

**Decision D0102001 – Published in note form only**

***Re de Waal and Ministry of the Premier and Cabinet* [2001] WAICmr 10**

**Date of Decision: 30 January 2001**

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

The complainant sought access to two police reports which were created at the request of the Honorary Royal Commission into Homosexuality in 1974. The police reports dealt with certain evidence given by two witnesses before the Honorary Royal Commission and concerned allegations of bribery.

The agency consulted the Police Service in Western Australia and, subsequently, refused the complainant access to the two documents on the grounds that they are exempt under clause 5(1)(b) of Schedule 1 to the FOI Act.

The Information Commissioner considered that, on their face, the police reports clearly indicated that a senior police officer had carried out an investigation into the allegations made by the witnesses and that those investigations related to alleged contraventions or possible contravention of the criminal law in Western Australia, in particular, *The Criminal Code*.

The Information Commissioner found that disclosure of the police reports would “reveal” the investigation in the sense in which that term has been interpreted by the Supreme Court of Western Australia: see *Manly v Ministry of Premier and Cabinet* (1995) 14 WAR 550; *Police Force of Western Australia v Kelly and Another* (1996) 17 WAR 9.

Although the complainant referred to a number of public interest factors in support of his claim for access to the reports, including the age of the documents, if it is established that a document is exempt, the Information Commissioner does not have power to make a decision to the effect that access is to be given to the document: FOI Act s.76(4). The Information Commissioner confirmed the decision of the agency to refuse access on the grounds that the documents are exempt under clause 5(1)(b).