

Decision D0052012 - Published in note form only

***Re Farina and Department of State Development* [2012] WAICmr 5**

Date of Decision: 14 February 2012

Freedom of Information Act 1992: section 6(b); Schedule 1, clauses 3(1) and 12(c)

In January 2011, the complainant applied to the Department of State Development ('the agency') under the *Freedom of Information Act 1992* ('the FOI Act') for all documents on the proposed Osmington coalmine, Margaret River, for the period 8 November 2010 to the date that the agency received the application.

The agency identified two documents and gave access in full to one and in edited form to the other. The complainant sought internal review of that decision on the ground that additional documents should exist. By notice of decision dated 17 March 2011, the agency identified an additional 18 documents. The agency gave access in edited form to seven documents but refused access to the remainder. In April 2011, the complainant applied to the Information Commissioner for external review of the agency's decision and, in addition, raised a number of issues including the agency's failure initially to identify documents and in regard to the quality of its notices of decision.

Following the receipt of this complaint, the Commissioner's office obtained the FOI file maintained in respect of the complainant's application and requested that further searches for documents be made by the agency. Additional documents were identified as coming within the scope of the application. The agency gave access to some of those documents, either in full or in edited form but, ultimately, 25 documents remained in dispute. On 12 January 2012, the Commissioner wrote to the parties setting out his preliminary view of the complaint, which was that one document was exempt but, with the exception of some personal information that was exempt under clause 3(1), the remainder was not exempt or was not subject to the access procedures under s.6(b) of the FOI Act.

The agency accepted the Commissioner's preliminary view. The complainant advised that the only issue she disputed was the Commissioner's preliminary view that Document 18 was exempt under clause 12(c), although she raised certain concerns over procedural matters. At that point, only Document 18 remained in dispute between the parties.

Clause 12(c) provides, in brief, that matter is exempt matter if its public disclosure would infringe the privileges of Parliament. Having reviewed Document 18, which concerned a Question on Notice in the Legislative Assembly, the Commissioner was satisfied that the information was prepared for the purposes of, or incidental to, the transacting of Parliamentary proceedings, which included all acts done in the course of or for the purposes of transacting Parliamentary business: see *Re Ravlich and Department of the Premier and Cabinet* [2011] WAICmr 3 at [21]-[24].

The Commissioner considered that the public disclosure of Document 18 would infringe Parliament's privilege to control its own affairs, including the publishing of Parliamentary proceedings. In light of that, the Commissioner confirmed the agency's decision to refuse access to Document 18 on the ground that it was exempt under clause 12(c) of Schedule 1 to the FOI Act.