



# IMPORTANT FOI UPDATE

## No power for VCAT to order searches

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**On 27 March 2014 the Victorian Civil and Administrative Tribunal (“VCAT”) made a decision which effectively means that the VCAT does not have jurisdiction to order an agency to search for documents where the agency has already searched for documents.**

This decision applies in at least two situations. **First**, where an agency has searched for documents falling within a request and it has located documents and made a decision on them, and it is asserted that further documents exist. **Secondly**, where an agency has searched for documents falling within a request and it has not located any documents (often referred to as a no documents decision).

In either situation, the VCAT (and we would argue the FOI Commissioner) cannot as part of any **application for review** deal with the question of the thoroughness or diligence of any search for documents. That issue can only be dealt with by the FOI Commissioner by way of a **complaint** by the applicant.

This is because by making the amendments to the FOI Act in 2012 which introduced the FOI Commissioner, and expressly providing that the FOI Commissioner can by way of a complaint made to her deal with a decision that a document does not exist or cannot be located, Parliament expressed an intention that the FOI Commissioner deals with this issue about the thoroughness and diligence of searches under the complaint system.

For more information about how this might affect your agency please feel free to contact us.

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