The transfer of the Unit to the Ombudsman's Office has seen the merger of two under-resourced entities. The merger has effectively disguised the full extent and effect of the under-resourcing for the two activities (support/awareness and external review) instead of being a principled and careful move towards implementing a version of the successful Western Australian combination (with the Information Commissioner responsible for awareness/training and determinations). The abandonment of the FoI Unit by the Department of Premier and Cabinet was, at best, a symbolic downgrading in the prestige and authority of the Unit's activities. At worst, it effectively precluded the Unit from being staffed by officers at the middle to senior level in the bureaucracy who had access to the central policy processes of DPAC and central government agencies.

Conclusion

A survey of the Annual Reports for 1996/99 reveals that the FoI reporting process itself appears to be compliant in terms of statutory requirements. Data has been supplied by the Departments, agencies and councils in question to allow some statistical inferences to be made about the use of FoI in Tasmania. Reporting is an important feature of FoI schemes and the adequacy of the data in the Reports represents a slight improvement on earlier Annual Reports.[5]

This short article has identified a number of trends in the use and operation of the FoI Act. First, it is noted that Tasmania Police consistently record the highest numbers of FoI requests. This number is, however, decreasing, presumably in response to the policy of releasing pre-trial information with respect to lower court cases. Second, the Annual Reports indicate that there has been an overall decline in the use of FoI in Tasmania. The 1998/99 Annual Report offers some explanation of this decrease for specific departments and authorities.

This trend may suggest that administrative practices are changing and that agencies and authorities are becoming more aligned with FoI principles and pro-disclosure philosophy so as to necessitate less reliance on the Act to achieve openness in government. The fact that a majority of requests are being handled within the 30-day time frame is also to be commended and suggests some genuine commitment on the part of most agencies and authorities in facilitating the aims of the legislation.

The Tasmanian regime demonstrates the hallmarks of a system that has allocated FoI a minor and incidental role in public administration. The allocation of resources, the staffing and administrative arrangements and capacity of the Ombudsman's Office and FoI unit send a message that the Labor government is not interested in rejuvenating the system.

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VICTORIAN FoI DECISION

Victorian Civil and Administrative Tribunal (VCAT)

McCULLOCH and THE UNIVERSITY OF MELBOURNE [2001] No. 2000/70113

D cided: 13 March 2001.

Factual background

In October 1999 Melbourne Technologies Pty Limited, owned by the University of Melbourne, became a public company and its name was changed to Melbourne IT. At that time the company was the only issuer of *com.au* names in Australia. It was given a five-year exclusive licence in 1996 to register domain names throughout Australia. In April 1999 Melbourne IT was also granted one of five worldwide licences to issue global domain names.

The University of Melbourne considered commercial expansion of the company was best achieved by publicly listing Melbourne IT. In November 1999 the University of Melbourne Council approved the public float of the company and commenced a process of due diligence to secure arrangements for the float. Some 42.5 million shares were offered for sale at an issuing price of $2.20. The University maintained 7.5 million shares in the float and made $78.4 million after expenses. The share price peaked at $17.00 and in late December 2000 was selling for approximately 80 cents.

Procedural history

The applicant, Mr Graham McCulloch, is the general secretary of the National Tertiary Education Industry Union. On 3 April 2000 he sought access to a broad class of taped recordings of meetings of the University of Melbourne Council and Finance Committee. The University denied access to the tapes and Mr McCulloch applied to the VCAT for review of the University's decision. By the time of the hearing the request had been significantly narrowed to only include those parts of the taped meetings dealing with the decision to float Melbourne IT limited. At the hearing the University claimed the tapes were exempt according to ss.30, 38, 33, 32, 34(4)(ii) and 38 of the *Freedom of Information Act 1982* (Vic) (the Act).

Decision

The Victorian Civil and Administrative Tribunal (the VCAT) decided to

release a transcript of the tapes it had prepared for the hearing rather than the actual tapes. The matter was adjourned for final hearing in April. At the final hearing the Tribunal made orders that the documents be released.

Reasons for the decision

Section 30(1) (internal working documents)

(a) The tapes were deemed to be internal working documents of the University of Melbourne.

(b) The Tribunal did not consider releasing the tapes would be contrary to the public interest. Senior Member Megay cited a number of reasons for her decision. In her opinion the tapes were non-controversial, contained no secrets, legal advice or anything that could cause the University embarrassment or expose it to adverse comment. She maintained that the comprehensive media coverage of events surrounding the float removed the necessity for confidentiality. Moreover the results of the decision had also been the subject of a report by the Victorian Auditor General. She suggested that McCulloch's last minute narrowing of the request explained some of the University's previous apprehension at disclosing the documents.

The University relied on a number of public interest grounds supporting the s.30(1)(b) exemption. Some of these included: that there is no allegation of impropriety, that disclosure might result in future decisions to dispense with tapes of council meetings and that disclosure would breach the obligation of confidence inferred from the in-camera nature of the meetings.

The VCAT heard evidence from Mr Len Currie for the University regarding the nature of Council meetings and the information discussed. He said that council members were informed and understood that the meetings were confidential. The issues involved in the floating of Melbourne IT were commercially sensitive. If the tapes were released, he suggested, members might be less candid in their discussions. In his opinion release could possibly lead to the council meetings not being taped in the future.

McCulloch called three witnesses: Ms Alana Chin, Dr Jennifer Strauss and Ms Julie Wells. Ms Alanna Chin and Dr Jennifer Strauss discussed their experiences of being on a University Council and Ms Wells discussed the importance of accountability and transparency of University decisions.

In her written decision Senior Member Megay focused on the evidence of the University's witness Mr Currie. The Tribunal was not satisfied that there was enough direct evidence from Mr Currie that the Council members would be less frank or bold in their deliberations if they knew their thoughts would be publicised in the future. Furthermore Senior Member Megay commented that she would 'be amazed' if Council members had given evidence to that effect. She stated that release of the documents in no way binds the University in respect of future meetings or requires the University to make clearly confidential and commercially sensitive material public.

Section 32 (legal professional privilege)

Following the decisions of *Re City Parking and City of Melbourne* (1996) 10 VAR 170 and *Standard Charted Bank of Australia v Antico* (1993) 36 NSWLR 87 the Tribunal rejected the exemption. The VCAT found nothing in the tapes that would reveal what legal advice was sought and received by the Council from the transcripts. The Tribunal held that the fact that legal advice was received does not make the documents exempt.

Section 33 (documents affecting personal privacy)

The VCAT did not consider releasing the names of Council members would be unreasonable in the circumstances. It was maintained that while some of the speakers in the tapes were identified by name, the content of the transcripts was insignificant and their names are a matter of public record. Senior Member Megay submitted that there was no direct or indirect evidence suggesting the physical safety of the Council members would be jeopardised by releasing their names. In accordance with s.33(3) of the Act the Tribunal made an order requesting the Registrar to notify the Council members that their names may be released and advise them of their rights under s.50(2)(e). The documents would be released if there was no response from the Council members within 28 days.

Section 34(4)(ii) (documents relating to trade secrets)

The VCAT found that there was nothing sensitive in the tapes that would unreasonably disadvantage the University and therefore rejected the exemption. Senior Member Megay rejected Mr Currie's evidence which claimed that disclosure of the information would disadvantage the University in future commercial dealings by revealing approaches taken by it. While the meetings were found to contain information of a business, commercial or financial nature, the tribunal was not satisfied that the information would expose the University unreasonably to disadvantage.

Section 38 (documents to which secrecy provisions of enactments apply)

The Tribunal held that there was no prohibition in the University's Standing Resolutions or in any other University enactment '*applying specifically to information of a kind in the tapes*'. In relation to the Standing Resolutions Senior Member Megay contended that the wording is one of 'preferred conduct not a mandatory ruling'. Furthermore she was not persuaded that the fact that meetings were mainly held in-camera gave rise to the requisite prohibition. She commented that it would be odd if the University, which receives substantial public funding, were able to hide its deliberations entirely from the public.

[D.E.]

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