

Notice of Decision and Reasons for Decision

Applicant:	'DZ2'
Agency:	Victoria Police
Decision date:	17 May 2022
Exemption considered:	Section 33(1)
Citation:	'DZ2' and Victoria Police (Freedom of Information) [2022] VICmr 20 (17 May 2022)

FREEDOM OF INFORMATION – Law Enforcement Assistance Program (LEAP) Incident Report – Electronic Patrol Duty Return (ePDR) Form – handwritten notes of attending police members – Agency officer names – personal affairs information – unreasonable to disclose

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.

I am satisfied certain personal affairs information in the documents is exempt from release under section 33(1), however, I have determined to disclose a small amount of additional personal affairs information where I am satisfied it is not exempt information.

As I am satisfied it is practicable to provide the Applicant with an edited copy of the documents with irrelevant and exempt information deleted in accordance with section 25, access is granted in part.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

17 May 2022

Reasons for Decision

Background to review

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

Under freedom of Information, I apply for the document[s], on the Victorian Police attending at [address] on the [date], around [time], from [named Police Station].

2. The Agency identified two documents falling within the terms of the Applicant's request and refused access to the documents in part under section 33(1). The Agency's decision letter sets out the reasons for its decision.

Review application

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. I have examined a copy of the documents subject to review.
5. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
6. I have considered all 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 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) – Documents affecting personal privacy of third parties

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 (a **third party**);¹ and
 - (b) such disclosure would be 'unreasonable'.

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

10. Information relating to a person'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
11. A document will disclose a third party's personal affairs information if it is capable, either directly or indirectly, of identifying the third party. As the FOI Act does not place any restrictions on an

¹ Sections 33(1) and (2).

² Section 33(9).

applicant's use or dissemination of documents obtained under FOI, this is to be interpreted by reference to the capacity of any member of the public to identify a third party.³

12. The information exempted from release by the Agency includes the names, addresses and contact telephone numbers of third parties. It also includes the statements and observations of third parties who were present at the incident that is the subject of the documents.
13. I am satisfied this information constitutes the personal affairs information of third parties.

Would disclosure of the personal affairs information be unreasonable?

14. The concept of 'unreasonable disclosure' involves balancing the public interest in the disclosure of official information with the interest in protecting the personal privacy of a third party in the particular circumstances.
15. In *Victoria Police v Marke*,⁴ the Victorian Court of Appeal held there is 'no absolute bar to providing access to documents which relate to the personal affairs of others'. Further, 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'.⁵ The Court further held, '[t]he protection of privacy, which lies at the heart of [section] 33(1), is an important right that the FOI Act properly protects. However, an individual's privacy can be invaded by a lesser or greater degree'.⁶
16. In determining whether disclosure of the personal affairs information would be unreasonable in the circumstances, I have considered the following factors:

(a) The nature of the personal affairs information

The documents contain personal affairs information of persons other than the Applicant, including names, date of birth, contact telephone number, MNI Number (which is a unique identifier), registered numbers, relationship descriptors and other personal information. It also includes the recollection of events, as told by third parties present at an incident the subject of the request.

Some of the information is sensitive as it relates to a member of the community, and some is less sensitive as it relates to Agency officers performing their usual professional duties.

(b) The circumstances in which the information was obtained

The Agency recorded the information, including versions of events, as told by third parties, as part of its policing functions in the detection, investigation and prevention of breaches of the law.

In these circumstances, I consider some of the information is sensitive as it relates to a third party's interaction and involvement with police.

(c) The Applicant's interest in the information

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

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 [2008] VSCA 218 at [76].

⁵ *Ibid.*

⁶ *Ibid* at [79].

applicant seeks access to a document is a relevant consideration in determining whether disclosure would be unreasonable under section 33(1).⁷

The Applicant resides at the property where the incident occurred and Victoria Police members attended. I acknowledge the Applicant's personal interest in obtaining a copy of documents about police attending [their] property and with whom [they] interacted.

(d) Whether any public interest would be promoted by release of the personal affairs information

The nature of the Applicant's interest in obtaining access to the documents in full is a matter of private interest. However, this interest needs to be balanced with the public interest in the Agency maintaining confidentiality in sensitive information it holds in connection with its law enforcement functions.

In these circumstances, there is no information before me that any public interest would be promoted by release of the third parties' personal affairs information.

(e) The likelihood of disclosure of information, if released

As stated above, the FOI Act does not place any restrictions on an applicant's use or dissemination of documents obtained under FOI.⁸

Accordingly, I have considered the likelihood of the personal affairs information being further disseminated, if disclosed, and the effects broader disclosure of this information would have on the privacy of the relevant third parties.

In this matter, there is no specific information before me to suggest the personal affairs information would be further disseminated by the Applicant.

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

In deciding whether disclosure of a document would involve the unreasonable disclosure of a third party's personal affairs information, an agency must notify that person (or their next of kin, if deceased) an FOI request has been received for documents containing their personal information and seek their view as to whether disclosure of the document should occur.⁹ However, this obligation does not arise in certain circumstances, including if it is not practicable to do so.¹⁰

The Agency advised it consulted with the relevant police officers regarding their views on disclosure of their personal affairs information. One of the officers' objects to release of their personal affairs information and no response was received from another officer.

While a third party may object to disclosure, this is not determinative.

Having considered the content and context of the document, I have determined to release the personal affairs information of the police officer who did not respond to consultation by the Agency.

⁷ *Victoria Police v Marke* [2008] VSCA 218 at [104].

⁸ *Ibid* at [68].

⁹ Section 33(2B).

¹⁰ Section 33(2C).

In relation to the police officer who objected to release of their personal affairs information, while I have taken their view into account, having regard to the documents subject to review, I consider their name appears in the context of them carrying out their usual professional duties and is not particularly sensitive in the circumstances of this matter.

The Agency determined it was not practicable to consult with the remaining third party. I agree it would not be practicable to do so. I am satisfied the relevant third party would likely object to the disclosure of their sensitive personal affairs information in the documents and accept this is a factor against disclosure of their personal affairs information.

- (g) Whether disclosure of the information would or would be reasonably likely to endanger the life or physical safety of any person¹¹

In determining whether the disclosure of a document would involve the unreasonable disclosure of information relating to the personal affairs of any person, I must consider whether the disclosure of the information would, or would be reasonably likely to, endanger the life or physical safety of any person.¹² There is no information before me to suggest this is a relevant factor in this matter.

- (h) Whether the disclosure would increase the risk to a primary person's safety from family violence¹³

In determining whether the disclosure of a document would involve the unreasonable disclosure of information relating to the personal affairs of any person, I must consider whether the disclosure of the information would, or would be reasonably likely to, endanger the life or physical safety of any person. There is no information before me to suggest this is a relevant factor in this matter.

17. Having weighed up the above factors, on balance, I have determined it would not be unreasonable to release the names of the police officers who attended the incident at the Applicant's property and interacted with the Applicant directly in carrying out their usual professional duties as police officers. However, I am satisfied disclosure of the remaining personal affairs information of a third party would be unreasonable in the circumstances.
18. Accordingly, I am satisfied certain personal affairs information is exempt from release under section 33(1), and have determined to disclose a small amount of information where it is not exempt information.
19. My decision in relation to section 33(1) is set out in the Schedule of Documents at **Annexure 1**.

Section 25 – Deletion of exempt or irrelevant information

20. 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.
21. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'¹⁴ and the effectiveness of the deletions. Where

¹¹ Section 33(2A).

¹² Section 33(2A).

¹³ Section 33(2AB).

¹⁴ *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 a document meaningless, they are not 'practicable', and release of the document is not required under section 25.¹⁵

22. I have considered the information the Agency deleted as irrelevant information under section 25. I agree it falls outside the scope of the Applicant's request as it relates to matters other than those specified in their request.
23. Given the Agency's original decision to grant access to the documents in part with irrelevant and exempt information deleted in accordance with section 25, I am satisfied it remains practicable to provide the Applicant with an edited copy of the documents.

Conclusion

24. On the information before me, I am satisfied certain personal affairs information in the documents is exempt from release under section 33(1), however, I have determined to disclose a small amount of additional personal affairs information where I am satisfied it is not exempt information.
25. As I am satisfied it is practicable to provide the Applicant with an edited copy of the documents with irrelevant and exempt information deleted in accordance with section 25, access is granted in part.

Review rights

26. 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.¹⁶
27. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹⁷
28. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁸
29. 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.
30. 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.¹⁹

Third party review rights

31. As I have determined to release documents that contain the personal affairs information of third parties, if practicable, I am required to notify the relevant individuals of their right to seek review by VCAT of my decision within 60 days from the date they are given notice.²⁰
32. In this case, I am satisfied it is practicable to notify the relevant individuals of their third party review rights and confirm they will be notified of my decision on the date of decision.

¹⁵ *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].

¹⁶ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹⁷ Section 52(5).

¹⁸ Section 52(9).

¹⁹ Sections 50(3F) and 50(3FA).

²⁰ Sections 49P(5), 50(3) and 52(3).

When this decision takes effect

33. My decision does not take effect until the third parties' 60 day review period expires.
34. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
1.	[Date] (generated on [date])	ePDR Form	15	Released in part Sections 33(1), 25	Release in part Sections 33(1), 25 The document is to be released with irrelevant and exempt information deleted in accordance with section 25, as determined by the Agency, except for the police officer names and ID numbers in the document, which is to be released.	<p>Section 33(1): I am satisfied it would not be unreasonable to release the police officer names and ID numbers at the top of page 1 for the reasons set out in the Notice of Decision above. Accordingly, I am satisfied this information is not exempt from release under section 33(1).</p> <p>I note the member ID in the entry of [date, time] was released in the entry [date, time]. I am satisfied this information is not exempt from release under section 33(1).</p> <p>I am satisfied the remainder of the personal affairs information would be unreasonable to release for the reasons set out in the Notice of Decision above. Accordingly, I am satisfied this information is exempt from release under section 33(1).</p> <p>Section 25: I am satisfied the information identified by the Agency as irrelevant information does not relate to the Applicant’s request.</p> <p>I am satisfied it is practicable to provide the Applicant with an edited copy of this document with exempt and</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						irrelevant information deleted in accordance with section 25.
2.	Unconfirmed	Notes of attending officer	1	Released in part Sections 33(1), 25	Release in part Sections 33(1), 25 The document is to be released with irrelevant and exempt information deleted in accordance with section 25, as determined by the Agency.	Section 33(1): The document contains the personal affairs information of a third party. For the reasons set out in the Notice of Decision above, I am satisfied disclosure of this information would be unreasonable in the circumstances and it is exempt from release under section 33(1). Section 25: See comments in Document 1.