

## Notice of Decision and Reasons for Decision

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Applicant:	'DX7'
Agency:	Victoria Police
Decision date:	2 February 2022
Exemption considered:	Section 31(1)(d)
Citation:	'DX7' and Victoria Police (Freedom of Information) [2022] VICmr 7 (2 February 2022)

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FREEDOM OF INFORMATION – police records – law enforcements documents – Law Enforcement Assistance Program (LEAP)

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 the document requested by the Applicant under the FOI Act.

My decision on the Applicant's request is the same as the Agency's decision.

I am satisfied the document contains exempt information under section 31(1)(d).

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

My reasons for decision follow.

**Joanne Kummrow**  
Public Access Deputy Commissioner

2 February 2022

## Reasons for Decision

### Background to review

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

Law Enforcement Assistance Program (LEAP) database person history report entries against my current and former names...
2. The Agency identified one document falling within the terms of the Applicant's request, which it released in part with certain information exempted under section 31(1)(d). 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 document 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 31(1)(d) – law enforcement documents***

9. Section 31(1)(d) provides:

#### **31 Law enforcement documents**

- (1) Subject to this section, a document is an exempt document if its disclosure under this Act would, or would be reasonably likely to—

....
- (d) 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;

10. The Agency's decision letter states:

Part of the deleted information comprises details of the methods and procedures used by police during the course of their investigations. I am satisfied that the release of this information would be reasonably likely to prejudice the future effective use of those methods and procedures pursuant to the provisions of section 31(1)(d) of the Act.

11. Having reviewed the document, I am satisfied it contains information related to specific investigative procedures and methods employed by Victoria Police members in conducting a criminal investigation.
12. I am constrained in providing a detailed description of the information exempted from release by the Agency as to do so would likely disclose information that is the subject of the exemption.
13. I note the exemption in section 31(1)(d) does not apply to widespread and well known investigation methods and procedures.<sup>1</sup> However while the existence of LEAP and the associated database is well known to the wider public with LEAP being referenced by both the Agency, the Australian Bureau of Statistics and various published media sources, I am not satisfied the specific methods and procedures that appear in the LEAP record subject to review are publicly known.
14. Section 31(2) outlines the circumstances in which the exemption in section 31(1) does not apply when there is a public interest to grant access to a document. However, I am not satisfied any of the exceptions set out in section 31(2) apply to the information exempted from release by the Agency.
15. Further, I consider the public interest weighs against disclosure of the relevant information so the Agency may be able to effectively carry out its law enforcement functions.
16. In my view, the likely effect of disclosing the relevant information would be reasonably likely to undermine the effectiveness of investigative procedures and methods employed by Victoria Police members these methods and procedures in conducting a criminal investigation.
17. Accordingly, I am satisfied the information exempted from release in the document by the Agency is exempt under section 31(1)(d).

#### ***Section 25 – Deletion of exempt or irrelevant information***

18. 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.
19. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’<sup>2</sup> and the effectiveness of the deletions. Where deletions would render a document meaningless, they are not ‘practicable’, and release of the document is not required under section 25.<sup>3</sup>
20. I have reviewed the irrelevant information the Agency deleted in accordance with section 25. I agree it falls outside the scope of the Applicant’s request as it is the user ID of the Agency officer who generated the document for the purpose of processing the FOI request, and not an officer related to the subject matter of the document.
21. Given the Agency provided the Applicant with an edited copy of the document, I consider it continues to be practicable to provide an edited copy of the document with irrelevant and exempt information deleted in accordance with section 25.

#### **Conclusion**

22. On the information before me, I am satisfied the document is exempt under section 31(1)(d).

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<sup>1</sup> *XYZ v Victoria Police* [2010] VCAT 255 at [177].

<sup>2</sup> *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].

<sup>3</sup> *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].

23. As I am satisfied it is practicable to provide access to an edited copy of the document with the exempt and irrelevant information identified by the Agency deleted in accordance with section 25, access to the document is granted in part.
24. Therefore, my decision on the Applicant's request is the same as the Agency's decision.

### **Review rights**

25. 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.<sup>4</sup>
26. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>5</sup>
27. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>6</sup>
28. Information about how to apply to VCAT is available online at [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au). Alternatively, VCAT may be contacted by email at [admin@vcat.vic.gov.au](mailto:admin@vcat.vic.gov.au) or by telephone on 1300 018 228.
29. 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.<sup>7</sup>

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<sup>4</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>5</sup> Section 52(5).

<sup>6</sup> Section 52(9).

<sup>7</sup> Sections 50(3F) and (3FA).