



IMPORTANT UPDATE

Privacy Complaints to be Properly Particularised

FOI Solutions was successful in having the VCAT order a complainant to properly particularise a complaint before the matter could proceed.¹

The applicant is a person who for many years has been active in protesting against the North-South Pipeline designed to bring water to Melbourne from the Goulburn Valley. She was involved in organising and attending direct actions against the construction of the pipeline. Over time she had attended the sites of the pipeline construction.

This case is important because it emphasises the need for complaints about alleged interferences with privacy to be properly particularized, whether when made to the Privacy Commissioner or when referred to the Tribunal. Without proper particularization, the organisation concerned is not in a position to properly know what personal information about the complainant is in question and how it is alleged there has been an interference with privacy by the organisation.

The complaint as it stood, before both the Privacy Commissioner and the Tribunal, was that the complainant made a freedom of information request and received 88 documents that in some way referred to her and that, *in itself*, constituted an invasion of privacy.

The organisation sought particulars and received little in response. The complainant made a series of general allegations without referring to any fact or document and without particularising what personal information was complained about. The Tribunal found that the complaint was “poorly particularized” and that “there is something to be said for the frustration clearly articulated by [FOI Solutions].” It ordered the complainant to nominate 10 documents and particularise properly (among other things):

- what constitutes the act or practice complained of;
- the personal information in question; and
- what constitutes the interference with privacy.

Although those comments were about the complaint referred to it, the same comments apply to the complaint before the Privacy Commissioner (whose staff had ironically assisted in drafting part of the complaint).

If you require any further information or assistance about how this case affects your agency, or have any privacy issues or complaints requiring assistance, please do not hesitate to contact us.

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¹ *Beer v Melbourne Water Corporation* (Unreported, VCAT, 20 April 2011, Senior Member Megay)