

Decision D0222015 – Published in note form only

Re Mulrooney and SMHS Royal Perth Hospital [2015] WAICmr 22

Date of Decision: 16 November 2015

Freedom of Information Act 1992: section 26

On 6 March 2014, Dr Peter Mulrooney (**the complainant**) applied to SMHS Royal Perth Hospital (**the agency**) under the *Freedom of Information Act 1992* (**the FOI Act**) for access to copies of documents between five named officers of the agency regarding himself, RotaTrack and OzWest Aviation between 1 January 2013 and 6 March 2014.

By notice of decision dated 27 May 2014 the agency decided to give edited access to 21 documents that fall within the scope of the complainant's access application. The agency did not claim exemption for the information deleted from some of those documents. Rather, the agency advised that the information deleted did not relate to the parties or the subject matter described in the access application and, therefore, the deleted information was outside the scope of the application.

The complainant applied for internal review of the agency's decision, but the agency failed to complete the internal review in the period permitted by section 43 of the FOI Act. Therefore, the agency's decision was taken to have been confirmed on internal review.

The complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency's decision. Following receipt of the complaint, the Commissioner obtained a copy of the FOI file maintained by the agency in respect of the complainant's access application. The Commissioner obtained further information from the agency in relation to the searches it had conducted to locate the requested documents.

On 20 January 2015, the Commissioner's Complaints Coordinator informed the parties of his initial view that the agency had taken all reasonable steps to find the requested documents but that they cannot be found or do not exist.

The complainant maintained his claim that additional documents should exist.

Section 26 of the FOI Act provides that an agency may refuse access to a document if it is satisfied that 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 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 24 September 2015, after considering all of the information currently before her, the A/Commissioner advised the parties in writing that it was the A/Commissioner's preliminary view that the agency's decision to, in effect, refuse access to additional documents under section 26 of the FOI Act was justified. That is, the A/Commissioner was satisfied that all reasonable steps had been taken by the agency to locate the documents and that any

additional documents are either in the agency's possession but cannot be found, or do not exist. The complainant was invited to withdraw his complaint or to provide the Commissioner with further submissions relevant to the matter for the Commissioner's consideration.

On 28 September 2015, the complainant acknowledged receipt of the A/Commissioner's letter of 24 September 2015. However, apart from that advice, the complainant did not otherwise respond to the A/Commissioner's preliminary view.

On 16 October 2015, the complainant was advised that the Commissioner proposed to take no further action and close the file on the basis that the complaint was deemed to have been resolved by conciliation. However, the complainant stated that he did not accept that view and that he did not accept that the matter had been conciliated simply by the lack of detailed response from him to the preliminary view.

After considering all of the material before him, the Commissioner was not persuaded from the A/Commissioner's preliminary view. Accordingly, the Commissioner confirmed the agency's decision to refuse access to documents under section 26 of the FOI Act on the basis that those documents either cannot be found or do not exist.