

**Decision D0152012 - Published in note form only**

***Re Brown and State Administrative Tribunal [2012] WAICmr 15***

**Date of Decision: 17 May 2012**

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

The complainant, Mr Douglas Brown, applied to the State Administrative Tribunal ('the agency') under the *Freedom of Information Act 1992* ('the FOI Act') for access to documents relating to complaints he made to the agency about the way proceedings before the agency, to which he was a party, were dealt with. The agency gave the complainant access in full to nine documents.

On internal review, the agency gave the complainant access to two additional documents. In August 2010, the complainant applied to the Information Commissioner for external review of the agency's decision. The complainant identified additional documents that he submitted should exist and should be held by the agency.

The Commissioner accepted the complaint as a review of a deemed decision to refuse access to the documents under s.26 of 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.

Following receipt of the complaint, the Commissioner obtained the agency's FOI file maintained in respect of the complainant's access application and the original documents the subject of the agency's notices of decision. The Commissioner also made further inquiries with the agency. As a result of those inquiries, the agency identified additional documents within the scope of the application, which were released to the complainant in edited form with personal information about third parties deleted as exempt matter under clause 3(1) of Schedule 1 to the FOI Act. The agency also found evidence that a particular document that it had previously stated it had not received, had been received by the agency. However, the agency was unable to locate that document.

On 23 March 2012, the Commissioner provided both parties with a letter setting out his preliminary view of the complaint. The Commissioner noted that the agency's notices of decision failed to comply with s. 30 of the FOI Act. Among other things, they did not include information about review rights or reasons for refusing access to documents. However, having considered the agency's searches, the Commissioner was of the view that the agency had taken all reasonable steps to find the requested documents but that those documents could not be found or did not exist.

The complainant provided further submissions, including a contention that documents had been deliberately concealed or destroyed and that officers had acted in bad faith. The Commissioner found that, other than the complainant's allegations, there was no evidence to suggest that documents had been deliberately concealed or destroyed or that officers had acted in bad faith.

The Commissioner considered that the complainant's submissions provided no new evidence about the existence of the additional documents or further searches to be made. Having reviewed all of the material before him, the Commissioner was not dissuaded from his preliminary view and confirmed the agency's decision to refuse access to the requested documents under s.26.