

**Decision D0012002 – Published in note form only**

***Re Nield and Shire of Serpentine-Jarrahdale [2002] WAICmr 1***

**Date of Decision: 7 January 2002**

***Freedom of Information Act 1992; Schedule 1 clauses 3(1), 5(1)(b) and 7***

The complainant is involved in a long-standing and on-going dispute with the agency. In July 2001, he made an application to the agency for access under the FOI Act to various documents, including those submitted by the agency to its legal advisers that resulted in the agency obtaining confidential legal advice; a letter sent by the agency to the State Treasury regarding an application for a loan made by a third party; and a copy of a report made by an officer of the agency regarding the stockpiling of contaminated waste on a property in Birch Road, Oldbury, WA.

He was given access to most of the requested documents, but was refused access to 56 others on the grounds that those documents are exempt under clauses 3(1), 5(1)(b) and 7 of Schedule 1 to the FOI Act.

The Information Commissioner obtained the disputed documents from the agency and made inquiries with the agency and the complainant. Subsequently, both parties made further concessions and 28 documents remained in dispute.

Although the complainant claimed that some documents were in the public domain, the Information Commissioner decided that disclosure of others would reveal personal information about third parties, including names, addresses, telephone and facsimile numbers, and other information which would enable the authors to be identified. The Information Commissioner found no evidence that the documents were in the public domain and found those documents exempt under clause 3(1). The agency also claimed exemption for certain personal information appearing on a company letterhead. The Information Commissioner decided that that information was in the public domain and that its disclosure was, therefore, in the public interest.

The Information Commissioner decided that the disclosure of one document could reasonably be expected to reveal the fact of an investigation and something about the content of that investigation. The Information Commissioner found that document exempt under clause 5(1)(b) of Schedule 1 to the FOI Act.

The complainant alleged that the remaining documents were improperly claimed by the agency to be exempt under clause 7 to cover scurrilous behaviour. The Information Commissioner found no evidence to support the complainant's claim. The documents are all confidential communications between the agency and its legal advisers. The Information Commissioner found that the documents were made for the dominant purpose of giving or receiving legal advice and were exempt under clause 7.