

Decision D0552008 - Published in note form only

Re National Tertiary Education Industry Union and Curtin University of Technology [2008] WAICmr 55

Date of Decision: 23 December 2008

Freedom of Information Act 1992: Section 26

The complainant applied under the *Freedom of Information Act 1992* ('the FOI Act') to Curtin University of Technology ('the agency') for access to certain documents "*related to the development, implementation or outcomes of any managerial strategy for dealing with the NTEU Executive, either as individuals or as a member of a group or groups.*".

The agency identified one document as falling within the scope of the access application and initially gave access to an edited copy of that document. The agency later reconsidered its decision and gave full access to that part of the document that falls within the scope of the application.

The complainant applied to the Acting Information Commissioner ('the A/Commissioner') for external review on the ground that the agency had not identified all of the documents within the scope of their application.

The A/Commissioner considered the agency's decision to be, 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.

After further inquiries by the A/Commissioner's office, the agency made additional searches and inquiries for documents that may fall within the scope of the application. Following consideration of those additional searches and inquiries, the A/Commissioner's Senior Investigations Officer provided the parties with a letter setting out his preliminary view of the complaint and describing the searches and inquiries made by the agency for the requested documents. The officer's preliminary view was that the agency had taken all reasonable steps to locate further documents within the scope of the complainant's application and he was satisfied that further documents either could not be found or did not exist.

The complainant was invited to withdraw its complaint or provide further submissions by a given date. The complainant did not withdraw its complaint and made further submissions. Those additional submissions were considered. However, the complainant was unable to provide sufficiently persuasive submissions that could establish that it was reasonable that additional documents existed in the agency and that those alleged additional documents should be able to be found if all reasonable searches were conducted.

Having regard to all the submissions and information then before him, the A/Commissioner was not dissuaded from the preliminary view and confirmed the agency's decision to refuse the complainant access to the requested documents pursuant to s.26 of the FOI Act.