

IMPORTANT UPDATE

Unclear requests not valid

FOI Solutions successfully challenged at VCAT the validity of a request for access under the Victorian FOI Act.¹

The VCAT last week handed down a decision reaffirming the need for a request to set out clearly the documents sought before a valid request can be said to exist. Vice-President Judge Misso stated that a request must provide *õreasonably specific particulars enabling the proper officer to identify the document which is the subject of the request.ö* The information provided by an applicant must be *õspecific enough for the document to be capable of identification.ö*

His Honour reaffirmed the long-standing approach of VCAT that whether the information concerning the document is reasonable depends on the particular case and whether the applicant has provided a sufficiently precise description of the documents sought to permit the respondent, as a matter of practicality, to locate the document. The responsibility rests upon the applicant to strive to define with as much precision as the applicant can what the applicant wants.

Judge Misso stated that a responsible officer must consider two things:

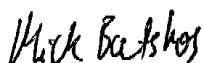
1. Whether the applicant has provided information concerning the document requested;
2. Whether the information provided is reasonable to the extent of being necessary for the responsible officer to identify the document requested.

He continued:

õIt is not the task of the responsible officer to try to ease out from such a request what the applicant might be getting at. First, for the responsible officer to do that would be a failure on the part of that responsible officer to undertake the statutory task set by section 17(2), and secondly, the responsible officer might inadvertently provide documents which are not what the applicant was seeking which would inadvertently lead to unnecessary and possibly protracted correspondence between the applicant and the responsible officer in an effort to try to work out what is constituted by the request, and at worst the making of an unnecessary application for review.ö

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

Dated: 14 July 2010

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

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¹ *Zeqaj v Victoria Police* (Unreported, VCAT, 6 July 2010, Judge Misso VP)