

Decision D0052009 – Published in note form only

Re Travers and Minister for Transport [2009] WAICmr 5

Date of decision: 25 February 2009

Freedom of Information Act 1992: Schedule 1: clause 1(1)

In late 2008, Mr Ken Travers MLC ('the complainant') applied to the Department for Planning and Infrastructure ('the Department') for access under the *Freedom of Information Act 1992* ('the FOI Act') to documents between the Department and the Premier and Minister for Transport or their offices with reference to the provision of rail infrastructure to Butler and to Perth Airport over a given time period. Under s.15(1) of the FOI Act, the Department transferred the complainant's access application to the Minister for Transport ('the Minister').

The Minister gave the complainant access in part to four documents and refused access to two documents on the ground that they were exempt under clause 1(1)(d)(i) of Schedule 1 to the FOI Act. As the decision was made by the Minister, no internal review is available. Therefore, on 30 January 2009, the complainant applied to the A/Information Commissioner ('the A/Commissioner') for an external review of the decision to refuse access to two documents under clause 1(1)(d)(i). In support of his complaint, the complainant submitted that access should be given to those documents not used to formulate Government policy and/or endorsed by an Executive body; and that access should be granted to edited copies of the disputed documents with exempt matter deleted.

The A/Commissioner required the agency to produce its FOI file and the two documents to which access had been refused.

The A/Commissioner considered the complainant's access application; the Minister's notice of decision; the complainant's application for external review; and examined the disputed documents. While taking into account the complainant's submission, the A/Commissioner was cognisant that under s.102(1) of the FOI Act the onus is on the Minister to establish that his decision was justified or that a decision adverse to another party should be made.

The Minister provided copies of the disputed documents for examination by the A/Commissioner. Having had the benefit of examining the disputed documents, the A/Commissioner considered that it is clear on the face of the disputed documents that they are exempt documents under clause 1(1)(d)(i) of Schedule 1 to the FOI Act. Each document was evidently prepared to brief a Minister in relation to matters prepared for possible submission to an Executive body. The A/Commissioner was of the view that based on his examination of the disputed documents, there was no matter contained in them that was not exempt that would allow editing or deletion of exempt matter and disclosure of the remainder as sought by the complainant. The A/Commissioner was also of the view that whether or not documents prepared to brief a Minister in relation to matters prepared for possible submission to an Executive body were or were not ultimately used to formulate Government policy or were endorsed by an Executive body would not constitute a limit on their status as exempt matter. Further, the A/Commissioner was of the view that none of the limits on exemption in clause 1 was applicable. The A/Commissioner decided that the two disputed documents are exempt under clause 1(1)(d)(i) of Schedule 1 to the FOI Act and confirmed the Minister's decision to refuse access on that basis.