

Decision D0032009 - Published in note form only

***Re Novelly and Kimberley TAFE* [2009] WAICmr 3**

Date of Decision: 12 February 2009

Freedom of Information Act 1992: Section 26

The complainant, a former employee of Kimberley TAFE, applied to that agency for certain documents relating to the agency's restructure in 2005 and her subsequent redeployment. Following previous FOI applications made by the complainant, the agency had already disclosed a number of documents relating to the redeployment issue, including the complainant's personnel file. In the present application, the agency identified 4 documents, not previously disclosed, as falling within the scope of the application and gave the complainant access in full to them. Since that decision was made by the agency's principal officer for the purpose of the FOI Act, the complainant applied directly to the Information Commissioner for external review of the agency's decision, on the ground that additional documents should exist.

The A/Information Commissioner ('A/Commissioner') obtained the agency's FOI file from the agency and one of the A/Commissioner's officers made inquiries with the agency about the searches it had conducted for the requested documents. On 5 January 2009, the A/Commissioner provided the parties with a letter setting out his preliminary view of the complaint, which was that further documents should exist. In light of that, the A/Commissioner required the agency to conduct further searches and to provide details of the searches and inquiries made for the requested documents. In addition, the complainant was invited to provide information and to suggest additional searches that the agency could make to locate the requested documents.

In the course of making its additional searches, the agency identified - and gave the complainant access to - some additional documents. However, the complainant considered that further documents should still exist.

After reviewing the searches and inquiries undertaken by the agency for the requested documents and the further information provided by the agency, the A/Commissioner was satisfied that the agency had taken all reasonable steps to locate the requested documents and that further documents did not exist or could not be found. The A/Commissioner noted that agencies are not required by the FOI Act to take every possible step to locate documents. Rather, they are required to take all reasonable steps. The A/Commissioner confirmed the agency's decision to refuse the complainant access to the requested documents under section 26 of the FOI Act.