

**Decision D0052019 – Published in note form only**

***Re Humphreys and Forest Products Commission [2019] WAICmr 5***

**Date of Decision: 28 June 2019**

***Freedom of Information Act 1992 (WA): section 26***

On 19 December 2017, David Humphreys (**the complainant**) applied to the Forest Products Commission (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to invoices or other documentation showing the sale prices of products sold by the agency from his plantation between 23 February 2017 and 17 March 2017.

By notice of decision dated 9 February 2018, the agency decided to give the complainant access to an edited copy of a document with certain information deleted on the ground that it was outside the scope of the access application.

On 23 February 2018, the complainant applied for internal review of the agency's decision. The agency confirmed its decision by letter dated 16 March 2018, however it gave the complainant access to an edited copy of the same document with less information deleted.

On 23 May 2018, the complainant applied to the Information Commissioner for external review of the agency's decision on the ground that the agency had not identified all of the documents within the scope of his application. The Acting Information Commissioner (**A/Commissioner**) considered the agency's decision to be, in effect, a decision to refuse access to the requested documents under section 26 of the FOI Act.

The agency provided the A/Commissioner with its FOI file maintained in respect of the access application. During the external review, the agency provided the A/Commissioner's office with additional information about its searches and explained why further documents could not reasonably be expected to exist. The agency also gave the complainant access to additional documents but they did not satisfy his request.

Section 26 of the FOI Act provides that an agency may refuse access to a document if all reasonable steps have been taken to locate the document, and it is satisfied that the document is either in the agency's possession but cannot be found, or does not exist. The A/Commissioner considers that, in dealing with section 26, the following questions must be answered. First, whether there are reasonable grounds to believe that the requested documents exist or should exist and are, or should be, held by the agency. Where those questions are answered in the affirmative, the next question is whether the agency has taken all reasonable steps to locate those documents.

On 27 May 2019, after considering all the information before her, the A/Commissioner provided the parties with her preliminary view of the matter. It was her preliminary view that the agency's decision to refuse the complainant access to documents pursuant to section 26 of the FOI Act was justified. The A/Commissioner considered that there were insufficient grounds to expect that additional documents exist within the scope of the complainant's access application and that, in any event, the agency had taken all reasonable steps to find additional documents and that they either cannot be found or do not exist. Accordingly, the

A/Commissioner did not require the agency to make any further inquiries or conduct any further searches.

The complainant was invited to accept the A/Commissioner's preliminary view or to provide additional submissions for her consideration. By letter dated 10 June 2019, the complainant made further submissions relevant to the matter.

The A/Commissioner recognised that applicants seeking to exercise their rights of access under the FOI Act must, to some extent, rely on the integrity of the searches conducted by the relevant agency. The A/Commissioner also recognised that, in some circumstances, an applicant may be sceptical about the adequacy of an agency's efforts to meet its obligations under the FOI Act.

However, after considering all of the information before her, including the complainant's further submissions, the A/Commissioner was not dissuaded from her preliminary view. Accordingly, the A/Commissioner confirmed the decision of the agency to refuse the complainant access to documents under section 26 of the FOI Act on the ground that further documents either cannot be found or do not exist.