

Decision D0452008 - Published in note form only

Re Goodall and City of Gosnells [2008] WAICmr 45

Date of Decision: 29 October 2008

Freedom of Information Act 1992: Section 26

The complainants applied under the *Freedom of Information Act 1992* ('the FOI Act') to the City of Gosnells ('the agency') for access to certain documents in relation to an incident concerning the inundation of water on their property. They advised that they were not seeking access to personal information about third parties. The agency located a large number of documents but agreed to extend the scope of the application to include others in order to provide a fuller picture of the area's drainage.

In the course of dealing with the application, the agency sought an extension of time from the complainants in which to provide its notice of decision. The complainants consented to an extension of time but on the condition that the principal officer of the agency make the decision, so that, if necessary, the complainants could apply directly to the A/Information Commissioner ('the A/Commissioner') for an external review of the agency's decision, without first having to seek internal review.

The agency decided to give access to all 118 documents identified, deleting only personal information which the complainants were not seeking to access. In September 2008, following the receipt of that decision, the complainants applied to the A/Commissioner for external review on the ground that the agency had not identified all of the documents within the scope of their application.

The A/Commissioner considered the agency's decision to be, in effect, a decision to refuse access to the requested documents under s.26 of the FOI Act. Section 26 deals with an agency's obligations in circumstances where it is unable to locate the documents sought by a complainant or where those documents do not exist.

Following further inquiries by the A/Commissioner's office, it was established that the agency had not been advised by the complainants that additional documents should exist because the complainants had requested that there be no internal review. Consequently, and in response to the complainants' submissions on external review, the agency made additional searches; located a number of documents within the scope of the application; and gave the complainants access to those documents. In October 2008, the A/Commissioner provided the parties with a letter setting out his preliminary view of the complaint and describing the searches and inquiries made by the agency for the requested documents. The A/Commissioner's preliminary view was that the agency had taken all reasonable steps to locate further documents within the scope of the complainants' application and he was satisfied that further documents either could not be found or did not exist.

The complainants were invited to withdraw their complaint or provide further submissions by a given date. However, the complainants did not withdraw their complaint and made no further submissions. Accordingly, and having regard to all the submissions and information then before him, the A/Commissioner confirmed the agency's decision to refuse the complainants access to the requested documents pursuant to s.26 of the FOI Act.