

Decision D0042003 – Published in note form only

Re Crisp and Department of Land Administration [2003] WAICmr 4

Date of Decision: 6 February 2003

Freedom of Information Act 1992, Schedule 1, clauses 4(2), 4(3), 6(1) and 12; Schedule 2, Glossary, clause 4(1)

An applicant applied to the Department of Land Administration ('the agency') for access, under the FOI Act, to a copy of a transcript of a hearing held before the Land Valuation Tribunal. The agency decided to give access, and the complainant, who was a party to that hearing, objected and lodged a third party complaint with the Information Commissioner, seeking external review of that decision.

The complainant submitted firstly, that the transcript was not a document of the agency but a document of the Tribunal and was, therefore, not accessible under the FOI Act. Secondly, the complainant claimed that the document was exempt under clauses 4(2), 4(3), 6(1) and 12 of Schedule 1 to the FOI Act.

After examining the transcript and the agency's file, and making inquiries with the Tribunal, the Information Commissioner informed both parties that the transcript was a document of the agency because it was in the possession of the agency, as set out in clause 4(1) of the Glossary in Schedule 2 to the FOI Act. Subsequently, the complainant accepted that view. However, the Information Commissioner was not satisfied that the complainant had established grounds for exemption under any of the exemption clauses cited by him. In respect of the exemptions in clauses 4(2) and 4(3), the Information Commissioner was not persuaded that the transcript had commercial value and, in any event, it was unclear how disclosure of that document could reasonably produce any of the adverse effects claimed by the complainant.

The particular deliberative process of the Tribunal had concluded and, balancing competing public interests, the Information Commissioner decided that disclosure of the transcript would not be contrary to the public interest, as required by clause 6(1)(b). Although the complainant submitted that it would be contrary to the public interest for a document that is not available from one agency to be available from another agency, if the latter has not referred it to the former, the Information Commissioner decided that the agency was not required to refer the document to the Tribunal. The Information Commissioner rejected the complainant's submissions that disclosure would be a contempt of court, because the hearing before the Tribunal had finished and there was no other material to establish that disclosure would interfere with the proceedings, or contravene the orders, of the Tribunal or any other court.

The Information Commissioner found that the transcript was not exempt under clauses 4(2), 4(3), 6(1) or 12 and confirmed the agency's decision to give access to it.