

## Notice of Decision and Reasons for Decision

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Applicant:	'DN3'
Agency:	Department of Justice and Community Safety
Decision Date:	16 August 2021
Exemptions and provision considered:	Sections 14, 29B, 30(1), 31(1)(a), 31(1)(d), 33(1), 35(1)(b), and 38 of the FOI Act in conjunction with section 104ZZA of the <i>Corrections Act 1986</i> (Vic)
Citation:	'DN3' and Department of Justice and Community Safety (Freedom of Information) [2021] VICmr 247 (16 August 2021)

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FREEDOM OF INFORMATION – prison records – Corrections Victoria – Individual Management File (IMF) – Community Correctional Services (CCS) File – documents not subject to the FOI Act – access subject to fee – document available for purchase – [multiple FOI requests combined]

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 satisfied information in the documents is exempt under sections 29B, 30(1), 31(1)(a), 31(1)(d), 33(1), 35(1)(b) and 38 of the FOI Act in conjunction with section 104ZZA of the *Corrections Act 1986* (Vic) (**Corrections Act**). However, I have granted access to additional information in the documents.

I am also satisfied one of the documents located by the Agency is not a document to which the FOI Act applies under section 14(1)(b).

Where I am satisfied it is practicable to provide the Applicant with an edited copy of a document with irrelevant and exempt information deleted in accordance with section 25, I have granted access to the document in part. Where it is not practicable to do so, I have refused access to the document in full.

The Schedule of Documents [has been redacted from the published decision].

My reasons for decision follow.

**Joanne Kummrow**  
Public Access Deputy Commissioner

16 August 2021

## Reasons for Decision

### Background to review

1. The Applicant made [number of] FOI requests to the Agency seeking access to various documents.
2. The Agency treated [number of] requests as a single request and rescoped the request as seeking access to the Applicant's Individual Management File (**IMF**) and Community Correctional Services File (**CCS file**).
3. The Agency's decision letter states:

Due to the current lockdown provisions instituted by the Victorian government, most of the department has moved to remote working arrangements. This has caused significant delays in responding to all FOI requests, particularly for documents held by operational areas such as Corrections Victoria.

In order to reduce the impacts of these delays, the department has decided to provide you with copies of your prison Individual Management File (IMF) and your Community Correctional Services (CCS) file.

The documents from your prioritised requests are all contained within these files and by providing you with them now will reduce the delays currently being experienced.

...
4. In doing so, the Agency did not communicate or consult with the Applicant. Nor did it advise as to which of the [number of] requests were combined into a single request.
5. The Agency determined to release the Applicant's IMF and CCS file in part under sections 30(1), 31(1)(a), 31(1)(d), 33(1) and 38 of the FOI Act in conjunction with section 104ZZA of the Corrections Act. The Agency also refused access to certain documents under section 6. The Agency's decision letter sets out the reasons for its decision.

### Review

6. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
7. I have examined copies of the documents subject to review.
8. During the review, the Agency submitted additional exemptions, including under sections 14 and 29B, applied to certain documents. Details of the relevant documents and exemptions are set out in the Schedule of Documents [which has been redacted from the published decision].
9. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
10. I have considered all communications and submissions received from the parties.
11. 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.
12. I also 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.

## Complaints

13. During the review, the Applicant lodged complaints concerning the adequacy of document searches conducted by the Agency and the Agency's decision to treat multiple FOI requests as a single request.
14. In accordance with section 61B(3), OVIC determined to address these concerns as part of this review.
15. OVIC made inquiries with the Agency in relation to the Applicant's concerns and addressed these concerns with the Applicant.
16. In the circumstances, I am satisfied OVIC has made reasonable inquiries with the Agency regarding the Applicant's concerns and the Agency conducted a thorough and diligent search for relevant documents. Accordingly, I do not consider any further inquiries are required to be made with the Agency or further action to be taken.

## Section 14 – Documents not subject to the FOI Act

17. During the review, the Agency clarified Documents 58 and 59 are not subject to the FOI Act under section 14(1)(a).
18. Section 14 provides:

### **14 Part not to apply to certain documents**

- (1) A person is not entitled to obtain access under this Part to—
  - (a) a document which contains information that is open to public access, as part of a public register or otherwise, in accordance with another enactment, where that access is subject to a fee or other charge;
  - (b) a document which contains information that is available for purchase by the public in accordance with arrangements made by an agency
- ...

19. Therefore, a document is not subject to access under the FOI Act if it is of a kind referred to in the various categories set out in section 14.<sup>1</sup>

20. The Victorian Civil and Administrative Tribunal (**VCAT**) has held:

The intention of this provision is to deny access under the FOI Act where a person is able to otherwise source documents from the public records. This is not a matter of the documents being exempt under the FOI Act. Rather they are simply not able to be disclosed under the FOI Act.<sup>2</sup>

21. The *Victoria Police (Fees and Charges) Regulations 2014* (Vic) prescribe a search fee is to be charged to conduct a search of relevant records concerning the existence of a person's criminal history.<sup>3</sup>
22. Accordingly, I am satisfied a document requested by the Applicant is accessible to them for a fee or charge, and is not a document to which the FOI Act applies by virtue of section 14(1)(b).
23. However, I am not satisfied the 'summary of facts' is accessible for a fee or charge.
24. The Schedule of Documents [has been redacted from the published decision].

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<sup>1</sup> *Rizza v Boroondarra CC* [2000] VCAT 2062 at [17] and [19].

<sup>2</sup> *Smeaton v Transport Accident Commission* [2017] VCAT 1486 at [42].

<sup>3</sup> *Victoria Police (Fees and Charges) Regulations 2014* (Vic) Regulation 6 in Schedule 3.

## **Section 29B – Documents of Court Services Victoria**

25. The Agency's decision letter states:

Amongst the documents discovered on your CCS file are court documents. Under section 6, documents relating to the judicial functions of a court are not subject to the FOI Act.

You may apply to the relevant court should you wish to gain access to your court documents.

26. During the review, the Agency clarified the documents to which it referred in its decision letter are exempt under section 29B, which provides:

### **29B Documents of Court Services Victoria**

A document is an exempt document if it is a document of Court Services Victoria that relates to the exercise of a judicial or quasi-judicial function of a court or VCAT.

27. For section 29B to apply, I must be satisfied the document:

- (a) is a document of Court Services Victoria (**CSV**); and
- (b) relates to the exercise of a judicial or quasi-judicial function of a court or tribunal.

28. CSV provides, or arranges for the provision of, the administrative services and facilities necessary to support the performance of the judicial, quasi-judicial and administrative functions of Victorian courts and tribunals (including VCAT).

29. In deciding if a document is exempt under section 29B, I have had regard to case law about how the broadly equivalent section 5 in the *Freedom of Information Act 1982* (Cth) (**Commonwealth FOI Act**) is interpreted. These cases indicate judicial or quasi-judicial information should be broadly interpreted as compared to administrative information, which should be narrowly interpreted.

30. In *Bienstein v Family Court of Australia*,<sup>4</sup> the Federal Court held documents, that would normally be described as 'administrative' and did not affect a judicial determination directly, were nonetheless 'judicial documents' as they are closely related to judicial independence. The Court considered documents that affect judicial independence should not be subject to the Commonwealth FOI Act.

31. This approach was broadened by the High Court of Australia in *Kline v Official Secretary to the Governor General*.<sup>5</sup> The Court narrowed administrative documents to documents that relate to logistical support, such as travel and accommodation arrangements. The Court found any documents 'preparatory to an exercise of a substantive power or to the performance of a substantive function' should not be subject to release under the Commonwealth FOI Act.

32. The documents exempted from release by the Agency under section 29B include County Court and Magistrates' Court documents, as listed in the Schedule of Documents in **Annexure 1**.

33. Having regard to the abovementioned caselaw, I am satisfied the documents exempted from release by the Agency under section 29B relate to judicial independence and do not merely relate to the logistical support or administrative processes of the Courts.

### *[Type of] reports*

34. The Agency also determined [certain] reports are exempt from release under section 29B.

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<sup>4</sup> (2008) 251 ALR 453.

<sup>5</sup> [2013] HCA 52.

35. Document 56 (a [type of] report) was the subject of an Order made by a County Court judge under section 8A of the *Sentencing Act 1991* (Vic) (**Sentencing Act**) during a criminal trial concerning the Applicant for the purpose of sentencing the Applicant following their conviction for a criminal offence.
36. Following the Order, CSV arranged for the Document to be created on behalf of the Court and submitted it to the Judge for their consideration in determining the appropriate sentence to be imposed.
37. Accordingly, I am satisfied Document 56 is a document of CSV, as it was commissioned by CSV on behalf of the Court and relates to the exercise of a judicial officer's sentencing functions under the Sentencing Act.
38. The remaining [types of] reports and supplementary [type of] report were not commissioned by CSV on behalf of the Court. Rather, they were commissioned by [third party description and context]. The Agency has confirmed a copy of these documents are located on the relevant Court proceeding file.
39. Considering the nature of these documents, I am satisfied they relate to the exercise of a judicial officer's sentencing functions under the Sentencing Act.
40. While a copy of these documents was subsequently provided to the Agency, I do not consider this changes the inherent status of the documents as documents of CSV.
41. Accordingly, I am satisfied the [types of] reports and supplementary psychological reports are each exempt under section 29B.
42. The Schedule of Documents in **Annexure 1** sets out my decision regarding section 29B.

#### ***Section 30(1) – Internal working documents***

43. Section 30(1) has three requirements:
  - (a) the document must disclose matter in the nature of opinion, advice or recommendation prepared by an officer or Minister, or consultation or deliberation that has taken place between officers, Ministers or an officer and a Minister;
  - (b) such matter must be made in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency or Minister or of the government; and
  - (c) disclosure of the matter would be contrary to the public interest.
44. The exemption does not apply to purely factual material in a document.<sup>6</sup>
45. The term 'officer of an Agency' is defined in section 5(1). It includes a member of an agency, a member of an agency's staff, and any person employed or engaged by or on behalf of an agency, whether or not they are subject to the provisions of the *Public Administration Act 2004* (Vic).

*Do the documents contain information in the nature of opinion, advice, recommendation, consultation or deliberation?*

46. The documents to which the Agency applied section 30(1) are case notes in the Applicant's CCS file. The Agency applied section 30(1) to a small amount of information in the document, which records the professional opinion and observations of a Community Correctional Services officer (**CCS officer**).

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<sup>6</sup> Section 30(3).

*Were the documents made in the course of, or for the purpose of, the deliberative processes involved in the functions of the Agency?*

47. Having viewed the document, I am satisfied the information exempted was recorded by an agency officer and comprises their opinions which were provided as part of the Agency's deliberative process concerning the supervision and ongoing management of a person serving a Community Corrections Order (CCO).

*Would disclosure of the information be contrary to the public interest?*

48. In determining if disclosure of the documents would be contrary to the public interest, I must consider all relevant facts and circumstances remaining mindful the object of the FOI Act is to facilitate and promote the disclosure of information.
49. This requires a 'process of the weighing against each other conflicting merits and demerits'.<sup>7</sup>
50. In this case, I have taken the following factors into account:<sup>8</sup>
- (a) the right of every person to gain access to documents under the FOI Act;
  - (b) the degree of sensitivity of the issues discussed in the documents and the broader context giving rise to the creation of the documents; and
  - (c) whether disclosure of the documents would be likely to inhibit communications between Agency officers, essential for the Agency to make an informed and well-considered decision or participate fully and properly in a process in accordance with the Agency's functions and other statutory obligations.
51. In its decision letter, the Agency advises disclosure of the information would be contrary to the public interest as it 'may in future impede full and frank discussion between case officers of the management of the order'.
52. Generally speaking, the observations and opinions recorded by CCS officers are sensitive in nature given their role in supervising persons subject to a CCO following their release from prison. In this case, the exempt information is particularly sensitive as it relates to information about the Applicant, including identifying risks to assist in their effective supervision whilst serving part of their sentence under a CCO.
53. While I am mindful of the Applicant's personal interest in accessing official information recorded about them in the documents, I am also mindful of the overall purpose of the documents. Such documents provide CCS officers with an official means of recording frank and candid information about an offender who has been released from prison to serve part of their sentence in the community subject to the terms and conditions of a CCO.
54. While there is no specific information before me to suggest disclosure of this document would lead to CCS officers not recording their subjective comments about offenders in the future, I am of the view the routine disclosure of such information would reasonably lead to a diminution in the degree of candour in information recorded by staff. I consider this would have an adverse effect on the quality and detail of information recorded and the effective performance of their functions in the supervision and management of offenders in the community.

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<sup>7</sup> *Sinclair v Maryborough Mining Warden* [1975] HCA 17; (1975) 132 CLR 473 at 485, adopted in *Department of Premier and Cabinet v Halls* [1999] VSCA 117 at [30].

<sup>8</sup> *Halls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

55. Such an outcome would be contrary to the public interest and the conduct of CCS, which relies on an open and free flow of information from CCS officers to inform its reporting and decisions with respect to offenders. In the circumstances, I consider there is a public interest in ensuring the confidentiality of the Agency's deliberations and maintaining the integrity of its processes in relation to the management of offenders in the community outweighs the Applicant's personal interest in obtaining access to the information that concerns them.
56. Therefore, I accept the Agency's submission that disclosure of the opinions and observations in the document would be likely to inhibit CCS officers from freely expressing their opinions, advice and recommendations in the future.
57. Accordingly, I am satisfied information in the documents is exempt under section 30(1).
58. The Schedule of Documents [has been redacted from the published decision].

### **Section 31(1)(a) – Law enforcement documents**

59. Section 31(1)(a) provides:

#### **31 Law enforcement documents**

- (1) Subject to this section, a document is an exempt document if its disclosure under this Act would, or would be reasonably likely to—
  - (a) prejudice the investigation of a breach or possible breach of the law or prejudice the enforcement or proper administration of the law in a particular instance;

60. 'Reasonably likely' means there is a real chance of an event occurring and it is not fanciful or remote.<sup>9</sup>
61. 'Prejudice' means to hinder, impair or undermine and includes actual prejudice as well as impending prejudice.<sup>10</sup>
62. 'In a particular instance' does not require a single specific investigation and can apply to the enforcement or proper administration of the law more generally. The phrase can encompass specific, identified aspects of the law, the administration of law or investigations of a breach, or potential breach, of law.<sup>11</sup>
63. 'Enforcement of the law' deals with the process of enforcement of the law, whereas the 'proper administration of the law' concerns how the law is administered, for example, regulatory, monitoring and compliance activities.<sup>12</sup>

#### *Document 4 - [type of document]*

64. In its submission, the Agency states:

Risk assessments are one of the measures used by Corrections Victoria for the proper management of an individual prisoner's welfare and rehabilitation needs. The release of this material would identify the assessment questions enabling prisoners to discuss the content of the assessments and manipulate their responses, thereby invalidating the results of future assessments. This would undermine the effectiveness of assessments and the assessment processes, therefore improperly affecting the administration of the *Corrections Act 1986*.

<sup>9</sup> *Bergman v Department of Justice Freedom of Information Officer* [2012] VCAT 363 at [65], quoting *Binnie v Department of Agriculture and Rural Affairs* [1989] VR 836.

<sup>10</sup> *Ibid*, *Bergman* at [66], referring to *Sobh v Police Force of Victoria* [1994] VicRp 2; [1994] 1 VR 41 (Nathan J) at [55].

<sup>11</sup> *Cichello v Department of Justice (Review and Regulation)* [2014] VCAT 340 at [24].

<sup>12</sup> *Cichello v Department of Justice* [2014] VCAT 340 at [23], referring to *JCL v Victoria Police* [2012] VCAT 1060 at [28]; *Croom v Accident Compensation Commission* (1989) 3 VAR 441, affirmed on appeal [1991] 2 VR 322.

Parts of the forensic assessment reports and risk screening tools are exempt under this section of the FOI Act. The release of this information would identify the assessment questions enabling offenders to discuss the content of the assessments and manipulate their responses, thereby invalidating the results of future assessments. This would undermine the effectiveness of assessment process and therefore prejudice the administration of the *Corrections Act 1986*.

65. Having reviewed the document, I accept the Agency's submission that disclosure of information related to the calculation of the Applicant's risk assessment could have a detrimental effect on how prisoner information is recorded and how risk assessments scores are calculated. Consequently, this may compromise the effectiveness of the Agency's functions under the Corrections Act relating to the maintenance of security and good management of prisons.
66. I am satisfied the release of this information would prejudice the proper administration of the Corrections Act with respect to the effectiveness of the Agency's methods or procedures for the management of an individual prisoner's welfare and rehabilitation. Accordingly, I am satisfied this information is exempt under section 31(1)(a).

*Document 61 – Victoria Police Criminal Record and Summary of Facts*

67. As stated above, I am satisfied the Victoria Police Criminal Record is not a document to which the FOI Act applies. Accordingly, my consideration of section 31(1)(a) relates to the 'Summary of Facts' only.
68. The Agency submits:

The Victoria Police Criminal record and associated summary of facts is also exempt in full under section 31(1)(a) in conjunction with section 185 of the Victoria Police Act 2013. Section 185 states that "disclose of restricted matter prohibited" – a person must not disclose a restricted matter – 120 penalty points or imprisonment of 1 year or both. The Victoria Police Criminal Record states specifically that it is confidential and an unlawful use and disclosure of this information could lead to prosecution.

69. Having carefully considered the document, I am not satisfied its disclosure would prejudice the investigation of a breach or possible breach of the law or prejudice the enforcement or proper administration of the law in a particular instance, as the relevant information relates to a finalised criminal matter.
70. As I am not satisfied sections 14 or 31(1) apply to this document, I have considered the application of sections 33(1) and 35(1)(b) below.
71. The Schedule of Documents [has been redacted from the published decision].

***Sections 31(1)(d) – Law enforcement documents***

72. Subject to section 31, section 31(1)(d) provides 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'.
73. The exemption does not apply to widespread and well-known methods and procedures.<sup>13</sup>

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<sup>13</sup> XYZ v Victoria Police [2010] VCAT 255 at [177].



74. The Agency's decision letter states:

There are some Victoria Police reports contained on your CCS file. These reports are exempt as the type of information they contain disclose methods Victoria Police uses in terms of its operational capabilities and disclosure would harm the effectiveness of those methods.

75. While I am unable to describe information in the document in detail, as to do so may reveal the information that is exempt, I can say the relevant information includes the details of a Law Enforcement Assistance Program (**LEAP**) report.

76. The existence of LEAP and the associated database is well known to the public. However, I am not satisfied the functions, methods and procedures associated with LEAP and the Corrections system are widely known.

77. I have considered the likely effect of disclosure of the relevant information and I am satisfied it would be reasonably likely to prejudice the effectiveness of the Agency's prison security and managements functions.

78. Accordingly, I am satisfied the information exempted by the Agency is exempt under section 31(1)(d).

79. The Schedule of Documents [has been redacted from the published decision].

***Section 35(1)(b) – Documents containing material obtained in confidence***

80. A document is exempt under section 35(1)(b) if two conditions are satisfied:

- (a) disclosure would divulge information or matter communicated in confidence by or on behalf of a person or a government to an agency or a Minister; and
- (b) disclosure would be contrary to the public interest as it would be reasonably likely to impair the ability of an agency or a Minister to obtain similar information in the future.

81. My examination of section 35(1)(b) relates to Document 59 only. Although the Agency does not rely on section 35(1)(b), I consider it a relevant exemption to consider in relation to this document.

***Was the information communicated in confidence?***

82. The document subject to review contains information obtained by Victoria Police from a third party during an investigation.

83. In *Akers v Victoria Police*,<sup>14</sup> VCAT notes:

... persons who provide statements or other information to the police do so with the expectation that these will only be disclosed to the extent necessary to conduct investigations and deal with criminal charges.

84. I consider members of the public, who provide information to Victoria Police as part of an investigation of a criminal matter, do so with the expectation it will remain confidential unless required for or relied upon in a prosecution before a court. As such, I am satisfied certain information in Document 59 would divulge information communicated in confidence by a third party to Victoria Police.

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<sup>14</sup> [2003] VCAT 397 at [35].

*Would disclosure of the information impair the agency's ability to obtain similar information in the future?*

85. Section 35(1)(b) also requires I consider whether the Agency would be impaired from obtaining similar information in the future if information is disclosed under the FOI Act.
86. This means, I must be satisfied, if the information were to be disclosed, others in the position of the communicator would be reasonably likely not to provide similar information to the Agency in the future.
87. Victoria Police relies on members of the public being able to provide it with confidential information to assist its criminal investigations.
88. Having carefully considered the document, I am satisfied the public interest lies in Victoria Police being able to maintain the confidentiality of individuals who provide information to Victoria Police in relation to a criminal investigation. There is a strong public interest in the Agency maintaining its ability to obtain information from members of the public. If such information were to be routinely released in response to an FOI request, the Agency would be impaired from obtaining information of a similar nature in the future which would hinder the ability of Victoria Police to investigate alleged criminal offences and carry out its investigation and law enforcement functions.
89. Accordingly, I am satisfied the relevant information in Document 59 is exempt under section 35(1)(b).
90. The Schedule of Documents [has been redacted from the published decision].

***Section 38 – Documents to which secrecy provisions apply***

91. 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.

92. Therefore, for a document to be exempt under section 38, three conditions must be satisfied:
- (a) there must be an enactment in force;
  - (b) the enactment must be formulated with such precision that it specifies the actual information prohibited from disclosure in the document; and
  - (c) the enactment must prohibit persons referred to in the enactment from disclosing the specific kind of information in the document (either absolutely or subject to exceptions or qualifications).
93. The Agency's decision states:

Section 104ZZA of the *Corrections Act 1986* (**Corrections Act**) prohibits the disclosure of confidential information and the personal information of offenders, prisoners and any other third parties. Section 104ZX defines personal or confidential information.

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 CRNs is information that identifies a person
- details about investigation of incidents is information that concerns the security and management of prisons.

The Corrections Act prohibits this information from disclosure. Therefore, it is exempt under section 38 of the FOI Act.

*Is there an enactment in force?*

94. The Agency relies on section 38 of the FOI Act in conjunction with sections 104ZZA and 104ZX of the Corrections Act to refuse access to certain information in the documents.
95. I am satisfied the Corrections Act is an enactment in force for the purposes of section 38 of the FOI Act.

*Does the enactment apply specifically to the kind of information in the documents?*

96. For section 38 to apply, the enactment must be formulated with such precision that it specifies the actual information sought to be withheld.
97. The Agency applied section 38 of the FOI Act in conjunction with section 104ZZA of the Corrections Act, which provides:

**104ZZA Offence to use or disclose personal or confidential information unless authorised**

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

Penalty: 120 penalty units.

98. Section 104ZZA of the Corrections Act operates to protect the personal privacy of persons who are identified in documents created in connection with the management and administration of the corrections system, including prisoners. The provision is also directed towards maintaining the confidentiality of methods and procedures used in the management of prisons and prisoners. The section imposes strict confidentiality requirements on Agency officers, among others, which apply in all but certain limited circumstances.
99. Section 104ZX of the Corrections Act defines 'relevant person' as a person specified in Schedule 5 of that Act and includes:
- ...
- (2) A person employed in the Department under Part 3 of the Public Administration Act 2004.
- (3) A person who provides services or advice (whether paid or unpaid) to or on behalf of the Department.
100. The term 'personal and confidential information' is defined in section 104ZX of the Corrections Act and includes the following, which I consider is 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.

...

101. The information in the documents the Agency considers is 'personal or confidential information' under section 104ZX of the Corrections Act is described in paragraph 93 above. Having carefully reviewed the documents, I am satisfied most of the relevant information identifies persons other than the Applicant or information to which the identity of a person can be reasonably determined.

102. However, certain information, such as shared group email addresses, telephone numbers and fax numbers do not fall within the scope of section 104ZX of the Corrections Act.
103. Accordingly, I am satisfied most the information deleted by the Agency contains information that falls within the definition of ‘personal or confidential information’ under section 104ZX of the Corrections Act and is information to which the secrecy provision under section 104ZZA of the Corrections Act applies.

*Does the enactment prohibit persons from disclosing the information in the document?*

104. Section 104ZZA of the Corrections Act clearly prohibits the use or disclosure of the type of information to which it applies. It is an offence to disclose information in contravention of that prohibition.
105. However, section 104ZZA is subject to exceptions in sections 104ZY and 104ZZ of the Corrections Act, which permit the release of personal or confidential information in certain circumstances.
106. I am satisfied the exceptions do not apply in this instance.
107. 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.
108. Accordingly, on the information before me, I am satisfied information in the documents is exempt under section 38 of the FOI Act in conjunction with section 104ZZA of the Corrections Act.
109. The Schedule of Documents [has been redacted from the published decision].

***Section 33(1) – Documents affecting personal privacy***

110. 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;<sup>15</sup> and
  - (b) such disclosure would be unreasonable.
111. Most of the personal affairs information in the documents has been claimed exempt under section 38. I am satisfied most of the information exempted under section 33(1) is exempt under section 38, as outlined above.
112. Accordingly, my assessment of section 33(1) only concerns information that I am not otherwise satisfied is exempt under section 38.

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<sup>15</sup> Sections 33(1) and (2).

113. Information relating to an individual'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>16</sup>
114. The concept of unreasonable disclosure involves balancing the public interest in the disclosure of official information with the protection of an individual's right to personal privacy in the circumstances.
115. In determining whether the release of personal affairs information is unreasonable, I have given weight to the following factors:
- (a) the nature of the personal affairs information;
  - (b) the circumstances in which the information was obtained;
  - (c) the extent to which the information is publicly available;
  - (d) whether any individuals to whom the information relates objects, or would likely object to the release of the information; and
  - (e) whether disclosure of the information would or would be reasonably likely to endanger the life or physical safety of any person.<sup>17</sup>
116. The Schedule of Documents [has been redacted from the published decision].

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

117. Section 25 requires an agency to grant access to an edited copy of a document when it is practicable to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.
118. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'<sup>18</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>19</sup>
119. Given the Agency provided the Applicant with an edited copy of the documents, it continues to be practicable to provide an edited copy of the document with irrelevant and exempt information deleted in accordance with section 25. However, I am satisfied it would not be practicable to delete exempt information in certain documents as to do so would render those documents meaningless.
120. The Schedule of Documents [has been redacted from the published decision].

#### **Conclusion**

121. I am satisfied information in the documents is exempt under sections 29B, 30(1), 31(1)(a), 31(1)(d), 33(1), 35(1)(b) and 38 of the FOI Act in conjunction with section 104ZZA of the Corrections Act.
122. I am also satisfied one document located by the Agency is not a document to which the FOI Act applies under section 14(1)(b).

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<sup>16</sup> Section 33(9).

<sup>17</sup> Section 33(2A).

<sup>18</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>19</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].

123. Where I am satisfied it is practicable to provide the Applicant with an edited copy of a document with irrelevant and exempt information deleted in accordance with section 25, I have granted access to the document in part. Where I am not satisfied it is practicable to delete such information from a document, I have refused access to the document in full.
124. The Schedule of Documents [has been redacted from the published decision].

### **Review rights**

125. 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>20</sup>
126. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>21</sup>
127. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>22</sup>
128. 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.
129. 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>23</sup>

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

130. I have determined to release information the Agency exempted from release under section 33(1). However, as I am satisfied the information is not personal affairs information for the purposes of section 33(1), I consider it is not practicable to notify any third parties in relation to my decision regarding their right to seek review of my decision.
131. Accordingly, my decision does not take effect until the Agency's 14 day review period expires.
132. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

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<sup>20</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>21</sup> Section 52(5).

<sup>22</sup> Section 52(9).

<sup>23</sup> Sections 50(3F) and (3FA).