



URGENT UPDATE

Written request terms prevail over oral clarification or narrowing

The VCAT made a decision today which emphasised the need to obtain clear and unambiguous requests from applicants before accepting them as valid under section 17 of the FOI Act.

Once a request is accepted as a valid request *in its terms*, agencies are not entitled to effectively rewrite the request (or treat it as narrowed or rewritten) by relying on conversations that suggest a clarification or narrowing of the request.

Therefore, it is crucially important to get any request (or amended request) in writing and to be satisfied that it is clear in its terms before accepting it as valid. If it is still not clear on its face (ie still too wide or lacking in definition) even after consultation has occurred by telephone or in person, it is incumbent on the agency to notify the applicant of that fact and to require a rewritten request and not to rely on a conversation as having the effect of modifying the request.

The Tribunal noted that principles stated in recent High Court authorities in relation to interpretation of written contracts were equally applicable in FOI cases in dealing with interpretation of requests for access. That is, it is important to note the written terms of a request, not any oral explanation that may have occurred prior to the written form being provided. Deal with the request on its face on the terms there expressed and not on what you understood the applicant to be requesting.

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