

## Notice of Decision and Reasons for Decision

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Applicant:	'BA5'
Agency:	Victoria Police
Decision Date:	23 January 2020
Exemption considered:	Section 33(1)
Citation:	'BA5' and Victoria Police ( <i>Freedom of Information</i> ) [2020] VICmr 9 (23 January 2020)

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FREEDOM OF INFORMATION – infringement notice – name – address – date of birth – driver licence number – vehicle registration details – description of alleged offence – release of information where applicant is the issuing officer

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 in that I have decided to refuse access to the document in full.

My reasons for decision follow.

**Joanne Kummrow**  
Public Access Deputy Commissioner

23 January 2020

## Reasons for Decision

### Background to review

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

Original or copy of original informant penalty notice issued by me [Applicant's name, rank and registered number] to [named person] issued approximately [number of] years ago.
2. In its decision, the Agency identified one document falling within the terms of the Applicant's request (the **Document**) and refused 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. I have examined a copy of the Document.
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;
  - (b) information provided with the Applicant's review application; and
  - (c) correspondence provided by the Agency on 8 January 2020.
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 exemption

8. The Agency relied on the exemption under section 33(1) to refuse access to the Document.
9. The Agency's decision letter sets out the reasons for its decision.

### ***Section 33(1) – Document containing personal affairs information***

10. 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;<sup>1</sup> and
  - (b) such disclosure would be 'unreasonable'.

*Does the document contain personal affairs information?*

11. Information relates to the 'personal affairs' of a person if it is reasonably capable of identifying them, or of disclosing their address or location.<sup>2</sup>

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<sup>1</sup> Sections 33(1) and (2).

12. Information relates to an individual's personal affairs if it 'concerns or affects that person as an individual'.<sup>3</sup>
13. 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.<sup>4</sup>
14. The Document is an infringement notice issued by the Agency. It contains the full name, residential address, date of birth, driver licence number and vehicle registration details of a person other than the Applicant.
15. Accordingly, I am satisfied the Document contains the personal information of an individual other than the Applicant.

*Would release of the personal affairs information be unreasonable?*

16. The concept of 'unreasonable disclosure' involves determining whether the public interest in disclosure of official information is outweighed by the need to protect an individual's personal privacy.
17. In *Victoria Police v Marke*,<sup>5</sup> the Victorian Court of Appeal held there is 'no absolute bar to providing access to documents which relate to the personal affairs of others'. Further, the exemption under section 33(1) 'arises only in cases of unreasonable disclosure' and '[w]hat amounts to an unreasonable disclosure of someone's personal affairs will necessarily vary from case to case'.
18. As also stated in *Victoria Police v Marke*, '[t]he protection of privacy, which lies at the heart of section 33(1), is an important right that the FOI Act properly protects. However, an individual's privacy can be invaded to a lesser or greater degree'.<sup>6</sup>
19. In determining whether disclosure of the personal information in the Document would be unreasonable, I have considered the following factors:
  - (a) The nature of the personal affairs information and the circumstances in which the information was obtained

The nature of the personal affairs information is described above, at paragraph 14. The information was obtained by the Agency in carrying out its law enforcement functions.

I consider information in the Document to be sensitive and personal in nature given it relates to a breach of the law by a third party.

The Applicant states they are aware of the third party's name and residential address because they were the issuing officer of the Document and the third party's [relationship descriptor] at the time of its creation.

Even where an applicant claims to know the identity of a third party, disclosure of a third party's personal affairs information in a document under the FOI Act may still be unreasonable in the circumstances.<sup>7</sup>

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<sup>2</sup> Section 33(9).

<sup>3</sup> *Hanson v Department of Education & Training* [2007] VCAT 123 at [9].

<sup>4</sup> *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].

<sup>5</sup> [2008] VSCA 218 at [76].

<sup>6</sup> [2008] VSCA 218 at [79].

<sup>7</sup> *AB v Department of Education and Early Childhood Development* [2011] VCAT 1263 at [58]; *Akers v Victoria Police* [2003] VCAT 397.

The third party provided their personal affairs information to the Agency in the context of the Applicant discharging their professional duties as an Agency officer. I consider it likely the Applicant provided their personal information to the Agency on the understanding it would be only be used by the Agency in discharging its law enforcement functions. I consider it reasonably likely the third party would not expect their personal affairs information in the Document to be disclosed under the FOI Act. These factors weigh against disclosure.

(b) 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 a document is a relevant consideration in determining whether disclosure would be unreasonable in the circumstances.<sup>8</sup>

The Applicant states they seek access to the Document because they want to use it as evidence in court proceedings, to demonstrate the third party is 'getting back' at the Applicant for issuing the infringement notice. This factor weighs in favour of disclosure.

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

While I acknowledge the Applicant's personal interest in seeking access to the information, there is no information before me to suggest the public interest would be promoted by the release of the personal affairs information of the third party. This factor weighs against disclosure.

(d) Whether the individual to whom the information relates object, or would be likely to object, to the release of the information

I do not have any information before me as to the views of the persons to whom the information relates. The Agency submits consultation was not practicable in the circumstances.

Having considered the nature of the personal affairs information, the circumstances in which it was obtained, the Applicant's association with the third party and their purpose for seeking access to the Document, I am of the view the third party would be likely to object to the release of the information. This factor weighs against disclosure.

(e) Whether the 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 personal affairs information could lead to the person to whom it relates suffering stress and anxiety. This factor weighs against disclosure.

(f) Whether the disclosure of the information would, or would be reasonably likely to endanger the life or physical safety of any person<sup>9</sup>

While I note the Applicant's association with the third party, there is insufficient information before me to satisfy me disclosure of the information to the Applicant would be reasonably likely to endanger the life or physical safety of any person. However, I accept the third party

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<sup>8</sup> *Victoria Police v Marke* [2008] VSCA 218 at [104].

<sup>9</sup> Section 33(2A).

could reasonably perceive the Applicant's request for the Document as such. Accordingly, this factor weighs against disclosure.

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

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

21. Section 25 requires an agency to grant access to an edited copy of a document where it is practicable for the agency to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.
22. It is clear from the terms of the Applicant's review application, particularly their purpose for seeking access to the Document, they require an unedited copy of the Document. Accordingly, there is no obligation to provide the Applicant with an edited copy of the Document with exempt information removed in accordance with section 25.
23. In any case, I consider it would not be practicable to delete exempt information in the Document as an edited copy of [the] Document would not retain meaning.

#### **Conclusion**

24. On the information available, I am satisfied the exemption in section 33(1) applies to some of the information in the Document. As there is no obligation to provide the Applicant with an edited copy of the Document in accordance with section 25, I have determined to refuse access to the Document in full.

#### **Review rights**

25. 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>10</sup>
26. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>11</sup>
27. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>12</sup>
28. 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.
29. 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>13</sup>

#### ***When this decision takes effect***

30. 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.

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

<sup>11</sup> Section 52(5).

<sup>12</sup> Section 52(9).

<sup>13</sup> Sections 50(3F) and (3FA).