

Decision D0182007 - Published in note form only

Re: Addisons and Department of Racing, Gaming and Liquor [2007] WAICmr 18

Date of Decision: 4 December 2007

Freedom of Information Act 1992: Clause 7; section 26

The complainant applied to the Department of Racing, Gaming and Liquor ('the agency') for access to certain documents (including internal agency documents, transcripts and notes of meetings) held by the agency in relation to the creation or possible creation of a new offence or offences under *Betting and Racing Legislation Amendment Bill 2006* prohibiting unauthorised publication of race or sports event data and regulating or prohibiting the operation or use of betting exchanges in Western Australia.

The agency initially identified nine documents of the kind requested and gave the complainant full access to two documents and edited access to two other documents. The agency refused the complainant access to five documents, on the ground that they were exempt under clause 7(1) of Schedule 1 to the *Freedom of Information Act 1992* ('the FOI Act').

The complainant applied to the former A/Information Commissioner ('the former Commissioner') for external review of the agency's decision. In its letter of complaint to the former Commissioner, the complainant expressed concern about the adequacy of the agency's searches for the requested documents. The complainant held the view that the agency had not identified all of the requested documents and it provided information to the former Commissioner in support of its claims in that regard. The complainant asked the former Commissioner to inquire into the adequacy of the agency's searches, as part of the external review process.

The former Commissioner obtained the originals of the five documents, examined the agency's FOI file and made further inquiries with the agency about the initial searches. The agency was required to undertake further searches for documents of the kind described by the complainant. As a result, the agency identified one additional document of the kind described by the complainant. The agency claimed exemption for that document under clause 7.

Following those additional searches, the A/Commissioner advised the complainant that he was then satisfied that the agency had identified all relevant documents falling within the scope of its access application. The A/Commissioner further advised the complainant that, in his view, the disputed documents were exempt under clause 7. The A/Commissioner invited the complainant to re-consider its complaint and to provide further information and/or submissions to him in support of its complaint.

The complainant did not reply within the time allowed.

Six documents are in dispute in this matter. They consist of confidential communications between officers of the agency and the officers of the State Solicitor's Office or the Parliamentary Counsel's Office.

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 applies to confidential communications between clients and their legal advisers made for the dominant purpose of giving or seeking legal advice or for use in existing or anticipated legal proceedings: *Esso Australia Resources Ltd v The Commissioner of Taxation* [1999] 201 CLR 49.

Having examined the disputed documents, the A/Commissioner accepted that they are confidential communications between the agency and its legal advisers which were prepared for the dominant purpose of seeking and giving legal advice. The A/Commissioner was satisfied that the disputed documents would be privileged from production on the ground of legal professional privilege and confirmed the agency's decision to refuse access to them pursuant to clause 7(1) of Schedule 1 to the FOI Act.

In addition, on the information before him, the A/Commissioner decided that the agency had taken all reasonable steps to find documents of the kind described by the complainant in its application for external review but that documents of that kind did not exist.