

## Notice of Decision and Reasons for Decision

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Applicant:	'BJ3'
Agency:	Judicial Commission of Victoria
Decision Date:	24 March 2020
Provision considered:	Section 143(1) of the <i>Judicial Commission of Victoria Act 2016</i> (Vic)
Citation:	'BJ3' and <i>Judicial Commission of Victoria (Freedom of Information)</i> [2020] VICmr 90 (24 March 2020)

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FREEDOM OF INFORMATION – complaints – judicial officers – information not subject to the *Freedom of Information Act 1982* (Vic)

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 the documents sought by the Applicant are not subject to the FOI Act.

My reasons for decision follow.

**Joanne Kummrow**  
Public Access Deputy Commissioner

24 March 2020

## Reasons for Decision

### Background to review

1. The Applicant made a request to the Agency under section 17 of the FOI Act seeking access to internal file notes relating to [number of] complaints made to the Agency concerning [judicial officers] with particular reference numbers.
2. In its decision, the Agency determined the documents to which the Applicant seeks access are not subject to the FOI Act.

### Review

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
5. 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 17 February 2020; and
  - (c) the Agency's submission dated 10 March 2020.
6. 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

7. In its decision, the Agency relied on section 143(1) of the *Judicial Commission of Victoria Act 2016* (Vic) (**JCV Act**) to determine the documents are not subject to the FOI Act. The Agency's decision letter sets out the reasons for its decision.
8. Section 143(1) of the JVC Act provides:

#### **143 Exemption from Freedom of Information Act 1982**

- (1) The **Freedom of Information Act 1982** does not apply to a document that is in the possession of any person or body to the extent to which the document discloses information that relates to—
  - (a) a complaint or referral; or
  - (b) an investigation, recommendation or referral under Part 2, 3, 4 or 5.
- (2) In this section—

*document* has the meaning as in the Freedom of Information Act 1982.
9. Having considered the specific terms of the Applicant's FOI request, I am satisfied section 143(1) of the JVC Act applies to the documents sought by the Applicant.

10. There are no exceptions to the application of this provision of the JVC Act in relation to access to documents under the FOI Act.
11. Accordingly, I am satisfied the FOI Act does not apply to the documents sought by the Applicant by virtue of section 143(1) of the JVC Act.

### **Conclusion**

12. On the information before me, I am satisfied the documents sought by the Applicant are not subject to the FOI Act.

### **Review rights**

13. 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>1</sup>
14. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>2</sup>
15. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>3</sup>
16. 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.
17. 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>4</sup>

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

<sup>2</sup> Section 52(5).

<sup>3</sup> Section 52(9).

<sup>4</sup> Sections 50(3F) and (3FA).