

Notice of Decision and Reasons for Decision

Applicant:	'FQ5'
Agency:	Victoria Police
Decision date:	23 May 2024
Exemptions and provisions considered:	Sections 31(1)(d), 33(1), 35(1)(b) and 38 in conjunction with section 464JA(4) of the <i>Crimes Act 1958</i> (Vic) and Regulation 12 of the <i>Criminal Procedure Regulations 2020</i> (Vic)
Citation:	'FQ5' and Victoria Police (Freedom of Information) [2024] VICmr 36 (23 May 2024)

FREEDOM OF INFORMATION – police records – interview recording – LEAP reports – personal affairs information of alleged victim – unreasonable disclosure of personal affairs information – disclosure would impair agency's ability to obtain similar information – *Crimes Act 1958* (Vic) – secrecy provisions – Section 464JA of the *Crimes Act 1958* (Vic) – Record of Interview – Video and Audio Recording of Evidence (VARE) – Regulation 12 of the *Criminal Procedure Regulations 2020* (Vic) – disclosure of methods for preventing, detecting, investigating breaches of the law

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 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 information in the documents is exempt from release under sections 31(1)(d), 33(1), 35(1)(b) and/or 38 in conjunction with sections 464JA(4) of the *Crimes Act 1958* (Vic) (the **Crimes Act**) and Regulation 12 of the *Criminal Procedure Regulations 2020* (Vic) (**CP Regulations 2020**).

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

The effect of my decision is that no further information is to be released to the Applicant.

Please refer to page 15 for information about review rights through the Victorian Civil and Administrative Tribunal (**VCAT**).

My reasons for decision follow.

Penny Eastman
Acting Public Access Deputy Commissioner

23 May 2024

Reasons for Decision

Background to review

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

Documents/records to a closed case in which we received a formal letter dated [date]. Regarding [alleged breach of the law] reported to [police] on or about [date]. [Agency officer details].
2. The Agency identified 28 documents (totaling 99 pages and four media files) falling within the terms of the Applicant's request. The Agency granted access to five documents in full, refused access to 10 documents in part and refused access to 13 documents in full under sections 31(1)(d), 33(1), 35(1)(b) and 38 of the FOI Act in conjunction with section 464JA(4) of the *Crimes Act 1958* (the **Crimes Act**) and Regulation 11 of the *Criminal Procedures Regulations 2009* (Vic).
3. The Agency's decision letter sets out the reasons for its decision.

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 documents 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 relevant communications and submissions received from the parties. I acknowledge the sensitive nature of this request and the reasons for the Applicant seeking access to the documents in full.
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, which is limited only by exceptions and exemptions in the FOI Act or relevant legislation that are deemed necessary to protect essential public interests, personal privacy and/or business affairs.

Review of exemptions

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

9. 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**);¹ and

¹ Sections 33(1) and 33(2).

- (b) such disclosure would be 'unreasonable'.

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

10. 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
11. 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.³
12. I have also considered the following factors in determining whether information is personal affairs information:
- (a) 'personal information' has been given a wide interpretation;⁴
 - (b) information that 'concerns or affects' the person as an individual is personal affairs information;⁵
 - (c) a person's personal opinion of another person, or their conduct, may be 'personal information 'regarding the opinion holder';⁶ and
 - (d) information that is 'fairly benign' will not deprive the information of its personal character.⁷
13. The documents contain names, dates of birth, addresses, telephone numbers, relationship descriptions, information provided to police and other personal affairs information of the alleged victim, witnesses and/or third parties, as well as the signatures of Victoria Police employees. I am satisfied this information constitutes personal affairs information under section 33(9).
14. I acknowledge certain parts of the documents also contain information relating to the personal affairs of the Applicant. However, given the context of the documents involves the police investigation into allegations made against the Applicant, I consider this information is intertwined with the personal affairs information of third parties.

Would disclosure of the personal affairs information be unreasonable?

15. 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.

² Section 33(9).

³ *O'Sullivan v Department of Health and Community Services (No 2)* [1995] 9 VAR 1 at [14]; *Beauchamp v Department of Education* [2006] VCAT 1653 at [42].

⁴ *Hutchinson v Department of Human Services* (1997) 12 VAR 422.

⁵ *Hanson v Department of Education and Training* [2007] VCAT 123 [9].

⁶ *Richardson v Business Licensing Authority* [2003] VCAT 1053.

⁷ *Hutchinson v Department of Human Services* (1997) 12 VAR 422.

16. In *Victoria Police v Marke*,⁸ 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’.⁹ The Court further held, ‘[t]he protection of privacy, which lies at the heart of [section] 33(1), is an important right that the FOI Act properly protects. However, an individual’s privacy can be invaded by a lesser or greater degree’.¹⁰
17. I acknowledge the Applicant is likely to be aware of the identity of certain third parties whose personal affairs information appears in the documents. However, 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.¹¹
18. In determining whether disclosure of the personal affairs information would be unreasonable in the circumstances, I have considered the following factors:

(a) The nature of the personal affairs information

I am satisfied the Agency obtained the personal affairs information in the context of a police investigation.

While I acknowledge some of the information relates to the personal affairs information of the Applicant, the information relating to third parties is inherently sensitive in nature and is intertwined with the personal affairs information of the Applicant. It is further not information that is publicly, or usually publicly, available due to its sensitive nature. In some cases, the information concerns a third party only and does not relate to the Applicant.

The documents include statements made by witnesses and other third parties provided in response to a police investigation. I consider when individuals provide such information to police, they do so with the expectation any such information, including highly sensitive information, will be held in confidence and used for the purpose of investigating a reported incident or possible subsequent prosecution only.

In such circumstances, I do not consider third parties who provide information to police would expect the information will be disclosed in an official police document to the person against whom an allegation is made, unless it is required as part of a court proceeding.

(b) The circumstances in which the information was obtained

As stated above, the information was obtained by the Agency in relation to a police investigation involving the Applicant.

⁸ [2008] VSCA 218 at [76].

⁹ Ibid.

¹⁰ Ibid at [79].

¹¹ *AB v Department of Education and Early Childhood Development* [2011] VCAT 1263 at [58]; *Akers v Victoria Police* [2003] VCAT 397 at [41].

I accept information provided to the Agency in these circumstances was obtained and recorded for law enforcement purposes, namely, in the context of a police investigation. I also acknowledge the information was obtained as part of the Agency's prosecutorial decision making process,¹² which means the respondent and the alleged victim do not ordinarily receive reasons why a brief of evidence is marked 'Not authorised'. The documents are ordinarily used for internal police decision making only.

(c) The Applicant's interest in the information

The FOI Act provides a general right of access that can be exercised by any person, regardless of their motive or purpose for seeking access to a document. However, the reasons why an applicant seeks access to a document is a relevant consideration in determining whether disclosure would be unreasonable under section 33(1).¹³

The Applicant provided reasons for seeking access to the requested documents in full. I consider the Applicant would have been informed of the Agency's decision to mark the Brief as 'Not authorised'. However, in accordance with the Agency's prosecutorial decision making process, the Applicant would not have been informed of the detailed reasons why the decision was made.

I acknowledge the Applicant's views concerning their right to access information relating to allegations made against them and about the impact of the allegations on them. However, given the unrestricted nature of information disclosure under the FOI Act, this right to access must be balanced with the rights of other persons, including the right to privacy. Accordingly, considerations in relation to whether disclosure of a third party's personal affairs information is reasonable involves a balancing exercise of weighing up one person's right to access information with another person's right to privacy.

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

There is no information before me to establish that disclosure of the information is required in order to serve the administration of justice. I consider the Applicant's interest in the documents would therefore primarily serve their personal interest only.

I am also satisfied there is a strong public interest in the Agency, as a law enforcement agency, being able to obtain and record information relating to a police investigation in confidence so that it can efficiently and effectively carry out its law enforcement functions.

Accordingly, I am not satisfied the public interest in transparency of the requested documents is outweighed by the public interest factors against disclosure in this case.

(e) The likelihood of disclosure of information, if released.

¹² Refer *GMW v Victoria Police (Review and Regulation)* [2018] VCAT 667 at [13] for an explanation of the Agency's standard process for prosecutorial decision making.

¹³ *Victoria Police v Marke* [2008] VSCA 218 at [104].

The nature of disclosure under the FOI Act is unrestricted and unconditional, which means an applicant is free to disseminate widely or use a document as they choose.¹⁴

Accordingly, I have considered the likelihood of the personal affairs information in the documents being further disseminated, if disclosed, and the effects broader disclosure of this information would have on the privacy of the relevant third parties.

On the basis of the information before me, I am satisfied the likelihood of further dissemination is low.

(f) Whether disclosure would cause a third party stress, anxiety or embarrassment

Given the sensitive and personal nature of the documents, I consider disclosure of certain information under the FOI Act would likely cause a third party or parties stress or anxiety.

(g) Whether the individuals to whom the information relates object, or would be likely to object, to the release of the information

In deciding whether disclosure of a document would involve the unreasonable disclosure of a third party's personal affairs information, an agency must notify that person (or their next of kin, if deceased) an FOI request has been received for documents containing their personal information and seek their view as to whether disclosure of the document should occur.¹⁵ However, this obligation does not arise in certain limited circumstances, including where it is not practicable to do so.¹⁶

The Agency did not consult with any third party in this instance, and I agree consultation would not be practicable given the matters that were investigated.

In any case, I am satisfied any third party involved would be reasonably likely to object to the disclosure of their personal affairs information in official police documents under the FOI Act in these circumstances.

(h) Whether disclosure of the information would or would be reasonably likely to endanger the life or physical safety of any person¹⁷

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.¹⁸

There is no specific information before me to suggest disclosure of the information would or would be reasonably likely to endanger the life or physical safety of any person.

¹⁴ Ibid at [68].

¹⁵ Section 33(2B).

¹⁶ Section 33(2C).

¹⁷ Section 33(2A).

¹⁸ Section 33(2A).

19. In weighing the above factors, I am satisfied disclosure of the third party personal affairs information in the documents would be unreasonable, and the relevant information is exempt from release under section 33(1).
20. The Schedule of Documents in **Annexure 1** sets out my decision in relation to section 33(1).

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

21. A document is exempt under section 35(1)(b) if two conditions are satisfied:
 - (a) disclosure would divulge information or matter communicated in confidence by or on behalf of a person or a government to an agency or a Minister; and
 - (b) disclosure would be contrary to the public interest as it would be reasonably likely to impair the ability of an agency or a Minister to obtain similar information in the future.

Was the information obtained in confidence?

22. Whether information communicated by an individual to an agency was communicated in confidence is a question of fact.¹⁹
23. 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.²⁰
24. The Agency relies on section 35(1)(b) to refuse access to Documents 17, 18 and 19. The documents contain witness statements obtained by the Agency as part of a police investigation.
25. 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.²¹
26. In *Akers v Victoria Police*,²² 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.
27. As noted above in my consideration of section 33(1), I consider the third parties, who provided information to the Agency as part of the police investigation into a criminal matter, did so with the expectation it would remain confidential and used for the purpose of investigating a reported incident or possible subsequent prosecution only.
28. Accordingly, I am satisfied disclosure of the relevant documents would divulge information communicated to the Agency in confidence.

¹⁹ *Ryder v Booth* [1985] VR 869 at [883]; *XYZ v Victoria Police* [2010] VCAT 255 at [264].

²⁰ *XYZ v Victoria Police* [2010] VCAT 255 at [265], referring to *Barling v Medical Board of Victoria* (1992) 5 VAR 542, 561-562.

²¹ *Williams v Victoria Police* [2007] VCAT 1194 at [75].

²² [2003] VCAT 397 at [35].

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

29. 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.
30. 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 if an agency's impairment goes no further than showing potential communicators of the information may be less candid than they would otherwise have been.²³
31. The Agency relies on members of the public and officials of other agencies being able to provide confidential information to investigate and resolve criminal matters. 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. If this information were to be routinely released in response to an FOI request, I am of the view the Agency would be impaired from obtaining information of a similar nature in the future.
32. I note the views of VCAT in *Williams v Victoria Police*²⁴ and recently in *RFJ v Victoria Police FOI Division*,²⁵ where evidence was accepted that persons would be less likely to make statements to Victoria Police if they were of the view the making of such statements was not confidential.
33. Having considered the content of the documents, I am satisfied the public interest lies in the Agency being able to maintain the confidentiality of individuals who provide statements during a police investigation. Further, if such information were to be released, it would hinder the ability of the Victoria Police to investigate alleged criminal offences and carry out its investigation and law enforcement functions.
34. Accordingly, I am satisfied the relevant information in the documents is exempt from release under section 35(1)(b).
35. The Schedule of Documents in **Annexure 1** outlines my decision in relation to section 35(1)(b).

²³ *Smeaton v Victorian WorkCover Authority* [2012] VCAT 1549 at [69], approving *Birnbauer v Inner and Eastern Health Care Network* [1999] 16 VAR 9.

²⁴ [2007] VCAT 1194 at [73].

²⁵ [2013] VCAT 1267 at [170].

Section 38 – Document to which secrecy provisions of enactments apply

Section 464JA(4) of the Crimes Act

36. The Agency exempted Documents 27 and 28 under section 38 of the FOI Act in conjunction with section 464JA(4) of the Crimes Act. In doing so, the Agency did not view the two documents and based its decision on the nature of the documents only.
37. Documents 27 and 28 are audio or audio-visual recordings of interviews conducted by the Agency officers with the Applicant and a third party (**the Records of Interview**).
38. 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.

39. Therefore, for a document to be exempt under section 38, three conditions must be satisfied:
- (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;
 - (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)

Is there an enactment in force?

40. The Agency relies on section 464JA(4) of the Crimes Act which provides:
- (4) A person must not supply or offer to supply an audio recording or an audiovisual recording to another person other than –
 - (a) the suspect in relation to whom the recording was made;
 - (b) a legal practitioner representing the suspect;
 - (c) an authorised person acting in the performance of his or her duties;
 - (d) a person engaged by a person referred to in paragraph (a), (b) or (c) to transport the recording.

Penalty: Level 8 imprisonment (1 year maximum).

Note

The maximum fine that may be imposed on a body corporate found guilty of an offence against this subsection is 600 penalty units: see section 113D of the **Sentencing Act 1991**.

41. I am satisfied the Crimes Act is an enactment in force for the purpose of section 38 of the FOI Act.

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

42. For section 38 to apply, the relevant enactment must be formulated with such precision that it specifies the actual information sought to be withheld.
43. Section 464JA(4) prohibits the disclosure of an audio recording or an audiovisual recording.
44. I am satisfied Documents 27 and 28 are audiovisual recordings of an interview conducted by a police officer with the Applicant and a third party (at the time, each considered 'the suspect') as part of the Agency's investigation into a criminal offence or offences.
45. As such, I consider section 464JA(4) applies specifically to the content of Documents 27 and 28, being audiovisual recordings.

Does the enactment prohibit persons from disclosing the recording?

46. It is clear from the operation of section 464JA of the Crimes Act that Parliament intends a 'recording' may only be possessed, played to another person, supplied or copied in strictly limited circumstances²⁶ and by certain persons. The high penalties that apply if these provisions are breached further supports Parliament's intention.
47. For the purposes of section 464JA(4), the Crimes Act defines the term 'suspect' in section 464(2) as follows:

suspect means a person of or above the age of 18 years who—

- (a) is suspected of having committed an offence; or
 - (b) has been charged with an offence; or
 - (c) has been summonsed to answer to a charge;
48. I have considered whether the prohibition on disclosure under section 464JA(4) of the Crimes Act does not operate in relation to the Applicant as they were 'the suspect in relation to whom the recording was made', giving rise to the operation of the exception in section 464JA(4)(a).
 49. I understand the Agency's position is that the Applicant is no longer a 'suspect' for the purposes of section 464JA(4) of the Crimes Act.
 50. VCAT considered this issue in *Akers v Victoria Police*²⁷ which similarly involved section 464JA(4) of the Crimes Act and obtaining audio or audio-visual recordings of records of interview. This decision relevantly considered the definition of 'suspect' in section 464(2) of the Crimes Act, and whether a person, who has been a suspect, would remain a suspect such that the agency would be permitted to supply a copy of the audio-visual record of interview to that person.²⁸

²⁶ For example, such as a police investigation or court process.

²⁷ (Review and Regulation) (Corrected) [2022] VCAT 720.

²⁸ *Ibid* at [22].

51. Taking into account the statutory context of the surrounding provisions and their use of present tense wording, VCAT observed:

A person who is at one point in time a suspect does not remain a suspect indefinitely, and the person will not remain a suspect for the purposes of these FOI Act and related provisions beyond the time at which the person ceases to be a suspect (for instance, because the person has pleaded guilty, the person has served a sentence, and there is no indication other than that 'the file has been closed' on the matters that were the subject of the police interview).²⁹

52. Subsequently, once a person is no longer a suspect, section 464JA(4) operates to prohibit that person being provided the document.³⁰

Conclusion on the applicability of section 38 in conjunction with section 464JA(4) of the Crimes Act

53. Based on the information above, I do not consider any of the exceptions in section 464JA(4), in particular 464JA(4)(a), made out in the Applicant's case, where the definition of 'suspect' does not extend to a person who is no longer under suspicion of having committed an offence.
54. While the FOI Act provides a statutory right for persons seeking access to documents, this right does not override the prohibitions on disclosure under section 464JA(4) of the Crimes Act. I do not have any discretion to release information under the FOI Act where I find the prohibition applies, as in this case.
55. I therefore find that Documents 27 and 28 are exempt in full under section 38 in conjunction with section 464JA(4) of the Crimes Act.

Regulation 12 of the Criminal Procedures Regulations 2020

56. The Agency applied section 38 in conjunction with Regulation 11 of the CP Regulations 2009 to refuse access to Document 26, being a Video and Audio Recording of Evidence (**VARE**).
57. In making my fresh decision, I have considered the application of section 38 along with the current applicable regulation in the circumstances, being the *Criminal Procedure Regulations 2020* (Vic) (**CP Regulations 2020**).

Is there an enactment in force?

58. I am satisfied the CP Regulations 2020 is an enactment in force for the purposes of section 38.

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

59. In summary, the CP Regulations 2020 operate with the *Criminal Procedure Act 2009* (**CP Act**) to provide a strict regime for the making, use, possession, editing, storage, access to and destruction of Video and Audio Recordings of Evidence (**VARE recordings**) given by child witnesses in connection with a criminal investigation or proceeding which relates, wholly or partly, to allegations of a sexual offence, physical assault or family violence.

²⁹ Ibid at [50].

³⁰ Ibid at [56].

60. VAREs are made pursuant to section 367 of the CP Act. Their use and disclosure is strictly limited by the CP Act and Regulations.
61. Regulation 12 of the CP Regulations 2020 provide that a VARE recording, copy of the recording or transcript of the recording can only be used in, or in connection with, specified types of criminal proceedings, or in accordance with regulation 26.
62. Regulation 26 allows the relevant Department Secretary to authorise in writing a person to use a copy or a transcript of a VARE for the purposes of assisting an intermediary to perform a function set out in section 398I of the CP Act (such as assessing a witness) or provide a deidentified copy for training or evaluation of intermediaries once the proceeding has been finalised.
63. Section 368A of the CP Act allows a Court to order that a VARE be produced in a proceeding, but only if that is in the best interests of the witness. In those circumstances, the Court must also have regard to the privacy of the witness and specify who may view or listen to the recording.

Does the enactment prohibit persons from disclosing the information in the documents?

64. An application for access to documents under the FOI Act does not come within any of the exceptions that authorise disclosure of a VARE.
65. I am satisfied the relevant sections of the CP Act and CP Regulations 2020 prohibit the disclosure of any VARE recording including a transcript of a VARE recording.
66. Accordingly, I am satisfied:
 - (a) the CP Regulations 2020 and CP Act are enactments in force for the purposes of section 38 of the FOI Act;
 - (b) Document 26 sought by the Applicant, would contain specific information the disclosure of which is prohibited under Regulation 12 of the CP Regulations 2020 and that none of the exemptions authorising disclosure apply; and
 - (c) Agency officers are prohibited from disclosing Document 26.
67. On the information before me and having considered the terms of the Applicant's request, I am satisfied Document 26 would contain information exempt under section 38 of the FOI Act in conjunction with Regulations 12 of the CP Regulations 2020.

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

68. The Agency applied section 31(1)(d) to exempt certain information in Documents 1, 2 and 3.
69. Section 31(1)(d) provides (subject to this section) a document is exempt if its disclosure would, or would be reasonably likely to, 'disclose methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures'. Section 31(1)(d) is subject to other provisions in section 31.

70. The exemptions in section 31(1) do not apply to widespread and well-known methods and procedures.³¹
71. I am constrained by the information I can provide in this decision in relation to the information refused by the Agency under section 31(1)(d) as to do so may reveal exempt information.
72. However, having reviewed the documents and the small amount of information exempted under section 31(1)(d), I am satisfied disclosure would reveal a method of preventing, detecting or investigating breaches of the law and they are therefore exempt under section 31(1)(d).
73. The Schedule of Documents in **Annexure 1** outlines my decision in relation to section 31(1)(d).

Section 25 – Deletion of exempt or irrelevant information

74. 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.
75. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’³² 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 25.³³
76. Given my decision is the same as the Agency’s decision and it granted access to some documents in part in accordance with section 25, I consider it remains practicable to provide the Applicant with an edited copy of certain documents with exempt information deleted.
77. I have also considered the information the Agency deleted from the documents as irrelevant. The Agency deleted the employee numbers and names of Victoria Police employees who generated the LEAP report and attendance summaries, as well as information which is not related to the Applicant. In this case, I agree this information is irrelevant to the Applicant’s FOI request.
78. In relation to Documents 26, 27 and 28, I am satisfied the Agency is prohibited from providing edited copies of documents as all information contained within them is exempt by virtue of section 38 of the FOI Act in conjunction with Regulation 12 of the CP Regulations (Document 26) and section 464JA(4) of the Crimes Act (Documents 27 and 28).

Conclusion

79. My decision on the Applicant’s request is the same as the Agency’s decision. No further information is to be released to the Applicant.
80. The Schedule of Documents in Annexure 1 sets out my decision in relation to each document.

³¹ *XYZ v Victoria Police* [2010] VCAT 255 at [177].

³² *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].

³³ *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], [155].

Timeframe to seek a review of my decision

81. If the Applicant is not satisfied with my decision, they are entitled to apply to VCAT or it to be reviewed.³⁴
82. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.³⁵
83. 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.
84. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

³⁴ Section 50(1)(b).

³⁵ Section 52(5).

Annexure 1 – Schedule of Documents

Document No.	Date of document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
1.	N/A	LEAP Incident Report – [number]	8	Released in part Sections 31(1)(d), 33(1)	Release in part Sections 31(1)(d), 33(1), 25	<p>Section 31(1)(d): I am satisfied the information deleted by the Agency under section 31(1)(d) is exempt from release for the reasons outlined in the Notice of Decision above.</p> <p>Section 33(1): I am satisfied it would be unreasonable to disclose the personal affairs information as identified by the Agency in this document for the reasons outlined in the Notice of Decision, above.</p> <p>Section 25: I am satisfied it continues to be practicable to provide the Applicant with an edited copy of this document with exempt information, as well as any irrelevant information, deleted in accordance with section 25.</p>
2.	N/A	Interpose Investigation Report – [number]	14	Released in part Sections 31(1)(d), 33(1)	Release in part Sections 31(1)(d), 33(1), 25	<p>Sections 31(1)(d), 33(1) and 25: See comments for Document 1.</p>

Document No.	Date of document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
3.	Various	Diary Notes – [name]	15	Released in part Sections 31(1)(d), 33(1)	Release in part Sections 31(1)(d), 33(1), 25	Sections 31(1)(d), 33(1) and 25: See comments for Document 1.
4.	Various	Notes – [date]	6	Refused in full Section 33(1)	Refuse in full Sections 33(1), 25	Section 33(1): I am satisfied disclosure of third party personal affairs information in this document would be unreasonable for the reasons outlined in the Notice of Decision. Section 25: I am not satisfied it is practicable to provide the Applicant with an edited copy of the document with exempt information deleted in accordance with section 25.
5.	[Date]	Video and Audio Taping of Evidence (VATE) Interview Log – [number]	5	Refused in full Section 33(1)	Refuse in full Sections 33(1), 25	Sections 33(1) and 25: See comments for Document 4.
6.	[Date]	VATE Interview Log – [number]	4	Refused in full Section 33(1)	Refuse in full Sections 33(1), 25	Sections 33(1) and 25: See comments for Document 4.

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Document No.	Date of document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
7.	[Date]	VARE Notes – [name]	1	Refused in full Section 33(1)	Refuse in full Sections 33(1), 25	Sections 33(1) and 25: See comments for Document 4.
8.	Various	Email Chain	12	Refused in full Section 33(1)	Refuse in full Sections 33(1), 25	Sections 33(1) and 25: See comments for Document 4.
9.	[Date]	Attendance Summary – [name]	1	Released in full	Release in part Section 25	Section 25: I am satisfied the information the Agency deleted is ‘irrelevant’ to the Applicant’s FOI request.
10.	[Date]	Attendance Summary – [Applicant]	2	Released in full	Release in part Section 25	Section 25: See comment for Document 9.
11.	N/A	Brief Head	2	Released in full	Not subject to review	
12.	N/A	LEAP – Intent to Summons (ITS) Report – [number]	1	Released in part Section 33(1)	Release in part Section 33(1), 25	Sections 33(1) and 25: See comments for Document 1.
13.	N/A	Hand Up Brief – Summary of Charges	1	Released in part	Release in part	Sections 33(1) and 25: See comments for Document 1.

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Document No.	Date of document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
				Section 33(1)	Sections 33(1), 25	
14.	N/A	Charge – Sheet and Summons	2	Released in part Section 33(1)	Release in part Sections 33(1), 25	Sections 33(1) and 25: See comments for Document 1.
15.	N/A	Witness List	1	Released in part Section 33(1)	Release in part Sections 33(1), 25	Sections 33(1) and 25: See comments for Document 1.
16.	N/A	Exhibit List	1	Released in full	Not subject to review	
17.	N/A	Statement – Witness One	5	Refused in full Sections 33(1), 35(1)(b)	Refuse in full Sections 33(1), 35(1)(b), 25	<p>Section 35(1)(b): I am satisfied the information provided by a third party to the Agency is exempt from release under section 35(1)(b) for the reasons outlined in the Notice of Decision.</p> <p>Section 33(1): I am satisfied disclosure of third party personal affairs information in this document would be unreasonable for the reasons outlined in the Notice of Decision.</p>

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Document No.	Date of document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						Section 25: See comments for Document 4.
18.	[Date]	Statement – Witness Two	3	Refused in full Sections 33(1), 35(1)(b)	Refuse in full Sections 33(1), 35(1)(b), 25	Sections 33(1) and 35(1)(b): See comments for Document 17. Section 25: See comments for Document 4.
19.	[Date]	Statement – Witness Three	2	Refused in full Sections 33(1), 35(1)(b)	Refuse in full Sections 33(1), 35(1)(b), 25	Sections 33(1) and 35(1)(b): See comments for Document 17. Section 25: See comments for Document 4.
20.	[Date]	Prescribed Person’s Statement – [name]	2	Released in part Section 33(1)	Release in part Sections 33(1), 25	Sections 33(1) and 25: See comments for Document 1.
21.	[Date]	Prescribed Person’s Statement – [name]	2	Released in part Section 33(1)	Release in part Sections 33(1), 25	Sections 33(1) and 25: See comments for Document 1.:
22.	15/10/2022	Statement – [name]	2	Released in part Section 33(1)	Release in part Section 33(1), 25	Sections 33(1) and 25: See comments for Document 1.

OFFICIAL

Document No.	Date of document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
23.	N/A	Exhibit One – Notes	4	Refused in full Section 33(1)	Refuse in full Sections 33(1), 25	Sections 33(1) and 25: See comments for Document 4.
24.	N/A	Exhibit Two - Sketch	1	Refused in full Section 33(1)	Refuse in full Sections 33(1), 25	Sections 33(1) and 25: See comments for Document 4.
25.	[Date]	Exhibit Three – Medical Records	2	Released in full	Not subject to review	
26.	N/A	Video and Audio Recording of Evidence (VARE)	N/A	Refused in full Section 38, in conjunction with the CP Regulations	Refuse in full Section 38, 25	Section 38: I am satisfied this document is exempt from release under section 38 in conjunction with Regulation 12 of the CP Regulations for the reasons provided in the Notice of Decision. Section 25: See comments for Document 4.
27.	[Date]	Record of Interview (ROI) – [Applicant]	N/A	Refused in full Section 38, in conjunction with the Crimes Act	Refuse in full Sections 38, 25	Section 38: I am satisfied this document is exempt from release under section 38 in conjunction with section 464JA(4) of the Crimes Act

Document No.	Date of document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						for the reasons provided in the Notice of Decision. Section 25: See comments for Document 4.
28.	[Date]	ROI – [name]	N/A	Refused in full Section 38, in conjunction with the Crimes Act	Refuse in full Sections 38, 25	Sections 38 and 25: See comments for Document 27 above.