

**Decision D0042011 - Published in note form only**

***Re Nichols and Government Employees Superannuation Board [2011] WAICmr 4***

**Date of Decision: 17 February 2011**

***Freedom of Information Act 1992:*** section 26(1).

The complainant applied to the Government Employees Superannuation Board ('the agency') for access to various documents relating to his interactions with the agency. The agency, after conducting searches for the requested documents, decided to give access to all documents that it found. The complainant considered that additional documents, particularly emails and notes, should exist but had not been located by the agency and applied for internal review of that decision. On internal review, a small number of emails were found and the agency gave the complainant access to all of those documents.

The complainant sought external review by the Information Commissioner because he considered that additional documents of the kind requested should exist and should be held by the agency. The complainant included his reasons why he thought further documents should exist. The Commissioner accepted the complaint as a review of a deemed decision to refuse access to documents under s.26 of the *Freedom of Information Act 1992* ('the FOI Act'). Section 26 provides that an agency may refuse access to a document if the agency is satisfied that all reasonable steps have been taken to find the document, and the document is either in the agency's possession but cannot be found or does not exist.

Following the receipt of the complaint, the Commissioner obtained the file maintained in respect of the complainant's access application from the agency and made further inquiries with the agency. On 20 January 2011, the Commissioner's Senior Investigations Officer provided both parties with a letter setting out his preliminary view of the complaint. The Commissioner's officer was of the view that, on the information before him, the agency had taken all reasonable steps to find the requested documents but that those documents were either in the agency's possession but could not be found or did not exist.

Consequently, the Commissioner's officer was of the view that, at that stage, the agency's deemed decision to refuse access to documents under s.26 was justified.

The complainant was invited to provide the Commissioner with further submissions or to withdraw his complaint. The complainant did not withdraw the complaint but made no further submissions. The Commissioner reviewed all of the material before him and confirmed the agency's deemed decision to refuse access to the requested documents under s.26.