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Information Commissioner

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## Notice of Decision and Reasons for Decision

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Applicant:	'EL9'
Agency:	Victoria Police
Decision date:	18 May 2022
Exemption considered:	Section 33(1)
Citation:	'EL9' and Victoria Police ( <i>Freedom of Information</i> ) [2022] VICmr 136 (18 May 2022)

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FREEDOM OF INFORMATION – law enforcement documents – charge sheets – documents affecting personal privacy – disclosure unreasonable

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.

I am satisfied certain information in the document is exempt from release under section 33(1).

As it is practicable to provide the Applicant with an edited copy of the document with exempt information deleted in accordance with section 25, access to document is granted in part.

My reasons for decision follow.

**Joanne Kummrow**  
Public Access Deputy Commissioner

18 May 2022

## Reasons for Decision

### Background to review

1. The Applicant made a request to the Agency seeking access to the following documents:
  - a) charge Sheet number one, where [the Applicant] was charged on the [dates] at [named Police Station]; and the sentencing hearing happen on the [date]
  - b) any charge sheet[s], after the date of [dates]
2. The Agency identified one document totalling 47 pages falling within the terms of the Applicant's request and refused access to information in the document under section 33(1). 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 a copy of the document 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 33(1) – Documents affecting the personal privacy of third parties*

9. A document is exempt under section 33(1) if two conditions are satisfied:
  - (a) disclosure of the document under the FOI Act would 'involve' the disclosure of information relating to the 'personal affairs' of a person other than the Applicant (a **third party**);<sup>1</sup> and
  - (b) such disclosure would be 'unreasonable'.

*Does the document contain personal affairs information of a third party?*

10. Information relating to a person's 'personal affairs' includes information that identifies any person or discloses their address or location. It also includes any information from which such information may be reasonably determined.<sup>2</sup>

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<sup>1</sup> Sections 33(1) and (2).

<sup>2</sup> Section 33(9).

11. A document will disclose a third party's personal affairs information if it is capable, either directly or indirectly, of identifying that person. As the FOI Act does not place any restrictions on an applicant's use or dissemination of documents obtained under FOI, this is to be interpreted by reference to the capacity of any member of the public to identify a third party.<sup>3</sup>
12. The personal affairs information in the document exempted by the Agency under section 33(1) is the signature of an Agency officer that appears on each page of the document.

*Would disclosure of the personal affairs information be unreasonable?*

13. The concept of 'unreasonable disclosure' involves balancing the public interest in the disclosure of official information with the interest in protecting the personal privacy of a third party in the particular circumstances.
14. In *Victoria Police v Marke*,<sup>4</sup> the Victorian Court of Appeal held there is 'no absolute bar to providing access to documents which relate to the personal affairs of others'. Further, the exemption under section 33(1) 'arises only in cases of unreasonable disclosure' and '[w]hat amounts to an unreasonable disclosure of someone's personal affairs will necessarily vary from case to case'.<sup>5</sup> The Court further held, '[t]he protection of privacy, which lies at the heart of [section] 33(1), is an important right that the FOI Act properly protects. However, an individual's privacy can be invaded by a lesser or greater degree'.<sup>6</sup>
15. In determining whether disclosure of the personal affairs information would be unreasonable in the circumstances, I have considered the following factors:

(a) The nature of the personal affairs information

The document is a 'charge sheet' issued by the Agency setting out details of charges made against the Applicant. The purpose of a charge sheet is to notify a person of criminal charges being issued to them.

The personal affairs information in the document is recorded in the context of their professional role, rather than in their personal or private capacity. However, I consider that a signature is also in the nature of private information.

(b) The circumstances in which the information was obtained

The information was provided to the Agency in the course of police investigations. While the name of the person, whose signature has been exempted from release, has been released, I consider the signature is additional detail that does not add to an understanding of the document.

(c) The Applicant's interest in the information

The FOI Act provides a general right of access that can be exercised by any person, regardless of their motive or purpose for seeking access to a document. However, the reasons why an applicant seeks access to a document is a relevant consideration in determining whether disclosure would be unreasonable under section 33(1).<sup>7</sup>

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<sup>3</sup> *O'Sullivan v Department of Health and Community Services (No 2)* [1995] 9 VAR 1 at [14]; *Beauchamp v Department of Education* [2006] VCAT 1653 at [42].

<sup>4</sup> [2008] VSCA 218 at [76].

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid* at [79].

<sup>7</sup> *Victoria Police v Marke* [2008] VSCA 218 at [104].

While I acknowledge the Applicant's interest in seeking a full copy of the document, I am not satisfied release of the third party's signature is likely to inform them about the charges laid against the Applicant and heard and determined in court.

(d) Whether any public interest would be promoted by release of the personal affairs information

The Agency disclosed all substantive information in the document to the Applicant except for the third party's signature. I am satisfied no particular public interest would be promoted by its disclosure.

(e) The likelihood of disclosure of information, if released

The FOI Act does not place any restrictions on an applicant's use or dissemination of documents obtained under FOI.<sup>8</sup>

Accordingly, I have considered the likelihood of the personal affairs information in the document being further disseminated, if disclosed, and the effects broader disclosure of this information would have on the privacy of the relevant third parties.

While there is no specific information before me to suggest the document would be further disseminated by the Applicant, given the sensitive nature of the document and the third party who investigated alleged criminal offences committed by the Applicant, I am satisfied this factor weighs against disclosure under the FOI Act.

(f) Whether the individuals to whom the information relates object, or would be likely to object, to the release of the information

In determining whether disclosure of a document would involve the unreasonable disclosure of a third party's personal affairs information, an agency must notify that person (or their next of kin, if deceased) an FOI request has been received for documents containing their personal information and seek their view as to whether disclosure of the document should occur.<sup>9</sup> However, this obligation does not arise in certain circumstances, including if it is not practicable to do so.<sup>10</sup>

The Agency advised it consulted with the third party, however the third party did not respond. There is no information before me therefore regarding whether that third party would object to the disclosure of their signature.

(g) Whether disclosure of the information would or would be reasonably likely to endanger the life or physical safety of any person<sup>11</sup>

In determining whether the disclosure of a document would involve the unreasonable disclosure of information relating to the personal affairs of any person, I must consider whether the disclosure of the information would, or would be reasonably likely to, endanger the life or physical safety of any person.<sup>12</sup> There is no information before me to suggest this is a relevant factor in this matter.

16. Having weighed up the above factors, on balance, I am satisfied disclosure of the personal affairs information of the third party would be unreasonable in the circumstances and is exempt from release under section 33(1).

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<sup>8</sup> Ibid at [68].

<sup>9</sup> Section 33(2B).

<sup>10</sup> Section 33(2C).

<sup>11</sup> Section 33(2A).

<sup>12</sup> Section 33(2A).

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

17. 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.
18. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’<sup>13</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>14</sup>
19. I have considered the effect of deleting exempt information from the document. In my view, it is practicable for the Agency to delete the exempt information, because it would not require substantial time and effort, and the edited document would retain meaning.

### **Conclusion**

20. On the information available, I am satisfied the exemptions in sections 33(1) apply to certain parts of the document as applied by the Agency.
21. Given my decision is the same as the Agency’s decision and it granted access to the document in part in accordance with section 25, it remains practicable to provide the Applicant with an edited copy of the document with the exempt information deleted.

### **Review rights**

22. 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.<sup>15</sup>
23. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>16</sup>
24. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>17</sup>
25. 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.
26. 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>18</sup>

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<sup>13</sup> *Mickelburgh 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>14</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>15</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>16</sup> Section 52(5).

<sup>17</sup> Section 52(9).

<sup>18</sup> Sections 50(3F) and 50(3FA).