

Decision D0262003 – Published in note form only

Re Kelly and Department of Justice [2003] WAICmr 26

Date of Decision: 9 October 2003

Freedom of Information Act 1992, Schedule 1, clause 5(2)(b)

The complainant made an application to the agency for access under the FOI Act to documents described as being statements allegedly made by various third parties to the Internal Investigations Unit of the agency. The agency neither confirmed nor denied the existence of such documents but stated that if such documents exist, they would be exempt under clause 5(2)(b) of Schedule 1 to the FOI Act.

The Information Commissioner examined the agency's FOI file and considered the terms of the complainant's access application. The Internal Investigations Unit of the agency is an exempt agency under Schedule 2 of the FOI Act. It conducts investigations into matters relating to prisons in Western Australia. The Information Commissioner was satisfied that, if documents of the kind described in the complainant's access application existed, then those kinds of documents are exempt by virtue of the fact that they would have been created by the Internal Investigations Unit. The Information Commissioner was satisfied that the documents described in the complainant's access application would fall within the terms of the exemption in clause 5(2)(b).

The Information Commissioner found that if the requested documents exist, those documents would be exempt documents under clause 5(2)(b) of Schedule 1 to the FOI Act and confirmed the decision of the agency to refuse access.