

From the Executive Director...

On 11 June 2014, the Victorian Government introduced in Parliament two very important Bills which will directly impact on all Victorian Agencies. The first introduces proposed changes to the FOI Commissioner regime under the FOI Act. It introduces new statutory officers, Assistant Freedom of Information Commissioners, and allows greater delegation of FOI Commissioner functions to staff, contractors or others. It provides clarity on time limits and some notification requirements and aims to focus on informal resolution of reviews and complaints. FOI Solutions has developed a briefing for agencies on this and other practical aspects of dealing with the FOI commissioner. Details appear in "Firm News" below and in the "[Training](#)" section of our website.

The second important Bill is the *Privacy and Data Protection Bill 2014* which will repeal the *Information Privacy Act 2000* and introduces a new privacy and data protection regime including the Commissioner for Privacy and Data Protection in place of the Privacy Commissioner. Please contact us if you require any advice on how this will affect your agency.

MICK BATSKOS
Accredited Specialist in
Administrative Law



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Recent Cases

Noonan v Ambulance Victoria

In *Noonan v Ambulance Victoria* the VCAT affirmed the respondent's decision that disclosure of a document containing information relating to statistics of ambulance response times would expose it to unreasonable disadvantage under ss 34(1)(a)(i) and 34(a)(ii) of the FOI Act.

The VCAT referred to an earlier decision where it determined that an agency was not engaged in 'trade or commerce' because it was discharging one of its statutory functions. That was distinguished by the VCAT because in this instance the respondent charged a fee for the particular service it performed. The VCAT concluded that was sufficient to distinguish the respondent from other agencies who provided services to the public free of charge. The VCAT held that the document contained information relating to the core business of the respondent, which involved providing a service for a fee.

The VCAT found that disclosure of the document could be misleading, lead to misrepresentations and would be likely to cause a loss of confidence in the service provided by the respondent. That would mean a loss of subscription membership and users of the service.

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Recent Cases continued...

Glascott v Victoria Police [2014] VCAT 615

In *Glascott v Victoria Police* the applicant sought access to an audio recording of a 000 caller used as evidence against him in a murder conviction which he was seeking to appeal. The applicant believed the recording had been altered. The VCAT affirmed the respondent's decision to refuse access to the recording under ss 33(1) and 35(1)(b) of the FOI Act.

The VCAT found that where confidentiality was apparent from the nature of the information, it was unnecessary to consider how it was received. It accepted the respondent's evidence that 000 callers provided information to it in confidence subject only to the possibility that they may be required to give evidence in court. It also accepted that callers were usually reluctant to provide their name and address and did so on the understanding their identity would remain confidential unless disclosure was required for investigation or legal proceedings.

The respondent had fostered an understanding of confidentiality of 000 callers over many years by not disclosing their identity. Disclosure would therefore substantially impair confidence in the security of emergency calls and

would be likely to deter members of the public from reporting crimes or seeking assistance from the respondent. It was critical to the respondent's law enforcement function that it could ensure confidentiality to 000 callers both to protect the public and to encourage the reporting of crime. This was consistent with the VCAT's general approach to treat information provided by the public to the respondent as confidential.

The VCAT found that disclosure of information ascertaining the caller's identity, address or location would be unreasonable for the following reasons:

- The information was highly sensitive and disclosure would cause her distress;
- The confidential nature of the information;
- The information was not in the public domain simply because it was played once in open court;
- The applicant's lawyers could seek the recording by court order;
- There was no public interest in release;
- The likelihood that the recording had been altered was remote;
- It was likely the caller would oppose release and it was reasonable for the respondent not to consult her due to the distress it would cause her.

Recent Updates

New FOI Application Fee in Victoria

Please note that from 1 July 2014 the application fee for a request for access to documents under s 17 of the *Freedom of Information Act 1982 (Vic)* ("FOI Act") will be \$26.50

The Victorian Government Gazette (No. S123) dated 15 April 2014 contained a notice from the Treasurer advising that the value of one fee unit under the *Monetary Units Act 2004* will, from 1 July 2014, be \$13.24.

The FOI Act states that an application fee will be two fee units. Therefore, the application fee under the FOI Act will be \$26.50. Note that the *Monetary Units Act* permits rounding to the nearest 10 cents and that the new fee applies from 1 July 2014. Therefore, you should amend any forms, literature, web sites or other information generated by your agency to reflect that change with effect from 1 July 2014.

Finally, just another timely reminder that GST is NOT payable on any application fees or access charges under the FOI Act.

Amended FOI Access Charges in Victoria

Please note that from 28 June 2014 different access charges will be payable by applicants seeking documents under the *Freedom of Information Act 1982 (Vic)* ("FOI Act")

The *Freedom of Information (Access Charges) Regulations 2004* will be repealed on and from 28 June 2014. New regulations were made on 3 June 2014 to replace them. They are the *Freedom of Information (Access Charges) Regulations 2014* and they come into operation on 28 June 2014.

Many items have remained the same, but there have been some important changes which have tied payable access charges to "fee units" under the *Monetary Units Act 2004*. This means that as "fee units" increase each year, so too will the access charges payable for certain items under the regulations

What makes things even more complicated, however, is that when the value of a fee unit changes from 1 July 2014, so too will the access charges payable. This is complicated further by the fact that there are no transitional provisions to explain what happens in relation to requests received before or after 28 June 2014.

Please contact us if you require further explanation or information.

Question time

Q: Do I have to give applicants review rights for a decision that there are no documents falling within the request?

A: The Victorian Civil and Administrative Tribunal has ruled that decisions from agencies there are no documents falling within a request or that they cannot be located, after having conducted a search, are no longer subject to a right of review. Any notice of decision must, however, inform applicant's of their right to complaint to the FOI Commissioner.

For more information about how this affects your agency, please contact us.

Q: Is it necessary for my organisation to train all employees about protected disclosures?

A: Similar to the old Whistleblower Act and the current Information Privacy Act, we believe regular training on protected disclosure requirements will minimise the risks of not complying with the Protected Disclosure regime. We think it is important to ensure that all employees are aware of the protected disclosure regime.

The level of training required will depend upon your organisation. For instance, if your organisation is a Council, some of your employees could potentially receive protected disclosure complaints. It will be incredibly important to ensure that they receive training on what they should do upon receiving protected disclosure complaints.

We also believe it is very important for those staff who hold responsible roles under the regime to know what these roles involve. It is likely that you will have already conducted training for your Protected Disclosure Coordinators and Protected Disclosure Officers, but if there have been changes within your staff in the last 12 months, you may wish to consider holding refresher training. We can assist with these training needs.

Firm News

Update on dealing with the FOI Commissioner briefings

As mentioned in "From the Executive Director", this month, the Victorian Government introduced in Parliament proposed changes to the FOI Commissioner regime under the FOI Act.

FOI Solutions has developed an hour-long briefing to outline what those changes will mean for agencies. It will also cover numerous other practical aspects in dealing with the FOI Commissioner.

The briefings will be held on Thursday, 31 July 2014. You can choose from four times: 9.00am, 10.30am, 12.00pm, and 2.30pm.

If you would like to express interest in attending this future session, to register, or if you require advice on how this will affect your agency, please contact us at marketing@foisolutions.com.au or visit our website: www.foisolutions.com.au.

Mick Batskos to speak at National Conference

Our Executive Director, Mick Batskos, has been invited to speak about privacy and freedom of information at

the Australian Institute of Administrative Law National Conference in Perth in July 2014. The AIAL National Administrative Law Conference is the pre-eminent conference for government law in Australia.

Mick's paper will present a comparative analysis of how "personal information" is treated under FOI and privacy laws in Australia. It will address:

1. What "personal information" is dealt with under the different privacy regimes?
2. How is personal privacy dealt with in freedom of information laws?
3. How is the balance or interaction of concepts of "personal information" managed between privacy and freedom of information laws?

It would be great if you could make it to what looks to be a great conference on government law issues. Please feel free to pass this message on to any colleagues who you believe may be interested. For more information about the program have a look at this AIAL link: <http://150.203.86.5/aial/NationalForum/ANFIndex.html>.

Farewell

Sadly, Thijs de Jong left FOI Solutions at the end of May 2014. Thijs brought much warmth, laughter and enjoyment to the firm during his time as a Law Clerk at FOI Solutions.

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 changes or improvements we can make to our current website. We want to make it relevant to your needs.

Any suggestions are welcome. If you have any comments to make regarding the website, please send them to marketing@foisolutions.com.au. We look forward to hearing from you.

As a reminder, on our current website you can also find hotlinks to cases in which we have acted as well as other helpful information.



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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 and click on the "Publications" button for more information.

Training

FOI Basic and Intermediate

FOI Solutions is proud to again offer training for FOI officers and decision-makers under the *Freedom of Information Act 1982 (Vic)*.

This will be done through intensive practical training workshops developed and presented by Mick Batskos, Executive Director of FOI Solutions.

Cost includes a half or full day training session, workshop and presentation papers, morning and/or afternoon tea, and lunch is provided for participants attending both sessions.

For further information about this or other upcoming training please see our [website](http://www.foisolutions.com.au), phone 03 9601 4111 or email marketing@foisolutions.com.au.

Upcoming Sessions

Privacy Detox

Wednesday 16 July and Monday 21 July 2014

Basic and Intermediate FOI Training

Friday 18 July and Monday 4 August 2014

Update on dealing with the FOI Commissioner

Thursday 31 July 2014

FOI Intensive

Monday 18 August and Friday 29 August 2014

Common Privacy Problems

Wednesday 8 October 2014

Drafting Good FOI Decisions

Monday 20 October and Monday 10 November 2014

Council-specific FOI and other issues

Monday 20 October and Monday 10 November 2014

Lessons from the FOI Commissioner

Monday 1 December 2014

If you would like to express interest in attending any future session, to register, 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.