

**OFFICE OF THE INFORMATION
COMMISSIONER (W.A.)**

**File Ref: F2101999
Decision Ref: D0062000**

Participants:

Paul Christopher Karolides
Complainant

- and -

Ministry of Justice
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION – refusal of access – prison incident reports – clause 5(1)(e) – whether real or substantial grounds to expect disclosure would endanger life or physical safety of any person.

Freedom of Information Act 1992 (WA) section 26; Schedule 1, clause 5(1)(e).
Freedom of Information Act 1982 (Cth)

Prisons Act 1981

Searle Australia Pty Ltd v Public Interest Advocacy Centre (1992) 108 ALR 163

DECISION

The decision of the agency is confirmed. The requested documents are exempt under clause 5(1)(e) of Schedule 1 to the *Freedom of Information Act 1992*.

B.KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

16 February 2000

REASONS FOR DECISION

BACKGROUND

1. This is an application for external review by the Information Commissioner arising out of a decision made by the Ministry of Justice ('the agency') to refuse Mr Karolides ('the complainant') access to documents requested by him under the *Freedom of Information Act 1992* ('the FOI Act').
2. The complainant is a sentenced prisoner in Casuarina Prison. On 6 July 1999, an incident occurred in the prison involving the complainant and several prison officers. The prison officers filed incident reports concerning that incident and, subsequently, charges under the *Prisons Act 1981* ('the Prisons Act') were preferred against the complainant.
3. In September 1999, the complainant applied to the agency under the FOI Act for access to all documents relating to the incident, including access to any videotape of the incident. On 30 September 1999, the agency informed the complainant that no video footage of the incident existed because of equipment malfunction on that day. Therefore, the agency refused him access to the tape recording under s. 26 of the FOI Act on the ground that the document did not exist. The agency also refused him access to the reports of the incident on the ground that those documents are exempt under clause 5(1)(e).
4. The complainant applied for internal review of the agency's decision. On 28 October 1999, the internal reviewer confirmed the initial decision of the agency. On 25 November 1999, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

REVIEW BY THE INFORMATION COMMISSIONER

5. I obtained the disputed documents from the agency. Investigations Officers from my office met with various officers of the agency and further information and documents were provided for my consideration. It is my understanding from letters received from the complainant that he does not dispute the decision of the agency to refuse access to the videotape on the ground that that document does not exist. However, he disputes the decision of the agency to refuse him access to the reports of the incident ('the disputed documents').
6. On 4 February 2000, 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 disputed documents may be exempt under clause 5(1)(e). A written submission in response to that view was received from the complainant.

THE DISPUTED DOCUMENTS

7. The disputed documents comprise three incident reports and two minute sheets, all dated 6 July 1999, from the complainant's Offender In Custody file. Those documents were incorrectly described as 4 incident reports in a letter dated 30 September 1999 from the agency to the complainant.

THE EXEMPTION

8. The exemption in clause 5(1)(e) provides that matter is exempt "... *if its disclosure could reasonably be expected to...endanger the life or physical safety of any person*". The words '*could reasonably be expected to*' appear in other exemptions and like provisions in the Commonwealth *Freedom of Information Act 1982* and the other States. The leading authority on the meaning of the phrase '*could reasonably be expected to*' is the decision of the full Federal Court of Australia in *Searle Australia Pty Ltd v Public Interest Advocacy Centre* (1992) 108 ALR 163. In that case, the Federal Court held that the phrase should be given its ordinary meaning and that the words in the exemption required a judgement to be made by the decision-maker as to whether it is reasonable, as distinct from something that is irrational, absurd or ridiculous, to expect the stated consequences to follow from disclosure of the documents.
9. The Federal Court also held that, on an objective view of the evidence, there must be real and substantial grounds for expecting the stated consequence to follow from disclosure of the documents. That is, it has to be established that it is disclosure of the documents, rather than any other event, that could reasonably be expected to cause the endangerment of life or physical safety.

The agency's submissions

10. The agency informs me that the complainant has a number of convictions for assaulting prison officers, and a history of violent and unpredictable behaviour within the prison system. The agency provided documentary material in support of these claims and the complainant's "*rapid volatility*". The agency also informed me that the complainant was one of the prisoners involved in a riot in Casuarina Prison on Christmas Day in 1998 and I understand that he was convicted of wilful damage and assaulting a prison officer as a result of that incident. The agency submits that, taking into account the complainant's history of threatening and violent behaviour towards prison officers, it is reasonable to expect the physical safety of prison officers to be in danger if the disputed documents are disclosed to the complainant.
11. I am informed by the agency that access to incident reports may be given to a prisoner under the FOI Act after due consideration by prison management of the contents of those documents and other facts relating to the particular prisoner concerned. When access to such documents is sought, the general response from the agency is that the reports are released to a prisoner either in full or in

edited form. However, access was refused in this instance because of the aggressive and unpredictable attitude of the complainant towards prison staff.

The complainant's submission

12. The complainant submits he seeks access to the disputed documents for the purposes of his defence to the charges against him resulting from the incident on 6 July 1999. He submits that he should be given access to the documents because they may have been prepared by prison officers in their professional capacity and he does not seek personal information about those officers, but seeks them in order to defend himself. The complainant submits that disclosure of the documents to him could not endanger the safety of those officers as, he claims, he already knows the identities of three of them and that their reports "*are incorrect*".
13. The complainant submits that he already has police statements concerning his involvement in other matters, made by prison officers with whom he is in contact in Casuarina Prison, and he has not done anything to those officers as a result of being given those statements. Finally, the complainant submits that "*violent and serious notations*" on his file should not be taken into account as they are not proven and are not true.

Consideration

14. I understand that the completion of incident reports by prison officers is part of normal prison management concerned with safety and security. I accept that the prison system is a closed environment where tensions between prisoners and staff are likely. I also accept that the agency has a responsibility for maintaining the safety and security of its prisons, and that responsibility, in my view, includes the safety of prison officers as well as prisoners. In a closed prison environment, any action that could affect either the security of the prison or the safety of prison officers or prisoners must be carefully considered so that those risks are minimised.
15. I have considered the contents of the incident reports, the complainant's criminal history, the complainant's prison record, the fears expressed to me by various prison officers concerning the consequences of disclosing the disputed documents to the complainant, and other information given to me by the agency, including some of the complainant's medical record and other incident reports. Based on that information, I am satisfied that an expectation of danger to the physical safety of people in Casuarina Prison following from the disclosure of the disputed documents to the complainant is not irrational or absurd, but is reasonably based.
16. The material before me clearly shows that the complainant has a history of violent and unpredictable behaviour and, in particular, a history of violence against public officers. The complainant has six convictions under the Criminal Code of assaulting public officers in the last 4 years and numerous convictions under the Prisons Act for using insulting and/or threatening language and behaving in an insulting or threatening manner, as well as convictions of assault

under that Act. Various incidents on his record within the prison system indicate that he may be prone to reacting violently to things said to him by people, most relevantly to this matter, particularly by prison officers and other authority figures. Given that apparent propensity and the nature of the prison environment, it does not appear unreasonable to me to expect the complainant to react in an unpredictable and possibly violent manner to the written words of the officers if those documents were to be disclosed to him.

17. The exemption in clause 5(1)(e) will be established if it is shown that the expectation that danger to the life or physical safety of a person will follow as a consequence of disclosure is reasonably based. The documents before me indicate that the complainant has made repeated threats of violence against prison officers and that he frequently behaves in an aggressive, abusive, disruptive and threatening manner. He has also injured himself and has threatened self-harm. Taking into account the nature of the prison environment, the length of the complainant's sentence and his well documented history of violence towards prison officers, I am satisfied that disclosure of the disputed documents could reasonably be expected to result in further aggressive behaviour and endangerment to the physical safety of either himself or prison officers.
18. Accordingly, I find that the disputed documents are exempt under clause 5(1)(e) of Schedule 1 to the FOI Act.
