



EMAIL UPDATE No.1 of 2006

“Adequacy of Searches for Documents: Federal Court Test Established and Applied”

In December 2005 Justice Finn of the Federal Court considered when searches for documents could be considered as adequate under the Commonwealth FOI Act. In particular, he considered when “all reasonable steps have been taken to find the document” as required in section 24A.

FOI Solutions acted for Telstra Corporation Limited in that Federal Court case, *Chu v Telstra Corporation Limited* [2005] FCA 1730. It was an appeal from an earlier decision of the Administrative Appeals Tribunal.¹ In finding that the AAT had made a mistake and applied the incorrect legal test, Justice Finn found:

“A person requesting access to a document that has been in that agency’s or Minister’s possession should only be able to be denied on the s 24A ground **when the agency** (or the Minister) **is properly satisfied that it has done all that could reasonably be required of it to find the document in question.**”² (emphasis added).

In the first AAT case since the *Chu* decision to apply the test set out by Justice Finn, FOI Solutions acted for Australia Post in the case of *Re Zacek and Australian Postal Corporation* [2006] AATA 124. The AAT accepted Australia Post’s submissions and evidence and was on balance satisfied that Australia Post had done all that could reasonably be required of it in the circumstances to find the documents sought by the applicant.

Taking into account the comprehensive nature of the steps taken by Australia Post to locate relevant documents and the provision of access to the applicant of documents the Tribunal was satisfied that no other documents, within the scope of the FOI requests for access, existed other than those released by Australia Post or included in the exempt documents. The case also dealt with the successful application of the legal professional privilege exemption.

If you require any further information in relation to any of these decisions, or if you require assistance in relation to any FOI matters in general, please do not hesitate to contact me.

Dated: 20 February 2006

A handwritten signature in black ink that reads 'Mick Batskos'.

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¹ *Re Chu and Telstra Corporation Limited* [2004] AATA 1127.

² The case has been remitted to the AAT for re-determination.