

Notice of Decision and Reasons for Decision

Applicant:	'EG5'
Agency:	Emergency Services Telecommunications Authority
Decision date:	1 July 2022
Exemption considered:	Section 38 of the <i>Freedom of Information Act 1982</i> (Vic) in conjunction with section 33(2) of the <i>Emergency Services Telecommunications Authority Act 2004</i> (Vic)
Citation:	'EG5' and <i>Emergency Services Telecommunications Authority</i> (Freedom of Information) [2022] VICmr 87 (22 July 2022)

FREEDOM OF INFORMATION – emergency services document – Triple Zero call – 000 call – secrecy provision – confidential information – *Emergency Services Telecommunications Authority Act 2004* (Vic)

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.

I am satisfied the documents are exempt from release in full under section 38 of the FOI Act in conjunction with section 33(2) of the *Emergency Services Telecommunications Authority Act 2004* (Vic).

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner
1 July 2022

Reasons for Decision

Background to review

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

We advise [the Applicant] was attended to by Ambulance Victoria on [date] at [location]. The emergency services attended the incident at approximately [time range].

We request that the Triple Zero (000) recording and all other documents pertaining to the emergency call made on [date] be provided to our office.

2. The Agency identified two documents, being audio recordings of 000 calls (the **documents**), falling within the terms of the Applicant's request.
3. The Agency refused access to the two documents in full, relying on the exemptions in section 33(1) and 38 of the FOI Act in conjunction with the secrecy provision in section 33 of the *Emergency Services Telecommunications Act 2004* (Vic) (**ESTA Act**). The Agency's decision letter sets out the reasons for its decision.

Review application

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
5. I have examined a copy 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 received from the parties.
8. I acknowledge the Applicant's genuine and personal interest in obtaining access to the documents.
9. 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.
10. 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 38 – Document to which a secrecy provision applies

11. Section 38 provides:

A document is an exempt document if there is in force an enactment applying specifically to information of a kind contained in the document and prohibiting persons referred to in the enactment from disclosing information of that kind, whether the prohibition is absolute or is subject to exceptions or qualifications.

12. For section 38 to apply, the relevant enactment (or law) must be formulated with such precision that it specifies the actual information sought to be withheld.

13. The Agency relies on section 38 in conjunction with section 33(2) of the ESTA Act to refuse access to the documents in full.

Section 33 of the ESTA Act – Prohibition on disclosure of ‘confidential information’

14. Section 33(2) of the ESTA Act prohibits the recording, disclosure, communication or use of confidential information received in the course of carrying out duties under the ESTA Act, except to the extent necessary for the Agency to perform its duties under that Act. Unauthorised disclosure of such information is an offence.
15. The financial penalty associated with unauthorised disclosure highlights Parliament’s intention that such information should remain protected.
16. The Agency is a statutory authority established under section 5 of the ESTA Act.
17. The functions of the Agency include:
 - (a) providing or enabling, and controlling the provision by others of emergency telecommunications and other communications services; and
 - (b) promoting and developing policies and procedures to improve the standard and provision of emergency telecommunications and other communications services.¹
18. Section 33(1) of the ESTA Act defines ‘confidential information’ as:

... any information relating to calls received or messages communicated by the Authority [the Agency] in the course of providing a service to an emergency services and other related services organisation.
19. The phrase ‘emergency telecommunications and other communications services’ is defined in section 3 of the ESTA Act and means either or both:
 - (a) call taking and dispatch services; and
 - (b) operational communications services;
20. The phrase ‘call taking and dispatch services’ is defined in section 3 of the ESTA Act and means the services of:
 - (a) taking, listening to and recording calls from the public or a member of an emergency services and other related services organisation, being calls in which assistance is sought of an emergency services and other related services organisation; and
 - (b) communicating the information given in such calls to the persons in emergency services and other related services organisations that are designated to respond to the calls and recording any such communication of information;

...
21. In this case, I am satisfied the Agency was engaged in 000 call taking and dispatch services, including communicating information it received from a 000 caller to other emergency service organisations, such as Ambulance Victoria and/or Victoria Police, which are listed under the definition of ‘emergency services and other related services organisation’ in section 3 of the ESTA Act.

¹ Section 7 of the ESTA Act.

22. I accept the confidentiality afforded to 000 calls under the ESTA Act assists the Agency to act in a manner that promotes public trust and open communication in accordance with its legislative obligations.²
23. I am satisfied the documents are audio recordings of 000 calls received by ESTA in accordance with carrying out its emergency telecommunications services, namely its 000 call taking functions and obligations under the ESTA Act.
24. Accordingly, I am satisfied the ESTA Act is an enactment for the purposes of the secrecy exemption under section 38 of the FOI Act.

Does the prohibition against disclosure in the enactment apply specifically to the kind of information in the documents?

25. I am satisfied the documents constitute ‘confidential information’ relating to 000 calls received and messages communicated by the Agency in the course of carrying out its emergency telecommunications and other communications services.
26. Further, I am satisfied section 33(2) of the ESTA Act applies specifically to information of a kind contained in the documents and prohibits persons from disclosing information of that kind.
27. I have also considered the exceptions in section 33(3) of the ESTA Act, and whether any apply in this instance. I note the Agency decision maker’s position as provided to the Applicant in its decision letter as below:

While ESTA has a Ministerial Authorisation that does permit, in specific circumstances, the release of information that would otherwise be confidential under s 33 of the ESTA Act, I do not consider the permitted circumstances apply in this instance and that none of the exceptions in s 33(3) of the ESTA Act displace the prohibition in s 33(2) in this instance.

28. In the circumstances, I accept the Agency’s position and am satisfied none of the exceptions in section 33(3) of the ESTA Act apply to the documents in this instance.
29. Therefore, I am satisfied the documents contain ‘confidential information’ for the purpose of section 33(1) of the ESTA Act and are exempt from release under section 38 of the FOI Act in conjunction with section 33(2) of the ESTA Act.

Section 25 – Deletion of exempt or irrelevant information

30. 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.
31. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’³ 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 25.⁴

² Section 28(2)(a) of the ESTA Act provides the Authority and all persons, to whom any emergency telecommunications and other communications services are provided, must ensure that, in the course of the provision of any such services, they act in a manner that promotes trust and open communication.

³ *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].

⁴ *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].

32. Given the nature of the requested documents and the application of section 38, I am satisfied it is not practicable to provide the Applicant with an edited copy of the documents. Accordingly, I am satisfied they are exempt from release in full.

Conclusion

33. While I acknowledge the Applicant's reasons for seeking access to the documents, I am satisfied they are exempt from release in full under section 38 of the FOI Act in conjunction with section 33(2) of the ESTA Act, as all information in the documents is 'confidential information' within the meaning of section 33(1) of the ESTA Act.
34. Given I am satisfied the documents are exempt from release under section 38, it is not necessary to also consider the application of section 33(1) to the same information.

Review rights

35. If the Applicant is not satisfied with my decision, they are entitled to apply to the Victorian Civil and Administrative Tribunal (**VCAT**) for it to be reviewed.⁵
36. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁶
37. 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.
38. The Agency is required to notify the Information Commissioner in writing as soon as practicable if an application is made to VCAT for a review of my decision.⁷

⁵ Section 50(1)(b).

⁶ Section 52(5).

⁷ Sections 50(3F) and 50(3FA).