

## From the Executive Director...

The flavour of the month is "Protected Disclosures". A complex web of legislation has been implemented introducing new processes and laws to replace the old whistleblowing regime in Victoria. Agencies must comply with the new regime by 1 August 2013.

FOI Solutions has a range of standardised or customised processes and policies available to help agencies comply by the due date. See our website home page for more information under "Announcements and Recent Developments": [www.foisolutions.com.au](http://www.foisolutions.com.au).

## What's News?

### RECENT CASES

#### ***Foster v Department of Health [2013] VCAT 648***

The applicant sought all documents relating to a complaint she had made to the Department. Documents were located and access was provided. The applicant informed the Department she was unhappy with the searches conducted and further documents were found.

The applicant then complained to the Ombudsman about the adequacy of the searches conducted. The Ombudsman was satisfied that thorough searches had been conducted.

The applicant sought review of the Department's decision alleging that further documents existed.

The Tribunal was not satisfied that the Department held further documents. It found that although the applicant had a reasonable basis for believing further documents existed due to inadequate earlier searches, it was now the case that the Department had done all that could reasonably be required of it to find the documents.

In light of the Ombudsman's findings that no further documents were held and the Department's willingness to undertake further searches when prompted the Tribunal held that there was nowhere else it could direct the Department search further.

#### ***Smeaton v Victorian WorkCover Authority [2013] VCAT 591***

The applicant sought various emails from WorkCover that were contained on back up tapes. WorkCover did not have the resources to search the back-up tapes itself and estimated it would cost \$14,500 to transfer old back up tapes to a hard drive. In addition, those hard drives would then need to be searched and relevant emails processed.

WorkCover refused to process the request on the basis that processing would substantially and unreasonably divert its resources.

The Tribunal agreed that the diversion of resources was substantial and, in the context of

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the applicant's many previous applications, unreasonable. This decision highlighted that electronically storing information does not necessarily make searching more efficient. The Tribunal also found that the available resources of the agency included a sub-contractor as well as WorkCover's IT team and FOI unit.



### **Duffy v Victorian WorkCover Authority [2013] VCAT 545**

The applicant sought documents sent by WorkCover to the Department of Public Prosecutions to obtain advice. WorkCover claimed that the documents were exempt as they were subject to legal professional privilege.

In reaching its conclusion, the Tribunal noted that privilege may be waived if advice is sought to achieve an improper purpose. An improper purpose can include breaching the law, committing fraud, conspiring against the applicant, engaging in reprisals against a person, corruption and a refusal to investigate a complaint.

In this case, there was no evidence that WorkCover sought to achieve an improper purpose.

A document referring the question of whether to prosecute an employer to the DPP was found to be legal advice comprising a brief to counsel. The Tribunal affirmed WorkCover's decision.

## RECENT UPDATES

### **Victorian FOI Commissioner**

Please note that the Victorian FOI Commissioner, Lynne Bertolini, now has a fully operational website:

<http://www.foicommissioner.vic.gov.au/>

### **Changes to Privacy**

Reforms to strengthen data security and the privacy and protection of personal information within the Victorian Public sector were announced by the Premier in December. These reforms, to be introduced into Parliament later this year will introduce the new role of the Privacy and Data Protection Commissioner, merging the roles of the Privacy Commissioner and the Commissioner for Law Enforcement and Data Security. The integrated role of the Commissioner is designed to provide a whole of government approach to data security and provide an improved response to new and emerging challenges affecting information privacy and data protection in Victoria.

These changes will not alter any legal obligations under the Victorian Privacy regime or the law enforcement data security regime. However, a new Victorian Protective Security

Policy Framework will be introduced.

FOI Solutions will continue to monitor the progress of this legislation.

### **IBAC**

The IBAC announced the appointment of Mr Andrew Kirkham Am, RFD, QC as Deputy Commissioner of IBAC in April.

The IBAC, along with the Protected Disclosures and associated legislation, is now fully operational. Agencies are expected to comply with the requirements of the new regime which include significant changes from the old "Whistleblowers" regime.



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## QUESTION TIME

*Q: The FOI Commissioner is currently reviewing a decision made by our agency. What should steps should our agency be taking to ensure the correct decision is made and how can FOI Solutions assist?*

A: Steps that could be taken include ensuring that the application for review was submitted to the FOI Commissioner within 28 days. There are also limited circumstances in which exempt documents need to be provided to the FOI Commissioner. FOI Solutions can provide detailed advice, assist with submissions and even act on your behalf (including attending meetings with the FOI Commissioner either with you or for you).

If you have any questions you would like answered in the newsletter please email us: [info@foisolutions.com.au](mailto:info@foisolutions.com.au) and refer to the fact you would like your question answered in the next newsletter.

## FIRM NEWS

### **15 Year Anniversary**

FOI Solutions will be celebrating its 15 Year Anniversary this year in August. More details will be made available closer to the date. We will also be celebrating 30 years of FOI being in operation in Victoria.

### **New Staff Member**

Shiloh Tuigamala is the newest addition to the FOI Solutions team, recently accepting the position of Administration Officer within the firm. Please say hello to her when you call our office number.

### **2012 VCAT Summaries released**

Our FOI and Privacy VCAT summaries for 2012 are available for purchase. They contain summaries of all FOI and Privacy decisions at VCAT from 2012. Be sure to order yours before 30 June 2013 to help use up your education budget.

### **New Service - Monthly VCAT summaries**

You can also subscribe to our new service and receive these summaries monthly, so that you will have summaries of all VCAT decisions monthly and only a few weeks after they have been determined. Please contact us for more information or to subscribe to that service.

## 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. There is presently an all day intensive available collecting some of our most popular sessions from 2012 and 2013 as well as an Open Forum for any questions.

Visit our web site at [www.foisolutions.com.au](http://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 it as we are about to engage in an update of the website. Any suggestions for improvement would also be welcome. It will be updated on a regular basis, so don't forget to come back often.

Email: [info@foisolutions.com.au](mailto:info@foisolutions.com.au)

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## TRAINING

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

- Basic FOI training for FOI decision makers
- Intermediate FOI training for FOI decision makers
- Consultation and notification
- Protected Disclosures

*We will be holding a number of training sessions throughout the rest of 2013. Please check our website for details of these training sessions.*

Upcoming sessions include:

- FOI Solutions Intensive Training (18 June 2013)

This training session combines previous lunchtime sessions into one all-day session. The sessions run on this day will be:

- Protected Disclosures
- FOI & Model Litigant Responsibilities
- Electronic Documents under the FOI Act in Victoria
- Consulting and Notifying Third Parties under FOI
- Non-essential FOI Processing
- Lessons from the FOI Commissioner
- an Open Forum to answer any questions raised.

This session is intended for people handling or managing FOI decision-making, privacy or protected disclosure functions in Victorian agencies.

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](mailto: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, whistleblowing, protected disclosures or other administrative law matters generally, please do not hesitate to contact our Executive Director, Mick Batskos.  
Tel: 9601 4111  
Mobile: 0417 100 796 Fax: 9601 4101  
Email: [mick@foisolutions.com.au](mailto:mick@foisolutions.com.au)

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

If you are interested in purchasing a copy of the 2012 summaries (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](http://www.foisolutions.com.au)

Feedback about the newsletter is also welcome.

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