

Decision D0272012 - Published in note form only

Re Duggan and Department of Agriculture and Food [2012] WAICmr 27

Date of Decision: 5 October 2012

Freedom of Information Act 1992: section 26

On 13 December 2010, the complainant, Mr Ian Duggan, applied to the Department of Agriculture and Food ('the agency') for access under the *Freedom of Information Act 1992* ('the FOI Act') to five categories of documents relating to certain actions taken by the agency in relation to his plantation. The agency identified a number of documents within the scope of each category and gave him access to those documents. The complainant sought internal review on the basis that other documents should exist. On internal review, the agency gave the complainant access to one additional document but confirmed 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 because he considered that more documents should exist with respect to three of the categories of documents he sought.

On receipt of the complaint, the Commissioner obtained the agency's FOI file relevant to the complainant's access application. Although the agency's 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 sufficient detail. Accordingly, the Commissioner's officers obtained further information from the agency 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. In the course of the Commissioner's office dealing with the matter, the complainant also accepted that the agency held no further documents with respect to two categories of documents so that only one category of documents remained in dispute, which related to certain courier consignment notes and correspondence created from late 2007 to early 2008 ('the requested documents').

On 14 August 2012, after considering the information before him, 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 agency had taken all reasonable steps to find the requested documents but that further documents either could not be found or do not exist. At that stage, the Commissioner did not require the agency to conduct any further searches. The Commissioner also noted that the agency's inability to locate documents in this matter appeared to be a result of a number of factors including misfiling, poor record keeping and inadequate training in record management.

The complainant was invited to withdraw the complaint or to provide information to support his view that further documents exist and why he considered that the agency had not taken reasonable steps to find the requested documents. The complainant made further submissions to the Commissioner which resulted in the Commissioner's office making additional inquiries with the agency. However, no further documents were located by the agency.

The Commissioner reviewed all of the material before him and was satisfied that the agency had now taken all reasonable steps to find the requested documents and 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 the requested documents under s.26 of the FOI Act.