

Notice of Decision and Reasons for Decision

Applicant:	'BG9'
Agency:	Department of Justice and Community Safety
Decision date:	17 March 2020
Exemptions and provisions considered:	Sections 31(1)(a), 31(1)(d), 25
Citation:	'BG9' and Department of Justice and Community Safety (<i>Freedom of Information</i>) [2020] VICmr 69 (17 March 2020)

FREEDOM OF INFORMATION – law enforcement documents – road safety cameras – mobile speed cameras – traffic cameras – camera locations – camera equipment layout

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 release the documents in part.

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 March 2020

Reasons for Decision

Background to review

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

We wish to obtain the following information collected by a mobile speed camera operating on [specified date] (and [specified date], if the camera remained on this date) on [specified intersection] (referenced as Operator ID [specified number] and camera number [specified number]):

1. The precise location of the speed camera setup. This can be street address or precise geographic coordinates.
2. For vehicles travelling away from the camera, the list of excess speeds detected and the time each occurred.
3. For vehicles travelling towards the camera, the list of excess speeds detected and the time each occurred.

The registration details of each vehicle are not requested.

2. In its decision, the Agency identified certain documents falling within the terms of the Applicant's request. It decided to release 1 page in full, 3 pages in part and refuse access to 1 page 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 been briefed by OVIC staff who inspected the documents claimed to be exempt under section 31(1).¹
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 and 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 subsequent correspondence dated 20 January 2020; and
 - (c) the Agency's submission dated 20 February 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 exemptions

8. The Agency relied on the exemptions in sections 31(1)(a) and 31(1)(d) to refuse access to the documents in part and in full. The Agency's decision letter sets out the reasons for its decision.

¹ Section 63D provides such documents may only be inspected at an agency's premises and the Information Commissioner is not entitled to take possession of them.

Sections 31(1)(a) and 31(1)(d)

9. Section 31(1)(a) provides a document is exempt if its disclosure under the FOI Act would, or would be reasonably likely to, prejudice the investigation of a breach or possible breach of the law, or prejudice the enforcement or proper administration of the law in a particular instance.
10. 'Reasonably likely' means there is a real chance of an event occurring; it is not fanciful or remote.²
11. 'Prejudice' means to hinder, impair or undermine and includes actual prejudice as well as impending prejudice.³
12. 'In a particular instance' does not require a single specific investigation. This phrase can encompass specific, identified aspects of law, administration of law or investigations of breaches or potential breaches of law.⁴
13. Section 31(1)(d) provides a document is exempt if its disclosure would, or would be reasonably likely to, 'disclose methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures'.
14. The exemptions in section 31(1) do not apply to widespread and well known law enforcement or investigation methods and procedures.⁵
15. The Agency submits release of parts of the documents subject to review would:
 - (a) reveal information about the operation of the road safety cameras and reasonably likely to prejudice the enforcement or proper administration of the *Road Safety Act 1986* and the *Road Safety Rules 2017* relating to the road safety camera program;
 - (b) undermine the public purpose of the road safety camera program with potential for the information to be used to avoid detection and prosecution if released; and
 - (c) disclose law enforcement methods and procedures used to prevent, detect and investigate potential breaches of the law and could undermine the effectiveness of the system and lead to interference with, or damage to, road safety camera sites and equipment.
16. In *Cichello v Department of Justice*,⁶ the Victorian Civil and Administrative Tribunal (**VCAT**) accepted sworn evidence before the Tribunal in relation to the location and design of traffic cameras and camera testing:

I accept that public release of the site diagram revealing the specific location of the infrastructure would unfortunately lead to an increase in deliberate damage to that infrastructure. This would prejudice the respondent's capacity to detect the speed of vehicles and enforce speed limits. I am also satisfied that, if the specific location of the infrastructure were publicly known, that there is a reasonable likelihood that some drivers would use such information to attempt to avoid detection for offences under the Road Safety Act 1986. I accept that this would prejudice the operation and enforcement of the Road Safety Act 1986. It would thereby undermine the administration of the law. It would hinder the detection of individual offences. Accordingly, the disclosure would be reasonably likely to prejudice the effectiveness of the road safety camera system. The site diagram is exempt.

² *Bergman v Department of Justice Freedom of Information Officer* [2012] VCAT 363 at [65], quoting *Binnie v Department of Agriculture and Rural Affairs* [1989] VR 836.

³ *Ibid*, *Bergman* at [66], referring to *Sobh v Police Force of Victoria* [1994] VicRp 2; [1994] 1 VR 41 (Nathan J) at [55].

⁴ *Cichello v Department of Justice (Review and Regulation)* [2014] VCAT 340 at [24].

⁵ *XYZ v Victoria Police* [2010] VCAT 255 at [177].

⁶ *(Review and Regulation)* [2014] VCAT 340.

I accept that release of information revealing what is monitored and the test equipment used would similarly facilitate evasion of the road rules by some drivers. I accept that it could in some instances lead to (dangerous) methods of camera avoidance (jeopardizing the safety of road users). I accept that the release of what is monitored and the test equipment would in these circumstances be reasonably likely to prejudice the effectiveness of the road safety devices. I also accept that it would be reasonably likely to prejudice the proper administration of the road laws. It would undermine the administration of the law or the detection of individual offences. Accordingly, the disclosure would be reasonably likely to prejudice the effectiveness of those methods or procedures. What is monitored and the test equipment used are exempt.

17. The Applicant advised the following in their review application and subsequent correspondence dated 20 January 2020:
 - (a) they believe one page was left out, as it does not appear to be a release of a 'full' page;
 - (b) in relation to the three pages released in part, that the incident speed detected be released as 'they are simply facts of each incident' and will not harm the Agency; and
 - (c) 'there is no lawful basis for declining to release the records of the numeric data' and 'no compelling reason to keep this information secret'.
18. The Agency released one page in full, although I note information that falls outside the scope of the Applicant's FOI request was deleted from the document in accordance with section 25 of the Act. I am satisfied the information deleted on this page is irrelevant to the Applicant's FOI request and is to remain deleted.
19. I have generally accepted the Agency's submission in relation to law enforcement documents in this matter and agree its decision is supported by the Cichello decision noted above. Having been briefed on the documents by OVIC staff, I agree the documents contain significant technical detail relating to law enforcement methods and procedures that are not widespread or well known.
20. I also note the Agency's submission in relation to road safety and its view the release of the documents in this matter would be reasonably likely to undermine the road safety program which, in my view, is an important public safety campaign designed to enhance road safety and change driver behaviour.
21. Accordingly, I am satisfied the documents are exempt under sections 31(1)(a) and 31(1)(d).
22. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

Section 25 - Deletion of exempt or irrelevant information

23. 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.
24. 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 a document meaningless, they are not 'practicable', and release of the document is not required under section 25.⁸

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].

25. I have considered the effect of deleting irrelevant and exempt information from the documents. Except for page 2 of Document 3, I am satisfied it is practicable to delete the irrelevant and exempt information from the documents, as to do so would not require substantial time and effort, and the edited documents would retain meaning.

Conclusion

26. On the information before me, I am satisfied the documents are exempt under sections 31(1)(a) and 31(1)(d).
27. With the exemption of page 2 of Document 3, I am satisfied it is practicable to delete irrelevant and exempt information from the documents as to do so would not require substantial time and effort, and the edited documents would retain meaning.
28. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

Review rights

29. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.⁹
30. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹⁰
31. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹¹
32. 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.
33. 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

34. My decision does not take effect until the relevant review period (stated above) expires, or if either party applies to VCAT for a review, until the VCAT proceeding is concluded.

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	[specified date]	Table – Vehicle travelling towards (facing) the camera	2	Released in part Sections 31(1)(a), 31(1)(d)	Release in part Sections 31(1)(a), 31(1)(d)	Sections 31(1)(a) and 31(1)(d): The document contains a table with columns detailing date and time, travel direction and detected speeds. I am satisfied it contains details that disclose procedures for detecting breaches of the <i>Road Safety Act 1986</i> (Vic) (Road Safety Act), and the disclosure of that information would be reasonably likely to prejudice the effectiveness of those procedures, and disclosure of this information would be reasonably likely to allow a person to evade detection. Accordingly, I am satisfied the document is exempt under sections 31(1)(a) and 31(1)(d).
2	[specified date]	Table – Vehicles travelling away from the camera	1	Released in part Sections 31(1)(a), 31(1)(d)	Release in part Sections 31(1)(a), 31(1)(d)	Section 31(1)(a) and 31(1)(d): The document contains the same type of information as described in Document 1 above and is exempt under sections 31(1)(a) and 31(1)(d) for the same reasons.
3	[specified date]	Camera Operator set up notes and Camera Incident Log	2	Released in part Sections 31(1)(a), 31(1)(d), 25	Release in part Sections 31(1)(a), 31(1)(d), 25	Sections 31(1)(a) and 31(1)(d): The information the Agency decided was exempt on page 2 includes operator setup checks and testing completed, site selection and diagram of equipment and surroundings. I am satisfied the page contains substantial technical detail that discloses procedures for detecting breaches of the Road Safety Act and its disclosure would be reasonably likely to prejudice the effectiveness of those

Annexure 1 – Schedule of Documents

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						<p>procedures. Further, information that disclose how a traffic camera operates and is installed and tested, would be reasonably likely to allow a person to either alter that equipment or try to evade detection. Accordingly, this page is exempt under sections 31(1)(a) and 31(1)(d).</p> <p>Section 25: The Agency deleted certain information from page 1 of the document as it falls outside the scope of the Applicant's request. I am satisfied this information falls outside of the scope of Applicant's request and is to remain deleted in accordance with section 25.</p>