



IMPORTANT UPDATE

FOI use during Court proceedings

VCAT handed down an important decision today relating to the interrelationship between FOI and existing Court proceedings between the applicant and the government agency concerned.

The VCAT heard a case in which access was refused in part to a document under the Victorian FOI Act. VCAT proceedings were commenced to seek review of that refusal decision. Due to various interlocutory steps there had been some delay in the conduct of the VCAT proceeding.

Whilst the VCAT review proceeding was on foot, the applicant commenced legal proceedings against the respondent government agency in the Supreme Court of Victoria. The government agency concerned sought an adjournment or stay of the VCAT proceeding pending the determination of the Supreme Court case. The government agency, represented by FOI Solutions, was successful in obtaining that order.

The Tribunal set out reasons why the stay was appropriate:

- ▶ the Tribunal considered it likely that there will be findings relating to similar facts in both the Tribunal FOI hearing and the Court proceedings and so it is inappropriate for the FOI application to proceed further until the conclusion of those proceedings;
- ▶ it is inappropriate that the Court discovery process be prejudiced by the possibility of release to the world at large against what the Court might otherwise determine as appropriate. The Tribunal referred to cases cited by the respondent agency about this.

This case *might* also give rise to the possible application of an exemption depending on the circumstances of a particular case. That is, would disclosure prejudice the administration of the law in a particular instance under s 31(1)(a)?

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

Dated: 23 October 2009

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

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