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Long v. City of Burlington

Supreme Court of Vermont - September 21, 2018 - 199 A.3d 542 - 2018 VT 103

Advocacy organization brought action against city alleging that the city violated the Public Records Act (PRA) by failing to disclose an unredacted market feasibility study for a proposed redevelopment project.

The Superior Court awarded summary judgment to the city. Advocacy organization appealed.

The Supreme Court of Vermont held that:

- The study was exempt from disclosure under the PRA trade secrets exemption despite voluntary submission of redacted version of the study to city;
- Developer made reasonable efforts to protect the confidentiality of information contained in the study, as required for that information to be exempt; and
- Even if the city's acknowledgment of a non disclosure agreement with developer was not binding on the city, the study was protected by trade secrets exemption.

Market feasibility study for a proposed redevelopment project was exempt from disclosure under the Public Records Act's (PRA) trade secrets exemption despite voluntary submission of redacted version of the study to city; developer who conducted the study included anticipated project costs and revenues, financial projections, and confidential lease terms with a major prospective tenant in the document, which could be reverse engineered by competitors to determine developer's pricing and forecasting models.

Developer made reasonable efforts to protect the confidentiality of information contained in market feasibility study for a redevelopment project, as required for that information to be exempt from disclosure under Public Records Act's (PRA) trade secrets exemption; developer only shared information with third parties when absolutely necessary, and only then on the condition that the information not be shared further, developer had a confidentiality agreement with its own consultant prohibiting the sharing of the information without consent, and developer requested confirmation from city that it acknowledged a non disclosure agreement.

Even if a city's acknowledgment of a non disclosure agreement (NDA) with developer was not binding on the city, market feasibility study conducted by developer for a redevelopment project was protected by trade secrets exemption under the Public Records Act (PRA); the PRA did not require a valid NDA for information to be exempt as trade secrets and developer made reasonable efforts to ensure that the information stayed confidential.