



Office of the Victorian
Information Commissioner

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Notice of Decision and Reasons for Decision

Applicant:	'CM2'
Agency:	Victoria Police
Decision date:	4 January 2021
Exemption considered:	Section 33(1)
Citation:	'CM2' and Victoria Police (<i>Freedom of Information</i>) [2021] VICmr 1 (4 January 2021)

FREEDOM OF INFORMATION – event log – police documents - personal affairs information – unreasonable disclosure – 000 call – triple zero call

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 document subject to review is exempt under section 33(1).

As I am satisfied it is not practicable to provide the Applicant with an edited copy of the document with exempt information deleted in accordance with section 25, I have determined to refuse access to the document in full.

Accordingly, my decision on the document is the same as the Agency's decision.

My reasons for decision follow.

Joanne Kummrow

Public Access Deputy Commissioner

4 January 2021

Reasons for Decision

Background to review

1. In consultation with the Agency, the Applicant made a request to the Agency seeking access to documents regarding telephone calls made to 'Triple Zero (000) or police stations regarding [a specific address].
2. In its decision, the Agency advised it had identified one document falling within the terms of the Applicant's request. The document is a table listing the date, time and location from which a 000 call or calls were made.
3. The Agency refused access to the document in full, relying on the exemption in section 33(1). The Agency's decision letters 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 received from the parties.
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 exemptions

Section 33(1)

10. 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 personal affairs information?

11. Information relating to an individual'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

¹ Sections 33(1) and (2).

² Section 33(9).

12. A document will disclose a third party's personal affairs information if it is capable, either directly or indirectly, of identifying that person. As the nature of disclosure under the FOI Act is unrestricted and unconditional, this is to be interpreted by reference to the capacity of any member of the public to identify a third party.³

13. Having reviewed the document, I am satisfied it contains personal affairs information of a third party.

Would disclosure of the personal affairs information be unreasonable?

14. Considering whether disclosure of an individual's personal affairs information would be unreasonable involves balancing the public interest in the disclosure of official documents with the interest in protecting a third party's personal privacy in the circumstances.

15. Whether the release of personal affairs information would be unreasonable must be considered taking into account the particular circumstances, having regard to any matter that may 'relevantly, logically, and probatively' bear upon whether disclosure of personal affairs information of any person would be unreasonable in its own context.⁴

16. In determining whether disclosure of the personal information in the documents would be unreasonable, I have considered the following factors in the context of the Applicant's request:

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

The document concerns notifications made to police. As such, the information was obtained in the context of the Agency's law enforcement functions, including undertaking investigations into allegations of a breach or possible breach of the law.

I consider when individuals provide such information to police, they do so under the assumption any information provided will be held in confidence and used for the purpose of investigating a reported incident or possible subsequent prosecution. In such circumstances, I consider the notifier's personal affairs information to be sensitive and provided in confidence.

(b) The Applicant's interest in the information and, if appropriate, whether their purpose for seeking access to 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 applicant seeks access to a document is a relevant consideration in determining whether disclosure would be unreasonable.⁵

There is limited information before me as to the Applicant's reasons for seeking access to the requested information. However, where an applicant seeks access to information concerning reports made to police by a third party regarding a breach or possible breach of the law in relation to the applicant, I consider limited weight should be given as to whether the purpose for which an applicant seeks access to the information is likely to be achieved by disclosure of the information.

³ *O'Sullivan v Department of Health and Community Services (No 2)* [1995] 9 VAR 1 at [14]; *Beauchamp v Department of Education* [2006] VCAT 1653 at [42].

⁴ *Ibid* at [98].

⁵ *Victoria Police v Marke* [2008] VSCA 218 at [104].

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

I am satisfied the personal affairs information in the document is not available to the public or otherwise open to access by the Applicant.

I consider the Applicant's interest in the document serves a private interest only.

I am satisfied the public interest weighs against disclosure of the document to ensure the Agency is able to obtain and record such information in confidence. Rather, I consider the public interest lies in the Agency being able to efficiently and effectively carry out its law enforcement functions.

Accordingly, I am not satisfied the public interest in transparency outweighs the personal privacy of a third party in this case.

(d) Whether a third party to whom the information relates object, or would likely object, to the release of the information

I have limited information before me as to whether any relevant third party would object to the release of their personal affairs information. However, having considered the nature of the information in the document and the circumstances in which it was obtained by the Agency in the context of its law enforcement functions, I am satisfied any third party, whose personal affairs information is contained in the document, would be reasonably likely to object to the release of their personal information.

(e) Whether release of the information could lead to a third party suffering stress and anxiety

Having considered the nature of the information and the circumstances in which it was obtained by the Agency, I am satisfied it is reasonably likely disclosure of the personal affairs information to the Applicant could lead to a third party suffering stress and anxiety.

(f) Whether the disclosure of the information would, or would be reasonably likely to, endanger the life or physical safety of any person⁶

I do not have any information before me to suggest disclosure of the information would or would be reasonably likely to endanger the life or physical safety of any person.

17. In weighing the above factors, I am satisfied disclosure of the personal affairs information in the document would be unreasonable in the circumstances, and the relevant information is exempt under section 33(1).

Deletion of exempt or irrelevant information

18. 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.
19. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'⁷ and the effectiveness of the deletions. Where

⁶ Section 33(2A).

⁷ *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 the document meaningless, they are not 'practicable', and release of the document is not required under section 25.⁸

20. I have considered the effect of providing an edited copy of the document with the exempt information deleted in accordance with section 25. I am satisfied it is not practicable to do so as this would result in minimal information being released and the edited document would be devoid of meaning.

Conclusion

21. On the information before me, I am satisfied the personal affairs information in the document is exempt under section 33(1).
22. As I am satisfied it is not practicable to provide the Applicant with an edited copy of the document with exempt information deleted in accordance with section 25, I have determined to refuse access to the document in full.

Review rights

23. If they are not satisfied with my decision, the Applicant is entitled to apply to the Victorian Civil and Administrative Tribunal (**VCAT**) for it to be reviewed.⁹
24. The Applicant may apply to VCAT for such a review up to 60 days from the date they are given this Notice of Decision.¹⁰
25. 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.
26. 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.¹¹

⁸ *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].

⁹ Section 50(1)(b).

¹⁰ Section 52(5).

¹¹ Sections 50(3F) and (3FA).