

Decision D0062007 - Published in note form only

Re Kin Kin Resorts Pty Ltd and Department for Planning and Infrastructure [2007] WAICmr 6

Date of Decision: 4 April 2007

Freedom of Information Act 1992: Section 26

In August 2006, the complainant applied to the Department for Planning and Infrastructure ('the agency') for access under the *Freedom of Information Act 1992* to certain documents in relation to property held by the complainant. The agency gave the complainant access to documents that it had identified as being within the scope of the access application. The complainant sought internal review of that decision on the basis that additional documents should exist. The agency gave the complainant access to further documents, although it noted that, in its view, those documents were not strictly within the scope of the original application. In November 2006, the complainant applied to the A/Information Commissioner ('the A/Commissioner') for an external review of that decision and identified the particular documents it was seeking, which had not been located by the agency. Those documents included maps relating to the Manjimup Town Planning Scheme ('the Scheme') which had been sent by the Shire of Manjimup ('the Shire') to the former Town Planning Board of Western Australia in the period 1981-1984.

On receipt of that application, the A/Commissioner sought further information from both parties and it was established that the requested documents did exist at the relevant period. In the course of the A/Commissioner's inquiries, the agency located the approved Scheme map at a storage facility. However, that site had been closed to access since October 2005 under the *Occupational Health and Safety Act 1984*, because of asbestos contamination. The agency advised the A/Commissioner that it had obtained a copy of the approved Scheme map from the Shire and given that document to the complainant.

In March 2007, the A/Commissioner wrote to the parties setting out her preliminary view of the complaint. In light of the searches and inquiries made by the agency - which were set out in detail in that letter - and on the basis of the information before her, the A/Commissioner was satisfied both that the requested documents had existed and that the agency had taken all reasonable steps to find those documents but they either could not be found or did not exist. The complainant was invited to make further submissions in respect of the matters for the A/Commissioner's determination.

On 30 March 2007, the complainant responded to the A/Commissioner's letter and raised a number of issues that were not relevant to the matters for determination. There being no further suggestions as to additional searches which could be made, the A/Commissioner confirmed the agency's decision to refuse access to the requested documents under section 26 of the FOI Act on the ground that the agency had taken all reasonable steps to find the requested documents but that they cannot be found or do not exist. The A/Commissioner also asked the agency to advise the complainant once its contaminated storage site was accessible.