

Notice of Decision and Reasons for Decision

Applicant:	'CB8'
Agency:	Victoria Police
Decision Date:	17 September 2020
Exemption considered:	Section 31(1)(d)
Citation:	'CB8' and Victoria Police (<i>Freedom of Information</i>) [2020] VICmr 264 (17 September 2020)

FREEDOM OF INFORMATION – police records – law enforcement documents – Law Enforcement Assistance Program (LEAP)

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 is the same as the Agency's decision.

I am satisfied the document is exempt under section 31(1)(d).

As I am satisfied it is practicable to provide access to an edited copy of the document with exempt information deleted in accordance with section 25, I have decided to grant access to the document in part.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

17 September 2020

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency for access to certain documents. Following consultation with the Agency, the Applicant amended the initial request to seek access to a Law Enforcement Assistance Program - Person History Report concerning the Applicant.
2. In its decision, the Agency identified one document falling within the terms of the Applicant's request. It refused access to the document in part under sections 33(1) and 31(1)(d).
3. The Agency's decision letter sets out the reasons for its decision.

Review

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
5. I have examined a copy of the document subject to review.
6. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
7. I have considered all communications and submissions received from the parties, including:
 - (a) information provided with the Applicant's review application dated [date];
 - (b) the Applicant's submission dated [date]; and
 - (c) information provided by the Agency during the review.
8. 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.
9. I note Parliament's intention the FOI Act must be interpreted so as to further the object of the Act and that 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.

Review of exemption

Section 31(1)(d) – law enforcement documents

10. Section 31(1)(d) provides:

31 Law enforcement documents

- (1) Subject to this section, a document is an exempt document if its disclosure under this Act would, or would be reasonably likely to—

....

- (d) 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;

11. The Agency's decision letter states:

The denied information in the LEAP person history report refers to details of the methods and procedures used by police during the course of police investigations. I am satisfied that the release of this information would be reasonably likely to prejudice the future effective use of those methods and procedures pursuant to the provisions of section 31(1)(d) of the Act.

- 12. Having reviewed the relevant information, I am satisfied it relates to specific procedures employed by Agency officers when responding to requests for police assistance and relevant police investigations.
- 13. I am constrained in providing any further description of the deleted information as to do so would likely disclose the very matter that is the subject of the exemption.
- 14. The exemption in section 31(1)(d) does not apply to widespread and well known investigation methods and procedures.¹
- 15. The existence of LEAP and the associated database is well known to the wider public with LEAP being referenced by both the Agency, Australian Bureau of Statistics and various published media sources. However, I am not satisfied the functions, methods and procedures associated with LEAP and the associated database are widespread or widely known amongst the public.
- 16. In addition, the Agency relied upon section 33(1) to refuse access to certain information in the document. However, I consider this information is also exempt under section 31(1)(d).
- 17. I have considered the likely effect of disclosing the information the Agency determined was exempt under the FOI Act, which provides for unrestricted and unconditional release of information. I am satisfied disclosure would be reasonably likely to undermine the use by the Agency and effectiveness of these methods and procedures in carrying out investigations and its law enforcement functions.
- 18. Section 31(2) outlines the circumstances in which the exemption under section 31(1) does not apply when there is a public interest to grant access to the document. However, I am not satisfied any of the exceptions set out in section 31(2) apply to the deleted information.
- 19. Accordingly, I am satisfied the information exempted in the document by the Agency is exempt under section 31(1)(d).

Deletion of exempt or irrelevant information

- 20. 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.
- 21. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'² and the effectiveness of the deletions. Where

¹ XYZ v Victoria Police [2010] VCAT 255 at [177].

² 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].

deletions would render a document meaningless, they are not 'practicable', and release of the document is not required under section 25.³

22. I have reviewed information the Agency determined as irrelevant information and deleted in accordance with section 25. I agree it falls outside the scope of the Applicant's request as it refers to the user ID of the Agency officer who generated the document for the purposes of the FOI request, and not an officer related to the subject matter of the document.
23. I have considered whether it is practicable to provide an edited copy of the document with irrelevant and exempt information deleted in accordance with section 25. I note the Agency decision provided for the Applicant to be provided with an edited copy of the document. As such, I consider it continues to be practicable to do so in accordance with section 25.

Conclusion

24. On the information before me, I am satisfied the document is exempt under section 31(1)(d).
25. As I am satisfied it is practicable to provide access to an edited copy of the document with exempt information deleted in accordance with section 25, I have decided to grant access to the document in part.

Review rights

26. If either party to this review is not satisfied with my decision, they are entitled to apply to Victorian Civil and Administrative Tribunal (**VCAT**) for it to be reviewed.⁴
27. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁵
28. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁶
29. 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.
30. 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.⁷

³ *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].

⁴ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

⁵ Section 52(5).

⁶ Section 52(9).

⁷ Sections 50(3F) and (3FA).