

## CAMBRIDGE AND PERTH

### OFFICE OF THE INFORMATION COMMISSIONER (WA)

#### Decision summary issued pursuant to s.76(8) of the *Freedom of Information Act 1992*

**COMPLAINT No:** 96085

**DECISION No:** D04796

**PARTIES:** Town of Cambridge

Complainant

City of Perth

Respondent

**No. of documents in dispute:** 8

**Exemption clause(s) :** Clause 7

On 27 November 1995, Mr G D Partridge, Chief Executive Officer of the Town of Cambridge ('the complainant') applied to the City of Perth ('the agency') for access under the *Freedom of Information Act 1992* ('the FOI Act') to certain documents of the agency. The agency identified 309 documents which were within the ambit of the complainant's access application. The agency deferred giving access to 118 documents; granted access to 173 either in full or in part; and refused access to 18 documents and parts of 3 others on the ground that those documents are exempt under clause 7 of Schedule 1 to the FOI Act.

On 21 February 1996, the complainant applied for internal review of the agency's initial decision, but only in respect of the documents, or parts of documents, which the agency claims are exempt under clause 7 of Schedule 1 to the FOI Act. On 4 April 1996, the agency's internal reviewer confirmed the initial decision to refuse the complainant access to the requested documents on the ground that 18 documents, and parts of 3 others, are exempt under clause 7. On 5 June 1996, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

I obtained copies of the disputed documents from the agency. After examining those documents and considering the submissions of the parties, preliminary conferences were held with the parties. As a result of those meetings, the complainant withdrew its claims in respect of those parts of the disputed documents where the matter deleted by the agency consisted of personal information about third parties. The agency also withdrew its claims for exemption in relation to 4 documents and released copies of those documents to the complainant.

On 22 July 1996, I provided the parties with my preliminary view on the matter and detailed reasons for that view. It was my preliminary view that there were 10 documents in dispute between the parties because some of the documents identified by the agency are duplicate copies of other documents. Further, in respect of those 10 documents, it was my preliminary view that 8 of those documents, *prima facie*, are exempt under clause 7, but that the 2 remaining documents are not exempt under clause 7 or at all. The agency accepted my preliminary view and released 2 documents to the complainant. Although offered the opportunity to make submissions to me in response to my preliminary view, the complainant declined to make any further submissions in respect of the remaining 8 documents. Therefore, based on the information before me, I remain of the view that the 8 documents remaining in dispute between the parties are exempt under clause 7 of Schedule 1 to the FOI Act. A summary of my reasons is as follows.

#### **The disputed documents**

Documents numbered 1194, 1223, 1224, 1226 and 1285 on the schedule prepared by the agency consist of correspondence addressed to either the Town Clerk or the Chief Executive Officer of the agency from the agency's legal advisers. Documents numbered 1195, 1375 and 1287 on the schedule consist of correspondence from the agency to its legal advisers.

The agency claims that the disputed documents are exempt under clause 7 of schedule 1 to the FOI Act because those documents were created for the sole purpose of giving or receiving legal advice.

## **The exemption - Clause 7 (Legal professional privilege)**

Clause 7 of Schedule 1 to the FOI Act provides:

### ***"Legal professional privilege***

#### ***Exemption***

- (1) *Matter is exempt matter if it would be privileged from production in legal proceedings on the ground of legal professional privilege.*

#### ***Limit on exemption***

- (2) *Matter that appears in an internal manual of an agency is not exempt matter under subclause (1)."*

The common law principle is that confidential communications between a solicitor and his or her client will be privileged from production in legal proceedings if made for the sole purpose of giving or receiving legal advice or for use in existing or anticipated legal proceedings: *Grant v Downs* (1976) 135 CLR 674; *Baker v Campbell* (1983) 153 CLR 52. A claim for privilege is not limited, in the case of such communications, to communications which have been made for the purpose of existing or contemplated litigation: *Trade Practices Commission v Sterling* (1979) 36 FLR 244.

I have examined the disputed documents. I am satisfied from my examination of those documents that they are confidential communications between the agency and its legal advisers, made for the sole purpose of giving or receiving legal advice and, therefore, that the disputed documents would be privileged from production in legal proceedings on the ground of legal professional privilege.

The complainant submitted, *inter alia*, under the terms of a Service Agreement between the respective Chief Executive Officers of the agency and the complainant, that in the course of seeking legal advice from the agency's legal advisers, officers of the agency were performing duties as employees of the complainant. Therefore, the complainant submitted that any legal advice sought by an officer of the agency was sought on behalf of the complainant and that that was sufficient to establish that a solicitor/client relationship existed between the agency's legal advisers and the complainant.

Legal professional privilege is the privilege of the client. In my view, in respect of the disputed documents, the agency was, and is, the client. I have examined the Service Agreement between the parties. From my examination of that document, there is nothing in that document that goes towards establishing that a solicitor/client relationship existed between the agency's legal advisers and the complainant. I reject the complainant's argument on that point.

Accordingly, for the reasons given to the parties which are summarised above, I am of the view that the disputed documents would be privileged from production in legal proceedings on the ground of legal professional privilege and I find those documents to be exempt under clause 7 of Schedule 1 to the FOI Act.

B. KEIGHLEY-GERARDY  
INFORMATION COMMISSIONER

31st July 1996