

Decision D0262013 – Published in note form only

Re Mills and Goldfields – Esperance Development Commission [2013] WAICmr 26

Date of Decision: 18 November 2013

Freedom of Information Act 1992: section 26

In December 2012, Ms Kate Mills (**the complainant**) applied to Goldfields – Esperance Development Commission (**the agency**) under the *Freedom of Information Act 1992* (**the FOI Act**) for access to documents concerning her employment with the agency.

In January 2013 the agency decided to grant access in full to certain documents (**the agency’s decision**). As the principal officer of the agency made the agency’s decision, an internal review was not available to the complainant for the purposes of the FOI Act.

In January 2013, the complainant applied to the Information Commissioner for external review of the agency’s decision on the basis that additional documents should exist which come within the scope of her access application but to which access had been refused.

The only dispute was the complainant’s claim that the agency had, in effect, refused access to further documents within the scope of her access application (**the requested documents**) under section 26 of the FOI Act. Section 26 of the FOI Act provides that an agency may refuse access to a document if all reasonable steps have been taken to find the document and the agency is satisfied that the document is either in the agency’s possession but cannot be found or does not exist.

Section 26 of the FOI Act requires an agency to take not ‘all steps’ but all ‘reasonable steps’ to find documents: see *Re Boland and the City of Melville* [1996] WAICmr 53 at [27].

The Information Commissioner’s officers obtained further information from the agency. In particular, the agency explained how it conducted searches for the requested documents. The searches included searches of the agency’s main server and the Chief Executive Officer’s laptop computer, mobile telephone and handwritten notes. In addition, the agency searched the desktop computers of officers nominated by the complainant. The agency also asked the Chair of the agency to search his records for the requested documents.

In October 2013, after considering the information before him, the Information Commissioner provided the parties with a letter setting out his preliminary view of the complaint. It was the Information Commissioner’s preliminary view that the agency’s decision under section 26 was justified.

In light of the Information Commissioner’s preliminary view, the complainant was invited to reconsider whether she wished to pursue the complaint or to provide the Information Commissioner with further submissions relevant to the matters for his determination.

The complainant provided further submissions. The Information Commissioner considered the complainant’s further submissions, reviewed all of the material before him and was satisfied that the agency had taken all reasonable steps to find the requested documents and that those documents are either in the agency’s possession but cannot be found or do not exist.

As a result, the Information Commissioner confirmed the agency’s decision to refuse access to the requested documents under section 26 of the FOI Act.