

Decision D0042004 – Published in note form only

***Re Lord and City of Perth* [2004] WAICmr 4**

Date of Decision: 29 January 2004

Freedom of Information Act 1992: Schedule 1, clause 7

The complainant owns the property adjacent to a development site situated in West Perth. In September 2003, the complainant applied, under the *Freedom of Information Act 1992* ('the FOI Act'), for access to a copy of a report prepared by the agency's lawyers, in relation to a development application in respect of the development site.

The agency refused the complainant access to the requested document on the ground that it is exempt under clause 7 of Schedule 1 to the FOI Act, which exempts from disclosure documents that would be privileged from production in legal proceedings on the ground of legal professional privilege. The complainant then made a complaint to the Information Commissioner, seeking external review of the agency's decision.

The A/Information Commissioner obtained the disputed document and other relevant material from the agency. After examining the material before her, including submissions made by the complainant, the A/Commissioner informed the parties, in writing, of her preliminary view of the complaint and her detailed reasons for that view.

In the absence of any further submission from the complainant, the A/Information Commissioner was not dissuaded from that view and found that the disputed document is a confidential communication between a legal adviser and its client, the agency, which was made for the dominant purpose of giving the agency legal advice. The A/Commissioner considered, therefore, that the disputed document would be privileged from production in legal proceedings on the ground of legal professional privilege.

The A/Commissioner found the disputed document exempt under clause 7 and confirmed the decision of the agency to refuse access to it.