

Notice of Decision and Reasons for Decision

Applicant: 'D18'
Agency: Department of Justice and Community Safety
Decision date: 30 June 2021
Exemption considered: Section 31(1)(a)
Citation: 'D18' and Department of Justice and Community Safety (*Freedom of Information*) [2021] VICmr 207 (30 June 2021)

FREEDOM OF INFORMATION – Parole Suitability Assessment – Commonwealth jurisdiction – information submitted to Adult Parole Board – prisoner records

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 in that I am satisfied the document subject to review is exempt in full under section 31(1)(a).

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, access to the document is refused in full.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

30 June 2021

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to the following documents:
 1. Judge's sentencing remarks from my case, viz. [Applicant] V The Queen, handed down on [date] in the [named] Court of Victoria.
 2. Psychological assessment/report of/on [the Applicant], authored by clinical Psychological assessment/report of/on [the Applicant], authored by clinical psychologist [name] and submitted to the abovementioned court for the purposes of the said case.
 3. Statement provided by general psychologist [name], likewise submitted to the above court for the purposes of the said case.
 4. Drug and alcohol assessment/report of/on [the Applicant], authored by [name of service] as part of their [specified] Drug and Alcohol Program which [the Applicant] undertook at [location] in [year/year].
 5. Parole Suitability Assessment (PSA) of myself, compiled by [name] of Community Correctional Services (CCS) Victoria submitted to the Adult Parole Board of Victoria - receipt noted by the latter at their [date] meeting to consider [the Applicant's] application for parole.
 6. Further report on [the Applicant] compiled by [name] (CCS) for Corrections Victoria and submitted to the Commonwealth Attorney-General (in approx. [date], or earlier) for the purposes of considering [the Applicant's] application for parole.
 7. Psychological assessment/report/of/on [the Applicant], conducted on [date] and [date] at HM Prison [location] and authored by [name] of Forensic Intervention Services (FIS) on behalf of Corrections Victoria.
2. The Agency identified certain documents falling within the terms of the Applicant's request and refused access to certain information in the documents under sections 31(1)(a), 31(1)(d), 33(1) and 38 in conjunction with section 104ZZA of the *Corrections Act 1986* (Vic) (**Corrections Act**).
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 to information in the documents.
5. Section 49M(1) permits an agency to make a fresh decision on an FOI request during a review.
6. On [date], the Agency made a fresh decision in which it identified additional documents falling within the terms of the Applicant's request, and relied on different and additional exemptions to refuse access to certain information in the documents.
7. The Applicant did not agree with the Agency's fresh decision. As required by section 49MA(2), I proceeded with my review on the basis of the fresh decision.
8. The Applicant seeks review of the Agency's decision in relation to point 6 of their FOI request, that is, the Parole Suitability Assessment in relation to the Commonwealth jurisdiction (**Commonwealth PSA**). Therefore, my review is limited to this document only.
9. I have examined a copy of the document subject to review.

10. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
11. I have considered all communications and submissions received from the parties.
12. 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.
13. 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.

Review of exemptions

14. The document subject to review is the Applicant's Parole Suitability Assessment, which comprises:

Psychological report dated [date] (which is also relevant to point 2 of [the] request (7 pages)

Review of Satisfactory Behaviour for Parole Suitability Assessments dated [date] (4 pages)

[Specialised Offender Assessment and Treatment Service] SOATS IPP [Intervention Pathways and Planning] Stakeholder Pathway letter dated [date] (1 page)

Alcohol and Other Drug Services - Assessment outcome dated [date] (1 page)

Caraniche Drug and Alcohol Screening Template dated [date] (2 pages)

Interstate Transfer – Annexure 4 (4pages)

15. Eligible prisoners are required to apply to the Adult Parole Board (the **Board**) if they wish to be considered for release from prison on parole. The Board is a decision making body that determines whether to grant, deny or defer parole, and any conditions of parole.
16. When an eligible prisoner applies for parole and the Board decides to progress the application, it requests Community Correctional Services (**CCS**), which is a unit within Corrections Victoria, to prepare a Parole Suitability Assessment (**PSA**).
17. The purpose of a PSA is to bring together relevant information for the Board to assess a prisoner's suitability for parole. A PSA is comprehensive and covers a wide range of issues including a prisoner's risk to the community, employment background, family and social life, drug and alcohol use history, behaviour while in prison and proposed accommodation if released on parole. The PSA also makes a recommendation on any discretionary conditions the Board should consider imposing on a prisoner's parole.¹

Section 31(1)(a) – Law enforcement documents

18. Section 31(1)(a) provides a document is exempt if its disclosure under the FOI Act would, or would be reasonably likely to, prejudice the investigation of a breach, or possible breach, of the law in a particular instance, or the enforcement or proper administration of the law in a particular instance.

¹ See Adult Parole Board Victoria at <https://www.adultparoleboard.vic.gov.au/parole-reports>.

19. 'Reasonably likely' means there is a real chance of an event occurring; it is not fanciful or remote.²'Prejudice' means to hinder, impair or undermine and includes actual prejudice as well as impending prejudice.³

20. I note the views of the Supreme Court of Victoria expressed in *Knight v Corrections Victoria*:

It is clear from the terms of s 31(1) that its provisions, and especially s 31(1)(a), are capable of applying to documents concerning the administration and management of prisons generally and concerning individual prisoners specifically. The Tribunal has so decided on a number of occasions, [72] including one where it upheld a decision to refuse access to a prisoner to information about himself. The tribunal has also applied s 31(1)(a) to uphold a decision to refuse to give access to information relating to the considerations of the Parole Board.⁴

21. In its decision letter, the Agency states:

'Administration of the law' under this section includes the administration of a prison under the *Corrections Act 1986* (Corrections Act) and the Corrections Regulations 2019.

Disclosure of this information would be contrary to the public interest as it has the potential to undermine the parole system by providing insights to the parole assessment process, which could be used to manipulate outcomes of parole applications.

Essential to the parole process is the provision of frank opinion and advice from the medical and corrections staff. If these reports and assessments were to be released under the FOI Act, it may cause staff to be less candid when writing them in future.

22. I acknowledge the Applicant's genuine interest in receiving access in full to the document.

23. However, having reviewed the document in this matter and noting its purpose and context, I accept the Agency's submission that granting access to the information exempted by the Agency would prejudice the proper administration of the Corrections Act in relation to efficient and effective decision making by the Board on parole applications. I am satisfied this is a 'particular instance' in which the administration of the law may be prejudiced.

24. In the context of disclosure under the FOI Act, which involves the unrestricted and unconditional release of a document, I accept disclosure of a document in full means an applicant is free to use or further disseminate a document as they please. In this case, disclosure of the document under the FOI Act could reasonably facilitate its dissemination within the prison and access by prisoners, offenders and/or the general public.

25. Accordingly, I am satisfied disclosure of the document would be reasonably likely to prejudice the proper administration of the law, in this case, the administration of the Corrections Act in regard to the management and security of a prison and prisoners. Therefore, I am satisfied the document is exempt under section 31(1)(a).

² *Bergman v Department of Justice Freedom of Information Officer* (General) [2012] VCAT 363 at [65], quoting *Binnie v Department of Agriculture and Rural Affairs* [1989] VR 836.

³ *Ibid*, Bergman at [66], referring to *Sobh v Police Force of Victoria* [1994] VicRp 2; [1994] 1 VR 41 (Nathan J) at [55].

⁴ *Knight v Corrections Victoria* [2010] VSC 338 at [73] (Bell J) which references at [74] *Lomax v Department of Justice* [1999] VCAT 2125; *Re Mallinder and Office of Corrections* (1988) 2 VAR 566, 580; *Re Lapidos and Office of Corrections* (No 4) (1990) 4 VAR 283, 307-308 and *Simons v Department of Justice* [2006] VCAT 20553 at [35]-[40]; and at [73] *Debono v Department of Justice* [2008] VCAT 1791 at [9]-[11] and [19]-[21].

Section 25 – Deletion of exempt or irrelevant information

26. Section 25 requires an agency to grant access to an edited copy of a document where it is practicable to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.
27. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’⁵ and the effectiveness of the deletions. Where deletions would render the document meaningless they are not ‘practicable’ and release of the document is not required under section 25.⁶
28. I have considered the effect of deleting exempt information from the document. I am satisfied the document is exempt in full as it is not practicable to provide the Applicant with an edited copy of the document that would retain any substantive and meaningful content.

Section 38 – Document to which a secrecy provision applies

29. While I note the Agency’s decision in relation to the document also relies on the application of section 38 in conjunction with section 104ZZA of the Corrections Act, given I am satisfied the document is exempt in full under section 31(1)(a), it is not necessary for me to also consider the application of this additional exemption.

Conclusion

30. On the information before me, I am satisfied the document is exempt in full under section 31(1)(a).

Review rights

31. 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.⁷
32. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁸
33. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁹
34. 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.
35. 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.¹⁰
36. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

⁵ *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].

⁶ *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].

⁷ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

⁸ Section 52(5).

⁹ Section 52(9).

¹⁰ Sections 50(3F) and (3FA).