

Decision D0242010 - Published in note form only

Re Boyd and Minister for Police; Emergency Services; Road Safety [2010] WAICmr 24

Date of Decision: 18 August 2010

Freedom of Information Act 1992: section 26(1)

On 27 April 2010, the complainant applied under the *Freedom of Information Act 1992* ('the FOI Act') to the Minister for Police; Emergency Services; Road Safety ('the Minister') for access to documents relating to matters that he had raised in a letter to the Premier. The Premier had referred that letter to the Minister and the complainant sought documents concerning the Minister's investigation of those matters. The Minister located eight documents within the scope of that application and gave the complainant access in full or in edited form to those eight documents.

There being no mechanism for internal review of a Minister's decision, the complainant sought external review by the Information Commissioner because he considered that documents of the kind requested should exist and should be held by the Minister. The complainant identified eight additional documents or categories of document that he considered should have been identified by the Minister and made submissions as to why such documents should exist.

The Commissioner accepted the complaint as a review of a deemed decision by the Minister to refuse access to 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.

The Commissioner obtained the file maintained in respect of the complainant's access application from the Minister's office and made further inquiries with staff and former staff of the Minister's office. On 29 July 2010, the Commissioner provided both parties with a letter setting out his preliminary view of the complaint. In that letter, the Commissioner noted that some of the requested documents would not be documents held by the Minister but would be held by one of the portfolio agencies for which the Minister was responsible. The Commissioner's preliminary view was that, on the information before him and for the reasons set out in his letter, he was not satisfied that the requested documents existed or should exist or that they would be held by the Minister. As a result, the Commissioner considered that the Minister was justified in refusing access to those documents under s.26 of the FOI Act.

The complainant was invited to provide the Commissioner with further submissions or withdraw his complaint. The complainant made additional submissions to the Commissioner on 3 August 2010. The Commissioner considered those submissions but, for the reasons given in a letter to the complainant, the Commissioner was not dissuaded from his preliminary view of the complaint. The Commissioner confirmed the Minister's deemed decision to refuse access to the requested documents under s.26.