

## Notice of Decision and Reasons for Decision

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Applicant:	'CC1'
Agency:	RSPCA (Victoria)
Decision date:	18 September 2020
Exemptions considered:	Sections 33(1), 35(1)(b)
Citation	'CC1' and RSPCA (Victoria) (Freedom of Information) [2020] VICmr 266 (18 September 2020)

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FREEDOM OF INFORMATION – complaint – alleged animal cruelty – telephone call – audio recording – complaint summary – personal affairs information – information provided in confidence – disclosure unreasonable – impair ability of agency to obtain similar information in the future

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.

On the information before me, I am satisfied the personal affairs information of third parties in the documents is exempt under section 33(1), and the confidential information provided by the complainant is exempt under section 35(1)(b).

While I have determined to grant access to the Complaint Summary in part with exempt information deleted in accordance with section 25, I am satisfied the Recording is exempt in full.

My reasons for decision follow.

**Joanne Kummrow**  
Public Access Deputy Commissioner  
18 September 2020

## Reasons for Decision

### Background to review

1. The Applicant made a request to the Agency in the following terms:

Copy of call recording about the complaint & a copy of complaint lodged in regards to a [description of animal]. I would like a full copy of this complaint that was lodged, the RSPCA attend my property on [date]. Snr Inspector [Agency officer] advised the complaint was made on [date]

2. The Agency identified one two-page document (**Complaint Summary**) and an audio recording (**Recording**) falling within the terms of the Applicant's request.
3. The Agency relied on the exemption in sections 33(1) and 35(1)(b) to refuse access to parts of the Complaint Summary and the entirety of the Recording.

### Review

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access to exempt information in the documents.
5. I have examined a copy of the Complaint Summary and listened to the Recording.
6. I have considered all relevant communications and submissions received from the parties.
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. 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.

### Section 33(1)

9. 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;<sup>1</sup> and
  - (b) such disclosure would be 'unreasonable'.
10. Information relating to an individual's 'personal affairs' includes, but is not limited to, information that identifies any person, or discloses their address or location. It also includes any information from which such information may be reasonably determined.<sup>2</sup>
11. A third party's opinion or observations about another person's conduct can constitute information in relation to the personal affairs of a third party.<sup>3</sup>

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<sup>1</sup> Sections 33(1) and (2).

<sup>2</sup> Section 33(9).

<sup>3</sup> *Richardson v Business Licensing Authority* [2003] VCAT 1053, cited in *Davis v Victoria Police (General)* [2008] VCAT 1343 at [43], *Pritchard v Victoria Police (General)* [2008] VCAT 913 at [24], *Mrs R v Ballarat Health Services (General)* [2007] VCAT 2397 at [13].

12. A document will disclose personal affairs information if the document is capable of, either directly or indirectly, identifying a particular individual whose personal affairs are disclosed. As the nature of disclosure under the FOI Act is unrestricted and unconditional, this is to be interpreted by the capacity of any member of the public to potentially identify a third party.<sup>4</sup>

*Do the documents contain the 'personal affairs information' of individuals other than the Applicant?*

13. I am satisfied the documents contain the personal affairs information of individuals other than the Applicant, namely the names and initials of Agency officers and the name, address and other identifying information of a third party who made a complaint to the Agency (the **complainant**).

*Would disclosure of the personal affairs information in the documents be unreasonable?*

14. The concept of 'unreasonable disclosure' involves balancing the public interest in disclosure of official information with the protection of a person's right to privacy in the particular circumstances.
15. The Supreme Court of Victoria Court of Appeal has held there is 'no absolute bar to providing access to documents which relate to the personal affairs of others', and the exemption under section 33(1) 'arises only in cases of unreasonable disclosure' and '[w]hat amounts to an unreasonable disclosure of someone's personal affairs will necessarily vary from case to case'.<sup>5</sup>
16. In determining whether disclosure of personal affairs information in the documents would be unreasonable in this matter, I have considered the following factors:

- (a) The nature of the personal affairs information and the circumstances in which the information was obtained

Where a member of the public provides an agency with information about a matter for which the agency is responsible for investigating and regulating, it is more often than not the very nature of providing information or making a complainant to the agency about an individual or organisation will be sensitive in nature.

In the context of this matter, the complaint concerns alleged animal cruelty. As such, I consider the nature of the personal affairs information in the documents is sensitive given this context.

I also consider the information was provided to the Agency by the complainant with an expectation of confidentiality in that the complainant's name, contact details and identifying information would not be provided to the Applicant.

In terms of the personal affairs information of the Agency officers named in the documents, I consider this information appears in the context of their professional roles as public servants, rather than in their personal or private capacity. Generally, it will only be where special circumstances exist that disclosure of such information to an applicant will be unreasonable for the purposes of section 33(1).

- (b) The Applicant's interest in the information, and whether their purpose for seeking the information is likely to be achieved

The FOI Act provides a general right of access that can be exercised by any person, regardless of their motive or purpose for seeking access to a document. However, the reasons why an

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<sup>4</sup> Ibid.

<sup>5</sup> [2008] VSCA 218 at [76].

applicant seeks access to a document is a relevant consideration in determining whether disclosure would be unreasonable.<sup>6</sup>

In their submission, the Applicant states they seek the identity of the complainant on the basis 'they need to be made aware providing false information is not acceptable'.

I acknowledge the document contains the information sought by the Applicant and would allow them to identify and locate the complainant.

I am of the view, disclosure of the personal affairs information of Agency officers and other agency officers would not assist the Applicant in regard to the purpose for which they seek access to the complainant's personal affairs information.

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

The Applicant did not provide information as to any public interest that would be promoted by release of the personal affairs information in the documents.

Rather, I consider the Applicant's stated purpose for seeking access to the personal affairs information is to serve a personal interest.

In the circumstances, I do not consider there is a broader public interest that would be served by the disclosure of the various personal affairs information in the documents, as detailed above.

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

I note the Agency determined it was not practicable to consult with the complainant on grounds it considered consultation as to their views on the release of their personal affairs information in the document would cause them unnecessary stress and anxiety. I accept consultation in these circumstances is not practicable.

In any case, I am satisfied it is reasonably likely the complainant would object to the disclosure of their personal affairs information in the documents.

I have considered the views of certain Agency officers, who were consulted as to the release of their personal affairs information in the documents. I note a number of the officers objected to the disclosure of their personal affairs information for personal and privacy reasons.

While the view of a third party as to disclosure of their personal affairs information is a relevant factor, but is not determinative, I am of the view it will generally be where special circumstances apply only, that the disclosure of agency officers' names will be unreasonable.

Having reviewed the terms of the Applicant's request, their stated purpose for seeking access to the personal affairs information exempted by the Agency in the documents (which is primarily focused on the identity of the complainant) and the views of the Agency officers, I accept disclosure of their names would be likely to cause them unnecessary stress and anxiety.

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<sup>6</sup> *Victoria Police v Marke* [2008] VSCA 218 at [104].

- (e) Whether disclosure of the information would, or would be reasonably likely to endanger the life or physical safety of any person<sup>7</sup>

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

17. Having weighed up the above factors, on balance, I am satisfied disclosure of the personal affairs information of all third parties named or identified in the documents would be unreasonable in the circumstances.

**Section 35(1)(b) – information communicated in confidence**

18. A document is exempt under section 35(1)(b) if two conditions are satisfied:
- (a) disclosure would divulge information or matters communicated in confidence by or on behalf of a person or a government to an agency or Minister; and
  - (b) disclosure would be contrary to the public interest as it would reasonably likely impair the ability of an agency or a Minister to obtain similar information in the future.

*Would disclosure divulge information or matter communicated in confidence by or on behalf of a person or a government to an agency?*

19. Whether information communicated by an individual was communicated in confidence is a question of fact.<sup>8</sup> When determining whether information provided to an agency was communicated in confidence, it is necessary to consider the position from the perspective of the communicator.<sup>9</sup>
20. The document contains information relating to a complaint made against the Applicant. I am satisfied from the context of the information and the submission of the Agency that it was provided by the individual in confidence.

*Would disclosure be contrary to the public interest as it would be reasonably likely to impair the ability of an agency to obtain similar information in the future?*

21. In deciding whether disclosure would be contrary to the public interest, I must consider whether disclosure of the documents would be reasonably likely to impair the ability of the Agency to obtain similar information in the future.
22. In *Gunawan v Department of Education*,<sup>10</sup> the Victorian Civil and Administrative Tribunal (VCAT) discussed the importance of confidentiality in the course of an investigation:

I consider that disclosure of the information contained in those documents would be contrary to the public interest, because I accept the evidence that the unit ... would be substantially impaired in their ability to undertake investigations in the future, and ... would be severely compromised by any interference in the confidentiality of the process.

23. The Applicant submits they seek access to the information in the documents as they consider the complaint made against them is false and malicious.
24. The Agency has power to investigate matters involving alleged animal cruelty in accordance with its functions under the *Prevention of Cruelty to Animals Act 1986* (Vic) (PCA Act).

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<sup>7</sup> Section 33(2A).

<sup>8</sup> *Ryder v Booth* [1985] VR 869 at 883; *XYZ v Victoria Police* [2010] VCAT 255 at [264].

<sup>9</sup> *Ryder v Booth* [1985] VR 869 at 883; *XYZ v Victoria Police* [2010] VCAT 255 at [265].

<sup>10</sup> [1999] VCAT 665.

25. I acknowledge the Applicant's interest in accessing information regarding the complainant where they consider the complaint made against them is false and malicious. However, the exemption under section 35(1)(b) is not concerned as to whether a complaint or information provided to an agency is true or not.
26. I am satisfied the confidential information in the document would allow the Applicant to identify and locate the complainant.
27. Where a complainant relies on their confidentiality being maintained when providing information or making a complaint to an agency about a third party, I consider disclosure of any information that would reasonably disclose the complainant's name, identity or location would substantially impact upon the willingness of complainants to come forward with similar information or complaints in the future. Such an outcome would be detrimental to the Agency and compromise its ability to carry out its important functions under the PCA Act.
28. Accordingly, I am satisfied disclosure of the confidential information provided by the complainant to the Agency would be reasonably likely to impair the Agency's ability to obtain similar information in the future when conducting investigations under the PCA Act.
29. As such, I am satisfied the confidential information provided by the complainant in documents is exempt under section 35(1)(b).

***Deletion of exempt or irrelevant information***

30. 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.
31. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'<sup>11</sup> 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.<sup>12</sup>
32. I have considered whether it is practicable to provide the Applicant with an edited copy of the documents with exempt information deleted in accordance with section 25. I am satisfied it is practicable to delete the exempt information in the Complaint Summary, as to do so would not require substantial time and effort, and the edited documents would retain meaning.
33. However, given the nature and content of the Recording, I am not satisfied it is practicable to do so, and the document is exempt in full.

**Conclusion**

34. My decision on the Applicant's request is the same as the Agency's decision.
35. On the information before me, I am satisfied the personal affairs information of third parties in the documents is exempt under section 33(1), and the confidential information provided by the complainant is exempt under section 35(1)(b).
36. While I have determined to grant access to the Complaint Summary in part with exempt information deleted in accordance with section 25, I am satisfied the Recording is exempt in full.

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<sup>11</sup> *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].

<sup>12</sup> *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].

## Review rights

37. If the Applicant is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.<sup>13</sup>
38. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>14</sup>
39. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>15</sup>
40. 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.
41. 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>16</sup>

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<sup>13</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>14</sup> Section 52(5).

<sup>15</sup> Section 52(9).

<sup>16</sup> Sections 50(3F) and (3FA).