

Decision D0042019 – Published in note form only

Re Lee and Department of Health [2019] WAICmr 4

Date of Decision: 19 June 2019

Freedom of Information Act 1992 (WA): section 26

On 24 July 2018, Jeffrey Lee (**the complainant**) applied to the Department of Health (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to emails sent between named officers of the agency between the dates of 23 January 2012 and 31 January 2012 relating to a health inspection of a named business, that took place on 23 January 2012.

By notice of decision dated 18 September 2018 the agency decided to refuse the complainant access to documents under section 26 of the FOI Act on the basis that no documents existed or could be found within the scope of his access application.

On 29 September 2018 the complainant applied for internal review of the agency's decision; the agency confirmed its decision by letter dated 11 October 2018. By letter dated 7 November 2018, the complainant applied to the Information Commissioner for external review of the agency's decision.

The agency provided the Office of the Information Commissioner with its FOI file maintained in respect of the access application. During the external review the agency provided additional information about the process it used to retrieve archived electronic files and recreate mailboxes.

On 17 April 2019, after considering all the information before her, the Acting Information Commissioner (**A/Commissioner**) provided the parties with her preliminary view of the matter. It was her preliminary view that the agency's decision to refuse the complainant access to documents pursuant to section 26 of the FOI Act was justified.

Section 26 of the FOI Act 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 considers that, in dealing with section 26, the following questions must be answered. First, whether there are reasonable grounds to believe that the requested documents exist or should exist and are, or should be, held by the agency. Where those questions are answered in the affirmative, the next question is whether the agency has taken all reasonable steps to locate those documents.

After considering all of the information before her, the A/Commissioner was of the view that the agency had taken all reasonable steps to identify all documents of the kind requested by the complainant. Accordingly, the A/Commissioner did not require the agency to make any further inquiries or conduct any further searches.

The complainant was invited to accept the A/Commissioner's preliminary view or to provide additional submissions for her consideration. By letter dated 15 May 2019, the complainant made further submissions relevant to the matter.

After considering all of the information before her, including the complainant's further submissions, the A/Commissioner was not dissuaded from her preliminary view.

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