

Decision D0142006 - Published in note form only

Re Ivanus and Department of the Premier and Cabinet [2006] WAICmr 14

Date of Decision: 21 June 2006

Freedom of Information Act 1992: Section 26

The complainant applied to the Department of the Premier and Cabinet ('the agency') for access under the *Freedom of Information Act 1992* ('the FOI Act') to copies of all documents held by the agency relating to the complainant. The complainant provided the agency with certain information relating to his application, in order to assist the agency to search for the requested documents.

After making initial searches for the requested documents, an officer of the agency contacted the complainant and advised him that searches for the requested documents had been unsuccessful. The complainant then provided the agency with further information, including the names of several individuals, to assist the agency to search for the requested documents.

After conducting further searches, the agency refused the complainant access to the requested documents, pursuant to s.26 of the FOI Act, on the ground that all reasonable steps had been taken to locate the requested documents but that they could not be found or did not exist. The agency subsequently confirmed its decision on internal review and the complainant applied to the A/Information Commissioner ('the A/Commissioner') seeking an external review of the agency's decision.

After receiving the complaint, one of the A/Commissioner officers visited the agency to seek further information about the nature of the searches and inquiries conducted by the agency in order to locate the requested documents. Officers of the agency demonstrated to the A/Commissioner's officer the searches and inquiries that were conducted by the agency using the information provided by the complainant. No documents within the scope of the complainant's access application were identified and the agency provided the A/Commissioner with detailed information about the searches and inquiries made by officers of the agency in order to locate the requested documents.

One of the A/Commissioner's officers then advised the complainant in detail of the searches and inquiries undertaken and of that officer's preliminary view of his complaint, which was that, on the basis of the information then before the A/Commissioner, the agency had taken all reasonable steps to find the requested documents but that they could not be found or did not exist.

In response to the preliminary view, the complainant insisted that the requested documents exist but he provided no information in support of that claim. In light of the searches and inquiries which the agency had made, and there being no evidence that documents of the requested kind exist or should exist, the A/Commissioner confirmed the agency's decision to refuse access to the requested documents under s.26 of the FOI Act.