

## **FREEDOM OF INFORMATION CASE NOTES**

---

### **Access to emails on 'back up tapes'** ***Information Act s.4***

The Complainant sought emails held on a Department's 'back up tape' system. This is a disaster recovery system which periodically takes a 'snapshot' of all the emails held in Departmental email accounts and stores this snapshot in the event of a major systems failure. The back-up tape system therefore may hold emails which were deleted from the Department's 'live' email system after a snapshot was taken.

The Complainant has sought and received such records in the past by agreeing to pay the actual processing costs of retrieving the emails from the back up tapes. The Department has more recently formed the view that emails held on back up tapes are not 'records' within the meaning of the Act, and hence are not 'government information'. As such, the Department rejected the request on the basis that the Act only permits applications to be made for 'government information', therefore the information requested in this case fell outside the scope of the Act.

This matter and a number of matters raising the same issue are ongoing. The *prima facie* decision maker found there were arguments open to the Complainant that information held on back-up tapes were records within the meaning of the Act, however a decision on the correct way to interpret these provisions of the Act can only be made at hearing.

The matter did not settle at mediation and was referred to hearing.