

MMI LIMITED AND POLICE

**OFFICE OF THE INFORMATION
COMMISSIONER (W.A.)**

**File Ref: 96107
Decision Ref: D04896**

Participants:

MMI Limited
Complainant

- and -

Police Force of Western Australia
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - documents relating to an investigation under the *Road Traffic Act 1974* - clause 5(1)(b) - law enforcement - whether disclosure could reasonably be expected to reveal the investigation of a contravention or possible contravention of the law in a particular case - section 23(2) - documents not identified - apparent from nature of documents described in access application that all the documents are exempt - no obligation to give access to edited copy of any document.

Freedom of Information Act 1992 (WA) ss. 23(2), 24, 72(1)(b), 75(1), Schedule 1 clause 5(1)(b), 7.
Road Traffic Act 1974 (WA).

Manly v Ministry of Premier and Cabinet (Supreme Court of Western Australia, 15 June 1995, Library No. 950310).

Police Force of Western Australia v Kelly and Smith (Supreme Court of Western Australia, 30 April 1996, unreported, Library No. 960227).

DECISION

The decision of the agency is confirmed. The requested documents are exempt under clause 5(1)(b) of Schedule 1 to the *Freedom of Information Act 1992*.

B.KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

13th August 1996

REASONS FOR DECISION

BACKGROUND

1. This is an application for external review by the Information Commissioner arising out of a decision of the Police Force of Western Australia ('the agency') to refuse MMI Limited ('the complainant') access to documents requested under the *Freedom of Information Act 1992* ('the FOI Act').
2. The complainant is the employer's indemnity insurer for Firemain Company in relation to the death of a passenger who died in a motor vehicle accident on the Southwest Highway in Western Australia on 10 February 1996. Officers of the agency attended the accident scene, conducted an investigation into the accident and ultimately prepared a report for the State Coroner. On 20 March 1996, solicitors for the complainant lodged an access application with the agency seeking access under the FOI Act to the agency's accident report file and to all other documents prepared by the agency in relation to the accident.
3. On 9 May 1996, Chief Inspector Rae of the agency, without identifying any of the requested documents and without specifying the reason why matter in any particular document is claimed to be exempt, pursuant to s.23(2) of the FOI Act, refused the complainant access to the documents on the ground that those documents were exempt under clause 5(1)(b) of Schedule 1 to the FOI Act.
4. On 11 June 1996, the complainant applied to the agency for internal review of its initial decision and, by letter dated 13 June 1996, Acting Superintendent Brown advised the complainant's solicitors that the agency's decision was confirmed. On 9 July 1996, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

REVIEW BY THE INFORMATION COMMISSIONER

5. On 12 July 1996, I notified the agency that I had received this complaint and, pursuant to my powers under s.75(1) and 72(1)(b) of the FOI Act, I sought the production to me of the documents in dispute, together with the file maintained by the agency in respect of this matter.
6. After examining the disputed documents, on 25 July 1996, I provided the parties with my preliminary view of this complaint and my reasons for that view. It was my preliminary view, based on my examination of the disputed documents, that the agency's claim for exemption under clause 5(1)(b) appeared to be justified. In light of my preliminary view, the complainant was provided with the opportunity to reconsider its complaint or to make further submissions. However, nothing further was received from the complainant or its solicitors by my office by the due date, or at all, despite a further invitation from my office.

THE DISPUTED DOCUMENTS

7. The documents in dispute between the parties consist of the entire contents of a file, reference number 178 96F3, created and maintained by the Major Crash Section of the agency.

THE EXEMPTION

8. The agency refused the complainant access to its investigation file on the basis of s.23(2) of the FOI Act, and under clause 5(1)(b) of Schedule 1 to the FOI Act. Section 23(2) provides:

“(2) The agency may refuse access to the requested documents without having identified any or all of them and without specifying the reason why matter in any particular document is claimed to be exempt if -

(a) it is apparent, from the nature of the documents as described in the access application, that all of the documents are exempt documents; and

(b) there is no obligation under section 24 to give access to an edited copy of any of the documents.”

9. In my view, the obligation on agencies under s.24 of the FOI Act to consider the possibility of deleting exempt matter and providing a complainant with access to an edited copy of a requested document, arises each time an access application is received. However, in some instances, depending on the nature of the documents requested, the obligation under s.24 will not arise, because it will be clear from the description in the access application that they are exempt documents. For example, if an access applicant requests access to all confidential written legal advices passing between an agency and its legal advisers pertaining to a particular matter, no obligation under s.24 would arise because clearly, those kinds of documents are exempt under clause 7 of Schedule 1 to the FOI Act.

10. Clause 5(1), so far as is relevant, provides:

“5. Law enforcement, public safety and property security

Exemptions

(1) Matter is exempt matter if its disclosure could reasonably be expected to -

(a)...

(b) reveal the investigation of any contravention or possible contravention of the law in a particular case, whether or not any prosecution or disciplinary proceedings have resulted;”

11. In *Manly v Ministry of Premier and Cabinet* (Supreme Court of Western Australia, 15 June 1995, Library No. 950310) Owen J. said, at page 25, that in order to be exempt under clause 5(1)(b) a document “...*must reveal something about the content of the investigation*”. In *Police Force of Western Australia v Kelly and Smith* (Supreme Court of Western Australia, 30 April 1996, unreported, Library No. 960227), Anderson J., after referring to the *Manly* decision, said, at page 9:

“...documents which reveal that there is an investigation, the identity of the people being investigated and generally the subject matter of the investigation probably would satisfy the requirement stipulated by Owen J. that the document “must reveal something about the investigation”.”

12. It was His Honour’s view that it matters not the stage which an investigation has reached or whether the investigation has in fact been completed. At pages 9 - 10, His Honour said:

“Even after an investigation has been completed there may be very good operational reasons why there should be no disclosure of it...Of course there may be no need for any secrecy whatever in a particular case and there may be good public interest reasons to give public access to the documents or to give the applicant access to the documents. However, whilst that may be a relevant consideration for the agency in exercising its discretion under s23(1) whether to allow access to the documents to the public or to a particular individual, it cannot help to determine whether the documents are in fact exempt documents under cl 5(1)(b).”

13. At pages 12 and 13 of that decision, His Honour said that “[o]nce it appears that disclosure of the matter could reasonably be expected to reveal the investigation of any contravention or possible contravention of the law in a particular case, the matter is exempt...”.
14. The Information Statement of the Police Service (which includes the agency) discloses that the role of the Major Crash Section of the Traffic and Operations Support Command is to coordinate and provide a specialist service to the State in the investigation of major crashes. Investigations by the Major Crash Section determine, among other things, whether any offences have been committed by any person under the provisions of the *Road Traffic Act 1974*. I accept that the *Road Traffic Act 1974* is a law for the purposes of clause 5.
15. All the documents requested, particularly those contained in the file identified by the agency as being within the ambit of the request for access to “*the accident report file*”, concern the Major Crash Section’s investigation of the motor vehicle crash on 10 February 1996. In my view, following the decision of the Supreme Court in *Police Force of Western Australia v Kelly and Smith* on the meaning and scope of the exemption provided by clause 5(1)(b), it is clear, given the nature of the documents requested by the complainant, that disclosure of those documents could reasonably be expected to reveal the investigation into a

contravention or possible contravention of the law, namely, the *Road Traffic Act 1974*.

16. Accordingly, I find the requested documents are exempt under clause 5(1)(b) of Schedule 1 to the FOI Act. Further, I find that it is apparent from the nature of the documents as described in the access application - and subsequently confirmed by my examination of the documents - that they are exempt. Accordingly, the agency was entitled to refuse access in accordance with s.23(2) of the FOI Act without identifying them and without specifying the reasons why matter in any particular document is claimed to be exempt.
