

Notice of Decision and Reasons for Decision

Applicant:	'AT3'
Agency:	Department of Justice and Community Safety
Decision date:	22 November 2019
Exemptions considered:	Section 38 of the <i>Freedom of Information Act 1982</i> (Vic) in conjunction with section 104ZZA of the <i>Corrections Act 1986</i> (Vic)
Citation:	'AT3' and <i>Department of Justice and Community Safety (Freedom of Information)</i> [2019] VICmr 175 (22 November 2019)

FREEDOM OF INFORMATION – prison intelligence documents – prisoners – secrecy provision – offence to disclose personal or confidential information – information concerning security and management of prisons – Centurion

All references to legislation in this document are to the *Freedom of Information Act 1982* (Vic) (**FOI Act**) unless otherwise stated.

Notice of Decision

I have conducted a review under section 49F of the Agency's decision to refuse access to documents requested by the Applicant under the FOI Act.

My decision on the Applicant's request is the same as the Agency's decision in that I have decided to refuse access to the documents.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

22 November 2019

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency for access to the following documents:

Your letter from [named person] [position title] dated [date], banning me for a further [duration], without explanations – Your letter from [named person] [position title] dated [date]. Accusations which I have taken offence to, drug trafficking. A further [duration] ban imposed?

 1. All intelligence investigations, that back up your letter to me (drug trafficking)
 2. A clear understanding why no explanation was given, your letter dated [date].
2. In its decision, the Agency identified 24 documents falling within the terms of the Applicant's request. It decided to refuse access to all documents in full.

Review

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. I have been briefed by OVIC staff who inspected the documents, all of which were exempted by the Agency section 31(1).¹
5. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
6. I have considered all communications and submissions received from the parties, including:
 - (a) the Agency's decision on the FOI request;
 - (b) information provided with the Applicant's review application; and
 - (c) the Agency's submission dated 18 October 2019.
7. In undertaking my review, I have had regard to the object of the FOI Act, which is to create a general right of access to information in the possession of the Government or other public bodies, limited only by exceptions and exemptions necessary to protect essential public interests, privacy and business affairs.

Review of exemptions

8. The Agency relied on the exemptions under sections 31(1)(a), 31(1)(d) and 38 of the FOI Act in conjunction with section 104ZZA of the *Corrections Act 1986* (Vic) (**Corrections Act**) to refuse access to the documents. The Agency's decision letter sets out the reasons for its decision.

Section 38 – Documents to which secrecy provisions apply

9. A document is exempt under section 38 if:
 - (a) there is an enactment in force;

¹ Section 63D provides such documents may only be inspected at an agency's premises and the Information Commissioner is not entitled to take possession of them.

- (b) that applies specifically to the kind of information in the document; and
- (c) the enactment must prohibit persons, referred to in the enactment, from disclosing that specific kind of information (either absolutely or subject to exceptions or qualifications).

Is there an enactment in force?

- 10. I am satisfied the Corrections Act is an enactment in force for the purposes of section 38.

Does the enactment apply specifically to the kind of information in the documents?

- 11. For section 38 to apply, the enactment must be formulated with such precision that it specifies the actual information sought to be withheld.
- 12. As indicated above, the Agency applied section 38 of the FOI Act in conjunction with section 104ZZA of the Corrections Act, which provides:

104ZZA Offence to use or disclose personal or confidential information unless authorised

A person who is or has been a relevant person must not use or disclose personal or confidential information unless that use or disclosure is authorised under section 104ZY or 104ZZ.

Penalty: 120 penalty units.

- 13. Section 104ZX of the Corrections Act defines 'relevant person' to mean a person specified in an item of Schedule 5 of that Act.
- 14. Section 104ZX of the Corrections Act defines 'personal or confidential':

personal or confidential information includes the following—

- (a) information relating to the personal affairs of a person who is or has been an offender or a prisoner;
- ...
- (g) information concerning the investigation of a contravention or possible contravention of the law by—
 - (i) an offender; or
 - (ii) a prisoner; or
 - ...
- (i) information concerning the management of prisons;
- (j) information concerning—
 - (i) security systems and security measures in, or in relation to, a prison; or
 - (ii) security measures taken to protect the community from offenders;
 - ...

- 15. The documents are intelligence reports held on the Corrections Victoria Intelligence Unit database, known as 'Centurion' (**intelligence reports**).
- 16. The Agency submits prison intelligence information, including information held on Centurion, is exempt from disclosure.

17. In making its submissions, the Agency highlighted decisions of the Victorian Civil and Administrative Tribunal (**VCAT**) that have affirmed prison intelligence information held in systems, such as Centurion, is exempt from disclosure.
18. In particular, the decision of *Knight v Department of Justice*² (**Knight decision**) concerns access to prison intelligence information held on 'Protel', which was the predecessor of Centurion.
19. Centurion is a restricted database used by authorised Agency officers to gather and assess intelligence and information about the activities of prisoners. The sources of prison intelligence include prisoners, prison visitors, prison officers, members of the police force, other Australian prisoners and members of the public.³
20. The Knight decision held information gathering about prisoners is essential to the proper management of the prison system, including and the security of prisons, prisoners and staff.⁴

Information gathering about prisoners is essential to the proper management of the prison system and the security of individual prisons. Such information and intelligence is essential for a number of purposes. One is ensuring the security and integrity of the prison system by early identification of planning for escapes or attempts to traffic drugs or other contraband into prisons or other prisoner activity which may threaten the security or good order of a prison. Another is to assist in making risk assessments about particular prisoners (whether they pose risks to themselves, to other prisoners, to prison officers or members of the public). A third purpose is to identify developments which may indicate problems developing between groups of prisoners. A fourth purpose is to gather information relating to the proposed commission of offences.

If PROTEL information were unavailable, the ability to manage the security of the prison, prisoners and prison officers would be severely impaired.

The disclosure of PROTEL information to prisoners would disclose the methodology used by intelligence staff to collect information, and this would enable prisoners to exploit that knowledge and to conceal any planned unlawful or harmful activity. From his experience, if a prisoner obtained information from PROTEL he or she would be likely to communicate it to other prisoners.

21. Information held in Centurion, as it was in Protel, is used by prison management to make informed decisions about prison security and the management of prisons.
22. Accordingly, I am satisfied the enactment applies specifically to the kind of information contained in the documents, namely personal or confidential information.

Does the enactment prohibit persons from disclosing the information in the document?

23. Having reviewed the circumstances in which disclosure is authorised under sections 104ZY and 104ZZ of the Corrections Act, I am satisfied the Agency is prohibited from disclosing the information contained in all 24 documents to the Applicant.
24. Disclosure of information in breach of section 104ZZA of the Corrections Act attracts a financial penalty, which highlights the legislature's intention that such information should remain confidential.
25. Accordingly, I am satisfied disclosure of the documents is exempt under section 38 of the FOI Act in conjunction with section 104ZZA of the Corrections Act.

² [2011] VCAT 1276.

³ *Knight v Department of Justice* [2011] VCAT 1276 at [26].

⁴ *Ibid*, at [28]-[30] at [92].

Sections 31(1)(a) and 31(1)(d)

26. In light of my decision in relation to section 38, it is not necessary for me to consider the additional exemptions relied on by the Agency.

Deletion of exempt or irrelevant information

27. Section 25 requires an agency to grant access to an edited copy of a document when it is practicable for the agency or Minister to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.
28. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'⁵ and the effectiveness of the deletions. Where deletions would render the document meaningless they are not 'practicable', and release of the document is not required under section 25.⁶
29. Having reviewed the documents, I am satisfied provision of an edited copy of the documents with exempt information deleted would render them meaningless.

Conclusion

30. On the information available, I am satisfied the documents are exempt under section 38 of the FOI Act in conjunction with section 104ZZA of the Corrections Act.
31. As I have determined it would not be practicable to delete exempt information from the documents in order to provide access to an edited copy in accordance with section 25, I have decided to refuse access to all documents in full.

Review rights

32. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.⁷
33. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁸
34. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁹
35. Information about how to apply to VCAT is available online at www.vcat.vic.gov.au. Alternatively, VCAT may be contacted by email at admin@vcat.vic.gov.au or by telephone on 1300 018 228.
36. The Agency is required to notify the Information Commissioner in writing as soon as practicable if either party applies to VCAT for a review of my decision.¹⁰

⁵ *Mickelborough v Victoria Police (General)* [2009] VCAT 2786 at [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967 at [82].

⁶ *Honeywood v Department of Human Services* [2006] VCAT 2048 at [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 at [140] and [155].

⁷ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

⁸ Section 52(5).

⁹ Section 52(9).

¹⁰ Sections 50(3F) and (3FA).

When this decision takes effect

37. My decision does not take effect until the relevant review period (stated above) expires. If a review application is made to VCAT, my decision will be subject to any VCAT determination.