

Decision D0082001 – Published in note form only

***Re Irvin and Department of Productivity and Labour Relations* [2001] WAICmr 8**

Date of Decision: 25 January 2001

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

In May 1999, the complainant ceased employment with a particular employer. In January 2000, he made a complaint to the agency alleging, among other things, that his former employer had not paid him in accordance with the relevant industrial award. Although the agency investigated his complaint, the former employer claimed that the complainant had been paid in accordance with the award and the matter remains unresolved.

In August 2000, the complainant applied to the agency for access to the file maintained by the agency in respect of his complaint. Although he was given access to almost all of the documents on file, the agency refused access to one document and claimed that it was exempt under clause 5(1)(b). The complainant lodged a complaint with the Information Commissioner and sought access to the disputed document.

The Information Commissioner made inquiries to establish the nature of an Industrial Award. Those inquiries established that industrial awards in Western Australia are made under Part II of the *Industrial Relations Act 1979*, and published in the government or industrial Gazette. An award binds relevant employees and employers alike. If an employee is not paid the amount to which he is entitled under the relevant award, a court can order the employer to pay the amount by which he has been underpaid and the amount ordered to be paid is considered to be a penalty imposed under the *Industrial Relations Act 1979*.

The Information Commissioner decided that industrial awards are given the force of law by the provisions of the *Industrial Relations Act 1979* and that awards are, therefore, laws for the purpose of clause 5(1)(b) of the FOI Act. The Information Commissioner decided that a failure to comply with the terms of an award would constitute a contravention of the law. The Information Commissioner decided that the inquiries conducted by the agency into the allegations made by the complainant constituted an investigation into a contravention or possible contravention of the law and that disclosure of the disputed document could reasonably be expected to reveal the investigation of any contravention or possible contravention of the law.

The Information Commissioner decided that the disputed document is exempt under clause 5(1)(b) and confirmed the decision of the agency to refuse access to that document.