

Decision D0262008 - Published in note form only

Re Gavranich and Shire of Mundaring [2008] WAICmr 26

Date of Decision: 14 July 2008

Freedom of Information Act 1992: Section 26

The complainant applied to the Shire of Mundaring ('the agency') for certain planning approval documents in relation to a neighbour's patio. The agency advised the complainant that it could not locate any planning approval documents. Instead, the agency located certain building licence documents which related to the request but refused access to those documents, claiming exemptions under clauses 3 (personal information) and 5 (property security) of Schedule 1 to the FOI Act. Since the principal officer of the agency made that decision, the complainant had no access to internal review and was able to apply directly to the A/Information Commissioner ('the A/Commissioner') for an external review of the agency's decision.

On receipt of the complaint, the A/Commissioner's officers clarified that the complainant was not seeking to have the agency's decision to refuse access to building licence documents reviewed. Instead, the complainant considered that the requested planning approval documents should exist and that the agency had not identified or located those documents.

The complainant produced information to the A/Commissioner to show that the agency had advised him - in response to a question asked at a Council meeting - that planning approval documents concerning the patio existed.

Following further inquiries with the agency, it was established that the advice given to the complainant concerning planning approval had been incorrect and that the only documents relevant to his request were building licence documents because in fact no application for planning approval has been made. Although the complainant accepted the agency's explanation, he did not withdraw his complaint.

The A/Commissioner considered that the agency's decision was, in effect, a decision to refuse access to the requested documents under s.26 of the FOI Act. Section 26 deals with an agency's obligations in circumstances where it is unable to locate the documents sought by a complainant or where those documents do not exist.

In this case, further investigations were carried out by FOI officers and additional inquiries were made with the agency. In view of the agency's explanation as to what had happened, and in light of the fact that the complainant provided no further information to show that planning approval documents should exist - the A/Commissioner was not satisfied that there were reasonable grounds to believe that the requested planning approval documents existed or should exist. The A/Commissioner confirmed the agency's decision to refuse the complainant access to the requested documents on the ground that it was not possible to give access to those documents since all reasonable efforts had been taken to find them and the A/Commissioner was satisfied that they do not exist.