

Notice of Decision and Reasons for Decision

Applicant:	'AU3'
Agency:	Victoria Police
Decision Date:	3 December 2019
Exemptions considered:	Sections 30(1), 33(1), 34(4)(c), 35(1)(b)
Citation:	'AU3' and Victoria Police (<i>Freedom of Information</i>) [2019] VICmr 184 (3 December 2019)

FREEDOM OF INFORMATION – recruitment documents – selection report – key selection criteria – referee report

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 differs from the Agency's decision.

I am satisfied the exemptions in sections 30(1) and 33(1) apply to two of the three documents subject to review. Document 9 is exempt in full under section 30(1) and, as I am satisfied it is practicable to delete exempt information in Document 10, I have determined to grant access to this document in part.

I am not satisfied Document 1 is exempt under section 30(1) and the document is to be released to the Applicant 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
3 December 2019

Reasons for Decision

Background to review

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

Details relating to selection process for the [named position and details]. Interview held at the [specified location] Police station on [specified day and date] with S/Sgt [named person], Recruitment consultant [named person] and independent Detective Sergeant [named person]. Please supply a copy of the following documents -Selection Report- Applicant Profile relating to myself ([Applicant's name]) - Preferred applicants (if applicable) -Any Shortlisting documents or notes -Written KSC ratings – Referee reports supplied by S/sgt [named person] [specified location] Police and one from [named organisation] (employee unknown) -Any notes or other materials relating to Referee checks that were relied on in decision making. -Probity report for [Applicant's name] -Any other documents relating to selection process

2. In its decision, the Agency identified 10 documents falling within the terms of the Applicant's request. It decided to release five documents in full, three documents in part and refuse access to two documents in full.
3. The Agency also located two of the Applicant's Professional Development and Assessment Reports dated [date] to [date], and [date] to [date]. In its decision, the Agency stated it did not assess these documents as it was of the view the Applicant would already have a copy of these documents.

Review

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
5. The Applicant indicated in their submission they seek a review of the Agency's decision to deny access to the Selection Report, Key Selection Criteria ratings and handwritten notes and Referee Report only. Accordingly, this review relates to Document 1, to which the Agency granted access in part and Documents 9 and 10, to which the Agency refused access in full.
6. I have examined copies of the documents 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 and submissions received from the parties, including:
 - (a) the Agency's decision on the FOI request;
 - (b) the Applicant's submission dated 23 April 2019 and information provided with the Applicant's review application; and
 - (c) all other communications between the Applicant, Agency and OVIC staff.
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.

Review of exemptions

10. The Agency relies on the exemptions in sections 30(1), 33(1), 34(4)(c) and 35(1)(b) to refuse access to the documents either in full or in part. The Agency's decision letter sets out the reasons for its decision.

Agency's reasons for decision

11. In relation to the application of section 30(1), the Agency states in its decision letter:

The denied information has been prepared by officers of Victoria Police and was prepared in the course of or for the purpose of the deliberative processes of the recruitment process. I acknowledge the strong public interest in transparency to ensure observance of your rights. On the other hand, there is the very strong public interest that officers of an agency have the opportunity to give opinion, advice and recommendation in a frank and candid manner to ensure that the public interest in having proper recruitment of police members is not impaired.

The denied information refers to hand written notes in point form that is incomplete. The release of this type of information may cause confusion and this is not in the public interest as it would unfairly undermine the recruitment process.

12. In relation to the application of section 33(1), the Agency states:

I acknowledge that your interest is of a personal nature. That is, this information is part of matters that you were involved in, and thus, the information is also part of your personal affairs. However, this information is also the personal affairs of other individuals. I have had to consider an individual's right to privacy and your interest in disclosure of the information. I determined that the interest in protecting the individual's personal privacy outweighs the interest in disclosure of the documents to you.

When determining that the release of information relating to the personal affairs of third parties would be unreasonable, I have taken into account a number of factors including but not limited to:

- the fact that it is not reasonable in the circumstances to consult with the third parties;
- the nature of the information in question;
- the circumstances in which the Victoria Police came to possess the information;
- the likelihood that disclosure would cause stress, anxiety or embarrassment;
- the statutory consequences of release, that is, there being no restrictions or limits to the dissemination of the information; and
- the likelihood that the persons referred to in the documents would object to the release of their personal details.

13. In relation to the application of section 34(4)(c), the Agency states:

The Selection Report is a *similar document* and contained the questions that were part of your recruitment process. These questions were prepared for a recruitment process and although your application for the position has been finalised the questions are still in use for recruitment processes. The release of the interview questions is likely to expose Victoria Police unreasonably to disadvantage by hindering the recruitment process and alerting other job applicants to the questions.

14. In relation to the application of section 35(1)(b), the Agency states:

Recruitment Services obtain referee reports in confidence to ensure that referees provide full and frank appraisals of job applicants. The capacity of Recruitment Services to obtain information would be substantially reduced if they were unable to provide an assurance of confidentiality. This assurance of

confidentiality would fail if information, of the type sought in your application, were to be available under the provisions of the Act.

Applicant's submission

15. In their submission, the Applicant raises the following summarised issues in relation to the documents subject to review and the exemptions relied on by the Agency:
- (a) The Applicant made the FOI request to find out why they were unsuccessful in obtaining a position in the Agency despite a lengthy career as a police officer.
 - (b) The Applicant believes they are 'more than qualified and experienced' for the role.
 - (c) The Applicant does not believe 'the initial selection process was fair or in the spirit of natural justice'.
 - (d) The Applicant believes their lengthy career in the police force has been 'severely tarnished' and would like to know if something adverse has been said about them.
 - (e) Without access to such information, the Applicant believes they have 'no recourse' nor an 'opportunity to discuss or rebut any allegations'.
 - (f) The Applicant believes they were 'denied natural justice in relation to the selection process' and that transparency of the [selection] process is paramount'.
 - (g) There is a public interest in the 'proper recruitment of police members' and that process 'should not be impaired by the opinion of a singular person who's opinion cannot be evidenced or put into context or questioned' by the candidate for the position.
 - (h) Clause 9.3 of the *Victoria Police Manual* regarding 'Transfer and Promotion' provides in relation to 'Referees':
 - *The convenor is to ensure that appropriate referee checks are conducted. **Referees are to be informed that their comments will be documented and may be made available to the applicant or used at any appeal to the Police Appeals Board.** [emphasis added by Applicant]*
 - *Referee checks need not be confined to those listed by the applicant. The immediate or next line supervisors must be consulted. The applicant must be advised if other persons are consulted.*
 - *Referee checks may be undertaken at anytime during the selection process.*
 - (i) The Applicant submits the above information 'operates to largely negate the claim that there is a significant public interest in officer's being unimpaired in the provision of frank referee reports' and that a referee would have been aware, or ought to have been, that 'when they compiled their report or proffered an opinion about the applicant that it might be made available'.
 - (j) In relation to incomplete handwritten notes exempted under section 30(1) and the public interest in the 'proper recruitment of police', the Applicant queries whether incomplete notes can be accurately relied upon to make a decision about the Applicant's suitability for the position.
 - (k) In relation to the selection report exempted under section 34(4)(c), the Applicant submits they 'already know what questions were asked of me in the interview and have not unduly shared it with others' and has no intention of doing so.
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- (l) In relation to section 35(1)(b), while the Applicant understands ‘confidentiality is important’, they submit they ‘have no idea what has been said about me. I have had no opportunity to understand or respond. I don’t know how much is based on assumption or is actually true and this has had a significant impact on my professional reputation and career advancement. If the referee reports are factual and based on the truth then the referees should have nothing to fear or hide by their release’.

Section 30(1)

16. 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
- (a) 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
- (b) disclosure of the matter would be contrary to the public interest.

17. The exemption does not apply to purely factual material in a document.¹

18. The Agency applied section 30(1) to refuse access to Document 9 in full.

19. I must also be satisfied releasing this information is contrary to the public interest. This requires a ‘process of the weighing against each other conflicting merits and demerits’.²

20. The Agency refused access to Document 9 based on its reliance on section 30(1).

Does the document contain information in the nature of opinion, advice, recommendation, consultation or deliberation prepared by an officer?

21. 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.

22. The term ‘deliberative process’ has been interpreted widely. In *Re Waterford and Department of Treasury (No. 2)*,³ the Commonwealth Administrative Appeals Tribunal held:

... “deliberative processes” [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.

23. Document 9 is a template document prepared by the Agency’s Transfer and Promotion Unit to assist selection panel members in their assessment of the Applicant as a candidate for the position. This includes the ability to record their overall comments and contemporaneous observations taken during the interview.

24. Having reviewed Document 9, I am satisfied it contains handwritten comments recorded by a selection panel member in relation to the key selection criteria ratings and the Applicant’s overall

¹ Section 30(3).

² *Sinclair v Maryborough Mining Warden* [1975] HCA 17; (1975) 132 CLR 473 at 485, adopted in *Department of Premier and Cabinet v Hulls* [1999] VSCA 117 at [30].

³ [1981] 1 AAR 1.

performance at interview. It contains evaluative remarks of the panel member and therefore discloses that person's opinions and thinking processes. As such, I am also satisfied it does not contain purely factual information for the purposes of section 30(3).

Was the document prepared 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?

25. I am satisfied the document discloses opinions that were provided in the course of and for the purpose of the Agency's deliberative processes with respect to undertaking police recruitment activities.

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

26. In deciding if release is contrary to the public interest, I must consider all relevant facts and circumstances, remaining mindful that the object of the FOI Act is to facilitate and promote the disclosure of information.

27. In deciding whether the information exempted by the Agency would be contrary to the public interest to release, I have given weight to the following relevant factors:⁴

- (a) the right of every person to seek access to documents under the FOI Act;
- (b) the degree of sensitivity of the issues discussed in the documents and the broader context giving rise to the creation of the documents;
- (c) the stage of a decision or status of policy development or a process being undertaken at the time the communications were made;
- (d) whether the disclosure of the documents 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 documents 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 documents 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.

28. I note the Agency stated in its decision letter the 'handwritten notes in point form are incomplete'. I consider evaluative remarks and opinions recorded in such template documents are, as they are in this case, brief and taken in summary or short form and provide for an interview panel member to quickly and conveniently record their contemporaneous opinions and comments. By contrast, for example, Document 9 is not a transcript of the Applicant's interview and does not contain the questions asked by interview panel members or the responses provided by the Applicant.

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

29. Accordingly, documents of this nature generally do not capture all relevant information presented to or considered by an interview panel member. In this sense, they can be considered an incomplete record of a selection panel member's thinking processes recorded during and at the end of an interview. For example, a number of factors may impact upon the detail of notes taken, including the particular approach of a selection panel member to either take detailed or brief notes, or the number and length of interviews being undertaken over a period of time. Further, comments recorded by an interview panel member in such a document will generally be subject to further discussion and deliberation between all panel members.
30. While noting the right of every person to seek access to documents under the FOI Act, I consider it would be contrary to the public interest to disclose this information due to the likelihood it would undermine the Agency's recruitment processes and the ability of selection panel members to freely record their opinions and comments in such documents.
31. While Agency officers and recruitment consultants, who are interview panel members, are professionally obliged to provide their opinions and comments in a recruitment process, I accept there is a public interest in them being able to quickly and conveniently record their contemporaneous opinions and comments during an interview without concern that will often be brief and short form notes will be disclosed to the candidate. Therefore, I am satisfied the impact of routinely disclosing documents of this nature would undermine the robustness and integrity of the Agency's recruitment process.
32. I also acknowledge the Applicant's personal interest in seeking access to the document, as set out in their submission. However, in this instance, I am not satisfied there is a greater public interest in disclosure of the document as the need to protect the Agency's recruitment assessment process, in my view, outweighs the Applicant's private interest in obtaining access to Document 9.
33. Accordingly, I am satisfied it would be contrary to the public interest to release this document and the relevant information in the document is exempt under section 30(1).

Section 33(1)

34. 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;⁵ and
 - (b) such disclosure would be 'unreasonable'.
35. 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.⁶

Do the documents contain personal affairs information?

36. Parts of the documents contain the names, position titles, statements made by third parties and information from which a person's identity, address or location could reasonably be determined.
37. Having reviewed the documents, I am satisfied information in the documents relates to the personal affairs of persons other than the Applicant. Some parts of the documents also contain information relating to the Applicant's personal affairs. However, I consider this information is intertwined with the personal affairs information relating to the third parties.

⁵ Sections 33(1) and (2).

⁶ Section 33(9).

Would disclosure be unreasonable in the circumstances?

38. In deciding whether the exemption applies, it is necessary to determine whether disclosure of the personal affairs information in the documents would be unreasonable in the circumstances.
39. The concept of 'unreasonable disclosure' involves balancing the public interest in the disclosure of official information with the personal interest in privacy in the circumstances of a particular matter.
40. I acknowledge the Applicant may know some of the third parties mentioned in the documents. However, even where an applicant claims to know the third parties involved, disclosure of personal affairs information may still be unreasonable.⁷
41. In deciding whether disclosure of a document would involve the unreasonable disclosure of a third party's personal affairs information, an agency must notify that person an FOI request has been received for documents containing their personal information and seek their view as to whether disclosure of the document should occur.⁸ However, this obligation does not arise if:
- (a) the notification would be reasonably likely to endanger the life or physical safety of a person, or cause them undue distress, or is otherwise unreasonable in the circumstances;
 - (b) the notification would be reasonably likely to increase the risk to the safety of a person experiencing family violence; or
 - (c) it is not practicable to do so.⁹
42. The Agency advised in its decision letter it did not consult with the individuals, whose personal affairs information was exempted under section 33(1), as it determined it was not practicable to do so.
43. However, during this review, the Agency consulted with one of the third parties, and this individual consented to the release of their personal affairs information to the Applicant.
44. I have given consideration to the following factors in the circumstances of this matter:
- (a) The nature of the personal affairs information

The information in the documents was recorded as part of the Agency's recruitment processes. Given the content of the information and the context in which it was recorded, I am of the view that part of the information was provided in confidence. This weighs against disclosure.
 - (b) The extent to which the information is available to the public

I do not consider the information exempted by the Agency is available to the public. This weighs against disclosure.
 - (c) Whether any public interest would be promoted by release of the information

The Applicant advised they seek access to the information to obtain an understanding of what was said about them as part of the Agency's recruitment process. Therefore, access would serve a private interest, rather than a public interest. The Applicant also believes there was a denial of natural justice in relation to the selection process. While I note the Applicant's personal interest in seeking access to this information, I do not consider there is a public

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

⁸ Section 33(2B).

⁹ Section 33(2C).

interest in the disclosure of the information such that the public interest would be promoted by release of the personal affairs information of third parties in the documents. This weighs against disclosure.

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

As detailed above, the Agency consulted with one of the individuals to whom the information relates and this individual agreed to the release of their personal affairs information to the Applicant. This weighs in favour of disclosure.

Part of the information in Document 10 includes details of admonishment notices issued to the Applicant by the Agency and a summary of complaints made by third parties against the Applicant. Although the Applicant is reasonably likely to be aware of the admonishment notices and the complaints made by third parties, this information has been recorded by a third party in the context of a referee report. I am of the view that the individuals referred to in the admonishment notice and the individuals who made complaints against the Applicant would be reasonably likely to object to the release of their information to the Applicant given the context in which the information was obtained by the Agency. This weighs against disclosure.

Also, part of the information in Document 10 records information obtained by the individual providing the referee report from a third party. I am of the view that this information is likely to have been provided by the third party to the referee in confidence and the third party would be reasonably likely to object to the release of their personal affairs information to the Applicant. This weighs against disclosure.

(e) Whether disclosure of the information would, or would be reasonably like to, endanger the life or physical safety of any person

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

45. In balancing the above factors, I have determined it would be unreasonable to release some of the personal affairs information to which the Agency has refused access under section 33(1).

Section 34(4)(c)

46. A document is exempt under section 34(4)(c) if two conditions are satisfied:

- (a) the document is an examination paper, a paper submitted by a student in the course of an examination, an examiner's report or similar document; and
- (b) the use or uses for which the document was prepared have not been completed.

47. The nature of the document and the use for which the document was prepared, which are both questions of fact, determine whether the exemption applies. The exemption does not involve any public interest considerations. Accordingly, it is not relevant whether disclosure of the document might prejudice or undermine the Agency's recruitment process.

48. The Agency submitted Document 1 is a selection report, which is a 'similar document' for the purposes of section 34(4)(c), and that the use for which it was prepared has not yet been completed because the questions are still in use for recruitment purposes.

49. The term 'examination' has a broad definition that includes non-academic related examinations. I accept the Agency's interview questions fall within its scope. On that basis, I accept certain

information in the selection report is akin to examination questions and answers, examiners' reports and examiners' guides.

50. However, I do not accept the purpose for which the document was created is ongoing. The Agency's submission regarding possible reuse of the interview questions, in my view, is analogous to the agency's submission in the Victorian Civil and Administrative Tribunal (**VCAT**) decision of *McKean v University of Melbourne*.¹⁰ However, this submission was not accepted by either the Tribunal or, subsequently, the Supreme Court of Victoria¹¹ (**McKean matter**).
51. Adopting the Supreme Court's approach in the McKean matter, I consider the second limb of section 34(4)(c) refers to whether the use for which the specific documents subject to review were created is completed, rather than whether information in the documents might be reused in the future.
52. In this matter, the Agency interviews have a clearly defined purpose and outcome, which is completed when the Agency decides whether to progress a particular group of candidates to the next stage of the recruitment process. The specific documents pertaining to each candidate's interview are not reused. Notwithstanding the Agency may use the same or similar questions and assessment methods in the future, the specific use for which the documents were prepared is completed once the relevant round of interviews are finished.
53. Accordingly, I am not satisfied Document 1 is exempt under section 34(4)(c).

Section 35(1)(b)

54. A document is exempt under section 35(1)(b) if two conditions are satisfied:
 - (a) disclosure would divulge information or matter communicated in confidence by or on behalf of a person or a government to an agency or a Minister; and
 - (b) disclosure would be contrary to the public interest as it would be reasonably likely to impair the ability of an agency or a Minister to obtain similar information in the future.
55. Whether information communicated by an individual was communicated in confidence is a question of fact.¹²
56. When determining whether information was communicated in confidence, it is necessary to consider the position from the perspective of the communicator.¹³
57. Confidentiality can be express or implied from the circumstances of a matter.¹⁴

Was the information communicated in confidence?

58. The Agency refused to grant access to information communicated by an individual to the Agency.
59. In this matter, I consider section 35(1)(b) is capable of applying to the documents as the information was communicated as part of an established process for the provision of information to the Agency's recruitment unit.
60. As noted above, the Agency's decision letter stated referee reports are provided in confidence to ensure referees provide full and frank appraisals for candidates.

¹⁰ [2007] VCAT 1310.

¹¹ *University of Melbourne v McKean* [2008] VSC 325.

¹² *Ryder v Booth* [1985] VR 869 at 883; *XYZ v Victoria Police* [2010] VCAT 255 at [264].

¹³ *Ibid*, XYZ at [265].

¹⁴ *Ibid*.

61. I have considered the Applicant's submission in relation to clause 9.3 of the Victoria Police Manual which states 'referees are to be informed that their comments will be documented and may be made available to the applicant'.
62. I accept, in some instances, the Agency may disclose to a candidate comments or feedback provided by referees. However, I am of the view the Agency is not required to make such information available in all circumstances and, therefore, the Agency can exercise its discretion to determine whether this type of information should be provided in the circumstances.
63. I am of the view , in the circumstances of a confidential recruitment process, individuals who provide referee reports do so with an expectation the details of those reports will be kept confidential. During the review, the Agency consulted with the individual who provided the referee report and this individual agreed to the release of their personal information, which includes the opinions and recommendations of this individual.
64. Accordingly, I am not satisfied the information in the documents includes information communicated in confidence. Therefore, the information in Documents 1 and 10 is not exempt under section 35(1)(b).

Deletion of exempt or irrelevant information

65. Section 25 requires an agency to grant access to an edited copy of a document when it is practicable for the agency to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.
66. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'¹⁵ and the effectiveness of the deletions. Where deletions would render a document meaningless they are not 'practicable' and release of the document is not required under section 25.¹⁶
67. I have considered the effect of deleting exempt information from the documents to provide the Applicant with an edited copy. In my view, it is practicable to delete the exempt information in accordance with section 25, as to do so will not require substantial time and effort, and the edited documents will retain meaning.

Conclusion

68. On the information available, I am satisfied the exemptions in sections 30(1) and 33(1) apply to two of the three documents subject to review. Document 9 is exempt in full under section 30(1) and, as I am satisfied it is practicable to delete exempt information in Document 10, I have determined to grant access to this document in part.
69. I am not satisfied Document 1 is exempt under section 30(1) and the document is to be released to the Applicant in full.
70. The Schedule of Documents in **Annexure 1** sets out a summary of my decision with respect to each document.

¹⁵ *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].

¹⁶ *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].

Review rights

71. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.¹⁷
72. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹⁸
73. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁹
74. 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.
75. 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.²⁰

Other matters

76. Section 49P(5) states that if I decide to disclose a document claimed to be exempt under sections 33(1) or 35(1) I must, if practicable, notify any person who has a right to apply to VCAT for a review of my decision of their right to do so.
77. As stated above, the Agency consulted with a third party during the review and the individual agreed to the disclosure of their personal information in the documents, which includes the opinions and recommendations of this individual, both of which the Agency exempted under sections 33(1) and 35(1)(b).
78. In circumstances where a third party subsequently consents to release of information previously exempted by an Agency under sections 33(1) and 35(1)(b), I note the intention under sections 33(3A) and 35(1D) is that the third party is not entitled to seek review a decision to release the relevant information.
79. Accordingly, I am satisfied it is not necessary and, therefore, not practicable to notify the third party given they consented to disclosure of the relevant information.

When this decision takes effect

80. 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.

¹⁷ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹⁸ Section 52(5).

¹⁹ Section 52(9).

²⁰ 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.	Undated	Selection Report	6	Released in part Sections 33(1), 34(4)(c), 35(1)(b)	Release in full	<p>Section 33(1): During the review, the third party named in the document consented to the release of their personal affairs information, which includes their name, opinion and recommendations. Therefore, I am not satisfied information in this document is exempt under section 33(1).</p> <p>Section 34(4)(c): I am of the view the specific use for which the interview questions were prepared is now complete. Therefore, I am not satisfied this information is exempt under section 34(4)(c).</p> <p>Section 35(1)(b): Given the third party named in the document agreed to the release of their personal affairs information, which includes their opinion and recommendations, I am not satisfied this information was provided in confidence, or would impair the ability of the Agency to obtain similar information in the future. Accordingly, I am not satisfied information exempted by the Agency is exempt under section 35(1)(b).</p>
2.	Undated	Candidate	12	Released in part	Not subject to review	

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
		profile		Section 33(1)		
3.	Undated	Applicant Details	1	Released in full	Not subject to review	
4.	Undated	Order of Preference	1	Released in full	Not subject to review	
5.	Undated	Applicant Preference List	1	Released in full	Not subject to review	
6.	Undated	Referee Contact Details	1	Released in full	Not subject to review	
7.	[date]	Probity report	13	Released in part Section 33(1)	Not subject to review	
8.	Undated	Work Experience	2	Released in full	Not subject to review	
9.	Undated	Key Selection Criteria ratings with handwritten notes	1	Refused in full Section 30(1)	Refuse in full Section 30(1)	Section 30(1): I am satisfied the document contains information in the nature of opinion, which was provided in the course of a deliberative function of the Agency, namely during a recruitment process. I am satisfied it would be contrary to

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						the public interest to release the opinions of Agency officers in circumstances where a robust understanding of matters requires open and written deliberations to ensure a proper process in the recruitment of police members is undertaken.
10.	Undated	Referee report	5	Refused in full Sections 33(1), 35(1)(b)	Release in part Section 33(1) The following information exempted by the Agency under section 33(1) is exempt and is to remain deleted: On page 1: <ul style="list-style-type: none"> • The seventh to ninth word inclusive in the first sentence of the fourth paragraph under the heading 'General Questions'; • The eighth to 10th word inclusive in the second sentence of the fourth paragraph under the heading 'General Questions' ; • The ninth to 11th word inclusive in the fifth paragraph under the 	Section 33(1): The personal affairs information in this documents comprises the name, position title, rank, opinion and recommendations of an individual who provided the Agency with a referee report concerning the Applicant. The document also includes the names of other third parties, an address, comments made by third parties and other information from which a person's identity or location could reasonably be determined, including that of a minor. I am satisfied release of some of the personal affairs information would be unreasonable as I am of the view it relates to sensitive matters and the third parties are reasonably likely to object to its release in the circumstances. However, for the reasons set out in

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					<p>heading 'General Questions';</p> <p>On page 2:</p> <p>In the second paragraph:</p> <ul style="list-style-type: none"> • The eighth, ninth and 18th word in the first sentence; • The first, second, 15th 16th, 23rd and 24th word in the third sentence; • The first, second, 10th and 14th word in the fourth sentence; <p>In the fourth paragraph:</p> <ul style="list-style-type: none"> • The eighth, ninth and 18th word in the first sentence; • The fifth, 15th and 34th word in the second sentence; • The first, second, 10th and 11th word in the third sentence; • The first and 11th word in the fourth sentence; <p>In the fifth paragraph:</p> <ul style="list-style-type: none"> • The eighth and ninth word; 	<p>Document 1 above, I am not satisfied it would be unreasonable to release some of the personal affairs information in this document.</p> <p>Section 35(1)(b): Refer to comments for Document 1, above.</p>

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
					<p>In the sixth paragraph:</p> <ul style="list-style-type: none"> • The fourth, fifth, 10th, 11th and 20th through to 27th word inclusive, in the first sentence; • The second and third sentence; <p>In the seventh paragraph:</p> <ul style="list-style-type: none"> • The 12th, 13th, 15th, 16th, 21st and 22nd word in the first sentence; <p>In the eighth paragraph:</p> <ul style="list-style-type: none"> • The 16th and 17th word in the first sentence; • The fourth through to sixth word inclusive in the second sentence; <p>In the ninth paragraph:</p> <ul style="list-style-type: none"> • The 11th through to 13th word inclusive and the 15th through to 17th word inclusive in the first sentence; • The first and 12th word in the second sentence; • The first, 12th, 15th, 20th, and 23rd 	

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
					<p>through to 30th word inclusive in the third sentence;</p> <ul style="list-style-type: none"> • The first and third through to 10th word inclusive in the fourth sentence; <p>In the tenth paragraph:</p> <ul style="list-style-type: none"> • The first, 18th and 22nd word in the first sentence; • The seventh through to 11th word inclusive and the 23rd, 24th and 28th through to 33rd word inclusive in the second sentence; • The fourth and 11th word in the third sentence; <p>In the eleventh paragraph:</p> <ul style="list-style-type: none"> • The third through to seventh word inclusive in the first sentence; • The seventh word in the second sentence; • The first, eighth, 15th word in the third sentence; • The first and 11th word in the fourth 	

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					<p>sentence;</p> <p>On page 3:</p> <p>In the third paragraph:</p> <ul style="list-style-type: none"> • The 27th and 28th word; <p>In the fourth paragraph:</p> <ul style="list-style-type: none"> • The 13th and 14th word; <p>In the sixth paragraph:</p> <ul style="list-style-type: none"> • The 11th through to 13th word inclusive in the first sentence; • The third, fourth and 17th word in the second sentence; • The fourth, fifth, 12th through to 16th word inclusive in the third sentence; • The sixth, seventh, 13th and 14th word of the fourth sentence; • The 10th through to 15th word inclusive in the fifth sentence; <p>In the seventh paragraph:</p>	

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
					<ul style="list-style-type: none"> • The fifth and sixth word; <p>In the eighth paragraph:</p> <ul style="list-style-type: none"> • The first and second word in the first sentence; • The fourth word in the second sentence; <p>In the ninth paragraph:</p> <ul style="list-style-type: none"> • The first, second, 11th and 19th word; <p>In the twelfth paragraph:</p> <ul style="list-style-type: none"> • The 22nd, 23rd, 31st and 32nd word in the first sentence; • The seventh and eighth word in the second sentence; <p>In the thirteenth paragraph:</p> <ul style="list-style-type: none"> • The first word in the first sentence; • The first and 13th word in the second sentence; • The 11th and 16th word in the third 	

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
					<p>sentence;</p> <ul style="list-style-type: none"> • The fifth and eighth word in the fourth sentence; • The 15th word in the fifth sentence; <p>On page 4:</p> <ul style="list-style-type: none"> • The second through to sixth paragraph inclusive on the bottom of page 4 under the last bold heading on that page; <p>On page 5:</p> <ul style="list-style-type: none"> • The first through to fifth paragraph on page 5. <p>All other information in the document is not exempt and is to be released to the Applicant.</p>	