

Decision D0062001 – Published in note form only

Re Campbell and Ministry of the Premier and Cabinet [2001] WAICmr 6

Date of Decision: 19 January 2001

Freedom of Information Act 1992; section 26

The complainant sought access under the *Freedom of Information Act 1992* ('the FOI Act') to documents related to a notice delivered to him in relation to graffiti at his property. The agency conducted a search of its computerised records management system and particular sections of the agency considered the most likely to hold the requested documents, if they existed, including the State Graffiti Taskforce, known as the Graffiti Program. That body is, in accordance with cl.2(4) of Schedule 2 to the FOI Act and regulation 10 of the *Freedom of Information Regulations 1993*, regarded as a part of the agency. The agency subsequently advised the complainant that it did not possess the requested documents and transferred the complainant's request to the City of Gosnells. The complainant applied to the Information Commissioner for external review of the decision of the agency.

The Information Commissioner was of the view that, although she does not have the power to review a decision by an agency to transfer an access application to another agency, she does have the jurisdiction to review a decision by an agency that it does not possess certain documents. The Information Commissioner regarded the decision by the agency that it does not possess the requested documents as a decision to refuse the complainant access to documents pursuant to section 26 of the FOI Act.

The Information Commissioner made inquiries with the agency and requested it to conduct additional searches of its records, all of which failed to locate the requested documents. A further search of the agency's computerised records management system was undertaken, together with other physical searches of the agency's records. The agency also provided a description of its record-keeping practices and the searches undertaken by it in relation to the complainant's access application. Further, the agency demonstrated the search capabilities of, and the searches undertaken in, its computerised records management system. A search was also conducted of the agency's database that holds records in relation to graffiti reported at properties.

The Information Commissioner also made inquiries with the agency and the City of Gosnells in relation to the procedures related to the service of notices to property owners in respect of graffiti and the associated record-keeping practices. The Information Commissioner's inquiries revealed that such notices are issued either by the Graffiti Program or the relevant local council and that the relevant notice in this case was issued by the City of Gosnells. There is no requirement that the City of Gosnells notify the Graffiti Program that a notice has been issued and it is unlikely that the Graffiti Program was notified on this occasion.

Based on the information before her, the Information Commissioner was not satisfied that there were reasonable grounds to believe that the requested documents exist, or should exist, at the agency. In any event, the Information Commissioner was satisfied that the agency had taken all reasonable steps to locate the requested documents and that the requested documents do not exist at the agency. The Information Commissioner confirmed the decision of the agency to refuse access under section 26 of the FOI Act on the ground that all reasonable steps had been taken to find the documents and that the documents do not exist.

