

Public Interest Determination

I, Sven Bluemmel, Information Commissioner, make the following public interest determination under section 31 of the *Privacy and Data Protection Act 2014*.

1. Authority

1.1 This public interest determination is made under section 31(1) of the Act.

2. Interpretation

2.1 For the purposes of this public interest determination:

Act means the *Privacy and Data Protection Act 2014 (Vic)*.

Application means the application for a public interest determination made by Victoria Police and DJCS to the Information Commissioner under section 29(1) of the Act on 25 June 2020.

DJCS means the Department of Justice and Community Safety.

Employee Information means the Victoria Police employee information provided to DJCS by Victoria Police, being the following:

- a. First name; and
- b. Middle name; and
- c. Surname; and
- d. Date of birth; and
- e. Registered number and for Victorian Public Sector employees, their V number; and
- f. Month and year when they commenced employment with Victoria Police; and
- g. Last, or as at 12 December 2019, rank or pay classification; and
- h. Last, or as at 12 December 2019, the Police station, or business unit within Victoria Police they worked.

IPP means an Information Privacy Principle as set out in Schedule 1 of the Act.

Personal Information has the same meaning as in section 3 of the Act.

Scheme means the Restorative Engagement and Redress Scheme.

Victoria Police means the police force of Victoria established by section 6 of the *Victoria Police Act 2013 (Vic)*

Victoria Police employee means all former and current Victoria Police members and employees as at 12 December 2019.

3. Scope

3.1 This public interest determination applies to the Employee Information that is Personal Information defined by section 3 of the Act. This public interest determination does not apply to Health Information as defined by section 3 of the *Health Records Act 2001 (Vic)*.

4. Background

- 4.1 DJCS administers the Scheme that allows Victoria Police employees who have experienced workplace sex discrimination, sexual harassment, or predatory behaviour while employed at Victoria Police to:
 - access counselling and wellbeing support;
 - participate in restorative engagement; and
 - apply for a redress payment.
- 4.2 DJCS is administering the Scheme to ensure it is operated externally from Victoria Police, providing applicants to the Scheme with anonymity from Victoria Police.
- 4.3 DJCS requires the Employee Information from Victoria Police to be able to verify an applicant to the Scheme is a Victoria Police employee, and is therefore eligible for redress under the Scheme.
- 4.4 The Scheme will utilise a case management system that undertakes an automated check to verify an applicant's current or former employment with Victoria Police using the Employee Information.
- 4.5 Consequently, only the Employee Information of those who make an application to the Scheme will be used by DJCS. Employee information will not be accessed to verify any alleged perpetrators or other third parties.
- 4.6 When the Employee Information was collected and created by Victoria Police, the primary purpose of its collection was for recruitment and employment purposes. The disclosure of Employee information to DJCS for the purposes described above constitutes a use and secondary disclosure that is not permitted under IPP 2.1.
- 4.7 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 because the sharing of personal information in the context of the Scheme is not for a law enforcement purpose or activity.
- 4.8 The Application seeks departure from compliance with the following IPPs:
 - 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.
 - DJCS from IPP 1.5. IPP 1.5 requires that where an organisation collects personal information about an individual from someone else, it must take reasonable steps to notify the individual of the matters noted in IPP 1.3.

5. Victoria Police's Act or Practice

- 5.1 Victoria Police will disclose the Employee Information to DJCS to enable DJCS to administer the Scheme.
- 5.2 The Application states that the Employee Information will be provided to DJCS in an encrypted format on a secure device.
- 5.3 Once in possession of DJCS, the Application states the Employee Information will not be stored in a human readable format.

6. DJCS's Act or Practice

6.1 DJCS will not provide a notice of collection to any Victoria Police employee whose personal information is contained in the Employee Information.

6.2 The Application states that it would be unreasonable and impractical to provide a notice of collection to Victoria Police employees as:

- 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.

6.3 DJCS will not provide a notice of collection to any third party whose personal information is contained in an application to the Scheme, for example witnesses or alleged perpetrators.

6.4 The Application states that providing a notice of collection to third parties would undermine the anonymity of the Scheme.

7. The Public Interest

7.1 The Application notes the following public interest reasons for Victoria Police's departure from IPP 2.1:

The Scheme is underpinned by victim-centric guiding principles, including victim safety, victim choice, control, consent and confidentiality.

Notably, as relevant background information, in a Submission by the Victorian Equal Opportunity and Human Rights Commission (Commission) dated May 2017, the Submission states in part "While the Commission had positive feedback on the restorative engagement conferences, it is important that financial and non-financial redress be available without the requirement that a victim go through a restorative engagement process. Throughout the review process, the Commission engaged with a number of personnel who were deeply traumatised by the harm suffered while working in Victoria Police. Some victims remained angry and disillusioned by the organisation, while some (especially those who are still employed by Victoria Police) felt very fearful of reprisal and concerned for their confidentiality.

Any scheme should have the ability for victims to choose not to participate in the restorative engagement element, and at all times victims should have the ability to withdraw from the process. Participants should be able to seek financial and non-financial redress without a conference, should they not wish to engage in the restorative process. Given that the restorative process has no 'fact finding' purpose, the Department of Justice and Regulation [now DJCS] should consider whether it would be possible for victims to seek redress confidentially and without Victoria Police needing to be notified of the details of the complaint. This points to the importance of an independent third party provider for the scheme, which could seek to establish whether the necessary threshold for participation was met without disclosing the details to Victoria Police."

... if an Applicant's identity is disclosed or revealed to Victoria Police during this process, this could deter an individual from making an application for fear of personal or career implications. ... By not ensuring anonymity, it could potentially deter Applicants and would undermine the very purpose of the Scheme. Consistent with this approach and the right to anonymity, there is no requirement for an Applicant to name an alleged perpetrator in an application...

7.2 The Application notes the following public interest reasons for DJCS's departure from IPP 1.5:

... in addition to the practical limitations of providing notice [noted at paragraph 6.2 of this public interest determination], the over-arching public interest to warrant departure from compliance with this principle essentially relates to ensuring an Applicant's safety and wellbeing so that they may access the Scheme in a victim-centric and confidential manner (although noting that this principle already allows an organisation to not provide a collection notice where it could pose a serious threat to the life or health of any individual).

To contextualise this further, it is possible that a current Victoria Police sworn officer or 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.

At a granular level, the purpose of the Scheme is to enable Applicants who have experienced this behaviour in the workforce to seek redress or participate in restorative engagement. The Scheme is founded on restorative justice principles, which offer victim Applicants a substantially different experience than that offered by other adversarial forms of redress, such as Courts or Tribunals. The Scheme provides the individual an opportunity to voice the harm they have experienced which has significant therapeutic qualities.

8. Determination

8.1 I have considered the Application, the public interest, and the objects of the Act.

8.2 I have also considered a submission received from the Police Association Victoria that supports the Application.

8.3 I am satisfied that Victoria Police employees who have been subject to workplace sex discrimination, sexual harassment, or predatory behaviour while employed at Victoria Police form a significant portion of the public, such that their interests constitute a public interest.

8.4 I am satisfied that the public interest in Victoria Police disclosing the Employee Information to DJCS substantially outweighs the public interest in complying with IPP 2.1.

8.5 Consequently, Victoria Police is permitted to depart from compliance with IPP 2.1 and engage in the act or practice described in paragraph 5.1.

8.6 I am satisfied that the public interest in DJCS not providing notice of indirect collection substantially outweighs the public interest in complying with IPP 1.5.

8.7 Consequently, DJCS is permitted to depart from compliance with IPP 1.5 and engage in the acts or practices described in paragraphs 6.1 and 6.3.

9. Duration

9.1 This public interest determination has effect from the date that it is signed until 30 June 2024.



Sven Bluemmel
Information Commissioner

7 July 2020