

Decision D0302002 – Published in note form only

***Re Leong and Town of Cambridge* [2002] WAICmr 30**

Date of Decision: 15 August 2002

Freedom of Information Act 1992 s.102(1); Schedule 1, clauses 3(1) and 5(1)(b)

The complainant applied to the agency, under the *Freedom of Information Act 1992* (‘the FOI Act’), for access to documents, including photographs, relating to an incident involving her dog and another dog. Before making its decision on access, the agency gave the complainant access to the photographs, by way of inspection.

The agency subsequently refused the complainant access to copies of the requested documents, including the photographs, on the ground that the requested documents were all exempt under clause 5(1)(b) of Schedule 1 to the FOI Act. The agency’s principal officer made the decision on access. Accordingly, as internal review of the decision on access was not available, the complainant lodged a complaint with the Information Commissioner, seeking external review of the agency’s decision.

The Acting Information Commissioner obtained the disputed documents from the agency. As two disputed documents contained some personal or business information about two third parties, they were notified of the complaint, invited to make submissions and advised of their right to be joined as a party to the complaint. One third party advised the Acting Information Commissioner that it did not object to the release of the documents relating to it and the other third party made no submissions. Neither sought to be joined as a party to the complaint. During the external review process, the complainant reduced the scope of her request to a request for access to copies of veterinary test results and photographs only.

After examining the disputed documents, the Acting Information Commissioner informed the parties that two of the disputed documents contained a small amount of personal information about the third parties that may be exempt under clause 3(1) of Schedule 1 to the FOI Act, but that the disputed documents may not be exempt under clause 5(1)(b), as claimed by the agency. As a result, the complainant withdrew her request for access to the personal information about third parties.

The Acting Information Commissioner found that the agency had not established, on the balance of probabilities, that disclosure of the disputed documents could reasonably be expected to reveal the investigation of any contravention or possible contravention of the law in a particular case, according to the decision of the Supreme Court of Western Australia in *Police Force of Western Australia v Kelly and Smith* (1996) 17 WAR 9. Accordingly, the Acting Information Commissioner was not persuaded that the agency had discharged the onus placed upon it by s.102(1) of the FOI Act, to establish that its decision to refuse access to the disputed documents was justified.

The Acting Information Commissioner found that the disputed documents were not exempt under clause 5(1)(b) of Schedule 1 to the FOI Act, but that the personal information about third parties, which the complainant no longer sought access to, should be deleted from the disputed documents.