## Background

The Complainant had a custody dispute with his former partner about their two children. The Complainant called the Child Support Agency (**CSA**) during which he made a threat to harm himself. The CSA notified Victoria Police, prompting them to perform a welfare check.

Victoria Police assigned officers, including a Leading Senior Constable (**LSC**), to conduct the welfare check. LSC attended the Complainant’s home and, after being unable to locate him, contacted the Complainant’s former partner to try and obtain his current whereabouts. In doing so, LSC disclosed that the Complainant had made a threat to harm himself. The Complainant asserted that his former partner later used this information in the custody dispute which led to his contact hours with his children being reduced.

## Submissions and VCAT’s decision

##### IPP 2.1

##### The Complainant alleged that Victoria Police breached IPP 2.1 when LSC disclosed to his former partner that he had made a threat to harm himself.

##### VCAT held that the disclosure was authorised, primarily on the basis that the personal information was disclosed for the primary purpose for which it was collected: being to ascertain the Complainant’s location and identify whether he was in any danger.

##### The Complainant argued that this could have been achieved without Victoria Police disclosing his information. VCAT rejected this argument, stating that such an approach would require VCAT to conduct an inquiry into police practices, which is not contemplated by IPP 2.1.

##### VCAT went on to find that the disclosure would also have been authorised under:

##### IPP 2.1(d) - There was a serious threat to the Complainant’s own life based on the comments he had made during the call with the CSA. The level of information disclosed (including that he had made the threats) was reasonably necessary for the purposes of preventing the threat as it was ‘selective and targeted’ to ensure that the Complainant could be located as soon as possible.

##### IPP 2.1(f) – As sections 144M and 144N of the *Family Violence Act 2008* permitted Victoria Police to disclose information about a concerned person (being the Complainant) to a primary person (being the former partner as parent of the two children), if Victoria Police believed that there was a risk the concerned person may commit family violence (Victoria Police becoming aware that the Complainant was out camping with his children and that if he was not located, those children could potentially become the victims of family violence).

##### IPP 3.1 and 4.1

##### The Complainant also alleged that Victoria Police breached IPPs 3.1 and 4.1, VCAT held that there was no interference with these IPPs as Victoria Police’s conduct was ‘reasonable, targeted, justified’ and ‘Victoria Police could not have made any further reasonable enquiry or taken any different action in the circumstances.’

## Other matters

In addition to its application of the IPPs, this decision provides several other useful insights on VCAT’s jurisdiction which individuals should consider when making a privacy complaint. These include:

* Individuals cannot make a direct application under the PDP Act to VCAT, a referral must come from OVIC. VCAT will be restricted to determining those matters in that referred complaint.
* Even where a breach has been established, when providing an order:
  + VCAT cannot review decisions made by another Court or independent body.
  + VCAT is unable to make orders regarding the employment or dismissal of an organisation’s employees.
  + Where financial compensation is being sought for psychological harm and other stressors are involved impacting upon the mental health of the complainant, individuals should attempt to substantiate their harm and disentangle it from the other stressors through a relevant health professional’s opinion.

Further Information

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