

Notice of Decision and Reasons for Decision

Applicant:	'FY9'
Agency:	Department of Jobs, Skills, Industry and Regions
Decision date:	16 July 2025
Exemptions and provisions considered:	Section 25A(5) in conjunction with section 38 under the <i>Freedom of Information Act 1982</i> (Vic) and section 30E of the <i>Surveillance Devices Act 1999</i> (Vic)
Citation:	'FY9' and <i>Department of Jobs, Skills, Industry and Regions</i> (Freedom of Information) [2025] VICmr 54 (16 July 2025)

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

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 body-worn camera footage the Applicant requested would be exempt in full under section 38 of the FOI Act in conjunction with section 30E of the *Surveillance Devices Act 1999* (Vic) (**SD Act**) and it would not be practicable to provide the Applicant with edited copies of the requested documents that removes the exempt information.

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

16 July 2025

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to [body-worn camera footage from officers of Game Management Authority at a specified time and date].
2. The Agency refused to grant access to the requested document in accordance with the Applicant's request under section 25A(5). The Agency relied on the exemption under section 38 of the FOI Act in conjunction with section 30E(1) of the SD Act. The Agency's decision letter sets out the reasons for its decision.
3. 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

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 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.
8. 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.

Review of section 25A(5)

9. 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.
10. Importantly, an agency is not required to identify any or all documents relevant to a request or to specify any relevant exemption under which a particular document would be exempt.

11. 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?

12. 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.
13. The nature of a document refers to the 'inherent or essential quality and character of the documents as described'.³
14. The requested documents are copies of body-worn camera footage taken by officers of the Game Management Authority at [a location and involving the Applicant].
15. I am satisfied the nature of the requested documents is objectively apparent from the terms of the Applicant's request.
16. Accordingly, I am satisfied the first requirement of section 25A(5) is met.

Would all documents, as described in the request, be exempt?

17. 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).⁴
18. In refusing access to the requested documents under section 25A(5), the Agency considered the documents, should any exist, would be exempt from release under section 38 of the FOI Act in conjunction with section 30E of the SD Act.

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

² *Ibid.*

³ *Ibid.*, [39].

⁴ *Ibid.*, [37].

Section 38 – Documents to which a secrecy provision applies

19. Section 38 exempts documents where information in those documents is protected by a secrecy provision.
20. 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.
21. For more information about section 38 see the FOI Guidelines.⁵

Is there an enactment in force?

22. An enactment is defined broadly in section 5. It means an Act or instrument made under an Act, including rules, regulations, local laws, or by-laws.
23. I am satisfied the SD Act is an enactment in force.

Does the enactment refer specifically to the information in the document and prohibit specific persons from disclosing the specified information?

24. 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.
25. 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.

26. The definition of ‘protected information’, as defined in section 30D of the SD Act, includes:

⁵ <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-38/>.

- (ac) any information obtained from the use of a body-worn camera or a tablet computer by a prescribed person, or a person belonging to a prescribed class of persons, acting in the course of the persons duties in the prescribed circumstances;
27. In summary, section 30E(1) of the SD Act prohibits the reckless or intentional disclosure of information obtained from a prescribed person's body-worn camera in the course of them undertaking their professional duties.
28. The unauthorised disclosure of such information is an offence and carries penalties under the SD Act. The penalties for disclosure, which include imprisonment, highlight the Legislature's intention that such information should not be disclosed.
29. For the purposes of sections 6(2)(e), 7(2)(e) and 30F(1B) of the SD Act, section 10(1)(m) of the *Surveillance Device Regulation 2016* (Vic) provides that authorised officers within the meaning of the *Game Management Authority Act 2014* (Vic) are prescribed persons or classes of persons in the circumstances of carrying out their functions under the SD Act or any other Act.
30. Section 10(2) of the *Surveillance Device Regulation 2016* (Vic) provides:
- For the purposes of paragraph (ac) of the definition of protected information in section 30D of the [SD Act], the prescribed persons or class of person and prescribed circumstances are those referred to in subregulation (1).
31. The Applicant is seeking access to body-worn camera footage from officers of the Game Management Authority. I am satisfied they are prescribed persons for the purposes of the SD Act.
32. As such, the Applicant is seeking access to body-worn camera footage that is prohibited from disclosure under section 30E(1) of the SD Act and no exceptions apply in the circumstances of this matter.
33. Accordingly, I am satisfied:
- (a) the SD Act is an enactment in force, for the purposes of section 38
- (b) the documents requested by the Applicant would contain the specific information prohibited from disclosure under section 30E(1) of the SD Act
- (c) the enactment prohibits persons from disclosing the requested body-worn camera footage.
34. The Applicant states that the requested footage has already been circulated. However, whether the footage has been circulated elsewhere does not override the secrecy provision from prohibiting disclosure of the requested documents in response to an FOI request.

Would there be an obligation to provide an edited copy of any document?

35. Section 25A(5) can only apply if:

- (a) it is not practicable to provide an edited copy of any of the documents that removes the exempt information⁶
 - (b) it is apparent from the request or through consultation by the agency or Minister with the applicant, that the applicant does not want access to an edited copy of the document that removes the exempt information.⁷
36. Given the nature of the requested documents, I am satisfied the body-worn camera footage would be exempt in full under section 38 of the FOI Act in conjunction with section 30E(1) of the SD Act and it would not be practicable to edit the documents to delete exempt information, as they would be rendered meaningless. As such, the Agency would not be obliged under section 25 to provide the Applicant with an edited copy of the requested documents.

Conclusion

37. On the information before me, I am satisfied the requirements for the application of section 25A(5) are met as I am satisfied the body-worn camera footage the Applicant requested would be exempt in full under section 38 of the FOI Act in conjunction with section 30E of the SD Act and it would not be practicable to provide the Applicant with edited copies of the requested documents that removes the exempt information.

Timeframe to seek a review of my decision

38. If the Applicant to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.⁸
39. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁹
40. 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.
41. 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.¹⁰

⁶ Sections 25(b) and 25A(5)(b)(i).

⁷ sections 25(c) and 25A(5)(b)(ii).

⁸ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

⁹ Section 52(5).

¹⁰ Sections 50(3FA).