

JOHNSON AND SGIC

**OFFICE OF THE INFORMATION
COMMISSIONER (W.A.)**

**File Ref: 95126
Decision Ref: D04195**

Participants:

Terence Hurley Johnson
Complainant

- and -

State Government Insurance Commission
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal of access - letters from legal adviser to agency - clause 7 - legal professional privilege - legal advice given by the agency's legal advisers - confidential communication between a legal adviser and the agency for the sole purpose of giving legal advice.

Freedom of Information Act 1992 (WA) Schedule 1 clauses 6, 7.

Re Johnson and State Government Insurance Commission (Information Commissioner, WA, 29 May 1995, unreported).

Re Read and Public Service Commission (Information Commissioner, WA, 16 February 1994, unreported).

Re Guyt and Health Department of Western Australia (Information Commissioner, WA, 16 March 1994, unreported).

Re Coastal Waters Alliance of Western Australia Incorporated and Department of Environmental Protection and Cockburn Cement Limited (Information Commissioner, WA, 28 September 1995, unreported).

Grant v Downs (1976) 135 CLR 674.

DECISION

The decision of the agency is confirmed. The disputed documents are exempt under clause 7 of Schedule 1 to the *Freedom of Information Act 1992*.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

13th October 1995

REASONS FOR DECISION

BACKGROUND

1. This is an application for external review by the Information Commissioner arising out of a decision of the State Government Insurance Commission ('the agency') to refuse Mr Johnson ('the complainant') access to parts of documents requested by him under the *Freedom of Information Act 1992* ('the FOI Act').
2. The background to this complaint is referred to in my decision in *Re Johnson and State Government Insurance Commission* (29 May 1995, unreported), at paragraphs 2-5 of that decision. The complainant was formerly employed by the agency in the position of Manager, Government Insurance. On 5 June 1992, he was involved in a vehicle accident on the Mitchell Freeway. That accident and subsequent events were investigated by the agency and the results of that investigation and certain other information were referred to police for further inquiry. Subsequently, the complainant was charged with, and acquitted of, the offence of making a false declaration as to the number of alcoholic drinks he had consumed prior to the accident.
3. On 18 August 1994, the Managing Director of the agency dismissed the complainant from his position with the agency and, on 31 August 1994, the Board of Commissioners of the agency ('the Board'), endorsed the action taken by the Managing Director. At subsequent meetings of the Board, it received "update" reports from various officers of the agency as to developments following the complainant's dismissal, and advice in relation to future action.
4. Thereafter, the complainant lodged a number of access applications under the FOI Act with the agency seeking access to various documents associated with the decisions of the Board and his dismissal. On 8 June 1995, the complainant lodged another access application with the agency seeking access to various documents, namely, reports to the Board made since 7 December 1994 and Minutes and resolutions of the Board since 14 December 1994, concerning his dismissal and subsequent action by the agency.
5. The agency initially identified five documents as coming within the scope of the access application. The complainant was granted access to edited copies of three documents from which exempt matter had been deleted, and denied access in full to two documents. On 29 June 1995, the complainant applied to the agency for internal review of its decision. On 6 July 1995, Mr V Evans, Managing Director of the agency granted access to three additional documents which, in the course of conducting the internal review, were found to be within the ambit of the access application. Mr Evans also confirmed the agency's initial decision that the matter deleted from three documents was exempt under clauses 6 and 7 of Schedule 1 to the FOI Act and the two documents to which access had been denied, were exempt under clause 7.

6. However, the complainant remained dissatisfied with the decision of the agency and, on 8 July 1995, applied to the Information Commissioner for external review.

REVIEW BY THE INFORMATION COMMISSIONER

7. On 14 July 1995, I notified the parties that I had accepted this complaint. I also obtained copies of the documents in dispute and the agency's FOI file maintained in respect of the complainant's access application. Meetings were held between officers of the agency and my staff and the complainant and my staff in an effort to conciliate this complaint. Those meetings resulted in the agency releasing unedited copies of the three documents to the complainant thereby reducing the number of documents remaining in dispute between the parties.
8. On 14 September 1995, I provided the parties with my preliminary view of the two documents remaining in dispute. It was my view that two documents which the agency claims are exempt under clause 7, would be privileged from production in legal proceedings on the ground of legal professional privilege. Following receipt of my preliminary view, the complainant did not withdraw his complaint, nor did he make any further submissions in support of his claim for access to the two documents remaining in dispute.

THE DISPUTED DOCUMENTS

9. The documents for which the agency claims exemption under clause 7 of Schedule 1 to the FOI Act, consist of two letters to the agency from a firm of solicitors. The first disputed document is a copy of a letter dated 25 January 1995, from a firm of solicitors to the Chief Executive of the agency. The second disputed document is a facsimile message dated 13 March 1995, from the same firm of solicitors to an officer of the agency.

THE EXEMPTION - LEGAL PROFESSIONAL PRIVILEGE

10. The agency claims that the disputed documents are exempt under clause 7 of Schedule 1 to the FOI Act on the ground of legal professional privilege. This is the third formal decision involving the complainant and the agency where the documents to which access has been refused are claimed to be exempt under clause 7. Clause 7 provides:

"Legal professional privilege

Exemption

- (1) *Matter is exempt matter if it would be privileged from production in legal proceedings on the ground of legal professional privilege.*

Limit on exemption

(2) *Matter that appears in an internal manual of an agency is not exempt matter under subclause (1)."*

11. I have discussed the principle and application of legal professional privilege in a number of my formal decisions, initially in *Re Read and Public Service Commission* (16 February 1994, unreported), at paragraphs 65-66; *Re Guyt and Health Department of Western Australia* (16 March 1994, unreported), at paragraphs 11-25, and most recently in *Re Coastal Waters Alliance of Western Australia Incorporated and Department of Environmental Protection and Cockburn Cement Limited* (28 September 1995, unreported), at paragraphs 38-59.
12. I have also referred to that principle in my other decisions involving the complainant and the agency. I repeat my comments and understanding of the law as it applies to legal professional privilege. It is clearly established law in Australia that confidential communications passing between a client and his legal adviser need not be given in evidence or otherwise disclosed by the client and, without the client's consent, may not be given in evidence or otherwise disclosed by the legal adviser if made for the sole purpose of enabling the client to obtain, or the adviser to give, legal advice: *Grant v Downs* (1976) 135 CLR 674.
13. The document designated as Document 9(a) on the agency's schedule supplied to the complainant, is a letter addressed to the Chief Executive of the agency from the agency's legal advisers. It is marked "Private and Confidential". The document designated as Document 10(a) on the agency's schedule, is a facsimile message from the agency's legal advisers sent to an officer of the agency. It is marked "Confidential" and is addressed to the Manager, Human Resources of the agency.
14. From my examination of both documents, I am satisfied each document is a confidential communication between the agency's legal advisers and the agency and I am also satisfied that both were made for the purpose of enabling the agency's legal advisers to give legal advice to the agency. Accordingly, I am satisfied that both documents would be privileged from production in legal proceedings on the ground of legal professional privilege. Therefore, I find that the two disputed documents are exempt under clause 7 of Schedule 1 to the FOI Act.
