

Decision D0172003 - Published in note form only

Re West Australian Newspapers Limited and Western Australian Electoral Commission [2003] WAICmr 17

Date of Decision: 16 June 2003

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

In October 2002, the Electoral Commissioner received a complaint concerning the actions of the Lord Mayor of Perth and another Councillor, which related to a Local Government By-Election for the City of Perth held in 1999. The Electoral Commissioner appointed an investigator to investigate that complaint and report accordingly. After receiving the investigator's report, the Electoral Commissioner decided that there was insufficient evidence to justify a prosecution for a breach of the *Local Government Act 1995*.

In April 2003, the complainant made an application to the agency for access, under the FOI Act, to the report of the investigation. The agency refused access to the report on the ground that it is 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 report and examined it. The Information Commissioner made inquiries and considered submissions from the parties. After considering the material before her, the Information Commissioner was satisfied that the agency had conducted an investigation to determine whether or not any person had breached the provisions of the *Local Government Act 1995*, a relevant "law" for the purpose of clause 5(1)(b). The Information Commissioner was also satisfied that disclosure of the report would reveal something about the content of the investigation and the people involved.

The complainant submitted that the information about the investigation was publicly known and, as the investigation had concluded, there was a public interest in knowing, among other things, why the Electoral Commissioner decided to dismiss the complaint. The Information Commissioner decided that the exemption applied regardless of how much the complainant or the public knew about the particular investigation and that the public interest factors were irrelevant to a determination of whether the report was exempt under clause 5(1)(b).

The Information Commissioner decided that disclosure of the report would reveal the investigation of a contravention or possible contravention of the law, within the meaning of clause 5(1)(b). The Information Commissioner found the disputed document exempt under clause 5(1)(b) and confirmed the decision of the agency to refuse access to it.