

Notice of Decision and Reasons for Decision

Applicant:	'EV1'
Agency:	Department of Justice and Community Safety
Decision date:	15 September 2022
Exemptions and provisions considered:	Section 38 of the <i>Freedom of Information Act 1982</i> (Vic) in conjunction with section 104ZZA of the <i>Corrections Act 1986</i> (Vic) and section 25
Citation:	'EV1' and Department of Justice and Community Safety (Freedom of Information) [2022] VICmr 219 (15 September 2022)

FREEDOM OF INFORMATION – prisoner – prison visitor – call history – incident – prison staff – personal affairs information – information to which secrecy provision applies – Corrections Victoria

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 information in the documents is exempt from release under section 38 in conjunction with section 104ZZA of the *Corrections Act 1986* (Vic).

As I am satisfied it is practicable to provide the Applicant with an edited copy of the documents with irrelevant and exempt information deleted in accordance with section 25, access to documents is granted in part.

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
15 September 2022

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to the following documents:
 - copy of record " Telephone and Visiting" while I was in [Corrections custody]
2. Following consultation with the Agency, the Applicant amended the terms of their request to seek access to:
 - Incidents,
 - Urinalysis results,
 - Incident reports,
 - Sentence Management Reports,
 - Telephone call log, and
 - Visits report.
3. The Agency identified 89 pages falling within the terms of the Applicant's request and refused access to the documents in part under section 38 of the FOI Act in conjunction with section 104ZZA of the *Corrections Act 1986* (Vic) (**Corrections 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 and submissions received from the parties.
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.
9. 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 – Documents to which secrecy provisions apply

10. 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'.
11. For section 38 to apply, the relevant enactment must be formulated with such precision that it specifies the actual information sought to be withheld.
12. The Agency refused access to information in the documents under section 38 in conjunction with section 104ZZA of the Corrections Act.

13. Section 104ZZA of the Corrections Act provides:

A person who is or has been a relevant person must not use or disclose personal or confidential information unless that use or disclosure is authorised under section 104ZY or 104ZZ.

Penalty: 120 penalty units.

14. The term 'personal or confidential information' is defined in section 104ZX of the Corrections Act and includes the following, which I consider are relevant in this matter:

(a) information relating to the personal affairs of a person who is or has been an offender or a prisoner;

...

(c) Information –

(i) that identifies any person or discloses his or her address or location or a journey made by that person; or

(ii) from which the person's identity, address or location can reasonably be determined.

15. The phrase 'relevant person' is set out in Schedule 5, and includes '[a] person employed in the Department under Part 3 of the Public Administration Act 2004'.

16. In summary, section 104ZZA of the Corrections Act operates to protect the security and management of prisoners and the personal privacy of individuals who are identified in documents generated in connection with the management and administration of the corrections system. The section imposes strict confidentiality requirements on Agency officers, among others, which apply in all but certain limited circumstances.

17. I am satisfied section 104ZZA of the Corrections Act is a secrecy provision to which section 38 of the FOI Act applies as:

(a) the Corrections Act is an enactment in force;

(b) section 104ZZA in conjunction with section 104ZX identifies, with precision, the type of information to which it applies; and

(c) section 104ZZA clearly prohibits specified 'relevant persons' from disclosing the information to which it applies.

18. The Agency's decision letter states:

In this case, the following material fits the definition of personal or confidential information:

the names of staff, their titles and signatures is information that identifies a person the names of prisoners and their CRN is information that identifies a person the names of third parties, their address and contact details is information that identifies a person.

19. I am satisfied the information exempted by the Agency identifies third parties and discloses their locations.

20. Sections 104ZY and 104ZZ of the Corrections Act set out exceptions to the prohibition on relevant persons disclosing personal or confidential information. I have reviewed and considered the application of these exemptions.

21. During the course of the review, the Applicant provided documentation which I consider is relevant to whether section 104ZY(2)(b) of the Corrections Act applies to allow the release of personal and confidential information of a third party.
22. In order for section 104ZY(2)(b) to apply, I must be satisfied the authorisation of a third party has been given. Having reviewed the information provided, I am not satisfied it is sufficient to authorise disclosure of the information to the Applicant in this instance. I note the Applicant may make a further application to the Agency for the information with appropriate authorisation provided.
23. Accordingly, I am satisfied section 104ZZA of the Corrections Act prohibits employees of the Agency from disclosing the personal information contained in the documents. Therefore, I am satisfied section 38 of the FOI Act applies to the documents.

Section 25 – Deletion of exempt or irrelevant information

24. 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.
25. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’¹ 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 25.²
26. Given my decision is the same as the Agency’s decision and it granted access to the documents in part in accordance with section 25, I consider it remains practicable to provide the Applicant with an edited copy of the document with exempt information deleted.

Conclusion

27. On the information before me, I am satisfied the information found to be exempt by the Agency is exempt from release under section 38 in conjunction with section 104ZZA of the Corrections Act.
28. As it is practicable to provide the Applicant with an edited copy of the documents with exempt information deleted in accordance with section 25, access is granted in part.

Review rights

29. If the Applicant 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.³
30. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁴
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.⁵

¹ *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].

² *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].

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

⁴ Section 52(5).

⁵ Sections 50(3F) and 50(3FA).

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
1.	[date]	Incident Inquiry	3	Released in part Section 38 in conjunction with section 104ZZA of the Corrections Act	Release in part Section 38 The document is to be released except for information deemed exempt by the Agency, which is to be deleted in accordance with section 25.	Section 38: The document contains 'personal or confidential information' as defined in the Corrections Act. I am satisfied this information is exempt from release under section 38 for the reasons set out in the Notice of Decision above. Section 25: I am satisfied it is practicable to provide the Applicant with an edited copy of this document with exempt information deleted in accordance with section 25.
2.	[date]	Urinalysis Enquiry	1	Released in full	Not subject to review	
3.	[date]	Meeting Results	1	Released in full	Not subject to review	
4.	[date]	2 Sheet B	39	Released in part Section 38 in conjunction with section 104ZZA of the Corrections Act	Release in part Section 38 The document is to be released except for information deemed exempt	Sections 38 and 25: See comments for Document 1.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					by the Agency, which is to be deleted in accordance with section 25.	
5.	[date]	Visitor List	17	Released in part Section 38 in conjunction with section 104ZZA of the Corrections Act	Release in part Section 38 The document is to be released except for information deemed exempt by the Agency, which is to be deleted in accordance with section 25.	Sections 38 and 25: See comments for Document 1.
6.	[date]	Call History Report	17	Released in part Section 38 in conjunction with section 104ZZA of the Corrections Act	Release in part Section 38 The document is to be released except for information deemed exempt by the Agency, which is to be deleted in accordance with section 25.	Sections 38 and 25: See comments for Document 1.