

Decision D0342003 – Published in note form only

Re Kasprzak and Department of the Premier and Cabinet [2003] WAICmr 34

Date of Decision: 10 December 2003

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

In January 2002, the complainant lodged a grievance with the Department of the Premier and Cabinet ('the agency') about the termination of his employment on the expiry of his contract with the agency. In June 2002, the complainant lodged a grievance with the Minister for Public Sector Management ('the Minister') against the Director General of the agency in relation to the investigation conducted into the complainant's first grievance. In March 2003, the complainant lodged a complaint with the Minister against the Director General of the agency concerning the standards of record-keeping within the agency. All of those matters were investigated and the complainant informed of the results. Subsequently, the complainant made an application to the agency for access under the *Freedom of Information Act 1992* ('the FOI Act') to documents in relation to his grievances against the agency and the Director General.

The agency gave the complainant access to some documents but refused access to others, on the ground that they are exempt under various provisions of Schedule 1 to the FOI Act. The complainant then made a complaint to the Information Commissioner, seeking external review of the agency's decision in respect of six documents, which the agency claimed were exempt under clause 5(1)(b) of Schedule 1 to the FOI Act.

The Acting Information Commissioner obtained the six documents from the agency and examined them. Following discussions with the agency, the agency gave the complainant access, in edited form, to three pages of one of those documents. Subsequently, the A/Commissioner informed the parties in writing of her preliminary view of the complaint and her detailed reasons for that view.

The A/Commissioner decided that the inquiries made into the complainant's grievances were for the purpose of determining whether there had been any breach of the law, including the Public Sector Standards and the Western Australian Public Sector Code of Ethics made under the *Public Sector Management Act 1994* ('the PSM Act') and the general principles of official conduct prescribed by s.9 of the PSM Act, and, if so, whether any disciplinary action was warranted.

The material before the A/Commissioner clearly established that the inquiries made by the agency constituted investigations into a contravention or possible contravention of the law, being the PSM Act. The A/Commissioner applied the law relating to clause 5(1)(b) as established by the decision of the Supreme Court of Western Australia in *Police Force of Western Australia v Kelly and Another* (1996) 17 WAR 9 and found that the disclosure of the disputed documents and the deleted matter could reasonably be expected to reveal that investigation, in the sense described in *Kelly's* case, regardless of how much the complainant already knew about the investigation.

The A/Commissioner found the disputed documents exempt under clause 5(1)(b) and confirmed the agency's decision to refuse access to those documents.