

BEHIND THE FOI DESK AT MONASH

Monash University is not a mainstream government department. It comes under the *FoI Act* as a 'prescribed authority', being a 'body corporate established for a public purpose' by an Act of the Victorian Parliament. During the first year of operation of the Victorian *FoI Act* (1983-84), Monash received the nineteenth largest number of requests (68), conducted through its principal officer (the Vice-Chancellor), the fifth largest number of internal reviews of decisions (9) and was respondent to the third largest number of appeals to the County Court of Victoria (5). Two of the five appeals to the County Court resulted in full hearings and their decisions were amongst the earliest judicial pronouncements on the State Act.¹

The extent of Monash's early and intense involvement with the Act was largely unexpected. Neither additional funding nor staff resources were available to deal with it. Although Monash and the other three Victorian universities are creatures of State statute, their recurrent budgetary funding comes from the Commonwealth Government. As a corporate resident of Victoria, Monash is subject to the State rather than the Commonwealth *FoI Act*. Government concern about the cost of administering freedom of information at both State and Federal levels has grown in each year since the respective Acts came into force. Peter Bayne canvassed some of the cost issues in (1986) 1 *FoI Review* 2.

It would be naive to hope that the Federal Government would give Monash extra funding for resources to help it comply with the provisions of the State *FoI Act*. It is even less likely that the State of Victoria, having long ago handed the funding of the universities to the Commonwealth, would make special payments to them to support the processing of *FoI* requests under the State Act. Thus the universities are at a real disadvantage in providing resources for *FoI*, compared with 'front line' State Government departments, and State funded 'prescribed authorities'.

The Monash Association of Students is actively interested in *FoI* matters, and many requests have come from individual students. One of the earliest requests of this kind, which culminated in the County Court case of *Hart v Monash University*, began when a student sought access to a record card containing numerical marks for subjects he had completed. Monash official results had always been published as alphabetical grades, and marks, although recorded, had never been revealed. The details of this case are well known to students of *FoI*, and it is sufficient here to say that the student was successful in obtaining access to the document (and the marks) he required. Since then the university has changed its policy, and the letters sent to students notifying them of their results now include both official grades and marks (in all cases where a mark is recorded). Marks which were awarded or recorded prior to the County Court decision are now routinely available on application to the Student Records Office, rather than on an *FoI* request.

Some of the current Monash concerns about the operation of the *FoI Act* are set out below.

What at Monash is 'a document of an agency'?

In round figures Monash employs 3000 people, 1100 or so of whom are academic staff, and it has a student enrolment of some 13 600. The daily population of the campus at Clayton during term time is therefore significantly larger than that of many Victorian regional cities.

'A document of an agency' is a document in the possession of an agency (s.5(1) of *FoI Act*). Not counting books and papers housed in the Main Library and its various branches, the number of documents physically located on the Monash campus is immense. It seems fair to say that nearly all the documents physically located within State Government departments (the 'front line' agencies under the *FoI Act*) are undoubtedly documents of the agency. The same is very likely true of the semi-government bodies and hospitals which are prescribed authorities under the *FoI Regulations*. The organisation of bodies such as these is heavily structured at all levels and all their files and documents will be subject to close official scrutiny and control. I believe that this cannot be said of the tertiary education institutions which are prescribed authorities under the Act.

There are real problems for Monash in deciding what is and what is not a document of an agency. There is a central filing system which holds the official files of the administrative divisions of the university. Each of the seven faculties has a central office, many of the records in which are known to and under the control of the central registry. This, we have come to think, is only the tip of the documentary iceberg. Beyond that point lie dozens of teaching departments, staff studies and offices, laboratories and workshops. Members of the Monash academic staff have a great deal of freedom of operation in the way in which they prepare their teaching materials, and carry out and record their various research projects. Their own desks, benches, cupboards and filing cabinets would be full of documents connected in varying degrees with their duties as members of the university staff. Many other documents physically located at the university will belong to, or have been created by, members of the academic staff for their own private purposes. No direct control would ever be exercised by Monash over these items. Many of these papers might refer to present and past students and colleagues of the academic concerned. They have been created by staff members as part to their individual and preferred way of carrying out their duties.

It is fairly easy for Monash to identify and locate officially filed documents which are relevant to an *FoI* request. It is not possible to state categorically that there are no other relevant but unofficial documents physically located at the Monash campus, or in any of the off-campus teaching and research departments.

The Victorian AAT, in *Horeh v The Ministry of Education*, a decision by Mr. K.R. Howie on 6 March 1986, has recognised that an employee of an agency may create and retain possession of documents for private purposes in the course of carrying out his or her duties. In that case there was a real concern by a senior employee about the possible personal and professional consequences to him of an enquiry which he was conducting in the course of his employment with the Ministry of Education. In cases such as that, documents created to deal with these personal concerns are not documents of the agency, not in its possession, and therefore not accessible under *FoI*.

Amongst the documents physically located at Monash there will be many 'private' items of that type. Their characterisation does not become an issue until someone puts in an *FoI* request to which they might be relevant. The test, of course, is not relevance but possession as a 'document of an agency'. Privately held material prepared for a private purpose, even