

**ACTORS' EQUITY ASSOCIATION OF AUSTRALIA AND AUSTRALIAN BROADCASTING TRIBUNAL (1985) NO N83/743**

Commonwealth AAT – 29 March 1985

**FACTS**

Actors' Equity wanted to respond to the Australian Broadcasting Tribunal's invitation to interested parties to make submission as to Australian content requirements for commercial television.

To do this Actors' Equity requested from the ABT documents called ABT-12s. An "ABT-12" is a form that the ABT requires each holder of a commercial television license to complete each year. The form contains financial information relating to the licensee's operation. The AAT declined to disclose the information in the ABT-12's under exemption s43 (1)(c)(i) of the FOI Act. The ABT argued that the disclosure of the financial information in the ABT-12s would have an adverse effect on the lawful business, commercial and financial affairs of the licensors.

**ISSUES**

Would the disclosure affect the licensees adversely in respect of their lawful business, commercial or financial affairs and would such disclosure be unreasonable?

**FINDING**

The information in the ABT-12s, if used with other information already available, would have a considerable effect on the business affairs of licensees competing with other licensees for advertising revenue and other business contracts. The licensors would be able to work out the marketing strategies of their competitors weakening the bargaining position of their competitors.

The marketing strategies of licensees are crucial in negotiations with television stations against other licensees.

It is consistent with the objective outlines in s3 of the Act that the Tribunal weigh the public interest in the disclosure of a document against the public interest in protecting the privacy of a third party whose affairs may be unreasonably disclosed by granting access to the document.

There are two types of "wholly government documents" documents that relate to (i) governments' dealings with business and (ii) simply consist of business information supplied to the government as a result of a government direction. ABT-12s fall in to the second type of documents.

The public interest in the disclosure of the second type of document carries less weight than the public interest in the disclosure of the first type of document.

The adverse effect on the business affairs of the licensees outweighs the public interest in disclosure. Therefore, the disclosure of the ABT-12s to the public would be unreasonable disclosure.

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## QUOTE

The Tribunal said:

*“..there are at least two kinds of what we may call government/business documents. The first are those that are truly government documents, that is to say have been created by the administration or that part of a flow of other correspondence and other documents between the administration and the business.*

*The second are those that, as in this case, consist simply of business information supplied to the government by direction with the authority of statute. The argument in favour of public scrutiny applies with much greater force to the first kind, in which the “government’s dealing with business are involved”. As to the second class, the considerations are somewhat different.”*

## IMPACT

Financial Information requested by an agency in its capacity as a regulating body is unlikely to be released to an applicant if the disclosure of the information would adversely affect the commercial bargaining position of the company providing the information.

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