

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

BUDGET ESTIMATES 2017

Australian Human Rights Commission

Question No. BE17-075

Senator Macdonald asked the following question on 25 May 2017:

CHAIR: That is very helpful for those who were questioning on that subject. Professor, I might start. I will not be terribly long. In a question labelled AE17/012, I asked about the complaint made by Ms Cindy Prior to the commission. You took it on notice. Your written response says, 'We thought it was filed with her application to the court, but it is not, as such, a public document.' You approached Ms Prior saying, 'Can you release it?' She said no for the reasons she has given. You finish by saying, 'Given that the request for the copy of the complaint followed a quick question about whether it was a public document, the commission has assumed that the chair only sought a copy of the claim if it was a document that was already public.' If it is not a document that is already public, can I still ask for a copy of it? It is the way the question is answered that encourages me to ask. If it is not already public, can I still ask, as part of this committee, for it to be made public?

Prof. Triggs: Thank you for the question. I think, as you will be aware, that when complaints come to us, they are confidential unless the parties choose themselves to take the matter into the media. If the complainant was asked by us if they would agree to information being released and the complainant said no, I believe that we will be controlled by our statute, which requires us to exercise confidentiality in relation to that complaint. So I think the answer is that were it not already in the public arena and the complainant requested that it be kept confidential, we would be required to honour that request. I can check the legality of that and come back to you to clarify the points and take it on notice.

The response to the honourable Senator's question is as follows:

The Commission treats a complaint document with total confidentiality. The Commission considers privacy and confidentiality to be a fundamental requirement of the successful operation of its complaint function.

That confidentiality is an important aspect of the complaint function is clear from the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act). Under section 49 of the AHRC Act, staff of the Commission must not divulge information about persons gathered in the course of the Commission exercising its functions, save to the extent required by law. And, section 49(2) provides that members of the Commission or Commission staff cannot be compelled to produce such information or documents in Court.

If a request was made for a copy of Ms Prior's complaint to the Commission, the Commission would consider whether to make a public interest immunity claim.