

Decision D0412002 - Published in note form only

***Re Hawken and Police Force of Western Australia* [2002] WAICmr 41**

Date of Decision: 2 December 2002

Freedom of Information Act 1992; Clause 3(1)

The complainant applied to the agency for access, under the *Freedom of Information Act 1992*, to a document relating to a decision taken by the agency to withdraw charges against a third party.

The requested document is a copy of a file note made by a legal practitioner. The agency refused access and claimed that the requested document was exempt under clause 7 of Schedule 1 to the FOI Act.

The complainant lodged a complaint with the Information Commissioner and sought external review of the agency's decision. The Information Commissioner examined the requested document. The Information Commissioner was satisfied that the requested document was a record of legal advice, but was unable to determine, on the basis of the material then before the Commissioner, whether legal professional privilege in respect of that document might have been waived. However, the Information Commissioner was satisfied that the requested document contained personal information about a third party, which was, on its face, exempt matter under clause 3(1) of Schedule 1 to the FOI Act.

The complainant submitted that he was seeking access to the requested document in support of a complaint, which he had made to the Legal Practitioners' Complaint Committee about the legal officer concerned. The Information Commissioner recognised a public interest in ensuring that the appropriate regulatory body, the Legal Practitioners' Complaint Committee, properly deals with complaints against legal practitioners. However, the Information Commissioner gave that factor less weight because the Legal Practitioners' Complaints Committee could obtain a copy of the document in the course of its investigation into the complaint and it was not a requirement that the complainant should be given access to the document under the FOI Act in order to pass the document on to another body.

The Information Commissioner could not identify any other public interests favouring disclosure of personal information. Therefore, the Information Commissioner gave more weight to the public interest in protecting privacy. The Information Commissioner found the document exempt under clause 3(1) and varied the decision of the agency to refuse access to that document.