



Decision D0182026 – Published in note form only

***Re MW2 and Department of Primary Industries and Regional Development [2026]
WAICmr 18***

Date of Decision: 7 September 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**) varied a decision of the Department of Primary Industries and Regional Development (**agency**).
2. The agency's decision was to:
 - grant full access to a copy of a new document (created with raw data) to fulfil one part of the complainant's access application; and
 - refuse the complainant access to documents (relating to designated inspectors) under section 26 of the *Freedom of Information Act 1992 (WA)* (**FOI Act**).
3. The Deputy Commissioner explained the correct decision was to refuse access to all documents under section 26 of the FOI Act.
4. The FOI Act creates a right of access to existing documents of an agency, not access to information. This means an agency is not required to create a document to satisfy an access application, where no such document exists.
5. To the extent the agency created a 'courtesy' document as a result of the access application, this was provided outside the FOI process and did not form part of the decision made under the FOI Act.

Reasons

Scope of the application

6. The access application sought, among other things:
 - The number of inspections conducted by designated inspectors between 1 January 2022 and 5 April 2025, or the most recent available date, including the date and type of facility inspected (e.g., piggery, poultry farm, abattoir).
 - Summary of inspection outcomes for the above period, including the number and nature of non-compliance incidents, severity assessments, and enforcement actions taken (e.g., warnings, infringement notices, or prosecutions).
7. The complainant submitted the agency interpreted the application too narrowly as a request for only summary and statistical information. The complainant claimed the application also sought documents about individual inspections.
8. The Deputy Commissioner disagreed. The wording of the application clearly requested aggregate and summary information. 'The number of inspections conducted' is aggregate information because it asks for a total or count over a specified period. The other requested information (date, and type of facility) appears to further break down the total into specified categories.

9. Similarly, the request for a ‘summary of inspection outcomes’ is expressly aggregate in nature because it asks for a summary of certain information. If the request were intended to seek the outcomes of individual inspections, the word ‘summary’ would serve no apparent purpose.

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

10. 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.
11. 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?
12. 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
 - 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?

13. The parties in this matter agreed there were reasonable grounds to believe at least some of the requested documents exist or should exist. This is because animal welfare inspections had taken place and it was reasonable to expect records of the number of inspections conducted, and documents summarising the outcomes of those inspections, to exist.
14. However, the agency submitted no documents relating to ‘evaluations, reports or audits conducted regarding the capacity, number, training, or resource allocation of designated inspectors’ exist. This is because, after making internal enquiries, it was clear such activities had not been undertaken. Therefore, in the Deputy Commissioner’s view, the complainant’s belief, without further probative material, did not establish evaluation, report or audit documents exist or should exist.

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

² *Re James*, [19]; *Re McLerie*, [39].

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

⁴ *Re James*, [18]; *Re Leighton and Shire of Kalamunda* [2008] WAlCmr 52, [85]; and *Re Veale and City of Swan* [2012] WAlCmr 12, [51].

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

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

15. The Deputy Commissioner considered the agency had taken all reasonable steps in the circumstances to find the requested documents.
16. The complainant submitted the agency's explanations for why no documents could be found had changed over time. Most recently, the agency had explained records about designated officers may not be held as a separate category of documents. Instead, they may be 'embedded' in broader categories, such as with general inspectorate records. This was important, submitted the complainant, because it goes to whether the agency's searches were 'reasonably adapted' to the way it actually holds records.
17. The Deputy Commissioner agreed the way records are stored is relevant to how searches are conducted. However, in this case he was satisfied the agency's searches were appropriately conducted because:
 - the agency had consulted with the relevant business areas to understand designated inspector processes; what information is recorded; where information is stored (and in what format); internal reporting processes; and any statutory reporting obligations;
 - the agency searched locations where such documents would be expected to be found, including hard copy files, email accounts and electronic databases;
 - such searches would ordinarily locate the requested documents if they existed in the agency's records; and
 - the agency located material relating to individual investigations, but not the specific documents the complainant sought.
18. The Deputy Commissioner therefore concluded the requested documents were likely never created.
19. The complainant also submitted the agency was undertaking inspections without documented procedures or recorded outcomes raising serious concerns of public administration. The Deputy Commissioner observed that, to the extent this submission raised an administrative point, he has a limited role in relation to section 26 matters. As the Office of Information Commissioner's [guide](#) states:

In some cases, poor record keeping, misfiling or inadequate training in records management may mean an agency cannot find a document that does or did exist. In those situations, the Commissioner may draw to the agency's attention any identified deficiencies in its recordkeeping practices. However, if the Commissioner is satisfied that the agency has taken all reasonable steps to find the document, there is nothing further the Commissioner is required to do on external review.
20. In any event, the complainant's submission did not necessarily mean the agency failed to conduct reasonable searches or take all reasonable steps to locate the documents. In fact, the agency's searches did identify documents relating to individual inspections. What was not identified were consolidated summaries of inspection outcomes, aggregated information, and evaluations, reports or audits.
21. 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.

Agency not required to create new documents

22. The agency's original decision, confirmed on internal review, was to 'grant full access to a copy of one document that has been created with raw data to fulfil part of [the

complainant's] request falling within [the first part] of the scope of [the complainant's] application'.

23. It is well established the FOI Act creates a right of access to existing documents of an agency, not access to information. This means an agency is not required to create a document to satisfy an access application, where no such document exists.⁶
24. In the present case, the agency created a document from raw data and purported to grant access to that document under the FOI Act. The Deputy Commissioner commended the agency's actions as being in the spirit and intent of the FOI Act.⁷ However, he noted, to the extent the document was subsequently created and provided to the complainant, access is provided outside the FOI process and does not form part of the decision made under the FOI Act.
25. Accordingly, the Deputy Commissioner varied the agency's decision so that it refused access to all documents under section 26 of the FOI Act.

Background

26. On 7 April 2025, the complainant made an access application under the FOI Act for certain documents about the activities of designated inspectors appointed under the *Animal Welfare Act 2002* (WA):
 - The number of inspections conducted by designated inspectors between 1 January 2022 and 5 April 2025, or the most recent available date, including the date and type of facility inspected (e.g., piggery, poultry farm, abattoir) (**request 1**).
 - Summary of inspection outcomes for the above period, including the number and nature of non-compliance incidents, severity assessments, and enforcement actions taken (e.g., warnings, infringement notices, or prosecutions) (**request 2**).
 - Any internal evaluations, reports or audits conducted regarding the capacity, number, training, or resource allocation of designated inspectors during this period (**request 3**).
27. During the course of communications in April and May 2025, the agency confirmed to the complainant no documents existed meeting the scope of the access application. In particular, the agency advised it did not hold a summary-type document relating to request 1.
28. The agency offered to aggregate raw data submitted by inspectors to ultimately create a document satisfying request 1. The complainant appears to have accepted this approach.
29. By initial decision, which was confirmed on internal review, the agency:
 - granted full access to a copy of one document created from raw data to fulfil request 1
 - refused access to documents falling under requests 2 and 3 under section 26 of the FOI Act.
30. The complainant applied for external review of the agency's decision.

⁶ *Re Simonsen and Edith Cowan University* [1994] WAICmr 10, [16]; *Re Brown and Police Force of Western Australia* [1995] WAICmr 22, [14]; *Re Burns and Department of Agriculture and Food* [2008] WAICmr 9.

⁷ See FOI Act, s 3, including s 3(3).

31. On 8 April 2026, the Office of the Information Commissioner (**OIC**) provided the complainant with an officer assessment. The assessment was, based on the available information, the Information Commissioner was likely to be of the view the agency's decision was justified.
32. The complainant did not accept the assessment and provided further submissions (discussed above).
33. The OIC made inquiries with the agency and obtained additional information about the likelihood of the requested documents, in the form requested, ever having been created.
34. The additional information elaborated on the roles and association between general and designated inspector functions in support of the agency's view the requested documents were unlikely to have been created.