

Notice of Decision and Reasons for Decision

Applicant:	'AV6'
Agency:	Victoria Police
Decision Date:	12 December 2019
Exemption considered:	Section 30(1)
Citation:	'AV6' and Victoria Police (<i>Freedom of Information</i>) [2019] VICmr 196 (12 December 2019)

FREEDOM OF INFORMATION – Traffic Incident System notes – internal working document –
correspondence between agency officers – public interest considerations

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 relates to Document 2 only and is the same as the Agency's decision.

I am satisfied the document is exempt under section 30(1).

As I am satisfied it is not practicable to delete exempt information in the document, the document is
exempt in full.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner
12 December 2019

Reasons for Decision

Background to review

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

All documents (including reports and investigations) relating to the accident on about [date]– near the corner of [location details], Melbourne – involving a collision between a police vehicle and a sedan.
2. In its decision, dated 21 August 2019, the Agency identified two documents, comprising of five pages falling within the terms of the Applicant’s request. It decided to refuse access to the documents 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. On 4 October 2019, the Applicant advised they do not seek access to the personal affairs information of third parties. Therefore, as the only information exempt in Document 1 is personal affairs information, it is not subject to review.
5. The Agency exempted Document 2 under sections 30(1) and 33(1). Accordingly, my review concerns whether section 30(1) applies to the document in full or in part, and whether personal affairs information can be deleted from the document under section 25 without rendering it meaningless.
6. I have examined a copy of the document subject to review.
7. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
8. I have considered all communications received from the parties, including:
 - (a) the Agency’s decision, dated 21 August 2019;
 - (b) the information provided with the Applicant’s review application; and
 - (c) communications between OVIC and the Agency and the Applicant.
9. 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.

Section 30(1)

10. Section 30(1) has three requirements:
 - (a) the document must disclose matter in the nature of opinion, advice or recommendation prepared by an officer or Minister, or consultation or deliberation that has taken place between officers, Ministers or an officer and a Minister; and
 - (b) such matter must be made in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency or Minister or of the government; and
 - (c) disclosure of the matter would be contrary to the public interest.

11. The exemption does not apply to purely factual material in a document.¹
12. The term 'officer of an Agency' is defined in section 5(1). It includes a member of the agency, a member of the agency's staff, and any person employed by or for the agency, whether that person is one to whom the provisions of the *Public Administration Act 2004* (Vic) apply or not.

Does the document disclose matter in the nature of opinion, advice, recommendation, consultation or deliberation of an officer?

13. In *Halliday v Office of Fair Trading*,² the former Administrative Appeals Tribunal of Victoria held the words 'opinion, advice or recommendation' convey a meaning of matters in the nature of 'a personal view', 'an opinion recommended or offered' or 'a presentation worthy of acceptance'.
14. The document contains Traffic Incident System notes prepared by Agency officers. It includes Agency officers' opinions, notes, observations and recommendations in relation to a motor vehicle incident investigation. I am satisfied this constitutes matters in the nature of opinion, advice or recommendation prepared by Agency officers.

Was the opinion, advice, recommendation, consultation or deliberation disclosed in the document provided in the course of, or for the purpose of, the deliberative process of the Agency?

15. In *Re Waterford and Department of Treasury (No. 2)*,³ the Commonwealth Administrative Appeals Tribunal held:

..."deliberative process" [is] wide enough to include any of the processes of deliberation or consideration involved in the functions of an agency...In short, ... its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

16. I am satisfied the opinion, advice and recommendations expressed in the Document were provided in the course of, and for the purposes of, the Agency's deliberative process in relation to a motor vehicle incident investigation.

Would disclosure of the Document be contrary to the public interest?

17. In deciding whether disclosure of the Document would be contrary to the public interest, it is necessary to balance relevant considerations, remaining mindful the object of the FOI Act is to facilitate and promote disclosure of information.
18. I have considered the following factors in determining whether release of the Document would be contrary to the public interest:⁴
 - (a) the right of every person to gain access to documents under the FOI Act;
 - (b) the degree of sensitivity of the issues discussed in documents and the broader context giving rise to the creation of the documents;

¹ Section 30(3).

² (unreported, AAT of Vic, Coghlan PM, 20 July 1995).

³ The opinion, advice or recommendation must be generated by an officer or Minister. Matters coming from another source, such as a complainant, witness or third party are not within section 30(1). See *Deasey v Geschke* (unreported, Vic County Court, Hassett J, 1 November 1984); *Ryder v Booth* [1985] VR 869.⁴ *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

⁴ *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

- (c) the stage or a decision or status of policy development or a process being undertaken at the time the communications were made;
 - (d) whether disclosure of the document would be likely to inhibit communications between agency officers, essential for the agency to make an informed and well-considered decision or participate fully and properly in a process in accordance with the agency's functions and other statutory obligations;
 - (e) whether disclosure of the document would give merely a part explanation, rather than a complete explanation for the taking of a particular decision or the outcome of a process, which the agency would not otherwise be able to explain upon disclosure of the documents;
 - (f) the impact of disclosing document in draft form, including disclosure not clearly or accurately representing a final position or decision reached by the agency at the conclusion of a decision or process; and
 - (g) the public interest in the community being better informed about the way in which the agency carries out its functions, including its deliberative, consultative and decision-making processes and whether the underlying issues require greater public scrutiny.
19. I note where information is sensitive, tentatively expressed or unclear, it is more likely its disclosure would be contrary to the public interest.⁵
 20. The Document contains Agency officers' opinions, notes, observations and initial recommendations in relation to a motor vehicle incident investigation. I accept such information is often sensitive, tentatively expressed or unclear in nature.
 21. I also acknowledge disclosure of documents under the FOI Act is unconditional and unrestricted, which means an applicant is free to disseminate or use a document as they choose.⁶
 22. Although, I do not have any information before me to suggest the Applicant intends on widely disseminating the document if disclosed, having considered the nature of the document and the personal and sensitive information it contains, I am of the view this factor weighs against disclosure.
 23. Information in the document is preliminary in nature. As such, it would give merely a part explanation, rather than a complete explanation for the Agency's decision or the outcome of a motor vehicle incident investigation, which the Agency would not otherwise be able to explain upon disclosure of the document. In other words, the document does not constitute the final decision or outcome of a motor vehicle incident investigation; it merely contains the Agency's deliberative process in relation to an investigation.
 24. The voluntary provision of opinions and thought processes by Agency officers, in the context of conducting a motor vehicle incident investigation, is necessary for the Agency to be able to ensure recommendations made in relation to the direction of an investigation are subject to proper and thorough deliberation.
 25. I am of the view, if Agency officers were aware their preliminary opinions and thought processes would be disclosed in response to an FOI request, they may be less likely to freely communicate in the future. I consider this would be a significant and detrimental outcome for the Agency, which

⁵ *Thomas v Department of Natural Resources and Environment* [2002] VCAT 533 at [27].⁶ *Victoria Police v Marke* [2008] VSCA 218 at [68].

⁶ *Victoria Police v Marke* [2008] VSCA 218 at [68].

relies on communications between its officers to make informed and well-considered recommendations in accordance with the Agency's functions and other statutory obligations.

26. I acknowledge there is a public interest in the community being informed about how the Agency carries out a motor vehicle incident investigation. However, I consider this is outweighed by the need to protect personal, professional and sensitive information provided by Agency officers for the reasons set out above.
27. In balancing the above factors, I am satisfied the release of the deliberative material in the document would be contrary to the public interest.
28. Accordingly, I am satisfied the information in the document is exempt under section 30(1).

Deletion of exempt or irrelevant information

29. 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.
30. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'⁷ 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 25.⁸
31. I have considered the effect of deleting exempt information from the Document and am satisfied it is not practicable to delete exempt information in the document, as to do so would render the document meaningless.

Conclusion

32. On the information before me, I am satisfied the document is exempt under section 30(1).
33. As I am satisfied it is not practicable to delete exempt information in the document, the document is exempt in full.

Review rights

34. 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.⁹
35. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹⁰
36. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹¹
37. 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.

⁷ *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].

⁸ *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].

⁹ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹⁰ Section 52(5).

¹¹ Section 52(9).

38. 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.¹²

When this decision takes effect

39. 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.

¹² Sections 50(3F) and (3FA).