

FREEDOM OF INFORMATION AND PRIVACY

Purpose of the Freedom of Information Act

The *Freedom of Information Act 1982* (Vic.) governs the right of the community to access information in the possession of the Victorian Government, and of other bodies such as universities, public hospital and local Councils which have been constituted under Victorian law for public purposes. The Act does not apply to privately-owned businesses.

The Act creates a general right of access to information in documentary form which is in the possession of agencies covered by the Act. The document may have been created by the agency, or may have been supplied to it by an external organisation or individual. It is not only documents in paper form that are accessible under the FOI Act. The word 'documents' includes a broad range of media including maps, films, microfiche, photographs, computer printouts, emails, computer discs, tape recordings and videotapes.

The Act states that agencies shall administer the Act with a view to making the maximum amount of information promptly and inexpensively available to the public (s16).

Distinguishing the FOI Act and privacy legislation

The FOI Act differs from privacy legislation. The objects of the FOI Act are to extend as far as possible the right of the community to access information in the possession of Government and statutory agencies. The *Information Privacy Act 2000* (Vic.) and the *Health Records Act 2001* (Vic.) are directed at establishing a regime for the responsible collection and handling of personal information and health information, and to provide remedies for interferences with the information privacy of an individual.

While the FOI Act compels openness, information privacy law requires discretion in dealing with the personal information of an individual (only natural persons have privacy rights, not governments or corporations). Under the FOI Act, anyone can seek access to a document; under privacy laws, only the person the subject of the personal information can seek access. While FOI legislation is basically about disclosure of documents (and less often, correction), information privacy deals with collection, use, quality, security, transfer and matching of personal information. (See *Freedom of information and privacy: timeless themes*, remarks of Paul Chadwick, Victorian Privacy Commissioner, 15 June 2005 at www.privacy.vic.gov.au and click on the link to Publications – Speeches).

To the extent that there is any inconsistency between the two privacy Acts and the FOI Act, the FOI Act prevails. This means that the rights to access one's personal information provided by the privacy legislation are overridden if an exemption in the FOI Act which allows the withholding of access applies.

FOI applications

An individual who wishes to obtain access to a document makes a written request to the agency which holds the document. The agency must give the person access to the document *unless* one of the exemptions specified in the Act applies.

If a person requests access to routine documentation or information, this should not be dealt with by the University's FOI Officer under the FOI Act, but rather as a routine matter by the Faculty, department or unit concerned.

Exemptions under the Freedom of Information Act

A document may be withheld from access on the ground that it is an exempt document. Part IV of the Act sets out the exemptions which an agency may rely upon in denying access to a document or documents which have been requested by an applicant. In some cases, access will be denied to the entire document. Alternatively, if the agency only wishes to claim an exemption in relation to part of a document, it may give the individual access to the document with the exempt information deleted.

If a document does not come within the exemptions under the FOI Act, it still may not be disclosed to the person who has made the FOI request if disclosure would breach the privacy legislation.

The provisions of the FOI Act relating to exemptions are detailed and technical and are subject to limitations. However, in summary, exempt documents are:

- Cabinet documents, documents containing matter communicated to the government by another government, and documents affecting national security, defence or international relations.
- Some internal working documents, the disclosure of which would be contrary to the public interest. Documents which have been held to fall within this exemption are tenders, documents relating to the appointment process of an academic position at a university, assessments of job applications, documents relating to an internal disciplinary inquiry into the applicant's conduct and an independent investigator's report into complaints made by the applicant to a university.
- Some law enforcement documents, such as those that if disclosed would be likely to prejudice the investigation of a possible breach of the law. Documents which have been held to fall within this exemption are documents recording the identity of a confidential source of information to the police in connection with an alleged offence.
- Documents covered by legal professional privilege. Documents which have been held to fall within this exemption are a communication between a Government Department's in-house legal adviser and a barrister, and a file note of an in-house lawyer prepared to give legal advice on whether to institute internal disciplinary proceedings against a teacher.
- Documents the disclosure of which would involve the unreasonable disclosure of information relating to the personal affairs of any person (including a deceased person). Documents which have been held to fall within this exemption are assessments of job applications and documents containing the names and other personal details of unsuccessful applicants for certain academic positions at a university.

- Documents relating to trade secrets and some documents relating to other matters of a business, commercial or financial nature the disclosure of which would be likely to expose a business, commercial or financial undertaking to unreasonable disadvantage. Documents which have been held to fall within this exemption are documents relating to an unsuccessful tenderer's application and documents relating to an offer of sponsorships.
- Some documents containing information provided to an agency in confidence. Documents which have been held to fall within this exemption are curriculum vitae of unsuccessful applicants for a job at a university, documents containing information provided in confidence to the police and documents relating to an internal investigation into the applicant's conduct.
- Some documents the disclosure of which would be likely to have a substantial adverse effect on the economy of Victoria.
- Some documents arising out of companies and securities legislation.
- Documents which are covered by secrecy provisions in other legislation.
- Some documents of local Councils.

Applications under the FOI Act to obtain access to a document in the possession of the University are dealt with by the University's FOI Officer. The FOI Officer sends a copy of the request to relevant areas of the University which may hold documents covered by the request. Staff members must provide to the FOI Officer *all* documents that fall within the request, even if the staff member concerned thinks that one or other of the exemptions may apply to a document or documents. The FOI Officer then makes a decision as to whether access is to be granted to the documents, or whether access is to be denied to some or all of the documents under an exemption or exemptions under the Act. The Act contains specified timelines for dealing with FOI requests.

It is the statutory responsibility of the FOI Officer to make a decision on the FOI request, not other staff members.

If the FOI Officer decides to deny access to a document or part of a document, the applicant may lodge an internal review of the FOI Officer's decision. If access is

denied under the internal review, the applicant may lodge an appeal to the Victorian Civil and Administrative Tribunal (VCAT).

Further information about FOI requests can be found on the University's website www.latrobe.edu.au/records/foi.htm

Further information about privacy legislation can be found at www.latrobe.edu.au/records/privacytu and www.latrobe.edu.au/legalservices/privacy

Angela Smith
Legal Services

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