

DECISION SUMMARY ISSUED BY THE INFORMATION COMMISSIONER (WA)

Decision title and citation: *Re Watson and Education Department of Western Australia* [2000] WAICmr 16

COMPLAINT No: F2051999

DECISION No: D0162000

PARTIES: Susan WATSON

Complainant

EDUCATION DEPARTMENT OF WESTERN AUSTRALIA

Respondent

Issue: Sufficiency of searches

Clause: Section 26

On 16 August 1999, Ms Watson ('the complainant') made an application to the Education Department of Western Australia ('the agency') under the *Freedom of Information Act 1992* ('the FOI Act') for access to various documents relating to three schools at which she had previously taught.

The agency did not provide her with a notice of decision within the permitted period of 45 days. On 12 October 1999, the complainant applied for internal review of the deemed refusal. On 27 October 1999, the agency granted her access in full to some documents although copies were not provided to her as she had received copies of those documents through a previous access application. The agency refused access to some documents on the basis that they are exempt in full or in part under clause 3(1) of Schedule 1 to the FOI Act. On 27 October 1999, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

Review by the Information Commissioner

I obtained the disputed documents and the agency's FOI file maintained for the purposes of the complainant's access application. Various inquiries were made with the agency and the complainant, but this complaint could not be resolved by conciliation between the parties.

On 21 December 1999, after considering the material before me, the parties were informed in writing of my preliminary view of this complaint, including my reasons. It was my preliminary view that the matter to which access had been refused may be exempt under clause 3(1). I received a response from the complainant alleging that certain documents should exist and that those documents had not been provided to her. However, she did not dispute the agency's decision with respect to the matter to which access had been refused on the basis of exemption under clause 3(1). Therefore, I am not dissuaded from my preliminary view and, for the reasons given in my letter of 21 December 1999, I find that matter exempt under clause 3(1).

In respect of the complainant's claim that additional documents should exist, I made further inquiries with the agency. As a result, one additional document was found and the complainant was given a copy of it. However, the agency was unable to locate the other documents described by the complainant. The complainant was informed of the nature and extent of the searches conducted by the agency to find those documents. I received a further response from the complainant. The only issue that I must determine is whether the agency's decision to refuse

access under s.26 of the FOI Act on the ground that the requested documents either do not exist or cannot be found, was justified.

Documents that cannot be found or do not exist

If a complainant raises the issue of the existence of a document that has not been identified by the agency, I consider that there are two questions that must be answered. The first question is whether there are reasonable grounds to believe that the requested document exists or should exist and is, or should be, held by the agency. In circumstances where the first question is answered in the affirmative, the next question is whether the agency has taken all reasonable steps to find the document. I do not consider that it is my function to physically search for the requested documents on behalf of the complainant. I take the view that, provided I am satisfied that the requested documents exist, or should exist, within the agency, it is my responsibility to inquire into the adequacy of the searches conducted by the agency and to require further searches if necessary in order to satisfy me that the agency has acted in accordance with its obligations under the FOI Act.

Existence of the documents

In this case, the documents described by the complainant consist of a “diary” prepared by a teacher’s aide in relation to a particular child at one school where the complainant was employed, and an attachment referred to in a facsimile cover sheet dated 27 August 1998 to which the complainant was given access by the agency.

My inquiries established that the diary was a record of a particular child’s activities at school prepared by the teacher’s aide as a communication tool so that matters concerning that child could be conveyed to the parents. The teacher’s aide confirmed that the document had existed. I am also satisfied that the attachment should exist because the facsimile cover sheet records that a document of some kind existed at the relevant time that the facsimile message was sent.

Reasonable searches

In relation to the diary, the agency searched the classroom occupied by the relevant class at the time and the Principal’s office without success. The teacher’s aide informed my office that she had searched her records but could not locate the document. She also informed me that she had ceased using the diary in 1998 and, at the end of that year, there had been a big clean up in the school and it was possible that the document had been discarded. The administration files and records of the school were also searched but the document could not be found.

In respect of the attachment, the alleged author of that document was approached by the agency. He could not recall the particular document, nor could he explain why that document had not been filed with the facsimile cover sheet in the agency’s normal record system.

For those reasons, I am satisfied that the agency has taken all reasonable steps to locate the documents, but they cannot be found. On that basis, I confirm the agency's decision to refuse access under s.26 of the FOI Act to them

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

16 March 2000