

Notice of Decision and Reasons for Decision

Applicant:	'AQ5'
Agency:	Court Services Victoria
Decision Date:	25 October 2019
Provision and exemptions considered:	Section 25A(5), 33(1), 31(1)(d)
Citation:	'AQ5' and Court Services Victoria (<i>Freedom of Information</i>) [2019] VICmr 149 (25 October 2019)

FREEDOM OF INFORMATION – personal affairs information – CCTV footage – court premises – refusal to process request on grounds all documents would be exempt – law enforcement documents – disclose methods or procedures for preventing, investigating, detecting or dealing with matters

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

25 October 2019

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency for access to the following documents:¹
 1. Pursuit to the Freedom of Information Act 1982 I request all CCTV surveillance footage from the Melbourne Magistrates Court, from the Supreme Court, and at the Supreme Court Prothonotary building: As follows –
 2. Attending the Supreme Court at 210 William street at the entrance of Lonsdale street to attend a Practice Court session for a directions hearing on the [date]: Entering the building at approximately [time] and approached and went through security: Security called [number] PSO officers: A PSO officer named [name] stopped me entering the Court because [reason]: I require the complete footage of me entering the Court building from the doors of Lonsdale street to waling too and through the security check point until the time that the PSO officers arrived and “detained” me: I require all the footage of every and all camera angles that captures everything that took place of the entire event from the time I entered the building to the time of the PSO officers ending: I want all footage from start to finish:
 3. Attending the supreme Court at the Prothonotary building at 436 Lonsdale street on the [date]: Entering the building at approximately [time]: I require the complete footage of me entering the Prothonotary building from the doors of Lonsdale street to walking too and three the security check point until the time that [number] PSO officers were then called: I require all the footage of every and all camera angles that captures everything that took place of the entire event: I want all footage from start to finish:
 4. Attending the Melbourne Magistrate Court on the [date]: In the morning entering the building a walking to approach the security check point at approximately [time]: I require the complete footage of me entering the Court building from the doors of William street to walking too and through the security check point, the footage during the security check, the footage leaving the security check point walking to the elevators: I want all footage from start to finish:
 5. Attending the Melbourne Magistrate Court on the [date]: Entering the Court building at approximately [time] walking to approach the security check point:
 - a. I require the complete footage of me entering the Court building from the doors of William street to walking too and through the security check point, the footage during the security check, the footage of having my bags personally checked by security at the security table, to the time of leaving the security table or the security check point, the footage leaving the security check point (table) and walking towards the elevators but having to take the stairs to go to level [number]:
 - b. I require the complete footage of me at the elevators then having to take the stairs:
 - c. I require the footage of the [number] PSO officers approaching me on level [number] and the direction they came from on level [number] to approach me:
 - d. I require the footage of the [number] PSO officers talking to me on level [number] surrounding in front of me while sitting down: I require the footage of the [number] PSO officers then escorting me from level [number] from where I was seated to the elevators, the footage inside the elevators, the footage leaving the elevators on the ground floor and being escorted from the elevators all the way to the PSO office:
 - e. I require the footage of what transpired inside the PSO office:
 - f. The PSO officer named [name] had [their] own body camera on and I require the footage from this device for start to finish (as stated in these paragraphs):

¹ With the exception of words or phrases redacted for the purposes of anonymisation of the Applicant and third parties, this has been reproduced from the Applicant’s original FOI request verbatim.

- g. While I was inside the PSO office for the period of time, I require the footage that captures the area outside the door entrance to the PSO office: And require any other footage in the opposite direction or the footage capturing all directions to and from the PSO office door entrance:
- h. I require the footage of me leaving the PSO office being escorted by up to [number] police officers to attend the court counter and then leaving the court counter being escorted: I require the footage after leaving the court counter to the next direction or destination, to eventually being escorted to the exit the court building:

- 6. I require every and all cameras, and all camera angles, that captures everything that took place as stated "above" of the entire events: I require the CCTV footage in its entirety of all the entire events from start to finish (as stated "above"), that visually defines me in the stated events at all times on the days in question

- 2. The Agency applied section 25A(5) to refuse the Applicant's request 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. During the review, the Agency advised body worn camera footage from Protective Services Officers (PSOs) is not in the Agency's possession. Such footage may be in the possession of Victoria Police. Accordingly, the Applicant's request for body worn camera footage falls outside the scope of this review.
- 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 Agency's submission dated 3 October 2019; and
 - (c) information provided with 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) to refuse to grant access to documents

- 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 9 September 2019.
- 10. Section 25A(5) provides 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 would be exempt under the FOI Act, and where removal 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 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 the document.²

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 CCTV footage taken at the Melbourne Magistrates' Court, the Supreme Court of Victoria and the Supreme Court Prothonotary buildings.

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 falling within the Applicant's request would be exempt under sections 33(1), 31(1)(d), and 31(1)(e).

Section 33(1) – Documents containing personal affairs information

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;³ and
 - (b) such disclosure would be 'unreasonable'.

Do the documents contain personal affairs information?

15. Information relates to the 'personal affairs' of a person if it is reasonably capable of identifying them, or of disclosing their address or location.⁴ It has also been held information relates to an individual's personal affairs if it 'concerns or affects that person as an individual'.⁵
16. As the nature of disclosure under the FOI Act is unrestricted and unconditional, this is to be interpreted by the capacity of any member of the public to identify a third party.⁶
17. The Victorian Civil and Administrative Tribunal (**VCAT**) has noted CCTV footage may disclose the personal affairs of persons other than a FOI applicant even if it does not show the faces of those third

² *Knight v Corrections Victoria* [2010] VSC 338.

³ Sections 33(1) and (2).

⁴ Section 33(9).

⁵ *Hanson v Department of Education & Training* [2007] VCAT 123 at [9].

⁶ *O'Sullivan v Department of Health and Community Services (No 2)* [1995] 9 VAR 1 at [14]; *Beauchamp v Department of Education* [2006] VCAT 1653 at [42].

parties. An individual may be capable of being identified by what they were wearing or what they were doing.⁷

18. I accept the Agency's submission the CCTV footage would capture the presence and interactions of a wide range of individuals including Court users, members of the public, judicial officers, Agency employees, Court security officers, Victoria Police members and PSOs.
19. I also accept the Agency's submission the personal affairs information likely to be captured in the footage include images of members of the public, Court staff, Court security officers and emergency services personnel.
20. I consider it reasonably likely the quality of the CCTV footage would be sufficiently clear at various times and to varying degrees to show identifying features of the individuals captured, such as facial features, distinctive clothing or other personal traits such as gait.
21. I consider it likely third party individuals' identities would be reasonably capable of being identified by persons with knowledge of or involvement in the events to which they relate, or any other member of the public.
22. Accordingly, I am satisfied the CCTV footage would contain personal affairs information of persons other than the Applicant.

Would release of the personal affairs information be unreasonable?

23. The concept of 'unreasonable disclosure' involves determining whether the public interest in disclosure of official information is outweighed by the personal interest in privacy.
24. In determining whether disclosure of the personal affairs information in the documents would be unreasonable, I have considered the following factors:

(a) The nature of the personal affairs information

I consider the requested CCTV footage would depict the images, movements, and dealings of a range of individuals, including court users, members of the public, Agency employees working in the courts, court security officers, PSOs and emergency services workers. This factor weighs against disclosure.

(b) The circumstances in which the personal affairs information was obtained

I accept the Agency's submission CCTV footage is obtained for the purpose of maintaining a safe and secure working environment for judicial officers, Court staff, other agency employees and all Court users. It is captured to ensure the security of Court buildings and to prevent, detect, investigate and deal with security issues, including breaches or evasions of the *Court Security Act 1980* (Vic) and other laws. This factor weighs against disclosure.

(c) The Applicant's interest in the information, and whether their purpose for seeking the information is likely to be achieved

The FOI Act provides a general right of access that can be exercised by any person, regardless of their motive or purpose for seeking access to a document. However, the reasons why an applicant seeks access to a document is a relevant consideration in determining whether disclosure would be unreasonable.⁸ In this case the Applicant did not provide any information

⁷ *Wilner v Department of Economic Development, Jobs, Training and Resources* [2015] VCAT 669 at [17].

⁸ *Victoria Police v Marke* [2008] VSCA 218 at [104].

as to their purpose for seeking access to the documents. As such, this factor has been considered, but neither weighs for or against disclosure.

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

There is no information before me to suggest the public interest would be promoted by the release of the personal information of any third parties captured. This factor weighs against disclosure.

(e) Whether the individuals to whom the information relates would be likely to object to the release of the information

As stated above, I accept CCTV footage is captured by the Agency for the purposes of safety and security measures and to detect wrongdoing.

While I consider it highly likely individuals attending the Courts on the dates in question were aware they were under surveillance, I accept such individuals would expect the footage would not be disclosed under the FOI Act without restriction or conditions.⁹

Having regard to the nature and circumstances of the creation of the CCTV footage, I am of the view the individuals, whose personal information is captured in the footage, would be reasonably likely to object to the release of the information for reasons other than law enforcement or health and safety purposes. This factor weighs against disclosure.

(f) Whether release of the information could lead the persons to whom it relates suffering stress and anxiety

Having considered the nature of the information and the circumstances in which it was obtained, I consider it reasonably likely release of the documents could lead to the persons to whom it relates suffering stress and anxiety. This factor weighs against disclosure.

(g) Whether the disclosure of the information would, or would be reasonably likely to endanger the life or physical safety of any person¹⁰

There is no information before me to suggest this is a relevant factor in this case.

25. Having weighed up the above factors, I am satisfied disclosure of the personal affairs information in the documents would be unreasonable in the circumstances. Accordingly, I am satisfied the documents are exempt under section 33(1).

Section 31(1)(d) – Law enforcement documents

26. A document is exempt under section 31(1)(d) if its disclosure under the FOI Act 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.
27. The phrase ‘reasonably likely’ means there is a real chance of an event occurring and it is not fanciful or remote.¹¹

⁹ See *Willner v Department of Economic Development, Jobs, Training and Resources (Review and Regulation)* [2015] VCAT 669 at [22]-[25].

¹⁰ Section 33(2A).

¹¹ *Bergman v Department of Justice Freedom of Information Officer* [2012] VCAT 363 at [65] quoting *Binnie v Department of Agriculture and Rural Affairs* [1989] VR 836.

28. 'Prejudice' means to hinder, impair or undermine, and includes actual prejudice as well as impending prejudice.¹²
29. The Agency submits:
- Disclosure of CCTV footage would undermine court security methods and procedures by revealing information about how CCTV cameras operate including such things as their location, limits of their view and timing of recordings. This is particularly relevant in relation to the parts of the Applicant's request for footage in areas that are not public areas of the courts such as the PSO office at the Melbourne Magistrates' Court.
- If released under FOI, there would be no restrictions or limitations to the dissemination of the CCTV footage. Such broad release could negatively impact on the use of CCTV cameras to prevent, detect, investigate or deal with breaches or evasions of the law and undermine CSV's ability to ensure that courts remain safe and secure.
30. Section 31(1)(d) does not apply where the methods or procedures in question are widespread and well-known.¹³
31. It is well known that CCTV cameras are used to assist in the prevention, detection, investigation, and handling of matters arising out of breaches or evasions of the law on Court premises. However, what is not well known is the location and number of cameras, the timing of recordings and the extent to which the cameras may or may not capture footage of particular areas within the Courts.
32. I consider if information confirming the location, timings of recordings and any other limitations of cameras on Court premises were to be released, it would allow individuals to make efforts to evade cameras and avoid detection.
33. Accordingly, I am satisfied release of the CCTV footage would be reasonably likely to prejudice the effectiveness of the security methods and procedures at the Court buildings and, therefore, is exempt under section 31(1)(d).
34. Given my decision in relation to section 31(1)(d), there is no requirement for me to consider the further exemption under section 31(1)(e) applied by the Agency.

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

35. 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.
36. The Applicant states they require 'every and all cameras, and all camera angles, that captures everything that took place', 'the CCTV footage in its entirety of all the entire events from start to finish' and 'the complete footage'. It is clear from the terms of the Applicant's FOI request, they do not wish to receive an edited copy of CCTV footage in accordance with section 25.

Conclusion

37. On the information available, I am satisfied the requirements of section 25A(5) are met.
38. 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 the documents in accordance with the Applicant's FOI request under section 25A(5).

¹² Ibid, *Bergman* at [66], referring to *Sobh v Police Force of Victoria* [1994] VicRp 2; [1994] 1 VR 41 (Nathan J) at [55].

¹³ *XYZ v Victoria Police* (2010) 33 VAR 1; [2010] VCAT 255 at [177], citing *Lawless v Department, Chief Commissioner of Police & Director of Public Prosecutions* (1985) 1 VAR 42 at [50].

Review rights

39. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.¹⁴
40. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹⁵
41. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁶
42. 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.
43. 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.¹⁷

When this decision takes effect

44. 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.

¹⁴ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹⁵ Section 52(5).

¹⁶ Section 52(9).

¹⁷ Sections 50(3F) and (3FA).