

Decision D0152009 – Published in note form only

Re 'L' and Department of Corrective Services [2009] WAICmr 15

Date of decision: 12 August 2009

Freedom of Information Act 1992: Section 26

Given the circumstances of this case, the complainant has not been identified by name. The complainant is currently a serving prisoner at Acacia Prison, but was on remand in Hakea Prison prior to being sentenced. The complainant applied under the *Freedom of Information Act 1992* ('the FOI Act') to the Department of Corrective Services ('the agency') for access to certain documents between specified dates concerning the complainant including a copy of videotape surveillance he believed was taken at Hakea Prison reception area on a specific date. The agency advised the complainant that the majority of the documents coming within the scope of his access application are available to him outside the FOI Act. Those documents were not dealt with further as part of the access application. The agency refused the complainant access to copies of the videotape surveillance under s.26 of the FOI Act on the ground that the requested documents do not exist or cannot be found.

The complainant sought internal review of the decision and claimed that additional documents of the kind requested should exist but had not been identified. The agency confirmed the initial decision.

Thereafter, on 25 May 2009, the complainant sought external review by the Information Commissioner of the agency's decision on access.

The agency produced the requested documents to the Information Commissioner. Those documents were examined and inquiries were made with the agency. After consideration of the material then available to him, the Information Commissioner advised the parties of his preliminary view of the complaint, including his detailed reasons. The Information Commissioner was of the view that, having regard to the details of the searches it had undertaken, the agency had taken all reasonable steps to find the documents that fall within the scope of the access application. The Information Commissioner did not require the agency to make any further inquiries or searches.

Accordingly, it was the Information Commissioner's preliminary view that the decision of the agency to refuse access to additional documents of the kind requested pursuant to s. 26 of the FOI Act, on the ground that the documents either do not exist or cannot be found, was justified.

In response to the Information Commissioner's preliminary view, the complainant provided additional submissions and further targeted inquiries were made with the agency about the issues raised in those submissions.

Having again considered all of the material before him, the Information Commissioner was not dissuaded from his preliminary view and he confirmed the agency's decision.