

Decision D0202004 - Published in note form only

***Re Mallet and Edith Cowan University* [2004] WAICmr 20**

Date of Decision: 10 December 2004

Freedom of Information Act 1992: Section 26

The complainant applied to Edith Cowan University ('the agency') for access to a micro-cassette tape ('the tape') which he had used to record a meeting of the Academic Appeals Committee on 29 June 2001 and which he had voluntarily given to that Committee. The tape is a document for the purposes of the *Freedom of Information Act 1992* ('the FOI Act'), as defined in the Glossary in Schedule 2 to the FOI Act.

The agency gave the complainant what purported to be a decision made under section 30 of the FOI Act, which stated that a search had been made but that the tape could not be found but which did not refer to the particular searches made for the tape. The agency confirmed its decision on internal review. Thereafter, the complainant applied to the A/Information Commissioner ('the A/Commissioner') for an external review of the agency's decision.

The A/Commissioner required the agency to make further searches and inquiries for the tape. The agency made those additional searches and inquiries and gave a detailed description of those searches and inquiries to the A/Commissioner. The agency accepted that the tape should exist but took the view that it either could not be found or no longer existed. On the basis of the information before her, the A/Commissioner was satisfied that there were reasonable grounds to believe that the tape once existed and should be held by the agency. However, having considered the additional searches and inquiries made by the agency, the A/Commissioner was satisfied that the agency had taken all reasonable steps to locate the tape.

The A/Commissioner confirmed the agency's decision to refuse access to the tape under section 26 of the FOI Act on the ground that, despite all reasonable steps having been taken to locate it, it cannot be found.