

**Decision D0202009 – Published in note form only**

***Re West and Department of Treasury and Finance* [2009] WAICmr 20**

**Date of Decision: 27 August 2009**

***Freedom of Information Act 1992; section 26***

The complainant sought access under the *Freedom of Information Act 1992* ('the FOI Act') to documents relating to works at Ardross Primary School. The agency granted access to some documents, but refused access to others under s.26 of the FOI Act on the ground that additional documents did not exist or could not be found.

The complainant applied for an internal review of the agency's decision. The agency did not hold any additional documents and, therefore, refused access under s.26 of the FOI Act on the ground that further documents either do not exist or could not be found. Thereafter, the complainant lodged a complaint with the Information Commissioner for an external review of the agency's decision.

The Information Commissioner made inquiries with the agency. The agency provided a detailed description of its current and earlier record-keeping practices and described the searches undertaken to find the documents requested by the complainant. On the basis of that information, the Commissioner was unable conclusively to determine whether or not the requested documents exist at the agency or did previously exist at the agency and have been destroyed. However, the Commissioner did conclude that if the requested documents did exist, it is more likely than not that those documents would have been held on files which have since been destroyed in accordance with the agency's Retention and Disposal Schedule.

The Information Commissioner confirmed the agency's decision to refuse access to the requested documents under section 26 of the FOI Act on the ground that the requested documents either do not exist or cannot be found.