

Decision D0062005 - Published in note form only

Re Michail and Department of Housing and Works [2005] WAICmr 6

Date of Decision: 18 April 2005

Freedom of Information Act 1992: Section 26

The complainant sought access under the *Freedom of Information Act 1992* ('the FOI Act') to all documents at the agency relating to the complainant. The agency granted the complainant access to all documents it identified as falling within the scope of his request.

The complainant sought internal review of the agency's decision on access, claiming that the agency had not supplied all the requested documents, and specified one document he claimed to be missing. On internal review, the agency advised the complainant that it did not hold any additional documents of the kind described by him. The agency refused the complainant access to the document, in accordance with s.26 of the FOI Act, on the ground that the document did not exist or could not be found. The complainant applied to the A/Information Commissioner for external review of the decision of the agency.

The A/Information Commissioner made inquiries with the agency and the agency made further searches.

In the course of the A/Information Commissioner dealing with the complaint, the complainant specified a number of other documents he claimed should have been supplied in response to his access application. Those included, among others, correspondence between the complainant and the agency in relation to earlier access applications made by him to the agency.

Although not agreeing that those documents were within the scope of the access application, at the A/Information Commissioner's request, the agency released those documents to the complainant. Other documents specified by the complainant had already been disclosed to the complainant as a result of a subsequent access application.

In respect of the one remaining specified document claimed by the complainant to be missing, the A/Information Commissioner advised the complainant of the searches that had been undertaken and the inquiries that had been made, and that, other than his recollection of signing an unidentified document, he had not produced any evidence that a document of that type exists, or ever existed. Further, there was nothing in the agency's files that were examined, or any other evidence, which indicated that such a document should have existed or ever did exist. The A/Information Commissioner did not therefore require the agency to undertake further searches for the document.

The A/Information Commissioner confirmed the agency's decision to refuse access to the requested document in accordance with s.26 of the FOI Act, on the ground that all reasonable steps had been taken to find the requested document but it does not exist.