

## **SUMMARY OF INFORMATION COMMISSIONER FOR WESTERN AUSTRALIA V MINISTRY OF JUSTICE (2001) WASC 3**

On 17 January 2001, the Supreme Court of Western Australia handed down its decision in relation to a question of law referred by the Information Commissioner ('the Commissioner') to the Court for determination, pursuant to section 78 of the *Freedom of Information Act 1992* ('the FOI Act).

The matter arose from an application made to Ministry of Justice ('the agency') by a prisoner ('the complainant') for access under the FOI Act to two specific documents ('the requested documents'). The requested documents are located on a file created by the Parole Board and forwarded to the complainant's case manager, an employee of the agency.

The agency refused access to the requested documents on the basis that they are not documents of the agency but are the documents of the Parole Board, which is an exempt agency under the Act.

The question for determination by the Court was:

*"Are the two documents located with the respondent [the agency] and to which the complainant seeks access in the possession or under the control of the respondent [the agency] for the purposes of the definition of "documents of an agency" in clause 4(1) of the Glossary in Schedule 2 to the Act?"*

Justice Wheeler of the Supreme Court has handed down her decision in this matter, answering "Yes" to the above question.

Her Honour decided that an agency is in possession of documents, so as to make them documents of the agency, when the agency actually physically holds those documents. Justice Wheeler made special mention of the comments by the High Court in *Victorian Public Service Board v Wright* (1986) 64 ALR 206, where the Court suggested that it was proper to give the relevant provisions of the [Victorian Freedom of Information] Act a "construction which would further, rather than hinder, free access to information".

Her Honour concluded that, although the Parole Board may have ownership of the documents and may have a right of possession of the documents superior to the agency, or ultimate control of the documents, the degree of control able to be exercised by the agency, together with the physical possession of the documents, was sufficient for the requested documents to be "documents of the agency" for the purpose of the FOI Act.

***Information Commissioner for Western Australia v Ministry of Justice [2001] WASC 3***