



IMPORTANT UPDATE

Osland ‘public interest’ decision handed down

The High Court yesterday handed down a decision which reiterated that in freedom of information matters the Victorian Civil and Administrative Tribunal can only contemplate requiring disclosure of exempt documents if it could identify a high-threshold public interest to override the public interest in upholding the exemption.

The High Court yesterday found that a 2005 VCAT decision, in which VCAT formed the opinion that disclosure of exempt documents was required by the public interest, did not contain any legal errors and was open to be made. Exempt legal advices the Government had obtained were ordered to be released in the unique circumstances of that case.

In relation to the public interest override in s 50(4) of the Victorian FOI Act, the High Court:

- reiterated that it was a significant and exceptional power;
- stated that the word ‘requires’ in s 50(4) directs the Tribunal to exercise the power with restraint;
- stated that it is not enough that access *could* be justified in the public interest;
- did not reject the Court of Appeal’s decision that ‘public interest’ in s 50(4) does not extend to questions of general policy or abstract policy considerations.

If you require any further information or assistance about how this update affects your agency, please do not hesitate to contact us.

Dated: 24 June 2010

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