

Notice of Decision and Reasons for Decision

Applicant:	'BV6'
Agency:	Victoria Police
Decision Date:	29 July 2020
Exemption considered:	Section 33(1)
Citation:	'BV6' and Victoria Police (<i>Freedom of Information</i>) [2020] VICmr 207 (29 July 2020)

FREEDOM OF INFORMATION – licensing and regulation – *Private Security Act 2004* (Vic) – private security industry – unreasonable disclosure – personal affairs information

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 a document requested by the Applicant under the FOI Act.

My decision on the Applicant's request differs from the Agency's decision in that I have decided to release additional information in the document.

I am not satisfied certain information in the document is exempt under section 33(1). However, I am satisfied certain personal affairs information of third parties is exempt under section 33(1).

As I am satisfied it is practicable to delete exempt information in accordance with section 25, I have determined to grant access to the document in part.

The Schedule of Documents in **Annexure 1** sets out my decision in relation to the document.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner
29 July 2020

Reasons for Decision

Background to review

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

any documents between Licensing + Regulation Dept (LRD) and [named person] of [address], regarding unlicensed private security activities.
2. In its decision, the Agency identified one document falling within the terms of the Applicant's request, being a two page letter from the Agency's Licensing Regulation Division to a third party (the **Document**). It decided to rely on the exemption in section 33(1) to refuse access to the Document in full. The Agency's decision letter sets out the reasons for its decision.

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 a copy of the Document 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 information provided with the Applicant's review application; and
 - (c) all other communications between the Agency, the Applicant and OVIC staff.
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.
8. Further, I note Parliament's intention the FOI Act must be interpreted so as to further the object of the Act and any discretions conferred by the Act must be exercised, as far as possible, so as to facilitate and promote the disclosure of information in a timely manner and at the lowest reasonable cost.

Submissions

9. The Applicant in their submission states:

...

I feel that the reasons for rejecting my application are unreasonable and not applicable to my particular case as [named person] – [named business undertaking] committed fraud by –

1. Knowingly failing to be registered to install security systems in Victoria. [sic]
2. Did not provide me new security systems but old parts of various security systems that were not compatible with each other therefore not functioning correctly.

3. Did not keep to agreed quote for work and quality of security products discussed.
4. Faulty wiring throughout property.
5. Faulty cameras supplied.
6. Even after all these problems when my solicitor sent [them] a legal letter outlining that [they are] responsible to refund me monies paid [they] stated that [they] would return to my property and fix the problems in [year] even though [they are] still not registered to install security systems.

I need the requested information to support my legal case and would like to receive this information as soon as possible please.

...

10. In its decision letter, the Agency submits:

The denied information consists of the personal details and business affairs of a third party.

I consider that this information constitutes 'personal information' within the meaning of section 33 of the Act. In addition, I am satisfied that disclosure of the personal information would be unreasonable in the circumstances, pursuant to section 33(1) of the Act.

In reaching my decision I have taken the following into account:

- the purpose for which Victoria Police obtained the personal information
- the likelihood that the parties involved would object to the release of their personal information
- the fact that a release under FOI imposes no restrictions on further use or dissemination
- the fact that disclosure of such personal information would be likely to cause stress, anxiety or embarrassment
- it is unreasonable to consult with the parties involved in these circumstances to obtain consent to release their personal information to you

Review of exemptions

Section 33(1)

11. 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;¹ and
 - (b) such disclosure would be 'unreasonable'.
12. Information relating to a person's 'personal affairs' includes information that identifies any person or discloses their address or location. It also includes any information from which such information may be reasonably determined.²
13. It has been held there is nothing particularly sensitive about matters occurring or arising in the course of one's official duties and disclosure of this type of information is generally considered not unreasonable.³

¹ Sections 33(1) and (2).

² Section 33(9).

³ *Milthorpe v Mt Alexander Shire Council* [1996] VCAT 368.

Does the information relate to the personal affairs information of an individual other than the Applicant?

14. The Agency relies on section 33(1) to refuse access to information relating to the name and address of a third party, and also other information from which a third party's identity could reasonably be determined. The Agency also relies on section 33(1) to refuse access to information relating to the name, position and rank number of an Agency officer.
15. I am satisfied this information relates to the personal affairs information of individuals other than the Applicant.

Would disclosure of the personal affairs information be unreasonable to release?

16. The concept of 'unreasonable disclosure' involves balancing the public interest in the disclosure of official information with the interest in protecting an individual's personal privacy.
17. I acknowledge the Applicant may know certain third parties mentioned in the document. However, even where an applicant claims to know the names or identities of a third party, disclosure of personal affairs information may still be unreasonable.⁴
18. In deciding whether disclosure of a document would involve the unreasonable disclosure of a third party's personal affairs information, an agency must notify that person an FOI request has been received for documents containing their personal information and seek their view as to whether disclosure of the document should occur,⁵ subject to certain exceptions.⁶
19. In this case, the Agency determined it was not practicable to consult with relevant third parties.
20. In determining whether disclosure of the personal affairs information would be unreasonable, I have considered the following factors in the circumstances of this matter:

(a) The nature of the personal affairs information.

The *Private Security Act 2004* (Vic) (**Private Security Act**) provides for the regulation of the private security industry for the purposes of ensuring public safety and peace.⁷

The regulation of the private security industry is a governmental function of the Agency authorised under law.

The document was created in the course of the Agency's Licensing and Regulation Division carrying out its regulatory functions under the Private Security Act with respect to the registration activities of a third party.

In the circumstances, I consider certain information in the document is sensitive in nature. This factor weighs against disclosure.

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

The personal affairs information in the document is not available to the wider public. This factor weighs against disclosure.

⁴ *AB v Department of Education and Early Childhood Development* [2011] VCAT 1263 (12 July 2011) at [58]; *Akers v Victoria Police* [2003] VCAT 397.

⁵ Section 33(2B).

⁶ Section 33(2C).

⁷ Section 1 of the *Private Security Act 2004* (Vic).

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

I acknowledge the Applicant's personal interest in obtaining access to the Document.

Where an applicant's motivation for seeking access to personal affairs information of a third party is more closely related to an applicant's personal interest or curiosity in obtaining the information without a broader public interest, access is more likely to be unreasonable.⁸

However, as detailed above, the regulation of the private security industry is a governmental function of the Agency authorised under law. Such a function is a public function carried out by the Agency, rather than a private right exercised by an individual. Further, the law provides for action to be taken against a person who does not comply with the Private Security Act.

I consider granting access to the document would promote the public interest in providing transparency concerning the Agency's role in carrying out its regulatory functions under the Private Security Act.

However, I am not satisfied there is a broader public interest to be promoted by releasing certain personal affairs information of third parties, which I consider is sensitive in nature.

(d) Whether the individuals to whom the information relates object or would be likely to object to disclosure of the information.

As detailed above, the Agency did not consult with the third party and the Agency officer.

However, I consider it is reasonably likely these individuals would object to the disclosure of their personal affairs information on grounds the information was recorded in a sensitive context.

In any case, while the view of the third parties is a relevant consideration, it is not determinative as to whether release of the document would be unreasonable in the circumstances.

(e) Whether disclosure of the information would, or would be reasonably like to, endanger the life or physical safety of any person.

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

21. In balancing the above factors, I have determined it would be unreasonable to release certain personal affairs information in the document that is sensitive in nature. Accordingly, I am satisfied this information is exempt under section 33(1).
22. However, I am not satisfied all personal affairs information is exempt under section 33(1) as I am not satisfied it would be unreasonable to release the relevant information as I consider the public interest in disclosure outweighs an individual's right to privacy in the particular circumstances. This includes information relating to the name, position title and rank number of an Agency officer where it concerns them performing their usual professional and work duties, rather than disclosing information concerning their personal or private life.
23. The Schedule of Documents in **Annexure 1** sets out my decision in relation to the document and section 33(1).

⁸ *Gunawan v Department of Education* [1999] VCAT 665.

Deletion of exempt or irrelevant information

24. 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.
25. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'⁹ 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 25.¹⁰
26. I have considered the effect of deleting exempt information from the document in accordance with section 25. I am satisfied it is practicable to delete the exempt information in the document as to do so would not require substantial time and effort, and the edited document would retain meaning.

Conclusion

27. On the information before me, while I am satisfied certain personal affairs information is exempt under section 33(1), I am not satisfied all information in the document is exempt under section 33(1).
28. As I am satisfied it is practicable to delete the exempt information in accordance with section 25, I have determined to grant access to the document in part.
29. The Schedule of Documents in **Annexure 1** sets out my decision in relation to the document.

Review rights

30. 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.¹¹
31. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹²
32. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹³
33. 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.
34. 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.¹⁴

Third party review rights

35. As I have decided to release personal affairs information of third parties, if practicable, I must notify those persons of their right to apply to VCAT for a review of my decision to disclose their personal affairs information.¹⁵

⁹ *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].

¹⁰ *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].

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

¹² Section 52(5).

¹³ Section 52(9).

¹⁴ Sections 50(3F) and (3FA).

¹⁵ Section 49P(5).

36. As I am satisfied it is practicable to notify the relevant third party of their review rights, they will be notified of my decision and their right to apply to VCAT for a review¹⁶ within 60 days from the date they are given notice of my decision.¹⁷

When this decision takes effect

37. For that reason, my decision does not take effect until the 60 day third party review rights expire.
38. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

¹⁶ Section 50(3).

¹⁷ Section 52(3).

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
1.	[date]	Letter from Licensing Regulation Division	2	<p>Refused in full</p> <p>Section 33(1)</p>	<p>Release in part</p> <p>Sections 33(1), 25</p> <p>The document is to be released except for the following information, which is exempt under section 33(1) and is to be deleted in accordance with section 25:</p> <p>Page 1:</p> <ul style="list-style-type: none"> • the addressee and the addressee's address; • the name in the salutation; and. • the third paragraph after the salutation. <p>Page 2:</p> <ul style="list-style-type: none"> • the fourth paragraph. 	<p>Section 33(1): I am satisfied it would be unreasonable to disclose certain personal affairs information of a third party due to the sensitive context in which this information was recorded. Accordingly, I am satisfied these parts of the document are exempt under section 33(1).</p>