

Decision D0142009 - Published in note form only

Re K and Office of the Public Sector Standards Commissioner [2009] WAICmr 14

Date of Decision: 14 May 2009

Freedom of Information Act 1992: Schedule 1: clause 14(5)(a) and (b)

This complaint is made against a decision of the Office of the Public Sector Standards Commissioner ('the agency') to refuse the complainant access to the documents requested under the *Freedom of Information Act 1992* ('the FOI Act'). For the reasons given in paragraph 1 of *Re J and Office of the Public Sector Standards Commissioner [2009] WAICmr 12*, I have decided not to identify the complainant by name in this decision.

The complainant, applied to the agency for certain documents relating to a specific report prepared for the agency with respect to the restructure of another named agency. The agency's principal officer refused the complainant access to the requested documents without specifying which particular exemption the agency relied upon. The agency did provide some documents to the complainant. The complainant applied to the agency for internal review of its initial decision. However, the principal officer wrote advising the complainant that as the decision was made by the agency's principal officer, internal review was not available pursuant to s.39(3) of the FOI Act. At that stage, the agency also released some additional documents to the complainant. Thereafter, the complainant applied to the Information Commissioner for external review of the agency's decision.

The A/Information Commissioner ('A/Commissioner') obtained the agency's FOI file from the agency; the originals of the disputed documents and the complete originals of all of the agency's files relating to the report and the preparation of the report. In addition, one of the A/Commissioner's officers made inquiries with the agency regarding its claims for exemption. On 17 March 2009, the A/Commissioner provided the parties with a letter setting out his preliminary view of the complaint, which was that the requested documents are exempt under clause 14(5)(a) and/or (b) of Schedule 1 to the FOI Act. The complainant was invited to withdraw the complaint, or to provide any further material or submissions to address the agency's reasons for decision, the A/Commissioner's preliminary view or to support the complainant's claim that the requested documents are not exempt documents under clause 14(5)(a) and/or (b).

The complainant did not accept the A/Commissioner's preliminary view and made further detailed submissions. After considering those submissions, the A/Commissioner remained of the view that the requested documents are exempt under clause 14(5)(a) and (b). The A/Commissioner confirmed the agency's decision to refuse the complainant access to the requested documents under clause 14(5)(a) and (b) of Schedule 1 to the FOI Act.