

Decision D0462000 – Published in note form only

Re de Waal and Ministry of the Premier and Cabinet [2000] WAICmr 46

Date of Decision: 28 August 2000

Freedom of Information Act 1992; Schedule 1 clause 8(2)

On 14 March 2000, the complainant made an access application to the agency for access to documents relating to the 1974 Honorary Royal Commission into Homosexuality ('the Royal Commission'). Following consultation and correspondence between the parties, it was agreed that the agency would deal with the access application in three parts.

On 2 June 2000, the agency advised the complainant that 54 documents had been identified as falling within the scope of Part 1 of the access application, and access was granted to 50 of those documents. Access to the four remaining documents was refused on the ground that those documents are exempt under clause 8(2) of Schedule 1 to the FOI Act. The complainant lodged a complaint with the Information Commissioner and sought access to the documents concerned.

The Acting Information Commissioner found, based on examination of the disputed documents and the other material before him, that the documents were confidential communications, as defined in clause 8(2) of Schedule 1 to the FOI Act. The Acting Information Commissioner found that the four disputed documents contain sensitive, private and personal opinions of the authors in the form of private communications between the Royal Commission and the authors, in circumstances where there was clearly an expectation of confidentiality.

When considering the public interest, the Acting Information Commissioner recognised that there is a public interest in interested persons having access to information considered by the Royal Commission, during the process of developing recommendations on matters referred to it by the Government of the day. It was decided that the public interests favouring disclosure had been satisfied, to a large extent, by the disclosure of many of the written submissions made to the Royal Commission and access to the transcript of the Royal Commission.

In the circumstances of this complaint, the Acting Information Commissioner concluded that the public interest in the protection of privacy, and government being able to obtain access to information of the kind contained in the disputed documents, outweighed the public interest in people being able to obtain access to those documents. The Acting Information Commissioner confirmed the decision of the agency to refuse access.