Lib No: 970646

JURISDICTION	**:**	SUPREME COURT OF WESTERN AUSTRALIA
CORAM	**:**	SCOTT J
HEARD	**:**	27 OCTOBER 1997
DELIVERED	**:**	27 NOVEMBER 1997
FILE NO/S	**:**	APPEAL SJA 1078 of 1997
BETWEEN	**:**	POLICE FORCE OF WESTERN AUSTRALIA Appellant AND HELEN LOUISE WINTERTON Respondent

Catchwords:

Administrative law - Freedom of information - s10, s23, s24, s76, s85, s102 of *Freedom of Information Act 1992 WA* considered - Legal professional privilege - Appeal from decision of Information Commissioner on external review of decision of Police Force of Western Australia denying access to documents - Matter remitted to Information Commissioner.

Representation:

Counsel:

Appellant	:	Ms C F Jenkins
Respondent	:	Ms C Galati

Solicitors:

Appellant	:	State Crown Solicitor
Respondent	:	Freehill Hollingdale & Page

Case(s) referred to in judgment(s):

Attorney General's Department v Cockroft (1986) 10 FCR 180
Director of Public Prosecutions v Smith (1989) 100 FLR 6
Manly v Minister of Premier and Cabinet (1994-1996) 14 WAR 550
Police Force of Western Australia v Kelly and Smith, unreported; SCt of WA (Anderson J) Library No 960227; 30 April 1996

Case(s) also cited:

Craig v South Australia (1995) 184 CLR 163
Director of Public Prosecutions & Anor v Smith (1989) VR 6
Kingston v Keprose Pty Ltd (1987) 11 NSWLR
Manly v Ministry of Premier and Cabinet, unreported SCt of WA; Library No 950310; 15 June 1995
MMI Limited v Police Force of Western Australia, unreported, WA Information Commissioner, 13 August 1996, D4896
Trade Practices Commission v Sterling (1979) 36 FLR 244

Library Number : 970646

SCOTT J:

The appellant appeals against a decision of the Information Commissioner ("the Commissioner") who conducted an external review of the appellant's decision to refuse the respondent access to certain of the appellant's documents. The respondent had requested access to those documents under the provisions of the *Freedom of Information Act 1992* of Western Australia ("the *FOI Act*").

The general background to the application is set out in the reasons for decision of the Commissioner and can be summarised in the following way. In 1992 Mr Peter Kyle inquired into matters concerning the City of Wanneroo which occurred between May 1986 to May 1991. Mr Kyle presented preliminary views to the Minister for Local Government in April and June 1992 and ultimately presented his final report ("the 1992 Report") to the Minister for Local Government on 2 December 1992. The 1992 Report was tabled in the Parliament of Western Australia on 3 December 1992.

Following the presentation of the 1992 Report, matters were referred to the appellant for the investigation of possible criminal conduct. The investigation of those matters, however, was terminated in December 1995 when Mr Kyle was commissioned to re-open the inquiry. Mr Kyle was ultimately injuncted from continuing with the inquiry and following the termination of that role, Mr Kyle made certain public comments in respect of the appellant's conduct in carrying out investigations flowing from the 1992 Report.

After making those public comments, Mr Kyle was requested to provide the Solicitor General for the State of Western Australia with a report detailing certain matters including the matters the subject of his public comments.

On 29 February 1996, Mr Kyle provided the Solicitor General with a written report ("the 1996 Report") detailing his concerns. That document is one of a number of documents central to this appeal. Those documents in dispute, have been numbered and presented to this Court in a bundle. The 1996 Report of Mr Kyle to the Solicitor General is document 43 which, although a pivotal document, is not in issue in these proceedings.

As part of the general narrative of the background to this appeal, Mr Kyle was subsequently replaced by Mr Roger Davis and the investigations which were continued by Mr Davis were reconstituted as a "Royal Commission". The Royal Commission is continuing, or has just completed, its inquiries. The 1996 Report to the Solicitor General was forwarded to the Commissioner of Police to carry out investigations, particularly in relation to the matters raised in the 1992 Report.

On 2 August 1996, the respondent, as Deputy Chief of Staff of *The West Australian Newspaper* applied under the *FOI Act* for access to "all documents - including personal notes and diary entries - relating to concerns by former local government inquiry head Peter Kyle about the police investigation into Wanneroo matters."

After the appellant dealt with the respondent's application (access to documents which came within the description was refused) the respondent sought an internal review of the appellant's decision. The respondent had by then indicated a willingness to accept access to edited copies of the documents in question. The reason for that editing and the effect of it will be discussed later in the course of these reasons.

The appellant's internal reviewer ultimately refused the respondent's request for access to edited copies of documents on the basis that:

> "The provision of such an edited copy would not provide a concise and workable tool for the purpose required, nor would it reflect any similarity to the original document."

On 22 October 1996, the respondent lodged a complaint with the Commissioner seeking a review by the Commissioner of the appellant's decision.

Pursuant to the statutory provisions, the Commissioner obtained from the appellant, a copy of the file maintained by the appellant in respect of the matter and a schedule was prepared describing each of the documents obtained.

Following discussions between the staff of the Commissioner and the respondent, the number of documents to which the respondent sought access was considerably reduced and the argument in relation to the balance of the documents turns upon whether those documents, either in their entirety or in edited form, are exempt from disclosure under the provisions of the *FOI Act*. In order to consider the merits of the appellant's claim for exemption, it is therefore necessary to turn to the general provisions of that Act.

The preamble to the *FOI Act* describes the Act as:

> "AN ACT to provide for public access to documents, and to enable the public to ensure that personal information in documents is accurate, complete, up to date and not misleading, and for related purposes."

The preamble is of significance in relation to this appeal because the Commissioner has taken it upon herself to edit nearly all of the documents in dispute with a view to releasing the balance to the respondent.

The right of access to documents under the *FOI Act* is contained in s10 which provides:

"**Right of access to documents**

10.(1) A person has a right to be given access to the documents of an agency (other than an exempt agency) subject to and in accordance with this Act.

(2) Subject to this Act, a person's right to be given access is not affected by -

(a) any reasons the person gives for wishing to obtain access; or

(b) the agency's belief as to what are the person's reasons for wishing to obtain access."

For the purposes of this appeal, it is accepted that the appellant is an agency within the meaning of that term in the section.

The right to claim exemption from s10 arises out of s23 which provides:

"**Refusal of access**

23.(1) Subject to section 24 the agency may refuse access to a document if -

(a) the document is an exempt document;

(b) the document is not a document of the agency; or

(c) giving access to the document would contravene a limitation referred to in section 7.

(2) The agency may refuse access to the 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 -

(a) it is apparent, from the nature of the documents as described in the access application, that all of the documents are exempt documents; and

(b) there is no obligation under section 24 to give access to an edited copy of any of the documents.

(3) Subject to section 24 the agency has to refuse access to a document that is the subject of an exemption certificate.

(4) If a document contains personal information and the applicant, or the person to whom the information relates, is a child who has not turned 16, the agency may refuse access to the document if it is satisfied that access would not be in the best interests of the child and that the child does not have the capacity to appreciate the circumstances and make a mature judgment as to what might be in his or her best interests.

(5) If a document contains personal information and the applicant, or the person to whom the information relates, is an intellectually handicapped person, the agency may refuse access to the document if it is satisfied that access would not be in the best interests of the person."

The power to deal with documents in an edited form is contained in s24 which provides:

"**Deletion of exempt matter**

24. If -

(a) the access application requests access to a document containing exempt matter; and

(b) it is practicable for the agency to give access to a copy of the document from which the exempt matter has been deleted; and

(c) the agency considers (either from the terms of the application or after consultation with the applicant) that the applicant would wish to be given access to an edited copy,

the agency has to give access to an edited copy even if the document is the subject of an exemption certificate."

The basis upon which the appellant refused the respondent access to the documents was under the provisions of s23(1)(a) of the *FOI Act*, that is, that the documents concerned were exempt documents.

"Exempt document" is defined in Schedule 2 of the *FOI Act* to mean: "a document that contains exempt matter."

"Exempt matter" means "matter that is exempt matter under Schedule 1".

Schedule 1 deals with exempt matter and provides in cl 5:

> "5. **Law enforcement, public safety and property security**
>
> ***Exemptions***
>
> (1) Matter is exempt matter if its disclosure could reasonably be expected to -
>
> ...
>
> (b) 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 appellant maintains the view that all of the documents in issue in this appeal come within the exemption provisions so that they should not be disclosed to the respondent either in their totality or in an edited form.

In her reasons for decision, the Commissioner classified the disputed documents into three groups, namely:

1 Exempt matters under cl 3(1) of the First Schedule to the *FOI Act*. The Commissioner's decision in that respect, insofar as it relates to the exemption of signatures, is not under challenge but the decision to provide access to the balance of those documents is the subject of appeal.

2 Matters claimed as exempt under cl 5(1)(b) of the First Schedule to the *FOI Act*, all of which are challenged in this appeal.

3 Matters the subject of a claim for legal professional privilege which are also the subject of challenge in this appeal.

In addition, there were a number of documents which the Commissioner classified as falling outside the ambit of the request for access and those documents are not in dispute in this appeal.

Each of those categories of documents will be discussed in the course of these reasons.

The grounds of appeal are:

> "A THE CLAIM TO EXEMPTION UNDER SUBCLAUSE 5(1)(b) OF SCHEDULE 1 TO THE FREEDOM OF INFORMATION ACT 1992
>
> 1 The learned Commissioner erred in law in that she failed to find that all of the documents the subject of the access application were wholly exempt pursuant to subclause 5(1)(b) of Schedule 1 to the *Freedom of Information Act 1992* ("the Act") in that she:
>
> (a) failed to find that by virtue of the terms of the access application itself, all of the documents which fell within the scope of the access application would necessarily reveal an investigation of the contravention or possible contravention of the law;
>
> (b) failed to correctly apply the exemption in subclause 5(1)(b) in accordance with the principles established in *Police Force of Western Australia v Kelly and Smith* (unreported, Library No. 960227, 30 April 1996, Anderson J);
>
> (c) misinterpreted the words 'reveal the investigation' in subclause 5(1)(b) in that she held that it is not a sufficient basis for the exemption that 'the

documents could reasonably be expected to reveal only the fact that there is, has been or will be an investigation' (of a contravention or possible contravention of the law).

2 In the alternative, the learned Commissioner erred in law in that she failed to find that all of the documents the subject of the access application were wholly exempt pursuant to subclause 5(1)(b), when the investigation conducted into the matters raised in the 1996 Report (referred to at paragraph 5 of the Commissioner's decision) constituted an investigation into a contravention or possible contravention of the law.

3 In the alternative, the learned Commissioner erred in law in her application of subclause 5(1)(b) to the individual documents the subject of the access application in that she failed to find that all matter in the documents, the disclosure of which matter would reveal an investigation by the police into the contravention or possible contravention of the law, was exempt from disclosure.

B THE CLAIM TO EXEMPTION UNDER CLAUSE 7 OF SCHEDULE 1 TO THE ACT

4 The learned Commissioner erred in law in that she failed to find that document 40 and parts of documents 31 and 34 would be privileged from production in legal proceedings on the ground of legal professional privilege, and therefore were exempt from disclosure under clause 7 of Schedule 1 to the Act."

In dealing with the grounds of appeal, it is important to note that under s76 of the *FOI Act*, the Commissioner is given power to review the decision of the agency (in this case the appellant) and to decide "any matter in relation to the access application ... that could, under this Act, have been decided by the agency". Section 76(4) provides:

> "If it is established that a document is an exempt document, the Commissioner does not have power to make a decision to the effect that access is to be given to the document."

In this respect it is important to note that whilst the appellant had power to grant access to an exempt document, the Commissioner has no such power on review.

The provisions of the *FOI Act* dealing with appeals to the Supreme Court confine such appeals to questions of law (see s85). In dealing with such an appeal, the Supreme Court has power to remit the matter to the Commissioner for reconsideration if the court decides to set the Commissioner's decision aside. It is also important to note that under s102 of the *FOI Act* the onus is on the appellant to establish that its decision was justified or that a decision adverse to the respondent should be made. There is some controversy between the parties as to the standard of proof. Counsel for the appellant, in that respect, relies upon **Attorney General's Department v Cockroft** (1986) 10 FCR 180 per Bowen CJ and Beaumont J where their Honours, in relation to the equivalent Commonwealth legislation, said at 190:

> "In our opinion, in the present context, the words 'could reasonably be expected to prejudice the future supply of information' were intended to receive their ordinary meaning. That is to say, they require a judgment to be made by the decision-maker as to whether it is reasonable, as distinct from something that is irrational, absurd or ridiculous, to expect that those who would otherwise supply information of the prescribed kind to the Commonwealth or any agency would decline to do so if the document in question were disclosed under the Act. It is undesirable to attempt any paraphrase of these words. In particular, it is undesirable to consider the operation of the provision in terms of probabilities or possibilities or the like. ...
>
> In our opinion, in departing from the terms of s 43(1)(c)(ii) and requiring the applicants to establish a case on the balance of probabilities, the majority of the Tribunal fell into error in their construction of the provision."

As can be seen from cl 5(1)(b) of the First Schedule to the *FOI Act*, the words "could reasonably be expected to" are also contained within the *FOI Act*

of Western Australia. With respect to their Honours, for my part, I can see no other sensible meaning for the words "could reasonably be expected to" than to conclude that the intention of Parliament was that the standard of proof should be that it was more likely than not that such was the case. In any event, whether that view is correct or not, the Western Australian provisions, are different to the Commonwealth Act in that the Commonwealth Act expressly refers to "prejudice" in relation to the future supply of information. The Western Australian *FOI Act* has no equivalent provision so that the reasoning referred to by Bowen CJ and Beaumont J in ***Attorney General's Department v Cockroft*** does not apply to the case presently under consideration. I am therefore of the view that for the purposes of the relevant clause in the Western Australian *FOI Act*, the standard is the balance of probabilities so that the appellant has to establish that it is more likely than not that the documents come within the exemption.

It is common ground that the 1992 Report into the City of Wanneroo has been made public and has been tabled in Parliament. The report was tabled at the end of 1992 and I have been provided with an extract of the findings of that inquiry. The findings are important because they reflect upon matters now under consideration. The findings are under two headings:

1 Conflict of interest

2 Corruption.

It is not necessary for me to outline the express findings in detail in these reasons, but when those findings are looked at in the context in which they occur, it is clear that findings under either of those two headings would be likely to give rise to investigations into contraventions, or possible contraventions, of the law in Western Australia. Indeed, the history of the matter reveals that the findings of the Kyle Inquiry were referred to the

Commissioner of Police for investigation of the matters the subject of the findings. As the Commissioner found, those inquiries were commenced but terminated in December 1995 when Mr Kyle was commissioned to re-open the inquiry. The history of the matter reveals that, following Mr Kyle's disqualification from continuing with the inquiry, he made certain complaints about the conduct of the appellant's officers in carrying out (or failing to carry out) the investigation of matters arising from the 1992 Report, and it is the documentation relating to the police inquiries between the time of the publication of the 1992 Report and the resumption of the inquiry in 1995 that are the subject of the present application.

Document 43, by which Mr Kyle reported his concerns in relation to the conduct of the inquiry by the appellant to the Solicitor General, whilst not one of the documents within the present application, (the Commissioner having upheld a claim for privilege in relation to it) is clearly a document of critical importance in determining the nature and extent of any investigation or investigations by the appellant or into members of the appellant arising out of the concerns Mr Kyle expresses in the 1996 Report.

The history of the matter reveals that the 1996 Report was sent to the Commissioner of Police under cover of a letter from the Solicitor General dated 2 April 1996. That letter is the subject of both the application and the present appeal. It is to be noted that certain documents were held by the FOI Commissioner to be not relevant and are not subject to appeal but other documents contained in Schedule B to the Commissioner's decision were held to be exempt only in respect of certain passages identified in that schedule. Included in that list of documents is document No 40 which is a copy of a memorandum from the Director of Public Prosecutions ("the Director") to the Solicitor General dated 11 April 1996. The Commissioner held that this

document was not the subject of legal professional privilege and could be edited so that only certain portions of it were exempt. The appellant maintains that the whole of the document should be subject to legal professional privilege and totally exempt from the operation of the *FOI Act.*

An exemption in relation to legal professional privilege is contained in cl 7 of Schedule 1 of the *FOI Act* in the following terms:

> "7. **Legal professional privilege**
>
> ***Exemption***
>
> (1) Matter is exempt matter if it would be privileged from production in legal proceedings on the ground of legal professional privilege.
>
> ***Limit on exemption***
>
> (2) Matter that appears in an internal manual of an agency is not exempt matter under subclause (1)."

I have examined the document and, in my opinion, the Commissioner was wrong in concluding that the document could be edited. It is clear that the document constitutes legal advice and opinion provided by the Director in response to the Solicitor General forwarding to the Director a copy of the 1996 Report. Whilst it can properly be said that some of the matters contained within that letter are gratuitous comments made by the Director which were not necessarily invited by the Solicitor General, in my opinion, those portions which the Commissioner decided should be released come within the ambit of legal professional privilege. In that respect, whilst I accept that there is a distinction between legal advice given by the Director and the expression of his own opinion in discharging the functions of his office (see ***Director of Public Prosecutions v Smith*** (1989) 100 FLR 6 per Kaye, Fullagar and Ormiston JJ at 13) in my opinion, the comments by the Director in this case do not come

within that category. It is clear from a perusal of the entire document, that such comments as are made within it, are comments made as part of the overall function of the Director in giving advice to the Solicitor General. In my opinion, legal professional privilege would attach to the whole of the document so as to prevent its disclosure. I would add that in my view, the Director, in giving that advice, was properly acting within his functions under the *Director of Public Prosecutions Act 1991* in relation to the prosecution of crime. There is no reference in the *Director of Public Prosecutions Act 1991* which would limit the Director's functions in that regard to persons who are not police officers. In that respect, it is also to be noted that the functions performed by the Director are performed on behalf of the Crown (see s10(1)(a)) so that solicitor/client privilege in relation to the letter under discussion would be that of the Crown in the sense of the Crown in the right of the State. It follows in my view, that document 40 is exempt under cl 7 of the First Schedule of the *FOI Act*. Similarly, any other documents that refer to the contents of document 40 would equally be the subject of legal professional privilege in the hands of the Crown. The evidence indicates that the Crown wishes to exercise its privilege in that regard.

In relation to the documents that are not the subject of a claim for legal professional privilege but come within the exclusion in cl 5(1)(b) of the First Schedule to the *FOI Act*, the Commissioner took the view that those documents could be appropriately edited so that it would be for the respondent to determine what, if any, use could be made of the balance. The difficulty with that approach is that the balance of the documents after the deletions have been made, in many cases make little or no sense. That in turn carries with it the inherent problem that it may invite speculation as to the subject matter of the documentation which in turn could cause considerable injustice and invite

litigation. While s24 of the *FOI Act* empowers the agency to give access to a copy of a document from which exempt matter has been deleted, the section is subject to the qualification contained in s24(b), namely:

> "it is practicable for the agency to give access to a copy of the document from which the exempt matter has been deleted."

Some meaning must be given to the word "practicable" in that subsection. In this respect I refer to the preamble to the *FOI* Act set out on page 5 of these reasons. It seems to me that, for an agency, and particularly a police agency, to release documents which relate to police work, it is of critical importance that the documents released should not be of a misleading nature. It seems to me that the reference in s24(b) to the word "practicable" is a reference not only to any physical impediment in relation to reproduction but also to the requirement that the editing of the document should be possible in such a way that the document does not lose either its meaning or its context. In that respect, where documents only require editing to the extent that the deletions are of a minor and inconsequential nature and the substance of the document still makes sense and can be read and comprehended in context, the documents should be disclosed. Where that is not possible, however, in my opinion, s24 should not be used to provide access to documents which have been so substantially edited as to make them either misleading or unintelligible.

The other aspect of the appellant's case in this area that requires consideration is the meaning to be given to the words "reveal the investigation" in cl 5(1)(b) of the First Schedule to the *FOI Act* set out earlier in these reasons. In ***Manly v Minister of Premier and Cabinet*** (1994-1996) 14 WAR 550, Owen J had occasion to consider the meaning of that clause and said at 563:

> "I think the clause is aimed at the specifics of the investigation, and not at the mere fact that there is or has been an investigation.

> This much seems to have been common ground in the correspondence between the appellant and the Commissioner. A document is not exempt from disclosure simply because it would reveal the fact of the investigation. It must reveal something about the content of the investigation."

Owen J went on to say at 563:

> "I also think that it would be wrong to test the coverage of the clause by looking at the document in isolation. It must be considered in the light of the surrounding circumstances and in view of what else is known to the parties and the public. This gives meaning to the exchange between the appellant and the Commissioner as to the extent to which details of the investigation were already in the public domain. The exemption applies if disclosure of *that* document would reveal the investigation. There must be something in the document which, when looked at in the light of the surrounding circumstances, would tend to show something about the content of the investigation. If that material is already in the public arena then it could not properly be said that the disclosure of the document would reveal the investigation."

Insofar as Owen J reached the view that the clause was limited to revealing the content of the investigation and not the fact of the investigation, I respectfully disagree. In my opinion, cl 5(1)(b) of Schedule 1 is an exemption designed to protect the proper functioning of law enforcement agencies. Whilst in some cases to reveal the fact of an investigation may cause no impediment to law enforcement authorities, in other cases, to reveal the fact of an investigation may be extremely detrimental. For example, a person realising that he or she is under suspicion may resort to destroying or concealing evidence or may resort to taking steps to see that other evidence is not made available to the investigating authority. In those cases, revealing the existence of an investigation may be sufficient to thwart the proper functioning of the law enforcement agency. In my opinion, cl 5(1)(b) should not be interpreted in the way suggested by Owen J.

The only other Western Australian case that counsel have been able to bring to my attention is the matter of ***Police Force of Western Australia v Kelly and Smith***, unreported; SCt of WA (Anderson J) Library No 960227; 30 April 1996 where his Honour said at 9:

> "In my opinion, the phrase '... if its disclosure could reasonably be expected to ... reveal the investigation of any contravention of the law in a particular case ...' is apt to include the revelation of the fact of a particular investigation by police of a particular incident involving certain people. I think there is very good reason to accept that Parliament intended that such matter be exempt from access under the FOI Act. It is not difficult to imagine cases in which it would be highly detrimental to good government and inimical to the administration of law enforcement to disclose that a particular criminal investigation is contemplated, has been started or has been completed. It is notorious that many investigations, particularly of large scale criminality, are multi-faceted, lengthy and sensitive and involve considerable personal risk to the officers engaged in them. No doubt it would be highly prejudicial to the practical success of many such investigations to allow or require the fact of them to be disclosed."

I respectfully agree with Anderson J's views and to the extent that they can be said to be in conflict with those of Owen J, I prefer the reasoning of Anderson J.

In the same case, Anderson J went on to say at 10:

> "I do not see why any element of novelty or exclusivity should be imported into the phrase 'reveal the investigation'. A document may reveal a state of affairs which is also revealed by other things. The same state of affairs may be separately revealed in several documents. I do not think there is any difficulty in saying that the separate disclosure of each separate document reveals that state of affairs. Further, I think it would be a very inconvenient construction of the Act, as it would mean that an applicant could overcome a claim of exemption by showing or claiming that he already knew something of the matter from other sources. I do not think it could have been intended that exemption should depend on how much the applicant already knows or claims to know of the matter."

In my view, the dicta of Anderson J in that respect correctly reveals the proper interpretation of the clause. In my opinion cl 5(1)(b) is designed to protect law enforcement agencies from the revelation of matters that are under investigation, or where investigation of those matters is contemplated.

I accept the submission of counsel for the appellant that all of the documents under consideration in this appeal follow from documents 40 and 43 in that they were generated following the findings of the 1992 Report. The subsequent investigations into the matters raised by Mr Kyle caused the generation of most of the documents now under consideration. Some of the documents, however, such as internal memoranda and the like, are internal administrative documents which do not necessarily come within the exemption in cl 5(1)(b) of the First Schedule to the *FOI Act.* If it be the case that such documents do not either reveal the investigation of any contravention or possible contravention of the law, then they would not be exempt. In considering each document, however, it is important to recall that the exemption covers not only contraventions or possible contraventions of the law, but also, "disciplinary proceedings". In considering whether or not any of the documents should be exempt under cl 5(1)(b), it will be necessary for the Commissioner not only to apply the clause in the manner suggested in these reasons, but also mindful of the possibility of disciplinary action being taken against police officers for their conduct in pursuing (or not pursuing) matters raised in the 1992 Report.

It follows, in my opinion, that this matter should be remitted to the Commissioner for further consideration and determination according to law and in accordance with these reasons. The Commissioner should look to each of the documents under challenge and determine whether any of them would reveal the investigation in the manner in which I have expressed it. If that is

so, then the exemption in cl 5(1)(b) should protect that document from disclosure absolutely. If that protection is not available, then the question for the Commissioner is whether, when the document is properly edited so as to delete exempt matter, the document will still be sufficiently intelligible in both meaning and context so as to justify its release.

I finally note that the Commissioner has deleted names and matters that would identify individuals from documents pursuant to the power contained in cl 3 of the First Schedule and as there is no challenge to the Commissioner's actions in that respect, those deletions should remain.