

Notice of Decision and Reasons for Decision

Applicant:	Singtel Optus Pty Ltd
Agency:	Department of Transport
Decision date:	26 November 2021
Provisions and exemption considered:	Sections 25A(5) and 38 of the <i>Freedom of the Information Act 1982</i> (Vic) in conjunction with section 90Q of the <i>Road Safety Act 1986</i> (Vic)
Citation:	<i>Singtel Optus Pty Ltd and Department of Transport</i> (Freedom of Information) [2021] VICmr 359 (12 December 2021)

FREEDOM OF INFORMATION – VicRoads – third party car registration information – refusal to process request on grounds all documents, should any exist, would be exempt in full – secrecy provision – *Road Safety Act 1986* (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 differs from the Agency's decision.

I am not satisfied it is apparent from the nature of the documents, as described in the Applicant's request, that all documents to which the request relates would be exempt under section 38 in conjunction with section 90Q of the *Road Safety Act 1986* (Vic).

The effect of my decision is the Agency is required to search for and identify all documents relevant to the terms of the Applicant's request and assess those documents in accordance with the FOI Act.

My reasons for decision follow

Joanne Kummrow
Public Access Deputy Commissioner
26 November 2021

Reasons for Decision

Background to review

1. The Applicant, through their legal representative, made a request to the Agency seeking access to the following documents:

Copies of all documents detailing who owned the vehicle with registration number, [registration number] in [date]. On or about [date], in the vicinity of [location], [circumstances] owned by [Applicant] and it was the above-mentioned truck with reg, [number].

2. The Agency refused access to the requested documents in accordance with Applicant's request under section 25A(5) on grounds it was satisfied all documents, should any exist, would be exempt under section 38 in conjunction with section 90Q of the *Road Safety Act 1986* (Vic) (**Road Safety Act**)
3. 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 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. Section 25A(5) provides an agency may refuse to grant access to documents in accordance with an FOI request without having identified any or all of the documents if it is apparent from the nature of the request the documents sought would be exempt under the FOI Act, and where deletion of exempt material would not facilitate release of documents, or it is clear the applicant does not seek an edited copy of the document.
10. The power under section 25A(5) is carefully circumscribed. A decision maker must be satisfied of the following three requirements that 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:

- 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 applicant's request, or through consultation with the applicant, they would not wish to have access to an edited copy of the document.¹

What is the essential character of the documents requested?

11. The Agency submits:

The Applicant seeks access to the registered operator of the vehicle in question in [year], meaning a screen print of VicRoads' Vehicle Registration and Identification System (VRIS) would be the relevant document. The VRIS screen would provide details of the current registered operator's, including their name, address and drivers licence number.

12. Having considered the terms of the Applicant's request, I consider the essential quality and character of the documents, as described in the request, is for a copy of 'all documents' relating to the ownership of a particular vehicle at a particular point in time. I am of the opinion the essential character of the documents, should any exist, would encompass a variety of administrative records relating to the ownership of the vehicle in question.
13. Accordingly, I am satisfied the nature of the documents is objectively apparent from the face of the request and the first requirement of section 25A(5) is met.

Would all requested documents, as described by the Applicant, be exempt from release?

14. In refusing access to documents under section 25A(5), the Agency submits any documents relevant to the request would be exempt in full under section 38 of the FOI Act in conjunction with section 90Q of the Road Safety Act.

Section 38 – Documents to which secrecy provisions apply

15. Section 38 provides:

38 Documents to which secrecy provisions of enactments apply

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.

16. Therefore, for a document to be exempt under section 38, three requirements must be satisfied:
- (a) there must be an enactment in force;
 - (b) the enactment must apply specifically to the kind of information contained in the document; and
 - (c) the enactment must prohibit persons referred to in the enactment from disclosing that specific kind of information, either absolutely or subject to an exception or a qualification.

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

Is there an enactment in force?

17. Section 90P of the Road Safety Act provides:

90P Freedom of Information Act 1982

- (1) A document which contains relevant information is an exempt document within the meaning of section 38 of the Freedom of Information Act 1982.
- (2) Subsection (1) does not limit the operation of section 38 of the Freedom of Information Act 1982.

18. 'Relevant information' is defined in section 90I of the Road Safety Act as information to which section 90J of the Road Safety Act applies.

19. Section 90J of the Road Safety Act provides:

90J Information to which this Part applies

- (1) This Part applies to information—
 - (a) that is collected or received by the Corporation (VicRoads) in relation to its registration or licensing functions and activities; and
 - (b) that identifies an individual or from which an individual's identity can be reasonably ascertained....
- (2) For the purposes of subsection (1), information collected or received by the Corporation in relation to its registration or licensing functions and activities includes, but is not limited to, information relating to—
 - (a) granting, renewing, suspending or cancelling registration of vehicles;
 - (b) entering or removing vehicles from the written-off vehicles register
 - (c) exempting vehicles from registration
 - (d) granting, renewing, suspending or cancelling driver licenses or learner permits and recording demerit points—whether that information relates to a registered or unregistered vehicle or a licensed or unlicensed driver.

20. Section 90Q of the Road Safety Act provides:

90Q Offences

- (1) The Corporation or a relevant person or a person who has been a relevant person must not use or disclose relevant information other than as authorised by this Part—
 - (a) Knowing that the use or disclosure is not authorised; or
 - (b) Being reckless as to whether the use or disclosure is so authorised.Penalty: 120 penalty units or imprisonment for 12 months.

21. Accordingly, I am satisfied the Road Safety Act is an enactment in force for the purpose of section 38.

22. Therefore, I am satisfied the first requirement of section 38 is met.

Does the enactment apply specifically to the kind of information in the document?

23. The prohibition on disclosure in section 90Q of the Road Safety Act applies to 'relevant information' as defined in section 90I.

24. As stated above, 'relevant information' is information to which section 90J of the Road Safety Act applies.
25. Having considered the terms of the Applicant's request, it is clear the Applicant seeks access to all documents detailing who owned a vehicle registered by the Agency at a particular point in time.
26. As such, I am satisfied any such information would be 'relevant information' the Agency collected or received in relation to its registration or licensing functions and activities, and would likely include information concerning the granting or renewal of vehicle registration for the purposes of section 90J of the Road Safety Act.
27. Therefore, I am satisfied the second requirement of section 38 is satisfied.

Does the enactment prohibit persons referred to in the enactment from disclosing the specific kind of information sought by the Applicant, either absolutely or subject to an exception or qualification?

28. Section 90Q of the Road Safety Act provides:

90Q Offences

- (2) The Corporation or a relevant person or a person who has been a relevant person must not use or disclose relevant information other than as authorised by this Part—
 - (a) knowing that the use or disclosure is not authorised; or
 - (b) being reckless as to whether the use or disclosure is so authorised.Penalty: 120 penalty units or imprisonment for 12 months.

29. Section 90I of the Road Safety Act defines 'relevant person' and includes 'employees in the Department', which means officers of the Agency.
30. Section 90K of the Road Safety Act authorises disclosure of relevant information in certain limited circumstances and for a particular purpose. Having reviewed section 90K, and on the information before me, it does not appear any of the exceptions to the prohibition under section 90Q of the Road Safety Act would apply in these circumstances.
31. Therefore, I am satisfied section 90Q prohibits the Agency from disclosing any 'relevant information' in the documents, namely, information the Agency collected or received in relation to its registration or licensing functions and activities, including the granting or renewal of vehicle registration.
32. Accordingly, I am satisfied the third requirement of section 38 is met.
33. In summary, I am satisfied all requested documents, should any exist, would be exempt from release under section 38 of the FOI Act in conjunction with section 90Q of the Road Safety Act, and the second requirement of section 25A(5) is met.

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

34. Section 25 requires an agency to grant access to an edited copy of a document containing exempt or irrelevant information if it is practicable for the agency to delete such information, and if the applicant is agreeable to receiving such a copy.

35. Determining what is 'practicable' requires consideration of the effort involved in making the deletions 'from a resources point of view',² and the effectiveness of the deletions – that is, whether editing a document would render it meaningless.³
36. Having considered the terms of the Applicant's request, I am satisfied there would likely be scope for the Agency to provide the Applicant with an edited copy of at least one or more of the requested documents, should any exist, with any exempt 'relevant information' deleted in accordance with section 25.
37. As such, I am satisfied it would be practicable to do so as it would likely not require substantial time and effort, and the edited documents would likely retain sufficient meaning for the Applicant given the context of their request.
38. Accordingly, I am not satisfied the third requirement of section 25A(5) is met.

Conclusion

39. On the information before me, while I am satisfied the Road Safety Act is an enactment in force and it would apply specifically to the 'relevant information' in the documents requested by the Applicant, I am not satisfied the third requirement under section 25A(5). Namely, I am satisfied it would be practicable to provide the Applicant with an edited copy of at least one or more of the requested documents, should any exist, with any exempt 'relevant information' deleted in accordance with section 25.
40. Accordingly, I am not satisfied it is apparent from the nature of the documents, as described in the Applicant's request, that all documents to which the request relates would be exempt under section 38 in conjunction with section 90Q of the Road Safety Act.
41. While the effect of my decision is that the Agency is required to search for and identify all documents relevant to the terms of the Applicant's request and assess those documents in accordance with the FOI Act, I confirm the specific information the Applicant seeks in relation to the ownership of a particular vehicle at a particular point in time will be exempt under section 90Q of the Road Safety Act, as described above. As such, the Applicant may wish to consider whether they continue to seek access to the requested documents with this exempt information deleted in accordance with section 25.

Review rights

42. 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.⁴
43. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁵
44. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁶

² *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].

³ *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].

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

⁵ Section 52(5).

⁶ Section 52(9).

45. 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.
46. 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

When this decision takes effect

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

⁷ Sections 50(3F) and (3FA).