

Decision D0322011 – Published in note form only

***Re G and Department for Child Protection* [2011] WAICmr 32**

Date of decision: 19 September 2011

Freedom of Information Act 1992: sections 15(1) and 26

In May 2011, the complainant applied under the *Freedom of Information Act 1992* ('the FOI Act') to the Department of Corrective Services ('DCS') for access to "[o]ne key document by DCD Midland 2003-04 letter to sent to me ..." DCS transferred the application in full to the Department for Child Protection ('the agency') under s.15(1) of the FOI Act.

On 10 June 2011, the agency notified the complainant of its decision to refuse access to the requested document pursuant to s.26 of the FOI Act. Section 26 provides that an agency may notify an applicant that it is not possible to give access to a document if all reasonable steps have been taken to find it and the agency is satisfied that the document is in the agency's possession but cannot be found or does not exist.

The agency confirmed its decision on internal review and, on 4 July 2011, the complainant applied to the Information Commissioner for external review of the agency's decision, claiming that the requested document should exist and providing further information to assist in identifying it.

Following the receipt of the complainant's application, the agency provided the Commissioner with its FOI file maintained in respect of the access application and the relevant client file. The Commissioner's Senior Investigation Officer obtained information from the agency concerning the searches and inquiries made for the requested document.

On 16 August 2011, the Commissioner provided the parties with a letter setting out his preliminary view of the complaint, including details of the searches made by agency. On the information before him, the Commissioner's preliminary view was that the agency had taken all reasonable steps to find the requested document but that it could not be found or did not exist.

The Commissioner invited the complainant to withdraw his complaint or to make further submissions to him as to what additional steps the agency could take to locate the requested document. The complainant responded to the Commissioner's letter on 8 September 2011 by repeating information that he claimed supported his view that the requested document should exist and should be held by the agency and by raising several queries.

The Commissioner considered the complainant's further submissions and, having reviewed all of the information before him, was not dissuaded from his preliminary view. The Commissioner was satisfied that the agency had taken all reasonable steps to find the requested document but that it could not be found or did not exist. Consequently, the Commissioner confirmed the agency's decision to refuse access to the requested document pursuant to s.26 of the FOI Act.