



Decision D0202026 – Published in note form only

Re ‘SB9’ and Department of Justice [2026] WAICmr 20

Date of Decision: 25 September 2026

Freedom of Information Act 1992 (WA): section 26; Schedule 1, clause 3(1).

Decision

1. For the reasons given to the parties and summarised below, the Information Access Deputy Commissioner (**Deputy Commissioner**) made the following decision:
 - the decision of the Department of Justice (**agency**) to refuse access to certain documents under section 26 of the *Freedom of Information Act 1992* (WA) (**FOI Act**), on the ground those documents cannot be found or do not exist, is confirmed;
 - the agency’s decision to refuse access to the name and rank of Western Australia Police (**WAPOL**) officers in certain documents, under clause 3(1) of Schedule 1 to the FOI Act, is set aside. In substitution, edited access to those documents is granted with the name and rank of WAPOL officers to be disclosed;
 - the agency’s decision to refuse access to the direct contact details of agency officers and of WAPOL officers under clause 3(1) is confirmed; and
 - the agency’s decision to refuse access to the personal information of a private individual under clause 3(1) is confirmed.

Reasons

Scope of the access application

2. The complainant alleged an incident had occurred between the complainant and a security guard at a court in Western Australia (**court incident**). The complainant sought access to a range of documents relating to the court incident.

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?
 - If so, has the agency taken all reasonable steps to find those documents?

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

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
- 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

There are no reasonable grounds to believe the documents exist or should exist

6. The complainant submitted the agency had an obligation to report certain types of incidents. The complainant contended this obligation arose under a contract for services the agency held with the company providing security to the court. The complainant highlighted that the Annual Report: Court Security and Custodial Services Contract for the relevant year reported certain incidents.
7. However, there was nothing before the Deputy Commissioner to suggest the figures the complainant identified in the annual report related to the court incident.
8. Furthermore, the agency confirmed in its submissions no incident report was created in relation to the court incident.
9. Accordingly, on the information available to him, the Deputy Commissioner was satisfied there were no reasonable grounds to believe the requested documents exist or should exist.
10. In reaching this conclusion, the Deputy Commissioner took into consideration the fact, during the external review process, the agency identified an additional 40 documents within the scope of the access application. However, the Deputy Commissioner considered the circumstances relating to the late identification of those documents, which pertained to a different part of the access application, did not, of themselves, provide reasonable grounds to believe the particular documents the complainant asserts exist do in fact exist.

The agency nevertheless took reasonable steps to find the requested documents

11. Even if there were reasonable grounds to be satisfied the documents exist or should exist, the Deputy Commissioner considered the agency had taken all reasonable steps in the circumstances to find the requested documents.
12. The Acting Deputy Commissioner's preliminary view provided to the parties observed the agency's internal review notice of decision did not include meaningful detail about the nature and extent of the searches undertaken and, therefore, the Acting Deputy Commissioner was not satisfied the agency had taken all reasonable steps to locate the relevant documents.
13. However, it is open to the Deputy Commissioner to consider whether the steps the agency has taken since its decision constitute reasonable steps to locate the documents. The Western Australian Supreme Court has observed the Information Commissioner has an inquisitorial function to investigate and make inquiries as the Information Commissioner thinks fit and when deciding any matter in relation to an access complaint, the Information Commissioner should have (and is entitled to have)

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

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

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

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

regard to his or her own investigations and is not bound to determine the access complaint by having regard only to the reasons given by the original decision-maker.⁶

14. During the external review, the agency took steps to locate the documents the complainant claimed exist. This included sending search requests to multiple relevant line areas of the agency, searches being carried out in relevant record keeping repositories where those documents are ordinarily kept and likely to be found and using the key words the complainant supplied to direct some of the searches.
15. The Deputy Commissioner was therefore satisfied the agency's decision to refuse access to documents pursuant to section 26 of the FOI Act is justified.

Clause 3(1) – Personal information

16. Clause 3(1) provides matter is exempt matter if its disclosure would reveal personal information about an individual.
17. In this matter, there were three categories of disputed information for consideration under clause 3 (**clause 3 information**), being:
 - the name and rank of WAPOL officers;
 - the direct contact details, such as email addresses and phone numbers, of agency and WAPOL officers; and
 - a small amount of personal information about private individuals.
18. The Deputy Commissioner was satisfied, in relation to all three categories of the clause 3 information, the identity of the individual was apparent or could reasonably be ascertained from the disputed information. Accordingly, disclosure of the disputed information would reveal personal information about an individual other than the complainant and was, on its face, exempt under clause 3(1).
19. This exemption is subject to limitations, of which clauses 3(3) and 3(6) are relevant in this matter.

Clause 3(3) – Prescribed details

20. Clause 3(3) provides matter is not exempt from disclosure under clause 3(1) merely because its disclosure would reveal the prescribed details of an officer of an agency.⁷ 'Merely' has its ordinary meaning of 'solely' or 'no more.'⁸
21. The name and rank of WAPOL officers would ordinarily fall within the meaning of 'prescribed details'. However, the Supreme Court of Western Australia has determined clause 3(3) applies only to personal information consisting of the prescribed details of a person who is or has been an officer of the agency to which the access application is made.⁹ In the matter before the Deputy Commissioner, the access application was made to the Department of Justice. WAPOL officers are not officers of the Department of Justice.
22. As a result, the name and rank of WAPOL officers in this matter are not prescribed details and the limit in clause 3(3) does not apply to that information.
23. The Deputy Commissioner was also satisfied, consistent with the decision in *Re Mossenson*,¹⁰ the direct contact details of agency officers and WAPOL officers are not prescribed details.

⁶ *Pearlman v WA A/Information Commissioner* [2019] WASC 257, [75]-[76]. See also s 76(1)(b) FOI Act.

⁷ Defined in regulation 9 of the *Freedom of Information Regulations 1993* (WA).

⁸ *Re 'V' and Curtin University* [2020] WAICmr 3, [41] (*Re 'V'*); *Re Byrnes and Department of Environment* [2006] WAICmr 6, [59].

⁹ *I v Department of Agriculture and Food* [No 2] WASC 272, [52].

¹⁰ *Re Mossenson and Others and Kimberley Development Commission* [2006] WAICmr 3, [23] (*Re Mossenson*).

Clause 3(6) – Is disclosure in the public interest?

24. Clause 3(6) provides matter is not exempt under clause 3(1) if its disclosure would, on balance, be in the public interest. The term ‘public interest’ is best understood as follows:¹¹

The public interest is a term embracing matters, among others, of standards of human conduct and of the functioning of government and government instrumentalities tacitly accepted and acknowledged to be for the good order of society and for the well-being of its members. The interest is therefore the interest of the public as distinct from the interest of an individual or individuals...

25. Weighing against disclosure of the clause 3 information, the Deputy Commissioner considered there is a strong public interest in upholding privacy. Former Information Commissioners and the Deputy Commissioner have consistently held the public interest in upholding privacy is strong. It may only be displaced by some other strong or compelling public interest or interests requiring the disclosure of personal information about one person to another person.¹²

Names and ranks of police officers

26. Favours disclosure of the officer names and ranks, the Deputy Commissioner considered there is a strong public interest in public officers being accountable for the things done in the course of performing, or purporting to perform, their functions or duties as an officer of an agency, particularly where it involves decisions affecting members of the public.
27. In the circumstances, the Deputy Commissioner considered the public interest in accountability outweighed the public interest in upholding the privacy of the officers. Accordingly, officer names and ranks are not exempt under clause 3(1).

Direct contact details of officers

28. The Deputy Commissioner considered although there is a public interest in members of the public being able to contact agencies and relevant officers, he did not consider this public interest requires members of the public to have the direct contact details of officers.¹³ Weighing against disclosure is the public interest in public officers being able to manage their work so that they can discharge their duties in an efficient and effective manner.
29. Given there are other ways agencies can be contacted by email and telephone, the Deputy Commissioner did not consider the public interest in the accessibility of agencies and their officers requires the disclosure of officers’ individual email addresses or direct telephone numbers. Therefore, he considered the limit in clause 3(6) does not apply to the direct contact details of officers and that information is exempt under clause 3(1).

Identifying information about private individuals

30. In relation to the identifying information about private individuals, the Deputy Commissioner recognised there is a general public interest in the transparency of the operations of agencies which favours disclosure. However, in balancing the competing public interests, he was of the view that public interest is not sufficient to outweigh the strong public interest in upholding the privacy of other individuals. As a result, he considered the limit on the exemption in clause 3(6) does not apply to the small amount of personal information about private individuals in the clause 3 information. Therefore, the Deputy Commissioner considered the identifying information about private individuals is exempt under clause 3(1).

¹¹ See, for example, *Re ‘V’*, [55] which adopts the description of the Victorian Supreme Court in *Director of Public Prosecutions v Smith* [1991] 1 VR, 75.

¹² See, for example, *Re ‘V’*, [67].

¹³ *Re Mossenson*, [38]-[39].