

Notice of Decision and Reasons for Decision

Applicant: 'EG9'
Agency: Victoria Police
Decision date: 21 January 2022
Exemption considered: Section 33(1)
Citation: *EG9' and Victoria Police (Freedom of Information) [2022] VICmr 91 (21 January 2022)*

FREEDOM OF INFORMATION – police records – police incident report – family violence – personal affairs information – LEAP extract

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 is the same as the Agency's decision in that I am satisfied certain information in the document is exempt from release under section 33(1) and the document is to be released in part.

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 January 2022

Reasons for Decision

Background to review

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

Police Report Incident [report number] Filed with [Victoria Police member] of the [Police Station name] on the [date]

Review application

2. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
3. I have examined a copy of the document subject to review.
4. The Applicant and Agency were invited to make a written submission under section 49H(2) in relation to the review.
5. I have considered all communications and submissions received from the parties, including:
6. 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.

Review of exemptions

Section 33(1) – documents affecting personal privacy

7. 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;¹ and
 - (b) such disclosure would be 'unreasonable'.
8. 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.²
9. 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.
10. Section 33(2A) requires that, 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 disclosure of the information would, or would be reasonably likely to, endanger the life or physical safety of any person. However, I do not consider this to be a relevant factor in the circumstances.

¹ Sections 33(1) and (2).

² Section 33(9).

11. When considering whether disclosure of a document would involve the unreasonable disclosure of a third party's personal affairs information, an agency must notify that person an FOI request has been received for documents containing their personal information and seek their view as to whether disclosure of the document should occur.³ 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.⁴

Does the document contain personal affairs information of individuals other than the Applicant?

12. 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 reasonably be determined.⁵
13. A third party's opinion or observations about another person's conduct can constitute information related to the third party's personal affairs.⁶
14. The document contains the name, address, mobile telephone number and age of a third party as well as other information about the third party.
15. I am satisfied the information the Agency exempted from release amounts to 'personal affairs information' for the purposes of section 33(1).

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

16. Determining whether disclosure of personal affairs information would be unreasonable involves balancing the public interest in the disclosure of official information with the interest in protecting the personal privacy of an individual other than an FOI applicant (a **third party**) in the circumstances.
17. In determining whether the disclosure of the personal affairs information would be unreasonable in this matter, I have considered the following factors:
 - (a) The nature of the personal affairs information, for example, whether it is sensitive or is of current relevance

Given the document is a police record and relates to a complaint of family violence, I consider it contains sensitive personal information, and therefore its disclosure is more likely to be unreasonable.⁷

³ Section 33(2B).

⁴ Section 33(2C).

⁵ Section 33(9).

⁶ *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].

⁷ *Page v Metropolitan Transit Authority* (1988) 2 VAR 243, 246.

(b) The circumstances in which the information was obtained by the Agency

The information subject to review was obtained in relation to a family violence complaint made by the Applicant to Victoria Police. I accept information provided to police in these circumstances is for the purpose of protecting the safety of affected family members and enabling further investigation of complaints.

The role of the third party in this context is personal in nature. I also note the content of the extract has not been tested in open court and therefore has not been aired publicly or tested for accuracy.

Although I accept the information about a third party was originally provided by the Applicant and their details are known to them, I consider disclosure of these details may still be unreasonable under these circumstances.⁸

(c) The Applicant's interest in the information, including their purpose or motive in seeking access to the document

The Applicant is seeking the document in the context of [an] application to [another government agency]. The Applicant advises [the government agency] requested the information in the document.

(d) Whether any public interest would be promoted by disclosure

In my view, the predominant interest in this matter is a personal one pertaining to the Applicant.

Given the sensitive nature of the document, the public interest weighs in favour of maintaining the privacy of other individuals to whom its content relates given the unrestricted and unconditional nature of release under the FOI Act, and interest in maintaining the integrity of such notifications and investigations.

(e) The likelihood of further disclosure of the information if it is released

The nature of disclosure under the FOI Act is unconditional and unrestricted, which means an applicant is free to disseminate widely or use a document as they choose once it is released.⁹

Based on the information before me, I am satisfied the Applicant is likely to disclose this information to the [government agency] and any legal professionals acting on their behalf in the related proceedings. However, given the sensitive nature of the document, being a police record containing personal information of third parties, I must consider that the document could be distributed more widely and the impact that could have on the third party. This factor therefore weighs against disclosure.

⁸ *AB v Department of Education and Early Childhood Development* [2011] VCAT 1263 at [58]; *Akers v Victoria Police* [2003] VCAT 397.

⁹ *Victoria Police v Marke* [2008] VSCA 218 at [104].

- (f) Whether the person to whom the information relates object or would be likely to object to the disclosure of the information

While I note the Agency did not consult with the third party in this instance, I am satisfied that the third party would object to the disclosure of this information given it contains sensitive information about them.

- (g) Whether disclosure would cause the relevant person stress, anxiety or embarrassment

Given the sensitive and personal nature of the document, I consider its disclosure may cause a third party stress or anxiety.

- (h) Whether disclosure of information relating to the personal affairs of any person would, or would be likely to, endanger the physical life and safety of any person

In determining whether 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.¹⁰

On the information before me, I do not believe the release of this information and its likely use by the Applicant would endanger the physical life and safety of any person.

- (i) Whether disclosure of the document would increase the risk to a primary person's safety from family violence

I must also consider whether disclosure would increase the risk to a primary person's safety from family violence.¹¹ The document clearly refers to family violence issues, which are also the subject of the Applicant's [type of] application. However, given the specific circumstances of this matter I do not consider its disclosure would increase the risk to any person's safety from family violence.

18. Having balanced the above factors, I am satisfied disclosure of the personal affairs information in the document would be unreasonable in the circumstances and, accordingly, it is exempt from release under section 33(1).
19. The Schedule of Documents in **Annexure 1** contains a summary of my decision with respect to the document.

Section 25 – Deletion of exempt or irrelevant information

20. Section 25 requires an agency to grant access to an edited copy of a document when it is practicable to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.
21. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'¹² and the effectiveness of the deletions. Where

¹⁰ Section 33(2A).

¹¹ Section 33(2AB).

¹² *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].

deletions would render a document meaningless, they are not 'practicable', and release of the document is not required under section 25.¹³

22. I have considered the effect of deleting exempt and irrelevant information from the document. I am satisfied it is practicable to delete the exempt and irrelevant information in accordance with section 25, as to do so would not require substantial time and effort, and the edited document would retain meaning.

Conclusion

23. On the information before me, I am satisfied certain information in the document is exempt from release under section 33(1).
24. As I am satisfied it is practicable to provide the Applicant with an edited copy of the document with delete exempt and irrelevant information deleted in accordance with section 25, access to the document is granted in part.
25. Accordingly, my decision is the same as the Agency's decision.

Review rights

26. 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.¹⁴
27. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹⁵
28. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁶
29. 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.
30. 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.¹⁷

¹³ *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].

¹⁴ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹⁵ Section 52(5).

¹⁶ Section 52(9).

¹⁷ 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] | Victoria Police LEAP extract, Family Violence report | 1 | Released in part | <p>Release in part</p> <p>Section 33(1), 25</p> <p>The document is to be released with the following exempt and irrelevant information deleted in accordance with section 25:</p> <ul style="list-style-type: none"> • the information exempted by the Agency under section 33(1), which I am satisfied is exempt from release; and • the information identified by the Agency as irrelevant. | <p>Section 33(1): I am satisfied the document contains personal affairs that would be unreasonable to disclose for the reasons described in the Notice of Decision above.</p> <p>Section 25: I am satisfied the information deleted by the Agency is irrelevant as it relates to an Agency officer who generated the document, rather than an officer directly related to the matter the subject to the Applicant’s FOI request.</p> |