

Decision D0032018 – Published in note form only

***Re Wells and Legal Profession Complaints Committee* [2018] WAICmr 3**

Date of Decision: 22 June 2018

Freedom of Information Act 1992 (WA): Schedule 1, clause 7(1)

On 27 July 2017, Gavin Wells (**the complainant**) applied to the Legal Profession Complaints Committee (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to documents comprising or referring to communications between the agency and other parties in relation to legal proceedings against him.

By decision dated 4 October 2017 the agency decided to give the complainant access to certain documents and to refuse him access to further documents on the basis that those documents (**disputed documents**) are exempt under clause 7(1) of Schedule 1 to the FOI Act (**clause 7(1)**). The agency's decision was confirmed on internal review.

The complainant alleges that the disputed documents were made in the course of or furtherance of an unlawful or improper purpose (**improper purpose**).

On 28 November 2017, the complainant applied to the Office of the Information Commissioner for external review of the agency's decision to refuse access to documents. Following receipt of the complaint, the agency provided this Office with a copy of the disputed documents together with its FOI file maintained in respect of the complainant's access application.

On 31 May 2018, the Acting Information Commissioner (**Acting Commissioner**) informed the parties in writing that it was her preliminary view that the disputed documents were exempt under clause 7(1). The complainant was invited to accept the Acting Commissioner's preliminary view or to provide her with further submissions. The complainant did not withdraw his complaint and made further submissions.

Clause 7(1) provides that matter is exempt if it would be privileged from production in legal proceedings on the grounds of legal professional privilege. It was the Acting Commissioner's view that the construction of clause 7(1) is to be undertaken in accordance with *Department of Housing and Works v Bowden* [2005] WASC 123 (**Bowden**). That is, once she decided that particular documents are on their face the subject of legal professional privilege, then that is all that is required to establish the exemption under clause 7(1).

The issue of improper purpose in relation to clause 7(1) was expressly considered by the Information Commissioner in great detail in *Re Duggan and Department of Agriculture and Food* [2011] WAICmr 31 (**Duggan**).

The Acting Commissioner accepted that she was not bound by a decision of a previous Commissioner. However, in her view, there was no valid reason in this matter, to depart from *Duggan*, particularly where *Duggan* considered and applied the binding Supreme Court decision of *Bowden*.

The Acting Commissioner considered all of the material before her, including the complainant's further submissions, but was not dissuaded from her preliminary view. Based on the material before her, including her examination of the disputed documents and applying *Bowden* and *Duggan* the Acting Commissioner was satisfied that the disputed documents would be privileged from production in legal proceedings on the grounds of legal professional privilege

Accordingly, the Acting Commissioner was satisfied that the disputed documents are exempt under clause 7(1).

The Acting Commissioner confirmed the agency's decision.