

## Notice of Decision and Reasons for Decision

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Applicant:	'Save Albert Park Inc'
Agency:	Australian Grand Prix Corporation
Decision date:	14 August 2023
Exemptions and provisions considered:	Sections 24A, 30(1), 34(4)(a)(ii) and 25
Citation:	'Save Albert Park Inc' and Australian Grand Prix Corporation (Freedom of Information) [2023] VICmr 84 (14 August 2023)

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FREEDOM OF INFORMATION – Formula 1 Grand Prix – Australian Grand Prix Corporation – Save Albert Park Inc – methodology for estimating attendance figures – internal working documents – disclosure not contrary to public interest – not satisfied disclosure would expose business undertaking unreasonably to disadvantage

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 am not satisfied information to which the Agency refused access under sections 30(1) and 34(4)(a)(ii) is exempt from release.

Where I am satisfied it is practicable to provide the Applicant with an edited copy of a document with irrelevant information deleted in accordance with section 25, access to the document is granted in part.

The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

My reasons for decision follow.

Joanne Kummrow  
**Public Access Deputy Commissioner**

14 August 2023

## Reasons for Decision

### Background to review

1. The Applicant made a request to the Agency for access to certain documents. Following consultation with the Agency, the Applicant clarified the initial request and sought access to:

The entire method by which AGPC estimates the number of attendees over the four days for both the 2019 and 2022 Formula 1 Australian Grand Prix events, including attendance figures for event staff, officials, competitors, holders of free tickets and schoolchildren; and

any documentation which outlines the instructions regarding the category of tickets that are to be scanned on entry.

2. The Agency identified 14 documents falling within the terms of the Applicant's request and refused access to the documents in full under sections 30(1), 33(1) and 34(4)(a)(ii).
3. No documents were found meeting the terms of the second part of the Applicant's request. However, during the review a document that broadly relates to this part of the request was located and provided to the Applicant outside the FOI Act.
4. The Agency's decision letter sets out the reasons for its decision.

### Review application

5. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
6. The Applicant advised they are not seeking access to information of ticket purchasers contained in the documents, including personal and business affairs information. Accordingly, any such information in the documents is not subject to review and has been deemed irrelevant pursuant to section 25.
7. I have examined copies of the documents subject to review.
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 from the parties.
10. 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.
11. I note Parliament's intention the FOI Act must be interpreted so as to further the object of the Act and any discretions conferred by the Act must be exercised, as far as possible, so as to facilitate and promote the disclosure of information in a timely manner and at the lowest reasonable cost.

### **Preliminary view provided by OVIC to Agency**

12. On [date], the Agency was provided with a preliminary view that there was likely insufficient evidence for the a Commissioner to be satisfied that disclosure of the documents subject to review would be contrary to the public interest for the purpose of section 30(1) or likely to expose the Agency unreasonably to disadvantage for the purpose of section 34(4)(a)(ii).
13. On [date], the Agency responded that it continued to consider the documents are exempt from release under sections 30(1) and 34(4)(a)(ii). Parts of the Agency's submission are set out below.

### **Concerns about the adequacy of document searches**

14. During the review, the Applicant raised concerns about the adequacy of the Agency's document searches in relation to their FOI request.
15. In accordance with section 61B(3), this complaint was dismissed and the subject matter of the complaint was dealt with by this review.
16. OVIC staff made further enquiries with the Agency to address the Applicant's concerns. The outcome of those enquiries was communicated to the Applicant.
17. Based on the Agency's response, I am satisfied the Agency undertook a thorough and diligent search for the requested documents. Accordingly, I consider the Applicant's concerns have been fully pursued and there is no need to make further enquiries or take further action under the FOI Act in relation to those particular concerns.

### **Review of provisions and exemptions relied upon by the Agency**

#### ***Section 24A – Repeated requests***

18. During the review, the Agency sought to rely on the provision in section 24A, which in summary concerns repeated FOI requests for the same document, as a basis under which the Applicant should be refused access to the requested documents.
19. Section 24A provides an agency or Minister may refuse to grant access to documents if satisfied:
  - (a) the request is made by, or on behalf of, a person who, on at least one previous occasion, has made a request to the agency or Minister, or to a predecessor of the agency or Minister, for access to the same documents or the same information; and
  - (b) the request was refused and the Tribunal, on reviewing the decision to refuse the request, confirmed the decision; and
  - (c) there are not reasonable grounds for making the request again.
20. The Agency relies on section 24A on grounds the Applicant was previously refused access to an earlier version of the same document in *[Name] v Australian Grand Prix Corporation* [2013] VCAT 1602 (the **2013 decision**).

21. In its submission, the Agency states:

...the present applicant has previously sought, relevantly, documents related to the “method by which the number of attendees was estimated by the [respondent]” (relevant to criterion (a)). The 2013 Tribunal decision ultimately affirmed the decision of the respondent refusing access to such documents (relevant to criterion (b)). Further, it is submitted that there are not reasonable grounds for making the request again, none being evident, or articulated (relevant to criterion (c)). Thus, s 24A is engaged and provides an additional reason for non-disclosure in this case.

...At the outset, it is accepted that the document which records the methodology for the 2019 and 2022 Events is not literally an unaltered document as that which was the subject of the 2013 Tribunal decision. That is because the document (a Microsoft Excel spreadsheet) is a working document, which has been updated over the years with new data on ticket sales and attendances. Nevertheless, the respondent instructs that the spreadsheet is an iterative version of the same document as was the subject of the 2013 Tribunal decision. It is submitted that that is sufficient for the purposes of s 24A.

...Section 24A being enlivened, there is no reason why it should not be applied as a further basis for non-disclosure.

22. Section 24A(2) requires an agency to give notice of a refusal under this section and inform the applicant of:

- (a) their right to apply for review of the decision;
- (b) the authority to which the application for review should be made; and
- (c) the time within which the application for review must be made.

23. As the Agency did not rely section 24A in its original decision, the Applicant was not advised of the right to request review of the decision to refuse access under section 24A(2).

24. Having considered the Agency’s submission, reviewed the relevant documents and the 2013 decision, I am not satisfied the documents subject to review are ‘the same documents’ or ‘the same information’, as required under section 24A, for the following reasons:

- (a) The provision requires that I must be satisfied the information is the same, however, in the majority of the documents before me, the data relates to time periods substantially after the 2013 decision, being 2019 through to 2022.
- (b) In my view, the provision clearly applies to the same information only so as to avoid duplication of work by agencies, in this case the information is clearly and substantially different from that the subject of the 2012 decision.
- (c) While some of the information, being certain ways of calculating expected attendance may be the same, this forms only a small part of the information and in any case, the Agency has not provided any evidence that the methodology by which it estimates attendance at the event has not been amended since 2013.

25. In any case, I have also had regard to section 24A(c) and am satisfied that even if the methodology could be said to constitute ‘the same information’, a request to access this information would not be unreasonable given the considerable new and different information in the documents, the passage of time since the 2013 decision and changed community expectations regarding the expenditure of public funds and use or the development of public resources in major sporting events in Victoria.

26. Accordingly, I am satisfied that there are reasonable grounds for the Applicant making their request again and the requirement under section 24A(c) is not made out and section 24A does not apply to the documents.

***Section 30(1) – Internal working documents***

27. Section 30(1) has three requirements:

- (a) the document must disclose matter in the nature of opinion, advice or recommendation prepared by an officer or Minister, or consultation or deliberation that has taken place between officers, Ministers or an officer and a Minister;
- (b) such matter must be made in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency or Minister or of the government; and
- (c) disclosure of the matter would be contrary to the public interest.

28. The exemption does not apply to purely factual material in a document.<sup>1</sup>

29. I must also be satisfied releasing this information is not contrary to the public interest. This requires a 'process of the weighing against each other conflicting merits and demerits'.<sup>2</sup>

*Do the documents disclose matter in the nature of opinion, advice or recommendation prepared by an officer or Minister, or consultation or deliberation that has taken place between officers, Ministers or an officer and a Minister?*

30. For the requirements of section 30(1) to be met, a document must contain matter in the nature of opinion, advice or recommendation prepared by an agency officer, or consultation or deliberation between agency officers.

31. It is not necessary for a document to be in the nature of opinion, advice or recommendation. Rather, the issue is whether release of the document would disclose matter of that nature.<sup>3</sup>

32. I note the documents contain a substantial amount of factual information, being actual attendance data. However, I also accept the information contains attendance estimates, and that this information amounts to the advice and opinion of Agency officers.

*Were the documents made in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency or Minister or of the government?*

33. The term 'deliberative process' is interpreted broadly and includes any of the processes of deliberation or consideration involved in the functions of an agency, Minister or government.<sup>4</sup>

34. In *Re Waterford and Department of Treasury (No.2)*,<sup>5</sup> the former Victorian Administrative Appeals Tribunal held:

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<sup>1</sup> Section 30(3).

<sup>2</sup> *Sinclair v Maryborough Mining Warden* [1975] HCA 17; (1975) 132 CLR 473 at [485], adopted in *Department of Premier and Cabinet v Hulls* [1999] VSCA 117 at [30].

<sup>3</sup> *Mildenhall v Department of Education* (1998) 14 VAR 87.

<sup>4</sup> *Brog v Department of Premier and Cabinet* (1989) 3 VAR 201 at [208].

<sup>5</sup> [1984] AATA 67; (1984) 5 ALD 588; 1 AAR 1 at [58].

... “deliberative processes” [is] wide enough to include any of the processes of deliberation or consideration involved in the functions of an agency... In short, ...its thinking processes — the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

35. I am satisfied the information recorded in the documents was provided in the course of, and for the purpose of, a deliberative process involved in the functions of the Agency, being the consolidation of attendance figures and revenue for the Australian Grand Prix.

*Would disclosure of the documents be contrary to the public interest?*

36. In deciding if release is contrary to the public interest, I must consider all relevant facts and circumstances remaining mindful the object of the FOI Act is to facilitate and promote the disclosure of information. In doing so, I have given weight to the following relevant factors:<sup>6</sup>
- (a) the right of every person to gain access to documents under the FOI Act;
  - (b) the degree of sensitivity of the issues discussed in the documents and the broader context giving rise to the creation of the documents;
  - (c) the stage of a decision or status of policy development or a process being undertaken at the time the communications were made;
  - (d) whether disclosure of the documents would be likely to inhibit communications between Agency officers, essential for the agency to make an informed and well-considered decision or participate fully and properly in a process in accordance with the Agency’s functions and other statutory obligations;
  - (e) whether disclosure of the documents would give merely a part explanation, rather than a complete explanation for the taking of a particular decision or the outcome of a process, which the Agency would not otherwise be able to explain upon disclosure of the documents;
  - (f) the impact of disclosing documents in draft form, including disclosure not clearly or accurately representing a final position or decision reached by the Agency at the conclusion of a decision or process; and
  - (g) the public interest in the community being better informed about the way in which the Agency carries out its functions, including its deliberative, consultative and decision making processes and whether the underlying issues require greater public scrutiny.
37. The Agency submits:
- (a) Contrary to the preliminary view provided to the Agency by OVIC, ‘*DA1 and Australian Grand Prix Corporation (Freedom of Information) [2021] VICmr 128 (13 May 2021) (my previous decision)*’ related to different information. In this case, the request seeks the methodology for estimating attendance numbers at the Grand Prix. The Agency advises that my previous decision relates to forecast revenue, however, this is not correct. My previous decision provided with the preliminary view was a request for various types of ticket sales for the Grand Prix.

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<sup>6</sup> *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

- (b) The methodology for estimating event attendances has never been in the public domain and is not audited.
- (c) The public interest weighs against disclosure because of:
  - a. the sensitive nature of the information in light of the competitive market in which the respondent operates;
  - b. the level of public funds invested; and
  - c. the public interest against the respondent having to compete in a market where its competitors have access to information which could impede its effectiveness as a competitive business.
- (d) Two matters, being *Save Albert Park Inc v Australian Grand Prix Corporation* [2008] VCAT 168 (Judge Harbison VP) (**2008 Tribunal decision**), and *[Name] v Australian Grand Prix Corporation* [2013] VCAT 1602 (Proctor SM) (**2013 Tribunal decision**) dealt with similar information and determined it to be exempt from release under section 34(4)(a)(ii). The same public interest considerations apply to section 30(1) and this decision.
- (e) The Commissioner should not lightly depart from those decisions.
- (f) It is likely the Applicant will disseminate the information.
- (g) The Agency's accounting is already subject to scrutiny through the audit process.

38. While I have given careful consideration to the submission of the Agency and VCAT's reasoning in its previous decision, as the decision maker in this matter, I have determined disclosure of the documents would not be contrary to the public interest for the following reasons:

- (a) I acknowledge there is a difference between the documents subject to my previous review decision and the current matter. However, I note they are similar document types and my reasoning in this matter is therefore similar to my previous review decision.
- (b) I also note the VCAT decisions referred to by the Agency both involve documents closely related to those the subject to this review, including 'documents related to methodology, not actual data'<sup>7</sup> in the 2008 Tribunal decision and 'patron attendance count methodology and formulas'<sup>8</sup>, as described the 2013 Tribunal decision, in which VCAT held the documents were exempt from release under section 34(4)(a)(ii). There was no finding in those matters regarding section 30(1).
- (c) While I acknowledge a decision of VCAT should be carefully considered in the context of a current review matter before OVIC, the Information Commissioner and Public Access Deputy Commissioner, in independently discharging their statutory decision making functions under section 49 the FOI Act are not obliged to follow a previous decision of VCAT as legal precedent, in the same way a VCAT member is not obliged to follow a previous decision of the Tribunal.

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<sup>7</sup> See paragraph [12].

<sup>8</sup> See paragraph [17].

- (d) I do not consider the information subject to review is particularly sensitive as the attendance figures are publicly reported by the Agency in its annual report and made widely available in the media. As such, I do not accept disclosure of the documents, which show the Agency's estimates for expected attendances at the event, would cause confusion, misunderstanding or mislead the public.
- (e) In releasing the documents, it would be open to the Agency to provide explanatory information to assist the public in understanding the status of the information in the document and to minimise any potential confusion or misunderstanding, should it be necessary to do so.
- (f) I also do not accept the Agency's submission that the level of public funding provided to the Agency is an argument in favour of non-disclosure. On the contrary, disclosure of the documents would serve the public interest by promoting transparency and accountability, including in the performance of the Agency's functions, public oversight of expenditure of public funds.
- (g) While I note the Agency states the information is not publicly available, based on the information before me, I do not consider disclosure of the documents would have any material impact on the future hosting of the Grand Prix, which is subject to a contractual agreement that was recently renewed for a further ten years until 2035, or the Agency or event's actual financial performance.

39. Accordingly, I am not satisfied disclosure of the documents would be contrary to the public interest, and the documents are not exempt from release under section 30(1).

40. My decision in relation to section 30(1) is set out in the Schedule of Documents at **Annexure 1**.

***Section 34(4)(a)(ii) – Information that would expose the Agency unreasonably to disadvantage***

41. 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'. A document is exempt under section 34(4)(a)(ii) if:

- (a) the agency is engaged in trade or commerce;
- (b) the document contains information of a business, commercial or financial nature; and
- (c) disclosure of which would be likely to expose the agency unreasonably to disadvantage.

*Is the Agency engaged in trade and commerce?*

42. Whether an agency is engaged in trade or commerce depends on the facts and circumstances of each case.<sup>9</sup>

43. VCAT has held 'the terms 'trade' and 'commerce' are not words of art; rather they are expressions of fact and terms of common knowledge'.<sup>10</sup>

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<sup>9</sup> *Stewart v Department of Tourism, Sport and the Commonwealth Games* [2003] VCAT 45 at [41].

<sup>10</sup> *Pallas v Roads Corporation (Review and Regulation)* [2013] VCAT 1967 at [33].



44. The Tribunal has adopted the view of the Federal Court of Australia that these terms are ‘of the widest import’.<sup>11</sup> An agency may be regarded as being engaged in trade or commerce, even if the amount of trade or commerce engaged in is insignificant and incidental to the agency’s other functions.<sup>12</sup>
45. Further, an agency may be engaged in trade or commerce, even if profit is not one of its express statutory objectives.<sup>13</sup>
46. While the phrase ‘trade and commerce’ may be interpreted broadly,<sup>14</sup> it has been held trade and commerce must ‘of their nature, bear a trading or commercial character’.<sup>15</sup>
47. The fact an agency’s predominant activities may be described as ‘governmental’ does not preclude it from relying on the exemption under section 34(4)(a)(ii).<sup>16</sup>
48. The Agency is a statutory corporation established under the *Australian Grands Prix Act 1994* (Vic) (the **GP Act**). Its functions are set out in section 20 of the GP Act:
- (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.
49. Given the functions of the Agency, I accept it is engaged in trade or commerce for the purposes of the FOI Act and in the context of the documents requested in the Applicant’s FOI request.

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<sup>11</sup> *Pallas v Roads Corporation (Review and Regulation)* [2013] VCAT 1967 at [34]; *Re Ku-Ring-Gai Co-operative Building Society (No 12) Ltd* (1978) 22 ALR 621 at [649].

<sup>12</sup> *Marple v Department of Agriculture* (1995) 9 VAR 29 at [47].

<sup>13</sup> *Thwaites v Metropolitan Ambulance Services* (1996) 9 VAR at [473].

<sup>14</sup> *Re Ku-Ring-Gai Co-operative Building Society (No 12) Ltd* [1978] FCA 50; (1978) 36 FLR 134.

<sup>15</sup> *Concrete Constructions (NSW) Pty Ltd v Nelson* [1990] HCA 17; (1990) 169 CLR 594 at 690; *Gibson v Latrobe City Council* [2008] VCAT 1340 at [35].

<sup>16</sup> *Stewart v Department of Tourism, Sport and the Commonwealth Games* (2003) 19 VAR 363; [2003] VCAT 45 at [41]; *Fyfe v Department of Primary Industries* [2010] VCAT 240 at [23].

*Do the documents contain information of a business, commercial or financial nature?*

50. The phrase ‘information of a business, commercial or financial nature’ is not defined in the FOI Act. Therefore, the words ‘business, commercial or financial nature’ should be given their ordinary meaning.<sup>17</sup>
51. Having reviewed the content of the documents and considered their context, I am satisfied they contain information of a business or commercial nature.

*Would disclosure of the documents be likely to expose the Agency unreasonably to disadvantage?*

52. Whether disclosure is likely to expose an Agency *unreasonably* to disadvantage depends on the particular facts and circumstances of the matter, considering the consequences that likely to follow from disclosure of the information.
53. 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.
54. The Agency submits:

49. OVIC’s case manager has advised of [their] initial assessment that the respondent has not demonstrated how disclosure of the methodology document would expose the respondent unreasonably to disadvantage for the purposes of s 34(4)(a)(ii) of the FOI Act. For present purposes, it is assumed that the other elements of the s 34(4)(a)(ii) exemption are not in issue.

50. Again, to the extent that the initial assessment proceeds from a premise that the respondent bears some onus (legal or evidentiary), it is misconceived (see par 6 above).

51. The case manager otherwise relies upon a previous OVIC decision where it is said “OVIC’s decision-maker disagreed with your Agency’s decision on a similar matter”. However, the “similar matter” to which reference is made was not concerned at all with the methodology for estimating attendances, but with ticket sales. As observed by Judge Harbison in the 2008 Tribunal decision at [59], there is no clear correlation between ticket sales and estimated attendances in the context of a four-day event. Much will depend on the methodology applied itself, and is all the more reason for its being tightly held. Of course, it is the application of the methodology which produces the estimated attendance – and that is the critical figure by reference to which discussions with the respondent’s sponsors and advertisers, the Victorian Government (who partly funds the Event) and Formula 1 management (the commercial rights holder of the Event) will take place (cf. the 2008 Tribunal decision at [56]).

52. Moreover, it would be erroneous for the Commissioner to reason that, because the respondent had not appealed a particular decision to the Tribunal, that somehow that diminished the sensitivity of different information that was perceived to be loosely connected with the subject matter. That is all the more so in circumstances where:

a. the Tribunal has clearly accepted the sensitivity of the attendance methodology (a matter which is returned to below); and

b. the decision by OVIC was made at a time of great upheaval and flux. At [72] of the relevant OVIC decision, it was expressly recognised as follows:

*[T]he release of the documents at this time, and the nexus between their disclosure and any exposure of the Agency to disadvantage, needs to be considered in the context of the challenging global and national environment arising from the impact of*

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<sup>17</sup> *Gibson v Latrobe CC (General)* [2008] VCAT 1340 at [25].

*the pandemic, such that the concerns relied on by the Agency in the [2008 Tribunal] decision will, in my view, have been superseded by more pressing concerns.*

In the present environment, those observations no longer apply. It would be wrong to rely upon an OVIC decision made at a particular time and in a particular context so as to prejudice the respondent precisely at the point where it is returning to normal business operating conditions.

55. The Agency also relies on its submissions in relation to section 30(1) as to the unreasonableness of disclosure. As set out above in relation to my analysis of section 30(1), I acknowledge there is a difference between the documents the subject of in my previous decision referenced by OVIC staff and the current matter. However, from my review of the documents, I consider they are similar. I also acknowledge that both 2008 and 2013 VCAT matters referred to above, relate to documents similar to those subject to this review.
56. I note the Agency did not appeal my previous decision and that has had no bearing on this decision.
57. I also note that the pandemic, while still prevalent, is no longer a factor in my reasons for decision.
58. In the 2008 VCAT Decision, a VCAT judicial member accepted the evidence of the Agency's Chief Executive Officer that disclosure of the documents 'would be likely to disadvantage the Respondent in the ways advanced by the Respondent's witness'.<sup>18</sup>
59. In summary, the Agency's Chief Executive Officer stated:<sup>19</sup>

53. He said that the Respondent was very concerned to protect all information which could be used to make calculation of attendances and ticket sales at the Grand Prix.

54. He said that ticketing information is treated as highly confidential information for all large public entertainment events. This includes gross ticket sales, and the information as to how many tickets are purchased in various categories, and the particular events for which various proportions of tickets are purchased.

55.. This is because it is this information which provides the clue as to how successful or unsuccessful the event's marketing and sales strategy has been. Any given event will seek to attract custom by marketing in what it believes to be the most effective way. It may advertise to a particular demographic group – for instance, to young men who love race cars or, alternatively, to families with young children. It is not until the ticket sales are analysed after the event that the success or failure in marketing to various groups can be evaluated, and patterns of success or failure of marketing strategies established.

56. As well as this information being vital for advertising and marketing of ticket purchases, it was said it is also vital information to use in attracting sponsors to place advertising at the event. Sponsors need to know how many individuals will see their sponsorship banners and advertising material. A sponsor will be less likely to be attracted if the numbers of people attending the event (and therefore seeing and being influenced by their signs or displays) are small. In negotiating with sponsors, the Respondent says that both the sponsor and the Respondent make offers and counter-offers reflecting what they perceive to be the popularity and prestige of the event.

57. Further, companies considering buying Corporate tickets need to be able to see how sought after these tickets are. Is a gift to a valued client of a ticket in a corporate box to the Grand Prix attractive? There is no point in a business buying tickets for corporate entertainment at the

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<sup>18</sup> Ibid at [74].

<sup>19</sup> Ibid at [53]-[65].

Grand Prix if attendance at the Grand Prix is not valued by the clients those businesses are trying to impress.

58. It is thus not just actual tickets sold which is essential marketing information. In the case of tickets sold over four days, it is necessary to estimate how many persons will use the ticket, and over how many days.

59. Estimating actual attendances at an event such as the Grand Prix is more difficult than one might at first think. Far different results may be obtained in various scenarios. For instance, a person may buy a 4-day ticket but only use it to attend once. Alternatively a person may buy a 4-day ticket and share it with three friends, so each of four friends attends on one day. Or a person may buy a 4-day ticket and that same person attends for all four days.

60. So, in the absence of actual figures of attendance and categories of attendance, assumptions need to be made about the likelihood of use of tickets purchased. Calculations may vary widely depending on exactly what those assumptions are.

61. Thus, the Respondent says that it will be greatly disadvantaged if the Applicant, or any competitor, is given access to documents which will enable the Applicant to attempt its own estimates of actual ticket sales, or to analyse the way in which ticket sales information is treated by the Respondent in its various financial statements and projections. The release of this information may harm actual ticket sales. It will also place the Respondent at a disadvantage in trying to extract the most favourable terms from potential sponsors.

62. The Respondent's final submissions set out three categories of the exempt information:-

1. Total ticket sales information broken down into Grandstand, Corporate and General Admission ticket sales.
2. Number of tickets sold to interstate and overseas visitors.
3. The number of free tickets issued for the event.

#### 1. Ticket Sales

63. The Respondent says that disclosure of ticket sales information would be likely to unreasonably expose the Respondent to disadvantage. Ticket sales information is a particular type of intellectual information capable of being used to assess the success of marketing strategies. It is not generally released into the marketplace. The only examples of release have been in relation to the Adelaide Grand Prix – shortly before the event was lost to Melbourne. It is highly sought after information because of its ability to signal trends and to confirm commercial success.

#### 2. Interstate and Overseas Patrons

64. The Respondent says that disclosure of the number of tickets sold interstate and overseas would be likely to unreasonably expose the Respondent to disadvantage. Attraction of sponsors between high profile events depends upon establishing the profile. Part of a profile is overseas recognition of the event. The evidence of the Respondent is that there is no reliable way of estimating the proportion of overseas and interstate visitors to the event, as those statistics cannot reliably be captured. Release of incomplete figures, providing a low impression of interstate or overseas interest, would be damaging to the Respondent in the marketplace.

#### 3. Free Tickets

65. The Respondent says that the release of the number of free tickets would be likely to unreasonably expose the Respondent to disadvantage. An event which relied on a large number of give-away tickets to give an impression of popularity would be seen within the marketplace to be unsuccessful. The Respondent gave evidence that there is no breakdown in the documents in dispute of different categories of free tickets. Tickets counted as free include tickets given in exchange for services, such as to contractors, sponsors, tickets giving admission to tradesmen working at the event, and various other categories of non-paying ticket, as well as free tickets in the usual sense of tickets given without obligation, such as tickets to charities. Therefore the Respondent argued that if the gross number of free tickets was to be released this would give

the impression that the event was being artificially enhanced by giveaway tickets, and so reduce the value of tickets sold and the likelihood of sponsorship.

60. In undertaking a review under section 49F, I am required by section 49P to make a fresh or new decision. This means my review does not involve determining whether the Agency's original decision is correct, but rather I am required to ensure my fresh decision is the 'correct or preferable decision'.<sup>20</sup> This involves ensuring my decision is correctly made under the FOI Act and any other relevant applicable law in force at the time of making my fresh decision.
61. While a decision of VCAT should be carefully considered in the context of a current review before OVIC, the Information Commissioner and Public Access Deputy Commissioner, in independently discharging their statutory decision making functions under section 49 of the FOI Act are not obliged to follow a previous decision of VCAT as legal precedent, in the same way a VCAT member is not obliged to do so.
62. Therefore, it is necessary for me in discharging my statutory duties under the FOI Act to be satisfied, based on the information before me at the time of my decision, that the disclosure of the documents under the FOI Act would expose the Agency unreasonably to disadvantage.
63. In relation to whether disclosure of the documents in the VCAT decision would expose the Agency unreasonably to disadvantage, the Tribunal held:

75. I accept that the onus of proving unreasonable disadvantage lies on the Respondent. However, Mr Maskiell has provided clear and logical reasons for the claimed disadvantage. He presented as an honest witness. He gave persuasive evidence that this information was part of the Respondent's intellectual property – its "know-how", and that this intellectual property was a very valuable commodity.

76. The Applicant suggested that any attempt to use the information by a competitor to attract sponsors or corporate clients away from the Grand Prix could easily be countered by advertising.

77. In my view the Applicant failed to come to grips with the issues of competition raised in the Respondent's witness statements. If, as I accept, this information is valuable intellectual property, then its release into the public domain deprives the Respondent of a valuable asset. It allows all of the entities with which the Respondent must deal – sponsors, competitors, corporate customers – access to data from which they can strengthen their bargaining position at the expense of the Respondent. This disadvantage cannot be countered by advertising or public relations.

78. In my view the Respondent has established that it will be unreasonably disadvantaged in the marketplace should the documents in dispute be released.

79. I might say, that although the matter was not argued in this case, it is clear to me that release of this information to the Applicant will mean its release into the public domain. The Applicant wishes to have the information so that it can be disseminated throughout the community – to the traders of Albert Park, and to the public whose funds underwrite the event.

64. I also acknowledge the 2008 VCAT Decision accepted in relation to the public interest override under section 50(4):

The public has a clear interest in having the funding of the event scrutinised by an independent authority. However, that interest is well satisfied in this case. The Respondent is bound by the *Financial Management Act 1994* to publish audited annual reports. Its affairs are subject to the

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<sup>20</sup> *Drake v Minister for Immigration and Ethnic Affairs* (1979) 24 ALR 577 at 591.

scrutiny of the Auditor-General. Further, section 25 of the *Australian Grand Prix Act 1994*, makes detailed provision for the preparation of an annual business plan and its detailed scrutiny before approval by Government. There was no evidence presented to me, apart from its assertion as a fact in the Applicant's submission, that there is "ample evidence in the public domain that the Respondent has a history of not being transparent and accountable".

65. I have carefully considered the submissions provided by the Agency and the Applicant in relation to this review, and the evidence before VCAT, as discussed in the 2013 VCAT Decision, and Her Honour's findings.
66. To be satisfied disclosure of a document would be likely to expose an undertaking unreasonably to disadvantage, it is necessary for an agency to establish each limb of the exemption under section 34(4)(ii)(a) is met.
67. I acknowledge '[s]ecuring, creating, staging and then retaining major events is a global, highly competitive business'.<sup>21</sup> I also accept the Agency's commercial success is in the public interest, and the information in the documents is valuable with respect to its operations. However, based on the information before me, I am not satisfied the Agency has objectively demonstrated the specific commercial, competitive or financial harm that would be caused by disclosure of the documents.
68. While I accept the Agency may be exposed to some measure of competitive disadvantage, I am unable to be satisfied, based on the information before me, that disclosure of the documents would expose the Agency *unreasonably* to disadvantage in that it would suffer in terms of its competitive advantage or financial harm. In this regard, I note the announcement in November 2022 that the contract for hosting the Grand Prix in Victoria has been secured for a further ten years from 2025 until 2035.<sup>22</sup> In these circumstances, I am not persuaded the Agency will be exposed unreasonably to any commercial, competitive or financial harm through disclosure of the documents.
69. In my view, the evidence presented by the Agency to VCAT and relied upon in this matter, relies on the impact of disclosure as being detrimental to the competitive position of the Agency and the Australian Grand Prix due to the importance of the 'information being vital for advertising and marketing of ticket purchases' and 'attracting sponsors to place advertising at the event'.
70. I appreciate the Agency does not wish for the requested information to be disclosed to the Applicant. However, there is no information before me to objectively establish what commercial or financial harm the Agency would reasonably be exposed to should the documents be released and how any resultant exposure to competitive or financial disadvantage would be unreasonable.
71. With respect, the VCAT Decision was determined in 2008, more than 12 years ago. I consider community expectations and standards regarding transparency and public accountability in the expenditure of public funds by government in relation to the hosting of major sporting events have increased in the intervening period. In this case, the information requested by the Applicant it relates to the methodology the Agency uses to estimate ticket sales. Having

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<sup>21</sup> Victorian Auditor General, *State Investment in Major Events* (May 2007) at <https://www.parliament.vic.gov.au/papers/govpub/VPARL2006-10No14.pdf>.

<sup>22</sup> Premier of Victoria, *Melbourne Takes Pole Position With F1 Deal To 2035*, media release, at <https://www.premier.vic.gov.au/melbourne-takes-pole-position-f1-deal-2035>.

considered the content of the spreadsheets subject to review, I do not consider the nature of this information and its disclosure would result in the Agency being exposed unreasonably to disadvantage.

72. While the pandemic was a factor in my previous decision, it was not a determinative factor. Rather, I was not satisfied, based on all the information before me, that disclosure would have a detrimental impact on the Agency. For the reasons set out above, I remain of that view in relation to this matter. Accordingly, I am not satisfied the documents are exempt from release under section 34(4)(a)(ii).
73. My decision in relation to section 34(4)(a)(ii) is set out in the Schedule of Documents at **Annexure 1**.

### ***Section 25 – Deletion of exempt or irrelevant information***

74. Section 25 requires an agency to grant access to an edited copy of a document where it is practicable to delete irrelevant information and the applicant agrees to receiving such a copy.
75. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’<sup>23</sup> and the effectiveness of the deletions. Where deletions would render a document meaningless, they are not ‘practicable’ and release of the document is not required under section 25.<sup>24</sup>
76. I have considered the effect of deleting irrelevant information from the documents. I am satisfied it is practicable to do so as editing the documents would not require substantial time and effort, and the edited documents would retain meaning.

### **Conclusion**

77. On the information before me, I am not satisfied the requested documents are exempt from release under sections 30(1) or 34(4)(ii)(a).
78. Where I am satisfied it is practicable to provide the Applicant with an edited copy of a document with irrelevant information deleted in accordance with section 25, access to the document is granted in part. Where I am not satisfied it is practicable to do, access is refused in full.
79. My decision in relation to each document is set out in the Schedule of Documents at **Annexure 1**.

### **Review rights**

80. 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>25</sup>

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<sup>23</sup> *Mickelborough v Victoria Police (General)* [2009] VCAT 2786 at [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967 at [82].

<sup>24</sup> *Honeywood v Department of Human Services* [2006] VCAT 2048 at [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 at [140] and [155].

<sup>25</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

81. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>26</sup>
82. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>27</sup>
83. 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.
84. 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>28</sup>

***When this decision takes effect***

85. My decision does not take effect until the Agency's 14 day review period expires.
86. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

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<sup>26</sup> Section 52(5).

<sup>27</sup> Section 52(9).

<sup>28</sup> Sections 50(3F) and (3FA).



Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
1.	[date]	2019 Event Attendance – Sheet 1	1	Refused in full  Sections 30(1), 33(1), 34(4)(a)(ii)	Release in full	Section 30(1): I am not satisfied the document is exempt from release under section 30(1) for the reasons set out in the Notice of Decision above.  Section 34(4)(a)(ii): I am not satisfied the document is exempt from release under section 34(4)(a)(ii) for the reasons set out in the Notice of Decision above.
2.	[date]	2019 Event Attendance – Sheet 2	4	Refused in full  Sections 30(1), 33(1), 34(4)(a)(ii)	Release in full	Section 30(1): I am satisfied information in the document is purely factual and does not meet the requirements of section 30(3) for the reasons set out in the Notice of Decision above.  Section 34(4)(a)(ii): See comments for Document 1.
3.	[date]	2019 Event Attendance – Sheet 3	44	Refused in full  Sections 30(1), 33(1), 34(4)(a)(ii)	Release in part  Section 25  The document is to be released except for	Section 30(1): See comments for Document 2.  Section 34(4)(a)(ii): See comments for Document 1.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					<p>information that is irrelevant, which is to be deleted in accordance with section 25, being:</p> <ul style="list-style-type: none"> <li>[description of relevant information].</li> </ul>	<p><b>Section 25:</b> The Applicant does not seek access to certain personal and business affairs information. Therefore, this information is irrelevant information and is to be deleted in accordance with section 25.</p>
4.	[date]	2019 Event Attendance – Sheet 4	111	<p><b>Refused in full</b></p> <p>Sections 30(1), 33(1), 34(4)(a)(ii)</p>	<b>Release in full</b>	<p><b>Section 30(1):</b> See comments for Document 2.</p> <p><b>Section 34(4)(a)(ii):</b> See comments for Document 1.</p>
5.	[date]	2019 Event Attendance – Sheet 5	4	<p><b>Refused in full</b></p> <p>Sections 30(1), 33(1), 34(4)(a)(ii)</p>	<b>Release in full</b>	<p><b>Section 30(1):</b> See comments for Document 2.</p> <p><b>Section 34(4)(a)(ii):</b> See comments for Document 1.</p>
6.	[date]	2019 Event Attendance – Sheet 6	3	<p><b>Refused in full</b></p> <p>Sections 30(1), 33(1), 34(4)(a)(ii)</p>	<b>Release in full</b>	<p><b>Section 30(1):</b> See comments for Document 2.</p> <p><b>Section 34(4)(a)(ii):</b> See comments for Document 1.</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
7.	[date]	2022 Event Attendance – Sheet 1	1	Refused in full Sections 30(1), 33(1), 34(4)(a)(ii)	Release in full	Sections 30(1) and 34(4)(a)(ii): See comments for Document 1.
8.	[date]	2022 Event Attendance – Sheet 2	1	Refused in full Sections 30(1), 33(1), 34(4)(a)(ii)	Release in full	Section 30(1): See comments for Document 2.  Section 34(4)(a)(ii): See comments for Document 1.
9.	[date]	2022 Event Attendance – Sheet 3	5	Refused in full Sections 30(1), 33(1), 34(4)(a)(ii)	Release in part  Section 25  The document is to be released except for information that is irrelevant, which is to be deleted in accordance with section 25, being: <ul style="list-style-type: none"> <li>[description of relevant information].</li> </ul>	Section 30(1): See comments for Document 2.  Section 34(4)(a)(ii): See comments for Document 1.  Section 25: See comments for Document 3.
10.	[date]	2022 Event Attendance – Sheet 4	16	Refused in full Sections 30(1), 33(1), 34(4)(a)(ii)	Release in part  Section 25  The document is to be released except for information that is irrelevant, which is to be	Section 30(1): See comments for Document 2.  Section 34(4)(a)(ii): See comments for Document 1.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					deleted in accordance with section 25, being: <ul style="list-style-type: none"> <li>[description of relevant information].</li> </ul>	Section 25: See comments for Document 3.
11.	[date]	2022 Event Attendance – Sheet 5	3	Refused in full Sections 30(1), 33(1), 34(4)(a)(ii)	Release in full	Section 30(1): See comments for Document 2.  Section 34(4)(a)(ii): See comments for Document 1.
12.	[date]	2022 Event Attendance – Sheet 6	12	Refused in full Sections 30(1), 33(1), 34(4)(a)(ii)	Release in full	Section 30(1): See comments for Document 2.  Section 34(4)(a)(ii): See comments for Document 1.
13.	[date]	2022 Event Attendance – Sheet 7	4	Refused in full Sections 30(1), 33(1), 34(4)(a)(ii)	Release in full	Section 30(1): See comments for Document 2.  Section 34(4)(a)(ii): See comments for Document 1.
14.	[date]	2022 Event Attendance – Sheet 8	5	Refused in full Sections 30(1), 33(1), 34(4)(a)(ii)	Release in full	Section 30(1): See comments for Document 2.  Section 34(4)(a)(ii): See

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						comments for Document 1.