

**Decision D092008 – Published in note form only**

***Re Burns and Department of Agriculture and Food* [2008] WAICmr 9**

**Date of decision: 1 April 2008**

***Freedom of Information Act 1992: Schedule 1: clause 3(1)***

The complainant made an application to the Department of Agriculture and Food ('the agency') under the *Freedom of Information Act 1992* ('the FOI Act') for the names of individuals on whom the agency had served Soil Conservation Notices under the *Soil and Land Conservation Act 1945*. The agency refused the complainant access to that information because the agency does not have in its possession any documents which consists of that type of information and because that type of information would be exempt because any such documents would reveal personal information about third parties.

The A/Commissioner has confirmed that the agency does not have in its possession a document which contains the information sought by the complainant. Under the FOI Act agencies are not required to create a document or documents to meet the terms of an access application.

The A/Commissioner found that any documents if such documents existed and could be identified would necessarily reveal personal information about third parties, if disclosed, and would therefore be *prima facie* exempt under clause 3(1) of Schedule 1 to the FOI Act. It is well established that the FOI Act protects the privacy, rights and interests of third parties, and that a strong public interest would need to be demonstrated by the complainant to override the privacy interests of third parties.

While the complainant submitted that there was a public interest in his being able to access this information in order to facilitate a legal challenge to the validity of the Notices, the A/Commissioner concluded that the public interest in maintaining the privacy of third parties should prevail in this instance.

The A/Commissioner also found that none of the limits on exemption would apply. Therefore, the agency was justified in refusing access to any documents which might contain information of the kind sought by the complainant because such documents would all be exempt under clause 3(1). The A/Commissioner therefore confirmed the agency's decision.