

**Decision D0132005 - Published in note form only**

***Re West Australian Newspapers Limited and City of Bayswater* [2005] WAICmr 13**

**Date of Decision: 10 June 2005**

***Freedom of Information Act 1992: Clause 5(1)(b)***

In November 2004, the complainant applied to the agency for access to certain documents relating to contracts awarded by the agency to companies associated with four councillors of the agency. The agency refused access to those documents, without identifying any of them, on the ground that they were exempt under clause 5(1)(b) of Schedule 1 to the FOI Act. Since that decision was made by the agency's principal officer, the complainant applied directly to the Information Commissioner for external review of that decision.

On receipt of the agency's file and the requested documents, the A/Information Commissioner made further inquiries with the agency and with another agency ('the investigating agency') which the agency claimed was conducting an investigation into a contravention or possible contravention of the law.

Following those inquiries, the A/Information Commissioner was satisfied that the agency had identified all of the documents that came within the scope of the access application and also that some of those documents were publicly available and, thus, not accessible under the FOI Act, pursuant to section 6 of the Act.

The A/Information Commissioner was also satisfied that the investigating agency was conducting an investigation into a contravention or possible contravention of the law and that the disclosure of the requested documents, including a schedule of those documents, could reasonably be expected to prejudice the investigation.

Section 74(1) of the FOI Act requires the Information Commissioner to ensure that exempt matter is not disclosed during the course of dealing with a complaint and section 74(2) places a further obligation on the Commissioner not to include exempt matter in a decision on a complaint or in reasons given for a decision. The A/Information Commissioner noted that the Supreme Court in *Manly v Ministry of Premier and Cabinet* (1995) 14 WAR 550 at 556-557 had recognised the difficulties faced by complainants and the constraints placed on the Information Commissioner by the FOI Act but took the view that section 90 - and by implication section 74 - should be construed strictly according to its tenor.

In the particular circumstances of this case, the A/Information Commissioner was constrained from providing the complainant with a description of the documents; detailed reasons; and the evidence before the A/Information Commissioner which supported those reasons, because to do so would breach section 74(2) of the FOI Act.