

THE STAFF DEVELOPMENT AND TRAINING CENTRE V. SEC, EMPLOYMENT,

WORKPLACE RELATIONS AND SMALL BUSINESS [2000] AATA 78

Commonwealth AAT - 8 February 2000

FACTS

Mr. and Mrs Van Putten, Directors of The Staff Development and Training Centre, had been engaged in commercial training and consultancy services for up to 14 years. For the last 9 years, 95% of its work had been as a result of contracts with the Department of Employment Education Training and Youth Affairs (DEETYA). Staff Development had been trading profitably with an annual turnover of approximately \$900,000. In 1997 DEETYA launched a tender for an employment services under the Job Services Network. The aim of the tender was the provision of employment services in different regions of Australia.

The Staff Development and Training Centre failed to secure a contract under the Job Network tender program and was unable to continue to employ its entire staff. The directors requested copies of the Tender Operation Manual of the Department which contained details relating to the financial viability requirements of the tender process.

ISSUES

Was the Operations Manual exempt under s36 (1) in that it would disclose an opinion, advice or recommendation, consultation or deliberation that had taken place, in the course of, or for the purpose of, the deliberative process involved in the functions of the agency?

Did the Operations Manual fall within the s9 (1) exception to s36 (1), a manual concerning a particular scheme, describing procedures to be followed by officers in relation to the scheme effecting the rights and obligations of persons?

Was the manual exempt from disclosure under s39 (1) in that the disclosure of the document would have a substantial adverse effect on the financial or property interests of the agency?

Would disclosure of the manual prejudice the effectiveness of test or audits of the agency, or have a substantial adverse effect on the operations of the agency (s40 (2)(a) and (d)?)

FINDINGS

The Operation Manual was not an exempt document under s36 (1) as a document relating to the deliberative processes of an agency as it merely outlined the procedures for an officer to undertake when assessing a tender, as opposed to outlining the considerations the officer took into account and how the officer came to the decision.

The manual was not exempt under s39. The tender procedure did not affect the financial resources of the State, as a tender was a mere offer and imposed no obligation on the State. The Job Network program was

not concerned about making a profit in a competitive market; it was concerned with the provision of employment services to the public.

The manual would not prejudice the outcome of an audit as the financial viability test only required the officers to review the accounts and not verify the accounts, in accordance with the ordinary definition of an audit.

The information in the manual was not prejudicial to the tender process as the information was on the general procedures of the tender process and was not enough to give an unfair advantage over other tenderers.

QUOTE

The Tribunal said:

“To a certain extent, the meanings of the word opinion, advice, or recommendation overlap. Whether they overlap or not, all are expressing the notion of consideration followed by the formation of a view either about a certain subject or about a course of action and the transmission of that view. While the operations manual can be said to set out certain courses of action that must be followed in assessing tenders, it cannot be said to contain matter in the nature of consideration followed by the formation of a view in assessing the tenders.”

IMPACT

A tenderer may be able to request information relating to the tender process if the information sets out the procedural steps that an officer must undertake when assessing the tender. The document cannot go as far as setting out the reasons for accepting or rejecting a tender, otherwise it could fall within the exceptions in the Act.