

Decision D0252009 - Published in note form only

Re West and Department of Education and Training [2009] WAICmr 25

Date of Decision: 21 September 2009

Freedom of Information Act 1992: Section 26

The complainant applied to the Department of Education and Training ('the agency') for access to documents relating to the erection of demountable classrooms and the construction of a pre-primary school at Ardross Primary School. The agency identified 130 folios and gave the complainant access in full to 119 folios and access in edited form to the remaining 11 folios. The complainant sought internal review of that decision because he considered that further documents should exist.

On internal review, the agency conducted further searches and identified an additional eight folios, which were disclosed to the complainant. However, the complainant considered that certain planning and other documents should exist and sought external review of the agency's deemed decision to refuse access to those documents.

Following the receipt of the complaint, the Information Commissioner obtained the file maintained in respect of the complainant's access application from the agency. One of the Commissioner's officers made inquiries as to the searches the agency had made for the requested documents. In the course of those inquiries, the agency located another 19 folios within the scope of the complainant's application that had been misfiled and gave him access in edited form to that material. The agency also advised the Commissioner that most of the documents sought by the complainant would have been held by the former Department for Housing and Works ('the Department'). Further inquiries indicated that files held by the Department, which may have contained the requested documents, had been destroyed in accordance with that agency's Retention and Disposal Schedule.

On 1 September 2009, the Commissioner provided the complainant and the agency with a letter setting out his preliminary view of the complaint. The Commissioner's preliminary view was that, pursuant to s.26 of the *Freedom of Information Act 1992* ('the FOI Act'), the agency had taken all reasonable steps to locate the requested documents but that they could not be found or did not exist. In light of the searches and inquiries made by the agency, the Commissioner did not require the agency to conduct further searches. The Commissioner noted that s.26 requires agencies to take all reasonable - not all possible - steps to locate documents. The complainant was invited to withdraw his complaint or make further submissions to the Commissioner, which he declined to do.

The Commissioner was not dissuaded from his preliminary view and confirmed the agency's deemed decision to refuse the complainant access to the requested documents under s.26 of the FOI Act.