



12 February 1997

The Commonwealth Ombudsman  
Commonwealth Ombudsman's Office  
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CANBERRA ACT 2601

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Attn: Mr John Wynack

Dear Sir

Alan Smith - Your reference number C/94/625

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I refer to your letters of 3 January and 7 February 1997. I apologise for the delay in replying, however Mr. Black's personal assistant has been on annual leave and consequently I was unable to speak with her in relation to your queries.

Telstra responds to your specific queries as follows:

- It is the case that Mr Black left Telstra's employ in April, 1996;
- You comment that you believe Telstra "should have taken steps to protect documents covered by [Mr Smith's] request while it consulted with Mr Smith in an attempt to scope down the FOI request".

It is the case that Telstra did indeed take such steps, as Telstra wished to retain all of the files created by Mr Black relating to the CoT claims. For that reason Mr Benjamin, Telstra's Director Consumer Affairs, instructed Mr Black's personal assistant to forward all of Mr Black's CoT files to the FOI Unit. As a result a large number of files (86 in all) were forwarded to the FOI Unit. Unfortunately, at that time the files in question were apparently not recognised as files relating to CoT matters, rather they were thought to be simply files of miscellaneous material. I should note that Mr. Black's personal assistant does not specifically recall disposing of the files in contention, rather she believes that they must have not been recognised and disposed of as they are not amongst the files forwarded to the FOI Unit. In this regard there were a number of other files which contained miscellaneous material, none of which related to CoT matters. Mr Benjamin instructed Mr Black's personal assistant that it was in order to dispose of that material as none of it appeared to be relevant to any current or ongoing matters.

As you will see from the above these files were inadvertently disposed of. It was Telstra's intention to retain all files held by Mr Black relating to the CoT matters. It is unfortunate that these files were disposed of, however I reiterate that that was not Telstra's intention. I point out also that, happily, this ought not limit the documents available to Mr Smith pursuant to his

FOI request. In this regard I note that:

- As my letter to you of 20th December 1996 noted, the files maintained by Mr Black of each piece of outward correspondence dispatched by him on any matter whilst he was at Telstra were retained and were inspected pursuant to the request from your office. As a result, three further pieces of correspondence were identified which fell within the scope of Mr Smith's FOI request. Consequently, I am satisfied that Telstra has completed as full a search as it is able for copies of correspondence from Mr Black to Dr Hughes for the period in question;
- In the three pieces of further correspondence located on Mr Black's files, reference is made to a letter from Dr Hughes to Mr Black dated 18th January 1994. Telstra has been unable to locate a copy of that letter on its files. Consequently I have written to Dr Hughes asking him to provide a copy of same to Telstra and will then pass that document on to Mr Smith.

As noted above I believe Telstra has completed as full a search as it is able for correspondence from Mr Black to Dr Hughes. As I noted in my letter of 20th December 1996 to you, if Mr Smith believes there is correspondence between Telstra and Hunt and Hunt which he has not received then Telstra would raise no objection if he chose to approach Hunt and Hunt directly or the Telecommunications Industry Ombudsman to request them to search their files.

On a separate matter I note that Mrs Garms has written to Telstra quoting from my letter to you of 20th December 1996. Whilst it is a matter for you as to how you deal with Telstra's responses, it was not my understanding that they were being passed on to Mrs Garms. If that is, in fact, the case I would appreciate the courtesy of being advised of that in advance.

I trust that the above responds to your queries. However if you require any further information please do not hesitate to contact me.

*R. W. Watters*

Yours faithfully  
John Armstrong  
Consumer Affairs Counsel

Per: Robyn Watters

Ref No: C/94/225



// March 1997

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Dear Mr Armstrong

I refer to previous communications concerning our investigation of complaints by Mr Alan Smith. In particular I refer to our investigation of the complaint alleging that Telstra unreasonably delayed providing documents requested in his October 1995 POI application - Telstra was notified of the complaint on 19 June 1996. On 7 March 1997 I sought information from three Telstra officers about one aspect of your response to that complaint viz the disposal of some of Mr Black's papers after Mr Black left the employ of Telstra.

The Ombudsman's office will soon respond to the statement read to Mr Wynack prior to Mr Wynack interviewing Ms Gill.

Attached is a copy of a letter I received from Mr Smith today. Mr Smith informed me that document number L68994 was included among documents he received in June 1996 pursuant to his FOI application of October 1995. Mr Smith stated that he did not receive a copy of the letter referred to in Mr Black's letter viz the letter from Mr Hughes dated 28 September 1994.

I should be grateful to receive your comments on Mr Smith's statement. In providing your comments, please advise me whether document L68994 was sourced from Mr Black's files. If not, please inform me of the source of the document ie from which Telstra file was document L68994 extracted.

I am not inquiring about document L69202.

My inquiries in this letter relate to the complaint I notified to Telstra on 19 June 1996.

Given that this inquiry is very specific, I should be grateful to receive a reply within 14 days.

Yours sincerely

  
John Wynack  
Director of Investigations

Ref No: C/94/625

13 March 1997



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Dear Mr Armstrong

I refer to previous correspondence and discussions concerning the complaint by Mr Alan Smith, which on 19 June 1996 in a letter to Telstra, I summarised as alleging '..that Telstra unreasonably has delayed providing documents requested under the FOI application.' (the FOI application was dated 18 October 1995)

On 20 December 1996 you informed the Ombudsman :

*'Telstra has been unable to locate Mr Black's further general files which include copies of the correspondence received from Hunt & Hunt in relation to the development of the Fast Track Arbitration Process and I am advised that these files, along with other documents, were disposed off by his personal assistant sometime after he left Telstra's employ.'*

On 12 February 1997, in response to queries I raised in a letter of 3 January 1997, you qualified your statement of 20 December 1996 with the following:

*'Unfortunately, at that time the files in question were apparently not recognised as files relating to CoT matters, rather she believes that they must not been recognised and disposed of as they are not amongst the files forwarded to the FOI Unit.'*

On 7 March 1997, I interviewed Ms Gill, Mr Benjamin and Mr Kearney in an attempt to obtain information about the alleged disposal of the documents to assist the Ombudsman to form a view as to whether Telstra had acted unreasonably in failing to provide documents to Mr Smith pursuant to his October 1995 FOI application.

pursuant to his October 1995 FOI application.

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During the course of her interview, Ms Gill informed me that the papers dealing with Mr Black's role in establishing the Fast Track Arbitration Procedure were on an 'arbitration file' and that that file is one that is missing. Ms Gill said that '*.. I don't recall having sent it to anybody and I don't recall having put it in the bin..*'. Ms Gill said that the 'arbitration file' was a manilla folder '*..but a fairly thick one.*'

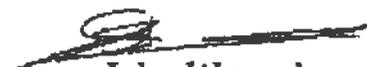
Mr Benjamin had no recollection of such a file being in existence or among those he sighted after Mr Black's departure. Mr Benjamin said that '*Mr Black himself would have removed files from the office, I understand, on his departure but I presume they are personal files.*'

On the basis of the information given to me by Mr Benjamin and Ms Gill, it is extremely improbable that Ms Gill disposed of the documents in the 'arbitration file', or indeed any other documents from Mr Black's office which would have been included in Mr Smith's FOI application of 18 October 1995.

Please inform me of the actions Telstra has taken to ascertain the whereabouts of the specific file which Ms Gill described as the 'arbitration file'. Has Telstra asked Mr Black whether he has any knowledge of the whereabouts of the file? I would appreciate receiving your response to this letter within seven days of the date of this letter.

The Ombudsman will write soon about the statement read by the lawyer from Malleson's prior to my interview of Ms Gill, and the opinion that the section 9 notices, issued to Messrs Benjamin and Kearney and to Ms Gill, were invalid.

Yours sincerely

  
John Wynack  
Director of Investigations

C/94/195

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Mr John Armstrong  
Telstra  
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Dear Mr Armstrong

I refer to my letter to Telstra dated 13 March 1997 (copy attached for your convenience) in which I asked you to inform me of the actions which Telstra has taken to ascertain the whereabouts of the specific file which Ms Gill described as the 'arbitration file', and whether Telstra asked Mr Black whether he has any knowledge of the whereabouts of the file.

I have no record of receiving a response to my inquiries. Please inform me when I might expect to receive a reply

Yours sincerely

  
John Wynack  
Director of Investigations