

## From the Executive Director...

**M**any agencies unknowingly have FOI decisions made by officers who are not properly authorised. Some agencies have not given authorisation to officers for all decision-making areas of the FOI Act. This means that decisions are being made unlawfully. Those agencies are susceptible to FOI Commissioner or other criticism, and the decisions are susceptible to legal challenge. We have developed an innovative, simple, quick and low cost solution to analyse your decision-making structure and help you fix it. For more information email [bronwyn@foisolutions.com.au](mailto:bronwyn@foisolutions.com.au).

**MICK BATSKOS**  
Accredited Specialist in  
Administrative Law



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## Recent Cases

### Russell v Yarra Ranges Shire Council [2014] VCAT 93

In *Russell v Yarra Ranges Shire Council*, the applicant was declared a 'prohibited person' by the Council. He made several FOI requests to the Council regarding the declaration and ultimately made an application to the VCAT for review of a deemed refusal decision. Shortly before the listed hearing date the applicant applied for adjournment of the final hearing, which was subsequently overturned.

At the day of the final hearing the applicant did not appear and the application for review was dismissed by the Tribunal. In this proceeding the applicant applied for the revocation of the dismissal order.

- The applicant failed to prove that the documents sought were not exempt;
- The documents contained deliberations and decisions of a closed Court meeting;

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## Recent Cases continued...

- The Tribunal considered that the documents sought were in all likelihood held to be exempt documents;
- The Tribunal accepted a certificate signed by the CEO as evidence of certain matters;

The Tribunal has a discretion to revoke or vary an order if it is satisfied that the applicant had a reasonable excuse for not attending. In considering this discretion the Tribunal may consider the merit of the proceeding.

In *Russell v Yarra Ranges Shire Council* the Tribunal was not satisfied that the applicant had a reasonable excuse for not attending the final hearing. The Tribunal informed the applicant by telephone that the final hearing was not going to be adjourned. The call was two days before the hearing and he did not advise the Council or the VCAT.

### **Rimes and Airservices Australia [2014] AICmr 25**

The applicant applied to the Office of Australian Informa-

tion Commissioner to review the decision of the agency. The agency refused a FOI request of the applicant under s 24A(1) of the FOI Act (Cth) on the basis that the documents did not exist.

The agency had sent out fresh search requests to several operational units within the agency and considered multiple other sources within the organisation. It had advised the applicant about its searches and that it could not find the documents requested.

In its submissions to the OAIC, the agency noted that it did not state that the agency does not hold the data which would satisfy the applicants request. They suspected that they did hold the data somewhere. However, the data was not in document form.

The OAIC held that the searches the agency conducted were comprehensive. If *documents* existed within the scope of the request it was reasonable to expect that they would have been found. The OAIC was therefore satisfied that the agency took all reasonable steps to locate the documents requested and that the documents cannot be found or do not exist.

## Recent Updates

### **New FOI decision-maker package**

Is your FOI officer appointed properly? Our experience has taught us that many agencies have not correctly authorised their FOI decision maker. This could mean that FOI decisions are made unlawfully by your agency.

To help Agencies to correctly structure their FOI regime, we have set up a low cost, fixed price solution. We will:

- analyse and assess your current decision-making structure;
- provide a written advice on compliance; and
- provide a document necessary to immediately rectify any non-compliance.

We will provide all of this within days of receiving full instructions. For more information about the package and how to apply, check out our website, or email [bronwyn@foisolutions.com.au](mailto:bronwyn@foisolutions.com.au).

### **New Australian Privacy Principles**

On 12 March 2014, the Australian Privacy Principles (APPs) replaced the National Privacy Principles and the (Commonwealth) Information Privacy Principles.

The new APPs regulate the handling of personal information by Australian Government agencies, businesses with a yearly turnover of more than \$3,000,000 or those trading in personal information, and all private health service providers.

For many Victorian agencies the new APPs do not require them to alter their current information privacy policies. If your agency unsure about the APPs you can contact us to see whether or not your agency must comply with the new APPs.



## Question time

### **Q: We have had a recent change of FOI staff at our organisation. Are we required to change our authorisations?**

**A:** If your authorisation was to the named *person*, then yes, your principal officer will need to authorise your new staff member to make FOI decisions. If your authorisation is for the *position* held by your previous staff member, and your new staff member now holds that position, your authorisation will probably enable the new person to make valid decisions. We strongly recommend ensuring that the authorisation has been provided by the right person. You might want to check that it was made by your principal officer!

### **Q: If a Victorian MP wants an electronic copy of a document, what access charges, if any, are payable?**

**A:** Where an applicant, including an MP, asks for an

electronic copy of a document, access in that form must be provided unless doing so would breach copyright, interfere with the agency's operations, or be detrimental to the preservation of the document (or is otherwise inappropriate).

You are entitled to charge the reasonable cost incurred by your agency in providing the copy. That can be difficult and complex to calculate. There is no exception for MPs as they are obliged to pay the reasonable costs incurred by an agency in making copies of documents.

We are holding a lunchtime training session on 30 April 2014 which deals with this in more detail. See the "Training" tab on our web site:

<http://www.foisolutions.com.au/training.php>

### **Q: I have heard there was a recent change in what must be made available to the public, is that right?**

**A:** Yes, changes to the *Local Government Act 1989* will commence on 18 April 2014. They impact on many areas including Council websites, various financial plans and annual reports. Contact us for more information.

## Firm News

### **New website**

In 2014, FOI Solutions will be releasing an all-new website, revamping our current website. We would love to hear any feedback you have as to improvements we can make to our current website. Any suggestions are welcome. If you have any comments to make regarding the website, please send them to [marketing@foisolutions.com.au](mailto:marketing@foisolutions.com.au). We look forward to hearing from you.

### **Case summaries**

The annual FOI Solutions VCAT and Privacy Case Summaries for 2013 are available for purchase at <http://www.foisolutions.com.au/publications.php>. If you have any questions about the summaries or would like to purchase copies from previous years, please contact us at [marketing@foisolutions.com.au](mailto:marketing@foisolutions.com.au).

A monthly subscription is also available to keep you up to date on a more regular basis.

### **FOI Solutions retreat**

This year FOI Solutions went to Geelong for our yearly retreat. It was a fantastic weekend where all staff got the opportunity to meet each other's families and become a closer team.

We had a productive brainstorming session which resulted in some good ideas to improve services to our clients. Past retreats have proven to be very productive and help to enable our team to work closer together to help our clients.



## Website

Be sure to check our website at [www.foisolutions.com.au](http://www.foisolutions.com.au) for information on recent news or developments, our training sessions and legal services offered. Register early for any training or seminar sessions as they tend to fill quickly.

On our website you will also find hotlinks to cases in which we have acted as well as other helpful information.



Professional excellence in government law

## Further information

If you would like any further information about the matters raised in this Newsletter or any assistance with FOI, privacy, protected disclosures or other government law matters, please do not hesitate to contact

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Feedback about the newsletter is also welcome.

Don't forget our **FOI and Privacy VCAT decision summaries** are available on a monthly subscription or an annual basis to keep you up to date with developments in this area.

If you are interested in purchasing a copy of the 2013 summaries (back issues are also available), log on to our web site at [www.foisolutions.com.au](http://www.foisolutions.com.au) and click on the "Publications" button for more information.

## Training

FOI Solutions conducts training sessions and lunch time seminars throughout the year including:

- Basic FOI training for FOI decision makers
- Intermediate FOI training for FOI decision makers
- Drafting Good FOI Decisions

### **SOCIAL MEDIA**

We will run a training session with practical tips and guidance on whether your agency needs to look at social media in its thorough and diligent searches for documents under FOI.

### **FOI BASIC & INTERMEDIATE**

The Basic FOI training does not presuppose FOI knowledge and helps you to improve your understanding of FOI processing. The intermediate training will follow-up the basic training and focus on some prominent issues, including exemptions.

## Upcoming Sessions

### **Electronic Documents**

Wednesday 30 April 2014

### **Basic & Intermediate FOI Training**

Monday 5 May 2014

### **Agency Rights under the FOI**

Wednesday 14 May and 11 June 2014

### **Social Media and FOI**

Friday 16 May 2014

### **Practical Tips from VCAT**

Friday 16 May 2014

### **Drafting Good FOI Decisions**

Wednesday 21 May 2014

### **Health Sector Forum**

Monday 23 June 2014

New topics and sessions are added from time to time, so be sure to check our website regularly. If you would like to express interest in attending any future session, or have a particular topic you would like covered in a future training session or lunchtime update, please contact us at

[marketing@foisolutions.com.au](mailto:marketing@foisolutions.com.au).