

Notice of Decision and Reasons for Decision

Applicant:	'FV7'
Agency:	Triple Zero Victoria
Decision date:	29 May 2025
Exemption considered:	Section 38 in conjunction with section 63 of the <i>Triple Zero Victoria Act 2023</i> (Vic)
Citation:	'FV7' and <i>Triple Zero Victoria</i> (Freedom of Information) [2025] VICmr 25 (29 May 2025)

FREEDOM OF INFORMATION – *Triple Zero Victoria Act 2023* (Vic) – TSV Act – Computer-Aided Dispatch – radio communication – unable to identify third parties from unit numbers and codenames

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 and no further information is to be released.

For information about further review rights through the Victorian Civil and Administrative Tribunal (**VCAT**), please refer to the end of this decision.

My reasons for decision follow.

Penny Eastman
Public Access Deputy Commissioner

29 May 2025

Reasons for Decision

Background to review

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

Information relating to a call made to Triple Zero Victoria on the [date].

The incident relates to the following:

CAD job is: [number]

Time of Incident: [time]

The incident involved: [description of incident]

The address of the incident is: [address].

May I please request all chronology of Computer-Aided Dispatch [job number] and radio communication audio on channel [number] between [codename] and [codename] during this incident from [time] on [date]?
2. The Agency identified two documents falling within the terms of the Applicant's request and refused access to both documents in full under section 38 in conjunction with section 63 of the *Triple Zero Victoria Act 2023 (Vic) (TSV 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 examined a copy of the documents subject to review and 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 exemption

Section 38 - Documents to which secrecy provisions of enactments apply

8. 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.

9. 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; and
- (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?

10. I am satisfied the TZV Act is an enactment in force for the purposes of section 38 of the FOI Act.

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

11. 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.

12. The Agency relies on section 63 of the TZV Act to refuse access to the documents. This provision states in part:

63 Confidentiality

- (1) A person must not make a record of, use or disclose to any person, any confidential information that is acquired in the performance of the person's functions or the exercise of the person's powers under this Act.

Penalty: 60 penalty units.

...

13. Section 63(3) of the TSV Act defines 'confidential information' for the purposes of section 63 as:

...any information in relation to call taking and dispatch services or operational communications services provided by Triple Zero Victoria.

14. Section 4 of the TSV Act defines 'call taking and dispatch services' as:

- (a) taking, listening to and recording calls in which assistance is sought from an emergency services organisation or a related services organisation by—
 - (i) a member of the public; or
 - (ii) a member of an emergency services organisation; or
 - (iii) a member of a related services organisation; and

- (b) communicating the information received in calls referred to in paragraph (a) to the relevant emergency services organisation or the relevant related services organisation designated to respond to the call and recording any such communication of information.
- 15. I am satisfied the TSV Act identifies the information to which the secrecy provision applies with sufficient precision for the purposes of section 38 of the FOI Act.
- 16. In this matter, the documents relate to an audio recording of dispatch radio between Agency officers and members of emergency services organisations, and an associated written chronology of events.
- 17. I am satisfied both documents relate to ‘call taking or dispatch services’ for the purposes of the TZV Act.
- 18. Accordingly, I am satisfied the information in these documents constitutes ‘confidential information’.

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

- 19. I am satisfied section 63(1) of the TZV Act prohibits specific persons from disclosing the specified information, being information relating to call taking or dispatch services.

Do any of the exceptions set out in section 63(2) of the TZV Act apply?

- 20. Section 63(2) of the TZV Act sets out circumstances in which the prohibition under section 63(1) of the TZV Act does not apply.
- 21. Section 63(2) of the TZV Act provides:
 - Subsection (1) does not apply if –
 - (a) the making of the record, use or disclosure of the confidential information is necessary for the purposes of, or in connection with, the performance of the person’s functions or exercise of the person’s powers under this Act; or
 - (b) the making of the record, use or disclosure of the confidential information is authorised by this Act or any other Act; or
 - (c) the disclosure of the confidential information is made to an Ombudsman officer within the meaning of the Ombudsman Act 1973; or
 - (d) the person to whom the confidential information relates gives written consent to the making of the record, use or disclosure of the information; or
 - (e) the disclosure of the confidential information is made to a court in the course of a criminal proceeding or any other proceeding under this Act or any other Act; or
 - (f) the disclosure of the confidential information is made with the written authority of the Minister.
- 22. The Applicant requires the information to better understand the circumstances of an incident in which [a family member] was involved in a collision while responding to an emergency. The

Applicant has submitted that both occupants of the fire appliance involved in the incident are willing to provide statements consenting to disclosure of information that relates to them.

23. I have considered whether section 63(2)(d) of the TZV Act would apply to excerpt parts of the audio recording that relate directly to the incident requested by the Applicant, being:

...radio communication audio on channel [number] between [codename] and [codename].

24. The Agency submits that:

as unit numbers and codes are used, rather than names, [the Agency] is unable to identify any of the third parties in the audio recording and therefore cannot obtain consent of third parties to the release of the recording.

25. The Applicant requested further enquiries be made to the Agency as they were of the view that:

...All emergency responses attended by CFA appliances are recorded on [Fire and Incident Reporting System] FIRS and uploaded to a central database. This system is easily accessible by the CFA and clearly records the crew details for every callout, including names. In this case, the record will show that the two occupants of the fire appliance were [named person] and [named person].

In addition, this information would also be accessible through the Victoria Police report relating to the collision, which again documents the names of both occupants.

26. In response, the Agency advised that it does not have access to the FIRS database or the Victoria Police report referred to.
27. Given the Agency is unable to identify the third party individuals relating to the codenames '[codename]' and '[codename]', I am satisfied the Agency cannot obtain the necessary written consent to disclosure of the information, and therefore this exception under section 63(2)(d) of the TZV Act does not apply.

Summary of section 38 assessment

28. I am satisfied:

- (a) the TSV Act is an enactment in force;
- (b) the TSV Act describes with sufficient precision the information that appears in the documents subject to review;
- (c) the TSV Act prohibits persons from disclosing the information in the documents.

29. As I am satisfied that no exceptions apply, I have determined the documents are exempt under section 38.

30. I appreciate this is an important matter for the Applicant and their [family member] and this is not the outcome they seek. However, I do not have discretion to release the requested documents under the FOI Act where, as in this case, I find they are documents to which a secrecy provision of an enactment applies.

Section 25 – Deletion of exempt or irrelevant information

31. 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.
32. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 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 25.¹
33. I have considered the effect of deleting exempt information from the documents. In my view, it is not practicable for the Agency to delete the exempt information, because doing so would render the documents meaningless.

Conclusion

34. On the information before me, I am satisfied the documents are exempt from release under section 3 in conjunction with section 63 of the TZV Act.
35. As I am satisfied that it is not practicable to provide the Applicant with an edited copy of the documents with exempt information deleted in accordance with section 25, access is refused in full.

Timeframe to seek a review of my decision

36. If the Applicant is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.²
37. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.³
38. 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.
39. The Agency is required to notify the Information Commissioner in writing as soon as practicable if it is advised the Applicant has applied to VCAT for a review of my decision.⁴

¹ *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].

² Section 50(1)(b).

³ Section 52(5).

⁴ Section 50(3FA).