

## FOI OFFICERS BEWARE

The Victorian Civil and Administrative Tribunal yesterday handed down a decision of major importance to the daily activities of FOI Officers.

It found that documents wrongly included within those thought to fall within a request for access, and which are the subject of a decision refusing access, may be the subject of an application for review by the VCAT. This is so even though it subsequently becomes apparent that the documents do not actually fall within the scope of the original request for access.

The Tribunal's decision confirmed that it is absolutely imperative for FOI Officers and internal review officers (usually the CEO of an agency) to be sure that there is no ambiguity in a request and that they are satisfied that they understand fully the scope of the request.

They must be satisfied that only documents relevant to a request are the subject of any decision about access. If access is refused to irrelevant documents which have been inadvertently included, those documents may nevertheless be the subject of review by the VCAT if the applicant appeals, even though not falling within the original request.

The case considered the operation of section 50(2)(a) of the *Freedom of Information Act* ("FOI Act") which provides that an applicant can apply to the Tribunal for review of:

*"a decision refusing to grant access to a document in accordance with a request."*

The Tribunal did not accept an argument that the words "in accordance with a request" meant that the Tribunal only had jurisdiction to review a decision refusing to grant access to documents which fell within the request for access, and that it could not review a decision about documents falling outside the request.

It found that once a decision had been made refusing access, it was the decision refusing access which was reviewable, regardless about which documents that decision was made. It found that the words "in accordance with a request" merely had the effect of identifying that it was in respect of decisions about requests properly made under section 17 of the FOI Act which the Tribunal had jurisdiction.

If you require any further information about this case please contact Mick Batskos on 9667 0233 or email: [mbatskos@bigpond.com](mailto:mbatskos@bigpond.com)

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