

**Decision D0102011 - Published in note form only**

***Re Allison & Allison and Western Australia Police [2011] WAICmr 10***

**Date of Decision: 7 April 2011**

***Freedom of Information Act 1992:*** section 26(1).

The complainants applied to the Western Australia Police ('the agency') for access to various documents relating to a certain allegation which the complainants claimed had been made to the agency. The agency, after conducting searches for the requested documents, decided that no documents of the type described by the complainants existed in the agency and refused access pursuant to s.26 of the *Freedom of Information Act 1992* ('the FOI Act').

Section 26 provides that an agency may refuse access to a document if the agency is satisfied that all reasonable steps have been taken to find the document, and the document is either in the agency's possession but cannot be found or does not exist.

The complainant maintained the claim that the requested documents should exist and applied for internal review of that decision. On internal review, the agency confirmed its original decision.

The complainants sought external review by the Information Commissioner because they considered that documents of the kind requested should exist and should be held by the agency. The complainants repeated the claims they had previously made to the agency but made no further submissions of substance to support why the requested documents should exist. The Commissioner accepted the complaint as a review of a deemed decision to refuse access to documents under s.26 of the FOI Act.

Following the receipt of the complaint, the Commissioner obtained from the agency the file maintained in respect of the complainants' access application and made further inquiries with the agency. On 16 March 2011, the Commissioner provided both parties with a letter setting out his preliminary view of the complaint. The Commissioner was of the view that, on the information before him, the agency had taken all reasonable steps to find the requested documents but that, other than the statements made by the complainants, there was nothing before him to establish that the requested documents exist or should exist.

The complainants were invited to provide the Commissioner with further submissions or to withdraw their complaint. The complainants did not withdraw the complaint and made further submissions, although much of that material was not relevant to the matter to be determined by the Commissioner.

Having reviewed all of the material before him, the Commissioner confirmed the agency's deemed decision to refuse access to the requested documents under s.26.