

damage or an expression of concern might not be sufficient (see *Re Maher and Attorney-General's Department* (1985) 7 ALD 731).

Disclosure of documents which were communicated in confidence from an overseas organisation to an Australian security organisation and to the release of which the overseas security organisation *had not consented*, was a matter which could reasonably be expected to cause damage to the relationship between the two security organisations, and therefore to Australia's international relations

(see *Re Throssell and Australian Archives* (1986) 10 ALD 403).

The expectation of damage to international relations had to be reasonable in all the circumstances, having regard to: (a) the nature of the information; (b) the circumstances in which it was communicated; and (c) the nature and extent of the relationship.

See *Re O'Donovan and Attorney-General's Department* (1985) 4 AAR 151.

Section 33(1)(b)

In relation to the claim under s.33(1)(b), the Tribunal commented

that the words 'breach of that confidence' were not limited to situations in which an action in equity or at common law for breach of confidence would lie (see *Re Maher and Attorney-General's Department* (1985) 7 ALD 731). It, however, stressed that for there to be a breach of confidence there had to be a continuing relationship of confidence.

Conclusion

Having inspected the documents, the Tribunal concluded that reasonable grounds existed for the claims made, in respect of each document in issue, under ss.33(1)(a) and/or 33(1)(b).

LITERATURE REVIEW

1987 ANNUAL REPORT ON THE VICTORIAN FOI ACT

Consolidation is probably the best word to describe the operation of the *FoI Act* in Victoria in 1986/87. With new requests totalling 9401, an increase of only 4.1% on the previous year, there appears to be a distinct levelling out of use of the legislation to obtain access to government records.

The refusal rate in the reporting period was 12.3%, a slight increase on the 11% figure of the previous year, whilst the percentage of requests denied at the internal review stage fell from 70.7% to 59.9%.

The statistics for the final stage of the review process, an appeal to the AAT, show that 151 appeals were made in 1986/87 compared to 126 in 1985/86. Perhaps the most interesting point to emerge from the statistics relating to the AAT is the number of appeals settled at the preliminary conference stage. A great deal of discussion has taken place about the lack of effectiveness of Federal AAT preliminary conferences in bringing about the early resolution of disputes. The more 'interventionist' approach by Victorian Tribunal members has, it would seem, been the main contributory factor in the 425% increase in cases settled at preliminary conferences in Victoria.

Turning to the types of requests made, it is clear that the Act is predominantly being used by members of the community to obtain access to personal records. The ratio in favour of personal as compared to non-personal requests is approximately 60:40. Despite the heavy use of the Act to obtain personal records, only 31 requests were made under s.39 for amendment of personal records.

To some extent the use of the Act to obtain personal records probably explains why the personal privacy exemption, s.33 is the most commonly cited provision. In fact it was relied on by agencies almost twice as often as the next most popular exemption provision, s.35.

In the controversial area of charges, the report states that a total of \$39,762.35 was collected with a further \$152,321.62 being waived. Of this latter figure two departments: Premier & Cabinet and Management & Budget accounted for almost 50% of the fee waivers. Opposition Members of Parliament who are not required to pay any fees for requesting documents appear to be largely responsible for the high sum of fees waived. Without doubt the Legal and Constitutional Committee currently reviewing the Act will be carefully studying

these figures in deciding whether MPs should continue to enjoy this privilege.

1986/87 ANNUAL REPORT ON THE COMMONWEALTH FOI ACT

A significant fall of 18% in the number of requests made under the Commonwealth *FoI Act* in the reporting period is illustrative of the declining state of affairs in which the legislation finds itself. The report itself places more significance on 'cost efficiency' than identifying whether the Act is operating satisfactorily. The slicing of \$6,500,000 off the *FoI Budget* achieved only 80% of predicted savings, but, according to the Attorney-General, Mr Bowen, this 'must be regarded as satisfactory given the inherent uncertainties in *FoI* costings and bearing in mind Senate rejection of certain of the Government's cost savings proposals'. One wonders what the impact on the legislation would have been had all the Government's proposals been enacted! Cost efficiency in processing requests increased 10%, although the average cost per request rose from \$430 to \$446. Such has been the apparent impact of the *FoI Laws Amendment Act 1986* on the operation on the legislation.

Somewhat ironically, the Attorney-General's Department boasts the highest refusal rate of all government departments and agencies. With a 35.5% refusal rate, the Attorney-General's Department leads the Department of Health (29.5%), Australian Customs Service (24.8%), Department of Employment and Industrial Relations (19.3%) and the Australian Federal Police (15.9%). Turning to the other end of the scale, the top five agencies were: Commissioner for Employees' Compensation (100% access rate), Trademarks Office (99.2%), Veterans Affairs (98.9%), Commissioner for Superannuation (98.1%) and the Patent Office (97.9%). Of the 29,436 requests received, 20,497 requests were granted in full (an increase of 2.8%) 7579 requests were granted in part (-2.3%) and 1360 requests were refused in full (-0.6%).

Although cost efficiency improved 10%, many departments and agencies failed to respond to requests within the required 30 days. In 3880 cases the Commissioner for Taxation failed to comply within the 30 day time limit, followed by Veterans Affairs (2133 cases), Defence (1564 cases) and Immigration & Ethnic Affairs (1029 cases).

Overall, however, the average response time for all FOI requests was 32.5 days, a decrease of 1.5 days on the previous reporting period.

In the case of earlier annual reports s.93(3)(a)(iv) of the Act required details of the extent to which agencies relied on exception and exemption provisions in refusing requests. In the interests of conserving resources this obligation was removed in the 1986 amendments and no statistics are now available to identify which sections are relied upon the most. It is therefore practically impossible to assess whether the Act is in fact achieving its object of creating a general right of access to Government documents limited only by exceptions and exemptions necessary for the protection of essential public and private interests.

The number of applications for review lodged with the AAT fell by 43% to 164, which can be attributed at least to some extent to the introduction of the \$240 filing fee.

In conclusion, the 1986/87 Report — the first to detail the effects of the 1986 amendments — reveals a less popular and more expensive Act. Whether in the name of cost efficiency this trend will continue remains to be seen.

The following table shows the performance of all the bodies subject to the Act.

DECISIONS ON REQUESTS

Agency	Granted in full	Granted in part	Access refused
Aboriginal Affairs			
Minister for Aboriginal Affairs	0	0	0
Aboriginal Affairs	19	8	0
Aboriginal Development Commission	0	3	3
Arts, Heritage & Environment			
Arts, Heritage & Environment	18	3	9
Australia Council	3	9	3
Australian Film Commission	2	3	4
Australian Film Television and Radio School	1	0	0
Australian National Gallery	1	0	1
Director of National Parks and Wildlife Service	7	1	4
Supervising Scientist for the Alligator Rivers Region	1	0	0
Attorney-General			
Attorney-General	0	0	0
Attorney-General's Department	46	41	48
Administrative Appeals Tribunal	1	0	0
Corporate Affairs Commission	1	0	1
Director of Public Prosecutions	7	0	0
Federal Court of Australia	0	1	1
Film Censorship Board	1	0	0
Human Rights and Equal Opportunity Commission	0	3	0
Law Reform Commission	0	1	0
National Companies & Securities Commission	2	0	1
Trade Practices Commission	2	5	1
Human Rights Commission	10	0	0
Aviation			
Minister for Aviation	0	0	0
Aviation	131	38	31
Communications			
Minister for Communications	0	0	0
Communications	6	3	4
Australian Broadcasting Corporation	10	2	5
Australian Broadcasting Tribunal	9	10	3
Australian Postal Commission	76	26	9
Australian Telecommunications Commission	291	143	40
Overseas Telecommunications Commission	9	3	0
Promotions Appeal Boards Postal & Telecommunications Commissions	2	0	0
Special Broadcasting Service	3	3	0
Community Services			
Minister for Community Services	0	0	0
Community Services	184	48	17
Defence			
Minister for Defence	0	0	0
Defence	1616	132	64
Defence Forces Retirement Death Benefits Authority	37	2	2

Education			
Minister for Education	1	0	0
Education	33	33	5
ACT Schools Authority	3	22	0
Australian National University	4	7	0
Canberra College of Advanced Education	1	1	1
Schools Commission	1	6	0
Tertiary Education Commission	2	3	1
Employment & Industrial Relations			
Minister for Employment & Industrial Relations	0	0	0
Employment & Industrial Relations	59	20	19
Australian Trade Union Training Authority	0	1	0
National Occup. Health & Safety Com.	1	0	0
Finance			
Minister for Finance	0	0	0
Finance	4	6	4
Commissioner for Superannuation	137	15	3
Foreign Affairs			
Foreign Affairs	30	22	5
Health			
Minister for Health	0	0	0
Health	117	43	67
ACT Health Authority	461	4	14
Health Insurance Commission	2	16	5
Housing and Construction			
Housing Construction	43	10	5
Immigration & Ethnic Affairs			
Immigration and Ethnic Affairs	1583	706	117
Industry, Technology & Commerce			
Industry, Technology and Commerce	22	1	0
Australian Customs Service	54	40	31
Local Government & Admin Services			
Local Government and Administrative Services	18	15	10
Albury-Wodonga Development Corporation	1	0	0
Primary Industry			
Minister for Primary Industry	0	0	0
Primary Industry	15	11	7
Australian Meat & Livestock Corporation	1	0	0
Prime Minister and Cabinet			
Prime Minister	0	0	0
Prime Minister and Cabinet	12	13	7
Australian Bicentennial Authority	5	1	0
Commonwealth Ombudsman	2	3	1
Public Service Board	24	5	7
Merit Protection and Review Agency	18	12	3
Resources and Energy			
Resources and Energy	6	4	3
Joint Coal Board	1	0	1
Snowy Mountains Hydro-Electric Authority	0	1	0
Science			
Science	13	0	2
CSIRO	18	14	0
Designs Office	3	1	0
National Standards Commission	2	0	0
Patents Office	60	34	2
Trace Marks Office	100	18	1
Social Security			
Minister for Social Security	0	0	0
Social Security	3519	1371	160
Commission for Employees' Compensation	345	5	0
Special Minister of State			
Dept Special Minister of State	2	3	13
Australian Electoral Commission	22	3	5
Australian Federal Police	51	102	29
National Crime Authority	0	4	6
Sport, Recreation & Tourism			
Sport, Recreation & Tourism	5	4	2
Australian Tourist Commission	3	0	0
Territories			
Minister for Territories	0	0	0
Department of Territories	65	33	11
A.C.T. Milk Authority	0	1	0
NCDC	16	8	1
Parliament House Construction Authority	0	0	2
Trade			
Minister for Trade	0	0	0
Trade	8	12	5
Australian Trade Commission	16	6	3
Transport			
Transport	25	5	0
Treasury			
Treasurer	0	0	0
Treasury	6	12	4
Australian Bureau of Statistics	10	2	
Commission of Taxation	1235	4235	429
Reserve Bank of Australia	17	2	2
Tax Agents' Board (NSW)	4	0	0
Tax Agents' Board (QLD)	1	0	0
Veterans' Affairs			
Veterans' Affairs	9780	123	168
Australian War Memorial	3	3	4
Defence Service Homes Corporation	5	1	0
Veterans' Review Board	5	2	5