

File Note - Arbitration Unit

125

Customer - Smith

Dated: 22 November 1995

Telephone Conversations: 22/11/95

Prepared By: Paul H Haar

Subject: FOI Request of 18 October 1995

I received a phone call from Alan Smith at around 1:00pm, responding to Telstra's letter of 20 November 1995.

Mr Smith wanted clarification of what the letter meant. I explained that his request was too general and he would need to be more specific. I pointed out the details in the Telstra letter, giving the reasons for denying access to the documents. In particular I pointed out the estimated 10 weeks work involved.

Mr Smith advised that he had been requested to seek the documents by his barrister. He advised that when he picked up a batch of documents from Gordon Hughes, he found a copy of a letter from Telstra to Gordon Hughes, which he had not received during the arbitration.

At this point Mr Smith had to terminate the call as a mini-bus full of guests arrived and he had to arrange their lunch.

When Mr Smith got back to me, he went on to explain that he was after the documentation that showed where and who suggested the arbitration process. At the same time, he was seeking documents he had not received.

He went on to say that he had seen, but didn't have access to letters from Telstra to Gordon Hughes, Lanes and Ferrier Hodgson. He had also picked up some technical data from Gordon Hughes, that he had not seen before.

Mr Smith advised that he had forwarded Telstra's letter to a Senator.

I suggested that if he wanted to be more specific in his request and wrote to us again, we would look at it again. This he said he would do on Monday.

10.7



26 February 1996

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Commercial & Consumer

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Mr Alan Smith
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Dear Mr Smith

Your letters to Mr Hoare

I refer to your letters of 6 and 11 February 1996 to Mr David Hoare, and your letter of 11 February 1996 to Mr David Hawker, a copy of which you forwarded to Mr Hoare. I am answering those letters on behalf of Mr Hoare as I am the manager responsible for handling your dispute through the arbitration procedure.

Your letters make many allegations, generally of the nature that Telstra senior management and employees have lied to you and been involved in a "cover-up", that Telstra has engaged in misleading, unconscionable and illegal conduct and that Telstra falsified evidence in the Fast-Track Arbitration Procedure. Telstra rejects outright all of the allegations made by you.

You have also in your letters made statements regarding matters which were raised by you in the arbitration process. As you are aware, the arbitration process dealt with complaints by you in relation to your telephone service. That process has been completed. Consequently, Telstra does not propose to comment further or enter into debate with you in relation to these matters.

Your letter to Mr Hawker also raises issues in relation to the conduct of the Arbitrator and the Arbitrator's Resource Unit. Telstra suggests that you ought to raise any concerns in this regard with the Telecommunications Industry Ombudsman.

Yours faithfully

Ted Benjamin
Group Manager
Customer Affairs

cc: Mr John Pinnock, TIO
By facsimile: (03) 9277 8797

Mr John Wynack, Director of Investigations
Commonwealth Ombudsman's Office
By facsimile: (06) 249 7829

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Having made enquiries of various persons within Telstra who have been involved with the Fast Track Arbitration Procedure, I am of the opinion that the scope of your request, which covers a period of some two years, is enormous and would entail staff perusing a minimum of 100 full lever arch ring binder folders or files. It is estimated that to peruse all these folders and to identify, locate and collate the documents within the filing system of Telstra, to examine the documents, to make a copy and then to notify you in relation to any final decision as to that request would take one Telstra employee based on half a day per folder (and the task may take longer) ten working weeks minimum. This person would have to be taken from their normal work to do this task or work outside normal business hours incurring extra expenses for Telstra

I hereby inform you that Telstra intends in accordance with s24 of the Act to refuse access to the documents you seek on the grounds that would be an unreasonable diversion of Telstras' resources to provide these documents to you.

Section 24 of the Act

Section 24 of the Act deals with circumstances where the nature of a request is such that Telstra believes that granting access to the documents sought would substantially and unreasonably divert its resources from its other operations. I have attached a copy of section 24 for your information. Section 24 sets out a procedure which Telstra must follow if it forms the intention to refuse access on this basis.

Telstra first must have regard to the resources that would be required in:

- a) identifying, locating or collating the documents within Telstra; or
- b) deciding whether to grant, or refuse access to documents to which your request relates, or to grant access to edited copies of such documents, including resources that would have to be used;
 - i) in examining the documents; or
 - ii) in consulting with any person or body in relation to the request; or
- c) making a copy, or an edited copy of the documents; or
- d) notifying any interim or final decision on the request.

Telstra may not have regard to any money payable as a charge for processing your request. Further, in deciding whether to refuse to grant access to documents, Telstra must not have regard to:

- a) any reasons that you may have given for requesting access; or
- b) Telstra's belief as to what your reasons for requesting access are.

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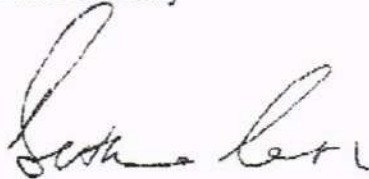
Telstra must not refuse to grant access to a document under section 24 unless it gives you written notice:

- i) stating an intention to refuse access; and
- ii) identifying an officer of Telstra with whom you may consult with a view to making the request in a form that would remove the ground for refusal; and
- iii) given you a reasonable opportunity so to consult; and
- iv) as far as is reasonably practicable, provided you with any information that will assist the making of the request in such a form.

You are requested to contact Paul Haar on (03) 204 5509 to make arrangements to discuss this matter further as provided for in section 24 (6) (iii).

Time ceases to run in respect of the handling of your request from the date of this letter until the date you confirm that your request remains in its original form or you make amendments to your request. I encourage you to contact Mr Haar as soon as possible to arrange the suggested meeting.

Yours faithfully



Bettina Evert
Senior Solicitor



12 February 1997

The Commonwealth Ombudsman
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Attn: Mr John Wynack

Dear Sir

Alan Smith - Your reference number C/94/625

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

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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

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10-c

Ref No: C/94/225

// March 1997



Mr John Armstrong
Telstra
Level 38
242 Exhibition Street
MELBOURNE VIC 3000

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 FOI 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.

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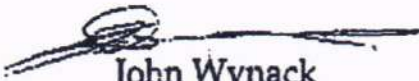
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My inquiries in this letter relate to the complaint I notified to Telstra on 19 June 1996.

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

10-D

Ref No: C/94/625



14 March 1997

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Dear Mr Armstrong

I refer to my letter of 13 March 1997 concerning the complaint by Mr Alan Smith alleging that Telstra unreasonably has delayed providing documents requested under the FOI application of 18 October 1995.

I should be grateful if you would notify Mr Benjamin, Mr Kearney and Ms Gill of my opinion that *'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.'*

Yours sincerely


John Wynack
Director of Investigations

10-E

Ref No: C/94/625

3 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.

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pursuant to his October 1995 FOI application.

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MAR 27 '00 10:54

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

10-F



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Dear Mr Wynack,


Complaint by Alan Smith - Reference No. C/94/195

I refer to your letter of 4 May 1998 in which you seek Telstra's advice in relation to a complaint by Mr Smith about Mr Black's "arbitration file". I apologise for the delay in responding.

In response to your queries, Telstra responds as follows:

- As to whether Telstra has asked Mr. Black whether he has any knowledge of the whereabouts of the file, I advise that I have contacted Mr. Black directly. He is not able to provide any information which would assist in locating the file;
- As to the actions Telstra has taken to ascertain the whereabouts of the file, I advise that Telstra has searched through Mr. Black's "CoT" files which were forwarded to the FOI Unit. In this regard I refer to Telstra's letter to you of 12 February, 1997 and note that there were 86 files in all. Telstra has been unable to locate the file in question in those files. Further, Telstra has searched through those files of Mr. Black which were retained by Telstra's Mr. Benjamin. The file in question is not amongst those files.


Yours faithfully


John Armstrong
Customer Affairs Counsel

10-G

Ref No: C/94/225

26 August 1997



Commonwealth
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Dear Mr Armstrong


On 7 June 1996 I notified you of a complaint we received from Mr Alan Smith in which he complained that Telstra unreasonably declined to make decisions under the FOI Act 1982 on specified documents, including *'Records of Mr Smith discussing with Telstra officers a discussion he had with Mr Malcolm Fraser'*.

On 25 September 1996 you informed me that you were attempting to locate copies of the documents.

On 14 April 1994 Mr Steve Black wrote to Mr Smith referring to *'..records of you discussing this matter with three officers of Telecom over the past 12 months.'* Mr Black also stated in his letter *'..please note that I have referred your letter and this response to the Australian Federal Police for their information'*.

Please inform me when I can expect to receive a substantive response to my letter of 7 June 1996 and to my oral request of 16 September 1996 for copies of the relevant records. Please inform me whether you have requested the AFP to provide copies of the documentation Mr Black sent to them in April 1994.

Yours sincerely



John Wynack
Director of Investigations

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No: C/94/195

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4 October 1997

*Filed at 3-25
4/10*

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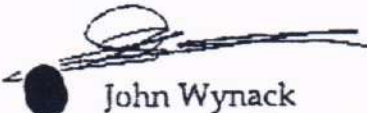
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FACSIMILE:
61-6-249 7829

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

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13 November, 1997

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Dear Mr. Wynack,

Complaint by Alan Smith
Your Ref. No. C/94/225

I refer to your letter of 6 October, 1997.

It appears to be the case that Telstra has not responded to the complaint made by Mr. Smith referred to in your letter and I apologise for the delay in this regard.

In response to Mr. Smith's complaint in relation to document L68994, Telstra responds as follows:

- Document L68994 was provided to Mr. Smith under cover of Telstra's letter of 21 June, 1996. The document was provided pursuant to Mr. Smith's FOI request of 18 October, 1995, as amended by him on 10 April, 1996;
- Document L68994 was not sourced from a file held by Mr. Black. Rather, on 10 April, 1996 Mr. Smith agreed to limit the scope of his FOI request to, inter alia, particular files held by Telstra. In this regard I refer you to:

Mr. Smith's acknowledgment addressed to Telstra of 10 April, 1996, which is Attachment I to Telstra's letter to you of 25 September, 1996;

Telstra's decision letter to Mr. Smith of 21 June, 1996, which is Attachment K to Telstra's letter to you of 25 September, 1996; and

Paragraph 5.1 of Telstra's letter to you of 25 September, 1996;

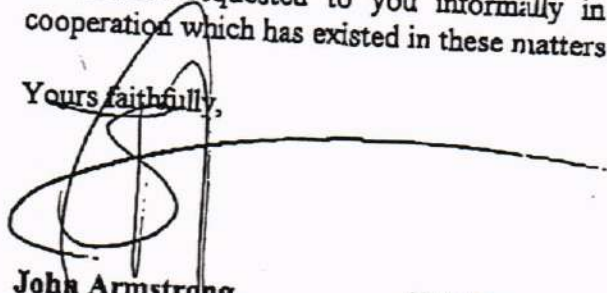
- Mr. Smith is correct when he notes that he did not receive in the consignment of documents provided on 21 June, 1996 a copy of the letter referred to in Mr. Black's letter viz the letter from Dr. Hughes dated 28 September, 1994. This is because a copy of the letter from Dr. Hughes dated 28 September, 1994 was not contained in the Telstra files to which Mr. Smith's FOI request was limited.



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I note that your letter of 11 March, 1997 notes that your query relates to a complaint by Mr. Smith which was notified to Telstra by way of your letter of 19 June, 1996. As you are, of course, aware there has previously been correspondence between Telstra and your office as to whether enquiries of this nature relate to that complaint. I should note that I do not accept that this enquiry arises out of that complaint. Nevertheless, I do not believe there is any purpose in canvassing that issue further as, as is apparent, Telstra is willing to provide the information requested to you informally in any event, in accordance with the spirit of cooperation which has existed in these matters throughout your investigations.

Yours faithfully,



John Armstrong
Customer Affairs Counsel