

Decision D0012009 – Published in note form only

***Re Leighton and Shire of Kalamunda* [2009] WAICmr 1**

Date of decision: 15 January 2009

Freedom of Information Act 1992: Section 26

This is the last of four separate, but related, external reviews sought by Ross William Leighton ('the complainant') against decisions of the Shire of Kalamunda ('the agency').

The background events leading to this complaint are set out in paragraphs 2, 3 and 5 in *Re Leighton and Shire of Kalamunda* [2008] WAICmr 48 ('*Re Leighton No.1*') and in paragraphs 2 to 4 of *Re Leighton and Shire of Kalamunda* [2008] WAICmr 52 ('*Re Leighton No.2*').

In this case, as was the case in *Re Leighton No.2*, the complainant applied to the agency for access to various documents held by or concerning a former councillor of the agency.

The agency decided that the requested documents were not documents of the agency and, therefore, it refused access to those documents on the basis that the agency did not have possession of the documents and it did not have the power to require those documents to be given to it by a person who was no longer, in the agency's view, an officer of the agency for the purposes of the *Freedom of Information Act 1992*.

On 22 August 2008, the complainant applied to the A/Information Commissioner ('the A/Commissioner') for external review of the agency's decision.

Having examined the agency's FOI file maintained in respect of the access application, action was suspended pending the determination of *Re Leighton No.2*. In light of the A/Commissioner's decision in *Re Leighton No.2*, the agency reconsidered its decision on access and subsequently dealt with the complainant's request for access on the basis that the requested documents may be documents of the agency. It then remained for the agency to take all reasonable steps to find documents of that kind.

The agency conducted a series of searches, including inquiries with the former councillor, but it could not find any documents of the kind requested. In light of the outcome of the searches, the agency's amended decision was a deemed refusal of access under section 26 of the FOI Act.

After consideration of the material then available to him, the A/Commissioner's officer required the agency to make additional inquiries in respect of the searches it had previously conducted. The agency carried out the additional inquiries, as did the former councillor, and the outcome was advised to the complainant. My officer advised the parties of his preliminary view of the complaint. The officer's view was that, other than documents previously identified as part of the three earlier and related access applications, it did not appear reasonable that there should be any further documents that fell within the scope of the access application. A detailed description of the searches and

inquiries conducted by the agency was given to the complainant and the complainant was invited to reconsider his complaint and to respond to the officer's written view.

The complainant did not provide any further submissions or further evidence to support the claim that additional documents exist or should exist.

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