

Decision D0072012 - Published in note form only

Re Environs Kimberley Inc and Shire of Broome [2012] WAICmr 7

Date of Decision: 29 February 2012

***Freedom of Information Act 1992*: clause 7(1)**

The complainant applied to the Shire of Broome ('the agency') for access to certain documents relating to planning approval for work at James Price Point and correspondence from the Environmental Protection Authority concerning a common user Liquefied Natural Gas precinct for processing gas from the Browse Basin. The agency identified ten documents (some with multiple attachments) as coming within the scope of that application and gave the complainant access in full or in part to seven of those documents but refused access to the remainder, claiming exemptions under clauses 3 and 8 of Schedule 1 to the *Freedom of Information Act 1992* ('the FOI Act').

The agency confirmed its decision on internal review and, in January 2011, the complainant applied to the Information Commissioner for external review of the agency's decision

In the course of that external review, the Commissioner's office prepared a schedule of 30 documents as being the actual documents in dispute in this matter. Following negotiations between the Commissioner's office and the parties, the number of documents in dispute was reduced to 14 and the agency withdrew its claims for exemption under clauses 3 and 8 but claimed that the 14 documents were exempt under clause 7(1) of Schedule 1 to the FOI Act.

Clause 7(1) provides that matter is exempt if it would be privileged from production in legal proceedings on the ground of legal professional privilege. Legal professional privilege applies to confidential communications between clients and their legal advisers made for the dominant purpose of giving or seeking legal advice or for use in existing or anticipated legal proceedings: *Esso Australia Resources Ltd v The Commissioner of Taxation* [1999] 201 CLR 49.

Having examined the disputed documents, the Commissioner provided the parties with a letter setting out his preliminary view of the complaint. The Commissioner's preliminary view was that certain information in two of the documents was outside the scope of the access application. The remainder of the disputed matter consisted of confidential communications between the agency and its legal advisers made for the dominant purpose of seeking or giving legal advice or were a record of those communications. The Commissioner's preliminary view was that that matter was privileged and, therefore, exempt under clause 7(1).

The complainant was invited to provide the Commissioner with further submissions but did not do so; however, the complainant did not withdraw its complaint. Subsequently, having reviewed all of the information before him, including the disputed documents, the Commissioner was not dissuaded from his preliminary view. The Commissioner was satisfied that the disputed documents, with the exception of the information that was outside the scope of the application, would be privileged from production on the ground of legal professional privilege and were, thus, exempt under clause 7(1). Accordingly, the Commissioner varied the agency's decision.