

Notice of Decision and Reasons for Decision

Applicant:	'FX4'
Agency:	Victoria Police
Decision date:	20 June 2025
Exemptions and provisions considered:	Sections 30(1), 34(1)(b), 34(4)(c), 25
Citation:	'FX4' and Victoria Police (Freedom of Information) [2025] VICmr 40 (20 June 2025)

FREEDOM OF INFORMATION – Psychological Selection Report – psychological interview notes – psychological testing – psychological assessments – police officer recruitment – recruitment documents

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 differs from the Agency's decision as I am not satisfied Document 5 is exempt from release under section 34(4)(c). However, I am satisfied Document 5 is exempt from release in full under sections 30(1) and 34(1)(b) and it is not practicable to provide the Applicant with an edited copy of the document with exempt information deleted.

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.

Sean Morrison
Information Commissioner

20 June 2025

Reasons for Decision

Background to review

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

Personal and health information collected about me through the Victorian Police Recruitment process. Including but not limited to psychological 1:1 interview notes and recommendation.
2. The Agency located 6 documents in response to the Applicant's request and refused access to the documents in full under section 33(4). However, the Agency decided to release the documents to the Applicant's nominated health service provider as follows:
 - (a) Documents 2 and 4 were released in full
 - (b) Documents 1, 3 and 6 were released in part
 - (c) Document 5 was refused in full.
3. The Agency relied on exemptions under sections 31(1)(d), 33(1) and 34(4)(c) to refuse access to information in the documents.
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. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
7. The Applicant advised OVIC during the review that they only sought for the Psychological Selection Report (**Document 5**) to be reviewed, which the Agency refused in full under section 34(4)(c).
8. During the review, the Agency sought to apply an additional exemption over parts of Document 5, specifically section 34(1)(b) to the [document type] (pages 29-39) and the [document type] (pages 40-60).
9. I have examined a copy of Document 5.
10. I have considered relevant communications and submissions received from the parties.
11. 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.
12. 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.

13. 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’.¹ 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.

Review of exemptions

Section 34(4)(c) – examination papers and examiner reports

14. A document or information is exempt under section 34(4)(c) if:
 - (a) it is:
 - (i) an examination paper or
 - (ii) a paper submitted by a student during an examination or
 - (iii) an examiner’s report or
 - (iv) similar document and
 - (b) the use or uses for which the document was prepared have not been completed.
15. The term ‘examination’ has a broad definition and can include non-academic related examinations.² For example, selection reports containing questions prepared for recruitment processes.
16. A ‘marking guide’ has been found to be a ‘similar document’ for the purposes of this exemption.³
17. If the use or uses of a document have been completed, the exemption cannot apply.⁴
18. The exemption does not involve any public interest considerations. Any potential prejudice or disadvantage to the agency in a document’s disclosure, or public interest in a document not being disclosed, is irrelevant.⁵
19. The words ‘prepared’ and ‘completed’ should be given their ordinary meaning.⁶
20. The ‘use’ or ‘uses’ of a document, must be a use ‘for which the document was prepared’, not a use of the information contained in the document or secondary use, created or realised after

¹ *Drake v Minister for Immigration and Ethnic Affairs* (1979) 24 ALR 577, [591].

² *‘AU3’ and Victoria Police* [2019] VICmr 184, [49].

³ *McKean v University of Melbourne* [2007] VCAT 1310, [22]; *‘AP8’ and Victorian Curriculum Assessment Authority* [2019] VICmr 143, [18].

⁴ *McKean v University of Melbourne* [2007] VCAT 1310, [25].

⁵ *McKean v University of Melbourne* [2007] VCAT 1310, [25]-[26]; *Melbourne University v McKean* [2008] VSC 325, [30].

⁶ *McKean v University of Melbourne* [2007] VCAT 1310, [29].

the document's preparation.⁷

21. Document 5 comprises of a [type of] Report prepared by a psychologist (**selection report**), typed and handwritten psychological interview notes (**interview notes**), a [type of] Report and a [type of] Report (**assessment reports**).

22. The Agency's decision states:

The [type of reports] are documents similar to examiner reports. Releasing the clinical questions and notes is comparable to providing exam answers; the applicant would be able to learn and prepare from such documents or allow others to do so. This is because the documents provide not only the questions but also the information provided by applicants that the examiner considered pertinent to note as part of the examination.

As these assessments are still used, their release would compromise the selection process. If released, the ability of the Medical Advisory Unit to accurately assess the psychological suitability of an applicant would be compromised. This then leaves Victoria Police open to a number of risks regarding the selection of unsuitable applicants.

23. The Agency clarified during the review that it also seeks to rely on section 34(4)(c) in relation to the selection report and interview notes, in addition to assessment reports.
24. I only accept the interview notes are akin to examination questions and answers because they contain questions that the psychologist asked the Applicant and the psychologist's typed and handwritten notes concerning the Applicant's answers. I do not accept the Agency's view that the selection report and the assessment reports are similar to an examiner's report.
25. For section 34(4)(c) to apply to the interview notes, the use or uses for which the documents were prepared must have not been completed.
26. In *University of Melbourne v McKean* [2008] VSC 325 (**McKean**), the Supreme Court of Victoria considered the application of section 34(4)(c) to examination marking guides and an examination paper, which VCAT had found were not exempt under section 34(4)(c). Justice Kyrou made the following observation in the context of considering the application of section 34(4)(c):

In the present case, in response to Mr McKean's requests for access, the University relevantly identified three specific documents as falling within his requests. Those documents did not include the bank of examination questions that are stored electronically and in master copies. The subject matter of the applications for review before the Tribunal in relation to s 34(4)(c) was whether the uses for which the three documents were prepared had been completed. The issue was not whether the uses for which the information in the three documents, as it appears in other documents held by the University, was prepared or generated had been completed.⁸

27. Justice Kyrou decided that it was open to VCAT to find that while the information in the precedent bank of questions and answers may be reused, the uses for which the documents were prepared were completed at the end of the examination assessment period when the

⁷ *McKean v University of Melbourne* [2007] VCAT 1310, [28].

⁸ *University of Melbourne v McKean* [2008] VSC 325, [27].

results were published.⁹

28. Adopting the Supreme Court's approach in the McKean matter, I consider the second limb of section 34(4)(c) refers to whether the use for which the specific documents subject to review were created is completed, rather than whether information in the documents might be reused in the future.
29. In this matter, the psychological assessment of the Applicant has been completed, as has the psychologist's interview notes. The specific documents pertaining to the Applicant's interview will not be reused. Notwithstanding the Agency may use the same or similar questions and assessment methods in the future, the specific use for which the interview notes were prepared is completed. This also applies to the selection report and assessment reports.
30. Accordingly, I am satisfied section 34(4)(c) does not apply to Document 5. Therefore, I will consider the application of section 34(1)(b) in relation to the assessment reports.

Section 34(1)(b) – business, commercial or financial information of a third party undertaking

31. A document or information is exempt under section 34(1)(b) if three conditions are satisfied:
 - (a) the document or information was acquired from a business, commercial, or financial undertaking
 - (b) the information relates to matters of a business, commercial or financial nature
 - (c) disclosure of the information is likely to expose the undertaking unreasonably to disadvantage (based on matters listed in section 34(2) and any other relevant considerations).
32. I have considered whether the assessment reports are exempt under section 34(1)(b).

Were the documents acquired from a business, commercial or financial undertaking?

33. The phrase 'information acquired' involves some positive handing over of information to an agency in a precise form.¹⁰
34. The actual document does not itself need to be acquired from an undertaking.¹¹ It may also disclose relevant information acquired from the undertaking.¹²
35. Both the assessment reports were generated using psychological testing tools purchased by the Agency from a third party business undertaking. The reports comprise of the Applicant's results from undertaking the two psychological assessment tools and include information about how to interpret the Applicant's results. Both documents are presented as reports using the third party undertaking's letterhead.

⁹ Ibid, [29].

¹⁰ *Thwaites v Department of Human Services* (1999) 15 VAR 1, 14.

¹¹ *Gill v Department of Industry, Technology and Resources* (1985) 1 VAR 97, 106.

¹² *Gill v Department of Industry, Technology and Resources* (1985) 1 VAR 97, 106; *Holbrook v Department of Natural Resources* (1997) 13 VAR 1, 8.

36. For the purposes of section 34(1)(b), I am satisfied the documents were acquired by the Agency from a business undertaking.

Does the information relate to matters of business, commercial or financial nature?

37. Both assessment reports provide scores, profiles and interpretative text based on the response data from the Applicant undertaking the assessment tools.
38. I am satisfied the assessment reports contain the intellectual property of the business undertaking as the reports were generated using the business undertaking's psychological testing tools, which is their proprietary information.

Would disclosure of the information be likely to expose the undertaking unreasonably to disadvantage?

39. In considering whether disclosure will expose the undertaking to unreasonable disadvantage, I have had regard to the following factors set out in section 34(2), along with any other relevant considerations:
- (a) whether the information is generally available to competitors of the undertaking
 - (b) whether the information would be exempt if it were generated by an agency or a Minister
 - (c) whether the information could be disclosed without causing substantial harm to the competitive position of the undertaking
 - (d) whether there are any considerations in the public interest in favour of disclosure which outweigh considerations of competitive disadvantage to the undertaking, for instance, the public interest in evaluating aspects of government regulation of corporate practices or environmental controls.
40. Other relevant considerations include whether disclosure would:
- (a) give a competitor of the undertaking a competitive financial advantage
 - (b) enable that competitor to engage in destructive competition with the undertaking
 - (c) lead to unwarranted conclusions about the undertaking's financial affairs and position that result in commercial and market consequences.¹³
41. I accept the psychological assessment tools are the intellectual property of the third party and disclose the methodology used in their psychological assessments. I accept that psychological assessment tools are routinely used in recruitment processes, and as such, I accept the undertaking works within a competitive industry.
42. In my view, should the assessment reports be released, it would likely expose the undertaking

¹³ *Dalla-Riva v Department of Treasury and Finance* [2007] VCAT 1301, [33].

unreasonably to disadvantage as it could provide its competitors with insight into how the undertaking presents scores, profiles, and interpretive text based on response data from its assessment tools.

43. Accordingly, I am satisfied disclosing the assessment reports would likely expose the undertaking unreasonably to disadvantage and are exempt from release under section 34(1)(b).
44. In forming this view I am required to seek, if reasonably practicable, the relevant undertaking's view as to whether the disclosure of the document should occur. In this instance, given the nature of the document, and the context it was created in, I have determined it is not reasonably practicable to consult with the undertaking.

Section 30(1) – Internal working documents

45. Section 30(1) exempts documents that contain opinion, advice or recommendation, or consultation or deliberation, where disclosure would be contrary to the public interest. A document is not exempt simply because it is an internal working document.¹⁴
46. To be exempt under section 30(1), three conditions must be satisfied:
 - (a) the document or information is matter in the nature of
 - (i) opinion, advice or recommendation prepared by an agency officer or a Minister or
 - (ii) consultation or deliberation that has taken place between agency officers or Ministers
 - (b) the matter was created during the deliberative process of an agency, Minister, or the government's functions
 - (c) disclosure of the matter would be contrary to the public interest.
47. There are four circumstances where section 30(1) does not apply:
 - (a) documents required to be made available for inspection and purchase under section 8
 - (b) purely factual information
 - (c) certain documents relating to adjudicative functions
 - (d) documents more than 10 years old.

48. I have considered the application of section 30(1) to the selection report and interview notes.

Do the documents contain opinion, advice or recommendation, or consultation or deliberation?

49. The selection report contains evaluation and assessment of the Applicant's psychological

¹⁴ *Graze v Commissioner of State Revenue* [2013] VCAT 869, 25.

suitability as a sworn police officer. I consider the report reflects information the assessing psychologist considered relevant to their assessment of the Applicant's suitability for the role.

50. The interview notes are templated documents to assist psychologists in their assessment of an applicant's psychological suitability for role with the Agency.
51. In this matter, the interview notes comprise of both typed and handwritten comments recorded by the psychologist. The content of the typed interview notes are also similar to the content in the selection report. Both the typed interview notes and selection report contain evaluative remarks of the psychologist and therefore disclose their opinion and thinking process.
52. The handwritten interview notes include information such as instructions for the psychologist, interview questions, key areas of assessment, and includes the ability for the psychologist to record their overall comments and contemporaneous observations taken during the interview.
53. Further, I consider the notes reflect information the psychologist considered relevant to their assessment of the Applicant's suitability for the role during the course of the interview and are not a verbatim or full transcript of the Applicant's responses.
54. While some information in the documents appears to be administrative to a degree, I consider it is nonetheless deliberative in nature.

Was the matter created during the deliberative process of an agency, Minister, or the government's functions?

55. I am satisfied the documents were prepared in the course of and for the purpose of the Agency's deliberative processes with respect to undertaking its recruitment activities for police officers.

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

56. In deciding whether disclosure of the information would be contrary to the public interest, I have given weight to the following relevant factors:¹⁵
 - (a) the right of every person to gain access to documents under the FOI Act
 - (b) the sensitivity of the issues involved and the broader context of how the document was created
 - (c) the stage of a decision at the time the communications were made
 - (d) whether disclosure of the documents would be likely to inhibit communications between agency officers that are essential for the agency to make an informed and well-considered decision or for those officers to properly participate in a process of the agency's functions
 - (e) whether disclosure of the documents would give merely a part explanation, rather than a

¹⁵ See <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-30/#disclosure-would-be-contrary-to-the-public-interest>.

complete explanation, for the taking of a particular decision or the outcome of a process, but only where the agency would not otherwise be able to explain upon disclosure of the document

- (f) the impact of disclosing documents in draft form, including disclosure not clearly or accurately representing a final decision by an agency or Minister
 - (g) the likelihood that disclosure would inhibit the independence of officers, including their ability to conduct proper research and make detailed submissions
 - (h) the public interest in the community being better informed about an agency's deliberative, consultative and decision-making processes
 - (i) the public interest in government transparency and accountability by enabling scrutiny or criticism of decisions and the decision-making process and building the community's trust in government and its decision-making processes
 - (j) whether there is controversy or impropriety around the decision or the decision-making process.
57. I have considered the Applicant's interest in the information and the right of every person to gain access to documents under the FOI Act.
58. I also consider there is a strong public interest in the Agency's recruitment processes being as transparent as possible, to ensure compliance with its own processes and procedures, as well as any relevant legislation. Transparency is essential in showing the Agency's decision is fair and based on set criteria and merit.
59. However, the Agency must engage appropriately skilled individuals for its police officer positions. Disclosing details of the psychological assessments of candidates routinely under FOI could reasonably expose the assessment processes for such positions to manipulation. The nature of release of documents under the FOI Act is unconditional and unrestricted. Dissemination of the documents could provide future candidates with an unfair advantage because the documents reveal the specific assessment questions and processes employed during the recruitment process, as well as provide insight into how interview responses were regarded. A potential future candidate could use this information to manipulate the Agency's recruitment process through adjusting their responses or behaviour to achieve a positive result.
60. Accordingly, I am satisfied disclosure of the documents would pose a reasonable risk of undermining the integrity of the Agency's recruitment process, particularly in circumstances where that process involves identifying psychologically suitable candidates for the recruitment of police officers.
61. Agency officers and psychologists are professionally obliged to provide frank advice and opinions in relation to the suitability of a candidate. I accept the need for candour in the assessment of prospective employees, particularly in the context of the recruitment of police officers given the duties and powers they are expected to exercise.
62. Further, the handwritten interview notes are a summary or in short form only. They provide for the psychologist to quickly and conveniently record their contemporaneous opinions and comments. I consider the notes recorded contain incomplete views and are a reflection of

information the psychologist considered to be relevant to their assessment of the Applicant's suitability for the role. The notes do not appear to be a full and complete record of the Applicant's responses to questions posed at the interview. In this sense, they could be considered an incomplete record of the psychologist's thinking processes.

63. I accept there is a public interest in psychologists being able to quickly and conveniently record their contemporaneous opinions and comments during an interview without concern the notes will be disclosed to the candidate. Therefore, I am satisfied the impact of routinely disclosing documents of this nature would undermine the robustness and integrity of the Agency's recruitment process and the ability of psychologists to freely record their opinions and comments in such documents.
64. Accordingly, I am satisfied the selection report and interview notes are exempt from release under section 30(1).

Section 25 – Deletion of exempt or irrelevant information

65. 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.
66. Deciding whether it is 'practicable' to delete exempt or irrelevant information requires an agency or Minister to consider:
 - (a) the effort involved in making the deletions from a resources point of view¹⁶ and
 - (b) the effectiveness of those deletions – that is, whether the edited document still has meaning.¹⁷
67. I have considered the effect of deleting exempt information from Document 5. In my view, it is not practicable for the Agency to delete the exempt information, it would render the document meaningless.

Conclusion

68. On the information before me, I am satisfied Document 5 is exempt from release in full under sections 30(1) and 34(1)(b) and it is not practicable to provide the Applicant with an edited copy of the document with exempt information deleted.

Timeframe to seek a review of my decision

69. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.¹⁸
70. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this

¹⁶ *Mickelborough v Victoria Police* [2009] VCAT 2786, [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967, [82].

¹⁷ *Honeywood v Department of Human Services* [2006] VCAT 2048, [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267, [140], [155]; *Re Hutchinson and Department of Human Services* (1997) 12 VAR 422.

¹⁸ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

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71. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.²⁰
72. 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.
73. 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.²¹

When this decision takes effect

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

¹⁹ Section 52(5).

²⁰ Section 52(9).

²¹ Sections 50(3F) and 50(3FA).

Annexure 1 – Schedule of Documents

Document No.	Date of document	Document Description	No. of pages	Agency Decision	OVIC Decision
1	[Date]	Various database documents	10	Released in part Section 31(1)(d)	Not subject to review
2	[Date]	Disclosure of pending leave	1	Released in full	Not subject to review
3	[Date]	Police Recruit Applicant Checklist	3	Released in part Section 33(1)	Not subject to review
4	[Date]	Psychological Consent Form	6	Released in full	Not subject to review
5	[Date]	Psychological Selection Report	60	Refused in full Section 33(4) and 34(4)	Refused in full Sections 30(1) and 34(1)(b) The selection report and interview notes are exempt under section 30(1) in full. The assessment reports are exempt under section 34(1)(b) in full.
6	[Date]	Medical File	26	Released in part Section 33(1)	Not subject to review
7	N/A	Initial application to Victoria Police	39	Released outside of the FOI Act	Not subject to review

Annexure 1 – Schedule of Documents