
Freedom of Information

Secrecy Provision Exemption

The AAT has held in two cases that documents are exempt from access because of secrecy exemptions in legislation which apply specifically to information of a kind contained in the documents and which prohibit persons from disclosing information of that kind: Re Lianos and Secretary to the Department of Social Security (19 February 1985) and Re Canopy Manufacturers and John Challier and Department of Aviation (25 January 1985). In the first-mentioned case, the documents in question were ministerial briefings and communications relating to the so-called 'Greek conspiracy case'. In the second-mentioned case, the documents in question related to an investigation and report on the assumed crash of a light aircraft.

Public Interest Test

The disclosure of documents in two cases was held by the AAT to be contrary to the public interest: Re Burns and Australian National University (1 February 1985) and Re Lianos and Secretary to the Department of Social Security (19 February 1985). In the first-mentioned case, which involved tapes of University Council meetings, the Tribunal held that the public interest in free debate and deliberation during such meetings, which it likened to those of Cabinet, was not outweighed by the public interest in the maintenance of the rights of the applicant as an individual peculiarly affected. In the Lianos case (which involved Ministerial documents) the Tribunal held that, on balance, the public interest in protecting confidential relationships between Ministers and promoting candid and frank advice and opinion outweighed the public interest in disclosing the documents. The Tribunal referred to Sankey -v- Whitlam (1978) 142 CLR 1 in listing considerations relevant to evaluating a public interest issue, including: the age of the document, the importance of the issues discussed, the extent to which prematurely disclosed information may be misunderstood by an ill-informed public and the circumstances in which the communications passed. In another case, Re Wertheim and Secretary to the Department of Health (20 December 1984), the Tribunal held that it was in the public interest for researchers to know, both for their own sake and for the sake of improving the general quality of medical research, why their applications for medical research grants had not been granted.

Diversion of Resources

The AAT has held that access should be refused to documents where compliance with the request for access would substantially and unreasonably divert the resources of the agency from its other operations: Re Shewcroft and Australian Broadcasting Corporation (27 February 1985). The Tribunal stated that the applicant's motivation in requesting access to the documents (the papers, minutes and recordings of 8 Board Meetings) was a relevant factor in considering the element of 'unreasonableness' required under the Act to claim exemption from access.

Business Information Exemption

Business information supplied by commercial television stations to the Australian Broadcasting Tribunal is exempt from access according to the AAT: Re Actors' Equity Association of Australia and Australian Consumers Association and Australian Commercial Television Stations (29 March 1985). The Tribunal held that disclosure of such information to a television station's competitor would have an unreasonably adverse effect on its business, commercial or financial affairs.

A D M I N I S T R A T I V E L A W W A T C H

The New System of Repatriation Appeals in Operation

The Repatriation Legislation Amendment Act 1984 substantially implemented recommendations made by the Administrative Review Council in its 20th report, Review of Pension Decisions Under Repatriation Legislation. The Act, which came into operation on 1 January 1985, established a Veteran's Review Board ('the VRB') and created a right of review by the AAT of the Board's decisions. As referred to above (page 25), a number of applications for review of VRB decisions have been lodged with the AAT.