

Decision D0022016 – Published in note form only

Re Dacey and Western Australia Police [2016] WAICmr 2

Date of Decision: 8 February 2016

Freedom of Information Act 1992 (WA): section 26

On 12 June 2015, Mr Darren Dacey (**the complainant**) applied to the Western Australia Police (**the agency**), under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to documents. Specifically, the complainant sought access to documents relating to a report the complainant asserts he made to the agency in the 1990s regarding an incident (**the Incident**).

By decision dated 19 August 2015, the agency refused access to the requested documents under section 26 of the FOI Act on the basis that all reasonable steps had been taken to find those documents but they cannot be found or do not exist. On 25 August 2015, the complainant applied to the agency for internal review. In a notice of decision dated 3 September 2015, the agency confirmed its decision to refuse the complainant access under section 26 of the FOI Act. On 7 September 2015, the complainant applied to the Information Commissioner for external review of the agency's decision.

Following receipt of the complaint, the Commissioner obtained a copy of the FOI file maintained by the agency in respect of the complainant's access application.

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. The Commissioner considers that, in dealing with section 26, the following questions must be answered. First, whether there are reasonable grounds to believe that the requested documents exist or should exist and second, whether the requested documents are, or should be, held by the agency. Where those questions are answered in the affirmative, the next question is whether the agency has taken all reasonable steps to find those documents.

The complainant made submissions to support his claim that the requested documents should exist. In summary, the complainant claimed that, given the seriousness of the Incident, it is a matter that he would have reported to the agency and the agency had not taken all reasonable steps to find the requested documents. He also claimed that if the agency could not locate the documents because no record had been made of his complaint about the Incident, then officers of the agency had failed in their duty.

The agency provided the Commissioner with details of the searches conducted to find the requested documents. The agency submitted that, based on its searches in the relevant databases, the requested documents did not exist.

On 22 January 2016, after considering all of the information before him, the Commissioner provided the parties with a letter setting out his preliminary view of the complaint. The Commissioner considered that if the complainant did lodge a complaint with the agency in relation to the Incident, then there are reasonable grounds to believe the requested documents exist or should exist and are, or should be, held by the agency. Therefore the Commissioner

considered whether the agency had taken all reasonable steps to find the requested documents.

In the circumstances of the case, it was the Commissioner's preliminary view that the agency had taken all reasonable steps to find the requested documents but those documents cannot be found or do not exist. The complainant did not accept the Commissioner's preliminary view and made further submissions about the existence of the requested documents.

The Commissioner sought further information from the agency in response to an issue raised by the complainant in his submissions.

The agency confirmed that only certain databases could reasonably be expected to hold documents of the kind requested by the complainant. The agency confirmed its earlier advice that searches had been conducted of all of those databases but no documents of the kind requested by the complainant could be found.

Having reviewed all of the material before him, the Commissioner was not dissuaded from his preliminary view. Accordingly, the Commissioner confirmed the decision of the agency to refuse access to the requested documents under section 26 of the FOI Act, on the basis that the requested documents either cannot be found or do not exist.