

Notice of Decision and Reasons for Decision

Applicant:	'FY7'
Agency:	Victoria Police
Decision date:	6 August 2025
Exemptions and provision considered:	Section 25A(5) in conjunction with section 38 under the <i>Freedom of Information Act 1982</i> (Vic) and sections 30D and 30E(1) of the <i>Surveillance Devices Act 1999</i> (Vic)
Citation:	'FY7' and Victoria Police (Freedom of Information) [2025] VICmr 52 (6 August 2025)

FREEDOM OF INFORMATION – body-worn camera footage – police documents – refusal to process an FOI request – secrecy provision – *Surveillance Devices Act 1999* (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 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.

I am satisfied the requirements for the application of section 25A(5) are met as I am satisfied the requested body-worn camera footage would be exempt in full under section 38 of the FOI Act in conjunction with sections 30D and 30E(1) of the *Surveillance Devices Act 1999* (Vic) (**SD Act**).

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

6 August 2025

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to [body-worn camera footage regarding an identified incident].
2. The Agency refused to grant access to the requested document in accordance with the Applicant's request under section 25A(5).
3. In refusing to grant access to the document under section 25A(5), the Agency relied on the exemption under section 38 of the FOI Act in conjunction with section 30D of the SD Act which prohibits the Agency from disclosing body-worn camera footage. The Agency's decision letter sets out its reasons for decision.
4. As permitted under section 25A(5), the Agency did not identify or locate the requested document the subject of the Applicant's FOI request. As such, the existence of the requested document is not confirmed and references to the document in this decision should not be taken as confirmation of its existence.

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. I have considered relevant 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.

Attempted informal resolution

10. During the review, OVIC staff provided the Applicant with an initial view that should this matter progress to a formal decision, it was likely I would agree with the Agency's decision to refuse to process the request under section 25A(5) of the FOI Act, on the grounds that it is apparent from the nature of the request that all documents would be exempt from release under section 38 of the FOI Act in conjunction with section 30E(1) of the SD Act. The Applicant was provided with a copy of a previous decision by OVIC relating to a similar FOI request.

11. In response, the Applicant indicated that they would like to progress the review to a formal decision. The Applicant made further submissions, including that an exception under section 30F(1)(d) of the SD Act applied.

Review of application of section 25A(5)

12. Section 25A(5) provides an agency may refuse to grant access to documents in accordance with an FOI request:
- (a) if it is apparent from the nature of the request all documents sought would be exempt under the FOI Act and
 - (b) where it is not possible to provide the applicant with an edited copy of the documents with exempt information deleted, or it is clear the applicant does not seek an edited copy of the documents.
13. The power under section 25A(5) is carefully circumscribed.¹ A decision maker must be satisfied the following three requirements are met, which operate to limit the application of section 25A(5):
- (a) The exempt nature of the documents must be objectively apparent from the face of the request. Namely, the terms of the request, as described by the applicant. The ‘nature’ of a document refers to its inherent or essential quality or character.
 - (b) It must be apparent all requested documents are exempt.
 - (c) It must be apparent from:
 - (i) the nature of the documents, as described in the request, no obligation would arise for the agency to grant access to an edited copy of a document in accordance with section 25 or
 - (ii) the request, or through consultation with the applicant, they would not wish to have access to an edited copy of the document.²

Is the nature of the requested documents objectively apparent from the face of the request?

14. 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 documents to which the request is expressed to relate are exempt documents.
15. The nature of a document refers to the ‘inherent or essential quality and character of the documents as described’.³
16. As described in the Applicant’s FOI request, the requested document would constitute body-worn camera footage taken by a police officer in relation to the exercise of the Agency’s law

¹ *Knight v Corrections Victoria* [2010] VSC 338, [37]

² *Ibid.*

³ *Ibid*, [38]-[39].

enforcement functions.

17. I am satisfied the essential quality of the requested document is objectively apparent from the terms of the Applicant's request.
18. As such, I am satisfied the first requirement of section 25A(5) is met.

Would the document, as described in the request, be exempt?

19. The Agency has relied on section 38 of the FOI Act in conjunction with section 30D of the SD Act.
20. A document is exempt under section 38 when three conditions are satisfied:
 - (d) there is a section of a Victorian Act (an enactment) that is in force; and
 - (e) the enactment applies specifically to information contained in the document; and
 - (f) the enactment prohibits specific persons from disclosing the specified information.
21. The SD Act is an enactment in force.
22. 'Protected information' is defined in section 30D(ab) of the SD Act to mean:

any information obtained from the use of a body-worn camera or a tablet computer by a police officer or an ambulance officer acting in the course of the officer's duty
23. Section 30E(1) of the SD Act provides:

30E Prohibition of use, communication or publication of protected information

(1) A person is guilty of an offence if –

- (a) the person intentionally, knowingly or recklessly uses, communicates or publishes any information; and
- (b) the person knows that, or is reckless as to whether, the information is protected information; and
- (c) the person that, or is reckless as to whether, the use, communication or publication of the information is not permitted by this Division.

Penalty: in the case of a natural person, level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.

In the case of a body corporate, 1200 penalty units.

24. In summary, section 30E(1) of the SD Act prohibits the reckless or intentional disclosure of information obtained from a police body-worn camera.
25. The unauthorised disclosure of such information is an offence and carries penalties under the SD Act. The penalties associated with disclosure, namely a fine and/or imprisonment, highlights the Legislature's intention that such information should remain protected and not be disclosed.

26. I am satisfied section 30E(1) of the SD Act operates to prohibit the disclosure of information obtained from a police body-worn camera, including the disclosure of the document requested by the Applicant.

Do any of the exceptions set out in section 30F of the SD Act apply?

27. Section 30F sets out circumstances in which the prohibition under section 30E does not apply.
28. The Applicant submits:

I would like to add to my supporting written submission that, in the decision of denying my request for the BWC footage, the responding officer has failed to consider the following section when citing Section 38 and Section 30E:

Surveillance Devices Act 1999, Section 30F (1) (d):

An investigation of a complaint against, or the conduct of, a public officer within the meaning of this Act or a public officer within the meaning of a corresponding law;

[officer name] [officer number] had been reported to Professional Standard Command before I made the FOI submission. I have requested the BWC as part of the complaint of the misconduct.

29. Section 30F(1)(d) provides:

(1) Local protected information may be used, communicated or published if it is necessary to do so for any of the following purposes— (d) an investigation of a complaint against, or the conduct of, a public officer within the meaning of this Act or a public officer within the meaning of a corresponding law.

30. 'Local protected information' is defined in section 30F(4)(c) to mean 'any information obtained from the use of a body-worn camera or a tablet computer by a police officer or an ambulance officer acting in the course of the officer's duty'.

31. I acknowledge the Applicant is of the view the requested information falls into the permitted uses of 'local protected information', as defined in section 30F(1)(d) of the SD Act and, therefore, the information is not subject to section 38.

32. I acknowledge that the Applicant is concerned about the conduct of a police officer and has made a complaint about the officer to the Professional Standards Command. However, seeking access to body-worn camera footage under FOI is a separate purpose from the Professional Standards Command investigating a complaint against, or the conduct of, a police officer.

33. Further, I have considered sections 30F(1A)(b) of the SD Act which, in summary, states that 'local protected information' obtained from the use of a body-worn camera by a police officer may be used, communicated or published for 'any prescribed purpose'. I do not consider any prescribed purposes set out in Regulation 11 of the *Surveillance Devices Regulations 2016* (**Regulations**) are made out in these circumstances.

34. Therefore, I am not satisfied an exception in section 30F applies in this matter.

35. Accordingly, I am satisfied the second requirement of section 25A(5) is met, as the requested body-worn camera footage would be exempt from release under section 38 in conjunction with sections 30D and 30E(1) of the SD Act.

Is there scope to provide an edited copy of the document requested?

36. 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.
37. Given the nature of the requested document, as discussed above, I am satisfied the requested body-worn camera footage would be exempt in full under section 38 of the FOI Act in conjunction with sections 30D and 30E(1) of the SD Act. As such, there would be no obligation under section 25 for the Agency to provide the Applicant with an edited copy of the document.
38. As such, I am satisfied the third requirement of section 25A(5) is met.

Conclusion

39. On the information before me, I am satisfied the requirements of section 25A(5) are met, in that I am satisfied the requested body-worn camera footage would be exempt in full under section 38 of the FOI Act in conjunction with sections 30D and 30E(1) of the SD Act.
40. Accordingly, I have refused access to the requested document in accordance with the Applicant's request under section 25A(5).

Timeframe to seek a review of my decision

41. If the Applicant to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.⁴
42. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁵
43. 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.
44. 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

⁴ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

⁵ Section 52(5).

⁶ Section 50(3FA).