

Decision D0132012 – Published in note form only

Re Wyatt and Department of Education [2012] WAICmr 13

Date of Decision: 15 May 2012

Freedom of Information Act 1992: Schedule 1, clause 12(c)

In November 2011, Mr Ben Wyatt MLA (‘the complainant’) applied to the Department of Education (‘the agency’) under the *Freedom of Information Act 1992* (‘the FOI Act’) for all responses to a particular email “*with the subject matter titled ‘Urgent Estimates Committee Response this afternoon please’ concerning the presence of Attendance Officers in schools.*”

The agency, without identifying the documents, refused the complainant access on the ground that all of them were exempt under clause 1 of Schedule 1 to the FOI Act. The complainant sought internal review of that decision. On 20 February 2012, the agency confirmed that the documents were exempt but this time relied upon clause 12(c). Clause 12(c) provides that matter is exempt if its public disclosure would, apart from the FOI Act and any immunity of the Crown, infringe the privileges of Parliament.

The complainant applied to the Information Commissioner for external review of that decision. On receipt of the complaint, the Commissioner’s office obtained the FOI file maintained in respect of the complainant’s application and the documents in dispute. On 13 April 2012, the Commissioner wrote to the parties setting out his preliminary view of the complaint, which was that all of the documents that the agency had identified as within the scope of the access application were exempt under clause 12(c). In his preliminary view, the Commissioner noted that the disputed matter was email correspondence prepared for the purposes of, or incidental to, answering a question raised by the Standing Committee on Estimates and Financial Operations (‘the Committee’).

Parliamentary privilege comprises certain powers, privileges and immunities conferred on both Houses of Parliament, its committees, members and officers. The justification for the privilege is that, to work effectively, Parliament must have certain freedoms, including the freedom to control its own proceedings so that it can operate independently and protect the integrity of its processes without interference from external sources.

In this case, the Commissioner was satisfied that the Committee was a committee of Parliament and considered that the public disclosure of the disputed documents would infringe the privileges of Parliament because it would encroach on Parliament’s right to control the publication of information incidental to transacting the business of Parliament. Consequently, the Commissioner’s preliminary view was that the disputed documents were exempt under clause 12(c). In light of that, the complainant was invited to withdraw his complaint or provide submissions to support his contention that the documents were not exempt as the agency claimed.

The complainant neither withdrew his complaint nor made further submissions. The Commissioner reviewed all of the information before him but was not dissuaded from his preliminary view. In light of that, the Commissioner confirmed the agency’s decision to refuse access to the disputed documents on the ground that they were exempt under clause 12(c) of Schedule 1 to the FOI Act.