

Puspa and Police Force

DECISION SUMMARY ISSUED BY THE INFORMATION COMMISSIONER (WA)

Decision title and citation: *Re Puspa and Police Force of Western Australia* [1999] WAICmr 14

COMPLAINT No: F0491999

DECISION No: D0141999

PARTIES: Keith PUSPA

Complainant

POLICE FORCE OF WESTERN AUSTRALIA

Respondent

No. of documents in dispute: 179 folios

Exemption clause(s): Clause 5(1)(b)

By letter dated 3 February 1999, Mr Puspa ('the complainant') lodged an application with the Police Force of Western Australia ('the agency') seeking access under the *Freedom of Information Act 1992* ('the FOI Act') to certain documents of the agency comprising the complete internal investigation file relating to a particular matter.

Without identifying any of the requested documents and without specifying the reason why matter in any particular document was claimed to be exempt, the agency refused access on the ground that the documents described in the complainant's access application are exempt under clause 5(1)(b) of Schedule 1 to the FOI Act. Further, the agency decided that it was not practicable to give access to edited copies of the requested documents. The complainant sought internal review of the agency's initial decision, but the internal reviewer confirmed the initial decision. On 15 April 1999, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

Review by the Information Commissioner

I obtained the file maintained by the agency in respect of the complainant's access application, together with the requested documents. On 13 May 1999, after examining those documents and considering the material before me, I informed the parties in writing of my preliminary view of this complaint, including my reasons.

It was my preliminary view that the agency's decision to refuse access under clause 23(2) of the FOI Act on the ground that the requested documents are all exempt under clause 5(1)(b) appeared to be justified. Although the complainant was invited to either provide further written submissions in support of his complaint or to withdraw, nothing more was forthcoming from the complainant. I am not dissuaded from my preliminary view. A summary of my reasons follows.

Refusal of access – Section 23(2)

Section 23(2) of the FOI Act provides that an agency may refuse access to the requested documents without having identified any or all of them and without specifying the reason why matter in any particular document is claimed to be exempt matter if it is apparent, from the nature of the documents as described in the access application, that all of the documents are exempt documents; and there is no obligation under section 24 to give access to an edited copy of any of the documents.

When an agency relies on s.23(2) to refuse access, the first question I must determine is whether it is apparent from the nature of the documents described in the complainant's access application that they are all exempt. The terms "exempt document" and "exempt matter" are defined in the Glossary in the FOI Act. An exempt document is one that contains exempt matter. Exempt matter means matter that is exempt under Schedule 1.

In this instance, the complainant sought access to a full copy of an investigation file relating to a complaint he had made to the agency concerning police officers. The agency claims that those documents are all exempt under clause 5(1)(b). In his complaint to me, the complainant specified that he seeks access to the statement of one particular police officer.

Exempt matter - clause 5(1)(b)

Clause 5(1)(b) provides:

“5. Law enforcement, public safety and property security

Exemptions

- (1) *Matter is exempt matter if its disclosure could reasonably be expected to -*
- (b) *reveal the investigation of any contravention or possible contravention of the law in a particular case, whether or not any prosecution or disciplinary proceedings have resulted.”*

The Supreme Court of Western Australia has determined the scope and meaning of the phrase “reveal the investigation” in clause 5(1)(b). If disclosure of the disputed matter could reasonably be expected to reveal that there has been a police investigation, the identity of the person being investigated and the subject matter of the investigation then it will be exempt: *Police Force of Western Australia v Kelly and Anor* (1996) 17 WAR 9 at 13.

In *Kelly’s* case, His Honour considered that “...the phrase “...if its disclosure could reasonably be expected to...reveal the investigation of any contravention of the law in a particular case...” is apt to include the revelation of the fact of a particular investigation by police of a particular incident involving certain people” (*ibid*). In that case, Anderson J made it clear that documents can “reveal an investigation” even when the fact of the investigation has been revealed through other materials or the investigation has concluded (*ibid* at 14-15).

The law is found in various statutes in Western Australia including, but not limited to, the Criminal Code and the *Police Force Regulations 1979* (‘the Police Regulations’). In my view, the documents requested by the complainant relate to an investigation of a contravention or possible contravention of the law, namely, the Criminal Code and the Police Regulations. Clearly, the Criminal Code is a law of this state. The Police Regulations are subsidiary legislation made under the *Police Act 1892* and fall within the definition of “the law” in clause 5(5) of Schedule 1 to the FOI Act.

The investigation file described by the complainant in his access application consists of 179 pages (folios) of various documents including statements from police officers concerning the incident in question. In my opinion, not all of the documents on that file could reasonably be expected to reveal the investigation. Some of them are merely administrative documents, such as internal memoranda and the like, which – as was found by Scott J in *Police Force of Western Australia v Winterton* (unreported; SCT of WA; Library no 970646; 27 November 1997) – reveal nothing of the investigation and are clearly not exempt under clause 5(1)(b). However, it is clear from the complainant’s complaint to me that those documents are not of the kind to which he seeks access.

In my view, of those documents of the kind sought by the complainant, on the balance of probabilities, it is more likely than not that all of them would reveal the investigation, according to the interpretation of that phrase by the Supreme Court of Western Australia. I consider that the disclosure of those folios could reasonably be expected to reveal the fact of that investigation, the subject matter of the investigation and the identity of the person or persons under investigation. Each one will reveal something of the police investigation into the particular incident involving the complainant.

Clause 5(1)(b) is subject to certain limits on exemption as provided in clause 5(4). However, on the information before me, it appears to me that none of the limits applies. I have also considered whether the agency is under an obligation under s.24 of the FOI Act to give the complainant access to an edited copy of the requested documents. In my view, it would not be practicable to delete exempt matter from those documents. I consider that the deletion of exempt matter from those documents would result in the deletion of most of the contents leaving a substantially edited document that made little or no sense. Therefore, I do not consider that the agency is under an obligation to give edited access to the requested documents.

Accordingly, I find that the requested documents are exempt under clause 5(1)(b) of Schedule 1 to the FOI Act. I confirm the decision to refuse access to the requested documents pursuant to s.23(2) of the FOI Act.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER
1 June 1999