

Notice of Decision and Reasons for Decision

Applicant:	'FV3'
Agency:	Department of Justice and Community Safety
Decision date:	30 April 2025
Provisions and exemption considered:	Sections 25A(5) and 38 of the <i>Freedom of Information Act 1982</i> (Vic), and section 104ZZA of the <i>Corrections Act 1986</i> (Vic)
Citation:	'FV3' and <i>Department of Justice and Community Safety</i> (Freedom of Information) [2025] VICmr 21 (30 April 2025)

FREEDOM OF INFORMATION – prison intelligence – Centurion Intelligence System – all documents would be exempt – section 104ZZA of the *Corrections Act 1986* (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 is the same as the Agency's decision.

I am satisfied that section 25A(5) applies, as it is apparent from the nature of the documents described in the Applicant's request, that all of the documents, should they exist, are exempt and access to an edited copy of any of the documents cannot be provided.

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

My reasons for decision follow.

Penny Eastman
Public Access Deputy Commissioner

30 April 2025

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to a copy of an intelligence report and their Centurion Intelligence System (CIS) file.
2. The Agency refused the request under section 25A(5), without having identified any or all documents, as it considered any documents relevant to the request, should they exist, would be exempt from release under section 38 in conjunction with section 104ZZA of the *Corrections Act 1986* (Vic) (**Corrections Act**).
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. 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 relevant 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.

Review of section 25A(5)

8. An agency may refuse a request without processing it, if:
 - (a) it is apparent from the nature of the documents described in the request, that all of the documents are exempt; and
 - (b) the agency cannot provide access to an edited copy of any of the documents, or the applicant does not want to receive an edited copy of the documents.
9. If section 25A(5) applies, it allows an agency to refuse the request without:
 - (a) having identified any or all of the documents to which the request relates; and
 - (b) specifying, in respect of each document, the exemption(s) that make the document exempt.
10. An agency may only rely on section 25A(5) in clear and limited circumstances.¹ An agency must interpret and apply section 25A(5) consistently with the FOI Act's objects to extend, as far as

¹ *Knight v Corrections Victoria* [2010] VSC 338, [58].

possible, the right of the community to access government held information through a general right of access to documents.²

First element – apparent on the face of the request that all documents exempt – section 25A(5)(a)

11. For section 25A(5) to apply, the first element is: it is apparent from the nature of the documents as described in the request that all of the documents to which the request is expressed to relate are exempt documents.

What is the nature of the requested documents?

12. The nature of a document refers to the ‘inherent or essential quality and character of the documents as described’.³ An agency cannot ‘go behind the description of the documents in the request’.⁴
13. It must be objectively apparent from the face of the request that all requested documents are exempt by their nature (under one or more exemption).⁵
14. The Applicant seeks access to a prison intelligence report and information within their file held on the CIS, which the Agency’s decision letter describes as a database that the Agency uses to gather and assess intelligence and information about the activities of prisoners.
15. As such, it is apparent the Applicant is seeking access to prison intelligence information. Therefore, I must consider if documents containing prison intelligence are exempt under section 38.

Would the requested documents be exempt under section 38?

16. A document is exempt under section 38 when three conditions are satisfied:
- (a) there is a section of a Victorian Act (an enactment) that is in force; and
 - (b) the enactment applies specifically to information contained in the document; and
 - (c) the enactment prohibits specific persons from disclosing the specified information.

Is there an enactment in force?

17. Section 104ZZA of the Corrections Act is an enactment in force.

Does the enactment refer specifically to the information in the requested documents, should any exist?

18. Section 104ZZA of the Corrections Act provides:

104ZZA Offence to use or disclose personal or confidential information unless authorised

² *Freedom of Information Act 1982* (Vic), section 3.

³ *Knight v Corrections Victoria* [2010] VSC 338, [39].

⁴ *Knight v Corrections Victoria* [2010] VSC 338, [38].

⁵ *Knight v Corrections Victoria* [2010] VSC 338, [38]-[39].

A person who is or has been a relevant person must not use or disclose personal or confidential information unless that use or disclosure is authorised under section 104ZY, 104ZZ or 104ZZAA

Penalty: 120 penalty units.

19. The term 'personal or confidential information' is defined in section 104ZX of the Corrections Act and includes the following, which I consider are relevant in this matter:
- (a) information relating to the personal affairs of a person who is or has been an offender or a prisoner;
 - ...
 - (c) information –
 - (i) that identifies any person or discloses his or her address or location or a journey made by that person; or
 - (ii) from which the person's identity, address or location can reasonably be determined.
 - ...
 - (i) information concerning the management of prisons;
 - (j) information concerning –
 - (i) security systems and security measures in, or in relation to, a prison; or
 - (ii) security measures taken to protect the community from offenders;
20. Intelligence gathering is essential to the management and security of prisons and prisoners. Its purpose is to ensure the safety, security and integrity of the prison, its systems, prisoners and staff and inform the Agency's decision making regarding these matters.
21. I note the Applicant is no longer incarcerated and the prison is no longer operating. Nevertheless, any intelligence gathered is likely to still have relevance to the management of prisoners who are still incarcerated, albeit at another prison, and would contain information concerning the security of and management that is applicable to other prisons. If intelligence documents were released, the management and security of prisons could be exploited and compromised.
22. As such, the enactment refers specifically to the information that would be contained in the requested documents, should any exist.

Does the enactment prohibit persons from disclosing the information in the requested documents, should any exist?

23. The secrecy provision must prohibit a person from disclosing the specified information.
24. Section 104ZZA of the Corrections Act operates to protect the privacy of individuals who are identified in documents generated in connection with the management and administration of the corrections system, as well as ensuring that the security and management of prisons is not

compromised. The section imposes strict confidentiality requirements on Agency officers, among others, which apply in all but certain limited circumstances.

25. Section 104ZZA of the Corrections Act prohibits 'a person who is or has been a relevant person' from disclosing 'personal or confidential information' unless authorised.
26. The phrase 'relevant person' is set out in Schedule 5 and includes '[a] person employed in the Department under Part 3 of the Public Administration Act 2004'.
27. As such, the Agency is a 'relevant person' for the purposes of section 104ZZA of the Corrections Act.

Are there any exceptions to the secrecy provision?

28. Sections 104ZY and 104ZZ of the Corrections Act set out exceptions to the prohibition on relevant persons disclosing 'personal or confidential information'.
29. Having reviewed these exceptions, there is no information before me to suggest an exception applies to authorise disclosure of the documents to the Applicant where the documents concern the security and management of the prison, irrespective of whether they relate to the Applicant personally and the Applicant authorises disclosure of information that relates to them, noting section 104ZY(2)(b) of the Corrections Act.
30. Accordingly, I am satisfied section 104ZZA of the Corrections Act prohibits Agency officers from disclosing the requested documents, should any exist, and I am satisfied the documents would contain information that is exempt from release under section 38.
31. In summary, I am satisfied that the first element is met, as it is apparent from the nature of the documents described in the request, that all of the documents, should they exist, would be exempt under section 38 in conjunction with section 104ZZA of the Corrections Act.

Second element – no obligation to provide an edited copy of any document – section 25A(5)(b)

32. The second element in section 25A(5)(b) relates to providing access to edited copies of a requested document.
33. Section 25A(5) can only be applied if:
 - (a) it is not practicable to provide an edited copy of any of the documents that removes the exempt information;⁶ or
 - (b) it is apparent from the request or through consultation with the applicant, that the applicant does not want access to an edited copy of the document that removes the exempt information.⁷

⁶ *Freedom of Information Act 1982* (Vic), sections 25(b) and 25A(5)(b)(i).

⁷ *Freedom of Information Act 1982* (Vic), sections 25(c) and 25A(5)(b)(ii).

34. It must be objectively apparent from the nature of the documents, as described in the request, that it would not be practicable to provide an edited copy of any of the documents, under section 25.⁸
35. I am satisfied it would not be practicable to provide an edited copy of any of the documents to remove exempt information, as they would be exempt in their entirety under section 38, based on their objective nature.

Conclusion

36. I am satisfied that section 25A(5) applies, as it is apparent from the nature of the documents described in the Applicant's request, that all of the documents, should they exist, are exempt and access to an edited copy of any of the documents cannot be provided. Therefore, access to the requested documents is refused.

Timeframe to seek a review of my decision

37. If the Applicant is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.⁹
38. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹⁰
39. 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.
40. 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.¹¹

⁸ *Knight v Corrections Victoria* [2010] VSC 338, [50].

⁹ Section 50(1)(b).

¹⁰ Section 52(5).

¹¹ Section 50(3FA).