

Freedom of Information

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Review

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ISSN 0817 3532

ISSUE No. 17

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Credits

The Freedom of Information Review is published six times a year by the Legal Service Bulletin Co-operative Ltd.

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Layout: Kasia Graphics

Typesetting: Kasia Graphics

Subscriptions: \$30 a year or \$15 to LSB subscribers (6 issues)

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Tel. (03) 544 0974

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Registered by Australia Post—Publication No. VBG 7600.

This issue may be cited as (1988) 17 *Fol Review*.

Comment

The personal privacy exemption in the Commonwealth *Fol Act* provides that a document is exempt if its disclosure would involve the unreasonable disclosure of information relating to the personal affairs of any person. The phrase 'personal affairs' has proven to be a troublesome concept, particularly in relation to whether personnel records of government employees fall within the scope of the exemption. In the Federal Court decision of *Young v Wicks*, Beaumont J offered a narrow interpretation of the phrase and ruled that personnel records were not within the scope of the exemption. This decision is to be compared with an earlier decision of His Honour in *Re Williams and the Registrar of the Federal Court* where he gave an arguably more qualified definition of section 41.

Against this background, the Full Federal Court was recently presented with the opportunity of clarifying the law in this area and providing some guidance as to what fell within the scope of 'personal affairs'.

The decision in *Department of Social Security v Dyrenfurth* (reported in this issue) is a major disappointment. The court refused to be drawn into defining even illustratively what constituted information relating to personal affairs of a person. In failing to take up this challenge the court leaves the AAT and *Fol* officers speculating as to what matters fall within the section.

In contrast, the Victorian AAT has had little difficulty in interpreting the State provision (s.33). See for example the decision of *Soo Lin Seng and Victoria Police* (reported in this issue). In other Victorian decisions, a job application has been held to relate to the personal affairs of a person as have documents relating to complaints made by prisoners about their conditions in prison.

While we agree that 'personal affairs' cannot be exhaustively defined, the court in *Dyrenfurth* simply did not come to terms with a crucial issue affecting the administration of *Fol* legislation which can only result in more litigation to have the law clarified.

Our feature article in this issue is by Victorian MP and prominent *Fol* user, Mr Mark Birrell, who argues that *Fol* has become an increasingly integral part of ensuring the accountability of executive government.

**Moira Paterson
Paul Villanti**

