

EVANS V. AUSTRALIAN SECURITIES INVESTMENT COMMISSION [1999] AATA 138

Commonwealth AAT - 12 March 1999

FACTS

ASIC has a database for queries by members of the public about unclaimed monies held by ASIC in their name. The unclaimed monies are moneys resulting from the acquisition of shares from dissenting shareholders which have not been paid to the former shareholder under Part 9.7 Corporations Law. The database facilitates payment of approved claims for payment of unclaimed monies.

Evans was successful at putting persons in touch with unclaimed monies due to them. He produced evidence of letters sent to him by writers who had recovered the unclaimed monies due to them and whom paid him a fee for his help. He said that he had been pursuing such investigations since 1989 as an income producing business. He requested that information in the database be released to him. ASIC refused the request on the grounds that the database contained personal information which was not to be disclosed in accordance with section 41 of the FOI Act.

ISSUES

What is personal information under the Act?

Could personal information be disclosed to a person other than the person listed on the database under the Act?

Would disclosure of personal information to the public be unreasonable disclosure and therefore prohibited under the Act?

FINDING

The information in the database was personal information as defined under the Act because the information in the database is about an individual whose identity is apparent or can reasonably be ascertained from the information.

To test whether the disclosure is unreasonable the question to be asked is whether it is in the public interest to disclose the information.

The disclosure would be reasonable, as it is in the public interest that unclaimed property is paid to the rightful owner.

QUOTE

This quote by Lockhardt J was cited:

“What is “unreasonable” disclosure of information for purposes of s41 (1) must have as its core public interest considerations.

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The exemptions necessary for the protection of 'personal affairs (s41) and business or professional affairs (s43) are themselves, in my opinion, public interest considerations. That is to say, it is not in the public interest that the personal or business affairs of persons are necessarily to be disclosed on applications for access to documents.

The exemption of disclosure of such information is not to protect private rights, rather it is in the furtherance of the public interest that information of this kind is excepted”.

IMPACT

Personal information about an individual can still be released to the public, even where the identity of the individual can be ascertained from the information.

The onus of proof is on the applicant, however to prove that it is in the public interest to release the information. This must be something more than a commercial interest.

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