

## CONDER AND POLICE

### OFFICE OF THE INFORMATION COMMISSIONER (WA)

#### Decision summary issued pursuant to s.76(8) of the *Freedom of Information Act 1992*

**COMPLAINT No:** 97061

**DECISION No:** D01497

**PARTIES:** **Raymond Noble Conder**

Complainant

**Police Force of Western Australia**

Respondent

**No. of documents in dispute:** 1

**Exemption clause(s) :** Not applicable

By letter dated 4 February 1997, Mr Conder ('the complainant') made application under the *Freedom of Information Act* ('the FOI Act') to the Police Force of Western Australia ('the agency') seeking access to a copy of a document described as a "field report" prepared by an officer of the agency which related to an incident at the Perth Modern School involving the complainant.

The agency refused the complainant access to the requested document on the ground that it is not a document of the agency, but a document in the possession and under the control of an exempt agency, The Bureau of Criminal Intelligence ('the BCI'). The complainant sought internal review of the agency's decision and, on 21 March 1997, the internal reviewer confirmed the initial decision of the agency. Thereafter, on 4 April 1997, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

### Review by the Information Commissioner

Following inquiries with the agency, I informed the parties in writing of my preliminary view that the requested document is a document of an exempt agency and not accessible under the FOI Act. The parties were also informed of my detailed reasons for that view and afforded an opportunity to provide further evidence and submissions. The complainant provided a further written submission which contained nothing to dissuade me from my preliminary view that the document is a document of an exempt agency and not accessible under the FOI Act for the reasons already given to the parties. Those reasons are summarised as follows.

### Documents of an exempt agency

Section 10(1) of the FOI Act provides that a person has a right to be given access to documents of an agency - other than an exempt agency - subject to and in accordance with the FOI Act. The term "exempt agency" is defined in the Glossary in the FOI Act to mean a person or body mentioned in Schedule 2 to the FOI Act, and includes staff under the control of that person or body. Schedule 2 lists a number of exempt agencies including the BCI.

The term "document of an agency" is defined in clause 4(1) of the Glossary to mean "... a document in the possession or under the control of the agency including a document to which the agency is entitled to access and a document that is in the possession or under the control of an officer in his or her capacity as such an officer." Clause 6(1) of the Glossary provides that a document of the BCI is not to be regarded as a document of the agency.

It is clear that a document need not be created by the BCI in order to be a document of the BCI. It need only be in the possession or under the control of the BCI. However, a document of the agency may not be deposited in the BCI, nor in any other exempt agency, for the purpose of preventing the agency from being able to give access to that document or part of it. To do so may amount to an offence under s.110 of the FOI Act.

The officer of the agency who submitted the report advised my office that he originally attended a complaint at Perth Modern School and made some preliminary inquiries but did not conduct a full investigation. I am informed that a field report was completed and forwarded to the BCI in accordance with the agency's usual procedures. Further, I am advised that a copy of the field report was not made. My inquiries indicate that the field report remains in the possession and under the control of the BCI, and that there are no copies in the agency.

It is my understanding that the role of the BCI includes, among other things, the collection and analysis of information obtained from various sources which relates to the agency's function as a provider of policing services to the community. It is also my understanding that the capacity to receive and act on information relating to suspected offences and criminal activities and conduct is essential for the work of the agency. I also understand that field reports prepared by officers in various areas of the agency constitute a source of such information.

Based on the information before me, I am satisfied that the field report to which access is sought was sent to the BCI in accordance with the usual practices of the agency, and not for the purpose of preventing the giving of access to that document. I am also satisfied that the field report remains in the possession of the BCI and that it is, therefore, not a document of the agency.

Accordingly, for the reasons given, I consider that the complainant does not have a right under the FOI Act to be given access to that document. I confirm the decision of the agency to refuse access to the requested document on the ground that it is a document of an exempt agency and is not a document of the agency to which the FOI Act applies.

B. KEIGHLEY-GERARDY  
INFORMATION COMMISSIONER  
22 April 1997