

Decision D0142012 – Published in note form only

Re Corr and City of Joondalup [2012] WAICmr 14

Date of decision: 15 May 2012

Freedom of Information Act 1992: section 26

The complainant, Mr Brian Corr, applied to the City of Joondalup ('the agency') for access under the *Freedom of Information Act 1992* ('the FOI Act') to documents regarding an allegation that he, as a councillor of the agency, had breached the Local Government Conduct Rules. The agency identified 11 documents and gave him access to them in full or edited form, deleting only personal information pursuant to clause 3(1). The complainant sought internal review on the basis that other documents should exist. On internal review, the agency identified, and gave the complainant access to, three additional documents. However, the complainant applied to the Information Commissioner for external review of the agency's decision because he considered that more documents should exist.

On receipt of the complaint, the Commissioner obtained the agency's FOI file relevant to the complainant's access application and sought further information from the agency. On 13 February 2012, the Commissioner gave the parties a letter setting out his preliminary view of the matter which was that the agency had not taken "*all reasonable steps*" to locate the requested documents, as required by s.26 of the FOI Act. It was also the Commissioner's preliminary view that some of the documents that the complainant claimed should exist were outside the scope of his application; others did not exist for the reasons given by the agency; and the remainder had now either been given to him or were the same as documents already given to him. The Commissioner required the agency to conduct further searches for, among other things, emails held on its computer database. He also invited the complainant to provide information to support his view that additional documents should exist.

In response, the agency made the required searches but located no further documents. The complainant was advised of those searches and their outcome. The complainant made further submissions to the Commissioner, adding to and clarifying his previous submissions. In particular, the complainant considered that documents the agency had dealt with as part of a second access application should have been identified in relation to this current matter. Following requests from this office to both parties for information on, and clarification of, certain points, the agency identified an additional 25 documents that came within the scope of the complainant's access application, being documents it had already dealt with in relation to his second application. The agency gave the complainant access in full to 12 documents, access in edited form to 10 documents and refused access to three documents. Following the receipt of that matter, the complainant advised that he withdrew his complaint in respect of those 25 documents but wished to proceed to a decision on this matter.

The Commissioner reviewed all of the material before him and, in the circumstances, was satisfied that the agency had now taken all reasonable steps to find the requested documents but that further documents are either in the agency's possession but cannot be found or do not exist. In light of that the Commissioner confirmed the agency's decision to refuse access to additional documents under s.26 of the FOI Act.