

**Decision D0352002 – Published in note form only**

***Re Dewan and Department of Environment, Water and Catchment Protection [2002] WAICmr 35***

**Date of Decision: 30 October 2002**

***Freedom of Information Act 1992, Schedule 1, clause 5(1)(b)***

In February 2002, the Chief Executive of the agency directed an officer of the Public Sector Management Division of the Department of the Premier and Cabinet to conduct a disciplinary inquiry under s.86 of the *Public Sector Management Act 1994* ('the PSM Act') into alleged breaches of discipline by the complainant. A disciplinary inquiry was conducted and, on 16 May 2002, the investigating officer presented his report, incorporating his findings and recommendations ('the Report') to the Chief Executive of the agency, for his consideration.

On 31 May 2002, the complainant made an application for access, under the FOI Act, to a copy of the Report. The agency refused him access to a copy of the Report, on the ground that it is exempt under clause 5(1)(b) of Schedule 1 to the FOI Act. The agency's decision was confirmed on internal review and the complainant then lodged a complaint with the Information Commissioner, seeking external review of the agency's decision.

The Information Commissioner obtained the Report from the agency and examined it. The contents of the Report clearly established that the investigating officer had carried out a disciplinary inquiry under s.86 of the PSM Act, for the express purpose of determining whether or not the complainant had committed any of the alleged breaches of discipline, in contravention or possible contravention of the PSM Act. The Information Commissioner was satisfied that the disciplinary inquiry was an investigation into allegations of a contravention or possible contravention of the law, namely the PSM Act (a relevant "law" for the purposes of clause 5).

The Information Commissioner found that the disclosure of the Report would reveal the investigation of a contravention or possible contravention of the law, in a particular case. The Information Commissioner decided that the exemption in clause 5(1)(b) applies to the Report, regardless of how much the complainant already knows about the disciplinary inquiry and despite the fact that the complainant had been given a copy of the Report, outside the FOI process, by another agency: see *Police Force of Western Australia v Kelly and Another* (1996) 17 WAR 9.

The Information Commissioner confirmed the decision of the agency to refuse access to the Report under clause 5(1)(b).