

**Decision D0072011 - Published in note form only**

***Re Ravlich and Attorney General [2011] WAICmr 7***

**Date of Decision: 31 March 2011**

***Freedom of Information Act 1992:*** section 26 and clause 7(1)

On 30 January 2009, the complainant applied to the Attorney General ('the agency') under the *Freedom of Information Act 1992* ('the FOI Act') for access to certain correspondence for the period from 23 September 2008 to the date of her access application. The agency advised the complainant that it had identified no documents within the scope of the access application. The complainant sought external review of that decision from the Information Commissioner ('the first complaint').

In April 2010, the Commissioner provided the parties with his preliminary view of the first complaint, which was that the agency had not taken all reasonable steps to locate the documents, pursuant to s.26 of the FOI Act. The Commissioner required further searches for particular electronic documents to be made. However, in the course of dealing with that matter it transpired that the complainant had made a new access application to the Department of the Premier and Cabinet under the FOI Act for the same electronic documents and, in March 2010, that application had been transferred to the agency. Following further searches and the assistance of IT staff, documents within scope of the complainant's applications were located and dealt with by the agency. During that time, the Commissioner suspended his review of the first complaint. In May 2010, the complainant sought external review of the agency's decision to refuse access to documents and to information in relation to the transferred application ('the second complaint') but did not claim that further documents should exist. From that point, the Commissioner dealt with both the first and second complaints together as one matter.

On 24 February 2011, following negotiations between the Commissioner's office and the parties, the Commissioner provided the parties with a letter setting out his preliminary view of the 43 documents or part documents which, at that time, remained in dispute. The Commissioner's preliminary view was that certain matter was outside the scope of the application; certain matter was exempt under clauses 1 and 3(1) of Schedule 1 to the FOI Act but that the remaining matter was not exempt under clauses 1, 6(1) or 7(1) as the agency claimed. The Commissioner queried whether the complainant sought access to personal information that was 'prescribed details' as set out in clause 3(3) – which related to officers of government agencies – and asked the agency for further information on clause 7(1) in relation to certain emails in three documents (Documents 100, 101 and 106).

In response, both parties accepted the Commissioner's preliminary view in respect of all documents except for certain matter in Documents 100, 101 and 106. The complainant advised that she wished to have access to all prescribed details and the agency provided additional information in relation to the emails in Documents 100, 101 and 106. Following consultation with officers of agencies, the agency gave the complainant access to the prescribed details contained in the documents. In addition, the Commissioner's Principal Legal Officer advised the complainant that, in her opinion, in light of the additional information now provided by the agency, email 5 of Document 100, email 1 of Document 101 and email 2 of Document 106 (together, 'the disputed matter') were likely to be exempt under clause 7(1). However, the complainant did not accept that opinion and was not prepared to withdraw her complaint in relation to the disputed matter, although she made no further submissions.

The Commissioner again examined Documents 100, 101 and 106 and considered the additional information provided by the agency. In light of that information, the Commissioner was satisfied that the disputed matter was exempt under clause 7(1) because it was subject to legal professional privilege and it was not practicable to provide edited copies of the relevant emails. For detailed reasons provided to the parties, the Commissioner confirmed the agency's decision to refuse access to the disputed matter in Documents 100, 101 and 106.