This case considered when release of commercial information “is likely” to expose an undertaking or an agency “unreasonably to disadvantage”.

The Facts

A member of Parliament requested information in 15 year old documents about the CityLink project held by the Department of Transport (DoT). This case considered whether section 34(1)(b) and 34(4) applied to CityLink documents and DoT emails. CityLink was an affected third party that appealed to VCAT.

The CityLink documents were Melbourne CityLink project modelling information with traffic volume forecasting and cash flow models. The DoT emails included DoT’s analysis of CityLink’s modelling and DoTs position on negotiations with CityLink.

The Decision

**CityLink Melbourne Limited documents**

The applicant argued the information was now outdated and release could not disadvantage CityLink because it had a “monopoly” over Melbourne CityLink for 20 more years.

Nevertheless, VCAT accepted CityLink and DoT evidence that the information was still current, confidential and sensitive enough to unreasonably disadvantage CityLink.

* VCAT accepted that that while the data was old, the traffic modelling systems and cashflow structures were both current because both were still used in this project, used in other more recent road project tenders and would be used in future tenders both in Victoria and elsewhere.
* VCAT also gave weight to CityLink’s evidence that it carefully secured this information – the models could only be run by two CityLink employees and information could only be accessed by 15 people.

**Department of Transport documents**

VCAT found that the DoT emails contained DoT’s assessment of the CityLink modelling and cashflow. Hence releasing this information was likely to unreasonably disadvantage DoT in future negotiations with CityLink.

**Public interest override**

The applicant argued that as a public roads project, there was a public interest in releasing the information.

VCAT was not persuaded that there was a public interest releasing documents in circumstances where: (i) the Deed governing the project was already publicly released in statute; (ii) the CityLink upgrade projects were comprehensively reviewed by the Auditor General a year ago; and (iii) no evidence was presented that identified a current need to investigate or scrutinise the project.

Key takeaway

An agency or a third party may, in some circumstances, be able to demonstrate that release of commercial information relating to completed projects is likely to expose the third party or agency unreasonably to disadvantage. However, such an assertion would need to be supported by cogent arguments and this may require substantial evidence, particularly in cases where the information in question was created some years ago.

Further Information

**t:** 1300 00 6842
**e:** enquiries@ovic.vic.gov.au
**w:** ovic.vic.gov.auThis case note is general in nature and does not constitute legal advice.