

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL  
ADMINISTRATIVE DIVISION  
GENERAL LIST

VCAT REFERENCE: G240/2009

**CATCHWORDS**

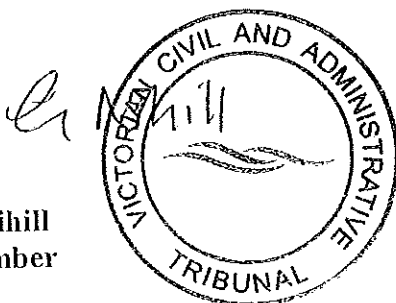
General List – information privacy – personal information – whether there was any personal information held, used or disclosed – summary dismissal under section 75 of the *Victorian Civil and Administrative Tribunal Act 1998*

**APPLICANT:** Mr Greg Carvill  
**RESPONDENT:** Casey City Council  
**WHERE HELD:** Melbourne  
**BEFORE:** Member G Nihill  
**HEARING TYPE:** Hearing  
**DATE OF HEARING:** 28 October 2009  
**DATE OF ORDER:** 28 October 2009  
**MEDIUM NEUTRAL CITATION:** INSERT AT INTERNET PUBLISHING

**ORDERS**

- 1 Pursuant to section 75 of the *Victorian Civil and Administrative Tribunal Act 1998* proceeding G240/2009 is summarily dismissed.
- 2 No order is made as to costs.

G Nihill  
Member



**APPEARANCES:**

For the Applicant: Applicant in person supported by Mr Richardson  
For the Respondent: Mr Batskos, Solicitor

---

## REASONS

### Background to Complaint

1. On 19 March 2009, the Privacy Commissioner referred to the Tribunal pursuant to s 37 (3) of the *Information Privacy Act 2000* a complaint by the applicant, Mr Carvill, against the City of Casey.
2. According to the summary of complaint attached to the referral letter from the Privacy Commissioner, Mr Carvill provided the following details of his complaint (set out in paragraph 3). I set these details out for two reasons. First, although requests and directions were made by the Tribunal prior to the hearing, no particulars of complaint were filed, Secondly, Mr Carvill gave a slightly different version of the complaint at the hearing.
3. The attachment to the referral letter from the Privacy Commissioner stated as follows:

“The Complainant had resided at his current address for many years. Over recent years, the complainant’s local area has experienced significant change from semi-rural to residential uses. Further sub-divisions for residential purposes are proposed around the Complainant’s home therefore increasing the value of the property.

“The Complainant had lodged a hardship application with the Respondent.

“On 3 April 2009 the Complaint received a telephone call from Mr Colin Butler, the Mayor of the Respondent. Mr Butler’s initial conversation was in relation to another matter but ended (sic) the conversation by asking the Complainant if he was interested in selling his property. Mr Butler advised the Complainant that he was finalizing his real estate agent qualifications and would be happy to assist the Complainant in the sale of his property, offering to purchase the property personally. Furthermore, the Complainant states that Mr Butler was aware of the hardship application he had lodged with the Respondent.

“The Complainant claims that having become aware of his personal information lodged on his hardship application, Mr Butler used his position as a representative of the Respondent to discuss the purchase of his property. The Complainant believes that Mr Butler was aware of information held by the Respondent relating to possible property sub divisions adjacent to the Complainant’s property...”

4. Directions requiring the filing and service of particulars of complaint and particulars of defence were made by the Tribunal on 10 July 2009, after which a mediation was to take place, but no particulars of complaint were received. On 23 September 2009 Deputy President Coghlan made the following orders:

1. The attachments to the complaint referred to the Tribunal on 19 March 2009 will stand as the Particulars of Complaint.
2. Listed for hearing on 28 October 2009... and the complainant is to present at the hearing all the evidence and material on which he intends to rely.
3. The respondent has liberty to apply at the conclusion of the complainant's evidence for an adjournment to prepare a response if the justice of the case requires.
4. In the alternative, at the conclusion of the complainant's case, the respondent shall be at liberty to make a submission that the application should be dismissed and this application can be made without the respondent being put to its election and shall be determined as if it was a final submission on the balance of probability
5. Orders made on 10 July 2009 are vacated.
6. Costs are reserved.

#### **Mr Carvill's request to be represented by Mr Richardson**

5. Mr Richardson, a friend of Mr Carvill's, sought leave to represent Mr Carvill. Mr Richardson described himself as a community advocate and watchdog. He explained that he had a keen interest in the activities of the City of Casey, as he was a former councillor for that municipality. He said that he had a lot of evidence about alleged corruption and misconduct on the part of the City of Casey, and he wished to put that evidence before the Tribunal on behalf of Mr Carvill. Mr Richardson said that he had supported Mr Carvill in his complaint against the City of Casey, and had acted as his advocate. He said that it would be fair for him to represent Mr Carvill, as the City of Casey was represented by a solicitor.
6. Mr Batskos for the City of Casey opposed this application on the following grounds. Mr Richardson was not a professional advocate, and the Tribunal ought not exercise its discretion under section 62(1)(c) of the *Victorian Civil and Administrative Tribunal Act 1998* because Mr Carvill was able to represent himself and, given the ability of the Tribunal to assist unrepresented parties, did not need representation. Mr Batskos suggested, though did not argue strongly, that Mr Richardson had considerable personal animosity against the City of Casey and the previous Mayor, Mr Butler, and therefore had his own interests in the outcome of proceedings that might influence his advocacy for Mr Carvill. Mr Batskos did not object to Mr Richardson providing support to Mr Carvill in the hearing.
7. Bearing in mind the requirement on the Tribunal, and the ability of the Tribunal, to conduct the proceeding fairly, as set out by Morris J in *Ogawa v University of Melbourne (General) [2005] VCAT 197*, I did not grant leave to Mr Richardson to appear as an advocate. I did, however, allow him to remain at the bar table

and act as a support person for Mr Carvill, and to offer to the Tribunal whatever evidence he wished to put on behalf of Mr Carvill.

### **The Information Privacy Act 2000**

8. The *Information Privacy Act 2000* (the Act) gives the Victorian Civil and Administrative Tribunal (VCAT) power to hear matters arising from that Act. Section 39 of the Act provides that the VCAT may hear a complaint “referred to it by the Privacy Commissioner under section 29, 32 or 37” or by the Minister under section 31.

9. Under the Act an interference with privacy arises if there is an act done or a practice engaged in by an organization which is contrary to or inconsistent with the Information Privacy Principles set out in the Act. In this application the Information Privacy Principles said to have been contravened were Information Privacy Principle 2.1 and Information Privacy Principle 4.1, which are set out as follows:

“2.1 An organization must not use or disclose personal information about an individual for a purpose (the secondary purpose) other than the primary purpose of collection...” (There are then exceptions set out)

“4.1 An organization must take reasonable steps to protect the personal information it holds from misuse and loss and from unauthorized access, modification or disclosure.”

10. The term “personal information” is defined in section 3 of the Act as follows:

“information or an opinion (including information or an opinion forming part of a database) that is recorded in any form and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, but does not include information of a kind to which the *Health Records Act 2001* applies”.

### **Mr Carvill’s complaint**

11. Mr Carvill detailed his complaint and responded to questions from myself and Mr Batskos. Mr Richardson also provided extensive explanation as to the complaint. This is a summary of the lengthy explanations as to the complaint:

- Mr Carvill lodged a hardship application with the City of Casey. It was unclear when that was lodged or what information was on it. No copy of it was available.
- In March 2007 Mr Richardson asked Mr Butler, Deputy Mayor of the City of Casey, to collect Mr Carvill from his home for a meeting, and also possibly to drive him home after the meeting. Mr Butler asked Mr Carvill whether his property came near Facey Road, and showed some interest in future plans for the surrounding area. They also had a discussion, which was uncomfortable for Mr Carvill, about personal family matters. Mr Carvill said that he was a

friend of Mr Butler's wife and daughters, and he and Mr Butler had a discussion about some family matters.

- On 3 April 2008 Mr Butler rang Mr Carvill offering to buy his property.
- Mr Carvill said that on 2 May 2008 he received a letter dated 29 April 2008 said to be from Collin Butler of the address 56 South Gippsland Hwy Tooradin 3980, which stated as follows:

*"Re: Telephone Conversation*

*Dear Mr Carvill*

*I wanted to buy your property at Lot9/No 130 Devon Meadows.*

*As I have viewed Shire of Cranbourne Map 9, which shows this property can be subdivided.*

*Due to my position in council subdivision of your property would be passed as the legend indicates L.P. Plan 08 subdivision, as per the subdivision act 1989*

*Yours faithfully*

*Collin Butler*

*Deputy Mayor City of Casey"*

- Mr Carvill said that on 14 May 2008 he also received a copy of this letter on City of Casey letterhead. Mr Carvill produced to the Tribunal a copy of the letter which was identical except that it was on City of Casey letterhead and did not have the Tooradin address at the top. A further copy of the first letter was received by Mr Carvill on 14 May 2008.
- There was further evidence about a phone call from an unidentified woman asking Mr Carvill if he intended to sell the property to Mr Butler, and a visit to Mr Carvill by Mr Butler, who left his real estate agent card.
- Mr Carvill said that he had suffered considerable distress at what he felt to be an abuse by Mr Butler of his position on the Council. Mr Carvill felt aggrieved that Mr Butler had asked about purchasing the property, and thought he had done so because he had information about its prospective value that could only have been available to him because of his position.
- Mr Richardson stressed this point, saying that Mr Butler was in breach of the Codes of Conduct expected of both Councillors and Real Estate Agents.
- Both Mr Carvill and Mr Richardson stated several times that the complaint was based on Mr Butler's breach of ethics, in that he, according to Mr Carvill and Mr Richardson, made the offer to buy the property because he knew about proposed planning schemes for the area from council meetings. Mr Carvill did not rely on or refer to the hardship application, and agreed that Mr Butler already knew his address.

## The respondent's submissions

12. Mr Batskos made the submission that the application ought be dismissed under section 75 of the *Victorian Civil and Administrative Tribunal Act 1998*. He submitted that Mr Carvill's application was bound to fail, and was manifestly hopeless and untenable. He said that Mr Carvill would need to satisfy the Tribunal to the requisite standard that there existed certain "personal information" about Mr Carvill and that it was used or disclosed by the Council. Mr Batskos submitted that Mr Carvill had produced no evidence that the Council held any particular, identified information about him which had been disclosed to Mr Butler. Therefore there was no possibility of the application succeeding.
13. Mr Batskos referred to the letters produced by Mr Carvill. He said that they did not represent evidence that personal information about Mr Carvill had been disclosed. Further, he said, they were not reliable evidence in any sense as, in Mr Batskos' submission, they were not genuine documents. Mr Batskos noted that the private address on the first letter was incorrect, and Mr Butler's name was spelled incorrectly on both that letter and the copy on City of Casey letterhead. Mr Batskos produced a letter from Mr Butler in which he denied ever sending the letters, or indeed having a conversation with Mr Carvill about possible purchase of his property. While suggesting that the letters said to have been from Mr Butler had most likely been forged by an unknown person, Mr Batskos did not take this matter any further, saying that if the proceeding were not dismissed summarily he would need to call witnesses and further evidence on this and other points.

## Discussion and conclusions

14. The original complaint and its attachment characterized the complaint as the use by Mr Butler of personal information disclosed by the City of Casey to make contact with Mr Carvill in order to attempt to purchase his property for personal gain. Particulars of this complaint were sought from Mr Carvill by the Tribunal on several occasions. Mr Carvill sent letters to the Tribunal about the complaint, but not particulars about the complaint or the personal information said to have been disclosed. I do not dismiss the claim for this reason. There was ample opportunity at the hearing for Mr Carvill to particularise the complaint, and he did so, as did Mr Richardson.
15. Both Mr Carvill and Mr Richardson were very clear that the reason why Mr Carvill felt aggrieved was not because Mr Butler had used or had access to personal information about Mr Carvill, but that he had access to information about potential planning uses for the land around Mr Carvill's property. Mr Carvill did not want to talk about the hardship application, and had nothing to add as to its date, or contents or relevance. This was the case even though I asked specific questions about it. It was clear that Mr Butler knew where Mr

Carvill lived, and that he did not obtain that information from personal information held by the City of Casey. Mr Butler had been to Mr Carvill's home at least once before, when he drove him to, and possibly from, the meeting in March 2007. In addition, members of Mr Butler's family knew Mr Carvill well, and visited his home. Mr Carvill agreed that his telephone number was listed in the White Pages, and was accessible to anyone.

16. I make no finding about whether the letters were genuine or forged. There was no comprehensive calling of evidence or cross examination on this point. In any case they do not offer evidence which could satisfy the Tribunal that there had been a contravention of the *Information Privacy Act*. They do not suggest that any personal information about Mr Carvill had been disclosed or used.
17. The question of whether or not Mr Butler had access to information about planning proposals is not relevant to a complaint that there has been a contravention of the *Information Privacy Act*.
18. There was no evidence that any personal information was held by the respondent about the applicant, and so no evidence that personal information was disclosed or used by the respondent.
19. For the above reasons, I am not satisfied the applicant's complaint is a complaint about personal information within the meaning of section 3 of the Act. It is therefore a complaint that cannot succeed; it is unsustainable and bound to fail. In those circumstances, it is appropriate to dismiss the complaint under s 75 of the *Victorian Civil and Administrative Tribunal Act 1998*.
20. No submission was made by the respondent for costs, and no order as to costs is made.

G Nihill  
Member



