

TOWILL AND HOMESWEST

**OFFICE OF THE INFORMATION
COMMISSIONER (W.A.)**

**File Ref: 95221
Decision Ref: D00396**

Participants:

Frances Elaine Towill
Complainant

- and -

**The State Housing Commission of Western
Australia (Homeswest)**
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION -refusal of access - documents recording addresses of dwellings built for the agency using Thermalite bricks - section 26 - documents either in the possession of the agency but cannot be found or do not exist - sufficiency of search - whether agency has taken reasonable steps to find documents - role of the Information Commissioner.

Freedom of Information Act 1992 (WA) ss.26, 66(6).

Re Anti-Fluoridation Association of Victoria and Secretary, Department of Health (1985) 8 ALD 163.

Re Sharp and Police Force of Western Australia (Information Commissioner, WA, 20 October 1995, unreported).

DECISION

The decision of the agency to refuse access to the requested document on the ground that it either does not exist or cannot be found, is confirmed.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

10th January 1996

REASONS FOR DECISION

BACKGROUND

1. This is an application for external review by the Information Commissioner arising out of a decision of The State Housing Commission of Western Australia (Homeswest) ('the agency') to refuse access to certain documents of the agency on the ground that those documents either cannot be found or do not exist.
2. On 13 September 1995, the agency received an access application under the *Freedom of Information Act 1992* ('the FOI Act') from Ms Towill ('the complainant'), Secretary, Housing Sub-contractors Union, requesting the addresses of any dwellings built for the agency using Thermalite bricks. The agency advised the complainant on 29 September 1995 that it was unable to locate any document containing the information requested and access was refused under s.26 of the FOI Act, because the requested documents either could not be found or did not exist.
3. The complainant sought internal review of that decision on 5 October 1995. The agency's decision was reviewed internally by Mr Peter Lynch, Acting Director, Housing Production. Mr Lynch confirmed the initial decision and again advised the complainant that the agency does not maintain specific records containing the information requested. On 30 October 1995, the complainant applied to the Information Commissioner for external review of the agency's decision.

REVIEW BY THE INFORMATION COMMISSIONER

4. After receiving this complaint, one of my investigations officers contacted the parties in an effort to conciliate this matter. Although the access application did not identify a particular document or type of document to which access was sought, it appeared from my inquiries, that the agency dealt with the complainant's request for "information" in accordance with the spirit and intent of the FOI Act.
5. Based on the information provided to me by the agency, a report provided to me by my investigations officer, and my examination of the relevant correspondence between the agency and the complainant, I was initially satisfied that the agency had made reasonable efforts to locate any documents falling within the ambit the access application. I informed the complainant of the extent of the searches carried out by the agency and that it was my opinion that the agency had made reasonable attempts to satisfy her request and had processed her application appropriately and according to the requirements of the FOI Act.

6. On 15 December 1995, I informed the complainant that it was my preliminary view that the searches conducted by the agency were, in all the circumstances, reasonable. I therefore invited the complainant to reconsider her complaint or, in the alternative, provide further material to me which might confirm that the requested documents may exist in the agency. As I received no further submissions from the complainant and no further contact was made with my office by the complainant, the complaint before me requires my determination.
7. Section 26 of the FOI Act deals with the requirements of an agency in circumstances in which it is unable to locate the documents sought by an access applicant. That section provides as follows:

"26. (1) The agency may advise the applicant, by written notice, that it is not possible to give access to a document if -

(a) all reasonable steps have been taken to find the document; and

(b) the agency is satisfied that the document -

(i) is in the agency's possession but cannot be found;

or

(ii) does not exist.

(2) For the purposes of this Act the sending of a notice under subsection (1) in relation to a document is to be regarded as a decision to refuse access to the document, and on a review or appeal under Part 4 the agency may be required to conduct further searches for the document."

8. To deal with complaints against a decision of an agency to refuse access on the basis that documents either do not exist or cannot be found, I consider there are two questions that must be answered. Firstly, are there reasonable grounds to believe that the requested document exists? Secondly, in circumstances in which the first question is answered in the affirmative, were the searches conducted by the agency to locate the document reasonable in all the circumstances?

Are there reasonable grounds to believe the requested documents exist?

9. Although an access applicant under the FOI Act may be at a disadvantage in that he or she may be, and often is, unfamiliar with the type of records held by State and local government agencies, a convenient starting point for an access applicant to identify the requested document is the agency's Information Statement, which is required to be published under Part 5 of the FOI Act and

which is also required to be made available for inspection or purchase by members of the public.

10. In this instance, I have examined and considered the agency's 1994 Information Statement, a copy of which has been provided to my office as required by the FOI Act. That document describes, *inter alia*, the functions of the Housing Production Directorate of the agency, at page 11, as follows:

“Responsible for the purchase, development and sale of land, the housing construction and purchase program, special projects, redevelopment, Homeswest estate improvement design, building materials and techniques and aboriginal housing state wide...”

11. Further, at page 27 of the Information Statement, the agency discloses that it holds plans related to houses constructed and that those documents are available for perusal by the public. Taking into account the information in the agency's Information Statement, it appears to me that there are reasonable grounds for the complainant's belief that documents of the kind requested by the complainant may exist in the agency.

Were the searches conducted by the agency reasonable?

12. The adequacy of efforts made by an agency to locate documents the subject of an access application is to be judged by having regard to what is reasonable in the circumstances: *Re Anti-Fluoridation Association of Victoria and Secretary, Department of Health* (1985) 8 ALD 163, at 170.
13. In this instance I am informed that the agency uses a computerised record management system ('the RMS') for its record keeping. I am further informed that all files within the central records system of the agency are recorded on the RMS. I am informed by the agency that the searches conducted to identify and locate documents of the kind requested by the complainant included a search of its computer data base using the key words "Thermalite", "building" and "building materials". That search identified one file entitled "Thermalite Autoclaved Aerated Concrete Blocks". A manual check of that file was made by staff of the agency but it included technical data associated with the particular building product and did not include any documents recording complaints or deficiencies associated with the product. Further, I am informed by the agency that no documents within the ambit of the access application are contained within that particular file.
14. Inquiries were also made with staff in the Housing Production division of the agency, including a check of various individual construction files. I am informed that individual construction files include contract specifications, but only general product options and not specific references to Thermalite bricks as such. I am also informed by the agency that the only way that it could provide the information requested by the complainant is by the identification of specific properties or people concerned and by checking the relevant construction file.

However, the agency claims that no discrete document containing the information requested, exists.

15. Therefore, on the basis of the information provided to my office, including a demonstration of the searches undertaken on the agency's computer data base, and an examination of the agency's FOI file maintained in respect of this matter, I am satisfied that the searches undertaken by the agency to locate a document containing the information requested by the complainant were, in all the circumstances, reasonable, and I do not require any further searches to be undertaken.

Documents that cannot be found or do not exist

16. I have previously expressed the view that it is not my function to physically search for the requested documents on behalf of an applicant, nor is it my function to examine in detail the agency's record-keeping system. If I am satisfied that requested documents exist, or might exist in an agency, it is my responsibility to inquire into the adequacy of the searches conducted by an agency, to require further searches if necessary and to satisfy myself that the agency has acted reasonably, pursuant to its obligations under the FOI Act: see *Re Sharp and Police Force of Western Australia* (20 October 1995, unreported), at paragraphs 19-21.
17. As I am satisfied, in this instance, that the complainant has been adequately informed of the nature and extent of the searches undertaken by the agency, and I am also satisfied that those searches have been, in the circumstances, reasonable, I find that the decision of the agency to refuse access on the ground that the requested document does not exist or cannot be found, was justified. Accordingly, I confirm the decision of the agency to refuse access to the requested documents.
