



## IMPORTANT UPDATE

### Further Osland decision handed down today

**The Court of Appeal handed down a further decision this afternoon in relation to the *Osland* case. In short, our client, the Secretary to the Department of Justice, was successful on her appeal in a unanimous decision.**

The matter had been sent back to the Court of Appeal from the High Court in order for the Court to consider, after looking at the exempt documents, whether the public interest required disclosure under s 50(4) of the FOI Act.<sup>1</sup>

The Court of Appeal reiterated that consideration of that section required a balancing process and that it was only if the public interest demands or necessitates disclosure (which is a stringent test) that it will apply to require the release of exempt documents.

The Court of Appeal also reiterated that abstract policy considerations such as the need for greater or 'proper' accountability as a reason in support of requiring disclosure had no place in the s 50(4) analysis in this or any other case. That is because the FOI Act itself is a mechanism by which the public interest in transparency and accountability is intended to be advanced. At a policy level, the FOI Act has already struck the balance between the public interest in the application of exemptions and the public interest in access to documents.

The Court of Appeal was satisfied that there was nothing in the circumstances of the case which compelled disclosure of the documents in the public interest. The consideration of Ms Osland's petition for mercy was an orthodox process of Government decision-making. The seeking of more than one legal advice was unexceptional, and preferring one view over another unexceptionable. There was no occasion for an exercise of the discretion to require disclosure under s 50(4) of the FOI Act.

If you require any assistance or advice in relation to this decision please do not hesitate to contact us.

**Dated: 7 April 2009**

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

**Mick Batskos**

**Tel:** (03) 9601 4111

**Fax:** (03) 9601 4101 or

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

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<sup>1</sup> That section is not able to be applied by FOI decision makers; it is only for the VCAT (or a Court on appeal) to use.