

Notice of Decision and Reasons for Decision

Applicant:	'EO4'
Agency:	Emergency Services Telecommunications Authority
Decision date:	10 June 2022
Exemptions and provisions 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	'EO4' and <i>Emergency Services Telecommunications Authority</i> (Freedom of Information) [2022] VICmr 158 (10 June 2022)

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

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 requested documents are exempt in full under section 38 of the FOI Act in conjunction with section 33(2) of the *Emergency Services Telecommunications Authority Act 2004* (Vic) (**ESTA Act**), and there is no obligation to provide the Applicant with edited copies of the documents in accordance with section 25.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner
10 June 2022

Reasons for Decision

Background to review

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

I request audio copies of the [number of calls] calls I made to 000 on my mobile phone [specified mobile number] on the [date], [call times and duration details].
2. The Agency identified [number] documents, being audio recordings of 000 calls (the **documents**), falling within the terms of the Applicant's request.
3. The Agency refused access to [number] 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(2) of the ESTA Act. The Agency also provided access to [number] documents in full. 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. 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 any submissions received from the parties.
7. I acknowledge the Applicant's genuine and personal interest in obtaining access to the document.
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.

Review of exemptions

Section 38 of the FOI Act – Document to which a secrecy provision applies

9. 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.
10. For section 38 to apply, the relevant enactment must be formulated with such precision that it specifies the actual information sought to be withheld.
11. The Agency refused access to Document [number] (Call [number] Part 1), Document [number] (Call [number] Part 2) and Document [number] (Call [number]) under section 38 in conjunction with section 33(2) of the ESTA Act.

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

12. 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.

13. The financial penalty associated with unauthorised disclosure highlights Parliament's intention that such information should remain protected.
14. The Agency is a statutory authority established under section 5 of the ESTA Act.
15. 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
16. 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.
17. 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;
18. 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;

...
19. 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 operator to other emergency services 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.
20. 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
21. I am satisfied the documents are audio recordings of 000 calls made by the Applicant and received by ESTA in accordance with carrying out its emergency telecommunications and other communications services, namely its 000 call taking functions and obligations under the ESTA Act.

¹ Section 7 of the ESTA Act.

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.

22. 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?

23. 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.
24. 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.
25. I have also considered the exceptions in section 33(3) of the ESTA Act, particularly section 33(3)(b), and whether any apply in this instance. I note the Agency's position as provided to the Applicant in its decision letter as below:

Before I outline my reasons for refusing FOI access, I note that section 33(3)(a) of the ESTA Act provides that ESTA can produce a document containing confidential information to a court in the course of criminal proceedings or proceedings under the ESTA Act.

Upon review of this matter it has been established that you made the calls to triple zero, however, calls [call number] and [call number] relate to a third party known to you and I do not have their consent to release the audio to you. I do have a Ministerial authorisation to release information including audio in some circumstances but it also requires the consent of all parties who may be identified in relation to the calls.

Pursuant to that Authority, we can provide you with calls [call number], [call number] and [call number] as requested.

26. 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 Document [number] (Call [number] Part 1), Document [number] (Call [number] Part 2) and Document [number] (Call [number]) in this instance.
27. Therefore, I am satisfied the documents contain 'confidential information' for the purposes of section 33(1) of the ESTA Act and is exempt under section 38 of the FOI Act in conjunction with section 33(2) of the ESTA Act.
28. As I have determined the above information to be exempt under section 38 of the FOI Act, I have decided not to consider section 33(1) to the same information.

Section 25 – Deletion of exempt or irrelevant information

29. 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.
30. 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 the document meaningless, they are not 'practicable', and release of the document is not required under section 25.⁴
31. Noting the documents subject to review include 000 calls made by the Applicant, I have considered whether it is practicable to edit the documents to delete information solely concerning third parties.

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].

I am satisfied it is not practicable to remove information concerning third parties from the documents as it would not provide any meaningful information to the Applicant.

32. I have also considered the effect of deleting exempt information from the documents. In my view, it is not practicable for the Agency to delete exempt information because it would render the documents meaningless.

Conclusion

33. While I acknowledge the Applicant's personal reasons for seeking access to the documents, I am satisfied the documents are exempt 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. Having determined the documents are exempt under section 38, it is not necessary for me to consider the Agency's application of section 33(1) to the same information.
35. As I am satisfied the documents are exempt from release in their entirety, there is no obligation to provide the Applicant with an edited copy of the document in accordance with section 25.
36. The Schedule of Documents [redacted from published decision] sets out my decision in relation to each document.

Review rights

37. 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
38. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁶
39. 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.
40. 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).

Annexure 1 – Schedule of Documents [redacted from published decision]