

Decision D0202012 - Published in note form only

***Re Mallet and Edith Cowan University* [2012] WAICmr 20**

Date of Decision: 17 July 2012

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

The complainant, Mr Desire Mallet, has made numerous access applications over a number of years to Edith Cowan University ('the agency') under the *Freedom of Information Act 1992* ('the FOI Act'). In dealing with one of those previous access applications the agency gave the complainant a notice of decision, dated 18 June 2009, which refused access to a document and gave reasons for that decision. In the present case, the complainant specifically cited the wording of that earlier notice of decision and sought access to all documents which were the basis for certain allegations which he considered that the agency had made against him from the wording used in that decision.

The agency refused access to the requested documents pursuant to section 26 of the FOI Act, on the basis that they did not exist. Section 26 of the FOI Act 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.

In March 2012, the complainant applied to the Information Commissioner for external review of the agency's decision. Following receipt of the complaint, the Commissioner obtained and examined the agency's FOI file maintained in respect of the complainant's access application. On 21 June 2012, the Commissioner provided both parties with a letter setting out his preliminary view of the complaint. Having considered the wording of the access application and the agency's explanation of its searches in the context of the terms of the complainant's application, the Commissioner was of the view that the agency had taken all reasonable steps to find the requested documents but that the requested documents did not exist.

The complainant provided written submissions, among other things, about the way that the agency had dealt with his access application and whether the agency had taken "*all reasonable steps*" to find those documents. The Commissioner acknowledged that some confusion had arisen in the way the agency had dealt with the application but considered that those matters had now been clarified and addressed.

The Commissioner was not dissuaded by the complainant's submissions from his preliminary view. In particular, the Commissioner did not consider that it was reasonable to interpret the agency's notice of decision, dated 18 June 2009, as containing allegations against the complainant and found that there was no evidence to suggest that the requested documents had ever existed. Having reviewed all of the material before him, the Commissioner confirmed the agency's decision to refuse access to the requested documents under s.26 of the FOI Act, on the ground that all reasonable steps had been taken to find the documents but that those documents do not exist.