

Notice of Decision and Reasons for Decision

Applicant:	'EG7'
Agency:	Victoria Police
Decision date:	7 January 2022
Provision considered:	Section 14(1)(b)
Citation:	'EG7' and Victoria Police (Freedom of Information) [2022] VICmr 89 (7 January 2022)

FREEDOM OF INFORMATION – access subject to a fee – documents not subject to FOI Act – Victoria Police Manual – policing response to personal safety intervention orders

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 a document requested by the Applicant under the FOI Act.

I am satisfied the requested document is not of a kind to which the FOI Act applies by virtue of section 14(1)(b) as the requested information is available for purchase by the public in accordance with arrangements made by an Agency.

Accordingly, the Agency is not required to provide the Applicant with access to the requested document under the FOI Act.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

7 January 2022

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to the 'Police Code of Practice for Personal Safety Intervention Order'.
2. In its decision, the Agency states a search was conducted at the Family Violence Command, the Office of the Commander, and the Priority and Safer Communities Division, and as a result found:

... the documents to which you seek access are contained in the Victoria Police Manual (**VPM**), specifically in the Operational Policing section, Responses to non family violence disputes. The VPM incorporates a policing response to personal safety intervention orders.

...

3. Accordingly, the Agency refused the Applicant's request as it determined a document containing the requested information it is not subject to the FOI Act.

Review of grounds for refusal

4. Section 13 provides every person has a legally enforceable right to obtain access to a document of an agency or official document of a Minister, other than an exempt document.
5. An 'exempt document' is:
 - (a) a document which, by virtue of a provision of Part IV [of the FOI Act], is an exempt document; or
 - (b) an official document of a Minister that contains some matter that does not relate to the affairs of an agency or of a department;
6. If a document is of a kind referred to in section 14, there is no entitlement to access to the document under the FOI Act.¹
7. Section 14(1) provides in part:

14 Part not to apply to certain documents

- (1) A person is not entitled to obtain access under this Part to—
 - (a) a document which contains information that is open to public access, as part of a public register or otherwise, in accordance with another enactment, where that access is subject to a fee or other charge...
 - (b) a document which contains information that is available for purchase by the public in accordance with arrangements made by an agency; or
- ...

8. The Victorian Civil and Administrative Tribunal (**VCAT**) has held in relation to section 14(1):²

The intention of this provision is to deny access under the FOI Act where a person is able to otherwise source documents from the public records. This is not a matter of the documents being exempt under the FOI Act. Rather they are simply not able to be disclosed under the FOI Act.³

9. The Victoria Police Manual (**VPM**) is an electronic document containing the Agency's policies and procedures and is publicly available for purchase by submitting an order to the Agency.

¹ *Rizza v Boroondara CC* [2000] VCAT 2062 at [17] and [19].

² *Smeaton v Transport Accident Commission (Review and Regulation)* [2017] VCAT 1486 at [42].

³ *Ibid* at [42].

10. In its decision, the Agency states:

The VPM containing the relevant section is available for purchase from the Victoria Police Corporate Policy, Policy and Legislation Division.

Details on how to purchase the VPM is available at: <https://www.police.vic.gov.au/procedures-and-legislation>.

Alternatively, the VPM is available for access from the State Library of Victoria. Please visit: <https://www.slv.vic.gov.au/search-discover>

11. A one-off purchase of the VPM costs a member of the public \$55.00, and updated VPMs are issued at the end of each quarter.
12. Given the above circumstances I am satisfied the requested document is not of a kind to which the FOI Act applies by virtue of section 14(1)(b).
13. Accordingly, I am satisfied the requested document is not of a kind to which the FOI Act applies by virtue of section 14(1)(b), as it contains information that is available for purchase by the public.

Review rights

14. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.⁴
15. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁵
16. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁶
17. 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.
18. 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.⁷

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

⁵ Section 52(5).

⁶ Section 52(9).

⁷ Sections 50(3F) and (3FA).