



## IMPORTANT UPDATE

# Court of Appeal decides on “unreasonable” disclosure of personal affairs

---

**The Victorian Court of Appeal yesterday handed down a landmark decision on the test to be applied by decision-makers in considering whether disclosure of personal affairs information was “unreasonable” under s 33(1) of the Victorian FOI Act.**

The complexity of the issue was reflected by the fact that each of the 3 judges took slightly different approaches and wrote separate reasons for decision. We believe that of the important principles that can be gleaned from the case include:

- ? Whether or not disclosure of personal affairs information is unreasonable involves a balancing test;
- ? Consideration of whether disclosure is unreasonable depends on *all* relevant facts and circumstances relating to a particular case, and will vary from case to case;
- ? The judges referred to numerous possibly relevant factors in determining whether disclosure is unreasonable;
- ? In determining whether on balance disclosure is unreasonable, a decision maker **MUST NOT** assume disclosure is **in fact** to the world at large. It is about disclosure to the particular applicant.
- ? However, the fact of the potential for wide dissemination or that disclosure *could be* to the world at large is relevant. An agency is entitled to assume that is the case—but not in every case. It will depend on the circumstances.
- ? This is because of the unconditional nature of disclosure and the loss of control that occurs when disclosure under the FOI Act occurs. Neither an agency nor the VCAT has power under the FOI Act to make disclosure conditional on a promise by an applicant not to disclose personal information more widely.

If you require any assistance or advice in applying this decision to any particular fact situation or you have any queries about the decision, please do not hesitate to contact us.

**Dated: 6 November 2008**

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)



## IMPORTANT UPDATE

# Court of Appeal decides on “unreasonable” disclosure of personal affairs

---

**The Victorian Court of Appeal yesterday handed down a landmark decision on the test to be applied by decision-makers in considering whether disclosure of personal affairs information was “unreasonable” under s 33(1) of the Victorian FOI Act.**

The complexity of the issue was reflected by the fact that each of the 3 judges took slightly different approaches and wrote separate reasons for decision. We believe that of the important principles that can be gleaned from the case include:

- ? Whether or not disclosure of personal affairs information is unreasonable involves a balancing test;
- ? Consideration of whether disclosure is unreasonable depends on *all* relevant facts and circumstances relating to a particular case, and will vary from case to case;
- ? The judges referred to numerous possibly relevant factors in determining whether disclosure is unreasonable;
- ? In determining whether on balance disclosure is unreasonable, a decision maker **MUST NOT** assume disclosure is **in fact** to the world at large. It is about disclosure to the particular applicant.
- ? However, the fact of the potential for wide dissemination or that disclosure *could be* to the world at large is relevant. An agency is entitled to assume that is the case—but not in every case. It will depend on the circumstances.
- ? This is because of the unconditional nature of disclosure and the loss of control that occurs when disclosure under the FOI Act occurs. Neither an agency nor the VCAT has power under the FOI Act to make disclosure conditional on a promise by an applicant not to disclose personal information more widely.

If you require any assistance or advice in applying this decision to any particular fact situation or you have any queries about the decision, please do not hesitate to contact us.

**Dated: 6 November 2008**

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)



## IMPORTANT UPDATE

# Court of Appeal decides on “unreasonable” disclosure of personal affairs

---

**The Victorian Court of Appeal yesterday handed down a landmark decision on the test to be applied by decision-makers in considering whether disclosure of personal affairs information was “unreasonable” under s 33(1) of the Victorian FOI Act.**

The complexity of the issue was reflected by the fact that each of the 3 judges took slightly different approaches and wrote separate reasons for decision. We believe that of the important principles that can be gleaned from the case include:

- ? Whether or not disclosure of personal affairs information is unreasonable involves a balancing test;
- ? Consideration of whether disclosure is unreasonable depends on *all* relevant facts and circumstances relating to a particular case, and will vary from case to case;
- ? The judges referred to numerous possibly relevant factors in determining whether disclosure is unreasonable;
- ? In determining whether on balance disclosure is unreasonable, a decision maker **MUST NOT** assume disclosure is **in fact** to the world at large. It is about disclosure to the particular applicant.
- ? However, the fact of the potential for wide dissemination or that disclosure *could be* to the world at large is relevant. An agency is entitled to assume that is the case—but not in every case. It will depend on the circumstances.
- ? This is because of the unconditional nature of disclosure and the loss of control that occurs when disclosure under the FOI Act occurs. Neither an agency nor the VCAT has power under the FOI Act to make disclosure conditional on a promise by an applicant not to disclose personal information more widely.

If you require any assistance or advice in applying this decision to any particular fact situation or you have any queries about the decision, please do not hesitate to contact us.

**Dated: 6 November 2008**

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)