

Decision D0222010 - Published in note form only

***Re Braybrooke and Department of Treasury and Finance (Office of State Revenue)*
[2010] WAICmr 22**

Date of Decision: 30 July 2010

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

The complainant applied to the Department of Treasury and Finance (Office of State Revenue) ('the agency') under the *Freedom of Information Act 1992* ('the FOI Act') for access to certain documents relating to an investigation into his application for a First Home Owners Grant.

The agency initially identified two documents and refused the complainant access to both documents on the ground that they were exempt under clause 6(1) of Schedule 1 to the FOI Act. On internal review, the agency identified six documents, which included the two previously identified. The agency varied its initial decision and gave the complainant full access to one document; edited access to one document; and refused access to the remaining four documents on the ground that they were exempt under clause 7(1) of Schedule 1 to the FOI Act. The complainant applied to the Information Commissioner for external review of that decision.

The Commissioner obtained the originals of the six documents and the FOI file maintained in respect of the complainant's access application from the agency. Following inquiries made by the Commissioner's A/Legal Officer, the parties confirmed that full access to one document had been given outside the FOI process. Subsequently, the external review was limited to the four documents for which the agency claimed exemption under clause 7(1) ('the disputed documents'). Additional information was obtained from the agency about the purpose for which the disputed documents had been prepared.

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 made or brought into existence 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.

The Commissioner provided both parties with his preliminary view of this matter, which was that the disputed documents were confidential communications between the agency and its legal advisers made for the dominant purpose of both giving and seeking legal advice in relation to the *First Home Owner Grant Act 2000* or for use in anticipated legal proceedings.

The complainant made further submissions to the Commissioner in support of his view that the disputed documents were not exempt as claimed but those submissions were not relevant to the matters to be determined by the Commissioner. The Commissioner found that the disputed documents would be privileged from production in legal proceedings on the ground of legal professional privilege and confirmed the agency's decision to refuse access to those documents pursuant to clause 7(1) of Schedule 1 to the FOI Act.