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Information Commissioner

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Notice of Decision and Reasons for Decision

Applicant:	'DD3'
Agency:	Victoria Police
Decision date:	4 June 2021
Exemptions and provision considered:	Sections 31(1)(d), 31(1)(e)
Citation:	'DD3' and Victoria Police (Freedom of Information) [2021] VICmr 157 (4 June 2021)

FREEDOM OF INFORMATION – number of police officers – protests – demonstrations

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 differs from the Agency's decision.

I have decided the specific information in the documents sought by the Applicant is not exempt under sections 31(1)d or 31 (1)(e).

As it is practicable to delete irrelevant information from the documents, I have determined to release the documents in part with irrelevant information deleted in accordance with section 25.

The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

My reasons for decision follow.

Sven Bluemmel
Information Commissioner

4 June 2021

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency for access to the following documents:

I am seeking documents outlining the pre event and post event police briefings for the following [name and date] -[name and date] -[name and date] -[name and date] I am seeking documents outlining the number and rank of police officers that were involved in the enforcement of each of the three protests.

2. In its decision, the Agency identified 20 documents falling within the terms of the Applicant's request. It decided to grant access to four documents in part and to deny access to the remaining documents in full. The Agency relied on the exemptions in sections 31(1)(a) and (d) and 33(1) to deny access to the documents. The Agency's decision letter sets out the reasons for its decision.

Review

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. The Applicant indicated they are not seeking the names of Agency officers.
5. I have examined copies of the documents 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.
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 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.

Preliminary view

10. The Applicant agreed to narrow the scope of my review to the number and rank of police officers who attended the four demonstrations. In the documents this information is contained in a small table for each demonstration.
11. My preliminary view that the information sought by the Applicant was not exempt under sections 31(1)(a) or 31(1)(d) was provided to the Agency.
12. The Agency responded stating it considered the sections 31(1)(d) and 31(1)(e) apply and provided an additional submission.

Applicant submission

13. The Applicant submitted the information requested has previously been released by the Agency under the FOI Act, and provided reference to newspaper articles based on that information. Those articles include the total cost, shifts undertaken and a break down of the rank of Agency officers that attended certain identified protests or demonstrations.

Agency submission

14. The Agency provided a submission in response to my preliminary view. In summary, the Agency submits:

When processing the previous requests, we identified user pay documents that were created by VicPol as we were looking to seek reimbursement from event organisers. In relation to this request ([reference]), no such document was created and therefore none exist for this request. We note that the previous requests were from a few years ago and our stance on releasing this type of information has changed in line with the changing circumstances in society.

...

Police have an obvious role to play in relation to large gatherings of people including protests to ensure public safety and that applicable laws are adhered to. It is not uncommon for protests to focus on issues which are divisive, and which attract groups of people who have different points of view leading to clashes occurring between these groups.

In order to manage protests, Police have developed certain methods and procedures which include determining the number, experience and expertise of police members who are required to attend protests.

The documents contained in the Applicant's refined scope request disclose the rank and number of police members attending the various protests. These matters are determined by a number of factors including the expected number of participants, the various groups that may be involved, any particular intelligence held by police in relation to those groups and the impact that the factors may have on the safety of members participating in the protests, other members of the public and police members themselves.

...

Review of exemptions

Section 31(1)(d)

15. Section 31(1)(d) provides (subject to this section) a document is exempt if its disclosure would, or would be reasonably likely to, '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'.
16. The exemptions in section 31(1) do not apply to widespread and well known methods and procedures.¹
17. I accept that, considered broadly, the number of police officers rostered to attend a protest relates to methods or procedures for preventing, detecting or investigating breaches or evasions of the law that may take place at such events.

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

18. However, I am not satisfied the disclosure of the information would be reasonably likely to prejudice the effectiveness of those methods or procedures for the following reasons:
- (a) The information does not include any detailed information about the methods used by Agency officers, for example their location, or specific crowd control procedures, nor any information about strategic decisions that may need to be made throughout a demonstration.
 - (b) I note the Agency's concerns, however, in my view, as described in the Agency's submission, the calculation of the number of Agency officers to attend a protest relies on a broad range of factors, including intelligence that would not be publicly available. In see those factors will likely change over time and will likely vary in each instance. I therefore do not consider it 'reasonably likely' that disclosure of this information would have any effect on the ability of the Agency to respond to protests in the future.
 - (c) I also note the public nature of the Agency's officers at protests. It would be therefore open to members of the public to at the least, estimate the number of police officers in attendance at any particular event.
19. I am therefore not satisfied section 31(1)(d) applies to the documents.

Section 31(1)(e)

20. Section 31(1)(e) provides (subject to this section) a document is exempt if its disclosure would or endanger the lives or physical safety of persons engaged in or in connection with law enforcement or persons who have provided confidential information in relation to the enforcement or administration of the law.
21. I note the Agency expressed concern for the safety of its members. However, for the reasons listed above, I do not consider the Agency has demonstrated disclosure would have any impact on the conduct of the Agency's operations and therefore, would not have any impact on the safety of its officers.
22. I therefore have determined section 31(1)(e) does not apply to the documents.

Deletion of exempt or irrelevant information

23. Section 25 requires an agency to grant access to an edited copy of a document when it is practicable for the agency or Minister to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.
24. 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 the document meaningless they are not 'practicable' and release of the document is not required under section 25.³
25. I note the Applicant is not seeking the names of Agency officers that appear throughout the document. This information is therefore irrelevant to the request.
26. I have considered the effect of deleting irrelevant and exempt information from the documents. In my view, it is practicable for the Agency to delete the irrelevant and/or exempt information from

² *Mickelburgh v Victoria Police (General)* [2009] VCAT 2786 [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 [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 at [140], [155].

certain documents because it would not require substantial time and effort, and the edited documents would retain meaning. However I have determined for certain documents it would not be practicable to delete irrelevant or exempt information as to do so would render the documents meaningless.

Conclusion

27. On the information available, I am satisfied the exemptions in sections 31(1)(a) and (d) apply to parts of the documents.
28. As it is practicable to edit some of the documents to delete irrelevant and or exempt information, I have determined to grant access to those documents in part.
29. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.
30. A marked-up copy of the documents showing the information to be released has been provided to the Agency with this decision.

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.⁴
32. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁵
33. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁶
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.⁷

When this decision takes effect

36. My decision does not take effect until the Agency's review period (stated above) expires. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

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).

Annexure 1 – Schedule of Documents

Doc. No.	Date of document	Title or description of document	Page of PDF	Agency's decision	OVIC decision
The Applicant narrowed the scope of the review to the information highlighted in a copy of the documents provided to the Agency with this decision.					
1	[date]	[name] demonstration	14	Refused in full Sections 31(1)(d), 31(1)(e)	Release in part Section 25 The information highlighted on page 14 in the document is to be provided to the Applicant.
2	[date]	[name] demonstration	69	Refused in full Sections 31(1)(d), 31(1)(e)	Release in part Section 25 The information highlighted on page 69 in the document is to be provided to the Applicant.
3	[date]	[name] demonstration	97	Refused in full Sections 31(1)(d), 31(1)(e)	Release in part Section 25 The information highlighted on page 97 in the document is to be provided to the Applicant.
4	[date]	Demonstration at [location]	125	Refused in full Sections 31(1)(d), 31(1)(e)	Release in part Section 25 The information highlighted on page 125 in the document is to be provided to the Applicant.