

Notice of Decision and Reasons for Decision

Applicant:	'BH1'
Agency:	Australian Grand Prix Corporation
Decision Date:	19 March 2020
Provisions considered	Section 13 of the <i>Freedom of Information Act 1982</i> (Vic) and section 49 of the <i>Australian Grand Prix Act 1994</i> (Vic)
Citation:	'BH1' and <i>Australian Grand Prix Corporation (Freedom of Information)</i> [2020] VICmr 70 (19 March 2020)

FREEDOM OF INFORMATION – Australian Grand Prix – race contract – provision in *Australian Grand Prix Act 1994* (Vic) removing right to access document under *Freedom of Information Act 1982* (Vic)

All references to legislation in this document are to the *Freedom of Information Act 1982* (Vic) (**FOI Act**) unless otherwise stated.

Notice of Decision

I have conducted a review under section 49F of the Agency's fresh decision to refuse access to the requested document under the FOI Act.

My decision on the Applicant's request is the same as the Agency's decision.

I am satisfied the relevant document, within which the information the Applicant seeks is contained, is not subject to the FOI Act due to the operation of section 49 of the *Australian Grand Prix Act 1994* (Vic) (**Grand Prix Act**).

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

19 March 2020

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to the following documents:
 1. Information in the race contract relating to the conditions under which the F1 grand prix contract could be cancelled by either party; and
 2. Information relating to race hosting fees applying to the [date range] series of races...
3. In its decision, the Agency identified one document falling within the terms of the Applicant's request and refused access to the document in full under certain exemptions in the FOI Act.
4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access to the document.

Fresh decision

5. Section 49M(1) permits an agency to make a fresh decision on an FOI request during a review.
6. On 13 January 2020, the Agency elected to make a fresh decision under section 49M to refuse access to the document on grounds it is not subject to the FOI Act. The fresh decision was made within the required 28 days under section 49M(2).
7. The Applicant did not agree with the Agency's fresh decision and, as required by section 49MA(2), I proceeded with my review on the basis of the fresh decision.
8. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
9. I have considered all communications and submissions received, including:
 - (a) the Agency's fresh and original decision on the FOI request;
 - (b) the Applicant's submissions dated 24 January 2020, which accompanied their review application and a copy of the covering page of the promoters agreement; and
 - (c) the Agency's submissions dated 7 February 2020; and
10. My jurisdiction to conduct a review under Part VI of the FOI Act extends to any decision made by an agency subject to the FOI Act 'to refuse access to documents in accordance with a request',¹ except where the FOI Act expressly provides otherwise, regardless of whether access is refused under a provision in the FOI Act or in another enactment.

Review of fresh decision

11. The Agency's fresh decision sets out its reasons for relying on section 49 of Grand Prix Act to refuse access to the document.
12. For the reasons set out below, I am satisfied section 49 of the Grand Prix Act operates to remove the right of an applicant under the FOI Act to seek access to the document sought.

¹ Section 49A(1)(a).

Section 49 of the Grand Prix Act

13. Section 49 of the Grand Prix Act provides:

- (1) Despite anything to the contrary in the Freedom of Information Act 1982, that Act does not apply to a document, whether created before, on or after the commencement of this section, to the extent that the document is, or discloses information about a contract between the Corporation or a company referred to in subsection (2) and one or more of—
 - (a) the bodies, whether corporate or unincorporate, partnerships or trusts—
 - (i) granting the right to hold a round of the Fédération Internationale de l'Automobile Formula One World Championship; or
 - (ii) responsible for the organisation of, or granting the right to hold, an approved motor sport event;
 - (b) bodies, whether corporate or unincorporate, partnerships or trusts owned by, or associates of, a body, partnership or trust referred to in paragraph (a);
 - (c) a person not ordinarily resident in Australia in concert with whom a body, partnership or trust referred to in paragraph (a) or (b) is acting in relation to that contract.
- (2) The companies referred to in this subsection are the following companies—
 - (a) Melbourne Grand Prix Promotions Pty Ltd A.C.N. 059 230 278;
 - (b) Melbourne Major Events Company Ltd A.C.N. 050 270 089.
- (3) Despite anything to the contrary in Part 7 of the Financial Management Act 1994 , the Corporation is not required to disclose in a report under that Part any information about a contract to which subsection (1) applies.

...

14. In its fresh decision, the Agency advised information relating to race cancellation and hosting fees is contained in the Promoters Agreement (the **Agreement**) between the Formula One World Championship Limited and the Agency. The Agency further advised, this Agreement 'provides rights to the Agency to hold a round of the Fédération Internationale de l'Automobile Formula One World Championship'.
15. While the Agency did not provide a copy of the document for my inspection on grounds it was not subject to the FOI Act, I am satisfied based on the Agency's submission, which was provided by the Agency's [specified senior position], and [their] responses to inquiries made on my behalf, the cancellation of the Grand Prix and its hosting fees is information contained in the Agreement.
16. I am also satisfied the Agreement is a document that falls within section 49(1)(a) of the Grand Prix Act, as it discloses a contract between the Corporation (the Agency) and its partner, Formula 1 that concerns the rights to hold the Fédération Internationale de l'Automobile Formula One World Championship in Melbourne.
17. Accordingly, I am satisfied the requested information is contained in a document that falls within the scope of section 49 of the Grand Prix Act and is not subject to access under the FOI Act.

Conclusion

18. On the information before me, I am satisfied the relevant document, within which the information the Applicant seeks is contained, is not subject to the FOI Act due to the operation of section 49 of the Grand Prix Act.

Review rights

19. If either party to this review is not satisfied with my decision, they are entitled to apply to the Victorian Civil and Administrative Tribunal (**VCAT**) for it to be reviewed.²
20. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.³
21. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁴
22. Information about how to apply to VCAT is available online at www.vcat.vic.gov.au. Alternatively, VCAT may be contacted by email at admin@vcat.vic.gov.au or by telephone on 1300 018 228.
23. The Agency is required to notify the Information Commissioner in writing as soon as practicable if either party applies to VCAT for a review of my decision.⁵

When this decision takes effect

24. My decision does not take effect until the relevant review period (stated above) expires. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

² The Applicant in section 50(1)(b) and the Agency in section 50(3D).

³ Section 52(5).

⁴ Section 52(9).

⁵ Sections 50(3F) and (3FA).