Freedom of Information —
Section 34 and commercial information between government and the private sector

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Introduction

Increasingly, government is dealing and transacting with private sector companies in relation to provision of goods, services and, in the current phase of the economic cycle, the delivery of major public infrastructure projects. These commercial transactions invariably involve the exchange and receipt of confidential and commercially sensitive information between government and private sector parties.

As already discussed by the previous presenter, commercial transactions and contracts between government and the private sector may be subject to confidentiality requirements under contract or the common law. However, a confidentiality clause in a contract will generally not be enough to exempt such a document from release under Freedom of Information. Arguably, a greater degree of public access to commercial information is the price to be paid by private companies when seeking to be awarded government contracts.

My presentation today will focus on the legal obligations of government agencies and Ministers in relation to business, commercial or financial information (business information) under the Freedom of Information Act 1982 (the FOI Act).

Section 34 of the FOI Act provides an exemption from release of documents relating to trade secrets and matters of a business, commercial or financial nature. The exemption is available to protect companies (or ‘undertakings’ as they are referred to in the FOI Act) and government agencies from being unreasonably exposed to disadvantage. The key provisions are ss 34(1) and (4).

Section 34(1) is directed to the protection of business information from unfair use or exploitation by commercial competitors of an undertaking. Section 34(4) relates to business information acquired by government in its commercial dealings which, if released, would be likely to expose an agency unreasonably to disadvantage.

This paper looks at the following issues for decision makers when determining a request for business sensitive information:

- Examination of ss 34(1) and (4) of the FOI Act
- The requirement for agencies to consult prior to release and reverse FOI rights
- Guidance from tribunals and the courts on the interpretation and application of s 34
- Reforms to the handling of business information in other jurisdictions following recent reviews of FOI legislation.

This paper does not examine the trade secret provisions under ss 34(1)(a) and 34(4)(a)(i).

Nor does it examine ss 34(4)(b) and (c) which deal with documents that contain scientific or technical research and an academic examination paper or examiner’s report.

Background

Before looking at s 34 of the FOI Act, it is worth considering a quote from the ‘Public Accounts and Estimates Committee Thirty-Fifth Report to Parliament Inquiry into Commercial in Confidence Material and the Public Interest’ (March 2000):

Decisions concerning the disclosure of commercially sensitive material produced by government agencies require the balancing of two competing sets of public interests. These are the public interest in ensuring Victorian government agencies are able to operate as effectively as possible, and the public interest in ensuring political and financial accountability.

This comment reflects the objects of the FOI, which are:

(1) … to extend as far as possible the right of the community to access to information in the possession of the Government of Victoria and other
bodies constituted under the law of Victoria for certain public purposes by—

(a) making available to the public information about the operations of agencies and, in particular, ensuring that rules and practices affecting members of the public in their dealings with agencies are readily available to persons affected by those rules and practices; and

(b) creating a general right of access to information in documentary form in the possession of Ministers and agencies limited only by exceptions and exemptions necessary for the protection of essential public interests and the private and business affairs of persons in respect of whom information is collected and held by agencies.

(2) It is the intention of the Parliament that the provisions of this Act shall be interpreted so as to further the object set out in subsection (1) and that any discretions conferred by this Act shall be exercised as far as possible so as to facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of information.\(^3\)

The use of the s 34 exemption has not been without criticism, particularly as government is increasingly involved in commercial negotiations, requests for tender and contractual agreements with private entities. The major criticism of s 34 is that agencies apply the exemption too readily in relation to information of a commercial nature which undermines public accountability of government’s business dealings. This tension between the need for accountability and protecting commercially sensitive information should be closely considered by decision makers when determining public interest considerations for and against disclosure. Ultimately, VCAT on review of a decision to refuse access to business information has demonstrated its willingness to review documents in dispute, document by document, determining whether any persuasive factors exist weighing against disclosure of the document.

**Section 34(1) – trade secrets and disadvantage to an undertaking**

Section 34(1) of the FOI Act provides exemption for a document if its disclosure would disclose information acquired by an agency or a Minister from a business, commercial or financial undertaking and the information relates to:

- trade secrets (s 34(1)(a)); or
- other matters of a business, commercial or financial nature the disclosure of which would be likely to expose the undertaking unreasonably to disadvantage (s 34(1)(b)).

**What does ‘information acquired’ mean?**

In *Re Gill and Department of Industry, Technology and Resources*\(^4\) it was held that ‘information acquired’ could mean that a document may have originated from either an agency or an undertaking. This means that information need not have been provided by an undertaking to an agency.

The issue of whether a concluded contract between an agency and undertaking will contain information acquired by an agency was examined in *Re Thwaites and Metropolitan Ambulance Service*.\(^5\) This case held that such documents constituted the record of the transaction and agreement between the parties and as such are ‘the contractual outcome of negotiations’ and, therefore, did not constitute ‘information acquired’. However, in *Re Thwaites and Department of Human Services*,\(^6\) VCAT stated that a different view may be taken where a contract, for example to manufacture a product, contained information of a different nature, such as the ‘exposition of some chemical formula’ rather than merely a record of concluded negotiations.
What is an ‘undertaking’?

The term ‘undertaking’ has been found to mean ‘an entity other than the agency itself’. Numerous entities have been found to be ‘undertakings’ including those which are government funded or partly controlled by government, including the Melbourne Major Events Co Ltd, Melbourne Grand Prix Promotions Pty Ltd, Melbourne 2006 Pty Ltd and St John’s Ambulance Victoria.

What is business information?

The phrase ‘information of a business, commercial or financial nature’ is not defined in the FOI Act. From a practical view, such information will generally not be difficult to identify.

However, in Accident Compensation Commission v Croom (a case in which the applicant sought access to an investigation and medical report denied under ss 34(1) and (4)), the Victorian Supreme Court (Appeal Division) held in relation to business information:

… the information of a particular document must relate to matters of a business nature before exemption can be claimed and that requirement is not satisfied by the contention in this case that the information is required for the purposes of the appellant’s business. The requirement can only be satisfied by the proper characterisation of the nature of the information itself. Here the information is of a medical and not of a business nature.

Therefore, the key consideration for decision makers will be whether disclosure of a document will expose an undertaking unreasonably to disadvantage.

What is meant by ‘expose an undertaking unreasonably to disadvantage’?

Narrowing the scope ‘disadvantage’

Following the election of the Labour Government, the FOI Act was amended in 1999, in part, to separate out trade secrets from the other categories of business information covered under s 34 and to raise the bar so that the release of the information had to now expose an undertaking or agency unreasonably to disadvantage.

This amendment was introduced specifically to restrict the ambit of the exemption applicable where commercial confidentiality was used as justification for non-release of documents. It was to operate in conjunction with the government’s policy of posting contracts for the delivery of services to the community on the Internet.

Section 34(2) factors

In deciding whether disclosure of information would be likely to expose an undertaking unreasonably to disadvantage for the purposes of s 34(1)(b), an agency or Minister may take into consideration the factors set out in s 34(2) of the FOI Act:

- Whether the information is generally available to competitors of the undertaking;
- Whether the information would be exempt matter if it were generated by an agency or a Minister;
- Whether the information could be disclosed without causing substantial harm to the competitive position of the undertaking;
- Any public interest considerations in favour of disclosure which outweigh considerations of competitive disadvantage to the undertaking; and
- Any other relevant considerations.

In the case of Accident Compensation Commission v Croom, the Victorian Supreme Court Appeal Division held that ‘disadvantage’ means injury of a financial kind.

Disclosure of information has been found to be likely to expose an undertaking to disadvantage where disclosure would:
• Give a commercial competitor of an undertaking a financial advantage;\textsuperscript{15}

• Enable a commercial competitor to engage in destructive competition with the undertaking;\textsuperscript{16}

• Lead to the drawing of unwarranted conclusions as to the undertaking’s financial affairs and position with commercial and financial consequences.\textsuperscript{17}

Other concerns expressed by government about the release of business information of undertakings have included that it would prejudice the future supply of information by an undertaking to government and may deter private entities from contracting with government. However, such grounds have not always been accepted by tribunals and courts on review.

**Timing of request**

The timing of a request may impact on a decision whether to refuse or grant access to business information. The fact that a project is on foot, at a critical point in negotiations or not yet concluded may bear upon a decision not to release documents due to an undertaking or an agency being likely, at the time of request and/or decision, to unreasonably be exposed to disadvantage.\textsuperscript{18} Take, for example, a competitive bidding process whereby if bidder information provided to an agency was released, this could allow a bidder to adjust its bid to come in below that of other bidders or to undermine the government’s overall competitive position in the tender process.

In circumstances where business information is too sensitive to release at the time of decision, it is suggested that the decision maker consider approaching the applicant to seek agreement to postpone a decision or adjourn a review application until such time that the information may no longer be sensitive and may be released either in full or to a greater extent. This is a particularly useful strategy if a request relates to information concerning an ongoing tender process under which a successful tenderer has not been announced and release of information sought would jeopardise the competitive tendering process.

**Documents falling within s 34(1)(b)**

Documents containing business information have been held to fall within s 34(1)(b) in the following cases:

• Contracts concerning the staging of the Melbourne 2006 Commonwealth Games which dealt with issues including ‘marketing, broadcasting, travel arrangements, accommodation, facilities’ and ‘revenue, expenditure, cost, marketing’ as disclosure would involve a perceived breach of confidentiality at a point at which important marketing and financial arrangements were about to be negotiated;\textsuperscript{19}

• Documents disclosing an undertaking’s (an auditing firm’s) methodology including how transactions were sampled and which explained the actual analysis of the job, were regarded as unique to the firm and worthy of protection;

• An application of an unsuccessful tenderer;\textsuperscript{20} and

• Sponsorships offered by the respondent authority to St John’s Ambulance Victoria.\textsuperscript{21}

However, in *Stewart v Department of Tourism, Sport and the Commonwealth Games*,\textsuperscript{22} the Tribunal emphasised that a confidentiality clause cannot simply be inserted into every contract to defeat the purpose of the FOI Act, and that the circumstances of each case must be considered.

**Documents not falling within s 34(1)(b)**

The following cases are examples of decisions in which documents containing business information have not been held to fall within s 34(1)(b):
• Disclosure of information in an advertising contract between the respondent and a private company (namely, dollar amounts and details of the services to be provided and the cost of those services);\(^{23}\)

• Disclosure of material that formed part of a company’s tender proposal (including the costing for an advertising campaign strategy);\(^{24}\)

• Wording in a partially released operation plan describing ‘control techniques’ used by a company to cull bats in the Royal Botanic Gardens;\(^{25}\) and

• Medical and investigation reports in relation to an investigation into a workplace injury claim.\(^{26}\)

In *Kotsiras v Department of Premier and Cabinet*,\(^{27}\) the Tribunal held that a document disclosing the background and scope of work an auditing firm had been contracted by government to undertake, would not disclose that firm’s methodology.

In a number of the above cases, the Tribunal has placed greater emphasis on the need for transparency and accountability rather than any evidence provided as to possible exposure of an undertaking to disadvantage. Whilst in *Asher v Victorian WorkCover Authority*,\(^{28}\) the Tribunal accepted that the information sought was not generally available to commercial competitors, it held that this was only one factor to be considered.

**Section 34(3) – consultation and reverse FOI rights**

It is a requirement under s 34(3) of the FOI Act, that prior to making a determination under s 34(1) the agency or Minister must consult with an undertaking to seek its views as to whether disclosure of its business information should occur. Any claim by an undertaking as to likely disadvantage should be supported by evidence and such evidence should be objectively assessed by the decision maker.

Access to a document ought not to be denied under s 34(1) if an undertaking has no objection to its release,\(^{29}\) fails to respond to an invitation to consult or is unable to provide evidence as to why the document should not be disclosed. In such circumstances the Tribunal has held that there is a strong basis for releasing documents.\(^{30}\)

If an agency decides to disclose a document after consultation, it must notify the undertaking of its right to make an application to VCAT for review of that decision pursuant to s 50(2)(e) of the FOI Act. Such review is subject to s 51, which requires that internal review of the decision must first be sought before proceeding to VCAT.

In relation to consultation with third parties, the NSW Ombudsman found that agencies are ‘unclear about the purpose of third party consultation, with practices differing across agencies’.\(^{31}\) For example, some agencies were found to be consulting with third parties without understanding the purpose of consultation; some saw consultation as a courtesy, which was contributing to delays in decision making. The Ombudsman was also critical where decision makers gave businesses an opportunity to raise exemptions, other than the business exemption, that may apply to their information.\(^{32}\)

Accordingly, the NSW Ombudsman recommended that:

The new Act should make clear that consultation is only required where the release of information contained in a document, whether or not the document is proposed to be released in full or with identifying information removed, could reasonably be expected to be of substantial concern to a third party.\(^{33}\)

In circumstances where an agency identifies that a large number of undertakings are listed in a document and, therefore, should be consulted, it should exercise caution in seeking to invoke s 25A of the FOI Act to release it from its consultation obligations under s 34(3). In a case before VCAT, a document contained the names of 135 entities\(^{34}\) and the respondent agency estimated that it would take considerable
resources and 5 ½ weeks work to complete the consultation process. The Respondent sought to rely upon s 25A of the FOI Act in respect of its obligation to consult under s 34(3). Whilst the Tribunal appeared to accept that the Respondent could avail itself of s 25A in respect of its obligation to consult, it found that the Respondent could not do so in this case. The Tribunal held that the respondent had overstated the task at hand and rejected the methodology of consultation it envisaged. It suggested all that was required was a standard letter be sent to the entities setting out the information required and notifying them of their rights of review.  

Section 34(4) – trade secrets and disadvantage to an agency

Section 34(4)(a) provides an exemption for a document if:

- it contains a trade secret of an agency; or
- in the case of an agency engaged in trade or commerce, information of a business, commercial or financial nature, the disclosure of which, would be likely to expose the agency unreasonably to disadvantage.

What is meant by an ‘agency engaged in trade or commerce’?

From cases determined, it appears that more often than not an agency involved in some form of commercial activity will be taken to be ‘engaged in trade or commerce’ even where such activities may not be significant and not reflect the agency’s core functions. Nor is an agency required to make a profit in order to be ‘engaged in trade or commerce’.

Documents falling within s 34(4)

The following cases provide examples of decisions in which documents containing business information have been held to fall within s 34(4):

- Contracts concerning the staging of the Melbourne 2006 Commonwealth Games;
- Sponsorships offered by the respondent Authority;
- A database extract containing the names of government assistance;
- Financial models prepared by Transurban and VicRoads concerning the Mitcham Frankston Freeway Project as the Tribunal was satisfied that the documents sought would undermine the State’s position in future negotiations with Transurban;
- Parts of business plans for the Australian Grand Prix Corporation;
- Parts of reports prepared to attract investors for a proposed ski fields project.

Documents not falling within s 34(4)

The following cases provide examples of decisions in which documents containing business information have not been held to fall within s 34(4):

- Minutes of a university council which were held not to constitute business information on the basis that they had ‘no current relevance’ and ‘the transaction had been long finalised’;
- A medical and investigator’s report in relation to an investigation into a workplace injury claim.

Reform of the business exemption

A number of jurisdictions have recently initiated reviews of their FOI legislation with the NSW and Queensland governments introducing new FOI legislation in 2009. The Commonwealth government has also proposed to introduce changes to the Commonwealth FOI Act.
The outcomes of these legislative reviews and reforms provide a possible glimpse as to the future direction and inevitable reform of FOI legislation in Victoria.

A theme present in each of the reviews is the need for a greater level of proactive disclosure of information by government.

NSW and Queensland FOI legislation has recently been overhauled to simplify the test limiting access to documents by introducing a single ‘public interest’ test.

**New South Wales**

The NSW review criticised the trade secrets/business affairs exemption on the basis that it has been applied too broadly by government. The NSW Ombudsman’s February 2009 report, *Opening Up Government*, stated that the provision was applied far too often without any thought as to the actual impact of release and that the exemption ‘should apply only to information that, if released, would have a detrimental impact on competitive business dealings, not merely information ‘about’ business affairs’.47

The NSW Ombudsman further stated:

> We are aware of cases where agencies, particularly those that are also operating in the private sector, claim that a document should not be released merely because it relates to their business affairs. This should not be enough. Those claiming release would damage their business interests must provide evidence to support their claim, and this should then be the subject of an objective assessment by the agency. The request should only be refused if the agency is satisfied release would indeed have a detrimental impact on commercial business interests.48

The Ombudsman’s report recommended in part that:

> The government should continue to actively encourage and require greater proactive disclosure of information by agencies.49

The new Act should state there is a presumption that agencies will release documents on application unless a reason for refusal, read narrowly, clearly applies.50

The reason for refusing access to documents concerning business affairs should be based on the reasonable expectation release would have a substantial adverse impact on an agency’s commercial business interests.51

The NSW Parliament agreed with the recommendations of the NSW Ombudsman and the *Government Information (Public Access) Act 2009* (NSW) *(NSW Act)* was passed and assented to on June 26 2009.52

Objectives of the NSW Act include, ‘authorising and encouraging the proactive public release of government information by agencies’ and that access to government information should be restricted ‘only when there is an overriding public interest against disclosure’53. The NSW Act expressly includes a presumption in favour of the disclosure of government information unless there is an overriding public interest against disclosure.54

The NSW Act removes exemptions against disclosure of the documents and replaces them with an entirely new scheme. Section 14(1) provides that it is to be ‘conclusively presumed that there is an overriding public interest against disclosure of any of the government information described in Schedule 1’. Section 14(2) provides that the public interest considerations listed in the Table to s 14 are the ‘only other considerations that may be taken into account under this Act as public interest considerations against disclosure for the purpose of determining whether there is an overriding public interest against disclosure of government information’.

The Table referred to in s 14 provides, in relation to ‘business interests of agencies and other persons’, there is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects:
(a) undermine competitive neutrality in connection with any functions of an agency in respect of which it competes with any person or otherwise place an agency at a competitive advantage or disadvantage in any market,

(b) reveal commercial-in-confidence provisions of a government contract,

(c) diminish the competitive commercial value of any information to any person,

(d) prejudice any person’s legitimate business, commercial, professional or financial interests,

(e) prejudice the conduct, effectiveness or integrity of any research by revealing its purpose, conduct or results (whether or not commenced and whether or not completed).


Queensland

The Queensland Government has also conducted an independent review of its FOI legislation which recommended that a new approach be taken to FOI with greater proactive and routine release of information and maximum disclosure of non-personal information.55

Similarly, to the NSW Act, the Queensland review recommended that there be a right of access to information held by government unless a document contains ‘exempt information’ or the release of the document would, on balance, be contrary to the public interest.

The independent review panel was of the view that the trade secrets/business affairs exemption should be removed as an exemption and ‘treated in a different way’. It recommended that the public interest test should apply to the whole of the business affairs exemption as this exemption ‘should not be so absolute that it should exclude any countervailing public interest considerations’.

The Queensland Government adopted (in full or in part) 139 of the 141 recommendations made by the review panel and the Right to Information Act 2009(Qld) (Qld Act) commenced operation on July 1 2009.

Under the Qld Act, information relating to trade secrets/business affairs is no longer considered exempt information. Instead, this exemption is now incorporated into factors which favour non-disclosure, which agencies must consider in deciding, on balance, whether disclosure would be contrary to the public interest: see s 47 and Schedule 4 of the Qld Act.

‘Exempt information’ under the Qld Act includes Cabinet information and information protected by legal professional privilege. Regardless of information being exempt, an agency or Minister has an overriding discretion to provide access to the requested information.

The previous FOI Act did not apply to documents received or brought into existence by a government-owned corporation carrying out activities set out in Schedule 2 of the Act, including commercial activities. Therefore, government-owned corporations were said to rely on this provision (s 11A) to resist release of commercially sensitive information. Under the new Qld Act, government-owned corporations must show that, on balance, the release of the requested information is contrary to the public interest.

The public interest test involves balancing a number of factors including, what is described as ‘harm factors’. Previously, some of the ‘harm factors’ were exemptions under the previous FOI Act. Now, these factors must be taken into consideration in determining whether a document should be disclosed. For example, in relation to business information, whether release of the information would affect confidential information or disclose trade secrets, business affairs or research.

Schedule 4 of the Qld Act sets out factors favouring non-disclosure due to the public interest harm in disclosing information.
containing trade secrets, business affairs or research if disclosure:

- would disclose trade secrets of an agency or another person;
- would disclose information (other than trade secrets) that has a commercial value to an agency or another person and could reasonably be expected to destroy or diminish the commercial value of that information; or
- would disclose information (other than trade secrets or information mentioned directly above) concerning the business, professional, commercial or financial affairs of an agency or another person and could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of information of this type to government.

However, the above public interest factors do not apply if what would be disclosed concerns only the business, professional, commercial or financial affairs of the person by, or on whose behalf, an application for access to the document containing the information is being made.


**Commonwealth**

The Commonwealth Government also proposes, in the form of its Freedom of Information Amendment (Reform) Bill 2009, to ‘simplify’ the test limiting access to documents by introducing a single ‘public interest’ test which favours the disclosure of documents.

According to this test, an agency or Minister must give an applicant access to a document, if it is a ‘conditionally exempt’ document, unless access to the document would, on balance, be contrary to public interest. With respect to business information, a document is conditionally exempt if its disclosure would disclose trade secrets, information with commercial value, or concerns a person in respect of his or her business or the business, commercial or financial affairs of an entity.\(^{56}\)

In relation to third party consultation on business documents, the existing provision requiring an agency or Minister to consult a business if the agency or Minister proposes to release a document containing business information is to be amended so that consultation is required only when it appears to the agency or Minister that the business might reasonably contend that the document is exempt under the business affairs exemption. The Commonwealth’s review found that the current consultation provision ‘can be unduly onerous (for example, consultation can be required for simple payment receipts)’.\(^{57}\) The proposed qualification currently exists in relation to the consultation requirement for documents containing personal information about third parties.

**FOI in Victoria – what does the future hold?**

Earlier last year, the Victoria Government introduced amendments to the Victorian FOI Act in the Parliament following an Own Motion Investigation conducted by the Victorian Ombudsman.\(^{58}\) Ultimately, the amendments, recommended by the Ombudsman, were voted down in the Upper House and the FOI Act remains unchanged.

The former Premier of Victoria, John Cain, has publicly criticised what he has described as ‘the wide exemptions to business on the basis of ‘commercial in-confidence’ which has arisen due to the increasing involvement of companies in government services.’\(^{59}\) Former Premier Cain comments that business ‘needs to moderate’ its demand for confidentiality in its dealing with government in competitive contracts or tenders stating that ‘[i]f business wants to get into this work, then it has to recognise that the public who pays through its taxes is entitled to know what the deal is’.
Former Premier Cain has also called for:

a thorough and comprehensive review
to be undertaken of Victorian FOI
legislation, with the benefit of the
reports prepared in other States and
amendments made to reshape FOI in
other jurisdictions and also to make it
more responsive to modern forms of
records, document management and the
nature of government business.

Whether the Government will embark on such a
process is yet to be seen at this stage. However,
our current Victorian FOI Act, while
undoubtedly in need of amendment in certain
areas, can arguably deliver the same outcomes in
its current form as sought by reforms to the
NSW and Qld FOI schemes.

One need only need to return to the objectives of
the FOI Act which prescribe that the FOI Act
must operate to:

- provide an access regime to information
  held by government which is ‘only
  limited by exceptions and exemptions
  necessary for the protection of essential
  public interests and the private and
  business affairs of persons in respect of
  whom information is collected and held
  by agencies’;60 and

- ensure that any discretions conferred
  by the FOI Act be ‘exercised as far as
  possible so as to facilitate and promote,
  promptly and at the lowest reasonable
  costs, the disclosure of information’.61

In the meantime, perhaps it is time to revisit the
objectives of our Act to ensure that agencies are
proactively providing access to and are
encouraged to release, where they can properly
do so, as much information as possible.62
Further, that when determining FOI requests,
decision makers must ensure that their decisions
are consistent with these objectives and that they
only apply exemptions when it is necessary to do
so in the public interest and objective evidence is
available, and such evidence is objectively
assessed by decision makers, to justify non-
disclosure of information sought.

For more information

For further information or legal advice on any
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The notes are not to be regarded as legal advice.

Ibid, xxx.

Section 3 of FOI Act

(1996) 9 VAR 472 at 473.


Re Mildenhall and Department of Treasury (1994) 7 VAR 342 (decision of former AAT).

Ibid.

Re Stewart and Department of Tourism, Sport and Commonwealth Games (2003) 19 VAR 363.

Re Australian Institute of First Aid and Emergency Care Providers Pty Ltd and Victorian Workcover Authority (2000) 16 VAR 222.


Ibid at 325.

State Bank of NSW v Department of Treasury (1991) 5 VAR 78 at 84.

Marple v Department of Agriculture (1995) 9 VAR 29 at 49.


Stewart v Department of Tourism, Sport and the Commonwealth Games (2003) 19 VAR 363.

Ibid.

Byrne Swan Hill Rural City Council (2000) 16 VAR 366.

Re Australian Institute of First Aid and Emergency Care Providers Pty Ltd and Victorian WorkCover Authority (2000) 16 VAR 222.

(2003) 19 VAR 363 at [48].


Ibid.

Humane Society International Inc v Royal Botanic Gardens [2002] VCAT 1051 at [74].


Kotsiras v Department of Premier and Cabinet (2003) VCAT 472.


Re Thwaites and Department of Health and Community Services (unreported, AAT of Vic, Nedovic PM, 22 August 1994).

Re Hulls and Victorian Casino and Gaming Authority (1998) 12 VAR 483 at 495.

Ibid, 73.

Ibid, 74.

Recommendation 60.


Ibid, [19].


Re Stewart and Department of Tourism, Sport and Commonwealth Games (2003) 19 VAR 363 at [41].

Ibid.

Re Australian Institute of First Aid and Emergency Care Providers Pty Ltd and Victorian Workcover Authority (2000) 16 VAR 222.


Dalla-Riva v Department of Treasury and Finance [2007] VCAT 1301.


Ibid, 61.

Ibid.

Recommendation 1.

Recommendation 19.

Recommendation 44.

Section 3, NSW FOI Act.

Section 5, NSW FOI Act.


Schedule 3, s 47G (Exposure Draft).


Section 3(1)(b), FOI Act.

Section 3(2), FOI Act.

Section 16(2), FOI Act.