

Notice of Decision and Reasons for Decision

Applicant:	'GA6'
Agency:	Court Services Victoria
Decision date:	18 February 2025
Exemption considered:	Section 29B
Citation:	'GA6' and Court Services Victoria (Freedom of Information) [2025] VICmr 69 (18 February 2025)

FREEDOM OF INFORMATION – contractual agreements – Magistrates' Court of Victoria register – judicial functions of the Court

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. I am satisfied the documents are exempt under section 29B and it is not practicable to release edited copies of the documents 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.

Penny Eastman
Public Access Deputy Commissioner

18 February 2025

Reasons for Decision

Background to review

1. The Applicant made a request to the Department of Justice and Community Safety, which was subsequently transferred to the Agency, seeking access to current agreements between the Magistrates' Court of Victoria and specified third parties for the provision of data.
2. The Agency identified four documents falling within the terms of the Applicant's request and refused access in full under section 29B. The Agency's decision letter sets out the reasons for its decision.

Review application

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. I have examined a copy of the documents subject to review.
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 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.
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 exemption - section 29B

9. For section 29B to apply to the documents, I must be satisfied each document:
 - (a) is a document of the Agency; and
 - (b) relates to the exercise of a judicial or quasi-judicial function of a Victorian court or VCAT.
10. The exemption will not apply to documents that do not relate to judicial or quasi-judicial functions, such as purely administrative functions.
11. The decision to exempt a document under section 29B is a discretionary power. This means an agency or Minister can choose to provide access to information that would otherwise be exempt under section 29B, where it is proper to do so and where the agency or Minister is not legally prevented from providing access. The Agency has not exercised its discretion in this instance.

Is each document a document of the Agency?

12. The documents subject to review are contractual agreements between the State of Victoria (through the Magistrates' Court of Victoria) and third parties for the provision of information from the Magistrates' Court of Victoria (**the Court**).
13. I accept that each document is a document of the Agency.

Do the documents relate to the exercise of a judicial or quasi-judicial function of a Victorian court or VCAT?

14. The Agency provides, or arranges for the provision of, the administrative services and facilities necessary to support the performance of the judicial, quasi-judicial and administrative functions of Victorian courts and tribunals.
15. The concepts of 'judicial functions' and 'quasi-judicial functions' are not defined in the FOI Act.
16. However, the High Court of Australia's interpretation in *Kline*¹ of sections 5 and 6 of the *Freedom of Information Act 1982* (Cth) (**Commonwealth FOI Act**) helps to explain what these terms mean:²
 - (a) judicial functions are the substantive powers or functions of a court as well as the matters preparatory to the exercise of such powers and functions; and
 - (b) quasi-judicial functions are the substantive powers or functions of a tribunal as well as the matters preparatory to the exercise of such powers or functions.³
17. The administrative functions of a court or tribunal are not judicial or quasi-judicial functions. 'Administrative function' means the apparatus supporting the exercise of judicial or quasi-judicial functions, such as the management and administration of registry and office resources, logistical support, infrastructure, physical necessities, travel and accommodation or the platform that enables judicial and quasi-judicial functions to occur.⁴
18. This means that a document of the Agency that relates to the:
 - (a) exercise of, or relates to a matter preparatory to, the exercise of a substantive power or function of a Victorian court or VCAT will be exempt under section 29B;
 - (b) administrative functions of a Victorian court or VCAT will not be exempt under section 29B.
19. Section 18(1) of the *Magistrates' Court Act 1989* (Vic) (**MC Act**) provides:

The principal registrar must cause a register to be kept of all the orders of the Court and of such other matters as are directed by this Act or the Rules to be entered in the register.

¹ *Kline v Official Secretary to the Governor General* [2013] HCA 52.

² *Freedom of Information Act 1982* (Cth), sections 5 and 6. These sections in the Commonwealth FOI Act limit the right of access from courts and certain tribunals to documents relating to 'matters of an administrative nature' only.

³ *Kline v Official Secretary to the Governor General* [2013] HCA 52 [76].

⁴ *Kline v Official Secretary to the Governor General* [2013] HCA 52 [41], [47], [71]-[72], [74], [77].

20. Section 18(3) of the MC Act provides:

Any person may, subject to any order made under Part 3 of the Open Courts Act 2013 and on payment of the prescribed fee, inspect that part of the register that contains the final orders of the Court.

21. The documents are contractual agreements concerning the provision of information from the register in accordance with section 18 of the MC Act.

22. The making of orders of the Court is done in the exercise of the Court's judicial functions, and I consider that the recording of those orders in the register and facilitating the inspection of the register under section 18(3) of the MC Act is done in relation to the Court's judicial functions.

23. I do not consider an agreement to obtain information from the register is done so in relation to the exercise of administrative functions of the Court, within the High Court's narrow interpretation of 'administrative functions' in *Kline*.

24. Therefore, I am satisfied the documents subject to review are exempt from release under section 29B.

Section 25 – Deletion of exempt or irrelevant information

25. 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.

26. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'⁵ 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 25.⁶

27. It is not practicable for the Agency to edit the documents as deleting exempt information would render them meaningless.

Conclusion

28. On the information before me, I am satisfied the documents are exempt from release in full under section 29B and it is not practicable to release edited copies of the documents with exempt information deleted.

Timeframe for Applicant to seek a review of my decision

29. If the Applicant is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.⁷

⁵ *Mickelburgh v Victoria Police (General)* [2009] VCAT 2786 at [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967 at [82].

⁶ *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].

⁷ Section 50(1)(b).

30. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁸
31. 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.
32. The Agency is required to notify OVIC in writing as soon as practicable if it becomes aware the Applicant has applied to VCAT for a review of my decision.⁹

⁸ Section 52(5).

⁹ Section 50(3FA).