

Notice of Decision and Reasons for Decision

Applicant:	'GC6'
Agency:	Department of Justice and Community Safety
Decision date:	1 September 2025
Exemption and provision considered:	Section 38 in conjunction with section 104ZZA of the <i>Corrections Act 1986</i> (Vic), 25
Citation:	'GC6' and <i>Department of Justice and Community Safety</i> (Freedom of Information) [2025] VICmr 86 (1 September 2025)

FREEDOM OF INFORMATION – prison incident – investigation file – secrecy provision – information concerning the security systems or measures of a prison

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.

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

1 September 2025

Reasons for Decision

Background to review

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

I'm seeking access to an investigation file into an incident that occurred at [named prison] on [date].
2. The Agency identified 1 document totalling 30 pages falling within the terms of the Applicant's request and granted access to the document in part, exempting certain information under section 38 in conjunction with 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. I have examined a copy of the document subject to review. I note that of the 30 pages, only 15 pages contain content. The other pages are blank and only included based on how the document was formatted and/or scanned by the Agency.
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.

Initial view

10. On [date], OVIC staff provided the Applicant with an initial view that if this matter proceeded to a formal decision, an OVIC Commissioner would likely uphold the Agency's decision. OVIC asked whether the Applicant would agree to withdraw the review.
11. In response to the initial view, the Applicant advised they wanted the review to continue to a formal decision.

Review of exemptions

Section 38 – Documents to which secrecy provisions of enactments apply

12. Section 38 exempts documents where information in those documents is protected by a secrecy provision.
13. A document is exempt under section 38 if three requirements are met:
 - (a) there is an enactment that is in force
 - (b) the enactment applies specifically to information contained in the document
 - (c) the enactment prohibits specific persons from disclosing the specified information.
14. For more information about section 38 see the FOI Guidelines.¹

Is there an enactment in force?

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

Does the enactment refer specifically to the information in the document?

16. For section 38 to apply to a document, an enactment must be formulated with such precision that it specifies the actual information sought to be withheld.
17. Section 104ZZA of the Corrections Act provides:

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

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.

18. The term ‘personal or confidential information’ is defined in section 104ZX of the Corrections Act and includes the following, which I consider is relevant in this matter:

- (c) information –
 - (i) that identifies any person or discloses his or her address or location made by the person; or
 - (ii) from which any person’s identity, address or location can be reasonably determined;
- ...
- (j) information concerning –

¹ <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-38/>.

- (i) security systems and security measures in, or in relation to, a prison;

19. In relation to this, the Agency's decision letter states:

In this case, the following material fits the definition of personal or confidential information:

- The names of staff, their titles and signatures is information that identifies a person; and
 - The names and/or any other identifying information of other offenders; and
 - Details about the CCTV cameras and their identification numbers is information that concerns the security and management of prisons.
20. Having reviewed the information the Agency has exempted, I am satisfied that it comprises 'personal or confidential information' within the meaning of section 104ZX of the Corrections Act as it relates to information which identifies a person as well as information about the security and management of the prison.

Does the enactment prohibit persons referred to from disclosing the information?

21. Section 104ZZA of the Corrections Act imposes strict confidentiality requirements on Agency officers, among others, which apply in all but certain limited circumstances.
22. 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.
23. 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*'.
24. As such, the Agency is a 'relevant person' for the purposes of section 104ZZA of the Corrections Act.
25. Sections 104ZY² and 104ZZ³ of the Corrections Act set out exceptions to the prohibition on relevant persons disclosing 'personal or confidential information'.
26. Having reviewed these exceptions, there is no information before me to suggest an exception applies to authorise disclosure of the requested information to the Applicant in this instance.
27. I am therefore satisfied that section 104ZZA of the Corrections Act prohibits Agency officers from disclosing certain information in the document as identified by the Agency.
28. As all three limbs described above have been met, I am satisfied the information redacted by the Agency is exempt from release under section 38.

² For example, with the authorisation, or at the request, of the person to whom the information relates.

³ Authorisation to disclose information given to the Adult Parole Board.

Section 25 – Deletion of exempt or irrelevant information

29. 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.
30. 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 view⁴ and
 - (b) the effectiveness of those deletions – that is, whether the edited document still has meaning.⁵
31. Given my decision is the same as the Agency’s decision and it granted access to the documents in part in accordance with section 25, I consider it remains practicable to provide the Applicant with an edited copy of the document with exempt information deleted.

Conclusion

32. On the information before me, I am satisfied certain information in the document is exempt from release under section 38 in conjunction with section 104ZZA of the Corrections Act. Accordingly, I have refused access to further information under section 38.

Timeframe to seek a review of my decision

33. If the Applicant to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.⁶
34. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁷
35. 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.
36. 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.⁸

When this decision takes effect

37. 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.

⁴ *Mickelburgh 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].

⁵ *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.

⁶ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

⁷ Section 52(5).

⁸ and 50(3FA)

Annexure 1 – Schedule of Documents

Document No.	Date of document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
1.	N/A	Incident Report	30 Note: this total includes blank pages.	Released in part Section(s) 38 and 30(1)	Same as the Agency	Section 38: I am satisfied that 'personal or confidential information' as defined in section 104ZZA of the Corrections Act is prohibited from release. Section 30(1): As I am satisfied the information the Agency exempted under section 30(1) is exempt under section 38, there is no need for me to conduct a review of this exemption.