

Decision D0302009 – Published in note form only

***Re S and Water Corporation* [2009] WAICmr 30**

Date of Decision: 16 November 2009

Freedom of Information Act 1992: Schedule 1, clause 7(1)

The complainant, who is a child, has not been identified by name.

The complainant's father, an employee of the Water Corporation ('the agency'), was fatally injured in a work site accident in 2009. After his death, the complainant, through legal advisers, applied to the agency for access to copies of documents relating to the complainant's late father and his fatal accident. Following discussions between the agency and the legal advisers, the scope of the access application was limited to the investigation report prepared for the agency on the fatal accident ('the disputed document').

The agency refused the complainant access to the disputed document and claimed exemption under clause 7(1) of Schedule 1 to the *Freedom of Information Act 1992* ('the FOI Act') on the ground of legal professional privilege. The agency confirmed its decision on internal review and the complainant applied to the Information Commissioner for external review of that decision. The Commissioner obtained the disputed document and other information from the agency.

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 protects from disclosure confidential communications between clients and their legal advisers if made or brought into existence 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.

The privilege is concerned with confidential communications and seeks to promote communication with a legal adviser, not to protect the content of a particular document: *Commissioner of Australian Federal Police and Another v Propend Finance Pty Ltd and Others* (1997) 188 CLR 501.

Having examined the documents provided by the agency, the Commissioner noted that the disputed document is attached to a letter to the agency from the agency's legal advisers. The Commissioner was satisfied on the information before him that the disputed document forms part of a confidential communication between the agency and its legal advisers made for the dominant purpose of giving legal advice to the agency. Accordingly, the Commissioner was satisfied that the disputed document would be privileged from production in legal proceedings on the ground of legal professional privilege and found it exempt under clause 7(1) of Schedule 1 to the FOI Act.