

**Decision D0282013 – Published in note form only**

***Re Cramphorn and Western Australia Police* [2013] WAICmr 28**

**Date of Decision: 4 December 2013**

***Freedom of Information Act 1992*: section 26**

In July 2012, Ms Christina Cramphorn (**the complainant**) applied to Western Australia Police (**the agency**) under the *Freedom of Information Act 1992* (**the FOI Act**) for access to documents concerning a number of incidents in 2011 and 2012.

In August 2012 the agency decided to give access in full to certain documents and to give access to an edited copy of other documents identified as falling within the scope of the access application. Between August 2012 and December 2012, the agency and the complainant exchanged a series of communications relating to the scope of the access application and whether additional documents may exist that fall within the clarified scope. Although the agency found additional documents and gave access to edited copies of those documents the complainant sought internal review on the basis that additional documents should exist that had not been found and given to her.

In December 2012, the agency confirmed its position on internal review that no other documents that fall within the scope had been found.

In January 2013, the complainant applied to the Information Commissioner for external review of the agency's decision on the basis that additional documents should exist which come within the scope of her access application but to which access had been refused.

The complainant limited her complaint to particular documents that she claimed should exist and be held by the agency, being the notebooks of two police officers who attended a particular incident which the complainant described (**the disputed documents**).

Section 26 of the FOI Act provides that an agency may refuse access to a document if all reasonable steps have been taken to find the document and the agency is satisfied that the document is either in the agency's possession but cannot be found or does not exist. Section 26 of the FOI Act requires an agency to take not 'all steps' but all 'reasonable steps' to find documents: see *Re Boland and the City of Melville* [1996] WAICmr 53 at [27].

The Information Commissioner's officers obtained further information from the agency. In particular, the agency explained that it had made inquiries with the relevant officers of the agency about the disputed documents. The agency confirmed that the notebook entries already identified and given to the complainant were the entirety of such documents.

In November 2013, an officer assisting the Information Commissioner advised the complainant that, after considering the information before him, the Information Commissioner was of the preliminary view that the agency's decision under section 26 was justified.

In light of the Information Commissioner's preliminary view, the complainant was invited to reconsider whether she wished to pursue the complaint or to provide the Information Commissioner with further submissions relevant to the matters for his determination.

The complainant did not respond and did not provide further submissions. The Information Commissioner reviewed all of the material before him and was satisfied that the agency had taken all reasonable steps to find the disputed documents and that those documents are either in the agency's possession but cannot be found or do not exist.

As a result, the Information Commissioner confirmed the agency's decision to refuse access to the requested documents under section 26 of the FOI Act.