

Decision D0042006 - Published in note form only

Re Carson and City of Swan [2006] WAICmr 4

Date of Decision: 17 February 2006

Freedom of Information Act 1992: Section 26

The complainant applied to the City of Swan ('the agency') for access under the *Freedom of Information Act 1992* ('the FOI Act') to various documents and information relating to the development of a Waterways and Dam Policy of the agency.

The agency gave the complainant access to the documents it identified as within the scope of the complainant's applications. The agency also provided certain information about the parties involved in the formulation of the relevant policy. However, the complainant considered that additional documents should exist and requested internal review of the agency's decision. The agency undertook further searches and enquiries but could locate no additional documents in respect of the application and confirmed the initial decision. The complainant still considered that further documents should exist and applied to the Information Commissioner for external review of the agency's decisions.

Based on preliminary inquiries, it appeared that the agency had not correctly interpreted the scope of the access application. Therefore, the agency was required to make further searches for the requested documents based on a clarified interpretation of the scope of the application. As a result, the agency identified a number of additional documents within the clarified scope. The agency gave the complainant access to those documents and gave to the Acting Information Commissioner ('the A/Commissioner') and the complainant a detailed description of the additional searches and inquiries conducted.

However, the complainant remained dissatisfied and sought additional documents relating to a community organisation that the complainant claimed had made a number of submissions to the agency on the then proposed policy. The complainant referred to minutes of the meetings of the community organisation which indicated there had been correspondence exchanged between it and the agency about the issue and argued that, therefore, the agency should have copies of those documents and they should have been identified in response to his access application.

As there appeared to be some merit in the complainant's contention, but the agency could locate no such documents, the agency was requested to contact the community organisation and seek its cooperation in identifying further documents. The community organisation provided a number of its documents to the agency and gave consent for the agency to disclose some of those documents to the complainant.

The agency agreed that it should have had copies of all of those documents, which consisted of emails and letters. The agency advised that the emails should have been printed out and filed in the agency but it appeared they had not been and no copies could be found. The agency also advised that it did have copies of the letters but they

related primarily to a particular application rather than to the policy. For that reason they had been filed on the file relating to the particular application and were not found when searching for documents relating to the policy. The A/Commissioner accepted that explanation as reasonable. The agency advised that it had subsequently searched that file for other documents concerning the policy, but no other documents could be found.

The complainant did not respond to any subsequent requests to either withdraw from the complaint or provide any evidence to support the claim that additional documents exist that had not been dealt with.

On the basis of the information provided, the A/Commissioner was satisfied that the agency had by then taken all reasonable steps to locate the requested documents but any further documents either cannot be found or do not exist. The A/Commissioner was also satisfied that the complainant had been adequately informed of the nature and extent of the searches conducted by the agency.

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.