

Freedom of Information

Third party business notification

Fact sheet

Notification of application for access to documents affecting business, commercial or financial information

Where the Department of Health & Human Services (the department) receives a freedom of information (FOI) request for information which includes business, commercial or financial information of a third party undertaking, the department is required to seek the views of the representative for the undertaking on the disclosure, pursuant to the *Freedom of Information Act 1982*.

Request for undertaking's views regarding release of business, commercial or financial information

Before making a decision the FOI decision maker must seek the views of an appropriate representative of the undertaking on whether disclosure of the information would unreasonably expose the undertaking to disadvantage. The disadvantage must be unreasonable in the commercial context, such as the risk of loss of negotiation power in a current business transaction which would be to the detriment of the business.

The undertaking's views must be provided in writing, giving examples of the disadvantage that will be suffered by disclosure and why it is unreasonable.

Decision

The FOI decision maker will be persuaded by your views; however they are not bound to follow them. Although your views may be adopted and the information exempted from release under section 34(1) of the Act, the FOI decision maker may also decide to fully or partially release the information to the applicant.

Release in full or in part

If your view is that the undertaking will not be unreasonably exposed by disclosure of the information under section 34(1) and there are no other issues for consideration, the decision will be made and it is likely that the documents will be released.

If a decision is made contrary to your view on behalf of the undertaking that information is to be released, the undertaking will be notified prior to the release. In this situation, the undertaking has a right to seek a review of the decision at the Victorian Civil and Administrative Tribunal (VCAT). Should this occur further information will be provided to the undertaking at the time.

Fully exempt

If the decision is that the documents are fully exempt under section 34(1), the applicant has the right to seek a review of the decision at VCAT. The undertaking will be notified and substantiation of its view will be sought. Representatives of the undertaking may be required to attend VCAT to provide evidence on why the information should not be released. Should this occur further information will be provided to the undertaking at the time.

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