



IMPORTANT PRIVACY UPDATE

VCAT decision on what is “personal information?”

VCAT today published a decision dealing with what is meant by “personal information” in the *Information Privacy Act 2000* (Vic) (“Act”). FOI Solutions was successful in having a complaint dismissed by the VCAT on the basis that the information concerned was not “personal information” as defined in the Act.

The applicant’s identity was not “apparent”. To be apparent:

“one would need to be able to look at the information collected and know or perceive plainly and clearly that it was information about the applicant. Thus for example, one’s identity would be ‘apparent’ if the information mentioned one’s name or was a photograph of a person.”

Nor was it a situation where, because of the singular nature of the information the information could be about no one else but a particular person - the identity would be capable of being clearly perceived by looking just at the information.

Nor can the identity of the applicant “reasonably be ascertained”. In this case, an individual’s identity could not be gleaned simply by reference to the information collected. Although not stating conclusively, the Tribunal appeared to lean towards a view of permitting consideration of some material outside that collected by the agency. Even so:

“the legislation requires an element of reasonableness about whether a person’s identity can be ascertained from the information and this will depend on all the circumstances in each particular case.”

In the present case, the alleged process of ascertainment required inquiries from different databases, cross-matching, and then cross-matching again with an external database, and even then the making of any possible connections would not identify the applicant with certainty. This is beyond what is reasonable.

If you would like any further information about this case, do not hesitate to contact me.

Dated: 8 December 2005

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