

## Notice of Decision and Reasons for Decision

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| Applicant:             | 'CY2'   |
| Agency:                | Department of Justice and Community Safety  |
| Decision date:         | 26 April 2021   |
| Exemptions considered: | Sections 31(1)(a), 31(1)(d)   |
| Citation:              | 'CY2' and Department of Justice and Community Safety<br>(Freedom of Information) [2021] VICmr 111 (26 April 2021) |

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FREEDOM OF INFORMATION – law enforcement documents – road safety cameras – installation and testing – manuals – camera equipment layout

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 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 is the same as the Agency's decision.

I am satisfied certain information in the documents is exempt under sections 31(1)(a) and 31(1)(d).

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

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

26 April 2021

## Reasons for Decision

### Background to review

1. The Applicant made a request to the Agency seeking access to certain documents. Following consultation with the Agency, the Applicant clarified their initial request.
2. The Applicant's clarified request seeks access to the following documents:
  - Any manuals relating to the camera located at the intersection of [named roads, location] on [date]
  - The testing and maintenance reports related to the above camera carried out either side of the date of the relevant infringement (date).
3. The Agency identified nine documents falling within the terms of the Applicant's request and granted access to certain documents in part and refused access to other documents in full under sections 31(1)(a), 31(1)(d), 33(1) and 38.
4. The Agency's decision letter sets out the reasons for its decision.

### Review

5. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
6. During the review, the Applicant advised they do not seek access to the personal affairs information of third party individuals. Accordingly, this information is considered as irrelevant information for the purposes of section 25.
7. Following enquiries made by OVIC staff, the Agency advised there was an error in its decision letter regarding the application of section 38. The Agency no longer relies on this exemption, and it is not considered as part of this review.
8. I have examined copies of the documents subject to review.
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 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

#### ***Sections 31(1)(a)) and 31(1)(d)***

13. Section 31(1)(a) provides, subject to section 31, '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’.

14. ‘Reasonably likely’ means there is a real chance of an event occurring; it is not fanciful or remote.<sup>1</sup>
15. The term ‘prejudice’ means to hinder, impair or undermine and includes actual prejudice as well as impending prejudice.<sup>2</sup>
16. Section 31(1)(a) may apply in two instances: firstly, where disclosure would prejudice an investigation; and secondly, where disclosure would prejudice the proper enforcement or proper administration of the law, which includes regulatory monitoring and compliance activities.<sup>3</sup>
17. Section 31(1)(d) provides, subject to section 31, that a document is an exempt document if its disclosure under the FOI Act 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’.
18. The exemptions in section 31(1) do not apply to widespread and well-known law enforcement or investigation methods and procedures.<sup>4</sup>
19. The Agency’s decision letter states:

‘Administration of the law’ under this section includes the administration of the *Road Safety Act 1986* (Road Safety Act) and the *Road Safety Road Rules 2009* (Road Safety Road Rules).

The release of the documents would reveal information about the operation of the road safety cameras and would be reasonably likely to prejudice the enforcement or proper administration of the Road Safety Act and the Road Safety Road Rules relating to the road safety camera program.

Release of the documents would undermine the public purpose of the road safety camera program which is to enhance road safety and reduce the incidents of traffic deaths and injuries. There is also the potential for the information contained in the documents to be used to avoid detection and prosecution with the consequent risk to public safety.

The primary function of the road safety cameras is to detect vehicles that have exceeded the applicable speed limit. By reducing speed, road safety is improved. There is a clear and well-established relationship between driving at speed and subsequent road trauma, including the likelihood and severity of collisions. Road safety cameras reduce road trauma by changing driver behaviour. They not only encourage drivers to slow down and obey traffic signals, but research has found that drivers who received fines in the past are less likely to speed or run a red light in the future.

The documents exempt under this section comprises information that is not in the public domain as it relates to the procedures and processes for the set-up of the mobile digital photographic speed detection device, camera equipment and ancillary equipment. It also contains diagrams of the components and equipment, wiring locations where the components are located when the mobile speed device and camera are set up.

The release of this material would disclose methods and procedures used in detecting potential breaches of the law and would allow someone with the appropriate knowledge to undermine the effectiveness of the system. Furthermore, the disclosure of this information could lead to interference with or damage to, camera sites and equipment.

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<sup>1</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>2</sup> *Sobh v Police Force of Victoria* [1994] 1 VR 41 at [55].

<sup>3</sup> *JCL v Victoria Police* [2012] VCAT 1060 at [28].

<sup>4</sup> *XYZ v Victoria Police* [2010] VCAT 255 at [177].

20. In *Cichello v Department of Justice*,<sup>5</sup> the Victorian Civil and Administrative Tribunal (VCAT) accepted sworn evidence before the Tribunal in relation to the location and design of traffic cameras and camera testing:

I accept that public release of the site diagram revealing the specific location of the infrastructure would unfortunately lead to an increase in deliberate damage to that infrastructure. This would prejudice the respondent's capacity to detect the speed of vehicles and enforce speed limits. I am also satisfied that, if the specific location of the infrastructure were publicly known, that there is a reasonable likelihood that some drivers would use such information to attempt to avoid detection for offences under the Road Safety Act 1986. I accept that this would prejudice the operation and enforcement of the Road Safety Act 1986. It would thereby undermine the administration of the law. It would hinder the detection of individual offences. Accordingly, the disclosure would be reasonably likely to prejudice the effectiveness of the road safety camera system. The site diagram is exempt.

I accept that release of information revealing what is monitored and the test equipment used would similarly facilitate evasion of the road rules by some drivers. I accept that it could in some instances lead to (dangerous) methods of camera avoidance (jeopardizing the safety of road users). I accept that the release of what is monitored and the test equipment would in these circumstances be reasonably likely to prejudice the effectiveness of the road safety devices. I also accept that it would be reasonably likely to prejudice the proper administration of the road laws. It would undermine the administration of the law or the detection of individual offences. Accordingly, the disclosure would be reasonably likely to prejudice the effectiveness of those methods or procedures. What is monitored and the test equipment used are exempt.

21. VCAT also found the Instruction Manual prepared by the manufacturer of the road safety camera system installed would be exempt in full for the same reasons as those detailed above.<sup>6</sup>
22. The Applicant provided extensive submissions as to the application of sections 31(1)(a) and 31(1)(d) to the requested documents, including:

[Quoted submissions redacted].

23. I acknowledge the Applicant's submissions and their concerns about the reliability of road safety cameras.
24. However, I note the documents contain information that is not publicly available, such as diagrams of the components and equipment, wiring locations where the components are located when the mobile speed device and camera are set up. I also accept the Agency's submission in relation to the documents and I acknowledge its decision is supported by the *Cichello* decision noted above. I am satisfied the disclosure of the requested documents would disclose methods and procedures for detecting breaches of the law and would prejudice the Agency's ability to enforce speed limits.
25. Further, the FOI Act provides for the unrestricted and unconditional release of information. I accept the Agency's submission the public release of the requested documents would be reasonably likely to undermine the road safety program, which is an important public safety mechanism designed to enhance road safety and change driver behaviour.
26. Accordingly, I am satisfied certain information in the documents is exempt under sections 31(1)(a) and 31(1)(d).

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

27. Section 25 requires an agency to grant access to an edited copy of a document where it is practicable for to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.

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<sup>5</sup> (*Review and Regulation*) [2014] VCAT 340.

<sup>6</sup> *Cichello v Department of Justice (Review and Regulation)* [2014] VCAT 340

28. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'<sup>7</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>8</sup>
29. I have considered the effect of deleting exempt information from certain documents. I am satisfied it is practicable to delete the relevant information, as to do so would not require substantial time and effort, and the edited documents would retain meaning.

## Conclusion

30. On the information before me, I am satisfied the documents are exempt under sections 31(1)(a) and 31(1)(d).
31. Where I am satisfied it is practicable to provide the Applicant with an edited copy of a document with exempt information deleted in accordance with section 25, I have granted access to that document. Where it is not practicable, access to a document is denied in full.
32. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

## Review rights

33. If the Applicant is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.<sup>9</sup>
34. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>10</sup>
35. 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.
36. 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>11</sup>

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<sup>7</sup> *Mickelborough v Victoria Police (General)* [2009] VCAT 2786 at [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967 at [82].

<sup>8</sup> *Honeywood v Department of Human Services* [2006] VCAT 2048 at [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 at [140] and [155].

<sup>9</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>10</sup> Section 52(5).

<sup>11</sup> Sections 50(3F) and (3FA).

## Annexure 1 – Schedule of Documents

| Document No. | Date of Document | Document Description   | No. of Pages | Agency Decision   | OVIC Decision  | OVIC Comments  |
|--------------|------------------|--|--------------|---|--|--|
| 1.           | [Date]           | Fixed Digital Road Safety System<br>Unscheduled Test Report  | 17           | Released in part<br><br>Sections 31(1)(a),<br>31(1)(d), 33(1) | Release in part<br><br>Sections 31(1)(a),<br>31(1)(d), 25<br><br>An edited copy of the document is to be released with information the Agency determined as exempt and irrelevant deleted in accordance with section 25. | Sections 31(1)(a) and 31(1)(d): I am satisfied certain information in the document is exempt under sections 31(1)(a) and 31(1)(d) for the reasons outlined above in the Notice of Decision.<br><br>Section 25: The Applicant does not seek access to the personal affairs information of individuals in the document.<br><br>I am satisfied it is practicable to provide the Applicant with an edited copy of the document with exempt and irrelevant information deleted in accordance with section 25. |
| 2.           | [Date]           | Fixed Digital Road Safety System<br>Site Routine Test Report | 18           | Released in part<br><br>Sections 31(1)(a),<br>31(1)(d), 33(1) | Release in part<br><br>Sections 31(1)(a),<br>31(1)(d), 25<br><br>An edited copy of the document is to be released with information the Agency determined as exempt and irrelevant deleted in accordance with section 25. | Sections 31(1)(a) and 31(1)(d): See comments for Document 1.<br><br>Section 25: See comments for Document 1.   |

| Document No. | Date of Document | Document Description  | No. of Pages | Agency Decision  | OVIC Decision   | OVIC Comments  |
|--------------|------------------|---|--------------|--|---|--|
| 3.           | [Date]           | Fixed Digital Road Safety Cameras Programmed Maintenance Report | 24           | Released in part<br><br>Sections 31(1)(a), 31(1)(d), 33(1) | Release in part<br><br>Sections 31(1)(a), 31(1)(d), 25<br><br>An edited copy of the document is to be released with information the Agency determined as exempt and irrelevant deleted in accordance with section 25. | Sections 31(1)(a) and 31(1)(d): See comments for Document 1.<br><br>Section 25: See comments for Document 1. |
| 4.           | [Date]           | Fixed Digital Road Safety Cameras Programmed Maintenance Report | 24           | Released in part<br><br>Sections 31(1)(a), 31(1)(d), 33(1) | Release in part<br><br>Sections 31(1)(a), 31(1)(d), 25<br><br>An edited copy of the document is to be released with information the Agency determined as exempt and irrelevant deleted in accordance with section 25. | Sections 31(1)(a) and 31(1)(d): See comments for Document 1.<br><br>Section 25: See comments for Document 1. |

| Document No. | Date of Document | Document Description | No. of Pages | Agency Decision  | OVIC Decision  | OVIC Comments   |
|--------------|------------------|----------------------|--------------|--|--|---|
| 5.           | [Date]           | Manual               | 27           | Refused in full<br><br>Sections 31(1)(a),<br>31(1)(d), 33(1) | Refuse in full<br><br>Sections 31(1)(a),<br>31(1)(d) | Sections 31(1)(a) and 31(1)(d): See comments for Document 1.<br><br>Section 25: I am satisfied it is not practicable to provide the Applicant with an edited copy of the document with exempt and irrelevant information deleted in accordance with section 25. |
| 6.           | [Date]           | Specifications       | 76           | Refused in full<br><br>Sections 31(1)(a),<br>31(1)(d), 33(1) | Refuse in full<br><br>Sections 31(1)(a),<br>31(1)(d) | Sections 31(1)(a) and 31(1)(d): See comments for Document 1.<br><br>Section 25: See comments for Document 5.  |
| 7.           | [Date]           | User Manual          | 33           | Refused in full<br><br>Sections 31(1)(a),<br>31(1)(d), 33(1) | Refuse in full<br><br>Sections 31(1)(a),<br>31(1)(d) | Sections 31(1)(a) and 31(1)(d): See comments for Document 1.<br><br>Section 25: See comments for Document 5.  |
| 8.           | [Date]           | Installation Manual  | 66           | Refused in full<br><br>Sections 31(1)(a),<br>31(1)(d), 33(1) | Refuse in full<br><br>Sections 31(1)(a),<br>31(1)(d) | Section 31(1)(a) and 31(1)(d): See comments for Document 1.<br><br>Section 25: See comments for Document 5.   |



| Document No. | Date of Document | Document Description | No. of Pages | Agency Decision  | OVIC Decision   | OVIC Comments   |
|--------------|------------------|----------------------|--------------|--|---|---|
| 9.           | [Date]           | Tester Manual        | 20           | <p><b>Refused in full</b></p> <p>Sections 31(1)(a), 31(d), 33(1)</p> | <p><b>Refuse in full</b></p> <p>Sections 31(1)(a), 31(1)(d)</p> | <p><b>Sections 31(1)(a) and 31(1)(d):</b> See comments for Document 1.</p> <p><b>Section 25:</b> See comments for Document 5.</p> |