

Notice of Decision and Reasons for Decision

Applicant:	'CA5'
Agency:	Victoria Police
Decision date:	7 September 2020
Exemption and provision considered:	Sections 33(1), 25
Citation:	'CA5' and Victoria Police (<i>Freedom of Information</i>) [2020] VICmr 252 (7 September 2020)

FREEDOM OF INFORMATION – CCTV footage – public transport – police records – evidence gathered during police investigation – practicable to edit document

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.

I am satisfied the footage captured by the two external cameras in the document does not disclose personal affairs information.

As I am satisfied it is practicable to delete or edit the irrelevant personal affairs information captured by the three internal cameras from the document in accordance with section 25, I have determined to grant access to the document in part.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

7 September 2020

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency for access to 'CCTV from motor vehicle accident [accident location] provided to police by [bus company]'.
2. In its decision, the Agency identified one document, being CCTV footage (the **footage**), that falls within the terms of the Applicant's request.
3. The Agency relied on section 33(1) to refuse access to the document in full.
4. In its decision letter, the Agency stated 'assessed the document in accordance with the provisions of the Act', it further advised the Applicant the requested:

footage is not able to be viewed by this office due to differing software programmes; however, I have been advised what is on the CCTV footage and in the circumstances if able to be viewed it would be denied. As a result, I consider that it is not practicable to view and edit the denied footage so as to remove the cause for its exemption.

Review

5. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access to the document.
6. In their review application, the Applicant submits:

My request is to obtain onboard video from a local bus so that I can review the footage in order to provide any additional information to police around the vehicle that damaged my parked car. I am NOT seeking to uncover any personally identifiable information merely a license plate would be sufficient for police to continue their investigation.

The request was denied based the below statement however I do not believe the following to be true, that any personally identifiable information is present in the media:

information relating to the personal affairs of any person includes information –

(a) that identifies any person or discloses their address or location; or

(b) from which any person's identity, address or location can reasonably be determined.'

Based on the assessment I received on [date] I believe I have rights to appeal the denial decision based on:

1. The decision was made despite the deciding manager being able to review the footage. "*Attached footage is not able to be viewed by this office due to differing software programmes...I consider that it is not practicable to view and edit the denied footage*"
 2. No personally identifiable information would present in the video. Dash cam footage from a bus does not provide the ability to identify an individuals [sic] identity.
7. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
 8. I have viewed a copy of the footage and considered all relevant communications received from the parties in relation to this review.

9. 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.
10. 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 33(1) – Personal affairs information

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'.

Does the document contain the 'personal affairs information' of individuals other than the Applicant?

12. The footage is thirty minutes in length and features footage captured from a total of five cameras, located inside and outside a public bus. The footage also records the time, date, speed and longitude and latitude of the bus as it progresses on its route.
13. The three internal cameras capture the bus driver and passengers sitting, standing and alighting.
14. The two external cameras capture surrounding traffic and the streetscape at the front and left hand side of the bus.
15. I consider the internal bus footage is sufficiently clear at various times and to varying degrees to identify the driver and passengers, such as their facial features, movements and attire. As such, I am satisfied the footage contains the personal affairs information of persons other than the Applicant.
16. I note, however the Applicant does not seek access to 'any personally identifiable information' in the footage. Accordingly, I consider footage captured by the internal cameras in the document is irrelevant to my review as it contains personal affairs information of third parties.
17. I continue to consider the footage captured by the two external cameras within the document.
18. Having viewed the external footage I am satisfied no personal affairs information of third parties is captured or sufficiently clear in the document.
19. Accordingly, I am satisfied the footage captured by the two external cameras within the document does not disclose personal affairs information.

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 an applicant agrees to receiving such a copy.

¹ Sections 33(1) and (2).

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 deletions would render a document meaningless, they are not 'practicable', and release of the document is not required under section 25.³
22. In its decision letter, the Agency states:

... I have taken into consideration the provisions of section 25(b) of the Act which allows for exempt material to be deleted in order to make documents available for release. In the circumstances however I am satisfied that any attempt to edit the denied documents would render the remaining as meaningless and devoid of any context.
23. I note the Agency did not view the footage, despite a requirement to do so in making a decision in relation to a document under the FOI Act.
24. Having viewed the footage, I have considered whether it is practicable to release an edited copy of the document with the irrelevant information deleted (or edited) from the document in accordance with section 25. I am satisfied it is practicable to do so, as the document will retain sufficient meaning and the effort involved in editing the document will not be onerous from a resources point of view.

Conclusion

25. On the information before me, I am satisfied the footage captured by the two external cameras in the document does not disclose personal affairs information.
26. As I am satisfied it is practicable to delete or edit the irrelevant personal affairs information captured by the three internal cameras from the document in accordance with section 25, I have determined to grant access to the document in part.

Review rights

27. 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.⁴
28. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁵
29. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁶
30. 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.
31. 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

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].

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).

When this decision takes effect

32. My decision does not take effect until the Agency's 14 day review period expires.