

DECISION SUMMARY ISSUED BY THE INFORMATION COMMISSIONER (WA)

Decision title and citation: *Re Woodford and Legal Practitioners Complaints Committee* [1999] WAICmr 24

COMPLAINT No: F0421999

DECISION No: D0241999

PARTIES: Michael James WOODFORD

Complainant

LEGAL PRACTITIONERS COMPLAINTS COMMITTEE

Respondent

No. of documents in dispute: 5

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

In September 1997, Mr Woodford ('the complainant') lodged a complaint with the Legal Practitioners Complaints Committee ('the agency') alleging unprofessional conduct by a legal practitioner, "practitioner A". The agency referred that complaint to practitioner A for a response. Practitioner A provided a response to the agency and lodged a cross-complaint against the complainant. The complainant responded to the cross-complaint against him.

After considering both responses, the agency informed the complainant and practitioner A that neither complaint disclosed any unprofessional conduct and gave its reasons. In February 1999, the complainant applied to the agency under the *Freedom of Information Act 1992* ('the FOI Act') seeking access to certain documents. In due course, access to some documents was granted, but the agency refused the complainant access to some others on the ground that those documents are exempt under clause 5(1)(a), (b) and (c) of Schedule 1 to the FOI Act. The agency's initial decision was confirmed following internal review and, on 8 April 1999, 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 and sought further submissions in support of the exemptions cited as grounds for its refusal of access. A summary of those submissions was given to the complainant and he responded to those claims. On 21 July 1999, after considering the material before me, I informed the parties in writing of my preliminary view of this complaint, including my reasons.

It was my preliminary view that the disputed documents may be exempt under clause 5(1)(b) of Schedule 1 to the FOI Act. The complainant responded with another submission, in substance rearguing his earlier submission. I am not dissuaded from my preliminary view that the disputed documents are exempt under clause 5(1)(b). A summary of my reasons follows.

The disputed documents

There are 5 documents in dispute. Those documents consist of memoranda dated between 1997 and 1999 from officers of the agency to the Complaints Committee of the agency.

Clause 5(1)(b)

Clause 5(1)(b) 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 complainant sought to draw a distinction between the investigative and adjudicative functions of the agency and the application of the exemption. He submits that, whilst the agency exercises both functions, the exemption can only apply in respect of its investigative functions. As the disputed documents contain information relied upon by the Complaints Committee in its adjudicative function, the complainant submits that exemption does not apply.

In my view, the application of the exemption is not limited to documents associated with purely investigative functions. Nothing in clause 5 limits the exemption in that way. Whatever the function of the agency creating the document, the purpose of its creation, or the use to which it is put, a document will be exempt under clause 5(1)(b) if its disclosure could reasonably be expected to reveal the investigation of a contravention or possible contravention of the law in a particular case. The words of the exemption also clearly indicate that it is intended to apply to investigations that could result in disciplinary proceedings, whether or not such proceedings have ensued.

Two questions arise from the terms of the exemption: firstly, whether the inquiries conducted by the agency into the complaints it received were investigations into a contravention or possible contravention of the law and, secondly, whether disclosure of the documents could reasonably be expected to reveal those investigations.

The agency is established by the *Legal Practitioners Act 1893*. Its functions include, among other things, receiving and conducting inquiries into complaints from practitioners or clients concerning alleged illegal or unprofessional conduct on the part of any legal practitioner, whether occurring before or after admission.

The agency submits that, once findings of illegal or unprofessional conduct, neglect or undue delay are made against any practitioner, either by the agency in the exercise of its summary jurisdiction or by the Disciplinary Tribunal, there is a range of penalties that may be imposed upon a practitioner, quite apart from the power of the Disciplinary Tribunal to refer its findings to the Full Court of the Supreme Court of Western Australia. The agency submits that the inquiries carried out by its officers into complaints received are, both in fact and by implication, investigations into contraventions or possible contraventions of the relevant standards of the *Legal Practitioners Act 1893*, which are “laws” as defined in clause 5(5).

Based on the material before me, I am satisfied that an investigation conducted by officers of the agency into complaints received by it concerning allegations of conduct for which a practitioner may be disciplined, is an investigation into a contravention or possible contravention of the *Legal Practitioners Act 1893*, a “law” for the purpose of clause 5(1)(b).

The Supreme Court of Western Australia has considered the meaning of the phrase “reveal the investigation” in clause 5(1)(b) on three occasions. In *Police Force of Western Australia v Kelly and Anor* (1996) 17 WAR 9, Anderson J said, at page 13, that “...the phrase “...if its disclosure could reasonably be expected to...reveal the investigation of any contravention of the law in a particular case...” is apt to include the revelation of the fact of a particular investigation by police of a particular incident involving certain people.”

In *Kelly*'s case, Anderson J made it clear that documents can “reveal an investigation” even when the investigation has been revealed through other materials or the investigation has concluded. His Honour said, at page 14 of that case:

“I do not see why any element of novelty or exclusivity should be imported into the phrase “reveal the investigation”. A document may reveal a state of affairs which is also revealed by other things. The same state of affairs may be separately revealed in several documents. I do not think there is any difficulty in saying that the separate disclosure of each separate document reveals that state of affairs.”

I have examined the disputed documents. I am satisfied that their disclosure could reasonably be expected to reveal the investigation carried out by officers of the agency into the complaints it received involving the complainant, and that the investigation was into a possible contravention or contraventions of the law. Accordingly, I find that the disputed documents are exempt under clause 5(1)(b). I confirm the decision of the agency to refuse access to those documents.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER
5 August 1999