

NAPIER AND RAVENSTHORPE

OFFICE OF THE INFORMATION COMMISSIONER (WA)

Decision summary issued pursuant to s.76(8) of the *Freedom of Information Act 1992*

COMPLAINT No: 97173

DECISION No: D03797

PARTIES: **Graham Robert NAPIER**

Complainant

SHIRE OF RAVENSTHORPE

Respondent

Issue: Sufficiency of search

Relevant section: Section 26

By letter dated 28 August 1997, Mr Napier ('the complainant') applied to the Shire of Ravensthorpe ('the agency') seeking access under the *Freedom of Information Act 1992* ('the FOI Act') to copies of two documents described as "informal surveys". Those documents were referred to in the minutes of a meeting of the Council of the Shire of Ravensthorpe ('the Council') dated July 1994.

In a letter dated 30 September 1997, Mr B.R. Hulland, Chief Executive Officer of the agency, informed the complainant that he would be given access to 4 documents that were identified as coming within the scope of his access application. As Mr Hulland is the principal officer of the agency for the purposes of the FOI Act, internal review was not available to the complainant.

By letter dated 6 October 1997, the complainant lodged a complaint with the Information Commissioner. The complaint concerned two matters. Firstly, he was dissatisfied with the charge of \$48.50 imposed by the agency for providing him with access to 4 documents. Secondly, he claimed that he had not been given access to one of the informal surveys mentioned in the minutes of the Council, thus raising the issue of the sufficiency of the searches conducted by the agency in respect of that document.

Review by the Information Commissioner

The first matter of complaint was resolved by conciliation between the parties, resulting in the agency refunding the complainant the amount of \$40.

After considering the material before me, on 26 November 1997, I informed the parties in writing of my preliminary view of the second matter, including my reasons. It was my view that the agency had taken all reasonable steps to find the requested document and that either it does not exist or cannot be found. Subsequently, I received a further written submission from the complainant, including a large bundle of photocopies of various documents relating to the agency and the complainant's concerns.

The final submission from the complainant has not dissuaded me from my preliminary view that the requested document does not exist. Both parties have been fully informed in writing of my reasons for my view. A summary of my reasons follows.

Documents that do not exist or cannot be found

Section 26 of the FOI Act deals with the requirements upon an agency in circumstances where it is unable to locate the documents sought by an access applicant. Section 26 provides that an agency may advise an applicant in writing that it is not possible to give access to a document if all reasonable steps have been taken to find the document and the agency is satisfied that either the document is in its possession but cannot be found, or the document does not exist.

For the purposes of the FOI Act, the sending of such a notice is to be regarded as a decision to refuse access to the document and, on external review or an appeal under Part 4 of the FOI Act, the agency may be required to conduct further searches for the document.

I have discussed my view of the requirements of s.26 in previous decisions concerning a document that cannot be found. I remain of the view that, when dealing with such an issue, there are two questions, which must be answered. The first question is whether there are reasonable grounds to believe that the requested document exists or should exist and is, or should be, held by the agency. In circumstances where the first question is answered in the affirmative, the next question, in my view, is whether the agency has taken all reasonable steps to find that document.

I do not consider that it is my function to physically search for the requested document on behalf of the complainant. Provided I am satisfied that the requested document exists, or should exist, I take the view that it is my responsibility to inquire into the adequacy of the searches conducted by the agency in a particular instance, and to require further searches if necessary.

The existence of the document

The document sought by the complainant is described in the minutes of the Council's July 1994 meeting as "*the last informal survey accepted by the Council*". The complainant informs my office that the last informal survey is actually a petition compiled in October 1990 against the complainant and his property.

The complainant's dispute with the agency is long-standing. It appears to me to stem from the agency's initial rejection of his application for planning approval to re-locate a second-hand dwelling house on land within the Shire. The complainant believes that the initial rejection of his application was based upon personal prejudice against him and his wife and that the so-called petition is part of the campaign against him.

The minutes relating to the Council's initial rejection of the complainant's application for planning approval in October 1990 record, in part:

"Considerable comment has been generated from the broader Hopetoun community regarding the condition and acceptability of the dwelling under consideration and indeed the general consensus is that the house is unsuitable for relocation to the Hopetoun townsite."

Mr Hulland, who was present at the meeting in question, maintains that the reference to "considerable comment" is the only documentary evidence of the informal survey. He said that it is a reference to a verbal report and feedback from the community and is not a reference to any document or petition in the possession of the agency.

The complainant has provided me with some evidence that a petition was taken in the community. However, there is no evidence that the petition was the informal survey referred to in the Council minutes, or that the agency is in possession of a written record of the informal survey.

The searches

The agency has searched relevant files, examined Council's minutes of its meetings, and documents relating to the complainant's planning application. Those searches have failed to locate any informal survey or petition.

For the reasons given to the parties which I have summarised above, I am satisfied that the agency has taken all reasonable steps to locate the requested document. There is nothing before me to warrant my requiring the agency to conduct any further searches to find that document.

Conclusion

Therefore, I confirm the decision of the agency to refuse access to that document, pursuant to s.26 of the FOI Act, on the basis that the document cannot be found or does not exist.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER
17 December 1997