

**Decision D0492000 - Published in note form only**

***Re Stewart and Fremantle Cemetery Board [2000] WAICmr 49***

**Date of Decision: 21 September 2000**

***Freedom of Information Act 1992; Schedule 1 clause 3(1), clause 7 and s.26***

In April 2000, the complainant made an application to the agency for access to documents relating to a particular marked grave and the right of burial in respect of that grave. The agency refused the complainant access to the requested documents on the basis that those documents were either otherwise publicly available or exempt under clause 3 or clause 7 of Schedule 1 to the FOI Act.

The complainant lodged a complaint with the Information Commissioner and sought access to all the disputed documents. The complainant also claimed that additional documents, which had not been identified, should exist in the agency.

After negotiations between the agency and the Information Commissioner's office, the agency subsequently released to the complainant a copy of all documents identified as falling within the scope of the access application except those particular documents that, in the opinion of the agency, are exempt under clause 3 (personal information) or clause 7 (legal professional privilege) of Schedule 1 to the FOI Act. As a result of those negotiations only 6 documents remained in dispute.

The Information Commissioner found one of the disputed documents, a statutory declaration made by a third party and containing personal information about that person and other third parties, exempt under clause 3. Of the other 5 documents, 4 were confidential communications between the agency and its Solicitors for the purpose of requesting or receiving legal advice and the 5<sup>th</sup> was a document in which legal advice given to the agency was summarised. The Information Commissioner found these exempt under clause 7. The Commissioner also found that, although certain documents may once have existed in the agency, the agency had taken all reasonable steps to find all the requested documents but those documents have either been destroyed or cannot be found.

The Information Commissioner confirmed the decision of the agency to refuse access.