

**DEPARTMENT OF PREMIER & CABINET V. HULLS [1999] VSCA 117**

Court of Appeal (Victoria) – 11 August 1999

**FACTS**

Hulls made a Freedom of Information application for access to all documents provided to the Department during the casino licence bidding process by the then Victorian Casino Control Authority (VCCA) which contain financial information regarding bids for the casino licence extracted from submissions lodged with the then VCCA by Applicants for the casino licence.

The Department claimed that the documents were exempt documents and should not be released to Hulls. Hulls issued an application for review with the then Administrative Appeals Tribunal. The Tribunal decided that the documents were exempt documents, but that it was in the public interest for the documents to be released. The Department appealed to the Court of Appeal.

**ISSUES**

What test was to be applied by the Tribunal in determining whether it was in the public interest for an exempt document to be released?

**FINDING**

The Tribunal had to first determine whether the documents in question were exempt. If they found that the documents were exempt, they then had to determine whether it was in the public interest for the exempt documents to be released. The Tribunal had to give reasons why it was in the public interest for otherwise exempt documents to be released.

The mere fact that the documents would be of interest to the public was not a sufficient reason by itself for the release of the documents.

**QUOTE**

Phillips JA said:

*“So far as s. 50(4) [of the FOI Act] is concerned, the question for the tribunal was whether the public interest demanded the release of the information mentioned ... even though that release must breach the confidentiality promised to Jupiters ... and when the question is put in that way it is obvious that the tribunal has not yet expressed its opinion. That releasing the information now to the public would not occasion any prejudice to Jupiters (and the lapse of time and the nature of the information might be two of many considerations) was not a matter inferred in favour of the applicant simply because that was no evidence on it.”* – paragraph 60 of [1999] VSCA 117.

## **IMPACT**

When the Tribunal, now the Victorian Civil Administrative Tribunal, has to decide whether it is in the public interest that otherwise exempt documents are released it must remember that the documents are exempt from disclosure, and should only be released if it is in the public interest for the documents to be released.

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