

Decision D0222011 - Published in note form only

Re Blahusiak and Department for Communities [2011] WAICmr 22

Date of Decision: 24 June 2011

Freedom of Information Act 1992: section 26.

On 9 May 2009, the complainant applied under the *Freedom of Information Act 1992* ('the FOI Act') to the Department for Communities ('the agency') for access to documents relating to the administration of the Western Australian Family Foundation Trust Fund for the financial year 2007-2008.

The agency gave the complainant access in edited form – excluding personal information pursuant to clause 3(1) of Schedule 1 to the FOI Act – to 24 documents and refused access to three documents. The complainant sought internal review on the ground that additional documents should exist. By decision dated 22 October 2009, the agency identified and gave access to additional documents and information. However, the agency varied its original decision on the ground that the complainant had agreed to exclude third party information so that the deleted information was not exempt under clause 3(1) but instead was outside the scope of the access application. In addition, the agency advised that it could not locate any additional documents and refused access to documents under s.26 of the FOI Act.

The complainant applied to the Information Commissioner for external review of the agency's decision. Following receipt of the complaint, the Commissioner obtained from the agency the file maintained in respect of the complainant's access application and the originals of the edited documents. The Commissioner also made further inquiries with the agency.

On 11 April 2011, an officer assisting the Commissioner advised both parties by letter that, in her opinion, the agency's decision to refuse access under s.26 of the FOI Act was justified and that the information deleted from the documents, except for a small amount in one document, was outside the scope of the access application.

The complainant did not respond to that letter. On 8 June 2011, the A/Information Commissioner wrote to the parties and advised that, for the reasons set out in her letter, her preliminary view was that certain information was not outside the scope of the application but that the agency was justified in claiming s.26 for the additional requested documents. The complainant was invited to provide the A/Commissioner with further submissions or withdraw his complaint.

The agency gave the complainant access to the information that, in the A/Commissioner's preliminary view, was not outside the scope. The complainant did not withdraw the complaint but made no further submissions. The Information Commissioner examined all of the material and agreed with the A/Commissioner's preliminary view.

The Commissioner was satisfied from the information before him that the agency had taken all reasonable steps to locate the requested documents but that they could not be found or do not exist. In addition, the Commissioner was satisfied that the deleted information was outside the scope of the access application and confirmed the agency's decision.