

DECISION SUMMARY ISSUED BY THE INFORMATION COMMISSIONER (WA)	
Decision title and citation: <i>Re Williams and Ministry of Justice</i> [1999] WAICmr 4	
COMPLAINT No: F0101999	DECISION No: D0041999
PARTIES: Wayne John WILLIAMS	Complainant
MINISTRY OF JUSTICE	Respondent
No. of documents in dispute: 2	Exemption clause(s): Clause 5(1)(b)

Mr Williams ('the complainant') is a prisoner in Casuarina Prison. In March 1998, the complainant lodged a complaint with the Superintendent of Casuarina Prison about the conduct of a prison officer. The complainant was informed that the particular incident of which he had complained had previously been investigated in 1995 and that the prison officer concerned had been dealt with after a disciplinary hearing.

By letter dated 25 August 1998, the complainant lodged an application with the Ministry of Justice ('the agency') seeking access under the *Freedom of Information Act 1992* ('the FOI Act') to various documents including the report of the investigation into the prison officer, the report of the disciplinary hearing and other documents associated with the investigation of his complaint.

The complainant was given access to some documents but he was denied access to two documents on the ground that they are exempt under clause 5(1)(b) of Schedule 1 to the FOI Act. The agency's initial decision was confirmed following internal review. On 26 January 1999, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision in respect of two specific documents.

Review by the Information Commissioner

DECISION
SUMMARY

I obtained the disputed documents from the agency. On 15 February 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 documents to which access has been refused may be exempt under clause 5(1)(b) of Schedule 1 to the FOI Act. Nothing further was received from the complainant. In the circumstances, I am not dissuaded from my preliminary view. A summary of my reasons follows.

The disputed documents

There are two documents in dispute in this matter. The first consists of folios 32 and 33 from Administration file No. 96/00241. That document is a transcript of the disciplinary hearing that occurred on 19 January 1996. The second document consists of folios 41-43 from the same administration file. It is a letter dated 19 January 1996, from the Superintendent appointed to conduct the disciplinary hearing to the then Director General of the agency. That document contains the Superintendent's report and recommendations following the disciplinary hearing.

The exemption – clause 5(1)(b)

Clause 5(1)(b) provides:

“5. Law enforcement, public safety and property security

- “(1) Matter is exempt matter if its disclosure could reasonably be expected to -
 - (a) ...
 - (b) 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 scope and meaning of the exemption in clause 5(1)(b) has been the subject of three decisions of the Supreme Court of Western Australia: see *Manly v Ministry of Premier and Cabinet* (1995) 14 WAR 550; *Police Force of Western Australia v Kelly and Another* (1996) 17 WAR 9; and *Police Force of Western Australia v Winterton* (unreported, Supreme Court of Western Australia, Library No. 970646, 27 November 1997).

Two questions arise from the terms of the exemption. Firstly, whether the inquiry into the alleged conduct of the prison officer was “an investigation into a contravention or possible contravention of the law”; and, secondly, whether the disclosure of the disputed documents could reasonably be expected to “reveal” that investigation.

The *Prisons Act 1981* (‘the Prisons Act’) is a statute of the Parliament of Western Australia and is, therefore, a “law” as defined in clause 5(5) of Schedule 1 to the FOI Act for the purposes of the clause 5 exemption. Section 98(1) of the Prisons Act provides, among other things, that a prison officer who commits a breach of any duty or responsibility imposed on him by the Prisons Act, the regulations made under that Act, the rules made under s.35 of that Act or standing orders, or who is negligent or careless in the performance of his duties, or who commits any act of misconduct which relates to the performance of his duties or his fitness to hold office as a prison officer, is guilty of a disciplinary offence.

If, following investigation or admission, a person is found to have committed a breach of discipline, he or she is potentially subject to one or more of the penalties provided in s.102 of the Prisons Act. Accordingly, in my view, the commission of a disciplinary offence by a prison officer would constitute a contravention of s.98(1) of the Prisons Act and would, therefore, be a contravention of the law within the meaning of clause 5(1)(b) of Schedule 1 to the FOI Act. I am satisfied that an investigation of the alleged commission of a disciplinary offence would be an investigation of a contravention or possible contravention of the law, in a particular case, and that the investigation into the conduct of the prison officer concerned was such an investigation.

The application of the exemption in clause 5(1)(b) requires that the disclosure of the disputed documents could reasonably be expected to reveal the particular investigation. It is not sufficient that the documents merely reveal the fact that there has been an investigation. They must reveal, in the words of Anderson J in *Kelly*, “...the fact of a particular investigation of a particular incident involving certain people.” (at page 13).

Anderson J also said, at pages 14 and 15 of the *Kelly* case that:

“I do not think that it could have been intended that exemption should depend on how much the applicant already knows or claims to know about the matter... [clause] 5(1)(b) is not limited to new revelations but covers all matter that of itself reveals the things referred to, without regard for what other material might also reveal those things, or when that other material became known, and without regard to the actual state of knowledge that the applicant may have on the subject or the stage that the investigation has reached.”

I have examined the disputed documents. I consider that the disclosure of those documents would reveal the fact of the investigation into the alleged conduct of the prison officer concerned and something of the content of that investigation. In my opinion, both documents fall within the terms of the exemption in clause 5(1)(b).

Limits on exemption

Clause 5(4) operates to limit the exemption in clause 5(1)(b), if the matter claimed to be exempt is information of the kind described in clause 5(4)(a)(i), (ii) or (iii) and its disclosure would, on balance, be in the public interest. Having inspected the documents, I do not consider that the disputed documents contain any matter of the kind described in subparagraphs (i), (ii) or (iii) of clause 5(4)(a). Accordingly, the limit does not apply and there is no scope for me to consider whether disclosure of the requested documents would, on balance, be in the public interest.

For the reasons given to the parties which I have summarised above, I find that the disputed documents are exempt under clause 5(1)(b) of Schedule 1 to the FOI Act. I confirm the decision of the agency to refuse access to those documents.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

9 March 1999