

**Decision D0122003 - Published in note form only**

***Re Ford and Department of Housing and Works [2003] WAICmr 12***

**Date of Decision: 4 April 2003**

***Freedom of Information Act 1992, Schedule 1, clauses 3(1), 7 and 8(1)***

The complainant is the registered owner of a property adjacent to a property owned by the agency. In November 2002, the complainant made an application to the agency for access under the FOI Act to documents relating to the retaining wall and brick wall between the two properties. The agency granted access to certain documents, but refused access to others on the grounds that those documents are exempt under clauses 3(1), 7 and 8(1) of Schedule 1 to the FOI Act. The agency also imposed a charge for giving access. 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. Subsequently, the agency withdrew its claim for exemption under clause 8(1) for one document. The Information Commissioner was satisfied that information deleted from a number of the other disputed documents including names, telephone numbers, and other information which, if disclosed, would identify third parties, was personal information as defined in the FOI Act. The Information Commissioner recognized a public interest in protecting the privacy of third parties and balanced that against a public interest in applicants being able to exercise their rights under the FOI Act. In the circumstances of this complaint, the Information Commissioner gave more weight to the former and found the deleted matter exempt under clause 3(1).

The Information Commissioner was also satisfied that 2 other documents were confidential communications between the agency and its legal adviser containing a request for legal advice and the legal advice given to the agency. The Information Commissioner found those documents exempt under clause 7. In the case of another document, a handwritten note recorded a privileged communication and the Information Commissioner found that the note was also exempt under clause 7.

In the circumstances of this matter, the Information Commissioner was satisfied that the charge imposed by the agency for dealing with the application and giving access was reasonable and calculated in accordance with the FOI Act and regulations.

The decision of the agency was varied accordingly.