



URGENT UPDATE

Personal Affairs Exemption and “World at Large”

On 14 December 2007 the Supreme Court handed down an extremely important decision affecting almost all Freedom of Information decisions in Victoria. It affects the application of s 33 of the Victorian FOI Act and the test to be applied by agencies and the VCAT in determining whether disclosure of personal affairs information is unreasonable.

The Supreme Court has effectively scrapped the “world at large” test. The Court held that it is not appropriate to consider disclosure under the FOI Act as being disclosure to “the world at large”. In looking at all the circumstances to determine whether disclosure of personal affairs information was unreasonable, “a relevant consideration for the decision-maker is the extent of the likely disclosure” which is “a matter which the decision-maker must have regard to”. The decision maker must consider each individual request for access on its own merits including the characteristics of the applicant and the applicant’s particular interest in having the information.

It is necessary that an FOI decision-maker have regard to, among other things, the likelihood that the applicant will disclose the information. Failure to do so would give rise to a legal error.¹

If you require further information or advice about how this will impact on your decision-making, please do not hesitate to contact us.

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

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¹ The respondent agency has lodged with the Court of Appeal an application for leave to appeal the decision.