Application for public interest determination – Notice pursuant to section 29(4) of the *Privacy and Data Protection Act 2014*

**Information Commissioner may make a determination**

On 25 June 2020, Victoria Police and the Department of Justice and Community Safety (**DJCS**) applied to the Information Commissioner (**the application**) for a public interest determination (**PID**) under section 29(1) of the *Privacy and Data Protection Act 2014* (**PDP Act**).

Under section 31(1) of the PDP Act, the Information Commissioner may make a PID if satisfied that the public interest in an organisation doing an act or engaging in a practice substantially outweighs the public interest in complying with a specified Information Privacy Principle (**IPP**)[[1]](#footnote-2). The Information Commissioner must have regard to:

* whether or not permitting the organisation to do the act or engage in the practice is in the public interest;
* the objects of the PDP Act; and
* any submission received from parties who would be affected by the making of the proposed PID.

**Background to the application**

DJCS administers the Restorative Engagement and Redress Scheme (**the Scheme**). The Scheme allows current and former Victoria Police employees to apply to access counselling and wellbeing support, participate in restorative engagement, and seek compensation, where they have experienced workplace sex discrimination, sexual harassment, or predatory behaviour.

The Scheme was developed in response to Recommendation 1 of the Victorian Equal Opportunity and Human Rights Commission’s Independent review of sex discrimination and sexual harassment, including predatory behaviour in Victoria Police.[[2]](#footnote-3)

The Scheme is administered by DJCS to ensure it is operated externally from Victoria Police, and applicants are provided anonymity from Victoria Police. This is required to ensure individuals do not fear personal or career implications by accessing the Scheme.

Victoria Police intends the provide DJCS with the following personal information (**Employee Information**) of *all* former and current (as of 12 December 2019) Victoria Police employees:

1. First name; and
2. Middle name; and
3. Surname; and
4. Date of birth; and
5. Registered number and for Victorian Public Sector employees, their V number; and
6. Month and year when they commenced employment with Victoria Police; and
7. Last, or as at 12 December 2019, rank or pay classification; and
8. Last, or as at 12 December 2019, the Police station, or business unit within Victoria Police they worked.

DJCS requires the Employee Information from Victoria Police to be able to verify that an applicant is a former or current Victoria Police employee, and is therefore eligible for redress under the Scheme.

While the Employee Information of every Victoria Police employee is to be provided to DJCS, *only* the Employee Information of those who make an application to the Scheme will used by DJCS.

When a Victoria Police employee applies to access the Scheme, a case management system will undertake an automated check using the Employee Information to verify the applicant’s employment with Victoria Police.

What the application seeks

To facilitate the Scheme, the application seeks departure from compliance with the following IPPs:

1. Victoria Police from IPP 2.1. IPP 2.1 requires organisations to not use or disclose personal information about an individual for a purpose other than the primary purpose of collection.

Without a PID, IPP 2.1 would not allow Victoria Police to disclose the Employee Information to DJCS for the purposes described in above background.[[3]](#footnote-4)

1. DJCS from IPP 1.5. IPP 1.5 requires an organisation that collects personal information about an individual from someone else to take reasonable steps to notify the individual of the matters noted in IPP 1.3.

Without a PID:

* 1. DJCS would be required to notify every Victoria Police employee that their Employee Information has been collected by DJCS. This in turn would require additional contact information to be provided to DJCS by Victoria Police to make this notification. It would also require DJCS employees to have direct access to the personal information.
  2. DJCS may be required to notify a third party (for example, an alleged perpetrator) whose personal information is contained in an individual’s application to the Scheme.

In summary, if the Information Commissioner grants the PID, the following acts or practices will be permitted:

1. Victoria Police will be permitted to transfer the Employee Information to DJCS; and
2. DJCS will not be required to provide notice of collection to:
   1. employees of Victoria Police as a result of the collection of the Employee Information; and
   2. third parties whose personal information may be collected as a result of it being contained in an application to the Scheme.

**The public interest**

**Victoria Police’s non-compliance with IPP 2.1**

The application claims that the public interest in Victoria Police providing the employee information to DJCS substantially outweighs the public interest in adhering to IPP 2.1 is the right for an applicant to the Scheme to remain anonymous from Victoria Police.

The Scheme is underpinned by victim-centric guiding principles, including victim safety, victim choice, control, consent and confidentiality. If an applicant’s identity is disclosed or revealed to Victoria Police during restorative engagement process, this could deter an individual from applying for fear of personal or career implications.

**DJCS’s non-compliance with IPP 1.5**

The application claims that the public interest in not requiring DJCS to provide a collection notice to third parties whose personal information has been collected substantially outweighs the public interest in adhering to IPP 1.5 is:

* the practical limitations of providing notice to every Victoria Police employee as a result of the collection of the Employee Information, including:
* the Employee Information does not contain contact information, and additional personal information (contact details) would be required to enable notification to occur;
* the large number of current and former Victoria Police employees who would have to be contacted; and
* by design, DJCS employees will not have direct access to the Employee Information.
* the right of an applicant to the Scheme to remain anonymous from Victoria Police which may be compromised if a notice of collection is provided in relation to the collection of third party information. For example, if a current Victoria Police employee who has experienced workplace sexual discrimination or harassment makes an application under the Scheme whilst continuing to work with their alleged perpetrator – to require DJCS to provide a collection notice to the perpetrator could escalate a risk of harm to the applicant.

**Duration of the PID**

The application seeks the PID to continue for four years until 30 June 2024 – the period for which the Scheme will operate.

**Submissions may be made in relation to the application**

In accordance with section 29(4)(b) of the PDP Act, the Information Commissioner invites any persons whose interests would be affected by the making of the requested PID to make a submission in relation to the application.

Submissions are invited from the date of this notice and must be received by **6 July 2020.**

Submissions must be emailed to [policyteam@ovic.vic.gov.au](mailto:policyteam@ovic.vic.gov.au). If a submission cannot be sent by email, please contact this office on 1300 006 842 to discuss alternative options.

1. Contained in Schedule 1 of the PDP Act. [↑](#footnote-ref-2)
2. <https://www.humanrightscommission.vic.gov.au/home/our-projects-a-initiatives/independent-review-victoria-police>. [↑](#footnote-ref-3)
3. Note: The law enforcement exemption in section 15 of the PDP Act, allowing a law enforcement agency to not comply with certain IPPs, does not apply as the sharing of personal information in the context of the Scheme is not for a law enforcement purpose or activity. [↑](#footnote-ref-4)