

## Notice of Decision and Reasons for Decision

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Applicant: 'EE3'  
Agency: Victoria Police  
Decision date: 13 May 2022  
Exemption considered: Section 31(1)(d)  
Citation: 'EE3' and Victoria Police (Freedom of Information) [2022] VICmr 65 (13 May 2022)

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FREEDOM OF INFORMATION – Police Air Wing – surveillance aircraft – operator’s manual – user manual – methods or procedures for the investigation of a breach or potential breach of the law

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.

My decision on the Applicant’s request is the same as the Agency’s decision as I am satisfied the documents are exempt from release in full under section 31(1)(d).

My reasons for decision follow.

**Joanne Kummrow**  
Public Access Deputy Commissioner  
13 May 2022

## Reasons for Decision

### Background to review

1. The Applicant made a request to the Agency seeking access to the following documents:

Documents relating to the equipment and surveillance capabilities of Police Air Wing aircraft registered VH-PVE (Textron Aviation B300, having serial number FL-1181). Specific areas of interest include electro-optical, radar, thermal, infrared, other electronic sensor capabilities, target tracking, datalinks, imaging devices and processing devices.
2. The Agency identified five documents falling within the terms of the Applicant's request and refused access to the documents in full, relying on sections 31(1)(d) and 31(1)(e). The Agency's decision letter sets out the reasons for its decision.

### Review application

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. I have examined the documents subject to review.
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 exemptions

#### ***Section 31(1)(d) – Disclosure of documents that would disclosure methods for preventing, detecting, investigating breaches of the law***

9. Section 31(1)(d) provides (subject to section 31) a document is exempt if its disclosure would, or would be reasonably likely to, 'disclose methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures'.
10. The exemptions in section 31(1) do not apply to widespread and well known methods and procedures.<sup>1</sup>
11. 'Reasonably likely' means the chance of an event occurring which is real, not fanciful or remote<sup>2</sup>.

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<sup>1</sup> XYZ v Victoria Police [2010] VCAT 255 at [177].

<sup>2</sup> Binnie v Department of Agriculture and Rural Affairs [1989] VicRp 73; [1989] VR 836 at 842)

12. In *Cichello v Department of Justice*,<sup>3</sup> the Victorian Civil and Administrative Tribunal (VCAT) held that a site test report of a speed camera, monthly maintenance reports for that speed camera, a document outlining the requirements for routine testing of fixed speed camera systems, and an instruction manual explaining how a speed camera functions were exempt from release under section 31(1)(d).

13. The Agency describes the documents in its decision as follows:

...The documents comprise various user manuals for the Police Air Wing aircraft registered VH-PVE (Textron Aviation B300, having serial number FL-1181).

...

The type of systems on board Victoria Police aircrafts and the user manuals which detail how to use these systems is a method utilised by Victoria Police for dealing with matters arising out of possible breaches of the law, the disclosure of which would be likely to prejudice the effectiveness of that method. This method is unlikely to be known to the public and consequently disclosure is likely to diminish the effectiveness of the method. Disclosure would give offenders and others insights into police methods such that the effectiveness of those methods would be subverted.

Furthermore, denying [the Applicant] this information aims to stop the mosaic effect where specific information might already be known to a particular group and that disclosure would serve to confirm what may otherwise only be suspected. It is one thing for observers to deduce with varying degrees of success from everyday experience, media reports and other informal sources what appear to be the methods and procedures employed by agencies to achieve their objectives; but it is quite another thing to have spelt out publicly from the agencies' own documents those methods or procedures.

14. The Applicant states in their review application:

I seek the requested documents to understand the scope of wholesale (as opposed to targeted to the individual) collection of intelligence by Victoria Police that is enabled by the use of this aircraft, and the privacy consequences of such capabilities.

15. Having considered the context and content of the documents, I am satisfied they are exempt from release under section 31(1)(d) for the following reasons:

- (a) the documents do not contain publicly available information;
- (b) the documents contain detailed information about aircraft and technology used by the Police Airwing, including its technical functions and capabilities, instructions on its use, graphical representations and photographs of its instruments;
- (c) the documents reveal methods and procedures used by the Agency in carrying out its law enforcement functions;
- (d) the methods and procedures are used in the prevention, detection and investigation of breaches or potential breaches of the law; and
- (e) disclosure would be reasonably likely to prejudice the effectiveness of those methods and procedures, where the relevant knowledge could be used to subvert, evade or undermine policing methods and procedures.

16. Further, I am satisfied the documents do not meet the requirements for the exceptions to section 31(1) set out in section 31(2).

17. Accordingly, I am satisfied the documents are exempt from release under section 31(1)(d).

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<sup>3</sup> (Vic) [2014] VCAT 340 at [45]-[46], [53], [57] and [60].

18. As I have determined the documents are exempt under section 31(1)(d), I have not further considered the application of section 31(1)(e) to the documents.

### ***Section 25 – Deletion of exempt or irrelevant information***

19. 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.
20. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’<sup>4</sup> 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.<sup>5</sup>
21. I have considered whether it is practicable to provide the Applicant with an edited copy of the documents with exempt information deleted in accordance with section 25. Given my decision in relation to section 31(1)(d) and the detailed nature of the documents, I am satisfied it is not practicable to delete the exempt information as to do so would render the documents meaningless.

### **Conclusion**

22. On the information before me, I am satisfied the documents are exempt from release under section 31(1)(d).
23. As I am satisfied it is not practicable to provide the Applicant with an edited copy of the documents with exempt information deleted in accordance with section 25, access is refused in full.

### **Review rights**

24. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.<sup>6</sup>
25. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>7</sup>
26. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>8</sup>
27. Information about how to apply to VCAT is available online at [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au). Alternatively, VCAT may be contacted by email at [admin@vcat.vic.gov.au](mailto:admin@vcat.vic.gov.au) or by telephone on 1300 018 228.
28. 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.<sup>9</sup>

### ***When this decision takes effect***

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

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<sup>4</sup> *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].

<sup>5</sup> *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].

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

<sup>7</sup> Section 52(5).

<sup>8</sup> Section 52(9).

<sup>9</sup> Sections 50(3F) and 50(3FA).