

Decision D0122008 - Published in note form only

***Re Mallet and Edith Cowan University* [2008] WAICmr 12**

Date of Decision: 24 April 2008

Freedom of Information Act 1992: section 26; Schedule 1

In January 2008, the complainant applied under the *Freedom of Information Act 1992* ('the FOI Act') to Edith Cowan University ('the agency') for access to certain documents. The application was closely related to past applications made by the complainant over a number of years concerning an issue arising from the time that he was enrolled as a student at the agency. The agency identified two documents as within the scope of the application and gave the complainant access to one document in full and to the other in edited form.

The complainant requested an internal review disputing the agency's decision to edit the second document and also claiming that additional documents should exist. On 3 March 2008, the agency confirmed its original decision. On 5 March 2008, the complainant applied to the A/Information Commissioner ('the A/Commissioner') for external review of that decision in respect of the question of additional documents only.

On receipt of this complaint, my office made further inquiries with the complainant to clarify the scope of his access application. As a result of those inquiries it became clear that some miscommunication had arisen over the wording of the complainant's application and the agency had not understood that wording to mean what the complainant understood it to mean. In the particular circumstances of this case, the A/Commissioner accepted that the requested documents came within the scope of the complainant's application.

Once the requested documents had been identified, the agency advised that the complainant had made a previous FOI application for the same documents in May 2006. In dealing with that application, the agency could not locate the requested documents and refused access to them - pursuant to s.26 of the FOI Act - on the basis that they could not be found or do not exist.

On 15 April 2008, the complainant was advised in writing that, on the basis of the information before the A/Commissioner, it appeared that the agency had taken all reasonable steps to find the requested documents. The complainant was invited to suggest further reasonable searches or inquiries that could be made.

On 17 April 2008, the complainant responded to that letter with further suggestions for locating the documents. In the circumstances, the A/Commissioner did not consider that those suggestions were reasonable. The A/Commissioner considered that the agency had taken all reasonable steps to find the requested document or documents and was satisfied that the document or documents could not be found or did not exist.