

## Notice of Decision and Reasons for Decision

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Applicant:	'BR8'
Agency:	Australian Grand Prix Corporation
Decision date:	23 June 2020
Exemptions considered:	Section 34(4)(a)(ii)
Citation:	'BR8' and Australian Grand Prix Corporation ( <i>Freedom of Information</i> ) [2020] VICmr 171 (23 June 2020)

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FREEDOM OF INFORMATION – names of corporate clients – company names – agency engaged in trade or commerce

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 decision to refuse access to documents requested by the Applicant under the FOI Act.

My decision on the Applicant's request differs from the Agency's decision.

I have decided that the document subject to this review is not exempt under section 34(4)(a)(ii).

My reasons for decision follow.

**Sven Bluemmel**  
Information Commissioner

23 June 2020

## Reasons for Decision

### Background to review

1. The Applicant made a request to the Agency for access to the following documents:
  - The number of corporate boxes and corporate seats for [specified year] and
  - The names of the organisations/companies that were to attend a corporate facility [for the specified year].
2. In response to the first part of the Applicant's request, the Agency provided the Applicant with the number of corporate boxes and corporate seats for [specified year].
3. In response to the second part of the Applicant's request, the Agency created a spreadsheet of the names of its corporate clients. The Agency refused access to the spreadsheet under section 34(4)(a)(ii). The reasons for the Agency's decision are set out in its decision letter.

### Review

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
5. The document subject to review is a spreadsheet (the **document**) with two tabs – the first labelled 'do not disclose' and the second labelled 'disclose'. The Agency advised it did not object to the release of the second tab on the basis that the names of those clients are publicly displayed at the event or in other promotional material. This review therefore is of the information recorded on the first tab of the spreadsheet.
6. I have examined copies of the document subject to review.
7. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
8. I have considered all communications submissions received from the parties, including:
  - (a) the Agency's decision on the FOI request;
  - (b) the Applicant's review application; and
  - (c) the Agency's submissions dated [date] and [date].
9. In undertaking my review, I have had regard to the object of the FOI Act, which is to create a general right of access to information in the possession of the Government or other public bodies, limited only by exceptions and exemptions necessary to protect essential public interests, privacy and business affairs.

### Preliminary view

10. The Agency was advised that the preliminary view of the Information Commissioner regarding this matter was that the document was not exempt under section 34(4)(a)(ii). The Agency was asked whether it would consider providing the document to the Applicant. Alternatively, if the Agency maintained the document is exempt, it was asked to provide further information in support of the application of the exemption.

11. In response, the Agency declined to provide further information to the Applicant and provided an additional submission in support of the application of section 34(4)(a)(ii). The Agency's submission is set out below.

## Review of exemptions

### **Section 34(4)(a)(ii)**

12. Section 34(4)(a)(ii) provides a document is an exempt document if it contains, 'in the case of an agency engaged in trade or commerce, information of a business, commercial or financial nature that would if disclosed under this Act be likely to expose the agency unreasonably to disadvantage'.
13. The Victorian Civil and Administrative Tribunal (**VCAT**) has held 'the terms 'trade' and 'commerce' are not words of art; rather they are expressions of fact and terms of common knowledge'. VCAT has adopted the view of the Federal Court of Australia that these terms are 'of the widest import'.
14. The provision contemplates that disclosure of a document under the FOI Act may expose the agency to a certain measure of disadvantage, and that any such exposure must be unreasonable.
15. The Agency was established under the *Australian Grands Prix Act 1994* (Vic) (the **Grands Prix Act**). Its functions are described in section 20 of the Grands Prix Act as follows:
  - (a) to negotiate, enter into and vary agreements under which Formula One events are held;
  - (b) to undertake and facilitate the organisation, conduct, management and promotion of Formula One events and Australian Motorcycle Grand Prix events;
  - (c) to establish at Albert Park a temporary motor racing circuit and supporting facilities for Formula One events;
  - (d) to do all other things necessary for or in connection with the conduct and financial and commercial management of each Formula One event promoted by the Corporation;
  - (e) with the consent of the Minister, to negotiate and enter into an agreement for the holding of, and to undertake the organisation, conduct, management and promotion of, a motor sport event approved by the Minister;
  - (f) such other functions as are conferred on the Corporation under this Act or any other Act.
16. I accept the Agency is engaged in trade or commerce. While it is a government agency, and its function is to promote an annual event in the public interest, I accept that the document subject to this request relates to commercial transactions and relationships more like those undertaken in the private sector than the public sector.
17. I also note relevant case law accepts the Agency is engaged in trade or commerce due to the functions set out in the Grands Prix Act and, while it is the only event of its kind, that it has competitors in the form of other major sporting events.<sup>1</sup>
18. I therefore must decide whether disclosure of the document would expose the Agency unreasonably to disadvantage.
19. In this regard, the Agency submits:
  - (a) disclosure may deter those companies from booking future events;

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<sup>1</sup> *Save Albert Park Inc v Australian Grand Prix Corporation* (General) [2008] VCAT 168, *Logan v Australian Grand Prix Corporation* (Review and Regulation) [2013] VCAT 1602

- (b) turnover of corporate customers will cause the agency 'unreasonable financial loss';
- (c) the information will be used by competitors, exposing the agency to unreasonable financial disadvantage;
- (d) the companies represent the Agency's largest income stream and reduces government expenditure on the event;
- (e) there is a public interest in not disclosing the information;
- (f) it is unreasonable for the companies' names to be made public; and
- (g) unreasonable inferences could be made from the information given the tickets purchased by them could be between \$300 and \$5,000.

20. I have decided it disclosure of the information would not expose the Agency unreasonably to disadvantage for the following reasons:

- (a) I note the Agency's view that disclosure would dissuade those companies from booking tickets in the future; however, there is no information before me to support this contention;
- (b) similarly, while I accept the Agency's view that disclosure of the document could expose it to some level of disadvantage, I do not consider it has provided sufficient information to demonstrate disclosure would cause it substantial or unreasonable harm to its competitive position;
- (c) the Applicant is not a competitor, and while disclosure under the FOI is unrestricted, I do not consider it is likely the information will be used for competitive purposes;
- (d) even if the information were to be disclosed to a competitor, I am not satisfied such disclosure would have any substantial impact on the Agency, given that it is entirely up to individual companies whether they choose to pay for and attend corporate facilities at the Australian Grand Prix; and
- (e) I am satisfied there is a substantial public interest in disclosing the corporate relationships of the Agency, given it receives public funding and is invested with functions under legislation.

21. For the reasons set out above, the document is not exempt under section 34(4)(a)(ii).

### **Conclusion**

22. On the information available, I am not satisfied the document is exempt under section 34(4)(a)(ii).

23. The document is therefore to be released to the Applicant.

### **Other matters**

24. Section 49P(5) states that if I decide to disclose a document claimed to be exempt under section 33(1) I must, if practicable, notify any person who has a right to apply to VCAT for a review of my decision of their right to do so.

25. In considering the meaning of 'practicable' in relation to other sections of the FOI Act, VCAT has stated the following:

The use of the word 'practicable' in the legislation to my mind connotes a legislative intention to apply common sense principles. 'Practicable' is not a term of art or a term of precise meaning.

.... The use of the word indicates there should be imported into the process the exercise of judgment by the agency concerned. It does not allow for the conclusion that because a task is possible, it must, ergo, be undertaken.<sup>2</sup>

26. VCAT also considers the possibility of an unnecessary intrusion into the lives of third parties is relevant when assessing the practicability of notifying them.<sup>3</sup>
27. There are more than 500 company names in the document. I have decided not to notify these companies given it is not sensitive business information, and it would be impracticable to contact this many individual parties.

### **Review rights**

28. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.<sup>4</sup>
29. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>5</sup>
30. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>6</sup>
31. Information about how to apply to VCAT is available online at [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au). Alternatively, VCAT may be contacted by email at [admin@vcat.vic.gov.au](mailto:admin@vcat.vic.gov.au) or by telephone on 1300 018 228 (international callers dial +61 3 8685 1462).
32. 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.<sup>7</sup>

### **When this decision takes effect**

33. 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.

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<sup>2</sup> *Re Schubert and Department of Premier and Cabinet* (2001) 19 VAR 35 at [45].

<sup>3</sup> *Coulston v Office of Public Prosecutions Victoria* [2010] VCAT 1234 at [42].

<sup>4</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>5</sup> Section 52(5).

<sup>6</sup> Section 52(9).

<sup>7</sup> Sections 50(3F) and (3FA).