

Notice of Decision and Reasons for Decision

Applicant:	'AT7'
Agency:	Victoria Police
Decision date:	28 November 2019
Exemption considered:	Section 33(1)
Citation:	'AT7' and Victoria Police (<i>Freedom of Information</i>) [2019] VICmr 179 (28 November 2019)

FREEDOM OF INFORMATION – Law Enforcement Assistance Program (LEAP) Incident Report – Electronic Patrol Duty Return (ePDR) Form – police officer's notes – family violence incident – family violence report – intervention order proceedings – personal affairs information – unreasonable to disclose

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.

With the exception of personal affairs information relating to the Applicant's child, I am satisfied disclosure of the personal affairs information of third parties in the documents would be unreasonable and is exempt under section 33(1).

In relation to personal affairs information relating to the Applicant's child, I am satisfied disclosure of this information would not be unreasonable in the circumstances and is not exempt under section 33(1).

As I am satisfied it would be practicable to provide the Applicant with an edited copy of the documents with exempt and irrelevant information deleted in accordance with section 25, I have determined to release further information in the documents to the Applicant.

The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

My reasons for decision follow.

Joanne Kummrow

Public Access Deputy Commissioner

28 November 2019

Reasons for Decision

Background to review

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

All documents/information held by [the Agency] in relation to a family violence incident involving [the Applicant] on [date].
2. In its decision, the Agency identified four documents, comprising 28 pages as falling within the terms of the Applicant's request. It decided to grant access to 13 pages in part, noting 15 pages of Electronic Patrol Duty Return (ePDR) Forms were not relevant to the Applicant's request.
3. The Applicant is identified in the documents as the Affected Family Member (**AFM**) and informed this office that following the family violence incident (the **incident**) on [date] they obtained an intervention order against the listed perpetrator of family violence.
4. The Applicant also advised the perpetrator applied for an interim intervention order against the Applicant and other family members and seeks access to the documents to assist in intervention order proceedings.

Review

5. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
6. The Applicant initially indicated they seek review of information exempted by the Agency under 33(1) and deleted in accordance with section 25(b).
7. On 19 November 2019, OVIC staff advised the Applicant information deleted by the Agency in accordance with section 25(b) is not relevant to the Applicant's request. Following this explanation, the Applicant advised they seek information exempted by the Agency under section 33(1) only.
8. Accordingly, this review relates to the seven pages to which the Agency granted access in part with information exempted under section 33(1).
9. I have examined copies of the documents subject to review.
10. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
11. I have considered all communications and submissions received from the parties, including:
 - (a) the Agency's decision on the FOI request, dated 11 September 2019;
 - (b) the Applicant's submission received on 4 October 2019 and information provided with the Applicant's review application; and
 - (c) communications between OVIC staff, the Applicant and the Agency.
12. 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

13. The Agency relies on the exemption under section 33(1) to refuse access to parts of the documents.
14. The Agency's decision letter sets out the reasons for its decision and advises the following factors were taken into account in reaching its decision:
 - there was no criminal offence detected as a result of the investigation and accordingly the 'personal information' has not been presented in court;
 - the purpose for which [the Agency] obtained the personal information;
 - the fact that a release under FOI imposes no restrictions on further use or dissemination;
 - it is unreasonable to consult with third parties in these circumstances to obtain consent to release their personal information to you; and
 - the likelihood that the persons referred to in the documents would object to the release of their personal details.

Section 33(1)

15. A document is exempt under section 33(1) if two conditions are satisfied:
 - (a) disclosure of the document under the FOI Act would 'involve' the disclosure of information relating to the 'personal affairs' of a person other than the Applicant;¹ and
 - (b) such disclosure would be 'unreasonable'.

Do the documents contain information relating to the 'personal affairs' of persons other than the Applicant?

16. Information relating to a person's 'personal affairs' includes information that identifies any person, or discloses their address or location. It also includes any information from which this may be reasonably determined.²
17. A third party's opinion or observations about another person's conduct can constitute information related to the third party's personal affairs.³
18. The exempt information includes the names, addresses and contact telephone numbers of individuals other than the Applicant. It also includes the statements and observations of third parties who were present at the incident. I am satisfied this information constitutes the personal affairs information of persons other than the Applicant.

Would the release of the personal affairs information be unreasonable?

19. In deciding whether disclosure of a document would involve the unreasonable disclosure of a third party's personal affairs information, an agency must notify that person an FOI request has been

¹ Sections 33(1) and (2).

² Section 33(9).

³ *Richardson v Business Licensing Authority* [2003] VCAT 1053, cited in *Davis v Victoria Police (General)* [2008] VCAT 1343 at [43], *Pritchard v Victoria Police (General)* [2008] VCAT 913 at [24], *Mrs R v Ballarat Health Services (General)* [2007] VCAT 2397 at [13].

received for documents containing their personal information and seek their view as to whether disclosure of the document should occur.⁴ However, this obligation does not arise if:

- (a) the notification would be reasonably likely to endanger the life or physical safety of a person, or cause them undue distress, or is otherwise unreasonable in the circumstances;
- (b) the notification would be reasonably likely to increase the risk to the safety of a person experiencing family violence; or
- (c) it is not practicable to do so.⁵

20. The Agency advised, having considered the above factors, it determined it was not practical to consult with third parties.

21. The concept of 'unreasonable disclosure' involves balancing the public interest in the disclosure of official information with the personal interest in privacy in the circumstances of a particular matter. In determining if disclosure would be unreasonable in the circumstances, I have given weight to the following factors:

(a) The nature of the personal affairs information

The documents contain personal affairs information of persons other than the Applicant, including names, dates of birth, addresses and contact details. It also includes the recollection of events, as told by third parties present at the incident. As the nature of the incident and associated documents relate to matters of family violence, I consider this information to be inherently sensitive. This weighs against disclosure.

(b) The circumstances in which the information was obtained

The Agency recorded the information, including versions of events as told by third parties as part of its functions in the detection, investigation and prevention of breaches of the law. As per information in the documents and comments within the Agency's decision letter, no criminal offence was identified at the time of the incident and the statements of third parties have not been heard or tested in open court. This weighs against disclosure.

(c) The Applicant's interest in the information being disclosed

The Applicant in this matter was identified as the AFM at the time of the incident. The Applicant has explained the Respondent in the matter has sought interim intervention orders against the Applicant and their family members and they believe access to the documents in full would assist the Magistrate, who will hear the intervention order proceedings.

I acknowledge the Applicant has a personal interest in obtaining access to the documents in relation to forthcoming legal proceedings. This weighs in favour of disclosure.

(d) Whether any public interest would be promoted by the release of the information

As stated above, the Applicant wishes to provide the documents to the Magistrate who will hear the intervention order proceedings. As such, I consider this is a private matter rather than one in which disclosure of the documents would promote the public interest. In any case, should the documents be relevant to the court proceedings, it would be open to the Applicant

⁴ Section 33(2B).

⁵ Section 33(2C).

to apply to the court for the documents to be subpoenaed and produced to the court. On balance this weighs against disclosure.

- (e) Whether the individual whose personal affairs information would, or would be reasonably likely to object to the release of that information

Given the circumstances in which the Agency obtained the information, I am satisfied certain third parties would be reasonably likely to object to release of their personal affairs information in the documents. I acknowledge other parties may be relatives of the Applicant, thus less likely to object to the release of the information under the FOI Act, which provides for unrestricted and unconditional release. However, I agree with the Agency's decision that consultation with third parties in this matter would not be reasonable in the circumstances.

The Applicant submits they are aware of the identity of the third parties and some of their personal affairs information as the Applicant was present at the time of the incident and has intervention order paperwork which includes details of third parties. The Applicant's awareness of this information is a relevant consideration, however, even in circumstances where an individual is known to the Applicant, it can still be considered unreasonable to release that information.⁶ Overall, these considerations weigh against disclosure.

22. Finally, section 33(2A) requires that, in deciding whether the disclosure of a document would involve the unreasonable disclosure of information relating to the personal affairs of any person, I must take into account whether the disclosure of the information would, or would be reasonably likely to, endanger the life or physical safety of any person. On balance, given the incident that gave rise to the Applicant's request, I am unable to discount the possibility disclosure of the documents under the FOI Act would be reasonably likely to pose a safety risk to any person. This weighs against disclosure.
23. On the information before me, with the exception of personal affairs information relating to the Applicant's child, I am satisfied it would be unreasonable to release the personal affairs information of third parties in the circumstances. Accordingly, this information is exempt under section 33(1).
24. In relation to personal affairs information relating to the Applicant's child, I am satisfied the Applicant is the child's parent and guardian and they consent to the release of this information. In the circumstances, I am satisfied disclosure of this personal affairs information would not be unreasonable. Accordingly, this information is not exempt under section 33(1).
25. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

Deletion of exempt or irrelevant information

26. 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.
27. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'⁷ 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 25.⁸

⁶ *AB v Department of Education and Early Childhood Development* [2011] VCAT 1263 at [58]; *Akers v Victoria Police* [2003] VCAT 397.

⁷ *Mickelborough v Victoria Police (General)* [2009] VCAT 2786 [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967 at [82].

⁸ *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].

28. I have reviewed information the Agency deleted in the documents as irrelevant to the terms of the Applicant's request. I agree it falls outside the scope of the Applicant's request as it relates to either the processing of the Applicant's FOI request or other job numbers the Agency staff attended to on the date of the incident.
29. I have considered the effect of deleting irrelevant and exempt information from the documents. In my view, I am satisfied it would be practicable to delete this information in accordance with section 25, as to do so would not require substantial time and effort and the edited documents would retain meaning.

Conclusion

30. With the exception of personal affairs information relating to the Applicant's child, I am satisfied disclosure of the personal affairs information of third parties in the documents would be unreasonable and is exempt under section 33(1).
31. In relation to personal affairs information relating to the Applicant's child, I am satisfied disclosure of this information would not be unreasonable in the circumstances and is not exempt under section 33(1).
32. As I am satisfied it would be practicable to provide the Applicant with an edited copy of the documents with exempt and irrelevant information deleted in accordance with section 25, I have determined to release further information in the documents to the Applicant.
33. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

Review rights

34. If either party to this review is not satisfied with my decision, they are entitled to apply to the Victorian Civil and Administrative Tribunal (**VCAT**) for it to be reviewed.⁹
35. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹⁰
36. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹¹
37. 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.
38. 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.¹²

Notification of third party review rights

39. Section 49P(5) requires that, if practicable, I must notify a third party of their VCAT review rights where I determine to disclose their personal affairs information following my review.
40. Given I have determined to release the personal affairs information of the Applicant's child in the documents, I do not consider these notification requirements are practicable in the circumstances.

⁹ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹⁰ Section 52(5).

¹¹ Section 52(9).

¹² Sections 50(3F) and (3FA).

When this decision takes effect

41. 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.

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
1.	[Date]	LEAP Incident Report	2	Released in part Section 33(1)	<p>Release in part</p> <p>Sections 33(1), 25</p> <p>The following information is to be released as I am satisfied it is not exempt under section 33(1):</p> <p>Page 1 – Under the heading 'Case Narrative'</p> <ul style="list-style-type: none"> • Line 3, words 10-14 • Line 4, word 1 <p>Page 2</p> <ul style="list-style-type: none"> • Line 1, word 3 • Line 4, word 8 • Line 5, word 9. <p>All other information is to remain deleted under section 25 as either irrelevant or exempt under section 33(1).</p>	<p>Section 33(1): Whilst the information I have directed be released is the personal affairs information of a third party, I consider the Applicant is the guardian of the third party and would therefore consent to its release.</p> <p>With regard to all other personal affairs information of third parties in the document, I am satisfied it would be unreasonable to release this information in the circumstances for the reasons outlined in the Notice of Decision.</p> <p>Section 25: I am satisfied it is practicable for an edited copy of the document to be released to the Applicant with exempt and irrelevant information deleted in accordance with section 25.</p>
2.	[Date] – [Date](generated)	ePDR Form	11	Released in part	Release in part	Sections 33(1) and 25: See comments for Document 1.

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
	on [Date])			Section 33(1)	<p>Sections 33(1), 25</p> <p>The following information is to be released as I am satisfied it is not exempt under section 33(1):</p> <p>Page 5: Of entry timestamped: [Time]</p> <ul style="list-style-type: none"> Line 11, word 2 <p>All other information is to remain deleted under section 25 as either irrelevant or exempt under section 33(1).</p>	
3.	[Date] (generated on [Date])	ePDR Form	14	Released in part Section 33(1)	<p>Release in part</p> <p>Sections 33(1), 25</p> <p>I consider that the following information can be released to the Applicant:</p> <p>Page 8: Of the first entry only timestamped: [Time]</p> <ul style="list-style-type: none"> Line 4, words 9 and 10 Line 5, words 1-4 	Sections 33(1) and 25: See comments for Document 1.

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
					<ul style="list-style-type: none"> Line 11, word 6 Page 9: Of entry timestamped: [Date] <ul style="list-style-type: none"> Line 11, word 2 All other information is to remain deleted under section 25 as either irrelevant or exempt under section 33(1).	
4.	Unconfirmed	Notes of attending officer	1	Released in part Section 33(1)	Release in part Sections 33(1), 25 Redactions as per the Agency's decision.	Section 33(1): I am satisfied it would be unreasonable to release this information in the circumstances for the reasons outlined in the Notice of Decision.