

DECISION SUMMARY ISSUED BY THE INFORMATION COMMISSIONER (WA)

Decision title and citation: *Re Fry and Department of Minerals and Energy* [2000] WAICmr 1

COMPLAINT No: F1871999

DECISION No: D0012000

PARTIES: Julie Hamilton FRY

Complainant

DEPARTMENT OF MINERALS AND ENERGY

Respondent

No. of documents in dispute: 2

Exemption clause(s): Clause 5(1)(b)

On 16 July 1999, Ms Fry ('the complainant') made an application to the Chemistry Centre (WA) seeking access under the *Freedom of Information Act 1992* ('the FOI Act') to various documents relating to forensic examinations conducted by the Chemistry Centre (WA) in August 1982. The Chemistry Centre (WA) is part of the Department of Minerals and Energy ('the agency') and the access application was dealt with by the agency.

The agency transferred part of the application to the Police force of Western Australia. In respect of the remainder, the agency decided to give the complainant access to an edited copy of one document only. The agency's decision was confirmed following internal review. On 6 October 1999, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision. In particular, the complainant claimed that additional documents should exist in the agency.

Review by the Information Commissioner

I obtained various documents from the agency, including two additional documents that the agency had not found in the first instance. After discussions with my office, the agency granted the complainant access to those two documents. The complainant also claimed that the agency had not identified or produced various notes taken during the forensic testing of samples delivered to the chemistry Centre (WA) by police officers. My office made further inquiries into this aspect of the complaint.

Following the return from leave of the officer concerned with the original testing, two additional documents, being a laboratory notebook containing test results and a Gas Chromatograph reading of the tests conducted on the relevant samples ('the disputed documents'), were found. However, the agency refused to grant the complainant access to those documents on the ground that they are exempt under clause 5(1)(b) of Schedule 1 to the FOI Act.

On 23 December 1999, after considering the material before me, I informed the parties in writing of my preliminary view of this complaint, including my reasons. It was my preliminary view that the disputed documents may be exempt under clause 5(1)(b). In the course of my dealing with this complaint, the complainant raised a number of other issues, not directly relevant to the question of access to the disputed documents. Those issues were dealt with in detail in my preliminary view.

I received a further submission from the complainant but I am not dissuaded from my preliminary view that the disputed documents are exempt. A summary of my reasons follows.

The exemption – clause 5(1)(b)

Clause 5(1)(b) provides that matter is exempt matter if its disclosure could reasonably be expected to reveal the investigation of any contravention or possible contravention of the law in a particular case, whether or not any prosecution or disciplinary proceedings have resulted.

The disputed documents relate to a criminal trial in Western Australia held in 1983 arising from an incident known colloquially as the Perth Mint Swindle. That trial, and the ongoing efforts by the persons convicted and sentenced to clear their names, have received wide publicity in Western Australia.

The fact of the investigation that led to the trial of those persons is widely known and I understand that the complainant may be particularly aware of the fact and much of the substance of the investigation, from her association with the persons convicted of, and sentenced for, various offences arising from that investigation. Further, the fact, and a good deal of the substance, of the investigation would have been revealed in the course of the trial, including some or all of the information contained in the disputed documents. However, in *Police Force of Western Australia v Kelly and Anor* (1996) 17 WAR 9, at pages 14-15, Anderson J said that the exemption in clause 5(1)(b) is not limited to new revelations and can apply regardless of the actual state of knowledge of the access applicant about the particular matter, or the stage the investigation has reached.

In *Kelly's* case, Anderson J made it clear that documents can "reveal an investigation" even when the investigation has been revealed through other things. His Honour considered that the same state of affairs could be separately revealed in several documents and that the separate disclosure of each separate document reveals that state of affairs.

In this instance, the complainant specifically described documents in her access application relating to the forensic testing of material by the agency after that material had been sent to the agency by the Police Force of Western Australia. The material was evidence collected as a result of a police investigation into a possible contravention of the law, namely the Criminal Code. The disputed documents are, in my view, clearly directly related to that police investigation and created as part of that investigation.

Having considered the nature of the documents described in the complainant's access application, and having examined the documents produced to me by the agency, it appears to me that those documents contain matter that could reasonably be expected to reveal the fact of a particular investigation by police of particular incidents involving certain people and something of the content of that investigation, and they are therefore, *prima facie*, exempt under clause 5(1)(b).

Limit on exemption

Clause 5(1)(b) is subject to the limit on exemption in clause 5(4). Relevantly, matter will not be exempt under clause 5(1)(b) if it consists of, among other things, merely information revealing that the scope of a law enforcement investigation has exceeded the limits imposed by the law. The complainant submits that that limit on exemption applies because she alleges the samples sent to the agency by police were fabricated. She disputes the authenticity of those samples and the accuracy of the case history notes provided with the samples. The complainant claims that, therefore, the limit on exemption applies and that it is in the public interest to prove that certain police officers, and former police officers, think that it is acceptable to fabricate scientific samples and information in order to secure a conviction for a crime.

Consideration

Clearly, the limit on exemption in clause 5(4)(a)(i) will only apply if the disputed documents contain information of the kind described, that is, information revealing that the scope of a law enforcement investigation has exceeded the limits imposed by the law. For example, documents revealing an illegality such as an unauthorised search of premises or person may well be caught by clause 5(4).

However, in this instance, the disputed documents do not contain that kind of information. The laboratory notes merely describe, in general terms, the nature of the exhibit and the tests conducted. The Gas Chromatograph reading is nothing more than a printout of a series of peaks and troughs with handwritten figures ascribed to various peak readings. In my view, neither of those documents would reveal that a police investigation has exceeded the limits imposed on it by the law.

Further, included with the material provided to me by the complainant is a copy of the transcript of evidence given by an officer of the Chemistry Centre (WA) at the trial in 1983. That document records the sworn testimony of the chemist who conducted the forensic testing of the samples, including his receipt of the samples and the results of the tests conducted. There is nothing before me to suggest that that testimony is inaccurate, other than the claim by the complainant that that is so. Neither of those is sufficient to require me to consider whether the limit on exemption applies and whether disclosure would, on balance, be in the public interest. Accordingly, I find that the disputed documents are exempt under clause 5(1)(b) of Schedule 1 to the FOI Act.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

11 January 2000