

**Decision D0062012 - Published in note form only**

***Re Moore and Western Australia Police [2012] WAICmr 6***

**Date of Decision: 16 February 2012**

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

The complainant applied to the Western Australia Police ('the agency') for access to certain documents relating to an investigation that resulted in his prosecution for certain offences. The agency, after conducting searches for the requested documents, decided that no documents of the type described by the complainant existed in the agency and refused access pursuant to s.26 of the *Freedom of Information Act 1992* ('the FOI Act').

The complainant maintained his claim that the requested documents should exist and applied for internal review of that decision. On internal review, the agency confirmed its original decision and provided a detailed explanation as to why such documents would not exist.

The complainant sought external review by the Information Commissioner because he maintained that documents of the kind requested should exist and should be held by the agency. The complainant repeated the claims he had previously made to the agency and made further submissions to support his view that the requested 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 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 agency's file maintained in respect of the complainant's access application and considered the submissions made by the complainant. On 25 January 2012, the Commissioner provided both parties with a letter setting out his preliminary view of the complaint. The Commissioner was of the view that, on the information before him, the agency had taken all reasonable steps to find the requested documents but that, other than the statements made by the complainant, there was nothing before him to establish that the requested documents exist or should exist. In addition, the agency had provided cogent reasons to explain why the requested documents did not exist.

The complainant was invited to provide the Commissioner with further submissions or to withdraw his complaint. However, the complainant did not respond to the Commissioner's invitation on either point.

Having reviewed all of the material before him, the Commissioner was not dissuaded from his preliminary view and confirmed the agency's deemed decision to refuse access to the requested documents under s.26.