

Notice of Decision and Reasons for Decision

Applicant:	'FC6'
Agency:	Victoria Police
Decision date:	21 April 2023
Exemptions and provision considered:	Sections 30(1), 31(1)(a), 31(1)(d), 33(1), 35(1)(b) and 38 in conjunction with section 30E(1) of the <i>Surveillance Devices Act 1999</i> (Vic)
Citation:	'FC6' and Victoria Police (Freedom of Information) [2023] VICmr 32 (21 April 2023)

FREEDOM OF INFORMATION – law enforcement documents – police records – Law Enforcement Assistance Program (LEAP) – incident report – CCTV footage – body-worn camera footage – police investigation – alleged criminal offence – personal affairs information of third party – unreasonable disclosure of personal affairs information – internal working documents – contrary to public interest – information communicated in confidence – reasonably impair agency to obtain similar information – secrecy provision – *Surveillance Devices Act 1999* (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.

I am satisfied the documents are exempt from release under sections 30(1), 31(1)(a), 31(1)(d), 33(1) and 35(1)(b). I am also satisfied the body-worn camera footage is exempt in full under section 38 of the FOI Act in conjunction with section 30E(1) of the *Surveillance Devices Act 1999* (Vic) (**SD Act**).

The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

21 April 2023

Background to review

1. The Applicant made a request to the Agency for access to certain documents. Following consultation with the Agency, the Applicant clarified the terms of their request to:

[documents such as statements, witness statements, photographs, CCTV relating to the investigation of specific incidents involving the Applicant].
2. The Agency identified 20 documents, totalling 81 pages, falling within the terms of the Applicant's request and granted access to one document in full, ten documents in part and refused access to 11 documents in full under sections 30(1), 31(1)(a), 31(1)(d), 33(1), 35(1)(b) and 38 in conjunction with sections 30D and 30E of the SD Act. The Agency's decision letter sets out the reasons for its decision.

Concerns relating to the adequacy of document searches

3. During the review, the Applicant raised concerns about the adequacy of the Agency's document searches in relation to their FOI request.
4. In accordance with section 61B(3), these concerns were dealt with under this review.
5. OVIC staff made further enquiries with the Agency to address the Applicant's concerns. The outcome of those enquiries was communicated to the Applicant.
6. Having carefully considered the Agency's response, I am satisfied it undertook a thorough and diligent search for the documents requested and there is no basis for the making of further enquiries or the taking of further action under the FOI Act.

Review application

7. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
8. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
9. I have considered all communications and submissions received from the parties.
10. 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.
11. 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.

Documents subject to review

12. I have examined a copy of the documents subject to review with the exception of the body-worn camera footage, being Documents 21 and 22. In the circumstances, I am satisfied these documents are as described by the Agency and did not require a copy to be provided to me for the purpose of making my review decision.
13. Further, during the review, the Agency advised that Document 20, which is described in the Agency's decision letters as a copy of CCTV footage, is in fact not a relevant document because it does not relate to the incidents described in the Applicant's request. Therefore, the Agency now submits Document 20 is irrelevant information for the purpose of section 25, which is discussed below.

Review of exemptions

Section 38 – Documents to which a secrecy provision applies

14. The Agency relies on section 38, in conjunction with section 30E(1) of the SD Act, to exempt the body-worn camera footage (Documents 21 and 22).
15. 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’.
16. For section 38 to apply, an enactment must be formulated with such precision that it specifies the actual information sought to be withheld.

Application of section 38 to the SD Act

17. ‘Protected information’ is defined in section 30D of the SD Act to mean:
 - ...
 - (ab) any information obtained from the use of a body-worn camera or tablet computer by a police officer or an ambulance officer acting in the course of the officer’s duty; or
 - (ac) any information obtained from the use of a body-worn camera or a tablet computer by a prescribed person, or a person belonging to a prescribed class of persons, acting in the course of the persons duties in the prescribed circumstances.
18. Section 30E(1) of the SD Act sets out the prohibition that applies to ‘protected information’ as defined in section 30D of the SD Act:

30E Prohibition of use, communication or publication of protected information

- (1) A person is guilty of an offence if –
 - (a) the person intentionally, knowingly or recklessly uses, communicates or publishes any information; and
 - (b) the person knows that, or is reckless as to whether, the information is protected information; and
 - (c) the person knows that, or is reckless as to whether, the use, communication or publication of the information is not permitted by this Division.

Penalty: in the case of a natural person, level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.

19. In summary, section 30E(1) of the SD Act prohibits the reckless or intentional disclosure of information obtained from a police body-worn camera.
20. I am satisfied section 30E(1) of the SD Act operates to prohibit the disclosure of information obtained from a police body-worn camera, including the disclosure of the footage requested by the Applicant under the FOI Act.
21. The unauthorised disclosure of such information is an offence and carries penalties under the SD Act. The penalties associated with disclosure, namely a fine and/or imprisonment, highlights the Legislature’s intention that such information should remain protected and not be disclosed.
22. Sections 30E(4) and 30E(5) detail the exceptions to the prohibition under section 30E(1):

...

- (4) Subsections (1) and (2) do not apply to—

- (a) the use, communication or publication of—
 - (i) any information that has been disclosed in proceedings in open court; or
 - (ii) any information that has entered the public domain; or
 - (b) the use or communication of protected information by a person who believes on reasonable grounds that the use or communication is necessary to help prevent or reduce the risk of serious violence to a person or substantial damage to property; or
 - (c) the communication to the Director-General (within the meaning of the Australian Security Intelligence Organisation Act 1979 of the Commonwealth) of protected information that relates or appears to relate to activities prejudicial to security (within the meaning of that Act); or
 - (d) the use or communication of information referred to in paragraph (c) by an officer of the Australian Security Intelligence Organisation in the performance of his or her official functions; or
 - (e) the use or communication of information to a foreign country or an appropriate authority of a foreign country in accordance with the Mutual Assistance in Criminal Matters Act 1987 of the Commonwealth.
- (5) Subsection (4)(c) and (d) do not authorise the use, communication or publication of protected information in respect of an emergency authorisation or corresponding emergency authorisation unless the use of powers under that authorisation has been approved under section 30 or the provisions of a corresponding law that correspond to section 30.
23. Based on the information before me, I am not satisfied any of the above exclusions apply to allow the release of body-worn camera footage in this matter.
24. I am satisfied:
- (a) the SD Act is an enactment in force, for the purpose of section 38;
 - (b) the footage, as described in the Applicant’s request, meets the definition of ‘protected information’, as defined in section 30D of the SD Act and would contain the specific information prohibited from disclosure under section 30E(1) of the SD Act;
 - (c) the enactment prohibits persons from disclosing information that would fall within the terms of the Applicant’s request; and
 - (d) I am the exceptions contained in sections 30E(4) and 30E(5) do not apply in this case.
25. Accordingly, I am satisfied Documents 21 and 22 are exempt from release under section 38 in conjunction with section 30E(1) of the SD Act.
26. The Schedule of Documents in **Annexure 1** outlines my decision in relation to section 38.

Section 30(1) – Internal working documents

27. The Agency refused access under section 30(1) to certain information in Document 3, which is a LEAP Incident report and case progress notes.
28. 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.

29. The exemption does not apply to purely factual material in a document.¹
30. It is not necessary for a document to be in the nature of opinion, advice or recommendation. Rather, the issue is whether release of the document would disclose matter of that nature.²
31. The term 'deliberative process' is interpreted broadly and includes any of the processes of deliberation or consideration involved in the functions of an agency, Minister or government.³
32. In *Re Waterford and Department of Treasury (No.2)*,⁴ the former Victorian Administrative Appeals Tribunal held:
- ... "deliberative processes" [is] wide enough to include any of the processes of deliberation or consideration involved in the functions of an agency... In short, ...its thinking processes — the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.
33. Having read the exempted information, I am satisfied it is information in the nature of advice and opinion recorded for the Agency's deliberative processes involved in responding to a police incident.

Would disclosure of the advice and opinion in the document be contrary to the public interest?

34. In deciding whether the information exempted by the Agency would be contrary to the public interest, I have given weight to the following relevant factors:⁵
- (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 document and the broader context giving rise to the creation of the documents;
 - (c) the stage of a decision or status of policy development or a process being undertaken at the time the communications were made;
 - (d) whether disclosure of the document 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;
 - (e) whether disclosure of the document would give merely a part explanation, rather than a complete explanation for the taking of a particular action or decision, which the Agency would not otherwise be able to explain upon disclosure; and
 - (f) the public interest in the community being better informed about the way in which the Agency carries out its functions, including its deliberative, consultative and decision making processes and whether the underlying issues require greater public scrutiny.
35. With respect to the application of section 30(1), the Agency considers disclosure of the information it considers is exempt from release would be contrary to the public interest, because:

...the denied information contains the personal opinion of a police member in relation to a family violence incident. I am satisfied that the personal opinion was provided for the consideration of other

¹ Section 30(3).

² *Mildenhall v Department of Education* (1998) 14 VAR 87.

³ *Brog v Department of Premier and Cabinet* (1989) 3 VAR 201 at [208].

⁴ [1984] AATA 67; (1984) 5 ALD 588; 1 AAR 1 at [58].

⁵ *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

police members and support staff as part of the deliberative and consultative processes associated with handling family violence incidents. In my view it would be contrary to the public interest to release this information as members of police must be able to freely communicate their professional opinions so as to ensure that these types of incidents are thoroughly investigated and to ensure that family violence risk assessments are subject to proper consideration.

36. I accept that information concerning police involvement in a family violence incident is highly sensitive in nature. I also accept the Agency's submission that an incident classification process is intended for the internal communications between its officers in connection with carrying out their law enforcement functions, including responding to family violence matters. I also note the future use of this information, which would form part of the Agency decision making concerning required legal actions and investigations.
37. To this extent, I consider the classification process to be an important process of the Agency, designed to support the safety and welfare of affected family members, and promote the effectiveness of the Agency's response to family violence incidents.
38. I note certain factors that contributed to the classification of the family violence incident were disclosed to the Applicant in Document 3. I am satisfied this information informs the Applicant about the factors considered by the Agency in its assessment of the incident without the need to disclose the actual classification.
39. Accordingly, having considered all relevant issues both for and against disclosure, I am satisfied the information identified as exempt by the Agency in Document 3 is exempt under section 30(1).
40. The Schedule of Documents in **Annexure 1** outlines my decision in relation to section 30(1).

Section 31(1) – Law enforcement documents

Section 31(1)(a)

41. Section 31(1)(a) provides a document is an exempt document if its disclosure under this Act would, or would be reasonably likely to, 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.
42. 'Reasonably likely' means that there is a real chance of an event occurring; it is not fanciful or remote.⁶
43. 'Prejudice' means to hinder, impair or undermine and includes actual prejudice as well as impending prejudice.⁷
44. 'In a particular instance' does not require a single specific investigation. This phrase can encompass specific, identified aspects of law, administration of law or investigations of breaches or potential breaches of law.⁸

Section 31(1)(d)

45. Section 31(1)(d) provides (subject to this section) 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'.

⁶ *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.

⁷ *Ibid*, *Bergman* at [66], referring to *Sobh v Police Force of Victoria* [1994] VicRp 2; [1994] 1 VR 41 at [55].

⁸ *Cichello v Department of Justice (Review and Regulation)* [2014] VCAT 340 at [24].

46. The exemption in section 31(1)(d) does not apply to widespread and well-known investigation methods and procedures.⁹
47. In determining the application of section 31(1), section 31(2) provides that the section will not apply to:
- (a) a document revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law;
 - (b) a document revealing the use of illegal methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law;
 - (c) a document containing any general outline of the structure of any programme adopted by an agency for investigating breaches of, or enforcing or administering, the law;
 - (d) a report on the degree of success achieved in any programme adopted by an agency for investigating breaches of, or enforcing or administering, the law;
 - (e) a report prepared in the course of routine law enforcement inspections or investigations by an agency which has the function of enforcing and regulating compliance with a particular law other than the criminal law;
 - (f) a report on a law enforcement investigation, where the substance of the report has been disclosed to the person who, or the body which, was the subject of the investigation—
if it is in the public interest that access to the document should be granted under this Act.
48. I am constrained from describing the exempted information in detail, as to do so would reveal the very information that gives rise to the exemption.
49. With respect to the application of section 31(1)(a), the Agency considers disclosure of the exempted information would be reasonably likely to prejudice the ongoing investigation subject to the FOI request. The Agency's decision letter states:
- The denied information refers to information ascertained by Police during the course of the investigation into this matter. I have been advised that the investigation remains unsolved. It is my opinion that the release of the denied information would be reasonably likely to prejudice any new investigation given these matters occurred in [month and year].
50. Having read the exempted information and noting the advice of the Agency that the information relates to an unresolved investigation, I am satisfied disclosure in this instance would be reasonably likely to prejudice the proper investigation of a possible breach of the law.
51. With respect to the application of section 31(1)(d), the Agency's decision letter states:
- Part of the deleted information comprises details of the methods and procedures used by police during the investigation into this matter. I am satisfied that the release of this information would be reasonably likely to prejudice the future effective use of those methods and procedures pursuant to the provisions of section 31(1)(d) of the Act.
52. Having reviewed the document subject to review, I am satisfied it relates to specific procedures employed by Agency officers and relevant police investigations.
53. While the existence of LEAP and the associated database is publicly known, I am not satisfied the functions, methods and procedures utilised by the Agency with LEAP and the associated database are widespread or widely known by the public.
54. I have considered the likely effect of disclosing the information to which the Agency refused access. I am satisfied its disclosure would be reasonably likely to undermine the use by the Agency and

⁹ *XYZ v Victoria Police* [2010] VCAT 255 at [177].

effectiveness of these methods and procedures used by police in carrying out criminal investigations and related law enforcement functions.

55. Section 31(2) provides the exemption under section 31(1) does not apply when there is a public interest in granting access to the document. However, I am not satisfied any of the exceptions set out in section 31(2) apply to the relevant information in the document subject to review.
56. Accordingly, I am satisfied the information identified by the Agency as exempt in Documents 1, 2 and 3, is exempt from release under sections 31(1)(a) and 31(1)(d).
57. The Schedule of Documents in **Annexure 1** outlines my decision in relation to section 31(1).

Section 33(1) – Documents affecting personal privacy of third parties

58. 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**);¹⁰ and
 - (b) such disclosure would be ‘unreasonable’.
59. 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 this may be reasonably determined.¹¹
60. A third party’s opinion or observations about another person’s conduct can constitute information in relation to a third party’s personal affairs.¹²

Do the documents contain personal affairs information of individuals other than the Applicant?

61. I am satisfied the documents contain personal affairs information relating to third parties, which include, names, addresses, telephone numbers as well as information of personal or private concern obtained by the Agency during police involvement.

Would disclosure of the personal affairs information in the documents be unreasonable?

62. The concept of ‘unreasonable disclosure’ involves balancing the public interest in the disclosure of official information with the personal interest in privacy in the particular circumstances of a matter.
63. In *Victoria Police v Marke*,¹³ 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’.¹⁴ 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’.¹⁵

¹⁰ Sections 33(1) and 33(2).

¹¹ Section 33(9).

¹² *Richardson v Business Licensing Authority* [2003] VCAT 1053, cited in *Davis v Victoria Police (General)* [2008] VCAT 1343 at [43], *Pritchard v Victoria Police (General)* [2008] VCAT 913 at [24], *Mrs R v Ballarat Health Services (General)* [2007] VCAT 2397 at [13].

¹³ [2008] VSCA 218 at [76].

¹⁴ *Ibid.*

¹⁵ *Ibid* at [79].

64. 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 personal affairs information is highly sensitive in nature as it concerns allegations of family violence and alleged criminal damage.

The documents include statements of third parties, photographs, videos and other investigation documents obtained or created by police officers in the course of carrying out their law enforcement functions.

I acknowledge the Applicant is aware of the circumstances around the creation of certain documents and may know the identities and personal information of certain third parties. However, even where an applicant may know the identity of a third party, disclosure of their personal affairs information under the FOI Act may still be unreasonable in the circumstances.¹⁶

(b) The Applicant's interest in the information and whether their purpose for seeking the information is likely to be achieved

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).¹⁷

I have considered information provided by the Applicant in support of their review application, including their submissions and reasons for seeking access to the documents in full.

Specifically, the Applicant seeks access to the documents in full to better understand the Agency's processes in response to the alleged family violence matters and to verify the accuracy of any information provided by third parties.

To the extent the Applicant seeks access to the documents in full, their purpose would be met by release of the third-party information.

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

I consider the Applicant's interest in the documents is personal in nature only.

I consider there exists a public interest in police processes, particularly in relation to the manner in which the police conduct their investigations. Further, I acknowledge a broader public interest in disclosure where it is clear from the face of a document there may be a miscarriage of process or outcome.

While I acknowledge the Applicant disputes the allegations of family violence however, there is nothing in the documents to suggest there was anything unusual about the way in which the Agency conducted the process of responding to an alleged breach of an intervention order.

Given the context and purpose for which the documents were created, I consider there is a strong public interest in protecting the personal privacy of affected third parties where documents concern allegations of family violence and the ability of the Agency to obtain and

¹⁶ *AB v Department of Education and Early Childhood Development* [2011] VCAT 1263 at [58]; *Akers v Victoria Police* [2003] VCAT 397 at [41].

¹⁷ *Victoria Police v Marke* [2008] VSCA 218 at [104].

record as much information as possible from third parties in relation to family violence incidents.

(d) The likelihood of further disclosure of the personal affairs information, if released

The FOI Act does not place any restrictions on an applicant's use or dissemination of documents obtained under FOI.¹⁸

I note the Applicant's stated intention to use the documents for future legal action against a third party. Therefore, there is reasonable likelihood that the personal affairs information would be disclosed further if released.

(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 (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.¹⁹ However, this obligation does not arise if:

- (a) the notification would be reasonably likely to endanger the life or physical safety of a person, or cause them undue distress, or is otherwise unreasonable in the circumstances;
- (b) the notification would be reasonably likely to increase the risk to the safety of a person experiencing family violence; or
- (c) it is not practicable to do so.²⁰

The Agency determined it was not practicable to consult with the third parties.

Although do not have the views of the third parties before me, considering the nature and context in which the information was provided to the Agency, I consider it reasonably likely that the third parties would object to the release of their information to the Applicant.

(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 whether the disclosure of the information would, or would be reasonably likely to, endanger the life or physical safety of any person.²¹

65. In summary, while I acknowledge the Applicant's genuine and compelling reasons for seeking access to the documents, I have determined to refuse access to the personal affairs information of third parties in the documents due to:

- (a) the confidential setting in which the personal information was provided by third parties, being to assist a police investigation into allegations of family violence and criminal damage;

¹⁸ Ibid at [68].

¹⁹ Section 33(2B).

²⁰ Section 33(2C).

²¹ Section 33(2A).

- (b) the information in the documents has not been aired or tested in open court;
- (c) the unconditional and unrestricted nature of disclosure under the FOI Act;
- (d) I am of the view the public interest in this case lies in preserving the privacy of the third parties' personal affairs information provided during a police investigation; and
- (e) with regard to personal affairs information of Agency officers, I am satisfied the Agency has released the bulk of this information and the outstanding information would not assist the Applicant for the reasons they seek access to the documents and the Applicant is able to read the document without the inclusion of this information.

66. The Schedule of Documents in **Annexure 1** outlines my decision in relation to section 33(1).

Section 35(1)(b) – Information obtained in confidence

67. 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.

Was the information obtained in confidence?

68. Whether information communicated by an individual to an agency was communicated in confidence is a question of fact.²²

69. It is necessary to consider the position from the perspective of the communicator, noting confidentiality can be expressed or implied from the circumstances of a matter.²³

70. There is no information before me concerning the expressed views of the third parties who provided information to the Agency. Nonetheless, having considered the circumstances in which the information was provided I am satisfied it is reasonable to conclude that the third parties communicated information to the Agency in the context of implied confidentiality.

71. Further, I believe when people provide statements to the police during an investigation, they do so with an expectation that the information will only be used for the purpose of the Agency's investigation and any related proceedings.

72. Accordingly, I am satisfied documents contain information communicated to the Agency in confidence.

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

73. The public interest test in section 35(1)(b) is narrow, in that it is directed toward the impact release would have on an agency's ability to obtain the same type of information in the future. It does not allow me to take into consideration an applicant's reasons for seeking access documents.

74. In *Williams v Victoria Police*²⁴ and in *RFJ v Victoria Police FOI Division*,²⁵ VCAT accepted evidence that persons would be less likely to make statements to Victoria Police if they were of the view the

²² *Ryder v Booth* [1985] VR 869 at [883]; *XYZ v Victoria Police* [2010] VCAT 255 at [264].

²³ *XYZ v Victoria Police* [2010] VCAT 255 at [265].

²⁴ *(General)* [2007] VCAT 1194 at [73].

²⁵ [2013] VCAT 1267 at [170].

making of such statements would not be kept confidential, subject to subsequent criminal prosecution.

75. Having considered the content and the context in which the information was communicated to the Agency, I am satisfied the public interest lies in the Agency being able to maintain the confidentiality of individuals who provide information and their personal accounts to the Agency during a police investigation. Further, I accept if such information were to be routinely released, it would hinder the ability of law enforcement agencies to investigate and prosecute alleged criminal offences and to efficiently and effectively carry out its criminal investigation and law enforcement functions.
76. Accordingly, I am satisfied the information communicated by third parties and exempted by the Agency in accordance with section 35(1)(b) is exempt.
77. The Schedule of Documents in **Annexure 1** outlines my decision in relation to section 35(1)(b).

Section 25 – Deletion of exempt or irrelevant information

78. 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.
79. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’²⁶ 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 25.²⁷
80. With respect to Document 20, having considered the Agency’s submission I am satisfied the document falls outside the scope of the Applicant’s FOI request and therefore, refused as irrelevant information under section 25.
81. Having read the documents released in part, I am satisfied it was practicable for the Agency to provide edited copies with irrelevant and exempt material deleted as the edited copies retained meaning.
82. I also agree with the Agency that the editing of certain documents is not practicable as the deletion of exempt material would render those documents meaningless, and those documents are exempt from release in full.

Conclusion

83. On the information before me, I am satisfied information in the documents is exempt from release under sections 30(1), 31(1)(a), 31(1)(d), 33(1), 35(1)(b) and 38 in conjunction with section 30E(1) of the *Surveillance Devices Act 1999* (Vic).
84. Accordingly, the result of my decision is the same as the Agency’s and no further information is to be released.

Review rights

85. 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.²⁸

²⁶ *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].

²⁷ *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].

²⁸ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

86. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.²⁹
87. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.³⁰
88. 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.
89. 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.³¹

²⁹ Section 52(5).

³⁰ Section 52(9).

³¹ Sections 50(3F) and 50(3FA).

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
1.	[date]	Law Enforcement Assistance Program (LEAP) report	4	Refused in full Sections 31(1)(a), 33(1)	Refuse in full Sections 31(1)(a), 33(1)	<p>Section 31(1)(a): For the reasons set out in the Notice of Decision, I am satisfied disclosure of the document would prejudice the Agency’s investigation into a breach or possible breach of the law.</p> <p>Section 33(1): For the reasons provided in the Notice of Decision, I am satisfied it would be unreasonable to disclose the personal affairs information in this document.</p> <p>Section 25: I am satisfied it remains impracticable to provide an edited copy of the document with exempt and irrelevant information deleted as to do so would render the document meaningless.</p>
2.		Investigative document	1	Refused in full Sections 31(1)(a), 31(1)(d), 33(1)	Refuse in full Sections 31(1)(a), 31(1)(d), 33(1)	<p>Section 31(1)(a): See comments for Document 1.</p> <p>Section 31(1)(d): For the reasons set out in the Notice of Decision, I am satisfied that disclosure of the document would disclose methods and procedures utilised by police that are not widely known.</p> <p>Section 33(1): See comments for Document 1.</p> <p>Section 25: See comments for Document 1.</p>
3.	[date]	LEAP incident report	6	Released in part	Release in part	<p>Section 30(1): For the reasons set out in the Notice of Decision I am satisfied section 30(1)</p>

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				Sections 30(1), 33(1), 25	Sections 30(1), 33(1), 25	<p>applies to a very small amount of information in the document.</p> <p>Section 33(1): See comments for Document 1. Further to the Agency's exemptions, I am also satisfied additional personal affairs information is exempt in the document. A marked-up copy has been provided to the Agency indicating the exempt material.</p> <p>Section 25: I am satisfied it was practicable for the Agency to provide the Applicant with an edited copy of the document as to do so would not have taken considerable time and effort and the document retained meaning.</p>
4.	[date]	Electronic Patrol Duty Return (ePDR) form	35	Refused in full Sections 33(1), 25	Refuse in full Sections 33(1), 25	<p>Section 33(1): The information in the document relates to police attendance to an incident. I am satisfied the information recorded relates to a third party, who is not the Applicant. For the reasons set out in the Notice of Decision I am satisfied it would be unreasonable to release this information.</p> <p>Section 25: I consider information the Agency deleted in the document under section 25 is irrelevant to scope of the Applicant's request as it relates to police attendance at other reported events.</p> <p>I am satisfied it remains impracticable to provide an edited copy of the document with exempt</p>

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						and irrelevant information deleted as to do so would render the document meaningless.
5.	[date]	Cover Sheet	1	Released in part Section 33(1)	Release in part Section 33(1)	Section 33(1): The Agency removed the signatures of a third party. For the reasons in the Notice of Decision, I am satisfied release of the personal affairs information is unreasonable in the circumstances. Section 25: See comments for Document 3.
6.	[date]	Personal document	2	Refused in full Section 33(1)	Refuse in full Section 33(1)	Section 33(1): See comments for Document 1. Section 25: See comments for Document 1.
7.	[date]	Briefing note	3	Released in part Section 33(1)	Release in part Section 33(1)	Section 33(1): See comments for Document 5. Section 25: See comments for Document 3.
8.	[date]	LEAP intent to summons report	1	Released in part Section 33(1)	Release in part Section 33(1)	Section 33(1): See comments for Document 5. Section 25: See comments for Document 3.
9.	[date]	Briefing note	1	Released in part Section 33(1)	Release in part Section 33(1)	Section 33(1): See comments for Documents 1 and 5. Section 25: See comments for Document 3.
10.	[date]	Briefing note	2	Released in part Section 33(1)	Release in part Section 33(1)	Section 33(1): See comments for Documents 1 and 5. Section 25: See comments for Document 3.

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11.	[date]	Brief Head	2	Released in part Section 33(1)	Release in part Section 33(1)	Section 33(1): See comments for Document 5. Section 25: See comments for Document 3.
12.	[date]	Preliminary Brief – Statement Made by Informant	5	Released in part Section 33(1)	Released in part Sections 33(1), 25	Section 33(1): See comments for Documents 1 and 5. Section 25: See comments for Document 3.
13.		Charge sheet	1	Released in part Section 33(1)	Release in part Sections 33(1), 25	Section 33(1): See comments for Documents 1 and 5. Section 25: See comments for Document 3.
14.	[date]	[Document description]	2	Refused in full Sections 33(1), 35(1)(b)	Refuse in full Sections 33(1), 35(1)(b)	Section 33(1): See comments for Document 1. Section 35(1)(b): For the reasons set out in the Notice of Decision, I am satisfied the document would disclose information communicated in confidence the disclosure of which would be contrary to the public interest in that it would impair the ability of the Agency to receive similar information in the future. Section 25: See comments for Document 1.
15.	[date]	Witness statement	3	Refused in full Sections 33(1), 35(1)(b)	Refuse in full Sections 33(1), 35(1)(b)	Section 33(1): See comments for Document 1. Section 35(1)(b): See comments for Document 14. Section 25: See comments for Document 1.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
16.		Statutory Declaration	1	Refused in full Sections 33(1), 35(1)(b)	Refused in full Sections 33(1), 35(1)(b)	Section 33(1): See comments for Document 1. Section 35(1)(b): See comments for Document 14. Section 25: See comments for Document 1.
17.	[date]	Exhibit 1 – LEAP extract	5	Released in part Section 33(1)	Release in part Sections 33(1), 25	Section 33(1): See comments for Document 1. Section 25: See comments for Document 3.
18.		Exhibit 2 - photos	4	Refused in full Section 33(1)	Refuse in full Section 33(1)	Section 33(1): See comments for Document 1. Section 25: See comments for Document 1.
19.		Criminal history	2	Released in full	Not subject to review	
20.		CCTV clip (Point 1)		Refused in full Sections 31(1)(a), 33(1)	Refused in full Section 25	Section 25: For the reasons provided by the Agency and set out in the Notice of Decision, I am satisfied the document is in fact irrelevant information and is to be refused on that basis.
21.		Exhibit 3 - Body-Worn Camera Footage		Refused in full Section 38	Refused in full Section 38	Section 38: I am satisfied information in the document is 'protected information' and exempt from release under section 38 in conjunction with section 30E(1) of the SD Act. Section 25: See comments for Document 1.
22.		Exhibit 4 - Body-Worn Camera Footage		Refused in full Section 38(1)	Refused in full Section 38	Section 38: See comments for Document 21.