

**Decision D0082025 – Published in note form only**

***Re Peterson and City of Melville [2025] WAICmr 8***

**Date of Decision: 30 June 2025**

***Freedom of Information Act 1992 (WA): section 26***

On 24 March 2023, Shane Peterson (**the complainant**) applied to the City of Melville (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to documents containing personal information and metadata relating to him, including opinions that may or may not be true, that were sent, received, noted or logged by named officers of the agency.

By notice of decision dated 8 May 2023, the agency decided to give the complainant access to an edited copy of documents, deleting information that was outside the scope of the complainant's access application.

The complainant sought internal review of the agency's decision, disputing the editing of the documents released and claiming that further documents should exist. By internal review decision dated 24 May 2023, the agency confirmed the initial decision.

On 15 June 2023, the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency's decision, claiming that the agency had, in effect, refused him access to further documents pursuant to section 26 of the FOI Act (**section 26**). In addition, the complainant disputed the editing of the documents released.

The Commissioner obtained the agency's FOI file maintained in respect of the access application, together with the documents released to the complainant.

One of the Commissioner's officers (**the officer**) made inquiries with the agency, which resulted in the agency conducting further searches. The agency located additional documents, and the agency released all but one of those documents to the complainant.

After considering the material then before the Commissioner, the officer provided the complainant with their assessment of the matter. It was the officer's assessment that the agency's decision to, in effect, refuse the complainant access to further documents under section 26, on the ground further documents could not be found or did not exist, was justified. The officer was also of the view that the agency's decision to delete information on the basis it was outside the scope of the access application was also justified.

The complainant did not accept the officer's assessment in relation to section 26 and made further submissions. As the complainant did not dispute the officer's assessment in relation to the editing of the documents released, that issue was not considered further.

The Acting Information Commissioner (**A/Commissioner**) considered all the material before her, including the complainant's further submissions and agreed with the officer's assessment.

Section 26 provides that an agency may refuse access to a document if all reasonable steps have been taken to locate the document, and it is satisfied that the document is either in the agency's possession but cannot be found, or does not exist.

The A/Commissioner observed that the question of whether or not 'all reasonable steps' have been taken by an agency to locate documents is a question of fact for the decision maker: see *Chu v Telstra Corporation Ltd* [2005] FCA 1730, at [14]. Consequently, the A/Commissioner considered that, on external review, the judgement as to whether all reasonable steps have been taken by an agency to locate the requested documents is a judgement for the A/Commissioner to make, based on the circumstances and the material before her.

The A/Commissioner acknowledged that, when an agency locates additional documents during the external review process, as was the case here, it is understandable that an applicant will be sceptical about the agency's record keeping practices. The agency acknowledged that there have been issues in the past with its record keeping and advised that improvements have been made. The A/Commissioner observed that good record-keeping underpins the right of access to documents under the FOI Act.

The A/Commissioner also observed that the terms in which an access application is framed set the parameters for an agency's response under Part 2 of the FOI Act and set the direction of an agency's searches to locate all documents which may fall within the scope of the access application: see *Re Guest and Main Roads Western Australia* [2009] WAICmr 24 at [20].

Having regard to the terms of the access application and the searches undertaken by the agency in this matter, the A/Commissioner found that the agency had taken all reasonable steps in the circumstances to find the documents within the scope of the complainant's access application and that further documents either cannot be found or do not exist.

Accordingly, the A/Commissioner confirmed the agency's decision to refuse the complainant access to documents under section 26 of the FOI Act.