



# Victoria Government Gazette

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## Freedom of Information Act 1982

### Section 65AB

#### STATEMENT OF REASONS FOR SEEKING LEAVE TO APPEAL

On 8 April 2010, the Victorian Civil and Administrative Tribunal (VCAT) constituted by Senior Member Mr Robert Davis made a decision in the matter of Andrew McIntosh MP v Victoria Police (G47/2010).

On the same day the VCAT ordered:

- that the decision made by Victoria Police (agency) to refuse to grant Mr McIntosh (applicant) access to documents on the basis that the work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations, be set aside; and
- the agency to process the applicant's request in accordance with the **Freedom of Information Act 1982** (FOI Act).

Section 25A(1) of the FOI Act provides that an agency may refuse to grant access to documents without having caused the processing of the request to have been undertaken, if the agency is satisfied that the work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations.

Pursuant to section 25A(2) of the FOI Act, the agency, in deciding whether to refuse to grant access pursuant to section 25A(1), is to have regard to the resources that would have to be used:

- (a) in identifying, locating or collating the documents within the filing system of the agency, or the office of the Minister; or
- (b) in deciding whether to grant, refuse or defer access to documents to which the request relates, or to grant access to edited copies of such documents, including resources that would have to be used –
  - (i) in examining the documents; or
  - (ii) in consulting with any person or body in relation to the request; or
- (c) in making a copy, or an edited copy, of the documents; or
- (d) in notifying any interim or final decision on the request.

In this case, the agency submitted that the work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations, including the operations of the agency's Freedom of Information (FOI) unit in processing other FOI requests apart from the applicant's particular request.

VCAT, however, in determining that the processing of the request would not substantially and unreasonably divert the resources of the agency from its other operations, found that it was unnecessary to take into account the resources of the agency's Freedom of Information (FOI) unit in processing the applicant's request.

For the reasons set out in this statement, the public interest is served by the agency appealing from the Order of VCAT.

As the decision was made by a Senior Member of VCAT, section 148(1) of the **Victorian Civil and Administrative Tribunal Act 1998** limits any appeal to questions of law and requires that an appeal be made to the Trial Division of the Supreme Court of Victoria with the leave of that Court.

**SPECIAL**

On 13 May 2010, the Chief Commissioner of Victoria Police caused to be lodged with the Supreme Court a summons seeking leave to appeal the decision of the VCAT.

This statement briefly sets out the reasons for seeking leave to appeal and is provided in accordance with section 65AB(2) of the FOI Act.

**Statement**

Leave to appeal the Order of the VCAT has been sought as the Tribunal has made errors of law regarding the proper construction and application of section 25A(1) of the FOI Act.

The Tribunal erred in construing the words ‘other operations’ at section 25(1)(a) as not including the operations of the agency’s FOI Unit in processing other FOI requests apart from the respondent’s particular FOI request. The Tribunal erred in not construing that expression as the operations of the agency’s FOI Unit apart from its operation of processing the respondent’s particular FOI request.

As a result of this misconstruction, the Tribunal erred in failing to take into account the resources that would have taken the agency’s FOI Unit to process the respondent’s particular FOI request in determining whether the processing of the applicant’s request by the agency would substantially and unreasonably divert the resources of the agency from its ‘other operations’ for the purposes of section 25A of the FOI Act.

The public interest is served by judicial consideration of the matters of law raised in this decision. The purpose of section 25A of the FOI Act is to ensure that an agency is not being diverted from its core functions through needing to process a very broad-ranging request for documents. It is not in the public interest that severe disruptions are caused to agencies by such onerous requests. It is, for example, not in the public interest for overly onerous requests, which make up a minority of the requests received by agencies, to divert the operations of agencies from processing the majority of the other requests they receive from general members of the public. To require agencies to process these relatively few overly burdensome requests would prevent agencies from processing the majority of the other requests they receive in an efficient and effective manner.

The determination of the questions of law raised in this appeal would clarify the proper construction of section 25A of the FOI Act and therefore ensure that the resources of agencies are not inappropriately being diverted from performing its core functions by overly burdensome requests.

BOB CAMERON MP  
Minister for Police and Emergency Services

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