

Decision D0202005 - Published in note form only

Re Lee and Department of Education and Training [2005] WAICmr 20

Date of Decision: 28 November 2005

Freedom of Information Act 1992: Section 26

The complainant made two applications under the *Freedom of Information Act 1992* ('the FOI Act') to the Department of Education and Training ('the agency') for access to documents relating to, among other things, the abolition of certain positions and the restructure of the Overseas Qualification Unit ('the Unit'). Since those applications were made to the same agency and were closely related, they are both dealt with in this decision.

The agency gave the complainant access to the documents it identified as within the scope of the complainant's applications. However, the complainant considered that additional documents should exist and requested internal reviews of the agency's decisions. In respect of one application, the agency gave the complainant access to additional documents for her information, although those documents were not considered to be within the scope of the relevant access application. The agency could locate no additional documents in respect of the other application. The complainant still considered that further documents should exist and applied to the A/Information Commissioner ('the A/Commissioner') for external review of the agency's decisions.

The A/Commissioner required the agency to make further searches for the requested documents. The agency made additional searches and inquiries and gave a detailed description of those searches and inquiries to the A/Commissioner, together with a list of 26 officers and former officers it had consulted. In light of that, the A/Commissioner did not consider it reasonable to expect the agency to manually search the large volume of documents in its possession in the hope that further documents might be located.

The A/Commissioner noted that a formally documented process of the agency's decisions to abolish positions and restructure the Unit might have been expected to exist in this case, and that the documentary record that did exist appeared to be less than satisfactory in terms of good record keeping and administrative practice. However, the Information Commissioner's role is to consider whether the agency's searches for the requested documents have been adequate and, if necessary, to require further searches to be made. On the basis of the information provided, the A/Commissioner was satisfied that the agency had taken all reasonable steps to locate the requested documents but that those documents either cannot be found or do not exist. The A/Commissioner was also satisfied that the complainant had been adequately informed of the nature and extent of the searches conducted by the agency.

The A/Commissioner confirmed the agency's decision to refuse access to the requested documents under section 26 of the FOI Act on the ground that, despite all reasonable steps having been taken to locate the requested documents, they do not exist or cannot be found.