



Decision D0112026 – Published in note form only

Re ‘P’ and Western Australia Police Force [2026] WAICmr 11

Date of Decision: 13 July 2026

Freedom of Information Act 1992 (WA): Section 26

Decision

1. For the reasons given to the parties and summarised below, the Information Access Deputy Commissioner (**Deputy Commissioner**) confirmed the decision of the Western Australia Police Force (**agency**) to refuse the complainant access to documents (relating to forensic analysis) under section 26 of the *Freedom of Information Act 1992 (WA)* (**FOI Act**).
2. Consistent with the Office of the Information Commissioner’s (**OIC**) new policy, the Deputy Commissioner decided not to identify the complainant by name to uphold their privacy and the privacy of other individuals involved in this matter.

Reasons

Section 26 – documents that cannot be found or do not exist

3. Section 26 provides an agency may refuse access to a document if it has taken all reasonable steps to find the document and is satisfied the document is either in the agency’s possession but cannot be found, or does not exist.
4. In dealing with section 26, the following questions must be asked:¹
 - Are there reasonable grounds to believe the requested documents exist or should exist?
 - If so, are the requested documents held, or should they be held, by the agency? and
 - If so, has the agency taken all reasonable steps to find those documents?
5. Further:
 - it is not the function of the Information Commissioner to physically search for documents on behalf of a complainant;²
 - an agency is not required to take every possible step to locate documents, but only to take all reasonable steps;³
 - the adequacy of an agency’s efforts to locate documents must be judged by what was reasonable in the circumstances;⁴

¹ *Re James and City of Albany* [2014] WAICmr 2, [17]; *Re McLerie and City of Melville* [2022] WAICmr 1, [38].

² *Re James and City of Albany* [2014] WAICmr 2, [19]; *Re McLerie and City of Melville* [2022] WAICmr 1, [39].

³ *Re Boland and City of Melville* [1996] WAICmr 53, [27].

⁴ *Re James and City of Albany* [2014] WAICmr 2, [18]; *Re Leighton and Shire of Kalamunda* [2008] WAICmr 52, [85]; and *Re Veale and City of Swan* [2012] WAICmr 12.

- the reasonableness of an agency's searches depends, in part, on the likelihood the requested documents exist. The more likely it is a document exists, the more extensive the searches may need to be.⁵

Are there reasonable grounds to believe the documents exist or should exist?

6. Having considered the complainant's submissions, the Deputy Commissioner was not persuaded the complainant's belief, without further probative material, established the requested documents exist or should exist.
7. The Deputy Commissioner noted the complainant's concern the agency had not taken all reasonable steps to find the documents. He also noted the complaint's position they cannot be expected to identify how the agency should search its own recordkeeping system. However, the Deputy Commissioner found the complainant's submissions did not establish the requested documents exist or should exist. In other words, the complainant did not adequately explain why the forensics documents exist or should exist.
8. Further, the complainant had claimed material from 1999 was discovered during a 2014 record management system changeover. While this indicates historical records were identified at the time, it does not provide a basis to conclude the particular requested documents were ever created.
9. Accordingly, the Deputy Commissioner was not persuaded there were reasonable grounds to be satisfied the requested documents exist or should exist.

Has the agency taken all reasonable steps to find those documents?

10. In light of the above, it was not necessary for the Deputy Commissioner to consider this question.
11. Nevertheless, even if there were reasonable grounds to be satisfied the documents exist or ought to exist, the Deputy Commissioner considered the agency had taken all reasonable steps in the circumstances to find the requested documents.
12. In reaching his view, the Deputy Commissioner noted:
 - the agency searched locations where such documents would be expected to be found, including both its hard copy case files and electronic records management system;
 - searches of that nature would ordinarily locate the requested documents if they existed in the agency's records;
 - the agency located material relating to the relevant investigation, but not the specific documents the complainant sought.
13. The Deputy Commissioner also noted the complainant's assertion the agency may have an interest in not disclosing the documents. The assertion was not supported by probative material and did not provide a sufficient basis to conclude the agency had not conducted reasonable searches or taken all reasonable steps to locate the documents.
14. The complainant's further submissions also did not identify any information which would provide a practical basis for requiring the agency to conduct additional searches.
15. Having regard to the very low likelihood the requested documents exist, the Deputy Commissioner was satisfied the agency had taken all reasonable steps in the

⁵ *Lee v Department of Justice* [2020] WASC 105, [64].

circumstances to locate the documents within the scope of the access application and they either could not be found or did not exist.

16. Accordingly, the Deputy Commissioner did not require the agency to conduct further searches and confirmed the agency's decision to refuse the complainant access to documents under section 26 of the FOI Act.

Background

17. On 5 April 2024, the agency received an application from the complainant under the FOI Act for access to documents described as the forensic analysis of items found during the search of the property of another named individual (**third party**).
18. By initial decision, which was confirmed on internal review, the agency refused access to the requested documents under section 23(2) of the FOI Act. On 16 September 2024, the former Information Commissioner received the complainant's application for external review of the agency's decision.
19. The former Information Commissioner advised the agency she was not persuaded the agency's claim under section 23(2) was supported. As a result, the agency amended its position and conducted searches for the requested documents. Following those searches, the agency advised the requested documents could not be found or did not exist. As such, the agency effectively refused the complainant access to the requested documents under section 26 of the FOI Act.
20. The OIC subsequently made inquiries with the agency and obtained additional information about the agency's searches.
21. The OIC provided the complainant with its assessment of the matter, which was the agency's decision to refuse access to the requested documents under section 26 was likely justified.
22. The complainant did not accept the assessment and provided further submissions (including those discussed above).