

Decision D0112000 – Published in note form only

Re Blight and Legal Practitioners Complaints Committee [2000] WAICmr 11

Date of Decision: 2 March 2000

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

In 1998, the complainant made complaints to the agency alleging unprofessional conduct by a legal practitioner and a legal firm. Those complaints were considered by the agency on four occasions between September 1998 and December 1999. Subsequently, the complainant was informed by the agency of its determination in respect of his complaints.

In November 1999, the complainant sought access under the *Freedom of Information Act 1992* ('the FOI Act') to documents presented to the agency in respect of his complaints. He was given access to some, but not all, of the requested documents. The agency refused him access to 7 documents on the ground that those documents are exempt under clause 5(1)(b) of Schedule 1 to the FOI Act because their disclosure could reasonably be expected to reveal the investigation of a contravention or possible contravention of the *Legal Practitioners Act 1893*.

The Information Commissioner ('the Commissioner') found that an investigation conducted by the agency into complaints received by it concerning allegations of conduct for which a legal practitioner may be disciplined, amounts to an investigation into a contravention or possible contravention of the law within the terms of clause 5(1)(b).

The Commissioner also found that the disclosure of the 7 documents would reveal the fact that there was an investigation, the identity of the persons investigated and the subject matter of the investigation. The Commissioner decided that the documents were exempt under clause 5(1)(b) and confirmed the decision to refuse the complainant access to those documents.

Although this was a case where the Commissioner was of the opinion that the agency could have exercised its discretion under s.3(3) of the FOI Act to release the documents even though they contain exempt matter, the agency chose not to do so.