

Decision D0372008 - Published in note form only

Re Leighton and Shire of Serpentine-Jarrahdale [2008] WAICmr 37

Date of Decision: 28 August 2008

Freedom of Information Act 1992: Section 26

The complainant applied to the Shire of Serpentine Jarrahdale ('the agency') for certain documents in relation to a car park next to the Mundijong Tavern. After identifying 8 documents falling within the scope of the application, the agency gave access in full to 6 documents and access to edited copies of 2 documents, relying on the exemption under clause 4 (commercial or business information) of Schedule 1 to the FOI Act for the information deleted from those two documents. The complainant sought internal review of the decision, claiming that the agency had not identified the particular document which he had sought access to ('the requested document'). The agency confirmed on internal review that it did not hold the requested document. On 6 June 2008, the complainant applied to the A/Information Commissioner ('the A/Commissioner') for external review of the agency's decision.

The A/Commissioner obtained the agency's FOI file and other relevant material from the agency and one of the A/Commissioner's officers made inquiries with the agency about the searches it had conducted for the requested document. In July and August 2008, the complainant made detailed submissions.

In support of his claim that the requested document existed, the complainant claimed that an officer at the agency had advised him that the requested document existed at the agency. However, after making inquiries with the relevant officer, the A/Commissioner was unable to establish to the relevant probative standard whether that advice had been given to the complainant.

In any event, after reviewing the searches and inquiries undertaken by the agency for the requested document and the further information provided by the agency, the A/Commissioner was satisfied that the agency had taken all reasonable steps to locate the requested document and that the document did not exist. Accordingly, the A/Commissioner confirmed the agency's decision to refuse the complainant access to the requested document under section 26 of the FOI Act.