

Decision D0172004 - Published in note form only

***Re Garcia-Valle and Department of Consumer and Employment Protection* [2004]
WAICmr 17**

Date of Decision: 13 October 2004

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

The agency received a number of complaints alleging unprofessional conduct by two employees of a company associated with the complainant. Those complaints were investigated by the agency. Subsequently, the complainant was informed by the agency of its determination in respect of the complaints it had received.

In August 2004, the complainant sought access under the *Freedom of Information Act 1992* ('the FOI Act') to documents relating to himself and the company concerned and the complaints received by the agency. He was given access to some, but not all, of the requested documents. The agency refused him access to certain documents on the ground that those documents are exempt, in full or in part, under clauses 3(1), 5(1)(a), 5(1)(b) and 6(1) of Schedule 1 to the FOI Act.

Clause 5(1)(b) of Schedule 1 to the FOI Act provides that "*... matter is exempt matter if its disclosure could reasonably be expected to reveal the investigation of any contravention or possible contravention of the law in a particular case, whether or not any prosecution or disciplinary proceedings have resulted*".

The A/Information Commissioner ('the A/Commissioner') found that an investigation conducted by the agency into complaints received by it alleging conduct for which a real estate agent may be disciplined under the *Real Estate and Business Agents Act 1978*, 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 disputed documents would reveal the fact that there was an investigation, the identity or identities of the person or persons being investigated and the subject matter of the investigation. The A/Commissioner decided that the documents were exempt under clause 5(1)(b) and confirmed the decision to refuse the complainant access to those documents.

As the A/Commissioner found that the agency's decision to refuse access to the disputed documents under clause 5(1)(b) was justified, it was not necessary for her to consider the agency's claims for exemption under clauses 3(1), 5(1)(a) and 6(1).