

OFFICE OF THE INFORMATION COMMISSIONER (QLD)

Information Sheet - the Business Affairs exemption (s.45(1)(c))

An agency can refuse access to **exempt matter** or an **exempt document**. The word "matter" refers to a piece of information. It could be a whole page or part of a page, right down to a single word or figure. Parts of a page can be exempt matter when other parts are not.

Section 45(1) of the *Freedom of Information Act 1992* Qld (the FOI Act) sets out three separate grounds for exemption of business information of agencies and businesses. Any one piece of information can only be exempt under one of the three grounds. The first two grounds relate to narrow categories of intrinsically valuable information: trade secrets, and other information of commercial value. They are discussed in a separate Information Sheet.

The third ground, set out in s.45(1)(c), is broader. It provides that matter is exempt if -

(c) *its disclosure—*

- (i) *would disclose information (other than trade secrets or information mentioned in paragraph (b)) concerning the **business, professional, commercial or financial affairs** of an agency or another person; and*
- (ii) *could reasonably be expected to have an **adverse effect** on those affairs or to **prejudice the future supply of such information** to government;*

*unless its disclosure would, on balance, be in the **public interest**.*

Information concerning business, professional, commercial or financial affairs

To qualify for exemption, the information in issue must actually **concern** (be about) the business, professional, commercial or financial affairs of the agency or business operator. It is not enough that the information has some connection with a business, or has been provided to an agency by a business, or will be used by a business in the course of undertaking its business operations.

Examples of matter that does usually concern business, professional, commercial or financial affairs:

- financial information submitted in an application for a government grant
- audited balance sheets and profit and loss accounts
- information about the pricing structure used by a business
- information about the work activities of professionals e.g., doctors/lawyers, who operate an income-generating professional practice

Examples of matter that does not concern business, professional, commercial or financial affairs:

- witness statements concerning an industrial accident, and a medical report on the injured worker: see *Accident Compensation Commission v Croom* [1991] 2 VR 322
- information about safety aspects of a proposed dam, for which a grazing and crop-growing business was seeking licensing approval: see *Re Bouilly and Department of Primary Industries* (98001)
- information about the work activities of professionals who are government employees, e.g., an engineer employed by a local council
- general assessments of the geographical features of a region contained in a development proposal for land within the region

Adverse effect or Prejudice to future supply

There must be a reasonable expectation (not mere speculation or conjecture) that disclosure of the information in issue could either:

- have an adverse effect on the business, etc, affairs which the information concerns; or
- prejudice the future supply of similar information to government.

Adverse effect usually refers to the business or individual being exposed to commercial disadvantage, i.e., competitive harm. The adverse effect must be on the business, etc, affairs that the information concerns, not just some general adverse effect. Uncertainty as to what an applicant might do with information is not enough. A person objecting to disclosure must explain how disclosure of the particular matter in issue could reasonably be expected to cause the adverse effect.

Prejudice the future supply of information is not measured by the reaction of the agency or business operator in the case in question. It is a question of whether a substantial number of people could reasonably be expected not to provide such information (or to provide less detailed information) in the future. Things that tell against the existence of such a reasonable expectation can include:

- the existence of a legal power to require disclosure of information of the kind in question;
- if the information is given in order to obtain some benefit, license or approval from the government, e.g., if the information must be supplied in order to obtain a building permit, or a government grant or subsidy; or if the information is required to support a tender for the award of a government contract;
- if the supplier would be disadvantaged if it failed to supply the information, e.g., a contractor required to answer a complaint about its performance supplying information in order to explain and justify what it did.

Public interest balancing test

If the information meets the above requirements, there is a public interest against giving access to it. The Commissioner must then weigh up all the public interest considerations for and against giving access. Unless the ones in favour of access outweigh the ones against access, the matter will be exempt matter.

For more detail about the public interest balancing test, you can read the Information Sheet on *Public Interest Balancing Tests*.

Further reading

If you want to read more about this exemption, you can go to the Information Commissioner's website at www.infocomm.qld.gov.au. Some cases you might like to look at are:

- about this exemption in detail: *Re Cannon and Australian Quality Egg Farms Limited* (94009)
- about 'professional affairs': *Re Pope and Queensland Health* (94016)
- about information in tender documents: *Re Dalrymple Shire Council and Department of Main Roads* (98010); *Re Sexton Trading Company Pty Ltd and South Coast Regional Health Authority* (95033)
- about how the exemption applies to information about development projects that are of interest to the neighbouring community: *Re Cardwell Properties Pty Ltd & Williams and Department of the Premier, Economic and Trade Development* (95019); *Re Qld Community Newspapers Pty Ltd and Redland Shire Council* (98002); *Re Boully and Department of Natural Resources* (98001)
- about documents relating to the sale of rights to extract sand and gravel: *Re Vynque and Department of Primary Industries* (98006).

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Information Sheets are introductory only. They deal with issues in a general way. Additional factors may be relevant in particular cases. Detailed consideration of the issues can be found in the cases referred to above. The Information Commissioner considers each case on its merits.