

Decision D0032003 – Published in note form only

***Re Tobin and Department of Education* [2003] WAICmr 3**

Date of Decision: 29 January 2003

Freedom of Information Act 1992, Schedule 1, clause 5(1)(b)

In September 1999, the Commissioner for Public Sector Standards tabled in Parliament a report of an inquiry into discipline and related processes in the agency and recommended that the Minister for Education cause inquiries to be made to determine if any members of the agency had contravened section 8(1)(c) of the *Public Sector Management Act 1994*. Subsequently, an inquiry was conducted and reports were prepared.

In October 2002, the complainant applied under the FOI Act for access to the reports. The agency refused access and claimed that the documents were exempt under clause 5(1)(b) of Schedule 1 to the FOI Act. The complainant then lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

Section 8(1)(c) of the *Public Sector Management Act 1994* provides that employees are to be treated fairly and consistently and not subjected to arbitrary or capricious administrative acts. Section 80(b)(i) of that Act provides that an employee who contravenes any of its provisions commits a breach of discipline and may be subject to one or more of the penalties provided in Division 3 of Part 5 of the Act.

The Information Commissioner was satisfied that the *Public Sector Management Act 1994*, and the Standards and Codes made under that Act, are relevant laws for the purpose of clause 5(1)(b) and that a breach of discipline is a contravention of the law within the meaning of that exemption clause. The Information Commissioner was satisfied that there had been an investigation into any contravention or possible contravention of the law, namely, the *Public Sector Management Act 1994*, and that disclosure of the disputed documents would reveal something about the content of that investigation: see *Police Force of Western Australia v Kelly and Another* (1996) 17 WAR 9.

The complainant raised some public interest arguments in support of his claim for access. However, in the circumstances of this complaint, the Information Commissioner found that none of the limits on exemption in clause 5(4) applies. Accordingly, the Information Commissioner found the disputed documents exempt under clause 5(1)(b) and confirmed the agency's decision to refuse access to them.