

**Decision D0022005 - Published in note form only**

***Re Rhodes and Department of Agriculture [2005] WAICmr 02***

**Date of Decision: 15 February 2005**

***Freedom of Information Act 1992: Clause 7(1)***

The complainant applied to the Department of Agriculture ('the agency') for access to certain information in the minutes of the Veterinary Surgeons Board ('the Board') and correspondence between the Board and its legal adviser, concerning a complaint made by the complainant to the Board.

The agency gave the complainant access to edited copies of the Board minutes but refused access to two documents on the ground that they are exempt under clause 7(1) of Schedule 1 to the *Freedom of Information Act 1992* ('the FOI Act'). In November 2004, the complainant applied to the A/Information Commissioner ('the A/Commissioner') for external review of the agency's decision.

The A/Commissioner obtained the originals of the disputed documents from the agency and made further inquiries with the agency. The A/Commissioner was satisfied that the complainant had received all of the sections of the Board minutes relevant to his complaint and that the remaining information in those minutes was outside the scope of his access application.

The two documents in dispute are a letter and a facsimile - with attachments - from the Board's legal adviser to the Board.

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 applies to confidential communications between clients and their legal advisers made 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.

Having examined the disputed documents, the A/Commissioner accepted that they are confidential communications between the Board and its legal adviser which were prepared for the dominant purpose of seeking and giving legal advice. The A/Commissioner was satisfied that the disputed documents - including the attachments - would be privileged from production on the ground of legal professional privilege and confirmed the agency's decision to refuse access to them pursuant to clause 7(1) of Schedule 1 to the FOI Act.