

## Notice of Decision and Reasons for Decision

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Applicant:	'AV1'
Agency:	Department of Justice and Community Safety
Decision Date:	6 December 2019
Exemption 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:	'AV1' and <i>Department of Justice and Community Safety (Freedom of Information)</i> [2019] VICmr 191 (6 December 2019)

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FREEDOM OF INFORMATION – secrecy provision – Corrections Act - personal or confidential information identifying third parties

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 a document requested by the Applicant under the FOI Act.

My decision on the Applicant's request is the same as the Agency's decision.

I am satisfied information in the document exempted by the Agency, is exempt under section 38 of the FOI Act in conjunction with section 104ZZA of the *Corrections Act 1986* (Vic).

As I am satisfied it is practicable to delete exempt information in the document, I have determined to grant access to the document in part in accordance with section 25.

My reasons for decision follow.

**Joanne Kummrow**  
Public Access Deputy Commissioner  
6 December 2019

## Reasons for Decision

### Background to review

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

The appointments between [applicant name and reference number] and [named Agency officer][sic] of corrections Victoria, [suburb]...on the dates of the [specified dates].

2. In its decision, the Agency identified two documents falling within the terms of the Applicant's request. It decided to grant access to certain documents in full, and access to one document in part.

### Review

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access in full to one document.
4. I have examined a copy of the document, which is a case note prepared by an Agency officer documenting an appointment between the Applicant and the Agency officer.
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) the information provided with the Applicant's review application;
  - (c) the information provided by the Agency on 7 June 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 relies on the exemptions under sections 33(1) and 38 of the FOI Act in conjunction with the *Corrections Act 1986* (Vic) (**Corrections Act**) to refuse access to parts of the document. The Agency's decision letter sets out its reasons for 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;
  - (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).
10. For section 38 to apply, an enactment must be formulated with such precision that it specifies the actual information sought to be withheld.

11. 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.

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

**"Personal or confidential information" includes the following –**

...

(c) Information –

- i. that identifies any person or discloses his or her address or location or a journey made by the person; or
- ii. from which any person's identity, address or location can reasonably be determined

...

*Is there an enactment in force?*

14. 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 document?*

15. The document is a case note detailing an appointment the Applicant had with the Agency.
16. The information exempted in the document is identifying information of Agency staff members.
17. I am satisfied the enactment applies specifically to the kind of information in the document.

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

18. 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 in the document to the Applicant.
19. As set out above, unauthorised disclosure of 'personal or confidential information' is an offence under section 104ZZA of the Corrections Act. The penalty associated with unauthorised disclosure highlights Parliament's intention that such information should remain protected.
20. Accordingly, I am satisfied disclosure of the third party identifying information in the document is exempt under section 38 of the FOI Act in conjunction with section 104ZZA of the Corrections Act.

### **Section 33(1) – Personal affairs information**

21. Having determined the document is exempt in part under section 38 of the FOI Act in conjunction with section 104ZZA of the Corrections Act, it is not necessary for me to consider the application of section 33(1) to the document.

### **Deletion of exempt or irrelevant information**

22. 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.
23. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’<sup>1</sup> and the effectiveness of the deletions. Where deletions would render a document meaningless they are not ‘practicable’ and release of the document is not required under section 25.<sup>2</sup>
24. I have considered the effect of deleting exempt information from the document so as to provide the Applicant with an edited copy of the document in accordance with section 25.
25. I am satisfied it is practicable to delete exempt information in the document as do to so would not require substantial time and effort, and the edited document would retain meaning.

### **Conclusion**

26. On the information before me, I am satisfied information in the document exempted by the Agency, is exempt under section 38 of the FOI Act in conjunction with section 104ZZA of the Corrections Act.
27. As I am satisfied it is practicable to delete exempt information in the document, I have determined to grant access to the document in part in accordance with section 25.

### **Review rights**

28. 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.<sup>3</sup>
29. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>4</sup>
30. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>5</sup>
31. Information about how to apply to VCAT is available online at [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au). Alternatively, VCAT may be contacted by email at [admin@vcat.vic.gov.au](mailto:admin@vcat.vic.gov.au) or by telephone on 1300 018 228.
32. 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.<sup>6</sup>

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<sup>1</sup> *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].

<sup>2</sup> *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].

<sup>3</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>4</sup> Section 52(5).

<sup>5</sup> Section 52(9).

<sup>6</sup> Sections 50(3F) and (3FA).

***When this decision takes effect***

33. 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.