

## Notice of Decision and Reasons for Decision

---

Applicant:	'FO1'
Agency:	Department of Justice and Community Safety
Decision date:	19 January 2024
Sections considered:	Sections 31(1)(a), 8
Citation	'FO1' and Department of Justice and Community Safety (Freedom of Information) [2024] VICmr 14 (19 January 2024)

---

FREEDOM OF INFORMATION – youth justice – risk and needs assessment – practice guidelines – *Children, Youth and Families Act 2005* (Vic) (**CYF Act**) – disclosure would not prejudice the proper administration of the law – principal officer obligations to publish certain documents – section 8

All references to legislation in this document are to the *Freedom of Information Act 1982* (Vic) (**FOI Act**) unless otherwise stated.

### Notice of Decision

I have conducted a review under section 49F of the Agency's decision to refuse access to a document requested by the Applicant under the FOI Act.

My decision on the Applicant's request differs from the Agency's decision.

I am not satisfied the document is exempt from release under section 31(1)(a) and it is to be released in full. My reasons for decision follow.

In addition to my decision, the Agency is requested to ensure it complies with its statutory obligations under Part II of the FOI Act, in particular, section 8 in relation to the document.

Please refer to the end of my decision for information about further review rights through the Victorian Civil and Administrative Tribunal (**VCAT**).

Joanne Kummrow  
**Acting Information Commissioner**

## Reasons for Decision

### Background to review

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

A copy of the validated assessment process procedure/document currently used to assess the risks and needs of every young person in Youth Justice
2. The Agency identified one document falling within the terms of the Applicant's request and refused access in full under section 31(1)(a).
3. The Agency's decision letter sets out the reasons for its decision. In summary the Agency determined that disclosure of the document would be reasonably likely to impact risks and needs assessment practices and thereby prejudice the administration of the *Children, Youth and Families Act 2005 (CYF Act)*.

### Review application

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
5. I have examined a copy of the document subject to review.
6. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
7. I have considered all communications and submissions received from the parties.
8. In undertaking my review, I have had regard to the object of the FOI Act, which is to create a general right of access to information in the possession of the Government or other public bodies, limited only by exceptions and exemptions necessary to protect essential public interests, privacy and business affairs.
9. I note Parliament's intention the FOI Act must be interpreted so as to further the object of the Act and any discretions conferred by the Act must be exercised, as far as possible, so as to facilitate and promote the disclosure of information in a timely manner and at the lowest reasonable cost.
10. 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'.<sup>1</sup> 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.

---

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

## Review of exemption

### *Section 31(1)(a) – Disclosure of documents would prejudice the enforcement or proper administration of the law*

11. Section 31(1)(a) provides that a document is an exempt document if its disclosure ‘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’.

*Does the document relate to enforcing or administering a law in a particular instance?*

12. The proper administration of the law deals with how the law is administered and includes, for example, regulatory, monitoring and compliance activities.<sup>2</sup>
13. The terms ‘in a particular instance’ qualifies the terms ‘enforcement or proper administration of the law’, but it does not require a single specific investigation. Rather, the scope of this exemption can encompass specific, identified aspects of law, administration of law or investigations of breaches or potential breaches of law.<sup>3</sup>
14. The document subject to review is a *Risk and Needs Assessment Practice Guideline* for Youth Justice. The Agency submits that assessments completed by Youth Justice officers are guided by the document to inform planning, referrals, and management of a young person whilst in custody or who are subject to a court order.
15. I accept the document relates to the administration of the CYF Act, which is the central legislation governing youth justice in Victoria and concerns the administration of the CYF Act in a particular instance, being the assessment of the risks and needs of young people in the youth justice system.

*Would disclosure of the document prejudice, or be reasonably likely to prejudice, the enforcement or proper administration of the law?*

16. ‘Prejudice’ means to hinder, impair or undermine and includes actual prejudice as well as impending prejudice.<sup>4</sup>
17. ‘Reasonably likely’ means there is a real chance of an event occurring; it is not fanciful or remote.<sup>5</sup>
18. Accordingly, I must consider whether disclosing the document would prejudice the proper administration of the CYF Act, and why this prejudice would, or is reasonably likely to, occur.

<sup>2</sup> *Cichello v Department of Justice* [2014] VCAT 340 at [23], referring to *JCL v Victoria Police* [2012] VCAT 1060 at [28] and *Croom v Accident Compensation Commission* (1989) 3 VAR 441 (affirmed on appeal [1991] 2 VR 322).

<sup>3</sup> *O’Sullivan v Police Force (Vic)* (1986) 1 VAR 171 at [175]-[176]; *Bergman v Department of Justice Freedom of Information Officer* [2012] VCAT 363 at [69]; *Cichello v Department of Justice (Review and Regulation)* [2014] VCAT 340 at [24].

<sup>4</sup> *Bergman v Department of Justice* [2012] VCAT 363 at [66], referring to *Sobh v Police Force of Victoria* [1994] VicRp 2; [1994] 1 VR 41 (Nathan J) at [55].

<sup>5</sup> *Bergman v Department of Justice* [2012] VCAT 363 at [65], quoting *Binnie v Department of Agriculture and Rural Affairs* [1989] VR 836.

19. The Agency considers that disclosure would compromise the confidentiality of assessments conducted within the Youth Justice system as well as the safety and security of Youth Justice precincts.
20. In making its decision, the Agency consulted with its Clinical Oversight and Rehabilitation team which advised that disclosure of the document would lead to a significant risk in the integrity of the tools used by staff, the ability to identify risk levels and associated needs, as well as the referral pathway for rehabilitation interventions. While specific examples were provided, I will not address those in my decisions as to do so may reveal the information that is claimed exempt from release.
21. The document refers to criminogenic theories or models that are widely known and used and referred to with respect to Youth Justice in Victoria as well as in other Australian jurisdictions.
22. While the document refers to screening and assessment tools used by staff in managing young people within the Youth Justice system and when they are used, it does not include specific instructions on what the tools are, how to apply the tools in practice, or how to interpret or assess the results or outcomes of the tools. As such, I am not satisfied that young people would be able to circumvent or manipulate assessments by virtue of knowing what tools and assessments are used or what criminogenic theories underpin the use of those assessments and tools.
23. For example, the Agency has drawn attention to Table 1 in the document, which refers to a well-known theoretical model concerning criminogenic needs. The Agency submits the table includes information that 'speaks to the specifics within the tool', such that it could be used by people to influence the validity of assessments conducted.
24. I do not accept that this would be reasonably likely to occur if the information were disclosed, as the information, in my view, is broad and does not provide instructions on how staff are to apply the intervention strategies in practice. I do not accept it is of a nature such that it could be used by young people to circumvent the interventions designed to address their criminogenic risks and needs.
25. The Agency also submits there are several inaccuracies in the document that do not reflect current practice and present information that could be misleading, and in this respect, a full suite of practice guidelines is currently subject to review and revision. The Agency provided OVIC with a marked-up version of the document to identify information that was inaccurate. In any case, I do not consider the disclosure of information that is no longer up to date will prejudice, or would be likely to prejudice, the proper administration of the CYF Act.
26. Lastly, I do not accept the Agency's submission that disclosure would compromise the safety and security of Youth Justice precincts, as the document does not address matters of safety and security in Youth Justice precincts.
27. Accordingly, I am not satisfied disclosure of the document would, or would be reasonably likely to, prejudice the proper administration of the CYF Act with respect to the planning, referrals, and management of a young person whilst in custody or within the youth justice system.
28. Accordingly, I am not satisfied the document is exempt from release under section 31(1)(a).

## Conclusion

29. On the information before me, I am not satisfied the document is exempt from release under section 31(1)(a) and it is to be released in full.
30. Further to my decision above, section 8 in Part II of the FOI Act provides that certain documents are to be made available for inspection and purchase by an agency. In a modern context, this includes publishing a document on the Internet.
31. Section 8(1) provides:
- (1) This section applies, in respect of an agency, to documents that are provided by the agency for the use or guidance of, or are used or may be used by, the agency or its officers—
    - (a) in making decisions or recommendations, or in providing advice to persons outside the agency, with respect to rights, privileges or benefits, or to obligations, penalties or other detriments, to or for which persons are or may be entitled, eligible or subject, being—
      - (i) documents containing interpretations or particulars of Acts or schemes administered by the agency, not being particulars contained in another Act; or
      - (ii) manuals, rules of procedure, statements of policy, records of decisions, letters of advice to persons outside the agency, or similar documents containing rules, policies, guidelines, practices or precedents; and
    - (b) in enforcing Acts or schemes administered by the agency where a member of the public might be directly affected by that enforcement, being documents containing information on the procedures to be employed or the objectives to be pursued in the enforcement of the Acts or schemes.
32. Section 8 also sets out requirements for an agency's principal officer in relation to documents required to be published and documents the principal officer maintains should remain exempt from release.<sup>6</sup>
33. Accordingly, given my decision that the document is not exempt from release under the FOI Act, the Agency should make this document, or a future updated document, publicly available in compliance with section 8 of the FOI Act.

## Timeframe to seek a review of my decision

34. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.<sup>7</sup>
35. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>8</sup>

---

<sup>6</sup> In particular, see sections 8(2)-8(6) and also section 9.

<sup>7</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>8</sup> Section 52(5).

36. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>9</sup>
37. 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.
38. 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>10</sup>

**When this decision takes effect**

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

---

<sup>9</sup> Section 52(9).

<sup>10</sup> Sections 50(3F) and 50(3FA).