

**Decision D0332012 - Published in note form only**

***Re Pedrocchi and Department of Fisheries [2012] WAICmr 33***

**Date of Decision: 30 November 2012**

***Freedom of Information Act 1992: section 26***

In March 2010, the complainant, Mr Nicholas Pedrocchi, applied to the Department of Fisheries ('the agency') for access under the *Freedom of Information Act 1992* ('the FOI Act') to 18 categories of documents, as well as specific information, relating to mackerel fishing. The agency identified a number of documents within the scope of each category and gave him full access to some of those documents, access to edited copies of others and refused him access to some documents on the basis that those documents or parts of those documents were exempt under clauses 3, 6 and 7 of Schedule 1 to the FOI Act. The complainant sought internal review of the agency's decision and claimed that other documents should exist at the agency within the scope of his access application. On internal review, the agency confirmed its original decision. Thereafter, the complainant applied to the Information Commissioner for external review of the agency's decision.

On receipt of the complaint, the Commissioner obtained the originals of the disputed documents together with the agency's FOI file relevant to the complainant's access application. As the agency's FOI file provided limited evidence of the searches and inquiries it had conducted for documents within the scope of the application, the Commissioner's officers obtained further information from the agency and required additional searches and inquiries to be made. Following those inquiries, further documents were located by the agency and subsequently disclosed to the complainant. In the course of the external review, the agency gave the complainant access to some of the material that it had previously claimed was exempt. As a result, the only issue remaining in dispute was the complainant's claim that the agency had, in effect, refused access to further documents within the scope of his 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.

On 1 November 2012, after considering the information before her, the A/Information Commissioner provided the parties with a letter setting out her preliminary view of the complaint. It was the A/Commissioner's preliminary view that the agency had taken all reasonable steps to find the requested documents but that further documents either could not be found or do not exist. At that stage, the A/Commissioner did not require the agency to conduct any further searches. The A/Commissioner considered that the agency's inability to locate documents in this matter appeared to be a result of a number of factors including poor record keeping and inadequate training in records management. However, the A/Commissioner noted that the agency acknowledged those deficiencies and had taken steps to rectify those issues. Upon review of all the information, the A/Commissioner was satisfied the agency was committed to ensuring applications for access under the FOI Act would be managed more efficiently in the future.

The complainant was invited to withdraw his complaint or to provide information to support his view as to why he considered that the agency had not taken reasonable steps to find the requested documents. The complainant advised he did not accept the A/Commissioner's preliminary view and made further submissions to the Commissioner.

The Commissioner considered the further submissions, reviewed all of the material before him and was satisfied that the agency had now 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. In light of that, the Commissioner confirmed the agency's decision to refuse access to the requested documents under section 26 of the FOI Act.