

Decision D0212007 - Published in note form only

Re Deacons and National Trust of Australia (WA) [2007] WAICmr 21

Date of Decision: 20 December 2007

Freedom of Information Act 1992: Section 26

In late March 2007, the complainant applied to the National Trust of Australia (WA) ('the agency') for access under the *Freedom of Information Act 1992* ('the FOI Act') to all documents (including draft documents) passing between or in the possession or control of the Chairman of the agency and the Heritage Council of Western Australia ('the HCWA') and the Minister for Heritage, in relation to two heritage listed properties in Perth.

The agency gave the complainant access to a number of documents but advised it that access could not be given to documents of the requested kind that consisted of personal correspondence, documentation and communications in the possession of Chairman of the agency, which had been created and/or sent by him and not directed or copied to the agency. On internal review, the agency, following further searches, confirmed its decision. In late June 2007, the complainant applied to the A/Information Commissioner ('the A/Commissioner') for an external review of that decision.

The A/Commissioner required the agency to provide its FOI File and information in relation to the searches made for the documents. One of the A/Commissioner's legal officers made further inquiries with the agency and with the HCWA. No further documents of the requested kind were identified as a result of those inquiries. In late August 2007, the legal officer advised the complainant of the results of those inquiries.

In response, the complainant asked that further inquiries be made directly with the Chairman of the agency. Following that request, the legal officer made inquiries with the Chairman and one document, considered by this office to be a document of the requested kind, was identified. The Chairman gave the complainant access to a copy of that document.

In late November 2007, the legal officer wrote to the complainant advising it that, on the basis of the information then before the A/Commissioner, and in light of the searches and inquiries made by him, it appeared that no further documents of the kind requested existed and that all reasonable steps to find the requested documents had been taken but they could not be found or did not exist.

In response, the complainant advised the A/Commissioner that it was not satisfied with the totality of documents provided but it made no submissions and provided no probative material to the A/Commissioner in support of its complaint. There being no evidence to establish that further documents existed, the A/Commissioner set aside the agency's decision and, in substitution, decided under section 26 of the FOI Act that it was not possible to give access to additional documents on the ground that all reasonable steps to find the requested documents had been taken but that they cannot be found or do not exist.