

Decision D0092000 – Published in note form only

***Re Sobczuk and Police Force of Western Australia* [2000] WAICmr 9**

Date of Decision: 1 March 2000

Freedom of Information Act 1992 – s.26, Schedule 1 clause 5(1)(b)

In 1995, the complainant was offered employment with the Carnarvon Medical Service Aboriginal Corporation in the position of Accountant/Administrator Officer. He accepted that offer and commenced employment. Subsequently, the complainant was charged and convicted of the crime of stealing as a servant under s.378(7) of the Criminal Code.

On 5 May 1999, the complainant made an application to the agency under the *Freedom of Information Act 1992* (“the FOI Act”) for access to a series of documents described in point form in his application. Initially, the agency refused to deal with his access application on the ground that it was too broad and ill-defined. However, after intervention by the Information Commissioner, the complainant reframed his application and the agency dealt with it. The agency refused access to some of the requested documents on the ground that those documents either cannot be found or do not exist and to others on the ground that they are exempt under clause 5(1)(b) of Schedule 1 to the FOI Act.

A number of documents sought by the complainant were described as documents recording “*discriminatory reasons*”, “*reasons for not charging*”, “*reasons for not investigating*”, “*refusing to charge*”, “*instructions not to investigate*” and “*mockery phone calls*”. Inquiries by the Information Commissioner found no basis for a belief that such documents exist or should exist in the agency.

Other documents identified by the complainant were clearly related to the investigation conducted by the agency and the subsequent charges preferred against the complainant. Taking into account the nature of the documents described in the access application and after examining the documents produced by the agency, the Information Commissioner found that disclosure of the documents would reveal the fact of the agency’s investigation into a particular incident, being a possible contravention of the law, involving certain people. The Information Commissioner found those documents exempt under clause 5(1)(b).

The Commissioner confirmed the decision of the agency to refuse access to the documents on those grounds.