

Notice of Decision and Reasons for Decision

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| Applicant: | 'F15' |
| Agency: | Victoria Police |
| Decision date: | 18 August 2023 |
| Exemptions and provision considered: | Sections 30(1), 31(1)(d), 33(1), 35(1)(b) and 38 of the <i>Freedom of Information Act 1982</i> (Vic) in conjunction with the <i>Surveillance Devices Act 1999</i> (Vic) |
| Citation: | 'F15' and Victoria Police (Freedom of Information) [2023] VICmr 85 (18 August 2023) |

FREEDOM OF INFORMATION – police documents – Law Enforcement Assistance Program (LEAP) – handwritten notes – intervention order – preliminary brief – exhibits – witness statements – photographs – search warrant – affidavit for a search warrant – seizure of property – body worn camera footage – 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.

My decision on the Applicant's request differs from the Agency's decision. While I am satisfied the documents are exempt from release under sections 33(1), 35(1)(b) and 38, I am not satisfied certain information is exempt from release under sections 30(1) or 31(1)(d).

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, access is refused in full.

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

A marked-up copy of the documents indicating exempt or irrelevant information in accordance with my decision has also been provided to the Agency.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

18 August 2023

Reasons for Decision

Background to review

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

All documents relating to an incident that was reported on the [date] at [address] by [named person]. Several frivolous and vexatious allegations were made against me and I would like to know what was said. I would, also, like a copy of the affidavit that was used to procure a Search Warrant on my property and any documents pertaining as to why it was necessary to seize our home computer.

2. The Agency identified 37 documents falling within the terms of the Applicant's request and granted access to six documents in full and refused access to 24 documents in part and seven documents in full under sections 30(1), 31(1)(d), 33(1), 35(1)(b) and 38 in conjunction with section 30D and 30E of the *Surveillance Devices Act 1999* (Vic) (**SD Act**). The Agency's decision letter sets out the reasons for its decision.

Review application

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. I have examined a copy of the documents subject to review with the exception of the requested body worn camera footage on the basis of previous decisions of this office where, as a discreet document, it is accepted that it is exempt from release under section 38 in conjunction with section 30E of the SD Act.
5. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
6. I have considered all communications and submissions received from the parties.
7. In undertaking my review, I have had regard to the object of the FOI Act, which is to create a general right of access to information in the possession of the Government or other public bodies, limited only by exceptions and exemptions necessary to protect essential public interests, privacy and business affairs.
8. I note Parliament's intention the FOI Act must be interpreted so as to further the object of the Act and any discretions conferred by the Act must be exercised, as far as possible, so as to facilitate and promote the disclosure of information in a timely manner and at the lowest reasonable cost.
9. In conducting a review under section 49F, section 49P requires that I make a new or 'fresh decision'. Therefore, my review does not involve determining whether the Agency's decision is correct, but rather requires my fresh decision to be the 'correct or preferable decision'.¹ This involves ensuring my decision is correctly made under the FOI Act and any other applicable law in force at the time of my decision.

¹ *Drake v Minister for Immigration and Ethnic Affairs* (1979) 24 ALR 577 at [591].

Review of exemptions

Section 30(1) – Internal working documents

10. 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.
11. The exemption does not apply to purely factual material in a document.²
12. The Agency applied section 30(1) to Document 3 only.

Does the document 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?

13. For the requirements of section 30(1) to be met, a document must contain matter in the nature of opinion, advice or recommendation prepared by an agency officer, or consultation or deliberation between agency officers.
14. 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.³
15. The document comprises handwritten notes made by an Agency officer. The exempt information records the opinion of an Agency officer with respect to the reasons why another officer was asked to take over the investigation of an incident.
16. As such, I am satisfied the first requirement for section 30(1) is met.

Was the document 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?

17. 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.⁴
18. In *Re Waterford and Department of Treasury (No.2)*,⁵ 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.

² Section 30(3).

³ *Mildenhall v Department of Education* (1998) 14 VAR 87.

⁴ *Brog v Department of Premier and Cabinet* (1989) 3 VAR 201 at [208].

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

19. The document was made in the course of, and for the purpose of, the Agency's investigation of an incident as part of its law enforcement functions.
20. As such, I am satisfied the second requirement for section 30(1) is met.

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

21. In deciding if release is 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.
22. In doing so, I have given consideration to the following factors, where relevant:⁶
 - (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;
 - (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 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;
 - (e) whether disclosure of the documents would give merely a part explanation, rather than a complete explanation for the taking of a particular decision or the outcome of a process, which the Agency would not otherwise be able to explain upon disclosure of the documents;
 - (f) the impact of disclosing documents in draft form, including disclosure not clearly or accurately representing a final position or decision reached by the Agency at the conclusion of a decision or process; and
 - (g) 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.
23. In its decision, the Agency states disclosure of the exempt information would be contrary to the public interest as:

... police must be able to freely communicate their professional opinions and thought processes so as to ensure that these types of incidents are thoroughly investigated and to ensure that decisions made regarding the direction of investigations are subject to proper and thorough deliberation.
24. In my view, I do not consider disclosure would be contrary to the public interest for the following reasons:
 - (a) Disclosure will provide transparency around why there was a change in the primary investigator of the matter.

⁶ *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

- (b) I do not accept disclosure of this information will inhibit the thoroughness of the Agency's investigations of incidents as part of fulfilling its law enforcement functions, noting it is the Agency's core function.
 - (c) I do not accept disclosure of this information will inhibit similar decisions being made and recorded in the future, where it is identified a change in investigator is required. The recording of such information is reasonable as part of expected record-keeping practices by public sector agencies.
25. Accordingly, I am not satisfied that information in Document 3 is exempt from release under section 30(1).

Section 31(1)(d) – Disclosure of methods for preventing, detecting, investigating breaches of the law

26. 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'. Section 31(1)(d) is subject to other provisions in section 31.
27. The exemptions in section 31(1) do not apply to widespread and well-known methods and procedures.⁷
28. The Agency exempted Document 37 in full under section 31(1)(d), which is an affidavit for a search warrant. I note the executed search warrant (Document 36) was released by the Agency to the Applicant in part with a signature deleted.
29. In its decision, the Agency states:
- Affidavits contain details of the reasons that the police have for believing that they will find evidence of an indictable offence on the premises they wish to search. The affidavit for a search warrant also contains details of procedures utilised by police for dealing with matters arising out of possible breaches of the law, the disclosure of which would be likely to prejudice the effectiveness of those procedures.
30. The executed search warrant (Document 36) sets out the reasons for the warrant was for the 'recovery of evidence relating to investigation of [action]'. Document 37 sets out more detailed facts and other grounds for seeking a search warrant.
31. While the document discloses methods used by police in investigating an alleged criminal offence, I do not accept disclosure will be reasonably likely to prejudice the effectiveness of the methods and procedures used by police in future investigations for the following reasons:
- (a) the methods recorded in this document are specific to a particular investigation;
 - (b) the summary of the reasons for obtaining a search warrant have been disclosed to the Applicant already in Documents 3 and 36;
 - (c) considered objectively, based on the circumstances of the investigation, the document does not disclose any methods or procedures that would not be expected to have been used; and

⁷ XYZ v Victoria Police [2010] VCAT 255 at [177], referring to *Re Lawless v Secretary to Law Department* (1985) 1 VAR 42, 50.

- (d) it is unlikely that the information can be used by members of the public to subvert the law or the effectiveness of future investigations.

32. Accordingly, I am not satisfied the document is exempt from release under section 31(1)(d).

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

33. 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**);⁸ and
- (b) such disclosure would be ‘unreasonable’.

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

- 34. 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.⁹
- 35. 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 nature of disclosure under the FOI Act is unrestricted and unconditional, this is to be interpreted by reference to the capacity of any member of the public to identify a third party.
- 36. The documents disclose identifying information of third parties who reported an alleged incident to the police. It includes information that explicitly identifies the third parties such as their names and contact information, but also includes details of what they reported to the police and information about their property.
- 37. The documents also identify police officers, other agency staff and officers of an emergency services agency who provided information to the police as witnesses, having attended an alleged incident in their professional capacity. It includes details of what witnesses observed.
- 38. I am satisfied this is personal affairs information for the purposes of this exemption.

Would disclosure of the personal affairs information be unreasonable?

- 39. 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.
- 40. In *Victoria Police v Marke*,¹⁰ 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’.¹¹ The Court further held, ‘[t]he protection of privacy, which lies at the

⁸ Sections 33(1) and 33(2).

⁹ Section 33(9).

¹⁰ [2008] VSCA 218 at [76].

¹¹ *Ibid.*

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'.¹²

Personal affairs information of alleged victims

41. In determining whether disclosure of the personal affairs information of alleged victims would be unreasonable in the circumstances, I have considered the following factors:
- (a) The nature of the personal affairs information is described above. In my view, the nature of this information is sensitive in the circumstances, having considered the context in which it was obtained by the Agency.
 - (b) The information was obtained by the Agency during a police investigation of an alleged incident. I am of the view third parties, who provided the information to the Agency as part of its investigation, did so on the assumption the information would remain confidential unless required for a subsequent criminal investigation or legal process. In the circumstances, I am satisfied the third parties would not have unreasonably expected the information they provided to the Agency as part of a police investigation would be disclosed to the Applicant under the FOI Act.
 - (c) The Applicant seeks access to the documents to pursue legal action, because they are concerned with the veracity of the allegations that were made against them and the subsequent police investigation and granting of a search warrant.
 - (d) I note the Applicant is likely aware of the identity of third parties in the particular circumstances of this matter, having considered the nature of the incident to which the documents relate. Nevertheless, even where an applicant claims to know the identity of a third party, disclosure of their personal affairs information may still be unreasonable in the circumstances.¹³
 - (e) I am of the view there is a public interest in the Agency maintaining its ability to receive confidential information on a voluntary basis from members of the public in order to conduct investigations into alleged breaches or possible breaches of the criminal law. If information of this type were to be routinely disclosed under the FOI Act, I am satisfied it would jeopardise the Agency's ability to carry out its investigative and law enforcement functions.
 - (f) There is no information before me to suggest the Applicant intends to widely disseminate the documents, other than to pursue legal action. Nevertheless, I consider it is reasonably likely the personal privacy of the third parties would be detrimentally impacted should their personal affairs information in the documents be disclosed under the FOI Act.
 - (g) I do not have any information before me as to the views of the third parties regarding disclosure of their personal affairs information. I accept it was not practicable for the Agency to consult with the third parties in the circumstances of this matter. However, having considered the sensitive nature of the information in the documents and the circumstances in which it was obtained by the Agency, I am of the view the individuals concerned would be reasonably likely to object to the release of their personal affairs information under the FOI Act.

¹² Ibid at [79].

¹³ *AB v Department of Education and Early Childhood Development* [2011] VCAT 1263 at [58]; *Akers v Victoria Police* [2003] VCAT 397 at [41].

- (h) 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.¹⁴ There is no information before me to suggest this is a relevant factor in this case.
42. On balance, I am satisfied disclosure of the personal affairs information of the alleged victims is unreasonable in the circumstances.

Personal affairs information of public sector officers

43. The documents also contain personal affairs information of police members, other agency officers, and officers of an emergency services agency who provided information to the police as witnesses, having attended to an alleged incident in their professional capacity. I will refer to these persons as 'agency officers' hereafter.
44. In determining whether disclosure of the personal affairs information of agency officers would be unreasonable in the circumstances, I have considered the following factors:
- (a) Whether an agency officer's personal affairs information is exempt from release under section 33(1) must be considered in the context of each matter. Subject to an agency demonstrating special circumstances, there is nothing particularly sensitive about matters occurring or arising from the course of an agency officer's professional duties or work responsibilities as a public servant.
 - (b) I generally consider it would not be unreasonable to disclose personal affairs information of an agency officer where a document sought is an official document of the agency and records agency staff carrying out their usual employment duties and responsibilities within a professional context. In this case, I consider personal information pertaining to Agency officers is recorded in the context of them performing their professional duties.
 - (c) While I note certain Agency officers are considered to be witnesses, nevertheless I consider they were involved in the matter in a professional capacity rather than in a private capacity.
 - (d) The personal affairs information is not sensitive in the context of this matter.
 - (e) I consider the personal privacy of the third parties would not be detrimentally impacted should their personal affairs information be disclosed under the FOI Act.
 - (f) There is no information before me to suggest the third parties would object to disclosure of their personal affairs information, nor do I consider it likely given the information relates to them in their professional capacity.
 - (g) There is no information before me to suggest disclosure would or would be reasonably likely to endanger the life or physical safety of any person.
45. As such, I consider it would not be unreasonable to disclose most personal affairs information concerning agency officers. However, I am satisfied it would be unreasonable to disclose signatures.

¹⁴ Section 33(2A).

Personal affairs information of the Applicant's solicitor

46. I am not satisfied disclosure of the name of the Applicant's solicitor would be unreasonable given their professional relationship with the Applicant.
47. Accordingly, having carefully considered the circumstances of this matter, I am satisfied certain information is exempt from release under section 33(1). However, I have determined to release further information to the Applicant where I am satisfied it is not exempt from release under section 33(1).
48. The Schedule of Documents in **Annexure 1** outlines my decision in relation to section 33(1).

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

49. A document is exempt from release 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?

50. Whether information communicated by an individual to an agency was communicated in confidence is a question of fact.¹⁵
51. In doing so, 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.¹⁶
52. The Agency has exempted three witness statements obtained by the Agency as part of its investigation under section 35(1)(b).
53. There is nothing on the face of the documents to indicate the information was communicated in confidence. However, for the purposes of section 35(1)(b), a document need not be marked 'confidential' for the content to be considered information communicated in confidence.¹⁷
54. I agree with observations made in *Akers v Victoria Police*,¹⁸ where the Victorian Civil and Administrative Tribunal (**VCAT**) noted:

... 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.
55. I consider the third parties who made statements to the Agency as part of the police investigation into an alleged offence, did so with the expectation the information they provided would remain confidential unless required for a subsequent criminal investigation or legal process.

¹⁵ *Ryder v Booth* [1985] VR 869 at [883]; *XYZ v Victoria Police* [2010] VCAT 255 at [264].

¹⁶ *XYZ v Victoria Police* [2010] VCAT 255 at [265], referring to *Barling v Medical Board of Victoria* (1992) 5 VAR 542, 561-562.

¹⁷ *Williams v Victoria Police* [2007] VCAT 1194 at [75].

¹⁸ [2003] VCAT 397 at [35].

56. Accordingly, I am satisfied disclosure of the documents would divulge information communicated to the Agency in confidence.

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

57. Section 35(1)(b) also requires I consider whether the Agency would be impaired from obtaining similar information in the future if the information were to be disclosed under the FOI Act. This involves considering whether others in the position of the communicator would be reasonably likely to be inhibited or deterred from providing similar information to the Agency in the future should the information be disclosed.
58. 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. I note the exemption will not be made out of an agency's impairment goes no further than showing potential communicators of the information may be less candid than they would otherwise have been.¹⁹
59. The Agency relies on members of the public and officials of other agencies being able to provide confidential information to investigate and resolve alleged offences. There is a strong public interest in the Agency maintaining its ability to obtain information for the purposes of its investigations and any subsequent legal proceedings.
60. I note the views of VCAT in *Williams v Victoria Police*²⁰ and *RFJ v Victoria Police FOI Division*,²¹ where evidence was accepted that persons would be less likely to make statements to the Agency if they were of the view the making of such statements was not confidential.
61. Having considered the content of the documents, I am satisfied that the public interest lies in the Agency being able to maintain the confidentiality of individuals who provide witness statements during a police investigation. Further, if such information were to be released, it would hinder the ability of the Agency to investigate alleged criminal offences and carry out its investigation and law enforcement functions.
62. Accordingly, I am satisfied the witness statements are exempt from release under section 35(1)(b).
63. The Schedule of Documents in **Annexure 1** outlines my decision in relation to section 35(1)(b).

Section 38 – Documents to which secrecy provisions of enactments apply

64. Section 38 provides:

38 Documents to which secrecy provisions of enactments apply

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.

65. Therefore, for a document to be exempt under section 38, three conditions must be satisfied:

¹⁹ *Smeaton v Victorian WorkCover Authority* [2012] VCAT 1549 at [69], approving *Birnbauer v Inner and Eastern Health Care Network* [1999] 16 VAR 9.

²⁰ [2007] VCAT 1194 at [73]

²¹ [2013] VCAT 1267 at [170].

- (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)

66. The Agency relies on section 38 in conjunction with sections 30D and 30E of the SD Act to refuse access to the body worn camera footage in full.

67. Section 30D of the SD Act provides:

30D What is protected information?

In this Division –

protected information means –

...

- (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;

68. Section 30E of the SD Act provides:

30E Prohibition on 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 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

Is there an enactment in force?

69. I am satisfied the SD Act is an enactment in force.

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

70. In order for section 38 to apply to an enactment, the enactment must be formulated with such precision that it specifies the actual information sought to be withheld.

71. I am satisfied section 30E(1) of the SD Act prohibits the disclosure of body worn camera footage.

72. Accordingly, the enactment applies specifically to body worn camera footage sought by the Applicant.

Does the enactment prohibit persons from disclosing the information in the document(s)?

73. In summary, section 30E(1) of the SD Act prohibited the reckless or intentional disclosure of information obtained from a body worn camera.
74. Unauthorised disclosure of such information is an offence and carries penalties under the SD Act. The financial penalty and potential imprisonment penalty associated with disclosure highlights the legislature's intention that such information should remain protected.
75. I am satisfied the relevant sections of the SD Act prohibit the disclosure of information obtained from a body worn camera.

Summary on section 38

76. I am satisfied:
 - (a) the SD Act is an enactment in force for the purposes of section 38;
 - (b) the requested body worn camera footage would contain the specific information prohibited from disclosure under section 30E(1) of the SD Act;
 - (c) the enactment prohibits persons from disclosing body worn camera footage; and
 - (d) the prohibition is absolute, in that disclosure is not subject to exceptions or qualifications.
77. Accordingly, while the Agency did not obtain the requested body worn camera footage on grounds it is exempt, I accept any such footage is exempt from release under section 38 in conjunction with section 30E(1) of the SD Act.

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'²² 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 25.²³
80. I have considered the information the Agency deleted from the documents as irrelevant. I agree it falls outside the scope of the Applicant's request as it relates to police involvement or attendance in unrelated matters or is the user identification of persons who generated the documents to process for this FOI request.
81. I have considered the effect of deleting irrelevant and exempt information from the documents. 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,

²² *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].

²³ *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].

access to the document is granted in part. Where it is not practicable to do so, access is refused in full.

82. The Schedule of Documents in **Annexure 1** outlines my decision in relation to section 25.

Conclusion

83. My decision on the Applicant's request differs from the Agency's decision. While I am satisfied the documents are exempt from release under sections 33(1), 35(1)(b) and 38, I am not satisfied certain information is exempt from release under sections 30(1) or 31(1)(d).
84. 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, access is refused in full.
85. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.
86. A marked-up copy of the documents indicating exempt or irrelevant information in accordance with my decision has also been provided to the Agency.

Review rights

87. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.²⁴
88. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.²⁵
89. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.²⁶
90. 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.
91. 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.²⁷

Third party review rights

92. As I have determined to release documents that contain the personal affairs information of third parties to which the Agency refused access, if practicable, I am required to notify those individuals of their right to seek review by VCAT of my decision within 60 days from the date they are given notice.²⁸
93. In this case, I am satisfied it is practicable to notify most of the relevant persons of their review rights. As I do not have their direct contact details, I have requested the Agency assist me by providing a supplied notification letter to each third party on my behalf without delay.

²⁴ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

²⁵ Section 52(5).

²⁶ Section 52(9).

²⁷ Sections 50(3F) and 50(3FA).

²⁸ Sections 49P(5), 50(3) and 52(3).

When this decision takes effect

94. My decision does not take effect until the third parties' 60 day review period expires.
95. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

Annexure 1 – Schedule of Documents

| Document No. | Date of Document | Document Description | No. of pages | Agency Decision | OVIC Decision | OVIC Comment |
|--------------|------------------|--|--------------|--|--|---|
| 1. | [Date] | LEAP Incident report [reference] | 5 | Released in part Sections 33(1), 25 | Release in part Sections 33(1), 25 The document is to be released in accordance with the marked-up copy provided to the Agency with this decision. | <p>Section 33(1): While I am satisfied this document contains the personal affairs information of third parties, the disclosure of which would be unreasonable and is exempt from release under section 33(1), I consider certain information is not exempt from release under section 33(1) for the reasons provided in the Notice of Decision above.</p> <p>Section 25: I am satisfied the user ID is irrelevant information. I am also satisfied it is practicable to provide the Applicant with an edited copy of this document with exempt and irrelevant information deleted in accordance with section 25.</p> |
| 2. | [Date] | Electronic Patrol Duty Return (ePDRs) [reference] | 30 | Released in part Sections 33(1), 25 | Release in part Sections 33(1), 25 | Section 33(1): I am satisfied certain information in this document is exempt from release under section |

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| | | | | | No further information is to be released. | <p>33(1) for the reasons provided in the Notice of Decision above.</p> <p>Section 25: I am satisfied the document contains information relating to police matters that do not involve the Applicant. Such information is irrelevant information for the purposes of the Applicant's FOI request and this review.</p> <p>I am satisfied it is practicable to provide the Applicant with an edited copy of this document with exempt and irrelevant information deleted in accordance with section 25.</p> |
| 3. | [Date] | Handwritten members notes | 8 | Released in part Sections 30(1), 33(1), 25 | <p>Release in part</p> <p>Sections 33(1), 25</p> <p>The document is to be released in accordance with the marked-up copy provided to the Agency with this decision.</p> | <p>Section 30(1): I am not satisfied information in the document is exempt from release under section 30(1) for the reasons provided in the Notice of Decision above.</p> <p>Section 33(1): See comments for Document 1.</p> |

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| | | | | | | Section 25: See comments for Document 2. |
| 4. | [Date] | Application for an Intervention Order | 6 | Released in part Sections 33(1), 25 | Release in part Sections 33(1), 25 No further information is to be released. | Section 33(1): See comments for Document 2. Section 25: I am satisfied it is practicable to provide the applicant with an edited copy of this document with exempt and irrelevant information deleted in accordance with section 25. |
| 5. | [Date] | Application for a Family Violence Intervention Order | 2 | Released in part Sections 33(1), 25 | Release in part Sections 33(1), 25 No further information is to be released. | Section 33(1): See comments for Document 2. Section 25: See comments for Document 4. |
| 6. | [Date] | Memorandum | 4 | Released in part Sections 33(1), 25 | Release in part Sections 33(1), 25 The document is to be released in accordance with the marked-up copy | Section 33(1): See comments for Document 1. Section 25: See comments for Document 4. |

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| | | | | | provided to the Agency with this decision. | |
| 7. | [Date] | Memorandum | 2 | Released in part Sections 33(1), 25 | Release in part Sections 33(1), 25 The document is to be released in accordance with the marked-up copy provided to the Agency with this decision. | Section 33(1): See comments for Document 1. Section 25: See comments for Document 4. |
| 8. | [Date] | Brief head | 1 | Released in part Sections 33(1), 25 | Release in part Sections 33(1), 25 No further information is to be released. | Section 33(1): See comments for Document 2. Section 25: See comments for Document 4. |
| 9. | [Date] | Brief to be completed by sub-officer/authorising member page | 1 | Released in part Sections 33(1), 25 | Release in part Section 33(1), 25 No further information is to be released. | Section 33(1): See comments for Document 2. Section 25: See comments for Document 4. |

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| 10. | [Date] | LEAP intent to summons report | 1 | Released in part Sections 33(1), 25 | Release in part Sections 33(1), 25 No further information is to be released. | Section 33(1): See comments for Document 2. Section 25: See comments for Document 4. |
| 11. | Undated | Preliminary brief – statement made by informant | 1 | Released in full | Not subject to review | |
| 12. | Undated | Preliminary brief – statement of alleged facts | 2 | Released in part Sections 33(1), 25 | Release in part Sections 33(1), 25 The document is to be released in accordance with the marked-up copy provided to the Agency with this decision. | Section 33(1): See comments for Document 1. Section 25: See comments for Document 4. |
| 13. | Undated | Preliminary brief – witness list | 2 | Released in part Sections 33(1), 25 | Release in part Sections 33(1), 25 The document is to be released in accordance with the marked-up copy | Section 33(1): See comments for Document 1. Section 25: See comments for Document 4. |

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| | | | | | provided to the Agency with this decision. | |
| 14. | Undated | Exhibit list | 1 | Released in part Sections 33(1), 25 | Release in part Sections 33(1), 25 No further information is to be released. | Section 33(1): See comments for Document 2. Section 25: See comments for Document 4. |
| 15. | [Date] | Preliminary brief – acknowledgment | 1 | Released in part Sections 33(1), 25 | Release in part Sections 33(1), 25 No further information is to be released. | Section 33(1): See comments for Document 2. Section 25: See comments for Document 4. |
| 16. | Undated | Charge sheet and summons | 2 | Released in part Sections 33(1), 25 | Release in part Sections 33(1), 25 No further information is to be released. | Section 33(1): This is a police brief copy of a charge sheet and summons addressed to the Applicant. However, it appears that the document is incomplete as it is not signed and therefore, unlikely to have been served to the Applicant in this form. As such, I consider it would be unreasonable to disclose the personal affairs information of third parties for the |

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| | | | | | | reasons provided in the Notice of Decision above. Section 25: See comments for Document 4. |
| 17. | Undated | Statements – cover page | 1 | Released in full | Not subject to review | |
| 18. | [Date] | Statement of third party | 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 2. Section 35(1)(b): I am satisfied this document is exempt from release under section 35(1)(b) for the reasons provided in the Notice of Decision above. Section 25: See comments for Document 4. |
| 19. | Undated | Statement of third party | 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 2. Section 35(1)(b): See comments for Document 18. |

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| | | | | | | Section 25: See comments for Document 4. |
| 20. | [Date] | Statement of third party | 4 | 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 2. Section 35(1)(b): See comments for Document 18. Section 25: See comments for Document 4. |
| 21. | [Date] | Member's statement | 3 | Released in part Sections 33(1), 25 | Release in part Sections 33(1), 25 No further information is to be released. | Section 33(1): See comments for Document 2. Section 25: See comments for Document 4. |
| 22. | [Date] | Member's statement | 3 | Released in part Sections 33(1), 25 | Release in part Sections 33(1), 25 No further information is to be released. | Section 33(1): See comments for Document 2. Section 25: See comments for Document 4. |
| 23. | [Date] | Member's statement | 2 | Released in part | Release in part | Section 33(1): See comments for Document 1. |

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| | | | | Sections 33(1), 25 | Sections 33(1), 25 The document is to be released in accordance with the marked-up copy provided to the Agency with this decision. | Section 25: See comments for Document 4. |
| 24. | Undated | Exhibit 1 – Google Map screenshot | 1 | Released in part Sections 33(1), 25 | Release in part Sections 33(1), 25 No further information is to be released. | Section 33(1): This is a screenshot of publicly available information via Google Maps. However, I am satisfied it would be unreasonable to disclose information that would reveal the location of third parties in the circumstances of this matter. Section 25: See comments for Document 4. |
| 25. | Undated | Cover page - Exhibits | 1 | Released in full | Not subject to review | |
| 26. | Undated | Exhibit 3, Page titled "Photograph List 1" (photograph 1- 3) | 1 | Released in part Sections 33(1), 25 | Release in part Sections 33(1), 25 | Section 33(1): See comments for Document 2. Section 25: See comments for Document 4. |

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| | | | | | No further information is to be released. | |
| 27. | Undated | 3 x photographs | 3 | Refused in full Section 33(1) | Refused in full Section 33(1) | Section 33(1): See comments for Document 2. Section 25: I am satisfied the document is exempt in full and it is not practicable to provide an edited copy of this document. |
| 28. | Undated | Exhibit 5, Page titled "Photograph List 2" (photograph 4 -7) | 1 | Released in part Sections 33(1), 25 | Release in part Sections 33(1), 25 No further information is to be released. | Section 33(1): See comments for Document 2. Section 25: See comments for Document 4. |
| 29. | Undated | 4 x photographs | 4 | Refused in full Section 33(1) | Refuse in full Section 33(1) | Section 33(1): See comments for Document 2. Section 25: See comments for Document 27. |
| 30. | Undated | Exhibit 6, Page titled "Photograph List 3" (photograph 8-14) | 1 | Released in part Sections 33(1), 25 | Release in part Sections 33(1), 25 | Section 33(1): See comments for Document 2. |

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| | | | | | No further information is to be released. | Section 25: See comments for Document 4. |
| 31. | Undated | 7 x photographs | 7 | Refused in full Section 33(1) | Refuse in full Section 33(1) | Section 33(1): See comments for Document 2. Section 25: See comments for Document 27. |
| 32. | Undated | Exhibit 7, Page titled "Photograph List 4" (photograph 15-19) | 1 | Released in part Sections 33(1), 25 | Release in part Sections 33(1), 25 No further information is to be released. | Section 33(1): See comments for Document 2. Section 25: See comments for Document 4. |
| 33. | Undated | 4 x photographs relating to applicant's property | 4 | Released in full | Not subject to review | |
| 34. | Undated | Applicant's Nil criminal priors page attached to the brief | 1 | Released in full | Not subject to review | |
| 35. | Undated | Brief Backing Sheet | 1 | Released in full | Not subject to review | |

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| 36. | [Date] | Search warrant | 2 | Released in part Sections 33(1), 25 | Release in part Sections 33(1), 25 No further information is to be released. | Section 33(1): See comments for Document 2. Section 25: See comments for Document 4. |
| 37. | [Date] | Affidavit for a search warrant | 2 | Refused in full Sections 31(1)(d), 33(1) | Release in part Section 33(1) The following information is exempt from release under section 33(1) and is to be deleted in accordance with section 25: (a) paragraphs 4, 5, 6, 8, 10, 11; (b) the third line of paragraph 12; and (c) signatures. | Section 31(1)(d): I am not satisfied this document is exempt from release under section 31(1)(d) for the reasons provided in the Notice of Decision above. Section 33(1): See comments for Document 1. Section 25: See comments for Document 4. |
| 38. | N/A | Body worn camera footage | N/A | Refused in full Section 38 | Refused in full Section 38 | Section 38: I note the Agency did not obtain body worn camera footage on the basis it considered such footage would be exempt |

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| | | | | | | <p>from release under section 38. For completeness, I am satisfied body worn camera footage is exempt from release under section 38 for the reasons provided in the Notice of Decision above.</p> <p>Section 25: See comments for Document 27.</p> |