

**Decision D0022002 – Published in note form only**

***Re Fischer and Department of Education [2002] WAICmr 2***

**Date of Decision: 7 January 2002**

***Freedom of Information Act 1992; clauses 7 and 8(1)***

In August 2001, the complainant made an application to the agency for access under the FOI Act to documents relating to an out-of-court settlement between the agency and a third party. In particular, the complainant sought confirmation of the amount paid by the agency in respect of the settlement agreement.

The agency identified 11 documents and claimed exemption for those documents under clauses 7 and 8(1) of Schedule 1 to the FOI Act. The complainant then lodged a complaint with the Information Commissioner.

The Information Commissioner examined the disputed documents and made inquiries into the complaint.

Six of the disputed documents are confidential communications between the agency and the Crown Solicitors Office, which are clearly made for the dominant purpose of giving or receiving legal advice, or for use in existing or anticipated legal proceedings. The Information Commissioner decided that those documents would be privileged from production in legal proceedings on the ground of legal professional privilege. The Information Commissioner found those documents exempt under clause 7.

One of the disputed documents is a Deed of Release signed by the parties, which contains a confidentiality clause, and 4 other documents refer to the contents of the Deed of Release.

Having considered the terms of the confidentiality clause (which the Information Commissioner cannot describe in detail owing to the obligations under s.74 of the FOI Act), the Information Commissioner was satisfied that the agency is bound by the terms of that contract and that any disclosure of its terms would be a breach of a contractual obligation of confidence for which a legal remedy could be obtained. Accordingly, the Information Commissioner found those documents exempt under clause 8(1).

The complainant submitted that the public has a right to know the amount of money paid by the agency under the Deed for Release. However, neither clause 7 nor clause 8(1) is limited by a public interest test. Therefore, there is no scope for the Information Commissioner to consider whether disclosure would, on balance, be in the public interest.