

**Decision D0182012 - Published in note form only**

***Re Whisson and Curtin University of Technology* [2012] WAICmr 18**

**Date of Decision: 28 June 2012**

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

The complainant, Dr Glen Whisson, applied to Curtin University of Technology ('the agency') under the *Freedom of Information Act 1992* ('the FOI Act') for access to a form completed online by another staff member ('the Form'). The complainant had been advised by the staff member who completed that form that it had been submitted electronically to the Professional Standards and Conduct Unit ('the PSCU') of the agency.

The agency advised the complainant that the PSCU did not receive the Form and, based on the searches it conducted, the requested documents (the Form in electronic or hard-copy format) did not exist. The agency described its searches and refused access to the Form pursuant to section 26 of the FOI Act, on the basis that the Form did not exist. On internal review, the agency confirmed that decision. In February 2012, the complainant applied to the Information Commissioner for external review of the agency's decision.

Section 26 of the FOI Act 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 receipt of the complaint, the Commissioner obtained the agency's FOI file maintained in respect of the complainant's access application. The Commissioner also made further inquiries with the agency. As a result of those inquiries, the agency searched the computer on which the Form was originally completed. No electronic record of the Form was located. The agency also explained the process for successfully creating and submitting an online complaint form and the way an online complaint form is saved in the agency's record management system.

On 10 May 2012, the Commissioner provided both parties with a letter setting out his preliminary view of the complaint. Having considered the agency's explanation of its searches in the context of how an online complaint is created, submitted and saved, the Commissioner was of the view that the agency had taken all reasonable steps to find the requested documents but that the documents did not exist.

The complainant provided further submissions about the existence of the Form and whether the agency had taken "*all reasonable steps*" to find it. The complainant requested additional searches including a search of the agency's back-up system for the Form as a deleted email. The Commissioner was not persuaded by the complainant's submissions and found that there was no evidence to suggest that in this case the Form existed as a deleted email or at all. Having reviewed all of the material before him, the Commissioner was not dissuaded from his preliminary view and confirmed the agency's decision to refuse access to the requested documents under s.26 of the FOI Act, on the basis that the documents cannot be found or do not exist.