

## Notice of Decision and Reasons for Decision

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Applicant:	'BH6'
Agency:	Victoria Police
Decision Date:	20 March 2020
Exemptions and provisions considered:	Sections 33(1), 38 of the <i>Freedom of Information Act 1982</i> (Vic) in conjunction with section 464JA(4) of the <i>Crimes Act 1958</i> (Vic) and section 4 of the <i>Judicial Proceedings Reports Act 1958</i> (Vic)
Citation:	'BH6' and Victoria Police ( <i>Freedom of Information</i> ) [2020] VICmr 75 (20 March 2020)

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FREEDOM OF INFORMATION – law enforcement documents – police investigation – alleged sexual assault – Video and Audio Recording of Evidence (VARE) – non-authorized brief of evidence – law enforcement documents – documents to which secrecy provisions apply

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.

I am satisfied the documents are exempt under sections 33(1) and 38.

Where it is practicable for the Agency to provide the Applicant with an edited copy of a document with exempt information deleted in accordance with section 25, I have determined to grant access to those documents in part.

Accordingly, my decision on the Applicant's request differs from the Agency's decision in that I have determined to release additional information in the documents.

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

20 March 2020

## Reasons for Decision

### Background to review

1. The Applicant made a request to the Agency for access to a copy of the 'police brief and/or file' about an investigation conducted by the Agency into an alleged sexual assault. The Applicant is related to the victim of the alleged assault.
2. In its decision, the Agency identified 23 documents falling within the terms of the Applicant's request. It decided to refuse access to those 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 and submissions received from the parties, including:
  - (a) the Agency's decision on the FOI request;
  - (b) the Applicant's submission dated [date] and other correspondence from the Applicant during this review; and
  - (c) correspondence from the Agency during this review, including its further submission dated [date].
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. In its decision, the Agency relied on the exemption in section 38, in conjunction with section 464JA(4) of the *Crimes Act 1958* (Vic) (**Crimes Act**), to refuse access to the documents.
9. During this review, the Agency submitted Document 23 is also exempt under section 38 due to the operation of section 4 of the *Judicial Proceedings Reports Act 1958* (Vic) (**JPR Act**).

### **Sections 38 and section 464JA(4) of the Crimes Act**

10. Section 38 provides:

A document is an exempt document if there is in force an enactment applying specifically to information of a kind contained in the document and prohibiting persons referred to in the enactment from disclosing information of that kind, whether the prohibition is absolute or is subject to exceptions or qualifications.

11. For a document to be exempt under section 38, three conditions must be satisfied:
  - (a) there must be an enactment in force;

- (b) the enactment must be formulated with such precision that it specifies the actual information prohibited from disclosure in the document; and
  - (c) the enactment must prohibit persons referred to in the enactment from disclosing the specific kind of information in the document (either absolutely or subject to exceptions or qualifications).
12. In summary, section 464 of the Crimes Act sets out strict procedural requirements for the conduct of investigations by police officers into alleged criminal offences.
  13. Section 464JA of the Crimes Act concerns 'offences in relation to recordings'. Section 464JA(1) contains definitions for 'authorised person', 'recording' and 'publish'.
  14. In summary, 'authorised person' includes, a police officer, prosecutor, judicial officer and court staff.
  15. 'Recording' is defined as 'a recording made in accordance with sections 464B(5H), 464G or 464H'.
  16. 'Publish' includes, 'bring to the notice of the public or any member of the public by any other means, including by publication on the Internet'.
  17. Sections 464JA(2)-(5) and (7) prescribe:
    - (2) A person must not knowingly possess an audio recording or an audiovisual recording unless the person—
      - (a) is the suspect; or
      - (b) is a legal practitioner representing the suspect; or
      - (c) is an authorised person acting in the performance of his or her duties; or
      - (d) has possession of the recording in a sealed package in the course of his or her duties as a person engaged by a person referred to in paragraph (a), (b) or (c) to transport the recording to that person.

Penalty: Level 8 imprisonment (1 year maximum).

**Note**  
The maximum fine that may be imposed on a body corporate found guilty of an offence against this subsection is 600 penalty units: see section 113D of the **Sentencing Act 1991**.
    - (3) A person must not play an audio recording or an audiovisual recording to another person unless—
      - (a) the recording is played for purposes connected with any civil or criminal proceeding and any inquiry before any court or tribunal; or
      - (b) the recording is played for purposes connected with an investigation of a death or a fire or an inquest held by a coroner;
      - (c) the recording is played for purposes connected with disciplinary action against a police officer under the **Victoria Police Act 2013**; or
      - (d) the recording is played for purposes connected with disciplinary action against a legal practitioner; or
      - (e) the recording is played in accordance with the direction of a court under section 464JB; or
      - (f) the recording is played in accordance with section 464JD; or
      - (g) the recording is played by an authorised person acting in the course of his or her duties.

Penalty: Level 8 imprisonment (1 year maximum).

**Note**  
The maximum fine that may be imposed on a body corporate found guilty of an offence against this subsection is 600 penalty units: see section 113D of the **Sentencing Act 1991**.
    - (4) A person must not supply or offer to supply an audio recording or an audiovisual recording to another person other than –
      - (a) the suspect in relation to whom the recording was made;
      - (b) a legal practitioner representing the suspect;
      - (c) an authorised person acting in the performance of his or her duties;

(d) a person engaged by a person referred to in paragraph (a), (b) or (c) to transport the recording.

Penalty: Level 8 imprisonment (1 year maximum).

**Note**

The maximum fine that may be imposed on a body corporate found guilty of an offence against this subsection is 600 penalty units: see section 113D of the **Sentencing Act 1991**.

(5) A person, other than an authorised person acting in the performance of his or her duties, must not copy the whole or any part of an audio recording or an audiovisual recording or permit another person to make such a copy, unless the person is acting in accordance with the direction of a court under section 464JB.

Penalty: Level 8 imprisonment (1 year maximum).

**Note**

The maximum fine that may be imposed on a body corporate found guilty of an offence against this subsection is 600 penalty units: see section 113D of the **Sentencing Act 1991**.

...

(7) A person must not publish or cause to be published the whole or any part of an audio recording or an audiovisual recording except in accordance with the direction of a court under section 464JB.

Penalty: Level 7 imprisonment (2 years maximum).

**Note**

The maximum fine that may be imposed on a body corporate found guilty of an offence against this subsection is 1200 penalty units: see section 113D of the **Sentencing Act 1991**.

*Is there an enactment in force?*

18. I am satisfied the Crimes Act is an enactment in force for the purposes of section 38 of the FOI Act.

*Does the enactment apply specifically to the kind of information in the documents?*

19. I am satisfied Documents 12 and 22 are audio recordings of interviews with alleged suspects conducted by police officers as part of their investigation into the alleged incident. However, I am not satisfied the other documents subject to review are 'recordings' for the purposes of this section.

*Does the enactment prohibit persons from disclosing the recordings?*

20. It is clear from the operation of the above provisions in section 464JA that Parliament intends a 'recording' may only be possessed, played to another person, supplied or copied in strictly limited circumstances<sup>1</sup> and by certain persons<sup>2</sup> only. Further, the high penalties that apply if these provisions are breached further supports Parliament's intention.

21. The Applicant is not an 'authorised person' referred to in section 464JA(1) of the Crimes Act.

22. Having considered sections 464JA(2) and (4) of the Crimes Act, I am satisfied they prohibit the Applicant from possessing Documents 12 and 22, and the Agency providing the Applicant with a copy of these documents. While the FOI Act provides a statutory right for persons seeking access to documents, I do not consider this right overrides the prohibitions on disclosure under sections 464JA(2) and (4) of the Crimes Act.

23. Accordingly, I am satisfied Documents 12 and 22 are exempt under section 38 of the FOI Act in conjunction with sections 464JA(2) and (4) of the Crimes Act.

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<sup>1</sup> For example, such as a police investigation or court process.

<sup>2</sup> For example, including a police officer, suspect, a suspect's legal practitioner or an 'authorised person' under section 464JA(1) of the Crimes Act.

## **Sections 38 and section 4 of the JPR Act**

24. Section 4 of the JPR Act provides:

### **4 Prohibition of reporting of names**

(1) In this section –

...

**publish** means disseminate or provide access to the public or a section of the public by any means – including by—

- (a) publication in a book, newspaper, magazine or other written publication; or
- (b) broadcast by radio or television; or
- (c) public exhibition; or
- (d) broadcast or electronic communication—

other than for a purpose connected with a judicial proceeding;

**sexual offence** means an offence under subdivision (8A), (8B), (8C), (8D), (8E), (8F) or (8FA) of Division 1 of Part I of the **Crimes Act 1958** or under any corresponding previous enactment or an attempt to commit any such offence or an assault with intent to commit any such offence.

(1A) A person who publishes or causes to be published any matter that contains any particulars likely to lead to the identification of a person against whom a sexual offence, or an offence where the conduct constituting it consists wholly or partly of taking part, or attempting to take part, in an act of sexual penetration as defined in section 35 of the **Crimes Act 1958**, is alleged to have been committed is guilty of an offence, whether or not a proceeding in respect of the alleged offence is pending in a court.

25. I am satisfied the JPR Act is an enactment in force and section 4 of that Act is a secrecy provision to which section 38 applies.

26. Section 4 of the JPR Act refers to information that ‘contains any particulars likely to lead to the identification of a person against whom a sexual offence ... is alleged to have been committed’. In my view, the application of this provision is intended to be interpreted broadly to protect the identity of victims of sexual offences.

27. In this matter, the Video and Audio Recording of Evidence (**VARE**) log identifies an alleged victim of a sexual offence and contains detailed information regarding the particular allegations.

28. Following a review of the VARE documents, I consider these documents contain detailed descriptions of the alleged events, which involved an alleged sexual assault of [description of the alleged victim]. As such, I am satisfied the documents are subject to the secrecy provision in section 4 of the JPR Act and, therefore, are exempt under section 38 of the FOI Act.

29. The Schedule of Documents in **Annexure 1** sets out my decision in relation to section 38 for each document.

### **Section 33(1)**

30. 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;<sup>3</sup> and

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<sup>3</sup> Sections 33(1) and (2).

- (b) such disclosure would be 'unreasonable'.

*Do the documents contain personal affairs information?*

31. Information relates to the 'personal affairs' of a person if it is reasonably capable of identifying them, or of disclosing their address or location.<sup>4</sup>
32. It has also been held information relates to an individual's personal affairs if it 'concerns or affects that person as an individual'.<sup>5</sup>
33. As the nature of disclosure under the FOI Act is unrestricted and unconditional, this is to be interpreted by the capacity of any member of the public to identify a third party.<sup>6</sup>
34. In its submission, the Applicant states:

According to s 33(2), the provisions of s 33(1) do not have effect in relation to a request by a person for access to a document relating to that person. [Named person] is the victim of the alleged abuse, and as such the [Brief] and files relate directly to [them], and the crimes [they allege] have occurred.

As such, personal information relating to the victim, being [named person], is not exempt, and access should be granted to [their] police statement, interview notes, and any other such documents.

35. However, I am not satisfied the FOI request was made by the alleged victim and there is no information before me to suggest they do not have capacity to lodge an FOI application to the Agency.
36. The following summarises the nature of the personal affairs information in the documents that was exempted under section 33(1) by the Agency:
- (a) names of third parties, including the accused, the victim, witnesses and agency officers;
  - (b) contact details of third parties; and
  - (c) various documents comprising a brief of evidence, such as Information Sheets, brief head, summary of charges, summary of circumstances, witness list exhibit list, witness statements, and records of interviews.
37. Accordingly, I am satisfied the documents contain the personal affairs information of individuals other than the Applicant.

*Would release of the personal affairs information be unreasonable?*

38. The concept of 'unreasonable disclosure' involves determining whether the public interest in the disclosure of official information is outweighed by the personal interest in privacy.
39. In determining whether disclosure of the personal affairs information in the documents would be unreasonable, I have considered the following factors:
- (a) The nature of the personal affairs information and the circumstances in which the information was obtained

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<sup>4</sup> Section 33(9).

<sup>5</sup> *Hanson v Department of Education & Training* [2007] VCAT 123 at [9].

<sup>6</sup> *O'Sullivan v Department of Health and Community Services (No 2)* [1995] 9 VAR 1 at [14]; *Beauchamp v Department of Education* [2006] VCAT 1653 at [42].

The information was obtained by the Agency in the context of undertaking a criminal investigation. This information is inherently sensitive and personal in nature.

Further, it is reasonable to expect the information in the documents was provided to the Agency on the understanding it would only be used for the purpose of investigating the alleged crime and in any prosecution of an alleged offender. This factor weighs against disclosure.

(b) The extent to which the information is available to the public

The briefs of evidence were not authorised and the contents of the documents have not been aired and tested in open court. As such, the information is not in the public domain. This factor weighs against disclosure.

(c) The likelihood of further disclosure of information, if released

As stated above, the FOI Act does not impose any conditions or restrictions on an applicant's use of documents disclosed under the FOI Act. Accordingly, I must consider the likelihood and potential effects of further dissemination of the third parties' personal affairs information if released.

In this matter, there is no specific information before me to suggest the documents would be further disseminated by the Applicant. However, given the particularly sensitive nature of the documents and the Applicant's relationship to the alleged victim, on balance, I am not satisfied this factor weighs in favour of unconditional disclosure under the FOI Act. This is in contrast to court documents upon which a court will place restrictions as to what and how sensitive information may be disclosed to non-parties to the proceeding. In cases involving alleged sexual assault of [description of the alleged victim], it is likely a court order will be made – in the nature of section 4 of the JPR Act – prohibiting disclosure in any form of such information.

(d) Whether any public interest would be promoted by release of the information

I note the Applicant's relationship to the alleged victim and what is likely to be a genuine interest in obtaining access to the documents. However, on the information before me, I consider such interest is of a personal nature.

In light of the above factors, I am not satisfied the public interest would be promoted by release of the third parties' sensitive personal affairs information. Rather, I am of the view the public interest in preserving the ability of police to conduct investigations and obtain the cooperation of witnesses during their investigations outweighs any personal interest in this case. This factor weighs against disclosure.

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

During this review, the Applicant provided the written authority of the victim to release their personal affairs information to the Applicant.

In reviewing the documents, I have considered whether it would be practicable to provide the Applicant with edited copies of the documents with the victim's information released in accordance with section 25.

However, in most instances, I have determined it is not practicable to do so where I have determined a document is exempt under section 38.

There is no information before me regarding the views of the remaining third parties to whom the information relates, as the Agency determined it was unreasonable to consult with third parties in the circumstances.

Having regard to the circumstances in which the documents were created, with the exception of the alleged victim, who provided a written authority for release of their personal affairs information, I am of the view other third parties would be reasonably likely to object to the release of their personal affairs information in the documents. This factor weighs against disclosure.

- (f) Whether the disclosure of information would, or would be reasonably likely to endanger the life or physical safety of any person<sup>7</sup>

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

- (g) The Applicant's interest in the information, and whether their purpose for seeking the information is likely to be achieved

The FOI Act provides a general right of access that can be exercised by any person, regardless of their motive or purpose for seeking access to a document. However, the reasons why an applicant seeks access to a document is a relevant consideration in determining whether disclosure would be unreasonable.<sup>8</sup>

In its submission, the Applicant states they seek access to the information for the following reasons:

1. Understand the nature of the assaults and misconduct alleged by our client;
2. Review any evidentiary material in support of or against our client's claim;
3. Make an assessment as to the prospects of bringing a civil assault Claim [...];
4. Provide our client with the appropriate legal advice; and
5. Potentially identify the names of the relevant [...] [class of persons] and / or the perpetrators, enabling our client to bring a civil claim against them.

While I acknowledge release of the documents would assist the Applicant's legal representative in relation to the above points, this factor is not determinative and must be considered in light of the other factors discussed above.

40. On the information before me, I am satisfied release of the documents would involve the unreasonable disclosure the personal affairs information of individuals other than the Applicant.
41. Accordingly, I am satisfied the documents are exempt under section 33(1).
42. The Schedule of Documents in **Annexure 1** sets out my decision in relation to section 33(1).

#### ***Deletion of exempt or irrelevant information***

43. Section 25 requires an agency to grant access to an edited copy of a document when it is practicable to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.

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<sup>7</sup> Section 33(2A).

<sup>8</sup> *Victoria Police v Marke* [2008] VSCA 218 at [104].



44. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'<sup>9</sup> 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.<sup>10</sup>
45. I have considered the effect of deleting exempt information from the documents in accordance with section 25. I am satisfied it is practicable to delete exempt information from certain documents, as to do so not require substantial time and effort, and the edited documents would retain meaning.

### **Conclusion**

46. On the information before me, I am satisfied the documents are exempt under sections 33(1) and 38.
47. Where it is practicable for the Agency to provide the Applicant with an edited copy of a document with exempt information deleted in accordance with section 25, I have determined to grant access to those documents in part.
48. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

### **Review rights**

49. 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.<sup>11</sup>
50. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>12</sup>
51. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>13</sup>
52. Information about how to apply to VCAT is available online at [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au). Alternatively, VCAT may be contacted by email at [admin@vcat.vic.gov.au](mailto:admin@vcat.vic.gov.au) or by telephone on 1300 018 228 .
53. 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.<sup>14</sup>

### **When this decision takes effect**

54. My decision does not take effect until the relevant review period (stated in paragraph 50 or 51) expires, or if either party applies to VCAT for a review, until the VCAT proceeding is concluded.

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<sup>9</sup> *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].

<sup>10</sup> *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].

<sup>11</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>12</sup> Section 52(5).

<sup>13</sup> Section 52(9).

<sup>14</sup> Sections 50(3F) and (3FA).

Annexure 1 – Schedule of Documents

No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
1.	[Date]	LEAP incident report	4	<p><b>Refused in full</b></p> <p>Sections 33(1), 38</p>	<p><b>Refused in full</b></p> <p>Sections 33(1), 38</p>	<p>This document is an incident report and case progress regarding an alleged sexual offence. It contains information relating to the alleged victim, accused persons, witnesses, agency officers and a 'case progress narrative' detailing the alleged incident and investigation.</p> <p><b>Section 38:</b> I am satisfied certain information in this document is exempt under section 38 as:</p> <ul style="list-style-type: none"> <li>(a) section 4 of the JPR Act is an enactment in force to which section 38 applies;</li> <li>(b) the information specifically applies to the document subject to review; and</li> <li>(c) section 4 of the JPR Act prohibits the disclosure of the information.</li> </ul> <p><b>Section 33(1):</b> In addition, I am satisfied it would be unreasonable to release the personal affairs information of third parties for the reasons set out in the Notice of Decision above. However, I do not consider it would be unreasonable to release the personal affairs information of the alleged victim as they have provided their consent to release of such information to the Applicant. Accordingly, certain information in this document is exempt under section 33(1).</p> <p><b>Section 25:</b> I am satisfied it is not practicable to deleted exempt information in the document</p>

Annexure 1 – Schedule of Documents

No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						in order to release an edited copy of the document as to do so would render the document meaningless. Accordingly, the document is exempt in full under sections 33(1) and 38.
2.	[Date]	LEAP - Intent to Summons Report	2	Refused in full Sections 33(1), 38	Refused in full Sections 33(1), 38	Sections 33(1), 38, 25: See comments for Document 1.
3.	Undated	Information sheet	2	Refused in full Sections 33(1), 38	Refused in full Sections 33(1), 38	Sections 33(1), 38, 25: See comments for Document 1.
4.	N/A	Brief Head – [redacted] Accused	1	Refused in full Sections 33(1), 38	Refused in full Section 33(1)	Section 33(1): See comments for Document 1.  Section 38: I am not satisfied the document is exempt under section 38 given the operation of section 4 of the JPR Act as it does not identify a victim of a sexual offence or contain information capable of identifying a victim of a sexual offence.  Section 25: See comments for Document 1.
5.	[Date]	Summary of Charges – <sup>t</sup> [redacted] Accused	7	Refused in full Sections 33(1), 38	Refused in full Section 33(1)	Sections 33(1), 38, 25: See comments for Document 4.
6.	N/A	Witness List - [redacted] Accused	2	Refused in full	Refused in full	Section 33(1), 38, 35: See comments for Document 1.

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No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
				Sections 33(1), 38	Sections 33(1), 38	
7.	N/A	Exhibit List - [redacted] Accused	1	<b>Refused in full</b>  Sections 33(1), 38	<b>Refused in full</b>  Section 33(1)	<p><b>Section 33(1):</b> See comments for Document 1. Accordingly, I am satisfied this document is exempt under section 33(1).</p> <p><b>Section 38:</b> See comments for Document 4. Accordingly, this document is not exempt under section 38.</p> <p><b>Section 25:</b> I do not consider it practicable for the Agency to provide the Applicant with an edited copy of the document with exempt material deleted as it would render the document meaningless.</p>
8.	[Date]	Statement – Member	4	<b>Refused in full</b>  Sections 33(1), 38	<b>Refused in full</b>  Sections 33(1), 38	<p><b>Section 33(1):</b> This is a statement of the investigating officer. I consider it would be unreasonable to release the personal affairs information in this document for reasons outlined above. Accordingly, this document is exempt under section 33(1).</p> <p><b>Section 38:</b> See comments for Document 1. Accordingly, this document is exempt under section 38 due to the application of section 4 of the JPR Act.</p>
9.	[Date]	Affidavit Re Accuracy of	1	<b>Refused in full</b>	<b>Refused in full</b>	<b>Section 33(1):</b> This document contains the

Annexure 1 – Schedule of Documents

No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
		VARE Recording		Sections 33(1), 38	Section 38	<p>personal affairs information of the alleged victim and agency officers. I consider it is not unreasonable to release the personal affairs information of the alleged victim given they have provided consent. Further, I do not consider it unreasonable to release the personal affairs information of agency officers where it relates to their professional capacity as opposed to their private life. Accordingly, the document is not exempt under section 33(1).</p> <p><b>Section 38:</b> See comments for Document 1. Accordingly, this document is exempt under section 38 due to the application of section 4 the JPR Act.</p>
10.	N/A	Photograph List	1	<p><b>Refused in full</b></p> <p>Sections 33(1), 38</p>	<p><b>Release in part</b></p> <p>Sections 33(1), 25</p> <p>This document is to be released except for the names of third parties, which are exempt under section 33(1) and to be deleted in accordance with section 25.</p>	<p><b>Section 33(1):</b> I consider it unreasonable to release the names of [any] accused persons contained in this document for reasons outlined above. Accordingly, the names of third parties are exempt under section 33(1).</p> <p><b>Section 38:</b> See comments for Document 4. Accordingly, this document is not exempt under section 38.</p> <p><b>Section 25:</b> I consider it is practicable for the agency to provide the Applicant with edited copies of the document with exempt information removed.</p>

Annexure 1 – Schedule of Documents

No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
11.	[Date]	Interview Notes – [redacted] Accused	8	Refused in full Sections 33(1), 38	Refused in full Sections 33(1), 38	<p><b>Section 33(1):</b> This document contains notes taken by the Agency during an interview with an accused person. The document consists primarily of allegations regarding an alleged sexual assault being put to the person and responses to those allegations. Given the circumstances in which the Agency obtained the information and the context of the document, I consider it unreasonable for this information to be released. Accordingly, I am satisfied the document is exempt under section 33(1).</p> <p><b>Section 38:</b> See comments for Document 1. Accordingly, this document is exempt under section 38 due to the application of section 4 of the JPR Act.</p>
12.	N/A	DVD Interview	1 DVD	Refused in full Sections 33(1), 38	Refused in full Section 38	<p><b>Section 38:</b> I am satisfied this document is exempt in full under section 38 because:</p> <ul style="list-style-type: none"> <li>(a) section 464JA of the Crimes Act is an enactment in force;</li> <li>(b) the information specifically applies to the recording subject to review; and</li> <li>(c) section 464JA of the Crimes Act prohibits the disclosure of the recording.</li> </ul>
13.	N/A	Brief Head – [redacted]	1	Refused in full	Refused in full	<p><b>Section 33(1):</b> See comments for Document 4. Accordingly, this document is exempt under</p>

Annexure 1 – Schedule of Documents

No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
		Accused		Sections 33(1), 38	Section 33(1)	section 33(1).  <b>Section 38:</b> See comments for Document 4. Accordingly, I am not satisfied the document is exempt under section 38.
14.	[Date]	Summary of Charges	6	<b>Refused in full</b>  Sections 33(1), 38	<b>Refused in full</b>  Section 33(1)	<b>Section 33(1):</b> See comments for Document 5. Accordingly, this document is exempt under section 33(1).  <b>Section 38:</b> See comments for Document 5. Accordingly, I am not satisfied the document is exempt under section 38.
15.	N/A	Witness List - [redacted] Accused	2	<b>Refused in full</b>  Sections 33(1), 38	<b>Refused in full</b>  Sections 33(1), 38	<b>Section 33(1):</b> See comments for Document 6. Accordingly, this document is exempt under section 33(1).  <b>Section 38:</b> See comments for Document 6. Accordingly, I find this document is exempt under section 38 due to the application of section 4 of the JPR Act.
16.	N/A	Exhibit List -[redacted] Accused	1	<b>Refused in full</b>  Sections 33(1), 38	<b>Refused in full</b>  Section 33(1)	<b>Section 33(1):</b> See comments for Document 7. Accordingly, this document is exempt under section 33(1).  <b>Section 38:</b> See comments for Document 7. Accordingly, I am not satisfied this document is exempt under section 38.

Annexure 1 – Schedule of Documents

No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
17.	N/A	Photograph List [redacted] Accused	1	<b>Refused in full</b>  Sections 33(1), 38	<b>Release in part</b>  Sections 33(1), 25  This document is to be released except for the names of third parties, which are exempt under section 33(1) and to be deleted accordance with section 25.	<b>Section 33(1):</b> See comments for Document 10. Accordingly, I am satisfied the names of third parties are exempt under section 33(1).  <b>Section 38:</b> See comments for Document 10. Accordingly, I am not satisfied this document is exempt under section 38.  <b>Section 25:</b> See comments for Document 10.
18.	N/A	Photographs	12	<b>Refused in full</b>  Sections 33(1), 38	<b>Release in part</b>  Sections 33(1), 25  This document is to be released except for photographs '18' and '19', which are exempt under section 33(1) and to be deleted in accordance with section 25.	<b>Section 33(1):</b> This document contains photographs of the internal and external property in which the alleged offence occurred. I am satisfied it would be unreasonable to release internal and external photographs of the accused's room, as it may be capable of identifying them by individuals familiar with the location. Accordingly, certain photographs are exempt under section 33(1).  <b>Section 38:</b> See comments for Document 4. Accordingly, this document is not exempt under section 38.  <b>Section 25:</b> See comments for Document 10.
19.	[Date]	Witness Statement	4	<b>Refused in full</b>	<b>Refused in full</b>	<b>Section 33(1):</b> This is a statement provided to the Agency by a third party. Given the



Annexure 1 – Schedule of Documents

No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
				Sections 33(1), 38	Sections 33(1), 38	<p>circumstances in which the Agency obtained the information and the context of the document, I consider it unreasonable for this information to be released. Accordingly, I am satisfied the document is exempt under section 33(1).</p> <p><b>Section 38:</b> See comments for Document 1. Accordingly, this document is exempt under section 38 due to the application of section 4 of the JPR Act.</p>
20.	[Date]	Witness Statement	3	<p><b>Refused in full</b></p> <p>Sections 33(1), 38</p>	<p><b>Refused in full</b></p> <p>Section 33(1)</p>	<p><b>Section 33(1):</b> See comments for Document 19. Accordingly, I am satisfied the document is exempt under section 33(1).</p> <p><b>Section 38:</b> See comments for Document 4. Accordingly, I am not satisfied this document is exempt under section 38.</p>
21.	[Date]	Interview notes	5	<p><b>Refused in full</b></p> <p>Sections 33(1), 38</p>	<p><b>Refused in full</b></p> <p>Sections 33(1), 38</p>	<p><b>Section 33(1):</b> See comments for Document 11. Accordingly, I am satisfied the document is exempt under section 33(1).</p> <p><b>Section 38:</b> See comments for Document 11. Accordingly, this document is exempt under section 38 due to the application of section 4 of the JPR Act.</p>
22.	N/A	DVD Interview	1 DVD	<b>Refused in full</b>	<b>Refused in full</b>	<p><b>Section 38:</b> See comments for Document 12. Accordingly, this document is exempt under section 38 due to the operation of 464JA of</p>

Annexure 1 – Schedule of Documents

No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
				Sections 33(1), 38	Section 38	the Crimes Act.
23.	[Date]	VARE log - Victim	25	Refused in full Sections 33(1), 38	Refused in full Sections 33(1), 38	<p><b>Section 33(1):</b> This document contains written notes taken by the Agency in relation to a VARE statement by the victim of an alleged sexual offence.</p> <p>I am satisfied it would not be unreasonable to release the personal affairs information of the victim as they have consented to the release of their personal affairs information. However, given the context of the document and the circumstances in which the information was obtained, I consider it unreasonable to release the personal affairs information of [any] accused persons. Accordingly, certain information contained in this document is exempt under section 33(1).</p> <p><b>Section 38:</b> See comments for Document 1. Accordingly, this document is exempt under section 38 due to the application of the JPR Act.</p>