

Notice of Decision and Reasons for Decision

Applicant:	'AX3'
Agency:	Victoria Police
Decision date:	19 December 2019
Exemptions considered:	Sections 31(1)(d), 33(1)
Citation:	'AX3' and Victoria Police (<i>Freedom of Information</i>) [2019] VICmr 211 (19 December 2019)

FREEDOM OF INFORMATION – Law Enforcement Assistance Program (LEAP) – LEAP involvements – LEAP database – interest – law enforcement documents – police methods and procedures

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 document in full.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

19 December 2019

Reasons for Decision

Background to review

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

Victoria Police statement[s], opinions, comment[s] on [Applicant's name] as a [description of Applicant].
2. In its decision, the Agency identified one document falling within the terms of the Applicant's request. It decided to refuse access to the document 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. The Applicant indicated they were seeking to amend records referring to them as a [description of Applicant]. Accordingly, this review relates to the one document to which the Agency refused access in full.
5. I have been briefed by OVIC staff, who inspected the document claimed to be exempt under section 31(1)(d).
6. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
7. I have considered all communications and submissions received from the parties, including:
 - (a) the Agency's decision on the FOI request, dated 10 July 2019;
 - (a) information provided with the Applicant's review application, dated 26 July 2019;
 - (b) the Applicant's submission, dated 8 August 2019; and
 - (c) discussions between OVIC staff, the Agency and the Applicant.
8. 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

9. The Agency relied on the exemptions under 31(1)(d) and 33(1) to refuse access to the document. The Agency's decision letter sets out the reasons for its decision.

Law enforcement documents

10. Section 31(1)(d) provides a document is exempt if its disclosure would, or would be reasonably likely to, 'disclose methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures'.

11. The exemption in section 31(1)(d) does not apply to widespread and well-known methods and procedures.¹
12. From my review of the document, I am satisfied the information exempted by the Agency discloses police methods or procedures for preventing or dealing with matters arising out of breaches, or possible breaches, of the law. Specifically, I am satisfied the deleted material discloses methods and procedures employed by officers of the Agency for preventing, detecting, investigating or dealing with matters arising out of, breaches or evasions of the law.
13. While I am unable to describe the information in detail, as to do so may reveal the information that is exempt, as set out in the Agency's decision letter, I can say that the exempt information includes the details of a Law Enforcement Assistance Program (**LEAP**) database Interest Flag.
14. The existence of LEAP and the associated database is well-known to the wider public with LEAP being referenced by both the Agency, Australian Bureau of Statistics and various published media sources. However, I am not satisfied the functions, methods and procedures associated with LEAP and that database are widespread or widely known.
15. I have considered the likely effect of disclosing the information exempted by the Agency and I am satisfied disclosure would be reasonably likely to prejudice the effectiveness of the Agency's law enforcement functions, operational methods and procedures.
16. Accordingly, I am satisfied the information exempted by the Agency in the document is exempt under section 31(1)(d).
17. I note the Agency also relied upon section 33(1) to refuse access to the document. However, I consider the most appropriate exemption to apply to the document is section 31(1)(d). Accordingly, I do not consider it is necessary to consider the application of this additional exemption.

Deletion of exempt or irrelevant information

18. 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.
19. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'² 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 25.³
20. I have considered the effect of deleting exempt information from the document. In my view, it is not practicable to delete such information, as to do so would render the document meaningless.

Conclusion

21. On the information before me, I am satisfied the document is exempt under section 31(1)(d). As it is not practicable to edit the document to delete exempt information, I have decided to refuse access to the document in full.

¹ *XYZ v Victoria Police* [2010] VCAT 255 at [177].

² *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].

³ *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].

Review rights

22. 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.⁴
23. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁵
24. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁶
25. 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.
26. 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.⁷

When this decision takes effect

27. 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.

⁴ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

⁵ Section 52(5).

⁶ Section 52(9).

⁷ Sections 50(3F) and (3FA).