

Decision D0602000

***Re Campbell and Police Force of Western Australia* [2000] WAICmr 60**

Date of Decision: 14 November 2000

Freedom of Information Act 1992 s. 26; Schedule 1 clause 5(1)(b)

The complainant applied under the *Freedom of Information Act 1992* ('the FOI Act') for access to documents resulting from a complaint he had made to police about alleged police harassment following a traffic incident in 1995. The complainant's complaint had been investigated by the Internal Investigations Branch of the agency. The agency refused access under s.26 of the FOI Act on the basis that the requested documents do not exist, and that decision was deemed to have been confirmed on internal review.

Section 26 of the FOI Act permits an agency to inform an access applicant in writing that it is not possible to give access to a document if all reasonable steps have been taken to find it and the agency is satisfied that the document either cannot be found or does not exist. Such a notice is taken to be a decision to refuse access and, on review, an agency may be required to conduct further searches. Following receipt of the complaint, the Information Commissioner requested that the agency conduct further searches for the requested documents. As a result, the agency located 10 documents, gave the complainant access to edited copies of 8 and refused access to 2. The agency claimed that those 2 documents, (investigators' handwritten notes of interview with police officers the subject of the complaint) were exempt under clause 5(1)(b) of Schedule 1 to the FOI Act, and maintained that other documents either did not exist or could not be found.

Clause 5(1)(b) exempts from disclosure matter which could reasonably be expected to reveal the investigation of a contravention or possible contravention of the law in a particular case, whether or not any prosecution or disciplinary proceedings have resulted. The investigation into the conduct alleged by the complainant was an investigation into whether or not there had been a contravention of the *Police Regulations 1979*, which contain regulations concerning, among other things, the conduct and discipline of police officers, and are a law as defined in clause 5(5). The Information Commissioner decided that the handwritten notes of the interviews were exempt under clause 5(1)(b) because disclosure of those documents could reasonably be expected to reveal the investigation of a possible contravention of the law.

The Information Commissioner also decided that, although the agency had taken all reasonable steps to locate them, other documents described by the complainant either do not exist or cannot be found in the agency. Therefore, the Information Commissioner found that the agency's decision to refuse access to those documents in accordance with s.26 of the FOI Act was justified.

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