

Decision D0072004 – Published in note form only

Re Thornton and Department of Health [2004] WAICmr 7

Date of Decision: 5 March 2004

Freedom of Information Act 1992: Schedule 1, clause 5(1)(b).

The complainant is an officer of the agency. In 2002 the complainant, and other officers of the Office of Aboriginal Health, lodged certain grievances with the agency. However, the manner in which the agency dealt with those particular grievances was itself the subject of some dissatisfaction among staff of the agency. As a result, the agency appointed an independent consultant to review the manner in which the agency dealt with the grievances lodged by staff within the Office of Aboriginal Health.

In August 2003, the complainant applied to the agency for access under the FOI Act to a copy of the independent consultant's report. The agency identified two documents as coming within the scope of the complainant's access application but refused her access to both documents on the ground that they were exempt under clause 5(1)(b) of Schedule 1 to the FOI Act. Thereafter, the complainant made a complaint to the Information Commissioner seeking external review of the agency's decision.

The A/Information Commissioner obtained the disputed documents from the agency, examined them and made further inquiries into the complaint. The A/Information Commissioner considered that the disputed documents could be categorised as reports of an investigation by the agency (undertaken by an independent consultant engaged for the purpose) into whether or not there had been contraventions or possible contraventions of the *Public Sector Management Act 1994* and/or the Public Sector Standards in Human Resource Management, by officers of the agency.

The A/Information Commissioner was satisfied that disclosure of the disputed documents could reasonably be expected to "reveal the investigation" carried out by the independent consultant, in the sense described by the Supreme Court of Western Australian in *Police Force of Western Australia v Kelly and Smith* (1996) 17 WAR 9.

In *Kelly's* case the Supreme Court decided that the disclosure of a document could reasonably be expected to reveal the investigation of a contravention or possible contravention of the law, if it revealed the fact of a particular investigation of a particular incident involving certain people. The A/Commissioner was satisfied that the disclosure of the disputed documents could reasonably be expected to 'reveal' the investigation in the sense described in *Kelly's* case, since their disclosure would reveal the fact of the investigation, the subject matter of the investigation and the identities of the persons involved in particular incidents. The A/Commissioner decided that the disputed documents are exempt under clause 5(1)(b) and that it was not practicable to give access to edited copies of them. Although an agency has discretion to give access to exempt documents, the Information Commissioner does not.

The A/Commissioner informed the parties, in writing, of her detailed reasons for decision and confirmed the agency's decision to refuse access to the documents under clause 5(1)(b) of Schedule 1 to the FOI Act.

