



What if the documents cannot be found?

If an agency is unable to locate documents requested by the applicant and there is reason to believe that those documents should exist, the onus is on the agency to demonstrate that it has taken all reasonable steps to find them.

Documents may not be found for a number of reasons including:

- the documents may simply never have existed;
- the documents may have once existed but they have since been destroyed;
- the documents may have been misfiled;
- the agency's record-keeping system may not be adequate to identify the location of the documents; or
- there may be inadequate training of staff in record management.

In those circumstances, the agency is required to advise the applicant that it is not possible to give access to the documents and explain that all reasonable steps to locate them have been undertaken but the documents cannot be found or do not exist. Such a decision is regarded as a decision to refuse access to the documents ([section 26](#)).

The agency's notice of decision should explain, in sufficient detail, the inquiries made and searches undertaken to find the documents. The explanation of the steps taken by the agency should include the locations searched, the reasons those locations were chosen and a description of how the searches were conducted. For example, if databases are searched, the key words used; if emails were searched, who conducted the searches and which folders were searched.

The agency should also ensure that a record is kept of all searches made, who conducted them and when and the method of the search (for example search terms, topics or scope). This will be useful if the matter is subject to internal or external review.

Tip: Remember to include the applicant's review rights in the notice of decision.

If you have any general enquiries about the FOI process, please see our website or contact our office.

Note: This Information Sheet is intended as a general guide only and should not be viewed as legal advice. The Information Commissioner considers each complaint on its merits and according to the relevant circumstances.

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