

Notice of Decision and Reasons for Decision

Applicant:	'AM6'
Agency:	Victoria Police
Decision date:	20 September 2019
Provisions and exemptions considered:	Sections 25A(5), 33(1)
Citation:	'AM6' and Victoria Police (<i>Freedom of Information</i>) [2019] VICmr 114 (20 September 2019)

FREEDOM OF INFORMATION – triple zero call – 000 – refusal to process request on grounds all documents would be exempt

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 to grant access to the documents in accordance with the Applicant's FOI request under section 25A(5).

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner
20 September 2019

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency for access to a Triple '000' call made by a named person from an identified number on a specified date.
2. In its decision, the Agency advised it decided to refuse access to the request under section 25A(5) of the Act.

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 advised they seek access to the document as they believe the call concerns them and they want to provide it to their local police.
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 received from the parties, including:
 - (a) the Agency's decision on the FOI request; and
 - (b) the Applicant's review application;
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 section 25A(5)

8. The Agency determined documents falling within the terms of the Applicant's request would be exempt from release under one or more exemptions under the FOI Act. Accordingly, the Agency refused to grant access to documents in accordance with section 25A(5).
9. The reasons for the Agency's decision are set out in its decision letter dated 14 August 2019.
10. Section 25A(5) provides that an agency may refuse to grant access to documents in accordance with an FOI request without having identified any or all of the documents if it is apparent from the nature of the request the documents sought would be exempt under the FOI Act, and where deletion of the exempt material would not facilitate release of the documents, or it is clear the applicant does not seek an edited copy of the documents.
11. The power in section 25A(5) is carefully circumscribed. A decision maker must be satisfied of the following three elements, which operate to limit its application:
 - (a) First, the exempt nature of the documents must be objectively apparent from the face of the request. Namely, the terms of the request as described by the applicant. The 'nature' of a document refers to its inherent or essential quality or character.
 - (b) Second, it must be apparent that all the documents in the request are exempt.

- (c) Third, it must be apparent from:
- i. The nature of the documents, as described in the request, that no obligation would arise under section 25 for the agency to grant access to an edited copy of a document; or
 - ii. The request or through consultation with the applicant that the person would not wish to have access to an edited copy of a document.¹

What is the essential character of the documents requested?

12. The essential quality or character of the documents as described in the Applicant's request is a recording or transcript of a call made to Triple '000' by a person other than the Applicant.

Would the documents requested, as described by the Applicant, be exempt?

13. In refusing access to the requested documents under section 25A(5), the Agency submitted any documents would be exempt under section 33(1).

Section 33(1)

14. 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;² and
 - (b) such disclosure would be 'unreasonable'.
15. 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.³
16. The concept of 'unreasonable disclosure' involves balancing the public interest in the disclosure of official information with the personal interest in privacy in the particular circumstances of a matter.
17. 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. However, I do not consider this to be a relevant factor in the circumstances.
18. 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 if an FOI request has been 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

¹ *Knight v Corrections Victoria* [2010] VSC 338.

² Sections 33(1) and (2).

³ Section 33(9).

⁴ Section 33(2B).

- (c) it is not practicable to do so.⁵
19. The Agency made its decision without identifying any documents subject to the request. It therefore was not practicable to conduct any consultation in this instance.
20. I consider disclosure of the type of information that would be subject to the request would involve the disclosure of personal affairs information relating to a person other than the Applicant.
21. In deciding whether the disclosure of the information would be unreasonable, I have taken the following factors into consideration:
- (a) whether the information is sensitive;
 - (b) the circumstances in which it was obtained;
 - (c) the extent to which it is available to the public;
 - (d) why the applicant seeks the information;
 - (e) the purpose for which the applicant seeks the information; and
 - (f) whether any public interest would be promoted by release of the information.
22. I have decided that any documents sought by the Applicant in this request would be exempt under section 33(1) for the following reasons:
- (a) information supplied to emergency services is likely to be sensitive;
 - (b) it would be reasonable for people who provide information to emergency services to do so with the expectation that it was given in private and would not be released;
 - (c) if such information were to be released, it could significantly affect the ability of emergency services to collect vital information about public safety. This is because I consider that the release of this type of information would mean that some people would be less likely to provide such information in the future; and
 - (d) while the Applicant advises the purpose of seeking the information is to provide it to police, I note the police would have the ability to access such information independently.

Is there scope to provide an edited copy of the documents requested?

23. 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.
24. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'⁶ and the effectiveness of the deletions. Where

⁵ Section 33(2C).

⁶ *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].

deletions would render the document meaningless, they are not 'practicable' and release of the document is not required under section 25.⁷

25. I am of the view it would not be practicable to provide the Applicant with an edited copy of any documents, should any exist, given the nature of the documents sought as I am satisfied the deletion of exempt information in the documents would render them meaningless.

Conclusion

26. On the information available, I am satisfied the requirements for the application of section 25A(5) are met.
27. Accordingly, my decision on the Applicant's request is the same as the Agency's decision in that I have decided to refuse to grant access to documents in accordance with the Applicant's FOI request under section 25A(5).

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.⁸
29. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁹
30. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁰
31. 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.
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.¹¹

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.

⁷ *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].

⁸ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

⁹ Section 52(5).

¹⁰ Section 52(9).

¹¹ Sections 50(3F) and (3FA).