

**Decision D0432001 – Published in note form only**

***Re Jones and Nurses Board of Western Australia* [2001] WAICmr 43**

**Date of Decision: 20 November 2001**

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

The complainant made a complaint to the Aged Care Complaints Resolution Scheme, which is part of the Commonwealth Department of Health and Aged Care ('the Commonwealth Department'), about certain aspects of the care given to her mother in a private aged care facility. The Commonwealth Department referred part of the complaint to the Nurses Board of Western Australia ('the agency') because it contained allegations about the conduct of persons registered as nurses under the *Nurses Act 1992*.

The agency arranged for the complaint to be investigated and a report was prepared for consideration by the agency. After considering the report, the agency resolved not to take any further action against any registered nurse.

The complainant applied to the agency for access, under the FOI Act, to the documents used by the agency to reach its decision on her complaint. The agency refused access to the requested documents. The agency claimed that disclosure would breach the confidentiality between the agency and the operator of the private aged care facility. Subsequently, the complainant lodged a complaint with the Information Commissioner.

The Information Commissioner obtained the disputed documents from the agency. The Information Commissioner formed the view that disclosure of the documents would not be a breach of confidence but considered that the documents were exempt under clause 5(1)(b) of Schedule 1 to the FOI Act.

The Information Commissioner found that the investigation conducted by the agency was an investigation to determine whether any nurse might have been guilty of unethical conduct, pursuant to s.61 of the *Nurses Act 1992*, by reason of carelessness, incompetence, impropriety or misconduct.

The Information Commissioner found that disclosure of the disputed documents could reasonably be expected to reveal the fact that there had been an investigation and something about the content of that investigation, including the identities of the persons whose actions were investigated by the agency. The Information Commissioner decided that disclosure would reveal the investigation of any contravention or possible contravention of the law, namely, the *Nurses Act 1992*: see *Police Force of Western Australia v Kelly and Another* (1996) 17 WAR 9.

The Information Commissioner varied the decision of the agency and found the disputed documents exempt under clause 5(1)(b) of Schedule 1 to the FOI Act.