



IMPORTANT UPDATE

VCAT decision on “health information” and FOI

VCAT yesterday published its reasons for decision in relation to what an agency MUST do when an FOI applicant seeks access to their own “health information” from the agency.

The VCAT made a finding that the information in certain documents about the applicant sought by the applicant comprised “health information”. After referring to sub-sections 33(4) and (5) of the *Freedom of Information Act 1982* (Vic), the Tribunal noted that:

- (a) where a person seeks access to his or her health information, an agency holding the information must not allow access if the principal officer of the agency “believes on reasonable grounds that the provision of the health information would pose a serious threat to the life or health of the person”; and
- (b) if the principal officer of an agency is not a registered medical practitioner, the agency **must** appoint a registered medical practitioner to decide on reasonable grounds whether the provision of the health information would pose a serious threat to the life or health of the person.

As the documents in question contained “health information” the next step, in view of that finding where the principal officer was not a registered medical practitioner, was the appointment of a medical practitioner to decide whether disclosure of the documents to the applicant would pose a serious threat to the life or health of the applicant. The Tribunal stated that such a course of action “**appear to me to be mandatory**”.

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

Dated: 21 October 2008

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

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