



IMPORTANT UPDATE

VCAT reiterates public interest factors

VCAT handed down an important decision today reiterating what can be considered as an internal working document, and the types of factual circumstances where disclosure can be contrary to the public interest.

FOI Solutions acted for Melbourne Water in the case of *Ryan v Melbourne Water* decided today. The VCAT accepted a document as an 'internal working document' under s 30(1)(a) when it:

- ▶ contained modeling information of a predictive nature including graphical representations, prepared at a particular point in time;
- ▶ involved assumptions predictive of what might occur in the future based on one of many possible scenarios.

The VCAT also accepted that disclosure is contrary to the public interest:

- ▶ where a document does not of itself accurately or fully reflect the reasons for a particular action or decision made by an agency;
- ▶ where a document would potentially mislead and confuse any debate about a general topic where it deals only with a narrow range of specific issues;
- ▶ if the document is susceptible to misinterpretation or mischievous interpretation.

Factors relevant in the present case included:

- ▶ where the modelling was a very early prediction and susceptible to misinterpretation;
- ▶ the modelling represented one of many possible scenarios which was not now accurate or current and therefore misleading and impossible for a lay person to understand such that release would be mischievous;
- ▶ the documents were highly technical documents, incomplete in some respects and out of date and could easily be misinterpreted;
- ▶ the material in the document was confusing, contained inconsistencies and represented one of many possible scenarios rather than a preferred view;
- ▶ disclosure would not advance the public debate about the topic;
- ▶ whether disclosure would inhibit frankness and candour;
- ▶ the age of the documents.

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

Dated: 7 October 2009

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

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