

Notice of Decision and Reasons for Decision

Applicant:	'AW4'
Agency:	Victoria Police
Decision Date:	17 December 2019
Exemption considered:	Section 33(1)
Citation:	'AW4' and Victoria Police (<i>Freedom of Information</i>) [2019] VICmr 203 (17 December 2019)

FREEDOM OF INFORMATION – criminal investigation – photographs – personal affairs information

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 access to the documents in full.

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

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

17 December 2019

Reasons for Decision

Background to review

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

Photographs and all related information concerning the burglary at [named address] between [date range].
2. In its decision, dated 24 June 2019, the Agency identified six documents, comprising 29 pages, falling within the terms of the Applicant's request. It decided to deny 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. I have examined copies of the documents subject to 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 submissions 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) communications between OVIC staff, the Agency and the Applicant.
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 exemptions

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

Section 33(1)

9. 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'.

Does the information constitute 'personal affairs information'?

10. 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

¹ Sections 33(1) and (2).

11. A third party's opinion or observations about another person's conduct can constitute information related to the third party's personal affairs.³
12. The documents subject to review include information relating to the investigation of a reported crime.
13. The information exempted by the Agency under section 33(1) includes names, addresses, contact numbers and other personal information of third parties.
14. I am satisfied the information exempted by the Agency amounts to 'personal affairs information' for the purposes of section 33(1).

Would disclosure of the information constitute unreasonable disclosure?

15. Determining whether disclosure would be unreasonable involves balancing the public interest in the disclosure of official information with the personal interest in protecting the privacy of third parties in the circumstances.
16. Section 33(2A) requires, 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 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.
17. 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;
 - (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 like to, endanger the life or physical safety of any person.
18. I have also taken into consideration the nature of disclosure 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 choose.⁴

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].

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

19. Having reviewed the documents subject to review, I am of the view their release would involve the unreasonable disclosure of personal affairs information of individuals other than the Applicant, taking into account the following factors:
- (a) the information provided to the Agency is sensitive in nature;⁵
 - (b) the third parties to whom the information relates would likely object to the release of such information;⁶
 - (c) the information provided to the Agency has not been aired in open court and the information is not in the public domain;
 - (d) the information was obtained by the Agency in the course of a criminal investigation. It is reasonable to expect the information was provided to the Agency on the understanding it would only be used for the purpose of investigating a reported crime and in any subsequent prosecution of an alleged offender;
 - (e) the Applicant has advised they seek access to the documents to assist in the investigation of an insurance claim. Having reviewed the documents, I am of the view the personal affairs information of individuals other than the Applicant will not shed light on or assist in the investigation of the insurance claim; and
 - (f) 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.
20. While I acknowledge the Applicant has a genuine interest in obtaining access to the documents subject to review, I have determined the need to protect sensitive information provided by third parties to the Agency outweighs the Applicant's personal interest in obtaining this information.
21. Accordingly, I have determined disclosure of the personal affairs information in the documents subject to review would be unreasonable and is exempt under section 33(1).

Deletion of exempt or irrelevant information

22. 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.
23. 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
24. I have considered the effect of providing an edited copy of the documents with exempt information deleted in accordance with section 25. In my view, it is not practicable to delete the exempt information, as to do so would render the document meaningless.

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

⁶ *Page v Metropolitan Transit Authority* [1988] 2 VAR 243 at [246].

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].

Conclusion

25. On the information available, I am satisfied the personal affairs information in the documents is exempt under section 33(1).
26. As I have determined it would not be practicable to provide an edited copy of the documents with exempt information deleted, I have decided to exempt the documents in full.

Review rights

27. 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
28. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹⁰
29. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹¹
30. 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.
31. 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

32. 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.

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

¹⁰ Section 52(5).

¹¹ Section 52(9).

¹² 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]	LEAP REPORT	5	Refused in full Section 33(1)	Refused in full Sections 33(1), 25	<p>Section 33(1): I am satisfied the release of 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 am satisfied it is not practicable to provide an edited copy of the documents with exempt information deleted, as to do so would render the document meaningless.</p>
2.	[date range]	Interpose Report	2	Refused in full Section 33(1)	Refused in full Sections 33(1), 25	See comments for Document 1.
3.	[date]	Fingerprint Report	1	Refused in full Section 33(1)	Refused in full Sections 33(1), 25	See comments for Document 1.
4.	[date]	Statement	2	Refused in full Section 33(1)	Refused in full Sections 33(1), 25	See comments for Document 1.
5.	[undated]	Run Sheet	3	Refused in full Section 33(1)	Refused in full Sections 33(1), 25	See comments for Document 1.
6.	[undated]	Photos	16	Refused in full Section 33(1)	Refused in full Sections 33(1), 25	See comments for Document 1.