

Notice of Decision and Reasons for Decision

Applicant:	'EH9'
Agency:	Victoria Police
Decision date:	8 March 2022
Exemptions and provisions considered:	Sections 25A(5), 31(4) in conjunction with section 62 of the <i>Sex Offenders Registration Act 2004</i> (Vic)
Citation:	'EH9' and Victoria Police (Freedom of Information) [2022] VICmr 100 (8 March 2022)

FREEDOM OF INFORMATION – police records – law enforcement documents – information relating to Sex Offenders Registry – *Sex Offenders Registration 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.

Accordingly, I have decided to refuse to grant access to the requested documents in accordance with the Applicant's request under section 25A(5) in conjunction with sections 31(4) of the FOI Act and section 62 of the *Sex Offenders Registration Act 2004* (Vic) (**Sex Offenders Registration Act**).

The effect of my decision is the Agency is not required to process the Applicant's request.

My reasons for decision follow.

Sven Bluemmel
Information Commissioner

8 March 2022

Reasons for Decision

Background to review

1. The Applicant, [via their representative], made a request to the Agency seeking access to the following documents:

...any details or records you may have on file which outlines our client's compliance with the conditions imposed while [they were] on the sex offenders register and any rehabilitation or courses or other requirements undertaken by our client.
2. The Agency refused access to the requested documents in accordance with the Applicant's request under section 25A(5) on grounds that all documents, should any exist, would be exempt under section 31(4) of the FOI Act in conjunction with section 62 of the Sex Offenders Registration Act.

Review application

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. During the review, OVIC staff provided the Applicant with an initial view that all documents, should any exist, would be exempt under section 25A(5) on grounds that it is apparent from the terms of the request that any document held by the Agency would be exempt from release under section 31(4) of the FOI Act.
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 section 25A(5) to refuse to grant access to documents

9. The power under section 25A(5) is carefully circumscribed. ¹ A decision maker must be satisfied of the following three requirements which operate to limit its application:
 - (a) First, the exempt nature of the documents must be objectively apparent from the face of the request. Namely, the terms of the request, as described by the applicant. The 'nature' of a document refers to its inherent or essential quality or character.
 - (b) Second, it must be apparent all requested documents are exempt from release.
 - (c) Third, it must be apparent from:

¹ *Knight v Corrections Victoria* [2010] VSC 338 at [37].

- i. the nature of the documents, as described in the request, no obligation would arise for the agency to grant access to an edited copy of a document in accordance with section 25; or
- ii. the request, or through consultation with the applicant, they would not wish to have access to an edited copy of the document.²

Is the nature of the documents objectively apparent from the face of the Applicant's request?

10. I am satisfied the nature or character of the requested documents, as described in the Applicant's request, is apparent from the terms of their request, being any document held by the Agency in relation to the Applicant's reporting obligations and compliance with the conditions imposed while being on the Sex Offenders Register.
11. Accordingly, I am satisfied the first requirement of section 25A(5) is met.

Would each of the requested documents, as described in the FOI request, be exempt?

12. As stated above, in refusing access to documents under section 25A(5), the Agency submits any documents meeting the terms of the Applicant's request would be documents contained in the Sex Offenders Register, as established and maintained in accordance with section 62 of the Sex Offenders Registration Act,³ and would be exempt from release in accordance with section 31(4) of the FOI Act.

Section 31(4) – Sex Offenders Register

13. Section 31(4) of the FOI Act provides:
 - (4) Despite anything in the contrary in this section, a document is an exempt document if it is a document contained in the Register established and maintained under section 62 of the Sex Offenders Registration Act 2004.
14. I have considered section 62 of the Sex Offenders Registration Act, which provides:
 - (1) The Chief Commissioner of Police is to establish and maintain, or arrange for another entity to establish and maintain, a Register of Sex Offenders.
 - (2) The Register is to contain the following information in respect of each registrable offender (to the extent that it is known by the Chief Commissioner of Police)—
 - (a) the registrable offender's name and other identifying particulars; and
 - (b) details of each Class 1 or Class 2 offence of which the registrable offender has been found guilty or with which he or she has been charged; and
 - (c) details of each offence of which the registrable offender has been found guilty that resulted in the making of a sex offender registration order; and
 - (d) the date on which the registrable offender was sentenced for any registrable offence; and
 - (e) the date on which the registrable offender ceased to be in government custody in respect of a registrable offence, or entered or ceased to be in government custody in respect of any offence during his or her reporting period; and

² *Knight v Corrections Victoria* [2010] VSC 338.

³ Section 62 of the *Sex Offenders Registration Act 2004* (Vic) provides, the Chief Commissioner of Police is to establish and maintain, or arrange for another entity to establish and maintain, a Register of Sex Offenders, and prescribes the specific types of information the register is to contain in relation to each registrable offender.

- (f) any information reported in respect of the registrable offender under Part 3; and
- (fa) if a prohibition order or a registration order has been made against the registrable offender, the details of that order; and
- (g) any other information that the Chief Commissioner of Police considers appropriate to include in the Register.

15. I accept the Agency's position that any document relevant to the Applicant's request would be contained in the Sex Offenders Register established and maintained under the Sex Offenders Registration Act.
16. In undertaking my review, I have considered the limitations to section 31 of the FOI Act that apply under section 31(2) of the FOI Act:

- (2) This section does not apply to any document that is-
 - (a) a document revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law;
 - (b) a document revealing the use of illegal methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law;
 - (c) a document containing any general outline of the structure of any programme adopted by an agency or investigating breaches of, or enforcing or administering the law;
 - (d) a report on the degree of success achieved in any programme adopted by an agency for investigating breaches of, or enforcing or administering, the law;
 - (e) a report prepared in the course of routine law enforcement inspections or investigations by an agency which has the function of enforcing and regulating compliance with a particular law other than the criminal law;
 - (f) a report on a law enforcement investigation, where the substances of the report has been disclosed to the person who, or the body which, was the subject of the investigation –

if it is in the public interest that access to the document should be granted under this Act.

17. I am satisfied none of the above exceptions apply in this case.
18. Having carefully considered this matter and relevant legislation, I am satisfied all requested documents, should any exist, would be exempt under section 31(4) of the FOI Act in conjunction with section 62 of the Sex Offenders Registration Act.

Is there an obligation for the Agency to grant access to an edited copy of any requested documents in accordance with section 25?

19. In summary, section 25 requires an agency to grant access to an edited document when it is practicable to delete exempt or irrelevant information and the applicant agrees to receiving such copy.
20. Determining what is 'practicable' requires consideration of the effect and editing involved in making the deletions 'from a resources point of view'⁴ and the effectiveness of those deletions. Where deletions

⁴ *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].

would render a document meaningless, they are not 'practicable', and release of the document is not required under section 25.⁵

21. Having considered the nature of the information sought, I am satisfied it would not be practicable to provide the Applicant with an edited copy of a requested document, should any exist, as I am satisfied the nature of the exemption under section 31(4) would apply to most, if not all the requested documents. As such, I am satisfied there is no obligation for the Agency to grant access to an edited copy of any requested document in accordance with section 25.
22. Accordingly, the third requirement of section 25A(5) is met.

Conclusion

23. On the information before me, I am satisfied the requested documents, should any exist, would be exempt in full under section 31(4) of the FOI Act in conjunction with section 62 of the Sex Offenders Registration Act.
24. Accordingly, I am also satisfied the requirements of section 25A(5) are met, as:
 - (a) it is apparent from the terms of the request that any relevant document would be contained in the Sex Offenders Register and such documents would be exempt from disclosure under section 31(4) in full; and
 - (b) there would be no obligation for the Agency to provide an edited copy of any documents in accordance with section 25.
25. Accordingly, having conducted a review, I have determined to refuse to grant access to the documents requested in accordance with the Applicant's request under 25A(5) in conjunction with section 31(4) of the FOI Act and section 62 of the Sex Offenders Registration Act.
26. The effect of my decision is the Agency is not required to process the Applicant's request.

Review rights

27. 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.⁶
28. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁷
29. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁸
30. 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.
31. 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.⁹

⁵ *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].

⁶ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

⁷ Section 52(5).

⁸ Section 52(9).

⁹ Sections 50(3F) and (3FA).

When this decision takes effect

32. My decision does not take effect until the Agency's 14 day review period expires. If a review application is made to VCAT, my decision will be subject to any VCAT determination.