



# FAX UPDATE

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## RECENT FOI AMENDMENTS CONSIDERED BY VCAT

The first case to consider the scope of some of the recent amendments to the *Freedom of Information Act 1982* (“**FOI Act**”) was handed down by the Victorian Civil and Administrative Tribunal on 17 March 2000.

The case considered the operation of the commercial in confidence exemptions in section 34(1)(b) and 34(4) of the FOI Act as amended from 1 January 2000. Those provisions were considered in the context of a tender by a local council for the operation and management of two swimming pools run by the council.

The applicant was an unsuccessful tenderer who sought access to various documents including:

- ? Tender submissions;
- ? Proposed rate options and other business options;
- ? Evaluation of tender documents.

In summary, the VCAT held that:

- ? The tender submissions and the evaluation of tender documents of the **successful** tenderer were not exempt under section 34(1)(b) of the FOI Act. Although disclosure of those documents would disadvantage the successful tenderer, such disadvantage was not considered as “unreasonable” by the VCAT.
- ? The tender of the successful tenderer was also not exempt under section 34(4) of the FOI Act. Although there is a measure of disadvantage to the council in not being able to offer confidentiality to tenderers, such disadvantage (which is more theoretical than real) is not unreasonable.
- ? The tender submissions and evaluation of tender documents for the **unsuccessful** tenderer were exempt under section 34(1)(b) as that tenderer would be unreasonably disadvantaged by the disclosure. Similarly, that exemption applied to responses to questions posed by the tender evaluation panel during discussions with the unsuccessful tenderer and rate options proposed by that tenderer.
- ? The set of business options proposed by the successful tenderer was not exempt under section 34(1)(b).

If you require any further information about the decision and what it will mean for your agency please contact Mick Batskos on 9667 0233 or email: [mbatskos@bigpond.com](mailto:mbatskos@bigpond.com) or fax 9667 0237.

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