

Decision D0092007 – Published in note form only

Re Hudson and Kimberley Health Region [2007] WAICmr 9

Date of decision: 18 April 2007

Freedom of Information Act 1992: Section 26

The complainant applied to the Department of Health ('the Department') for access to documents relating to her employment with the Department including those concerning her employment with the Kimberley Population Health Unit ('the KPHU'). The KPHU reports to the Kimberley Health Region ('the agency'), which is part of the WA Country Health Service. The Department transferred the complainant's access application to the agency, pursuant to s.15 of the *Freedom of Information Act 1992* ('the FOI Act').

The agency gave the complainant a copy of the documents held on her personal file and those documents relating to an issue that arose during her employment with the KPHU. The complainant claimed that certain documents were missing from the documents released to her and sought internal review of the agency's decision on that basis.

The agency undertook a further search for documents and, as a result, gave the complainant one additional document. The complainant remained dissatisfied and applied to the A/Information Commissioner ('the A/Commissioner') for an external review of the agency's decision.

The complainant advised the A/Commissioner's office that the documents she claimed were missing were those relating to the agency's investigation of a particular issue and which were created in a specific timeframe. The A/Commissioner's officer made various further inquiries with the agency in relation to the searches and inquiries it had undertaken to locate the requested documents.

Following his review of the information and documents then before the A/Commissioner, the A/Commissioner's Senior Legal Officer informed the complainant that it was his view that the agency had taken all reasonable steps to find the requested documents but that additional documents of the kind the complainant believed should exist at the agency either cannot be found or do not exist. The Senior Legal Officer was of the opinion that, although it was not unreasonable for the complainant to have formed an expectation that certain records relating to the investigation in question would have been created by officers at the agency, there was no evidence before the A/Commissioner to establish that additional documents of that kind actually exist and are in the possession of the agency.

The complainant made further submissions to the A/Commissioner. After considering those submissions, and having some further inquiries made as a result, the A/Commissioner confirmed the agency's decision to refuse access to the requested documents under s.26 of the FOI Act on the ground that, despite all reasonable steps having been taken to locate the documents, they cannot be found or do not exist.