

**Decision D0322008 – Published in note form only**

***Re E and Racing and Wagering Western Australia* [2008] WAICmr 32**

**Date of Decision: 31 July 2008**

***Freedom of Information Act 1992, Schedule 1, clause 5(2)(a)***

The complainant made an application to Racing and Wagering Western Australia ('the agency') for access, under the *Freedom of Information Act 1992* ('the FOI Act') to documents described as emails created by officers of the Internal Affairs Unit ('the IAU') of the Police Force of Western Australia. The agency gave the complainant access to some of the requested documents but refused the complainant access to others of the requested documents, on the ground that the documents to which access was refused ('the disputed documents') were exempt under clause 5(2)(a) of Schedule 1 to the FOI Act. The agency's decision was confirmed on internal review and the complainant then sought external review of that decision.

The A/Information Commissioner examined the agency's FOI file and the disputed documents. The A/Information Commissioner was satisfied, on the basis of that examination and the other information before him, that the disputed documents had been created by the IAU, which is an exempt agency under Schedule 2 of the FOI Act.

The complainant conceded that some kind of investigation had been made by the IAU but made submissions to the A/Information Commissioner that the limit on exemption set out in clause 5(4)(a)(i) of Schedule 1 of the FOI Act applied to the disputed documents. The complainant said that the phrase "...a law enforcement investigation" in clause 5(4)(a)(i) should be interpreted as meaning an investigation into an allegation of a criminal offence or an offence against a regulatory statute. The complainant also said that if no law enforcement investigation took place, at all, then the possibility existed that the disputed documents were not exempt under clause 5(2).

The A/Information Commissioner rejected the complainant's submission that the phrase "...a law enforcement investigation" in clause 5(4)(a)(i) should be interpreted as meaning an investigation into an allegation of a criminal offence or an offence against a regulatory statute, applying the decision of the former Information Commissioner in *Re Kobelke and Department of the Premier and Cabinet* [1998] WAICmr 07. The A/Information Commissioner was not satisfied that the complainant had provided sufficient probative material to support the submission that it was possible that a law enforcement investigation had not taken place in the circumstances of the matter.

The A/Information Commissioner found that the requested documents were exempt under clause 5(2)(a) of Schedule 1 to the FOI Act and confirmed the decision of the agency to refuse access.