

**Decision D0282009 – Published in note form only**

***Re Salmon and Town of Cottesloe* [2009] WAICmr 28**

**Date of Decision: 30 October 2009**

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

The complainant applied to the Town of Cottesloe ('the agency') for access to copies of correspondence from the agency's legal advisers to the agency. The agency refused the complainant access to two documents on the ground that they were the subject of legal professional privilege and, consequently, exempt under clause 7(1) of Schedule 1 to the *Freedom of Information Act 1992* ('the FOI Act'). The agency confirmed its decision on internal review and the complainant applied to the Information Commissioner for external review of that decision. The Commissioner obtained the documents in dispute and other information from the agency.

The Office of the Information Commissioner advised the complainant in a detailed letter of its initial assessment of the disputed documents, which was that they would be the subject 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.

In response to that advice, the complainant submitted that the agency's legal advisers were acting without specific instruction in relation to the subject of the disputed documents, and that the agency had not been charged for that legal advice. Therefore, the complainant submitted that the documents could not be the subject of legal professional privilege.

The Commissioner considered the complainant's submissions but was not persuaded that legal professional privilege only applies to paid legal advice specifically commissioned by a client. On the information before him, the Commissioner was satisfied the advice contained in the disputed documents was given to the agency by its legal advisers, acting in that capacity, and that the disputed documents were confidential communications between the agency's legal advisers and the agency, prepared for the dominant purpose of providing legal advice. Accordingly, the Commissioner determined that the two documents would be privileged from production on the ground of legal professional privilege and confirmed the agency's decision to refuse the complainant access to them pursuant to clause 7(1) of Schedule 1 to the FOI Act.