

Decision D0402008 - Published in note form only

Re Burns and Department of Agriculture and Food [2008] WAICmr 40

Date of Decision: 22 September 2008

Freedom of Information Act 1992: section 26

In May 2008, the complainant applied under the *Freedom of Information Act 1992* ('the FOI Act') to the Department of Agriculture and Food ('the agency') for access to a chronological sequence of officers concerned with agricultural land clearing over a 20-year period. The agency refused the complainant access to the requested documents under s.26 of the FOI Act on the basis that the documents cannot be found or do not exist.

The complainant requested an internal review disputing the agency's decision. On 1 July 2008, the agency confirmed its original decision. On 4 August 2008, the complainant applied to the A/Information Commissioner ('the A/Commissioner') for external review of that decision.

On receipt of this complaint, further inquiries were made with the agency in relation to the searches it had conducted to locate the requested documents. The agency explained that it had no reason to collect information of the kind requested and consequently, the agency did not have a discrete document containing the information sought. Nor was it possible to identify the requested information from discrete documents for a variety of reasons, including that such activities are not noted on early personnel records and it is not possible to identify the work performed by officers from their job title alone.

On 22 August 2008, the complainant was advised in writing that, on the basis of the information before the A/Commissioner at that stage, it appeared that the agency had taken all reasonable steps to find the requested documents. The complainant was invited to suggest further reasonable searches or inquiries that could be made. No response was received from the complainant by the prescribed time or at all.

In the circumstances, the A/Commissioner was not dissuaded from the view expressed in the letter of 22 August 2008 to the complainant. The A/Commissioner found that, in view of the searches and inquiries already made by the agency, and in light of the fact that there was no evidence before the A/Commissioner that any documents of the kind described in the complainant's access application exist or should exist at the agency, the agency had taken all reasonable steps to find the requested documents but that those documents either cannot be found or more probably do not exist.