

Decision D0352001 – Published in note form only

***Re Arnold and Department of Justice* [2001] WAICmr 35**

Date of Decision: 8 October 2001

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

The complainant is an officer of the agency. In February 2001, an internal memorandum relating to certain actions of the complainant, allegedly done in the course of his duties as an officer of the agency, was sent to a senior officer of the agency. The police investigated the allegations. The complainant was interviewed and subsequently cleared of any criminal or disciplinary misconduct.

In May 2001, the complainant made an application to the agency for access to a copy of the memorandum. The agency refused access on the ground that the document was exempt under clause 5(1)(b) of Schedule 1 to the FOI Act.

The Information Commissioner obtained the disputed document from the agency and examined it. Based on that examination, the Information Commissioner decided that disclosure of the document would “reveal” the investigation conducted by the police: 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.

The complainant submitted that he was aware of the fact of the investigation, the subject matter of the investigation and its outcome and claimed that the document should be disclosed to him. However, in *Kelly's* case the Supreme Court of Western Australia made it clear that the exemption in clause 5(1)(b) can apply, regardless of how much an applicant knows or claims to know about a particular investigation or its outcome.

The Information Commissioner applied the interpretation of the exemption in clause 5(1)(b) of Schedule 1 to the FOI Act made by the Supreme Court and found the disputed document exempt under that clause. The Information Commissioner confirmed the decision of the agency to refuse access to the disputed document.