

Decision D0092001 – Published in note form only

***Re Wall and Insurance Commission of Western Australia* [2001] WAICmr 9**

Date of Decision: 30 January 2001

Freedom of Information Act 1992; clause 7

In 1993, the complainant was employed by Royal Perth Hospital and he made a claim against his employer under the *Workers' Compensation and Rehabilitation Act 1981*. He also lodged a separate claim alleging unfair dismissal. Both claims were settled in 1999 and he signed a Deed of Release in respect of those matters.

Subsequently, the complainant sought access to documents relating to his workers' compensation claim. He was given access to most of the documents, but was refused access to 3 documents on the ground that they are exempt under clause 7 of Schedule 1 to the FOI Act, which exempts matter if it would be privileged from production in legal proceedings on the ground of legal professional privilege.

The disputed documents included two letters to the agency from a third party to which are attached two reports marked "Confidential" and compiled as a result of an investigation into the complainant's workers' compensation claims. The third document is a handwritten facsimile message from the agency to a third party to which is attached a letter from the Crown Solicitor's Office.

The Information Commissioner considered that the reports and the covering letters were confidential communications between the agency and a third party, made at the request of the agency's legal adviser, for the dominant purpose of seeking legal advice with reference to then existing legal proceedings, being the proceedings that had, at the relevant time, commenced under the *Workers' Compensation and Rehabilitation Act 1981*. The Information Commissioner decided that those documents would be privileged from production in legal proceedings on the ground of legal professional privilege and found them exempt under clause 7.

The Information Commissioner considered that the original letter from the Crown Solicitor's Office was a confidential communication between the agency and its legal adviser for the purpose of giving the agency legal advice and, therefore, a privileged communication. The Information Commissioner considered that privilege had not been waived by the agency forwarding a copy of that letter to the third party because that communication with the third party was a communication made for a privileged purpose. That is, the handwritten facsimile and the letter attached to it comprised a confidential communication from the agency to the third party for the purpose of the agency obtaining information at the request of, and to be put before, its legal adviser for the purposes of litigation which had been commenced. Therefore, it was a communication of the kind protected by legal professional privilege: see *Trade Practices Commission v Sterling* [1978] 36 FLR 244.

The Information Commissioner confirmed the decision of the agency to refuse access to those documents under clause 7.