

Decision D0302012 - Published in note form only

***Re Stock and Shire of Victoria Plains* [2012] WAICmr 30**

Date of Decision: 27 November 2012

***Freedom of Information Act 1992*: section 26**

The complainant, Mr Michael Stock, has been in dispute with the Shire of Victoria Plains ('the agency') for some years in respect of notices issued to him by the agency to pull down and remove buildings on properties he owns. In 2007 the State Administrative Tribunal ('SAT') affirmed the agency's decision to issue the relevant notices.

Over a number of years, the complainant has made various requests to the agency for access to documents and information relating to his properties and the agency has given him access to a large amount of documents and information. However, in some cases, the agency was unable to find documents that were once held, or should have been held, by the agency.

In February 2012, the complainant applied to the agency under the *Freedom of Information Act 1992* ('the FOI Act') for various documents relating to a building licence application for a property, which he described. In particular, the complainant described four kinds of documents with reference to dates and/or licence numbers.

In April 2012, the agency's Chief Executive Officer made a decision that was, in effect, a deemed refusal of access under section 26 of the FOI Act, on the basis that the requested documents do not exist. Section 26 of the FOI Act provides that an agency may refuse access to a document if the agency is satisfied that all reasonable steps have been taken to find the document, and the document is either in the agency's possession but cannot be found or does not exist.

In May 2012, the complainant applied to the Information Commissioner for external review of the agency's decision. Following receipt of the complaint, the Commissioner obtained and examined the agency's FOI file maintained in respect of the complainant's access application. Initially, the agency was advised that its reasons for the decision were not sufficient and it was required to provide additional information to the Commissioner to satisfy its onus to establish that its decision was justified.

On 24 October 2012, the Commissioner provided both parties with a letter setting out his preliminary view of the complaint. Having considered the wording of the access application and the agency's further explanation of its searches in the context of the terms of the complainant's application, the Commissioner was of the view that the agency had taken all reasonable steps to find the requested documents but that the requested documents did not exist.

The agency advised the Commissioner that there were administrative errors made by it in its dealings with the complainant and that those matters were brought out in SAT hearings. However, the agency also advised the Commissioner that although procedures have been tightened up it cannot undo the errors of the past and produce documents that never existed or have been lost or misplaced.

In the circumstances, the Commissioner was satisfied that the agency had taken appropriate steps to rectify the problems identified in order to improve the integrity of its record-keeping and, in turn, improve its ability to locate documents during searches conducted under the FOI Act in the future.

In response to the Commissioner's preliminary view, the complainant provided written submissions about, among other things, the way that the agency had dealt with his various inquiries over the years. However, little of those submissions were relevant for consideration by the Commissioner on whether the agency had taken "*all reasonable steps*" to find the requested documents.

The Commissioner was not dissuaded by the complainant's submissions from his preliminary view. Having reviewed all of the material before him, the Commissioner confirmed the agency's decision to refuse access to the requested documents under s.26 of the FOI Act, on the ground that all reasonable steps had been taken to find the documents but that those documents either cannot be found or do not exist.