



# What if the agency says it doesn't have the documents?

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An agency may tell you that it cannot give you the documents that you want because they can't be found or don't exist.

[Section 26](#) of the FOI Act allows an agency to come to this conclusion after taking all reasonable steps to find the documents.

If an agency decides to refuse you access on that basis, it is required to give you a written decision that should explain the steps taken to find the documents and the reasons why the agency is satisfied that a document can't be found or does not exist. This may include reasons why the document never existed, information about the destruction of the document according to appropriate policies, or details of the searches conducted to find the document.

## Seeking review of the decision

If you believe that a document exists and the agency has not conducted a reasonable search to find it, you can seek review of the agency's decision.

**Tip:** Agencies are not required to create a document to satisfy an access application, where no such document already exists.

**Tip:** Agencies don't have to keep every document – there are specific rules about which documents must be retained, how long they must be retained and when they can be destroyed. These are set out in the State Records Act 2000 and in government agencies' retention and disposal schedules approved by the State Records Commission.

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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