

CAMPBELL 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: F1021998

DECISION No: D0201998

PARTIES: Alfred CAMPBELL

Complainant

POLICE FORCE OF WESTERN AUSTRALIA

Respondent

No. of documents in dispute:

Exemption clause(s): Clause 5(1)(b)

On 12 February 1998, Mr Campbell ('the complainant') was spoken to by police regarding an alleged breach of the *Road Traffic Act 1974* and the regulations made pursuant to that Act. On 5 March 1998, the complainant lodged a complaint with the Parliamentary Commissioner for Administrative Investigations about the police officers involved in that incident and that complaint was subsequently investigated by the Internal Investigations Unit of the Police Force of Western Australia ('the agency').

In the course of the inquiries conducted by the agency into his complaint, the complainant lodged a further complaint against the police officer handling the initial investigation, and the subsequent complaint was also investigated by the agency.

By letter dated 6 May 1998, the complainant applied to the agency under the *Freedom of Information Act 1992* ('the FOI Act') for access to all records arising from the incident in which he was spoken to by the police. Initially, the agency refused to deal with his access application. However, following his request for internal review of that decision by the agency, access was refused on the grounds that the requested documents are exempt under clause 5(1)(b) of Schedule 1 to the FOI Act.

By letter dated 9 July 1998, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

REVIEW BY THE INFORMATION COMMISSIONER

I obtained the disputed documents from the agency. Those documents consist of the Internal Investigations Unit complaint file containing various administrative documents, reports from police officers and the report of the investigation into the complainant's complaint.

On 13 August 1998, after considering the material before me, I provided the parties with my preliminary view of this complaint, including my reasons. It was my preliminary view that the requested documents may be exempt under clause 5(1)(b) of Schedule 1 to the FOI Act. The complainant provided a further written submission for my consideration but did not withdraw his complaint. I have considered that submission but I am not dissuaded from the view that the requested documents are exempt. A summary of my reasons which have been given to the parties, follows.

The exemption – clause 5(1)(b)

Clause 5(1)(b) provides:

“5. *Law enforcement, public safety and property security*

“(1) *Matter is exempt matter if its disclosure could reasonably be expected to -*
(a) ...

(b) *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 scope and meaning of the exemption in clause 5(1)(b) has been the subject of three decisions of the Supreme Court of Western Australia: see *Manly v Ministry of Premier and Cabinet* (1995) 14 WAR 550; *Police Force of Western Australia v Kelly and Another* (1996) 17 WAR 9; and *Police Force of Western Australia v Winterton* (unreported, Supreme Court of Western Australia, Library No. 970646, 27 November 1997). As Information Commissioner, I am bound by those decisions and must apply the law as stated by the Supreme Court when dealing with complaints under the FOI Act.

Clause 5(1)(b) requires that, in order to be exempt, the disclosure of the requested documents could reasonably be expected to reveal the investigation of a contravention or possible contravention of the law. Two questions arise in this matter from the terms of the exemption: firstly, whether the investigation conducted by the Internal Investigations Unit of the agency into the complainant's complaint against the police officers was an "investigation into a contravention or possible contravention of the law"; and, secondly, whether the disclosure of the requested documents could "reveal" that investigation.

I understand that the Internal Investigations Unit creates files of its records relating to investigations of complaints against police officers made by members of the public. Clearly the requested documents relate to such an investigation. It then remains to determine whether that investigation was conducted into a contravention or possible contravention of the law.

In clause 5(5) of Schedule 1 to the FOI Act, "the law" is defined to mean the law of this State, the Commonwealth, another State, a Territory or a foreign country or state. Clause 5(5) also defines "contravention" to include a failure to comply. The *Police Regulations 1979* ("the Police Regulations") deal with, among other things, the conduct and discipline of police officers in the performance of their duties. The Police Regulations comprise a law within the terms of clause 5(5). Therefore, a failure to comply with Police Regulations or a breach of those regulations would, for the purposes of clause 5(1)(b), be a contravention of the law.

The application of the exemption also requires consideration of the nature of the particular documents in question, either as described in the access application, or as ascertained upon their inspection. It must be that their disclosure could reasonably be expected to reveal, at the very least, the fact of a particular investigation of a contravention or possible contravention of the law. It is not sufficient that the documents merely reveal the fact that there has been an investigation. They must reveal, in the words of Anderson J in *Police Force of Western Australia v Kelly and Another*, "...the fact of a particular investigation of a particular incident involving certain people" (at page 13).

Once it is established that there was an investigation of a contravention or possible contravention of the law in a particular case, and that disclosure of the particular document in question could reasonably be expected to reveal something of that investigation, then the document is exempt.

Having considered the nature of the requested documents, and having inspected the relevant file, I am satisfied that the requested documents contain matter that could reasonably be expected to reveal the fact of a particular investigation by police of a particular incident involving certain people and something of the content of that investigation. In my opinion, the requested documents fall within the terms of exemption in clause 5(1)(b).

LIMITS ON EXEMPTION

Clause 5(4) operates to limit the exemption in clause 5(1)(b), if the matter claimed to be exempt is information of the kind described in clause 5(4)(a)(i), (ii) or (iii) and its disclosure would, on balance, be in the public interest. Having inspected the documents, I do not consider that the documents contain any matter of the kind described in subparagraphs (i), (ii) or (iii) of clause 5(4)(a). Accordingly, the limit does not apply and there is no scope for me to consider whether disclosure of the requested documents would, on balance, be in the public interest.

For the reasons given to the parties which I have summarised above, I find that the requested documents are exempt under clause 5(1)(b) of Schedule 1 to the FOI Act.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER
21 August 1998