

**Decision D0082014 – Published in note form only**

***Re Sideris and City of Joondalup [2014] WAICmr 8***

**Date of Decision: 16 May 2014**

***Freedom of Information Act 1992: section 26***

On 27 December 2012, Mr Mitchell Sideris (**the complainant**) applied to the City of Joondalup (**the agency**) under the *Freedom of Information Act 1992* (**the FOI Act**) for access to documents concerning the elected members' strategic weekend held in February 2012.

In a notice of decision dated 8 February 2013, the agency decided to give the complainant access in full to 6 documents and edited access to 39 documents. On 4 March 2013 the complainant applied for internal review of the agency's decision. The request for internal review claimed that the agency had not disclosed all the documents requested in the access application.

On internal review, the agency effectively decided to refuse access to further documents on the basis that all reasonable steps had been taken to find further documents coming within the scope of the complainant's access application but that no further documents exist.

The complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency's decision to refuse access to further documents under section 26 of the FOI Act, on the basis that no further documents exist.

Following receipt of the complaint, the Commissioner obtained a copy of the FOI file maintained by the agency in respect of the complainant's access application. The Commissioner also considered detailed submissions from the parties, including information from the agency as to the searches it conducted for the requested documents.

Section 26 provides that an agency may refuse access to a document if the agency is satisfied that all reasonable steps have been taken to find the document, and the agency is satisfied that the document is either in the agency's possession but cannot be found or does not exist. The Commissioner considers that, in dealing with section 26, the following questions must be answered. First, whether there are reasonable grounds to believe that the requested documents exist or should exist and are, or should be, held by the agency. Where those questions are answered in the affirmative, the next question is whether the agency has taken all reasonable steps to find those documents.

On 22 April 2014, after considering the information before him, the Commissioner provided the parties with a letter setting out his preliminary view of the complaint. The Commissioner was not satisfied that additional documents exist, or should exist within the agency and, in any event, the agency had taken all reasonable steps to find the documents. Accordingly, it was the Commissioner's preliminary view that the agency's decision to refuse access to further documents under section 26 of the FOI Act was justified.

The complainant was invited to withdraw his complaint or to provide the Commissioner with further submissions relevant to the matter for the Commissioner's determination. The

complainant advised that he did not accept the Commissioner's preliminary view and made further submissions to the Commissioner. In summary, the complainant submitted that certain documents disclosed by the agency established that additional documents should exist within the agency.

Having reviewed all of the material before him, the Commissioner was not dissuaded from his preliminary view and confirmed the decision of the agency to refuse access to further documents under section 26 of the FOI Act, on the basis that no further documents exist.