

Notice of Decision and Reasons for Decision

| | |
|------------------------|---|
| Applicant: | 'AM9' |
| Agency: | Victoria Police |
| Decision date: | 24 September 2019 |
| Exemptions considered: | Sections 33(1), 35(1)(b) |
| Citation: | 'AM9' and Victoria Police (<i>Freedom of Information</i>) [2019] VICmr 117 (24 September 2019) |

FREEDOM OF INFORMATION – material obtained in confidence from third parties – firearms licence – fit and proper person – documents affecting personal privacy of third parties – unreasonable disclosure

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 the document 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 the document subject to review is exempt from release.

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

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner
24 September 2019

Reasons for Decision

Background to review

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

A copy of the letter that led the Chief Commissioner to be satisfied that there may be grounds to [suspend the Applicant's] firearm licence under s 49 of the *Firearms Act 1996* (Vic).
2. The Agency is responsible for the regulation of the firearms industry in Victoria. The *Firearms Act 1996* (Vic) (**Firearms Act**) requires that the holder of a firearm must be a 'fit and proper person' to possess, carry, use or acquire a firearm.
3. In its decision, the Agency identified one document, comprising two pages, falling within the terms of the Applicant's request. It decided to refuse access to the document in full.

Review

4. The Applicant sought review by the Information Commissioner under section 49A (1) of the Agency's decision to refuse access.
5. I have examined copies of the documents subject to review.
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;
 - (b) the Applicant's submission received on 21 August 2019 and information provided with the Applicant's review application; and
 - (c) all communications 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 in sections 33(1) and 35(1)(b) to refuse access to the document in full. The Agency's decision letter sets out the reasons for its decision.

Section 33(1)

10. [Redacted]
11. 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'.

¹ Sections 33(1) and (2).

Does the information constitute 'personal affairs information'?

12. 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
13. I also note the Victorian Civil and Administrative Tribunal (**VCAT**) has accepted a third party's opinion or observations about another person's conduct can constitute information related to the third party's personal affairs.³
14. The document subject to review comprises of confidential information provided by a third party to the Agency.
15. The information considered exempt by the Agency under section 33(1) includes:
 - (a) names and other identifying information of a party involved in the firearms licence investigation; and
 - (b) names and other identifying information of a third party.
16. I am satisfied the information identified by the Agency listed above amounts to 'personal affairs information' for the purposes of section 33(1).

Would disclosure of the information constitute unreasonable disclosure?

17. Determining whether disclosure would be unreasonable involves balancing the public interest in the disclosure of official information with the personal interest in privacy in the particular circumstances of a matter.
18. 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.
19. In determining whether the release of the personal affairs information is unreasonable, I consider the following matters are particularly relevant:
 - (a) the nature of the personal affairs information (for example, whether it is sensitive or its current relevance);
 - (b) the circumstances in which the information was obtained;
 - (c) the Applicant's interest in the information, including their purpose or motive for seeking access to the documents;
 - (d) whether any public interest would be promoted by disclosure;
 - (e) the likelihood of further disclosure of the information if it is released;
 - (f) whether the individuals to whom the information relates consent or object to the disclosure;

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].

- (g) whether disclosure would cause the individuals stress, anxiety or embarrassment; and
 - (h) whether the disclosure of information relating to the personal affairs of any person would, or would be likely to, endanger the life or physical safety of any person.
20. I have also taken into consideration that the nature of disclosure of a document under the FOI Act is unconditional and unrestricted, which means an Applicant is free to disseminate widely or use a document disclosed to them as they choose⁴.
21. Having reviewed the document subject to review, I am of the view release of the document would involve the unreasonable disclosure of personal affairs information of individual's other than the Applicant, taking into account the following factors:
- (a) the information provided to the Agency is sensitive in nature;⁵
 - (b) the information was provided to the Agency in confidence, with the understanding that the information would only be used for the purpose of the firearms licence investigation;⁶
 - (c) the individual to whom the information relates objects to the information being disclosed;⁷
 - (d) the information provided to the Agency has not been aired in public and the information is not in the public domain; and
 - (e) the Applicant's interest in obtaining the information is a matter of private interest. I do not consider any public interest would be promoted by disclosure of the third parties' personal affairs information to the Applicant. I am of the view the greater public interest lies in the Agency preserving the privacy of the third parties' in this circumstance.
22. While I acknowledge the Applicant has a genuine interest in obtaining access to the document subject to review, I have determined the need to protect sensitive information provided by third parties' in confidence to the Agency outweighs the Applicant's personal interest in obtaining this information.
23. Accordingly, I have determined the personal affairs information in Document 1 is exempt under section 33(1).

Section 35(1)(b)

24. As I have determined the document is exempt under section 33(1), it is not necessary for me to consider the application of section 35(1)(b) to the document.

Deletion of exempt or irrelevant information

25. 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.
26. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'⁸ and the effectiveness of the deletions. Where

⁴ *Victoria Police v Marke* [2008] VCSCA 218 at [68].

⁵ *Page v Metropolitan Transit Authority* [1988] 2 VAR 243 at [246].

⁶ *Levy v Department of Sustainability & Environment* [2011] VCAT 417 at [18]; *AB v Department of Education & Early Childhood Development* [2011] VCAT 1263 at [57].

⁷ *Page v Metropolitan Transit Authority* [1988] 2 VAR 243 at [246].

⁸ *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 25.⁹

27. I have considered the effect of deleting exempt information from the document. In my view, it is not practicable to delete the exempt information, as deleting the exempt information would render the document meaningless.

Conclusion

28. On the information available, I am satisfied the document is exempt under section 33(1). As I have determined it would not be practicable to delete the exempt information in the document, I have decided to exempt it in full. Accordingly, it is not necessary for me to consider the application of section 35(1)(b) to the document.

Review rights

29. If either party to this review is not satisfied with my decision, they are entitled to apply to the VCAT for it to be reviewed.¹⁰
30. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹¹
31. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹²
32. 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.
33. 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.¹³

When this decision takes effect

34. My decision does not take effect until the relevant review period (stated above) expires, or if either party applies to VCAT for a review, until the VCAT proceeding is concluded.

⁹ *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].

¹⁰ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹¹ Section 52(5).

¹² Section 52(9).

¹³ Sections 50(3F) and (3FA).

Annexure 1 – Schedule of Documents

| Document No. | Date of Document | Document Description | Number of Pages | Agency's Decision | OVIC Decision | OVIC Comments |
|--------------|------------------|-----------------------------------|-----------------|---|---|---|
| 1. | [Date] | Email provided to Victoria Police | 2 | <p>Refused in full</p> <p>Sections 33(1), 35(1)(b)</p> | <p>Refused in full</p> <p>Sections 33(1)</p> | <p>Section 33(1): I am satisfied the release of the personal affairs information of individuals other than the Applicant would be unreasonable. Accordingly, this information is exempt under section 33(1).</p> <p>Section 25: I have considered the effect of deleting exempt information from the document. In my view, it is not practicable to delete the exempt information, as deleting the exempt information would render the document meaningless. Accordingly, the document is exempt in full.</p> |