

Decision D0022004 – Published in note form only

Re ‘R’ and Police Force of Western Australia [2004] WAICmr 2

Date of Decision: 14 January 2004

Freedom of Information Act 1992: section 23(2); Schedule 1, clause 5(1)(b).

In May 2002, ‘R’, the complainant, made complaints at three separate police stations alleging that he had been sexually assaulted. The complainant in this decision has not been identified in order to protect his privacy. The agency investigated the matter but decided that there was insufficient evidence to support his allegation. The complainant subsequently made a further complaint to the agency about the manner in which his initial complaints had been dealt with by the agency.

In June 2003, the complainant applied to the agency for access under the *Freedom of Information Act 1992* (‘the FOI Act’) to documents relating to his complaints. The complainant sought access to specific categories of document, which included witness statements, interview notes, police reports and the agency’s investigation file. Without identifying any particular document, the agency refused the complainant access to the requested documents under section 23(2) on the ground that the documents described in the access application would all be exempt under clause 5(1)(b) of Schedule 1 to the FOI Act and that, further, it was not practicable to give the complainant access to an edited copy of any of the documents, pursuant to section 24. Thereafter the complainant made a complaint to the Information Commissioner, seeking external review of the agency’s decision.

The A/Information Commissioner made inquiries into the complaint and was satisfied that the disclosure of documents of the kind described in the access application could reasonably be expected to reveal the investigation of a contravention or possible contravention of the *Criminal Code (WA)* and the *Police Force Regulations 1979*, including the content of that investigation. In *Police Force of Western Australia v Kelly and Smith* (1996) 17 WAR 9, the Supreme Court made it clear that the application of clause 5(1)(b) is not affected by the fact that the access applicant already knows some of that information by other means. The A/Commissioner decided that documents of the kind described in the access application would be exempt under clause 5(1)(b) and that the agency was under no obligation to give access to edited copies of any of the documents.

The A/Commissioner informed the parties, in writing, of her detailed reasons for her view and, after considering a further submission from the complainant, confirmed the agency’s decision to refuse access to the documents under section 23(2) of the FOI Act.