

**SPIER V ACT ELECTORAL COMMISSIONER [1995] ACTAAT 125**

AAT of the ACT – 24 October 1995

**FACTS**

Spier sought access to two documents being legal advice from the ACT Government Solicitor and from the Office of the Director of Public Prosecutions, relating to an incident report after a person intimidated a poll helper at a polling booth.

The application was addressed to Phillip Green, ACT Electoral Commissioner. The decision to deny access to the documents was made by Phillip Green, the ACT Electoral Commissioner.

Spier applied to the AAT and did not first seek an internal review. Counsel for the Electoral Commissioner claimed that the correct agency for making the decision was the ACT Electoral Commission and the ACT Electoral Commissioner was not the principal officer of the Commission and therefore there should have been an internal review before the application to the AAT commenced.

**ISSUES**

Was the ACT Electoral Commissioner a principal officer of a prescribed authority for the purpose of the FOI Act?

Were the documents containing legal advice subject to legal professional privilege and therefore exempt documents?

**FINDING**

The ACT Electoral Commissioner was a person holding, or performing the duties of, an office established under an enactment and was therefore a prescribed authority.

The documents were provided by a legally qualified person for the purpose of providing confidential legal advice and were therefore subject to legal professional privilege.

**QUOTE**

Professor L J Curtis said:

*“However, considerable guidance as to what is meant by the provision [s. 4(3)(d)] can be gained by considering the structure of the FOI Act.*

*The holder of a statutory office which has no independent functions of its own and who does not independently hold files separate from the files of another agency could not, in practical terms, be the recipient of requests for access to documents under section 14 of the FOI Act. ...*

*The Electoral Commissioner ... has many statutory functions conferred on the office by specific provisions of the Electoral Act which are independent of the Electoral Commission.”*

## **IMPACT**

It is important that the correct prescribed authority be identified for the purpose of an FOI application. It can be difficult to identify whether an individual person is an officer or a principal officer of an agency and this can only be done if the exact agency is identified.

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