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Information Commissioner

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Notice of Decision and Reasons for Decision

Applicant:	'FA2'
Agency:	Victoria Police
Decision date:	21 February 2023
Exemption considered:	Section 33(1)
Citation:	'FA2' and Victoria Police (Freedom of Information) [2023] VICmr 11 (21 February 2023)

FREEDOM OF INFORMATION – police documents – details of persons involved – police attendance – Electronic Patrol Duty Return – ePDR – personal affairs information

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 information in the document is exempt from release under section 33(1).

However, I have determined certain information the Agency determined is irrelevant to the terms of the request is relevant and is to be released as I am not satisfied it is exempt from release.

As I am satisfied it remains practicable to provide the Applicant with an edited copy of the document with irrelevant and exempt information deleted in accordance with section 25, I have determined to grant access to the document in part.

The document is to be released to the Applicant in accordance with the marked up version provided to the Agency with this decision.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

21 February 2023

Reasons for Decision

Background to review

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

Detailed reports relating to me regarding police attendance [date] and [date]
2. Following consultation with the Agency, the Applicant amended the request and sought access to.
 1. Please see attached regarding [date], I am unsure about what this entry is about - but it is in my history report? I want to know what it is about.
 2. With regard to [date] - I had the police attend the current address [address] - as a report was received by the police [description of potential report subject] - which was not true. I require to have this information.
 3. I am requesting a concise report – [date] – police attended [address]. I want to know who requested this- I believe it is in the LEAP system database. [address] - may also be listed as [address].
3. The Agency identified an electronic Patrol Duty Return document (**ePDR**) falling within the terms of the Applicant's request and granted access to the document in part under section 33(1). 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 document 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 33(1) – Documents affecting personal privacy of third parties

10. A document is exempt from release 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**);¹ and
 - (b) such disclosure would be 'unreasonable'.

¹ Sections 33(1) and 33(2).

Does the document contain third party personal affairs information?

11. 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.²
12. 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.³
13. I am satisfied the document contains personal affairs information of third parties, including their names and telephone numbers.

Would disclosure of the personal affairs information be unreasonable?

14. 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 of a matter.
15. In *Victoria Police v Marke*,⁴ 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'.⁵ 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'.⁶
16. 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 and the circumstances in which it was obtained

The document is an ePDR document, which records the attendance by police throughout the day identified by the Applicant. From this document irrelevant information has been deleted where the records refer to attendances unrelated to the Applicant by the Agency officers on that day.

The personal affairs information constitutes two names and one telephone number obtained by Agency officers. This information was provided to the Agency by third parties in the context of the Agency carrying out its law enforcement functions and was obtained by Agency officers in the course of carrying out their duties.

(b) 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

² Section 33(9).

³ *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].

⁴ [2008] VSCA 218 at [76].

⁵ *Ibid.*

⁶ *Ibid* at [79].

applicant seeks access to a document is a relevant consideration in determining whether disclosure would be unreasonable under section 33(1).⁷

The Applicant seeks access to the information to identify the people who made reports about them to the Agency.

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

There is a public interest in the public voluntarily providing information to the Agency during the course of the Agency carrying out its law enforcement functions, including conducting inquiries. It is my view that disclosure of the personal affairs information provided to the Agency would undermine the ability of police officers to obtain similar information in the future from members of the public. The consequence of persons being unwilling to provide the Agency with information about breaches or possible breaches of the law would materially undermine the Agency's ability to fulfil its function.

While I acknowledge the Applicant's personal interest in obtaining access to the document in full, in my view, the public interest weighs in favour of preserving the confidentiality of information obtained during a police intervention. Accordingly, I consider this broader public interest outweighs the Applicant's personal interest in obtaining access to the document.

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

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

There is no information before me to determine whether the Applicant intends to disseminate the information in the documents.

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

In deciding whether disclosure of a document would involve the unreasonable disclosure of a third party's personal affairs information, an agency must notify that person 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.⁸ However, this obligation does not apply in certain circumstances.⁹

I have no information about whether a third party would object to the release of their personal affairs information. However, I consider any third party who provided their personal affairs information to the Agency would have done so on the understanding it would be used by the Agency in discharging its law enforcement functions only. In these circumstances, I am satisfied it is reasonably likely a third party would not expect nor consent to their personal affairs information being disclosed under the FOI Act.

(f) Whether disclosure of the information would or would be reasonably likely to endanger the life or physical safety of any person

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

⁷ *Victoria Police v Marke* [2008] VSCA 218 at [104].

⁸ Section 33(2B).

⁹ Section 33(2C).

whether the disclosure of the information would, or would be reasonably likely to, endanger the life or physical safety of any person.¹⁰

There is no information before me to suggest this factor is relevant in the circumstances of this matter.

17. On balance, I am satisfied disclosure of the personal affairs information would be unreasonable in the circumstances. Accordingly, I am satisfied the personal affairs information in the document is exempt from release under section 33(1).

Section 25 – Deletion of exempt or irrelevant information

18. 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.
19. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’¹¹ 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 25.¹²
20. The Agency determined certain information in the document is irrelevant information based on the terms of the Applicant’s FOI request and deleted this information under section 25.
21. Having reviewed the information, I agree most of it falls outside the scope of the Applicant’s request as it records Agency activities that are unrelated to the Applicant’s FOI request. I am also satisfied the ‘Member ID’ of the Agency officer who generated the document for the purpose of processing the Applicant’s FOI request is not relevant to the subject matter of the Applicant’s request.
22. However, there is information in the ePDR document that the Agency determined is irrelevant information, that I consider is relevant to the terms of the Applicant’s FOI request. That is, it relates to ‘a concise report’ of the incident and attendance by Agency officers involving the Applicant. I have considered whether this information is exempt from release and am satisfied the first lines of the deleted information in [dated entries] relates to the attendance to the Applicant’s premises and falls within the scope of the Applicant’s request.
23. Given the information deleted by the Agency is similar in nature to other information in the document which was released to the Applicant, I am further of the view that no other exemption applies to this information. Accordingly, I have decided to grant access to this information in part.
24. I am satisfied it remains practicable to provide the Applicant with an edited copy of the document with exempt and irrelevant information deleted in accordance with section 25, as editing the documents would not require substantial time or effort and will retain meaning.

Conclusion

25. On the information before me, I am satisfied information in the document is exempt from release under section 33(1).
26. However, I have determined certain information the Agency determined is irrelevant to the terms of the request is relevant and is to be released as I am not satisfied it is exempt from release.

¹⁰ Section 33(2A).

¹¹ *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].

¹² *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].

27. As I am satisfied it remains practicable to provide the Applicant with an edited copy of the document with irrelevant and exempt information deleted in accordance with section 25, I have determined to grant access to the document in part.
28. The document is to be released to the Applicant in accordance with the marked up version I have provided the Agency with this decision.

Review rights

29. 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.¹³
30. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹⁴
31. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁵
32. 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.
33. 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.¹⁶

When this decision takes effect

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

¹³ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹⁴ Section 52(5).

¹⁵ Section 52(9).

¹⁶ Sections 50(3F) and 50(3FA).