

Decision D0172012 – Published in note form only

Re Ravlich and Department of Commerce [2012] WAICmr 17

Date of Decision: 31 May 2012

Freedom of Information Act 1992: Schedule 1, clause 12(c)

In September 2011, Hon. Ljilanna Ravlich MLC (‘the complainant’) applied to the Department of Commerce (‘the agency’) under the *Freedom of Information Act 1992* (‘the FOI Act’) for access to “*All Departmental briefing notes provided to the Minister between 1st January 2011 and 1 September 2011.*”

Following negotiations between the parties, the complainant agreed to narrow the scope of her application to “*A copy of all Contentious Issues Briefing Notes relating to buying goods and services and retail trading hours sent by the Consumer Protection Division of the Department of Commerce to the Minister for Commerce between 1st March 2011 and 1 September 2011 inclusive.*” The agency refused the complainant access to the seven documents identified as coming within the scope of the access application on the ground that all of them were exempt under clause 12(c) of Schedule 1 of the FOI Act. The agency made claims in the alternative that certain documents and information were also exempt under clauses 1(1), 5(1) and 6(1) of Schedule 1 of the FOI Act. The complainant sought internal review of that decision. On 16 November 2011, the agency confirmed its initial decision.

The complainant applied to the Information Commissioner for external review of the agency’s decision. On receipt of the complaint, the Commissioner’s office obtained the FOI file maintained in respect of the complainant’s application and the documents in dispute. On 11 May 2012, the Commissioner wrote to the parties setting out his preliminary view of the complaint, which was that all of the documents that the agency had identified as within the scope of the access application were exempt under clause 12(c). In his preliminary view, the Commissioner noted that the disputed documents were Contentious Issues Briefing Notes prepared for the purposes of, or incidental to, the transacting of parliamentary business.

Parliamentary privilege comprises certain powers, privileges and immunities conferred on both Houses of Parliament, its committees, members and officers. The justification for the privilege is that, to work effectively, Parliament must have certain freedoms, including the freedom to control its own proceedings so that it can operate independently and protect the integrity of its processes without interference from external sources.

In this case, the Commissioner was satisfied that the documents were prepared to assist the Minister for Commerce to respond to issues during proceedings in Parliament and considered that the public disclosure of the disputed documents would infringe the privileges of Parliament because it would encroach on Parliament’s right to control the publication of documents and information incidental to transacting the business of Parliament. Consequently, the Commissioner’s preliminary view was that the disputed documents were exempt under clause 12(c). In light of that, the complainant was invited to withdraw her complaint or provide submissions to support her contention that the documents were not exempt as the agency claimed.

The complainant neither withdrew her complaint nor made further submissions. The Commissioner reviewed all of the information before him but was not dissuaded from his preliminary view. In light of that, the Commissioner confirmed the agency's decision to refuse access to the disputed documents on the ground that they were exempt under clause 12(c) of Schedule 1 to the FOI Act.