

Decision D0032007 - Published in note form only

Re Kin Kin Resorts Pty Ltd and Department of Local Government and Regional Development [2007] WAICmr 3

Date of Decision: 23 February 2007

Freedom of Information Act 1992: Section 26

In August 2006, the complainant applied to the Department of Local Government and Regional Development ('the agency') for access under the *Freedom of Information Act 1992* ('the FOI Act') to documents sent to the agency by a local government in relation to a rating order variation that was gazetted in 1988. The agency advised the complainant that access to the requested documents could not be given as they had been destroyed in 2003 in line with the agency's retention schedule. On internal review, the agency, following further searches, confirmed its decision and denied the complainant access to the documents under section 26 of the FOI Act on the ground that the documents no longer existed. In October 2006, the complainant applied to the A/Information Commissioner ('the A/Commissioner') for an external review of that decision.

On receipt of that application, the A/Commissioner required the agency to provide further information in relation to the searches made for, and the destruction of, the documents and also to identify the types of documents that would have been forwarded to the agency by the local government. The agency provided that information, at which time it became apparent that, although the requested documents had been scheduled for disposal under the agency's retention and disposal schedule, there was no evidence that conclusively established that those documents had, in fact, been destroyed.

In February 2007, the A/Commissioner wrote to the parties setting out her preliminary view of the complaint and advised that, on the information before her, and in light of the searches and inquiries made by the agency, she was satisfied that the documents had existed and, although it could not be conclusively established that they had been destroyed, the agency had taken all reasonable steps to find the requested documents but they either could not be found or did not exist.

In response to the A/Commissioner's preliminary view, the complainant raised a number of issues, most of which were not relevant to the matters for determination. There being no further suggestions as to additional searches which could be made or evidence to show that the requested documents still existed, 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 the agency had taken all reasonable steps to find the requested documents but that they cannot be found or do not exist.