

Decision D0372002 – Published in note form only

Re Kasprzak and Department of the Premier and Cabinet [2002] WAICmr 37

Date of Decision: 14 November 2002

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

In June 2002, the complainant lodged a grievance with the Minister for Public Sector Management against the Director General of the agency. The Minister caused inquiries to be made and informed the complainant of the result. Subsequently, the complainant made an application to the agency for access under the FOI Act to documents, being the notes about his grievance given to the Minister by the Director General.

The agency refused the complainant access to the requested documents on the ground that the documents are exempt under clause 5(1)(b) of Schedule 1 to the FOI Act. The complainant then lodged a complaint with the Information Commissioner, seeking external review of the agency's decision.

The Information Commissioner obtained the two disputed documents from the agency and examined them. The Information Commissioner made inquiries and examined other documents relevant to the complainant's grievance. Following that, the Information Commissioner decided that the inquiries made into the complainant's grievance were for the purpose of determining whether there had been any breach of the law, including the Public Sector Standards, the Code of Ethics or the Principles of Official Conduct made under the *Public Sector Management Act 1994* and, if so, whether any disciplinary action was warranted.

The material before the Information Commissioner clearly established that the inquiries constituted an investigation into any contravention or possible contravention of the law, being the *Public Sector Management Act 1994*. The Information 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 could reasonably be expected to reveal that investigation, in the sense discussed in *Kelly's* case, and regardless of how much the complainant already knew about that investigation.

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