disclosure of the opinions, the Tribunal commented:

> The subject matter is at the heart of the democratic process. It is of the utmost importance that there be public confidence in the integrity of the electoral system and the administration of the electoral law. Our firmly established democratic tradition rests upon a popular faith in these things.

The formal decision

The Tribunal ordered the release of the legal opinions in a prescribed form and a file note by the acting Crown Solicitor but otherwise affirmed the decision of the respondent in respect of the balance of the documents.

Supreme Court of Victoria

HORESH v. ADMINISTRATIVE APPEALS TRIBUNAL OF VICTORIA and MINISTRY OF EDUCATION
No. O.R. 29 OF 1986
Decided: 9 July 1987 by Murray J.
Request for amendment of personal records — same questions of fact as those in issue in defamation proceedings.

The applicant was a former teacher at Prahran High School and had sought amendment of a report written by the school principal in so far as it suggested that he had a poor record in respect of punctuality. In *Horesh and Ministry of Education,* 1 VAR 143 the Tribunal had adjourned the application until such time as defamation proceedings before the Supreme Court in respect of that document had been completed. It expressed the view that a hearing of the case would have required a determination of the same questions of fact as those in the defamation proceedings and that it might well have been prejudicial to both parties for there to have been a preliminary hearing of the evidence relating to the allegations contained in the report.

The Ministry of Education had argued at the Tribunal hearing that it would have been a contempt of court for a member of the Tribunal to have proceeded to investigate the same matter which was involved in the Supreme Court proceedings.

Murray J noted that the Tribunal member had expressly refused to give his view as to whether he would be committing a contempt if he proceeded with the case. All he did was come to a conclusion in the exercise of his discretion that it would be appropriate and convenient for him to refuse to go on with the proceedings until the Supreme Court action had been disposed of. Consequently, the appeal to the Supreme Court by the appellant could not be based upon the proposition that the member erroneously considered that he would have been in contempt of court if he had gone on with the proceedings.

According to Murray J —

> For the appellant to succeed before me he has to demonstrate that the decision of the member to adjourn the proceedings sine die, pending the outcome or disposal of the Supreme Court proceedings, was one not merely that I might not have taken in the similar position, but which could not properly, on any view, be taken in the proper exercise of discretion.

In his opinion, the appellant fell far short of satisfying this standard and he dismissed the appeal.

FEDERAL FoI DECISIONS

Administrative Appeals Tribunal

BARKHORDAR and AUSTRALIAN CAPITAL TERRITORY SCHOOLS AUTHORITY
No. A86/84
Decided: 15 April 1986 by Deputy President R.K. Todd
Reports on successful applicants to positions in Commonwealth Teaching Service — claim for exemption under s.40(1).

The applicant, a pre-school teacher, who had unsuccessfully applied for promotion, sought access to documents relating to the selection of successful applicants and to her unsuccessful appeals against their promotions. The documents in issue related to interviews, referees, reports and comments about applicants other than the applicant.

The Tribunal found on the evidence before it that there was a three stage process of promotion of teachers, namely optional peer assessment, selection by an Advisory Selection Panel and appeal to a Promotions Appeal Board. Furthermore, it found that in respect of each stage this had been treated as a confidential process as a matter of deliberate policy after consultation with teachers and union representatives bearing in mind the special characteristics of the teaching service (including the fact that teachers were very much the eye of the parental public), independently of, and long predating, FoI legislation with conscious attention to the needs of the service.

The Tribunal agreed with submissions made by the respondent that there was a reasonable expectation that could have the effect that:

- the morale of participants would be damaged;
- criticism or adverse comments, whilst constructive when used within the system, could undermine the position of teachers in their relationships with pupils and parents of pupils;
- candour and frankness of referees, Advisory Selection Panels and Promotions Appeal Board could be inhibited;
  an unwillingness on the part of teachers to provide referees' reports and to serve on Advisory Selection Panels and Promotions Appeal Boards could result;
- bad relationships between participants in the promotions system could arise;
- undue stress on participants could ensue.

Such consequences would be likely to lead to a breakdown in the system thereby adversely affecting to a serious degree the capacity of the respondent to ensure that the most efficient officers are promoted, and could lead to disputation within the CTS and with the teachers' union. This would clearly be contrary to the public interest in having an efficient school system.

It also took the view that the applicant here had no greater or lesser right to the documents than a member of the general public. It distinguished her position from that in *Re Burns* (No. 1) 6 ALD 193, a case involving deprivation of office, and commented that it did not see failure to obtain promotion in an area where in promotion was difficult to attain as likely to attract the stated principle.

The Tribunal also concluded that the situation here was quite different from that in *Re Dyrenfurth* (last issue) where the argument of adverse consequence had been undermined by disclosures already made by the agency. In its view, there was no doubt that the release to the public