

Decision D0262010 - Published in note form only

***Re Dow-Hall and Department of Training and Workforce Development*
[2010] WAICmr 26**

Date of Decision: 27 October 2010

Freedom of Information Act 1992: section 26; Schedule 1, clause 3(1)

The complainant applied to the former Department of Education and Training ('DET') for documents relating to various meetings held between staff of DET and staff of another agency in relation to the complainant. In light of the demerger of DET, the Department of Training and Workforce Development ('the agency') dealt with the complainant's access application in consultation with the Department of Education.

The agency identified 10 documents as falling within the scope of the application and gave the complainant access to 6 documents in full and access to edited copies of 4 documents, after deleting a small amount of information as exempt under clause 3(1) (personal information) of Schedule 1 to the *Freedom of Information Act 1992* ('the FOI Act').

The complainant sought internal review of the agency's decision, claiming that additional documents should exist in relation four categories of documents relating to a specific meeting held in mid May 2009 ('the requested documents'). The agency confirmed on internal review that it did not hold further documents and, in light of that, refused access pursuant to s.26 of the FOI Act, which relates to documents that cannot be found or do not exist. Thereafter, the complainant applied to the Information Commissioner for external review of the agency's decision, claiming that additional documents should exist in relation to the requested documents.

The Commissioner obtained the agency's FOI file and other relevant material from the agency. Although the agency's notices of decision and its FOI file provided some evidence of the searches and inquiries it had conducted to locate documents within the scope of the application, the details of the searches undertaken were not described or recorded in any detail. In particular, the Commissioner considered that the record of the searches and inquiries contained on the agency's FOI file did not specify the types or kinds of searches conducted (i.e. hardcopy or electronic) or the locations searched by each officer and was not sufficient to establish a claim that all reasonable steps had been taken to find the requested documents, pursuant to s.26 of the FOI Act.

Accordingly, the Commissioner's officers obtained information from the agency about the searches and inquiries it had conducted in order to locate the requested documents and required additional searches and inquiries to be made. Following those inquiries, one additional document was located by the agency and subsequently disclosed to the complainant. On 24 September 2010, the Commissioner provided the parties with a letter setting out his preliminary view of the complaint. It was the Commissioner's preliminary view that the requested documents either did not exist or could not be found. At that stage, the Commissioner did not require the agency to conduct any further searches.

The complainant was invited to withdraw the complaint or to provide the Commissioner with further submissions relevant to the matter for the Commissioner's determination. The complainant provided further material and made detailed submissions to the Commissioner. As a result, additional inquiries were made with the agency and the agency was requested to conduct further searches, however no additional documents were located.

After reviewing all of the searches and inquiries undertaken by the agency for the requested documents and considering all of the information provided by the agency and by the complainant, the Commissioner was satisfied that the agency had taken all reasonable steps to locate the requested documents and that further documents either could not be found or did not exist. Accordingly, the Commissioner confirmed the agency's decision to refuse the complainant access to the requested documents under s.26 of the FOI Act.