

Notice of Decision and Reasons for Decision

Applicant:	'EF9'
Agency:	Department of Transport
Decision date:	30 June 2022
Exemption considered:	Section 33(1)
Citation:	'EF9' and Department of Transport (Freedom of Information) [2022] VICmr 82 (30 June 2022)

FREEDOM OF INFORMATION – VicRoads – licensing and registration records – driver licence – motor vehicle registration – personal affairs information of third parties – agency officer names – administrative nature of documents – agency exercise of statutory functions – disclosure of personal affairs information not unreasonable

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 fresh decision to refuse access to documents requested by the Applicant under the FOI Act.

My decision on the Applicant's request differs from the Agency's decision in that I have determined to release additional information in documents.

I am satisfied the disclosure of personal affairs information in the documents would not be unreasonable in the circumstances. Accordingly, this information is not exempt from release under section 33(1) and access to the documents is granted in full.

The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

30 June 2022

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to certain documents held by VicRoads.
2. Following consultation with the Agency, the Applicant amended the terms of their request to:
 1. I request you please provide the copy of refund form which you obtained on [date] for the purpose of refund amount for learners permit test.
 2. I request you please provide any or all information you hold about the person specifically with audit logs. Requesting the current information with audit log specifically including with biographic/signature information you are currently holding.
 3. I request you please provide a true and correct copy of photograph of the person from your system specifically along with associated biographic information what you obtained on [date] in [location] customer service centre and stored it in your system with the audit logs to show what time that information was collected and stored in your computer system. This point is about a request for the true copy of the person's picture specifically with biographic/signature of that specific time when you obtained and stored in your system on mentioned date and place.
 4. I request you please provide complete, true, and correct copies of all information with audit logs when the person's information specifically, including biographic was forwarded to third party (May be placard is your contractor who prints licenses for you) to print, driving learner permit on [date] and [date]. (It is a request about when and what data VicRoads sent to contractor (placard) for printing of the person's learning permit. VicRoads sent this data two time one on [date] and [date], so I am requesting both data's specifically with biographic/signature information with audit logs. (It could be the system generated with audit showing time stamp with biographic image when it was sent for printing this learner permit).
 5. I request you please provide a complete, true and correct copy of the person's specifically biographic information on the time when it was first obtained and stored in your computer system that was on [date] in [location] customer service centre, with the audit logs to show what time that information was collected and stored in your computer system. (the difference between 3 and this point is, this request is only for biographic/signature information but the point 3 is about photo with biographic information).
 6. Please provide true, correct and complete copies from the third party (May be placard) with all information including date and time when they received information from you along with specifically biographic information with their audit logs who printed the [Name] driving learner permit on [date] and [date]. This request is to get information from who (placard) printed learning permit two times, so they received information from you two times.
 7. (Request is about what information they (printing body/department may be placard) received from you (VicRoads) each time, on the above-mentioned dates for printing of the [Name] driving learner permit).
 8. I request the information, by instrument reference or otherwise authoritative document, that provides right to VicRoads's any officer to override VicRoads promised response time deadlines as mentioned in your customer charter for example "VicRoads aim to respond to emails within 7 working days ". (Requesting the authoritative document which allows the VicRoads any officer don't follow the customer charter services Goals).
 9. I request the information, by instrument reference or otherwise authoritative documents, that provide right to VicRoads's any officer to withheld refund form/application where the VicRoads agreed to provide refund to it customer, and where the customer have right to receive refund amount. (Requesting the authoritative document which lawfully allows to VicRoads any officer to hold the refund form/application and don't process the refund when VicRoads agreed to refund to its customer and the customer have lawful right to receive that refund amount).
3. The Agency identified seven 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

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
5. Section 49M(1) permits an agency to make a fresh decision on an FOI request during a review.
6. On 22 April 2022, the Agency made a fresh decision in accordance with section 49M in which it released further information in the documents to the Applicant and relied on section 33(1) to refuse access to certain personal affairs information in the documents.
7. The Applicant did not agree with the Agency's fresh decision and, as required by section 49MA(2), I proceeded with my review on the basis of the fresh decision.
8. I have examined a copy of the documents subject to review.
9. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
10. I have considered all communications and submissions received from the parties.
11. 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.
12. 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.
13. In conducting a review under section 49F, section 49P requires that I make a new or 'fresh decision'. Therefore, my review does not involve determining whether the Agency's decision is correct, but rather requires my fresh decision to be the 'correct or preferable decision'.¹ This involves ensuring my decision is correctly made under the FOI Act and any other applicable law in force at the time of my decision.

Complaint concerning adequacy of document searches

14. During the review, the Applicant raised concerns about the adequacy of the Agency's document searches. In accordance with section 61B(3), these concerns were addressed as part of this review.
15. OVIC staff made further inquiries with the Agency to address the Applicant's concerns. The outcome of those inquiries was communicated to the Applicant.
16. Based on the Agency's response, I am satisfied the Agency undertook a thorough and diligent search for the requested documents. Accordingly, I consider the Applicant's complaint has been fully pursued and there is no basis for the making of further inquiries or taking further action under the FOI Act.

¹ *Drake v Minister for Immigration and Ethnic Affairs* (1979) 24 ALR 577 at 591.

Review of exemptions

Section 33(1) – Documents disclosing the personal affairs information of a third party

17. 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**);² and
 - (b) such disclosure would be ‘unreasonable’.

Do the documents contain personal affairs information of a third party?

18. 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.³
19. A document will disclose a third party’s personal affairs information if it is capable, either directly or indirectly, of identifying that person. As the FOI Act does not place any restrictions on an 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.⁴
20. I am satisfied the documents contain the personal affairs information of Agency officers, namely, their names and user identification numbers.

Would disclosure of the personal affairs information be unreasonable?

21. 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.
22. In *Victoria Police v Marke*,⁵ 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’.⁶ 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’.⁷
23. I accept the Agency’s submission that the role played by the Agency officers was administrative in nature and they were incidentally involved in the processing of the Applicant’s requests. Where an individual has a peripheral role in a matter, I am of the view disclosure of their name, username or employee ID number, where the Applicant does not already know this information, is likely to be unreasonable and, in some cases, immaterial or not relevant to an applicant’s FOI request.
24. In determining whether disclosure of the personal affairs information would be unreasonable in the circumstances of this matter, I have considered the following factors:

² Sections 33(1) and 33(2).

³ Section 33(9).

⁴ *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].

⁵ [2008] VSCA 218 at [76].

⁶ *Ibid.*

⁷ *Ibid* at [79].

(a) The nature of the personal affairs information

On the face of the documents, I do not consider the relevant personal affairs information of the Agency officers is particularly sensitive. The Applicant made a request for all information collected by the Agency and logged in relation to the Applicant's driving licence, registration, payments and refunds made to and by the Agency.

On the information before me, I do not consider it would be unreasonable to release the personal affairs information of Agency officers recorded in the documents in the context of these individuals carrying out their official duties that are largely administrative in nature.

(b) 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 applicant seeks access to a document is a relevant consideration in determining whether its disclosure would be unreasonable under section 33(1).⁸

The Applicant requested information in relation to their driver's licence and registration application process. Specifically, the Applicant seeks information about a refund request they made to the Agency for a learner's permit test. Documents 6 and 7 contain information about the refund provided by the Agency.

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

I acknowledge there is a public interest in ensuring lawful and reasonable access by Agency officers to the Agency's database and to confirm such access is in accordance with the Agency's policies and procedures.

Releasing this type of information provides an important mechanism for ensuring the integrity in the collection and holding of such information, and to ensure that relevant public sector agency information and database entries are made for the purpose of the Agency's administrative functions, are made within the usual course of an Agency officer's duties and in compliance with relevant privacy and information security laws, including the *Privacy and Data Protection Act 2014* (Vic).

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

The nature of disclosure under the FOI Act is unconditional and unrestricted, which means an applicant is free to disseminate widely or use a document as they choose once it is released.⁹

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

I do not consider the personal affairs information is sensitive. Rather, it is administrative in nature and was recorded in the context of the Agency officers carrying out their official duties.

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

The Agency determined it was not practicable to consult with the Agency officers whose personal affairs information is contained in the documents.

⁸ *Victoria Police v Marke* [2008] VSCA 218 at [104].

⁹ *Ibid* at [68].

The Agency provided the following submission in relation to their decision not to consult with these individuals:

- (a) Although considered, consultation with the affected individuals in this matter was determined to not be practicable due to the number of staff consultation required, in addition to the workload associated with acquiring staff names and emails to undertake this process.
- (b) The identities of the individuals were not known and would have involved reaching out to relevant business areas to attain the full name and email addresses of approximately 15 staff members. This would have required approximately 15 consultation letters to be drafted and 15 separate consultation emails to be sent to the affected individuals and the need to await their replies.
- (c) In addition, in consideration of the requirement of time to make a fresh decision, it was deemed unreasonable and not practicable to consult approximately 15 staff members when release of such names and/or user identifications serves no identified purpose that would justify release of this information.

Accordingly, I do not have specific information before me as to the views of the relevant third parties whose personal affairs are contained in the documents as the Agency determined it would not be practicable to undertake consultation due to the number of staff to be consulted. On this point, I consider it was practicable for the Agency to consult with the relevant third parties and that the sending of consultation emails to 15 Agency officers (noting a template consultation letter is available on OVIC's website) would be reasonable and practicable.

While the relevant third parties may object to the release of their personal affairs information, that is not a determinative factor in determining whether release is unreasonable.

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

I must consider whether disclosure of information in the documents would, or would be reasonably likely, to endanger the life or physical safety of any person.¹⁰ I do not consider this is a relevant factor in this matter.

- 25. Having weighed up the above factors, on balance, I am satisfied disclosure of the personal affairs information of the Agency officers would be not unreasonable in the circumstances of this matter.
- 26. Accordingly, I am satisfied personal affairs information in the documents is not exempt from release under section 33(1).

Conclusion

- 27. I am not satisfied the personal affairs information of Agency officers in the documents is exempt from release under section 33(1). Accordingly, access to the documents is granted in full.

Review rights

- 28. 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.¹¹

¹⁰ Section 33(2A).

¹¹ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

29. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹²
30. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹³
31. 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.
32. 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.¹⁴

Third party review rights

33. As I have determined to release documents that contains the personal affairs information of persons other than the Applicant, I am required to notify those persons of their right to seek review by VCAT of my decision within 60 days from the date they are given notice, if practicable.¹⁵
34. In this case, I am satisfied it is practicable to notify the relevant third parties of their review rights and I confirm they will be notified of my decision on the date my decision is made.

When this decision takes effect

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

¹² Section 52(5).

¹³ Section 52(9).

¹⁴ Sections 50(3F) and 50(3FA).

¹⁵ Sections 49P(5), 50(3) and 52(3).

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
1.	Undated	Drive Licencing System (DLS) screen-prints	11	Released in full	Not Subject to Review	
2.	Undated	Full Licence Audit	7	Released in part Section 33(1)	Release in full	Section 33(1): For the reasons provided in the Notice of Decision above, I am satisfied the document contains the personal affairs information of persons other than the Applicant. However, I am satisfied disclosure of this information is not unreasonable, in the circumstances. Accordingly, the document is to be released in full.
3.	Undated	Full Registration Audit	4	Released in part Section 33(1)	Release in full	Section 33(1): See comments for Document 2.
4.	Undated	Registration Audit (less than 3 months)	1	Released in part Section 33(1)	Release in full	Section 33(1): See comments for Document 2.
5.	Undated	HelpDesk	2	Released in part Section 33(1)	Release in full	Section 33(1): See comments for Document 2.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
6.	Undated	Licence Audit (less than 3 months)	3	Released in part Section 33(1)	Release in full	Section 33(1): See comments for Document 2.
7.	Undated	Payment record	1	Released in part Section 33(1)	Release in full	Section 33(1): See comments for Document 2.