

DECISION SUMMARY ISSUED BY THE INFORMATION COMMISSIONER (WA)

Decision title and citation: *Re Holmes and Police Force Of Western Australia* [2000] WAICmr 64

COMPLAINT No: F1612000

DECISION No: D0642000

PARTIES: **Martin Phillip HOLMES**

Complainant

POLICE FORCE OF WESTERN AUSTRALIA

Respondent

No. of documents in dispute: 10

Exemption clause: Clause 5(1)(b); s.23(2)

In July 2000, Mr Holmes ('the complainant') made an application to the Police Force of Western Australia ('the agency') for access under the *Freedom of Information Act 1992* ('the FOI Act') to documents pertaining to investigations allegedly conducted by the agency in which the complainant might have been a suspect.

The agency dealt with the application and identified 10 documents relevant to the request. The agency refused the complainant access to those documents on the ground that they are exempt under clause 5(1)(b) of Schedule 1 to the FOI Act. The agency's decision was confirmed following an internal review. On 18 September 2000, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

Review by the Information Commissioner

I obtained the disputed documents from the agency. After examining those documents and making other inquiries with both the agency and the complainant, I informed the parties in writing of my preliminary view of this complaint, including my reasons. It was my preliminary view that documents of the kind described in the complainant's access application may be exempt under clause 5(1)(b) of Schedule 1 to the FOI Act. However, the agency had not identified any documents of the kind described in the access application, and none was produced to me.

In my opinion the 10 documents identified by the agency and produced to me were not documents of the kind described in the complainant's access application. It was my preliminary view that those 10 documents may not be exempt under clause 5(1)(b).

The agency did not respond to my preliminary view letter.. The complainant responded but did not withdraw his complaint. Therefore, I am not dissuaded from my preliminary view. A summary of my reasons follows. Further, I do not deal with the 10 documents identified by the agency. I consider that those 10 documents fall outside the scope of the complainant's access application.

Clause 5(1)(b)

Clause 5(1)(b) provides that matter is exempt matter if its disclosure could reasonably be expected to reveal the investigation of any contravention or possible contravention of the law in a particular case, whether or not any prosecution or disciplinary proceedings have resulted.

The scope and meaning of clause 5(1)(b) has been the subject of three decisions by the Supreme Court of Western Australia. If disclosure of a document could reasonably be expected to reveal that there had been a police investigation, the identity of the person being investigated and the subject matter of the investigation then that document will be exempt under clause 5(1)(b): *Police Force of Western Australia v Kelly and Anor* (1996) 17 WAR 9 at 13.

The documents described by the complainant in his access application are documents of a particular kind, being those relating to any investigation where the complainant was considered by the agency to be a suspect, including any investigation then being conducted by the Macro Task Force. The Macro Task Force is a special team established by the agency to investigate the disappearance of a number of Perth women, including the murder of at least one of those missing women. Clearly, investigations of the kind conducted by the Macro Task Force are criminal investigations of the most serious kind, involving the crime of murder.

Section 23(2) of the FOI Act provides that an agency may refuse access to requested documents without having identified any or all of them and without specifying the reason why matter in any particular document is claimed to be exempt matter if it is apparent, from the nature of the documents as described in the access application, that all of the documents are exempt documents and there is no obligation under s.24 of the FOI Act to give access to an edited copy of any of the documents.

It is apparent to me, and it should have been apparent to the decision-makers in the agency, from the nature of the documents described in the complainant's access application that all of those documents would be exempt under clause 5(1)(b). Clearly, the disclosure of documents of the kind described by the complainant would reveal the fact of an investigation, the identity of the person being investigated and the subject matter of the investigation.

This is an instance where the agency could have properly dealt with the complainant's access application under s.23(2) of the FOI Act. Although it did not do so, s76(1) of the FOI Act provides that, in dealing with a complaint, I have the power to review any decision made by the agency in respect of the access application and the power to decide any matter in relation to the access application that could, under the FOI Act, have been decided by the agency.

I have also considered whether the agency was obliged, under s.24 of the FOI Act, to give the complainant access to edited copies of the requested documents. In my view, in the circumstances of an ongoing investigation, I do not consider that it would be practicable to do so.

For the reasons summarised above, which have been given to the parties in more detail, I set aside the decision of the agency. In substitution, I find that, without identifying any of the requested documents and without specifying the reasons why matter in any particular document is claimed to be exempt, it is apparent, from the nature of the documents as described in the complainant's access application, that all of those documents are exempt under clause 5(1)(b) and the agency is not obliged to give access to edited copies of any of those documents.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

1 December 2000