

Decision D0102003 - Published in note form only

***Re Walters and Town of Vincent* [2003] WAICmr 10**

Date of Decision: 14 March 2003

Freedom of Information Act 1992, Schedule 1, clause 5(1)(b)

The complainant is the registered owner of property situated in the agency. A number of complaints were made to the agency about the use made of the property by its tenants and the agency investigated those complaints to determine whether the property was being used for a purpose which contravened its local planning laws.

In October 2002, the complainant made an application to the agency for access under the FOI Act to documents relating to his property. The agency refused access on the grounds that the documents are exempt under clause 5(1)(b) of Schedule 1 to the FOI Act. The complainant then lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

The Information Commissioner obtained the disputed documents and examined them. The Information Commissioner was satisfied that there had been an investigation by the agency to determine whether or not the provisions of the *Town Planning and Development Act 1928* had been contravened. In addition, the police had investigated complaints relating to possible breaches of the Criminal Code by the tenants, and the complainant was aware of those investigations.

The Information Commissioner was satisfied that disclosure of the disputed documents would reveal something about the content of those investigations, including the identities of the people under investigation and found that disclosure of the disputed documents would reveal the investigation of any contravention or possible contravention of the law, within the meaning of clause 5(1)(b). The Information Commissioner decided that the exemption applied regardless of how much the complainant already knew about the investigation: see *Police Force of Western Australia v Kelly and Another* (1996) 17 WAR 9.

The Information Commissioner found the documents exempt under clause 5(1)(b) and confirmed the decision of the agency to refuse access.