

From the Executive Director

The issue that appears to be the flavor of the moment in FOI in Victoria is the commencement of the upcoming FOI Commissioner. Agencies are anxious to understand what the changes in the FOI regime will mean for them. FOI Solutions is conducting training outlining the changes in some detail. See the "Training" tab on our website for more information.

We can also assist with reviews of precedents and internal procedures within agencies to help you get ready for the introduction of the new regime. Contact me for more information or assistance on mick@foisolutions.com.au.

By Mick Batskos

What's News?

RECENT CASES

Mond v Building Commission of Victoria [2012] VCAT 796

The applicants sought documents in relation to a complaint they had made to the Building Commission about a neighbour's building works.

The documents in dispute included records of interview, written responses to investigations and file summaries.

Under s 33 disclosure was found to be unreasonable. Removal of identifying information would not be sufficient to prevent disclosure of personal affairs as the document contained accounts of behavior,

expressions of personal views and descriptions of workplaces that would constitute personal affairs information in the context in which it appeared. However, the Tribunal varied the original decision noting that in so far as the descriptions were of work practices that formed part of an individual's public life, and was not personal affairs information.

The Tribunal noted that although the documents did not mention confidentiality, it was clear that the documents were obtained as part of an investigation and identified significant information about persons and their opinions. The documents were found to contain information communicated in confidence (s 35(1)(b)). Release would have an adverse effect on the Commission's ability to obtain this information in future.

It was found that the public interest override (s 50(4)) would not apply here. Even if a report by the Victorian Attorney General relating to the building permit system and the general interest in an accountable and transparent Commission created a sufficient public interest, release of the documents would not, in this case, serve such a public interest.

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Tregale v Department of Human Services [2012] VCAT 722

The Applicant sought access to an audit report, and the Tribunal varied the decision by granting the release of information on one page of the report. Otherwise it was exempt.

In relation to s 30(1), the Tribunal held 'opinion' was an essential feature of audit reports. Also, it was prepared by an "officer" because the auditor was engaged by the disability agency from a select group of pre-approved auditors. However, the agency was not an officer of DHS because it was not substantially engaged to provide opinion, advice or recommendation to DHS.

Nevertheless, the report formed part of the deliberative process of DHS because it enabled it to assess its viability of its continued existence as a provider of valuable

services to disabled people.

The report's release was contrary to the public interest.

In relation to s 34(1)(a), the Tribunal found the audit service provider was clearly a commercial, business or financial undertaking because it charged a fee for its services even though it was a not-for-profit organisation.

"Opinion was an essential feature of audit reports" for s 30(1)

The report contained trade secrets because of its information relation to the disability agency's systems and procedures. Disclosure would cause harm to the disability agency in the context of the services it provides for disabled people.

RECENT UPDATES

Requests from Law Enforcement agencies: What are your responsibilities?

The Victorian Privacy Commissioner released Information Sheet 04.12 specifically dealing with IPP 2.1(g). The information sheet is designed to assist agencies in responding to requests for personal information from law enforcement agencies.

This can be accessed at [http://www.privacy.vic.gov.au/privacy/web2.nsf/files/responding-to-requests-from-law-enforcement-agencies/\\$file/info_sheet_04_12.pdf](http://www.privacy.vic.gov.au/privacy/web2.nsf/files/responding-to-requests-from-law-enforcement-agencies/$file/info_sheet_04_12.pdf)

Victorian Ombudsman Annual Report

The Victorian Ombudsman tabled his annual report in Parliament, August 2012. In relation to FOI the Ombudsman identified a number of significant problems in agencies administering the FOI Act. These included:

- Delay
- Failure to observe the Attorney General's guidelines

- A culture of secrecy and withholding documents; and
- Failing to interpret requests broadly and provide applicants with sufficient information.

In relation to s 16 of the *Freedom of Information Act* the Ombudsman pointed out that the provision was intended to expand the possibility of making material available, not reduce access.

The Ombudsman's Annual Report can be accessed at <http://www.ombudsman.vic.gov.au/www/html/292-annual-report-2012.asp>.

New Commonwealth Ombudsman Appointed

On 16 August 2012, Mr Colin Neave AM was formally appointed as the Commonwealth Ombudsman, replacing former Ombudsman Mr Allan Asher.

QUESTION TIME

We are often asked whether we know of anyone who can provide administrative assistance in an FOI related matter where agencies do not require legal advice and do not want to engage lawyers.

The answer is "Yes", our partner organisation **FOI Support** provides this kind of assistance. They can be contacted as per the details below:



Administrative Consultants

Level 2
155 Queen Street
Melbourne Victoria 3000

DX 345 Melbourne VIC
Email mick@foisupport.com
www.foisupport.com

Telephone (03) 9601 4100
Facsimile (03) 9601 4101
Mobile 0417 100 796

See also additional information at: www.foisolutions.com.au/FOISupport.htm

If you have any questions you would like answered in the newsletter please email us at info@foisolutions.com.au and refer to the fact you would like your question answered in the next newsletter.

FIRM NEWS

Paige Emery joined the FOI Solutions team in September 2012 as an administration officer. She provides administrative and reception services, and takes care of our library and precedents system. She can be contacted on 9601 4111 or paige@foisolutions.com.au.

WEBSITE

Be sure to check our website for information on recent news or developments, our training, and legal services offered. Register early for any training or seminar sessions as they tend to fill quickly.

Visit our website at www.foisolutions.com.au where you will find hotlinks to cases in which we have acted as well as other helpful information.

We would love to hear any comments or feedback, positive or negative, about the website as we are about to engage in an update of it. Any suggestions for improvement would also be welcome. The website will be updated on a regular basis, so don't forget to come back often.

TRAINING

FOI Solutions conducts a number of training sessions and lunch time seminars throughout the year.

- Basic FOI training for FOI decision makers
- Intermediate FOI training for FOI decision makers
- Training on dealing with electronic documents
- Training on amendments to FOI legislation

COMING UP SOON:

11 Sept: FOI Act Amendments lunchtime training session (12.30-2.30pm)
13 Sept: Basic & Intermediate FOI training sessions
26 Sept: FOI Act Amendments 2012 lunchtime training session (12:30pm-2:30pm)
1 Oct: Electronic Documents: A Guide Through the Maze lunchtime training session (12:30-2:30pm)

Details of our training timetable for the second half of 2012 and registration forms are available on our web site: www.foisolutions.com.au under the "Training" tab. Come back often as we add new topics from time to time.

If you have a particular topic you would like covered in a future training session or lunchtime update, please contact our Executive Director: mick@foisolutions.com.au

FURTHER INFORMATION

If you would like any further information about the matters raised in this Newsletter or any assistance with FOI, privacy, whistle blowing or other administrative law matters generally, please do not hesitate to contact Mick Batskos.

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Your feedback regarding this Newsletter would be most welcome, as well as would what you would like to see covered in future Newsletters.

Don't forget our **FOI and Privacy VCAT decision summaries** are available to keep you up to date with developments in these areas.

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

The 2011 VCAT case summaries are now available.

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