

**Decision D0042017 – Published in note form only**

***Re Hollins and Western Australia Police* [2017] WAICmr 4**

**Date of Decision: 10 March 2017**

***Freedom of Information Act 1992 (WA): Schedule 1, clause 7***

On 10 August 2016, Craig Hollins (**the complainant**) applied to Western Australia Police (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to certain documents which included internal agency correspondence detailing legal advice in relation to a particular matter.

By notice of decision dated 23 September 2016 the agency decided to refuse the complainant access to documents of the kind requested on the grounds they are exempt under clauses 5(1)(b) and 7(1) of Schedule 1 to the FOI Act. The complainant applied for internal review of the agency's decision. By letter dated 9 November 2016 the agency varied its decision by withdrawing its clause 5(1)(b) exemption claim. The agency identified one document within the scope of the complainant's application – which consisted of an email from the agency's Senior Solicitor, Police Prosecutions, to an investigating officer of the agency (**the disputed document**) – and refused access to it on the ground it is exempt under clause 7(1).

On 1 December 2016, the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency's decision. Following receipt of the complaint, the Commissioner obtained a copy of the disputed document from the agency together with the agency's FOI file maintained in respect of the complainant's access application.

On 16 February 2017, one of the Commissioner's officers informed the complainant that the Commissioner was of the preliminary view that the disputed document was exempt under clause 7(1). In light of the Commissioner's view, the complainant was invited to reconsider his complaint or to provide the Commissioner with further submissions. The complainant did not withdraw his complaint and made further submissions.

Clause 7(1) provides that matter is exempt if it would be privileged from production in legal proceedings on the ground of legal professional privilege. Legal professional privilege protects from disclosure confidential communications between clients and their legal advisers, if those communications were made for the dominant purpose of giving or obtaining legal advice or the provision of legal services, including representation in proceedings in a court: *Esso Australia Resources Ltd v The Commissioner of Taxation* (1999) 168 ALR 123.

The Commissioner considered all of the material before him, including the complainant's further submissions but was not dissuaded from his preliminary view. Based on the material before him, including his examination of the disputed document, the Commissioner was satisfied that the disputed document consists of a confidential communication between the agency and a legal adviser of the agency made for the dominant purpose of giving legal advice. Accordingly, the Commissioner was satisfied that the disputed document would be privileged from production in legal proceedings on the ground of legal professional privilege and found that the disputed document is exempt under clause 7(1). The Commissioner confirmed the agency's decision.