

**OFFICE OF THE INFORMATION  
COMMISSIONER (W.A.)**

**File Ref: F2007368  
Decision Ref: D0542008**

Participants:

**Ross William Leighton**  
Complainant

- and -

**Shire of Kalamunda**  
Respondent

### **DECISION AND REASONS FOR DECISION**

FREEDOM OF INFORMATION - refusal of access - emails and other correspondence received by councillors of a local government - section 26 - whether reasonable grounds to believe that documents exist or should exist - sufficiency of searches - meaning of "all reasonable steps" - whether all reasonable steps taken to find documents - whether reasonable to require forensic examination of councillor's home computers.

*Freedom of Information Act 1992*: sections 26(1), 72, 75, 76(1); Schedule 1, clause 3(1)

*Re Leighton and Shire of Kalamunda* [2008] WAICmr 48

*Re Leighton and Shire of Kalamunda* [2008] WAICmr 52

*Re Oset and Ministry of the Premier and Cabinet* [1994] WAICmr 14

*Chu v Telstra Corporation Limited* [2005] FCA 1730

## DECISION

The agency's deemed refusal of access pursuant to s.26, to the documents which the complainant claims exist or should exist, is confirmed on the basis that the agency has taken all reasonable steps to locate those documents but that they either do not exist or cannot be found.

JOHN LIGHTOWLERS  
A/INFORMATION COMMISSIONER

19 December 2008

## REASONS FOR DECISION

1. This complaint arises from a decision made by the Shire of Kalamunda ('the agency') to refuse Mr Ross Leighton ('the complainant') access to certain documents requested by him under the *Freedom of Information Act 1992* ('the FOI Act').

## BACKGROUND

2. This is the third of four separate, but related, external reviews sought by the complainant against decisions made by the agency. The background events are as set out in paragraphs 2, 3 and 5 in *Re Leighton and Shire of Kalamunda* [2008] WAICmr 48 ('*Re Leighton No.1*') and in paragraphs 2 to 4 of *Re Leighton and Shire of Kalamunda* [2008] WAICmr 52 ('*Re Leighton No.2*').

## THE ACCESS APPLICATION

3. On 25 July 2007, the complainant's lawyers, Jackson McDonald, applied on behalf of the complainant to the agency under the FOI Act for access to the following documents:
  1. *all e-mails, faxes, letters, petitions and other documents received from, or sent to, residents or ratepayers, or the agents of residents or ratepayers, regarding a proposed Scheme Amendment for Pt Loc 707 (32) Gavour Road, Wattle Grove ('the Scheme Amendment') which have been held, received or sent by Councillors Winterhalder and Taylor;*
  2. *all file notes or records of phone conversations made by Councillors Winterhalder and Taylor as a result of phone conversations or meetings with residents or ratepayers, or the agents of residents or ratepayers, regarding a proposed Scheme Amendment for Pt Loc 707 (32) Gavour Road, Wattle Grove; and*
  3. *All file notes, e-mails and memos passing between Councillors Winterhalder and Taylor and other Councillors or sent from Councillors Winterhalder and Taylor to staff of the Shire, regarding a proposed Scheme Amendment for Pt Loc 707 (32) Gavour Road, Wattle Grove".*
4. The scheme amendment referred to is an application made by the complainant to the agency to amend District Town Planning Scheme No.3 to rezone the complainant's property at Pt Loc 707 (32) Gavour Road, Wattle Grove, from Rural to Special Use (Aged Person Facility).
5. The complainant's application was limited to documents dated or created between 1 March 2007 and 25 July 2007. The complainant excluded from his application any correspondence between himself - or his agents - and councillors of the agency.

6. On 21 September 2007, the agency made its decision on access in relation to documents concerning Councillor Winterhalder and, on 28 September 2007, the agency made a second decision on the documents concerning Councillor Taylor.
7. The agency identified 58 documents relating to Councillor Winterhalder and gave the complainant full access to 18 documents; access to edited copies of 25 documents; and refused access to 15 documents. The agency identified 73 documents concerning Councillor Taylor and gave the complainant full access to 28 documents; access to edited copies of 28 documents; and refused access to 17 documents. The agency claimed that certain information and documents were exempt under clauses 3(1) and 6(1) of Schedule 1 to the FOI Act and that some documents were not accessible because they were not documents of the agency for the purposes of the FOI Act.
8. On 5 October 2007, the complainant applied to the agency for internal review of those two decisions – specifically, in relation to Documents 5, 7, 8, 13, 32, 33, 48, 50, 51, 53, 55, 56 and 57 of the Winterhalder documents and Documents 16, 26, 27, 42, 51, 60, 62, 63, 64, 65, 67, 68, 69, 70, 71 and 73 of the Taylor documents.
9. On 19 October 2007, the former Chief Executive Officer ('the former CEO') confirmed the agency's decisions on access in relation to those documents and, on 8 November 2007, the complainant applied to me for external review of that decision.

## **REVIEW BY THE A/INFORMATION COMMISSIONER**

10. Following the receipt of this complaint, I required the agency to produce to me for my examination the originals of each of the disputed documents and the agency's FOI file maintained in relation to the complainant's access application.
11. In his letter seeking external review, the complainant advised me that his complaint was made against the agency's decision to refuse access under clause 6(1) and the agency's decision that certain documents were not documents of the agency. The complainant also advised me that he would accept documents with personal information about third parties deleted.
12. Between November 2007 and April 2008, one of my officers consulted both the complainant and the agency to see whether a conciliated resolution of this complaint could be agreed. Following discussions with my office, the agency decided to give the complainant access to the disputed documents. Subsequently, on 22 April 2008, the former CEO gave the complainant access to all of the disputed documents with the deletion of a small amount of personal information (in accordance with the complainant's advice that he would accept documents with personal information deleted). At that point, it appeared to me that this complaint had been resolved by conciliation and negotiation between the parties.
13. However, on 13 May 2008, the complainant's lawyers wrote to me - in relation to both this complaint and the complaint the subject of my decision in *Re*

*Leighton No.1* – raising 12 queries concerning the documents released by the agency, specifically, in relation to this complaint, three emails and a set of handwritten notes. The complainant also sought to have the adequacy of the agency's searches for the requested documents reviewed and listed particular instances to illustrate his concerns over the adequacy of previous searches made by the agency.

14. In addition, the complainant asked me to obtain the hard drives and access the servers used by Councillors Winterhalder and Taylor at the relevant time. He asked that an information technology expert be engaged to forensically examine those hard drives and servers to see whether the agency had disclosed, in particular, emails falling within the scope of the complainant's access application. The complainant undertook to pay reasonable costs for the forensic examinations.
15. In response, I required the former CEO to give me additional and detailed information about the searches and inquiries undertaken by the agency for the documents. The agency gave me that information on 25 June 2008.
16. In the meantime, on 19 June 2008, the agency provided me with its response to the 12 issues referred to in the complainant's letter of 13 May 2008. Thereafter, on 24 July 2008 and 14 August 2008, the agency provided me with additional information on the alleged missing documents and the searches undertaken for them.
17. On 30 September 2008, one of my officers gave the complainant additional information about the agency's searches and inquiries for the requested documents, together with details of the inquiries and investigations conducted by my office in relation to the concerns raised in his letter to me of 13 May 2008. In brief, my officer told the complainant that, with regard to his queries concerning the three emails and the handwritten notes, the attachments which the complainant had said were not provided to him, had, in fact, been given to him. With regard to his queries concerning deleted information and certain attachments, all of that matter was outside the scope of the application. Finally, my officer advised the complainant that blank areas in the handwritten notes disclosed to him were blank in the originals and did not indicate that information had been erased or masked. The complainant made further detailed submissions to me on 14 October 2008, none of which related to his earlier concerns about the above-mentioned three emails and handwritten notes.
18. Following the receipt of those further submissions, my office made inquiries with Councillor Taylor in relation to the searches she had initially made. In order to assist Councillor Taylor to make further searches for four emails which the complainant claimed should exist, but which had not been located by her earlier searches, my office gave Councillor Taylor additional identifying information about those four emails. My office also gave Councillor Taylor advice prepared by my Information Systems Manager on conducting further and better searches of her "*Incredimail*" email system. Using the advice and search criteria information provided by my office, Councillor Taylor located the four emails and gave copies of them to the agency, for release to the complainant.

However, as the complainant subsequently advised my office that he did not seek a copy of those emails, my office advised the agency that it is unnecessary to release them.

19. On 26 November 2008, the complainant advised me that he did not consider that all reasonable searches had, as yet, been made. Since Councillor Taylor had now located the four missing emails, the complainant considered it likely that she also held a copy of a certain email, the subject of statutory declarations provided to this office, which formed part of the subject matter of *Re Leighton No.1*. ('the requested email'). The complainant enquired whether certain councillors and former councillors had been questioned in relation to the existence of the requested email.
20. On 4 December 2008, the complainant also gave me a copy of a letter dated 1 December 2008 which he submits confirms the existence of the requested email.

## SECTION 26

21. I am empowered by section 76(1) of the FOI Act to review any decision made by the agency and to decide any matter in relation to an access application that could have been decided by the agency. In my view, that power includes the ability to raise and deal with a "sufficiency of search" issue, even if that issue was not raised initially by the complainant with the agency, as is the case in this matter (see, for example: *Re Oset and Ministry of the Premier and Cabinet* [1994] WAICmr 14).
22. In effect, the complainant has applied for review of a deemed decision by the agency to refuse him access to documents under s.26 of the FOI Act. Therefore, that is the decision that I am reviewing.
23. Section 26(1) of the FOI Act deals with an agency's obligations when it is unable to locate documents sought by an access applicant or when those documents do not exist. Section 26 provides:

*"26. (1) The agency may advise the applicant, by written notice, that it is not possible to give access to a document if –*

*(a) all reasonable steps have been taken to find the document;  
and*

*(b) the agency is satisfied that the document –*

*(i) is in the agency's possession but cannot be found; or*

*(ii) does not exist.*

*(2) For the purposes of this Act the sending of a notice under subsection (1) in relation to a document is to be regarded as a decision to refuse access to the document, and on a review or*

*appeal under Part 4 the agency may be required to conduct further searches for the document.”*

24. In accordance with the well-established approach of this office, I do not consider that it is my function or that of my staff to physically search for documents on behalf of a complainant. Provided I am satisfied that the requested documents exist or should exist, I consider that my responsibility is to inquire into whether the agency has taken all reasonable steps to find the documents and, if necessary, to require the agency to conduct further searches.
25. When dealing with an agency's decision to refuse access to documents pursuant to s.26, there are two questions that must be answered. The first is 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 the first question is answered in the affirmative, the second question is whether the agency has taken all reasonable steps to find the documents.

### **The complainant's submissions**

26. The complainant made submissions to me by letter dated 14 October 2008, which I have summarised as follows:
  - The agency has not undertaken "*all reasonable searches*".
  - The searches undertaken by former Councillor Winterhalder are inadequate and I should obtain former Councillor Winterhalder's computer for forensic analysis, pursuant to my powers under section 72 of the FOI Act.
  - The information provided by Councillor Taylor was unsatisfactory and does not disclose what happened to the allegedly missing documents; consequently, I should obtain Councillor Taylor's computer for forensic analysis in order to be satisfied that full and proper disclosure has been made.
  - The complainant has made other FOI applications to the agency for documents held by councillors or former councillors. All of those individuals asserted that they had conducted "*all reasonable searches*" and yet additional documents were later found or documents which the complainant believes exist were not found. Accordingly, those individuals have not met their obligations at first instance to provide full and proper disclosure. If forensic examinations of the relevant hard drives and computers are not conducted it would be tantamount to justifying secrecy in government and the suppression of the general public's right to access documents under the FOI Act.
  - In the circumstances, where the complainant is willing to pay costs and the procedure is a relatively simple one, forensic examination of the hard drives and computers is reasonable.

- The correct test is that applied in *Chu v Telstra Corporation Ltd* [2005] FCA 1730, which requires that “*all reasonable steps*” must be taken to find documents when dealing with s.26 or its equivalent in the *Freedom of Information Act 1982 (Cth)* (‘the Commonwealth FOI Act’). All reasonable steps in this case include forensically examining the computers or computer hard drives of relevant councillors and not relying on the assertions of councillors that they have made all reasonable searches.
- The Information Commissioner has the power to require councillors to produce their computers to him and I should exercise that power in this case.
- The complainant, a councillor, a former councillor and one of the complainant’s solicitors have sworn statutory declarations “*from which a strong inference arises that not all documents within the scope of the applications have been disclosed*” and that the requested email should exist and be held by Councillor Taylor.

27. In addition, the complainant submits that Councillor Taylor:

- did not make “full and proper disclosure” of documents despite claiming that she had provided all documents falling within the scope of the complainant’s access application;
- had not responded to evidence that established that she had received additional emails;
- only discovered the four emails after she became aware that copies of them had been produced to the office of the Information Commissioner; and
- claimed to have disclosed all documents falling within the scope of the complainant’s access application but, when subsequently challenged, found additional documents.

### **The agency’s searches and inquiries**

28. My office has made detailed inquiries with the agency, Councillor Taylor and former Councillor Winterhalder about the nature and extent of the searches undertaken for the requested documents. In response, the agency has advised me as follows:

#### **(i) Searches by the agency**

- The agency initially checked for emails from Councillor Taylor and former Councillor Winterhalder, on the basis that documents held by its Administration, including all emails to and from staff and councillors, had been released to the complainant in previous FOI applications.
- The agency’s Records Officer reviewed all previously identified documents which had a CC, BCC or had Councillor Taylor’s or former



Councillor Winterhalder's name within the emails and searched the hardcopies on file. Also reviewed were a working copy of duplicates created by the Executive Manager Planning Services and all Executive Managers' computers and email.

- The agency's Records Officer reviewed the Central Records System via the Electronic Document Management System by searching the electronic file (GV-01/032) using the keywords: 32 Gavour Road, Aged Care Facilit\*, Rezon\* Gavour, Scheme Gavour, Special Elect\* Taylor and Winterhalder.

No new documents within the scope of the application were found.

***(ii) Searches by Councillor Taylor***

In response to my office's request for information as to the searches made for the requested documents – including on the computer or hard drive on which Councillor Taylor received, sent and/or stored documents of the requested kind, electronic storage locations such as 'inboxes', 'sent folders', 'deleted folders', 'archive folders' and storage devices such as flash drives, floppy discs or compact discs and details of the outcome of those searches – Councillor Taylor has advised as follows.

- Councillor Taylor made further searches for the allegedly missing documents and advised that to the best of her knowledge she had provided the agency with all documents held by her which were within the scope of the complainant's access application.
- Councillor Taylor advised that everything she gave the agency was found by searching the terms "Gavour Road" and "sent items". Councillor Taylor also advised that she did not know how to archive or backup documents so that what she gave the agency related only to documents held in her computer folder, which, as far she knows is all she has got.
- In relation to the complainant's claim that "*at an informal and confidential Council briefing held on Monday 7 April 2008 Councillor Taylor made comments to the effect that she had an information technology expert undertake repairs to her computer with the clear implication that the information technology expert had removed all records and archives of emails relating to [the complainant's] applications*", Councillor Taylor advised that her computer was repaired after it 'froze' on or around 22 October 2007 and she was not thereafter aware of anything missing from her records. [I understand that Councillor Taylor located the requested documents held by her, and gave them to the agency, before any repairs were carried out to her computer.]

In addition, following further inquiries by my office, Councillor Taylor has confirmed the following information, in writing, pursuant to my power under s.72(1)(a) of the FOI Act:

- During the period in 2007 when Councillor Taylor was receiving and sending emails in relation to the complainant's Scheme Amendment application, she created a folder in her email management system called 'Gavour Road Wattle Grove'.
- She transferred the emails that she received, which appeared to relate to the complainant's Scheme Amendment application (based on the name of the sender and the information in the 'Subject' line of the email), from her Inbox into the Gavour Rd folder.
- Emails which she sent in relation to the Scheme Amendment application were also stored in the Gavour Rd folder.
- It was her usual practice not to delete emails relating to agency matters.
- When she conducted her initial search in August/September 2007 for documents falling within the scope of the complainant's FOI application, she spent many hours searching her computer. She searched all folders where emails may have been stored including her Inbox. When she found emails in her Inbox which fell within the scope of the complainant's FOI application, she transferred those emails into the Gavour Rd folder.
- When she completed her searches, she printed all documents stored in the Gavour Rd folder and gave those documents to the agency.
- To the best of her knowledge, the repairs undertaken to her computer in October 2007 did not result in the loss or deletion of any documents on her computer including any documents falling within the scope of the complainant's FOI application.
- She has carried out searches for the requested documents in all locations, including on her computer, where documents of the requested kind may have been held or stored by her and she is satisfied that she has located all documents she holds and has provided those documents to the agency.

***(iii) Searches by former Councillor Winterhalder***

Following inquiries by my office, former Councillor Winterhalder has confirmed the following information, in writing, pursuant to my power under s.72(1)(a) of the FOI Act:

- The email management system used by former Councillor Winterhalder during the period 1 March 2007 and 25 July 2007 –

which is the date range of the requested documents – is called ‘Eudora’.

- The private email address which he used in relation to his official duties as a councillor including agency correspondence was not used or shared by another person.
  - All emails received by him within the above date range – both in relation to agency matters and other matters – were received in an ‘Inbox’ folder. It was his practice to delete emails from his Inbox upon their receipt if he regarded them as irrelevant and/or if they were emails that had only been copied to him. Once deleted, he was unable to retrieve such emails from Eudora. Deleted emails were not stored in a ‘Deleted Items’ folder or any other ‘back up’, archive or storage folder or device.
  - All emails sent by him within the above date range – both in relation to agency matters and other matters – were stored in an ‘Outbox’ folder. When searching for the requested documents, he checked all emails in the Inbox and Outbox within the above date range. He determined whether an email fell within the scope of the complainant’s FOI application based on who the email was from or to and the information in the ‘Subject’ line of the email. When he found an email within the scope of the FOI application, he printed it and, at the end of that process, gave all of those printed emails to the agency.
  - He did not search ‘Archive’ or Back up’ folders because all emails within the relevant date range (unless he had deleted them upon receipt) were still in his Inbox or Outbox at the time he conducted the search, rather than being stored in an ‘Archive’ or Back up’ folder.
  - He held all hard copy documents concerning agency matters, including letters and notes, in a folder. He searched that folder for the requested documents and gave the documents located to the agency.
  - He has conducted searches for the requested documents in all locations, including on his computer, where documents of the requested kind may have been held or stored by him and he is satisfied that he has located all documents that he holds and has provided those documents to the agency.
29. In addition, former Councillor Winterhalder conducted further searches for two emails identified by the complainant, which had not been located by his earlier searches, using the specific detail provided by the complainant. As a result, former Councillor Winterhalder found those two emails. For the reasons given in my recent decision in *Re Leighton No.2* at [24]-[57], I consider that those documents are documents of the agency, even though they are held by a former councillor of an agency. Former Councillor Winterhalder provided those documents to the agency for release to the complainant, and the agency

subsequently released them to the complainant, after deleting personal information about third parties.

### **Consideration**

30. I have considered the complainant's detailed submissions and the information provided to me by the agency, Councillor Taylor and former Councillor Winterhalder. I have also examined all of the material put before me by the complainant in support of both this complaint and his previous complaints to me.
- (a) *Are there reasonable grounds to believe that additional documents exist or should exist?*
31. In the course of dealing with the complainant's access application, the agency identified and dealt with 131 documents, including a large number of emails, many of which had been copied from one councillor to other councillors, so that the same email might be held in more than one place by more than one councillor.
32. In *Re Leighton No.2*, I accepted that the agency's policy on recordkeeping, in line with the approach of the State Records Office, is that emails of the kind requested by the complainant are not subject to mandatory retention under the agency's recordkeeping requirements. Consequently, neither the agency nor its officers are obliged to retain them.
33. In the present case, the complainant has raised numerous queries about emails which it considered should exist but which the agency did not locate in the course of dealing with this and other access applications made by the complainant. In view of those queries, the agency has instituted further searches and inquiries as a result of which some further documents have been located. In addition, some documents which the complainant considered should have been disclosed were found to have already been disclosed.
34. In view of the fact that the agency and its councillors are not obliged to retain documents of the kind requested; that there are a large number of documents involved; and that the agency does not – as some local government agencies do – require its councillors to use the agency's email address so that those records are captured on its own electronic database, it does not surprise me that additional documents were found in the course of this external review. Nor do I conclude, as apparently the complainant has, that it is more likely than not that the agency and/or its councillors are involved in some sort of "cover up" as noted in his lawyer's letter to me of 13 May 2008. In my view, the outcome is much what one would expect in the circumstances and there is nothing whatsoever before me to show that the agency or its councillors have attempted to avoid their statutory obligations under the FOI Act or to deliberately conceal documents from access.
35. In particular, the complainant considers that the requested email - as described in paragraph 19 above - should exist. At paragraphs 37 to 68 of my decision in

*Re Leighton No.1*, I analysed and considered the submissions made to me by the complainant's lawyers in their letter dated 30 September 2008 concerning the searches made by the agency for, amongst other things, the requested email. For the reasons set out there, I did not accept those submissions and I do not accept them now. For the same reasons given in that decision, I do not accept the submissions set out in the complainant's letter to me of 30 September 2008.

36. In *Re Leighton No. 1*, I considered the evidentiary weight of the statutory declarations provided in relation to the requested email. For the reasons given in those paragraphs, I found that the probative value of those three statutory declarations was not strong and that they provided no direct evidence that any of the three declarants had themselves seen or received the requested email. In my opinion, nothing in the complainant's submissions, received on 26 November 2008 and 4 December 2008, has advanced the complainant's claims beyond the submissions made to me in relation to *Re Leighton No.1*.
37. Notwithstanding that, I am not able to state categorically that no other documents of the kind requested exist or should exist. In my view, it is possible that such documents may exist and be in the possession or under the control of the agency, including its councillors.
38. Once I am satisfied that there are reasonable grounds to believe that additional documents of the kind described by the complainant exist or should exist and are or should be held by the agency, the question for my determination is whether the agency has taken all reasonable steps to find those documents.

***Have all reasonable steps been taken to find the requested documents?***

39. In this matter, as in *Re Leighton No.1* and *Re Leighton No.2*, the complainant asserts that neither the agency nor the relevant councillors have undertaken "*all reasonable searches*" to locate the documents the subject of the complainant's access application.
40. The agency has conducted searches of its database and its hardcopy files. It has made inquiries with the relevant councillors and it has reviewed all previous documents provided to the complainant under the FOI Act which are relevant to this particular complaint.
41. Both Councillor Taylor and former Councillor Winterhalder have made searches of the electronic storage locations on their home computers and their hard copy files. They have provided information concerning their storage and handling of those records. In my view, their advice is credible and both councillors have fully cooperated with the inquiries made by the agency and this office. I do not accept the complainant's assertion that Councillor Taylor has been less than open and forthcoming in searching her records. The documents presently before me, including the documents retained on the agency's FOI file and the inquiries made by my officers, contradict that assertion.
42. Nor do I accept the complainant's argument that, because further searches found additional documents, the next step should be to require a forensic examination

of the hard drives of the councillors' home computers. The question for my determination is whether the agency has now taken "all reasonable steps" under s.26(1) to find the requested documents without undertaking such an examination.

43. In *Re Leighton No.2* at [85], I said:

*"In Chu, the Federal Court, at [14], considered that the question of whether or not "all reasonable steps" had been taken to locate documents was a judgment to be made by the relevant decision makers and was not a question, ultimately, for the Federal Court. In other words, that question is a question of fact for the decision maker. Consequently, I consider that, on external review, the judgment as to whether all reasonable steps have taken to locate the requested documents is a judgment for me to make, based on the circumstances and the material before me."*

44. For the reasons given in paragraphs [86] - [90] of that decision, I am satisfied that the adequacy of efforts made by an agency to locate documents are to be judged by what is reasonable in the circumstances and that the requirement in s.26 of the FOI Act to take all reasonable steps is different from a requirement to take every possible step to locate a document, where 'reasonable' means appropriate in the circumstances.

45. I am satisfied that all reasonable steps have now been taken by the agency to find the requested documents. In the circumstances, a forensic examination of the two councillors' home computers in order to determine whether any further documents exist would be going beyond the requirement that all reasonable steps be taken. If there was any probative evidence – which in my view there is not – that documents or electronic information had been deleted to prevent the agency from giving access, my view would in all probability be different.

46. Taking into account the information and submissions provided by the complainant; the information provided by the agency, former Councillor Winterhalder and Councillor Taylor; the inquiries undertaken by my officers; and the recordkeeping obligations of the agency and its officers, I consider that the agency has taken all reasonable steps to find the requested documents but that the documents do not exist or cannot be found.

## CONCLUSION

47. I find that the agency has taken all reasonable steps to find the requested documents but that they do not exist or cannot be found. Accordingly, I confirm the agency's deemed decision to refuse the complainant access to the requested documents under s.26 of the FOI Act.

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