

Decision D0102002 – Published in note form only

Re Grljusich and City of Cockburn [2002] WAICmr 10

Date of Decision: 7 March 2002

Freedom of Information Act 1992; Schedule 1, clause 7

The complainant is a former Councillor of the City of Cockburn. In November 2001, the complainant made an application to the agency, under the FOI Act, for access to copies of legal advice obtained by the agency and to file notes made by officers of the agency and the agency's legal advisers, in relation to that advice.

Without identifying the requested documents, access was refused to the requested documents on the ground that they were exempt under clause 7 of Schedule 1 to the FOI Act.

The Information Commissioner obtained the disputed documents from the agency and examined them. The disputed documents consist of a letter dated 21 September 2000 from the agency's legal advisers to the agency (Document 1); a facsimile transmission, dated 9 March 2001, from the agency's legal advisers to the agency (Document 2) and a file note, dated 19 March 2001, made by an officer of the agency, which records details of that officer's telephone conversation with the agency's legal advisers (Document 3).

Documents 1 and 2 are confidential communications between the agency and its legal advisers, made for the dominant purpose of the legal advisers giving legal advice to the agency. Document 3 contains a record of a privileged communication between an officer of the agency and the agency's legal advisers, in relation to the seeking of legal advice.

The Information Commissioner was satisfied that Documents 1, 2 and 3 would be privileged from production in legal proceedings on the ground of legal professional privilege and she confirmed the agency's decision to refuse access to the disputed documents on the ground that they are all exempt under clause 7 of Schedule 1 to the FOI Act.

In respect of any file notes purportedly made by the agency's private legal advisers, the Information Commissioner expressed the view that such documents are not "documents of an agency" within the meaning of the FOI Act and the complainant does not have any right of access to such documents.