

## Determination

### External review - section 39 *Freedom of Information Act 1991*

Applicant	Ms Alison Sandy
Agency	SA Police
Ombudsman reference	2017/06579
Agency reference	17-1370
Applicant reference	140/17
Determination	The determination of the agency is varied.

## REASONS

### Application for access

1. By application under the *Freedom of Information Act 1991* (the FOI Act) the applicant requested access from the agency to:

Documents since 1 January, 2016, specifically reviews, audits, reports, briefings and attachments and related CCTV/video footage of police officers use of :-

1. Tasers
2. Capsicum Spray...

Please include any finalised investigations into incidents where Tasers or capsicum spray has been used along with relevant video footage.

Please note, I do not consent to documents being deemed irrelevant without consultation. I do however, consent to receiving edited copies of documents/footage with exempt material redacted/pixelated.

If footage of more than 10 incidents are captured, please limit to the first 10 located whereby no legal action is pending. Please also ensure the related incident report and any photos are included.

2. On 27 February 2017, the agency advised the applicant of its preliminary view that the request would substantially and unreasonably divert the resources of the agency from their use in the exercise of its functions. Accordingly, the agency invited the applicant to amend the request in accordance with section 18(2) of the FOI Act.
3. By email dated 28 February 2017 the applicant amended the request to:

The first 10 events from 1 January 2016 which have Taser footage of the incident and the matter has been finalised at Court. Please include the related incident report.

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## Background

4. On 9 March 2017, the agency requested an extension of 'a couple of weeks' which was agreed to by the applicant.
5. On 12 April 2017, the agency advised the applicant that it required an advance deposit in accordance with section 17 of the FOI Act.
6. On 2 May 2017 the agency received a letter from the applicant, dated 13 April 2017, enclosing the requested deposit.
7. For ease of reference, these and other procedural steps relating to the application have been set out in the appendix.

## Jurisdiction

8. This external review is within the jurisdiction of the Ombudsman as a relevant review authority under section 39 of the FOI Act.

## Provisional determination

9. I provided my tentative view about the agency's determination to the parties by my provisional determination dated 5 February 2018. I informed the parties that subject to my receipt and consideration of submissions from the parties I proposed to vary the agency's determination.
10. Pursuant to section 39(5)(b)(i), I requested that the agency consult with interested parties in relation to my provisional determination.
11. On 15 February 2018, my Legal Officer contacted the applicant to advise that consultation would be required and would likely extend the time taken to finalise this matter. In an effort to expedite the process the applicant advised that she was only interested in pursuing the Taser footage (documents 2, 4, 13, 14, 15, 16, 15B, 16B, 17 and 18) and those apprehension reports that had been refused entirely (documents 1 and 3).
12. The applicant did not provide further submissions in response to my provisional determination.
13. On 3 April 2018, the agency provided submissions in response to my provisional determination which included the views expressed by interested parties following consultation. I have considered these submissions in this determination.

## Relevant law

14. A person has a legally enforceable right to be given access to an agency's documents in accordance with the FOI Act.<sup>1</sup>
15. The FOI Act provides that upon receipt of an access application, an agency may make a determination to refuse access where the documents are 'exempt'. Schedule 1 of the FOI Act lists various exemption clauses which may be claimed by an agency as a basis for refusing access.
16. In this matter, clauses 4(2)(a)(iii), 4(2)(a)(iv), 4(2)(a)(vi), 4(2)(b), 6(1), 6(2), 6(3a), 11(b), 16(1)(a)(iv) and 16(1)(b) of Schedule 1 to the FOI Act were relied upon by the agency.

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<sup>1</sup> *Freedom of Information Act 1991*, section 12.

17. Under section 48, the onus is on the agency to justify its determination 'in any proceedings'. This includes the external review process.
18. Section 39(11) provides that the Ombudsman may confirm, vary or reverse the agency's determination in an external review, based on the circumstances existing at the time of review.

#### Documents in issue

19. The agency identified 20 documents within the scope of the application; 10 being apprehension reports and 10 being associated footage.
20. The agency determined to partially release eight documents and refuse access to 12 documents as follows:
  - refuse access to documents 1 to 4 on the basis of clauses 6(1), 6(2), 6(3a) and 11(b)
  - partially release documents 5 to 12 on the basis of clauses 6(1) and 6(3a); and
  - refuse access to documents 13 to 20 on the basis of clauses 4(2)(a)(iii), 4(2)(a)(iv), 4(2)(a)(vi), 4(2)(b), 6(1), 6(3a), 16(1)(a)(iv) and 16(1)(b).
21. This determination was confirmed on internal review.
22. During my external review the agency withdrew its reliance on clause 11(b) as the matters were no longer pending before a Court.
23. I note that the "SA Police - Freedom of Information Unit Schedule", attached to the agency's original determination, mistakenly duplicated numbers 15 and 16. I will refer to these documents as 15B and 16B as per the below table.

Our Ref	SAPOL Ref	Document Description
1	1	Apprehension Report 16/T39219
2	2	Video recording from Electronic Control Device (ECD) Ref Apprehension Report 16/T39219
3	3	Apprehension Report 16/T69547
4	4	Video recording from ECD Ref Apprehension Report 16/T69547
5	5	Apprehension Report 16/T31157
6	6	Apprehension Report 16/T45573
7	7	Apprehension Report 16/T46936
8	8	Apprehension Report 16/T58181
9	9	Apprehension Report 16/T59654
10	10	Apprehension Report 16/T73058
11	11	Apprehension Report 16/T65499
12	12	Apprehension Report 16/T81447
13	13	Video recording from ECD Ref Apprehension Report 16/T31157
14	14	Video recording from ECD Ref Apprehension Report 16/T45573
15	15	Video recording from ECD Ref Apprehension Report 16/T46936
16	16	Video recording from ECD Ref Apprehension Report 16/T58181
<b>15B</b>	15	Video recording from ECD Ref Apprehension Report 16/T59654
<b>16B</b>	16	Video recording from ECD Ref Apprehension Report 16/T73058
17	17	Video recording from ECD Ref Apprehension Report 16/T65499
18	18	Video recording from ECD Ref Apprehension Report 16/T81447

24. As stated above, on 15 February 2018 the applicant confirmed that she was only interested in pursuing access to documents 1, 2, 3, 4, 13, 14, 15, 16, 15B, 16B, 17 and 18 (**documents in issue**).
25. Therefore, documents 5, 6, 7, 8, 9, 10, 11 and 12 are excluded from my review.

### Issues in this review

26. It is for me to consider whether the agency has justified its determination to refuse access to the documents in issue on the basis of clauses 4(2)(a)(iii), 4(2)(a)(iv), 4(2)(a)(vi), 4(2)(b), 6(1), 6(2), 6(3a), 16(1)(a)(iv) or 16(1)(b).

### Consideration

27. I will address the applicability of each exemption clause in turn.

#### Clause 4(2)(a)(iii), (iv), (v), (vi) and 4(2)(b) - law enforcement and public safety

28. Clauses 4(2)(a)(iii), (iv), (v), (vi) and 4(2)(b) provide:

#### **4-Documents affecting law enforcement and public safety**

- (2) A document is an exempt document if it contains matter the disclosure of which –
- (a) could reasonably be expected –
- ...
- (iii) to prejudice the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law (including any revenue law); or
- (iv) to prejudice the maintenance or enforcement of any lawful method or procedure for protecting public safety; or
- ...
- (vi) to prejudice any system or procedure for the protection of persons or property; and
- (b) would, on balance, be contrary to the public interest.

29. The phrase ‘could reasonably be expected’ acts as a moderating preamble to the consequential effects set out in the ensuing subclauses.
30. The phrase requires that I make an objective judgment as to whether it is reasonable, as distinct from irrational, absurd or ridiculous, to expect that disclosure could result in one of the nominated effects.<sup>2</sup> That is, the expectation must be based on reason and not be ‘fanciful, far-fetched or speculative’.<sup>3</sup>
31. In *Xz v Commissioner of Police, NSW Police Force*, the New South Wales Administrative Decisions Tribunal had cause to consider clause 4(1)(e) of the now repealed New South Wales *Freedom of Information Act 1989*, which was in identical terms to clause 4(2)(a)(iii) of the South Australian FOI Act. The Tribunal relevantly observed:

<sup>2</sup> *Ipex Information Technology Pty Ltd v Department of Information Technology Services* [1997] SADC 3618; citing *Attorney-General's Department v Cockcroft* [1986] FCA 35.

<sup>3</sup> *Konieczka v South Australia Police* [2006] SADC 134 [14].

The exemption in cl 4(1)(e) undoubtedly covers the disclosure of the methods or procedures themselves as long as they are not commonplace or well known: *Re Lawless and Secretary to Law Department* (1985) 1 VAR 42; *Re Russo and Australian Securities Commission* (1992) 28 ALD 354 at 357.<sup>4</sup> (my emphasis)

32. In my view, this position applies equally to the subclauses set out in paragraph 28 above for the reason that disclosure of information that is already well known to the general public could not reasonably be expected to have any prejudicial effect.
33. The agency claimed clause 4 in relation to documents 13, 14, 15, 16, 15B, 16B, 17 and 18, each of which are video recordings. The agency submits:
- The ECD footage relates directly to SAPOL's practices, techniques and procedures utilised for detecting, investigating and dealing with offences committed against the law for which SAPOL is responsible.
- The ECD footage relates directly to SAPOL's systems and procedures for the protection of persons and/or property. I am of the opinion that disclosure could reasonably be expected to prejudice the effectiveness of SAPOL's ability to prevent, detect and investigate breaches of the law.
34. Having considered the recordings, I am not convinced that disclosure could reasonably be expected to have the suggested effect.
35. In my view, the police practice of using Electronic Control Devices (**ECDs or Tasers**) during incidents involving risk is well known, as is the fact that police use verbal commands when apprehending suspects.
36. Section 39(15) of the FOI Act prevents me from providing detailed descriptions of the footage, but in my view the recordings do not reveal anything about police operations that is not already common knowledge; therefore, disclosure could not reasonably be expected to have the consequential effects set-out in subclauses (iii), (iv) or (vi).
37. Given the initial criteria of clause 4(2) have not been satisfied there is no need for me to consider public interest factors for or against disclosure.
38. The agency made no further submissions regarding clause 4(2) in response to my provisional determination.
39. Accordingly, it is my determination that documents 13, 14, 15, 16, 15B, 16B, 17 and 18 are not exempt by virtue of clause 4(2).

#### Clause 6(1) - documents affecting personal affairs

40. Clause 6(1) provides:

##### **6-Documents affecting personal affairs**

- (1) A document is an exempt document if it contains matter the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).
41. The term 'personal affairs' is defined in section 4(1) of the FOI Act to include a person's financial affairs, criminal records, marital or other personal relationships, employment records, and personal qualities or attributes. However, the definition is not exhaustive.

<sup>4</sup> [2009] NSWADTAP 2, [21]

The term has been held to involve 'matters of private concern to an individual'<sup>5</sup> and the 'composite collection of activities personal to the individual concerned'.<sup>6</sup>

42. The agency relied upon clause 6(1) as a basis for refusing access to all documents.

43. In its original determination the agency submitted:

In relation to apprehension reports:

The documents contain personal affairs of other parties and that disclosure of such is unreasonable - consent has not been supplied for the release of such information.

...

In relation to video recordings:

The ECD footage contains information concerning the personal affairs of persons. Such information includes but is not limited to the name, age, date of birth, and other personal information. Release of any footage or description of the incident could be recognised by the individual involved in the ECD incident. I am of the opinion that disclosure of information concerning their personal affairs is unreasonable.

44. As a result, personal details of third parties, such as names, addresses, language spoken, occupation, age and date of birth were considered to be exempt and were redacted from apprehension reports. In regards to the footage, the agency determined that it could not be edited to remove exempt material and so refused access entirely.
45. In response to my provisional determination the agency provided further submissions with respect to what should be categorised as 'personal affairs'. I will not recite the agency's submissions as I agree that, in the present circumstances, adopting a broad interpretation of the term 'personal affairs' is appropriate.
46. To clarify, it is my view that all information which might directly or indirectly lead to the identification of any person, other than the applicant, constitutes that person's personal affairs. In addition to the material set out in paragraph 44 above, this may also include images of an individual, audio of an individual's voice, images of a location closely associated with an individual (for example a person's home or work) and images of clothing worn by that individual.
47. Furthermore, in circumstances where information has been de-identified, such as a victim's account of events, it is my view that the content still concerns that individual's personal affairs and warrants consultation regarding its release.
48. Clause 6(1) provides that information may only be regarded as exempt if its disclosure would involve unreasonable disclosure of information concerning personal affairs. This requirement has the effect of narrowing the otherwise broad scope of the exemption.
49. Being satisfied that the documents in issue contain a substantial amount of information concerning personal affairs, I now turn to whether disclosure would be unreasonable.
50. In *Treglown v SA Police* the South Australian District Court said that when interpreting 'unreasonable' in clause 6, a decision maker is to consider:

... not merely the content of the information which is sought to be disclosed, although in some circumstances that may be sufficient, but, as well, its relationship with other material known to the applicant, its level of sensitivity, the attitude of the person affected by the disclosure, the circumstances in which the information was originally obtained, whether it was already known to the applicant, the nature of the applicant's interest in it and any disclosed intentions with respect to its use.<sup>7</sup>

<sup>5</sup> *Commissioner of Police v District Court of New South Wales* (1993) 31 NSWLR 606, 625.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Treglown v SA Police* [2011] SADC 139 (Unreported, South Australian District Court, Judge Herriman, 20 December 2011), [133], considering *Re Chandra and Minister for Immigration and Ethnic Affairs* (1984) 6 ALD N257, 259 and *Victoria Police v Marke* (2008) 23 VR 223, [18] and [106]-[103].

51. In addition, unreasonableness has 'as its core, public interest considerations',<sup>8</sup> such as the protection of personal privacy, the objects of the legislation being satisfied and ensuring transparency and accountability within representative government.
52. In response to my provisional determination the agency submitted that it accepted my view in relation to documents 1 and 3 (apprehension reports), and would partially release these documents following redactions to information concerning the personal affairs of third parties. This will include information such as names, addresses, language spoken, occupation, age, personal relationships, and dates of birth.
53. In regards to documents 13, 14, 15, 16, 15B, 16B, 17 and 18 (the ECD footage), the agency submitted that disclosure, in any form, was unreasonable for the following reasons:
  - the strong objections of third parties
  - the sensitive nature of the footage
  - the risk of it being publicly disseminated.

54. I will address these in turn.

#### The strong objections of third parties

55. Given my tentative view that documents 1, 2, 3, 4, 13, 15, 15B, 16B, 17 and 18 could be partially released, I requested that the agency consult with interested parties. Accordingly, the agency wrote to 10 individuals to seek their views on release.
56. The agency received responses from four interested parties, while the remaining six letters were either returned to the agency as 'not at this address' or were not collected from the Post Office by the person concerned.
57. The agency provided a table setting out the responses received as well as the following submission:

#### Outcome of consultation

Of the four people who responded to the consultation letters sent out by SAPOL, none of them consented to the release of information concerning their personal affairs in this matter.

Indeed, each respondent expressed significant concern with respect to any details involving their personal affairs being release to the applicant.

The views of the respondents give significant weight to the argument that it would be unreasonable to release the ECD footage.

58. I note from the information provided by the agency that it did not provide my provisional determination to the interested parties, nor did it otherwise make clear that my tentative view was to release de-identified versions of the documents. Therefore, the objections of interested parties appear to have been made on the mistaken belief that documents would be released in full.
59. In my view, the agency could have been clearer when explaining the circumstances of this matter to each interested party by describing or providing a copy of the document, indicating what was intended to be redacted, and seeking their views on what remained to be released. Had this occurred the interested parties may have felt differently about release or, more importantly, may have better expressed why release of an edited version might still reveal their identities or otherwise be unreasonable.

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<sup>8</sup> *Colakovski v Australian Telecommunications Corporation* (1991) 29 FCR 429 per Lockhart J at 438.



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60. In any event, I accept that the interested parties objected to release of the documents for fear that they might be identified.
61. Given the nature of the documents, I consider it appropriate to presume that the six parties who remain unaware of the application would also object to disclosure.
62. I acknowledge that this is a significant factor weighing against disclosure. That said, I remain of the view that where documents can be de-identified the persuasive value of this consideration is reduced.

The sensitive nature of the footage

63. The agency submits:

Sensitive nature of the footage

The material in the footage is of a highly sensitive nature given the context of the deployment of an ECD by a SAPOL officer.

In this context it is instructive to provide some background on the use of ECDs by SAPOL.

An ECD is one of a range of operational safety equipment issued to SAPOL members to assist them in performing their duties. SAPOL members may be issued with an ECD as a tactical option to resolve an incident that satisfied the criteria of a 'high risk situation'. An ECD is provided for the protection of SAPOL members, members of the public, victims and offenders.

...

In summary, the ECD is deployed in high-risk situations. This footage depicts some examples of high risk-situations where SAPOL officers have considered the use of an ECD to be warranted [..].

It is sensitive material that is not otherwise in the public domain and it is, in all the circumstances, unreasonable for any part of the ECD footage to be released.

64. Given the circumstances in which SAPOL Officers utilise ECDs, I accept that footage captured by the audio-visual recording function of an ECD will often be sensitive to any third party involved in the incident leading to its use.
65. However, in my view, where documents can be de-identified the persuasive value of this consideration is reduced.
66. In fact, in circumstances where it is possible to de-identify footage, its release would be no different to the agency's partial release of an apprehension report which describes an incident and refers to the use of an ECD.

The risk of footage being publicly disseminated

67. The agency submits:

Risk of public dissemination of this material

The purpose of the footage as requested by the Seven Network is presumably for that footage to be featured on their media and television network.

There is a real risk, given that the FOI Act allows for unconditional release, that the public dissemination of recent ECD footage without any background or context will create unnecessary distress to victims and offenders who may identify themselves or be identified by other persons known to them (for example family members, friends or employers).



The tangible risk of dissemination of the footage on commercial television with no control over the context of that dissemination is a factor that strongly weighs against the release of the information. In this case, the importance of affording proper protection of the personal affairs of individuals who could be identified by or via the footage outweighs the applicant's right of access to the ECD footage.

However, the Respondent, submits that production of documents under the FOI Act is production potentially to the world at large and an FOI applicant's motives for wanting documents are not relevant. Having said that, the Respondent submits that the possibility of further dissemination is relevant to the public interest test.

68. When considering whether disclosure of information concerning personal affairs would be unreasonable, the decision maker should bear in mind that disclosure under the FOI Act is unrestricted and, therefore, there is potential for disclosed documents to be disseminated to the world at large.<sup>9</sup>
69. As stated in my provisional determination, I have considered the content of the information, the context in which it appears, the circumstances in which the information was obtained, its level of sensitivity, and the views of interested parties. I am also mindful that there is potential for the documents to be further disseminated.
70. After balancing the public interest in the protection of personal privacy against the public interest in disclosure, it is my view that the protection of personal affairs outweighs the public interest in disclosure, and it would therefore be unreasonable to release the documents in full.
71. I note the agency's submission that it is not possible to redact the material and release the remainder without risking the identification of a person and/or rendering the documents meaningless.
72. Having reconsidered the footage, I am satisfied that it would be unreasonable to disclose documents 4, 14, 15, 15B, 16B and 16 and do not consider it practicable to give access to edited versions of these documents. The nature and quality of the recordings is such that the images, voices, locations, an audible first name and other less significant factors, cumulatively tend to reveal the identity of the relevant third parties. It appears to me that the applicant would not wish to receive copies of these documents from which all exempt material has been deleted.
73. Whilst I am satisfied that it would be unreasonable to disclose full versions of documents 2, 13, 17 and 18, in my view, it is reasonably practicable to release these documents once exempt material has been deleted, as follows:<sup>10</sup>

Document	Exempt Audio	Exempt Visuals
Document 2	Voices of third party/s (not officers)	Images of furniture (not flooring)
Document 13	Voices of third party/s (not officers)	No editing required
Document 17	Voices of third party/s (not officers)	Images of third party/s
Document 18	Voices of third party/s (not officers)	Images of third party/s

74. Accordingly, it is my determination that clause 6(1) applies to all documents in issue. However, documents 2, 13, 17 and 18 should be partially released following redactions of exempt material.

#### Clause 6(2) - documents affecting personal affairs

75. Clause 6(2) provides:

<sup>9</sup> *'BA' and Merit Protection Commissioner* [2014] AICmr 9 [67].

<sup>10</sup> *Freedom of Information Act 1991*, section 20(4)

### 6-Documents affecting personal affairs

- (2) A document is an exempt document if it contains allegations or suggestions of criminal or other improper conduct on the part of a person (living or dead) the truth of which has not been established by judicial process and the disclosure of which would be unreasonable.
76. The agency relied upon clause 6(2) as a basis for refusing access to documents 1, 2, 3 and 4. The agency submits:
- The documents contain allegations or suggestions of criminal or other improper conduct on the part of a person, the truth of which has not been established by judicial process.
77. In the course of my external review, the agency advised that the incidents relative to documents 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15B, 16B, 17 and 18 resulted in the person depicted in the footage or named in the apprehension report in each case being convicted. Therefore, the truth of the allegations contained in these documents has, presumably, been established by judicial process.
78. Consequently, the requisite criteria of clause 6(2) can no longer be made out and the exemption does not apply.
79. Accordingly, it is my determination that clause 6(2) does not apply to the documents. Any redaction made on this basis should be lifted, while bearing in mind the need to ensure information concerning personal affairs under clause 6(1) remains exempt.

### Clause 6(3a) - documents affecting personal affairs

80. Clause 6(3a) provides:

### 6-Documents affecting personal affairs

- (3a) A document is an exempt document if it contains matter—
- (a) consisting of information concerning a person who is presently under the age of 18 years or suffering from mental illness, impairment or infirmity or concerning such a person's family or circumstances, or information of any kind furnished by a person who was under that age or suffering from mental illness, impairment or infirmity when the information was furnished; and
- (b) the disclosure of which would be unreasonable having regard to the need to protect that person's welfare.
81. The agency relied upon clause 6(3a) as a basis for refusing access to all documents or parts thereof.
82. The agency submits:

The documents contain information which is of a person who is presently under the age of 18 years and / or suffering from mental illness, impairment or infirmity or concerning such a person's family or circumstance. The disclosure of this information would be unreasonable having regard to the need to protect that person's welfare.

The ECD footage contains information that at the time of furnishing concerned persons who is [sic] under 18 years of age and/or were suffering from mental illness, impairment or infirmity. The information also concerns those persons family or circumstances and I am of the opinion that disclosure would be unreasonable having regard to the need to protect that person's welfare. Even though images may be pixelated there is no way of adequately sanitising the video to prevent the subject person from recognising themselves or another person recognising them.

83. Having considered the documents and the available evidence, it appears that this clause is only applicable to documents 6 and 14.
84. In accordance with section 39(15) of the FOI Act, I must avoid disclosing matter the agency claims to be exempt so I will not provide a description of the relevant information.
85. While clause 6(3a) could be claimed in relation to portions of these documents, in my view, redactions made on the basis of clause 6(1) sufficiently addresses the need to protect the person's welfare given, in effect, this de-identifies the documents.
86. As for the remaining documents, on the evidence available to me I am not convinced that they contain information concerning a person who is suffering from mental illness, impairment or infirmity, or concerning a person that is presently under the age of 18; although, I acknowledge that at the time of the agency's determination this was the case for one document.
87. Accordingly, it is my determination that while clause 6(3a) applies to documents 6 and 14, it does not justify further information being redacted than that already covered by clause 6(1).

Clause 16(1)(a)(iv) and 16(1)(b) - documents concerning operations of agencies

88. Clauses 16(1)(a)(iv) and 16(1)(b) provide:

**16—Documents concerning operations of agencies**

- (1) A document is an exempt document if it contains matter the disclosure of which—
- (a) could reasonably be expected—
- ...
- (iv) to have a substantial adverse effect on the effective performance by an agency of the agency's functions; or
- ...; and
- (b) would, on balance, be contrary to the public interest.

89. The term 'could reasonably be expected' has been dealt with above and will be applied here in the same manner.
90. It is worth highlighting the use of the word 'substantial' to qualify the requisite adverse effect which has been held to mean an effect 'that is "sufficiently serious or significant to cause concern to a properly informed reasonable person"'.<sup>11</sup>
91. The agency submits:

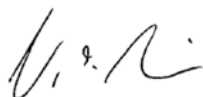
Further, disclosure could have an adverse effect on SAPOL operations in respect to SAPOL's continued commitment to reassuring and protecting the community from crime and disorder. I am of the opinion that it is an exempt document as it contains matter the disclosure of which would, on balance, be contrary to the broader public interest and I believe this outweighs [the applicant's] interest in this instance.

<sup>11</sup> *Thiess and The Department of Aviation* (1986) 9 ALD 454 [24] ; cited with approval in *Konieczka v South Australian Police* [2006] SADC 134 [17]

92. In the agency's original determination this paragraph followed the submissions advanced in relation to clause 4(2). Presumably those submissions are being relied upon here also, and in effect it is the same argument.
93. Therefore, for the same reasons as those outlined above in relation to clause 4(2), I am not satisfied that it is reasonable to expect that disclosure of the footage will have any adverse effect on the agency's operations, much less a substantial adverse effect.

#### **Determination**

94. In light of my views above, I **vary** the agency's determination, such that:
- Documents 1, 2, 3, 13, 17 and 18 be partially released to the applicant following redactions of personal affairs information of third parties (including any information tending to reveal the identity of any third party such as images, voices, names, addresses, language spoken, occupation, age, personal relationships, and/or dates of birth)
  - Documents 4, 14, 15, 15B, 16B and 16 are to be refused.
95. I reiterate that documents 5, 6, 7, 8, 9, 10, 11 and 12 were excluded from my review and the documents should be partially released in accordance with the agency's original determination.



Wayne Lines  
**SA OMBUDSMAN**

30 April 2018

## APPENDIX

### Procedural steps

Date	Event
13 February 2017	The agency received the FOI application dated 7 February 2017.
27 February 2017	The agency requested the applicant narrow the scope of the request
28 February 2017	The agency received the applicant's revised request
12 April 2017	The agency advised the applicant that it required an advance deposit. <sup>1</sup>
2 May 2017	The agency received the applicant's deposit.
30 May 2017	The agency determined the application.
19 June 2017	The agency received the internal review application dated 14 June 2017.
22 June 2017	The agency confirmed the determination.
7 July 2017	The Ombudsman received the applicant's request for external review dated 8 June 2017.
30 June 2017	The Ombudsman advised the agency of the external review and requested submissions and documentation.
21 July 2017	The agency provided the Ombudsman with its submissions and documentation.
5 February 2018	The Ombudsman provided his provisional determination.
3 April 2018	The agency provided submissions in response to the provisional determination.

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<sup>1</sup> *Freedom of Information Act 1991*, section 17