

**Decision D0032002 – Published in note form only**

***Re Bowden and Legal Practitioners Complaints Committee [2002] WAICmr 3***

**Date of Decision: 8 January 2002**

***Freedom of Information Act 1992; clause 5(1)(b)***

In 2000, the complainant made a complaint to the agency about certain actions of the Crown Solicitor's Office ('the CSO'), which occurred when the CSO was representing the State Government Insurance Commission in a matter involving the complainant's compensation claim. The agency investigated the complaint and, in June 2001, decided that there had been no apparent breach of professional obligations by any legal practitioner at the CSO. The agency decided to take no further action in respect of the complainant's complaint and informed him accordingly.

In July 2001, the complainant made an application to the agency seeking access under the FOI Act to copies of documents relating to his complaint. The agency granted the complainant access to some of the requested documents.

Without identifying any documents, the agency claimed that if other requested documents exist, then those documents would be exempt under clause 5(1)(b). The complainant lodged a complaint with the Information Commissioner and the Information Commissioner made inquiries into the complaint. Subsequently, the agency identified and described 5 disputed documents.

The agency is established by the *Legal Practitioners Act 1893* and its functions include, among other things, receiving and conducting inquiries into complaints from practitioners or clients concerning alleged illegal or unprofessional conduct on the part of any legal practitioner. Further, finding of illegal or unprofessional conduct, neglect or undue delay by a legal practitioner may result in the imposition of a penalty under the *Legal Practitioners Act 1893*.

The Information Commissioner decided that inquiries carried out by officers of the agency into complaints received are, in fact and by implication, investigations into contraventions or possible contraventions of the *Legal Practitioners Act 1893*, a relevant "law" for the purposes of clause 5(1)(b) of Schedule 1 to the FOI Act.

In this case, the Information Commissioner found that there had been an investigation under the *Legal Practitioners Act 1893* and decided that the disclosure of the disputed documents would reveal the fact that there had been an investigation, the identity of the persons investigated and the subject matter of the investigation. Further, it did not matter how much the complainant already knew about that investigation, the exemption in clause 5(1)(b) would still apply. The Commissioner found the documents exempt under clause 5(1)(b).