



# IMPORTANT FOI UPDATE

## Documents disclosing a consultant's business methodology can be exempt

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The Victorian Civil and Administrative Tribunal (“VCAT”) has confirmed that documents which individually or collectively describe the methodological approach taken by consultants to government agencies can be exempt from disclosure under the *Freedom of Information Act 1982* (“Act”).

In *Green v Department of Human Services*<sup>1</sup> the VCAT found that information in documents provided by a consulting firm which would disclose information as to the methodology by which the consulting firm assisted the client Department was information of a business, commercial or financial nature about the consultant. The consulting firm was a business commercial or financial undertaking.

The VCAT also accepted the evidence of the consulting firm that disclosure of this valuable commercial information would expose it unreasonably to disadvantage the consultant under s 34(1)(b) of the Act. VCAT accepted that:

- disclosure would enable competitors to take information and knowledge developed by the consultant and have a ready-made starting point;
- this would diminish the competitive advantage of the consultant, erode its position and result in fewer engagements, causing commercial disadvantage;
- the information could not be disclosed without causing substantial harm.

If you require any information or advice about how this decision might affect FOI decisions by your agency, please do not hesitate to contact us.

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<sup>1</sup> Unreported, VCAT, 3 October 2014