

Notice of Decision and Reasons for Decision

Applicant:	'FR8'
Agency:	Department of Transport and Planning
Decision date:	26 November 2024
Exemptions and provisions considered:	Section 38 of the <i>Freedom of Information Act 1982</i> (Vic) in conjunction with Part 7B and section 90P of the <i>Road and Safety Act 1986</i> (Vic)
Citation:	'FR8' and Department of Transport and Planning (<i>Freedom of Information</i>) [2024] VICmr 48 (26 November 2024)

FREEDOM OF INFORMATION – notification from a third party – information from which an individual's identity can be reasonably ascertained – secrecy provision – *Road Safety Act 1986* (Vic) – registration and licensing activities

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 is the same as the Agency's decision and no further information is to be released.

Please refer to page 5 for information about review rights through the Victorian Civil and Administrative Tribunal (**VCAT**).

My reasons for decision follow.

Penny Eastman
Public Access Deputy Commissioner

26 November 2024

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to the following documents:
 - ... further information regarding a “Request for medical information” [Case number] which I received on [date]...
 - ... further information as to the nature of the report, e.g. the justification for the report, as well as details about the time and place of any allegations, and who made them...
2. The Agency identified one document, which was a confidential notification made to the Agency.
3. The Agency refused access to the document in full under section 38 in conjunction with Part 7B and section 90P of the *Road Safety Act 1986* (Vic) (**Road Safety Act**).
4. The Agency’s decision letter sets out the reasons for its decision.

Review application

5. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency’s decision to refuse access.
6. I have examined a copy of the document subject to review.
7. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
8. I have considered relevant communications and submissions received from the parties, as well as the additional background content provided by the Applicant in their request to the Agency.

Review of exemption

Section 38 – Documents to which secrecy provisions of enactments apply

9. Section 38 provides:
 - 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.
10. Therefore, for a document to be exempt under section 38, three conditions must be satisfied:
 - (a) there is 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 prohibits persons, referred to in the enactment, from disclosing that specific kind of information (either absolutely or subject to exceptions or qualifications).

Is there an enactment in force?

11. Yes, I am satisfied the Road Safety Act is an enactment in force for the purpose of section 38.

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

12. 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.
13. The Agency relied on section 38 in conjunction with Part 7B of the Road Safety Act, which prohibits the disclosure of 'relevant information' except in accordance with the Act.
14. Section 90I of the Road Safety Act defines 'relevant information' as information to which section 90J of the Road Safety Act applies.
15. Section 90J of the Road Safety Act provides:
- (1) This Part applies to information —
 - (a) that is collected or received by the Secretary in relation to the Secretary's registration or licensing functions and activities or in relation to the accessible parking permit scheme; and
 - (b) that identifies an individual or from which an individual's identity can be reasonably ascertained.
 - ...
 - (3) For the purposes of subsection (1), information collected or received by the Secretary in relation to the Secretary's registration or licensing functions and activities includes, but is not limited to, information relating to —
 - (a) granting, renewing, suspending or cancelling registration of vehicles;
 - (b) entering or removing vehicles from the written-off vehicles register;
 - (c) exempting vehicles from registration;
 - (d) granting, renewing, suspending or cancelling driver licences or learner permits and recording demerit points —whether that information relates to a registered or unregistered vehicle or a licensed or unlicensed driver.
16. The document subject to review is written correspondence received by the Agency from another person regarding the Applicant. The person is identifiable by name and email address.
17. I am satisfied the enactment applies specifically to the document because it is information the Agency collected in relation to its licensing and registration functions and activities that identifies an individual.

Does the enactment prohibit people from disclosing information in the document?

18. Section 90P of the Road Safety Act provides:
- (1) A document which contains relevant information is an exempt document within the meaning of section 38 of the Freedom of Information Act 1982.
 - (2) Subsection (1) does not limit the operation of section 38 of the Freedom of Information Act 1982.

19. Section 90Q of the Road Safety Act provides:

90Q Offences

- (1) The Secretary or a relevant person or a person who has been a relevant person must not use or disclose relevant information other than as authorised by this Part –
 - (a) knowing that the use or disclosure is not so authorised; or
 - (b) being reckless as to whether the use or disclosure is so authorised.

Penalty: 120 penalty units or imprisonment for 12 months.

20. 'Secretary' means the Secretary of the Agency.¹
21. Section 90I of the Road Safety Act defines 'relevant person'. The definition includes 'employees in the Department', which means the Agency's officers.
22. Accordingly, I am satisfied the enactment prohibits Agency officers from disclosing the document.

Does an exception apply?

23. Section 90K of the Road Safety Act authorises disclosure of relevant information in certain circumstances and for particular purposes.
24. Having reviewed section 90K and on the information before me, it does not appear that any of the exceptions to the prohibition in section 90Q of the Road Safety Act apply in the circumstances.

Section 25 – Deletion of exempt or irrelevant information

25. 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.
26. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'² and the effectiveness of the deletions.

¹ Section 3(1) of the Road Safety Act.

² *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].

Where deletions would render a document meaningless, they are not 'practicable' and release of the document is not required under section 25.³

27. I have considered the effect of deleting exempt information from the document. In my view, it is not practicable for the Agency to do so, as it would render the document meaningless to the Applicant.

Conclusion

28. On the information before me, I am satisfied the document is exempt from release under section 38 of the FOI Act in conjunction with Part 7B and section 90P of the Road Safety Act.
29. As I am satisfied it is not practicable to provide the Applicant with an edited copy of the document with exempt information deleted in accordance with section 25, access to the document is refused in full.

Timeframe to seek a review of my decision

30. If the Applicant is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.⁴
31. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁵
32. 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.
33. The Agency is required to notify the Information Commissioner in writing as soon as practicable if the Applicant applies to VCAT for a review of my decision.⁶
34. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

³ *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].

⁴ Section 50(1)(b).

⁵ Section 52(5).

⁶ Section 50(3FA).