

Decision D0132001 – Published in note form only

Re Strahan and Western Australian Sports Centre Trust [2001] WAICmr 13

Date of Decision: 16 March 2001

Freedom of Information Act 1992; Schedule 1 clause 8(1)

The complainant sought access under the *Freedom of Information Act 1992* ('the FOI Act') to a copy of the licence agreement entered into by Western Australian Sports Centre Trust ('the agency') with Kwinana Motorplex Pty Ltd ('the Licensee') to conduct speedway and drag racing events and associated activities at the recently constructed Kwinana Motorplex ('the Agreement').

The agency consulted with the Licensee under s.33 of the FOI Act before making its decision on access. The Licensee informed the agency that it did not consent to disclosure of the Agreement and drew the agency's attention to the confidentiality clause in the Agreement. After considering the matter, the agency refused the complainant access to a copy of the Agreement on the ground that that document is exempt under clause 4 and clause 8(1) of Schedule 1 to the FOI Act. The agency advised the complainant that disclosure of the Agreement would be a breach of confidence for which legal remedy could be obtained by the Licensee against the agency and, therefore, the Agreement is exempt under clause 8(1). The complainant applied to the Information Commissioner for external review of the decision of the agency.

The Information Commissioner obtained the original of the Agreement from the agency. On the basis of her examination of the Agreement, and in particular, the terms of the confidentiality clause in the Agreement, the Information Commissioner formed the view that the agency's decision to refuse access to the Agreement, under clause 8(1), appeared to be justified. The complainant was informed of the Information Commissioner's views on the matter during a meeting with two of the Information Commissioner's officers. The Information Commissioner confirmed her preliminary view to the complainant in writing. The complainant made submissions to the Information Commissioner, raising several public interest factors which he claimed weighed in favour of disclosure of the Agreement.

The exemption in clause 8(1) is not limited by a "public interest test". Accordingly, the Information Commissioner found that the question of whether or not there is any public interest in disclosure of the Agreement did not arise for her consideration. If it is established that the document is an exempt document, the Information Commissioner does not have the power to decide that access is to be given to the document (s.76(4)).

Accordingly, the Information Commissioner confirmed the agency's decision to refuse access on the ground that the Agreement is exempt under clause 8(1) of Schedule 1 to the FOI Act. In light of that finding, it was unnecessary for the Information Commissioner to consider the agency's claim for exemption under clause 4.