

DECISION SUMMARY ISSUED BY THE INFORMATION COMMISSIONER (WA)	
Decision title and citation: <i>Re Morrissey and Legal Aid Commission</i> [1999] WAICmr 3	
COMPLAINT No: F1291998	DECISION No: D0031999
PARTIES: Leo Francis MORRISSEY	Complainant
LEGAL AID COMMISSION	Respondent
Issue: Refusal to deal with application for access: Sufficiency of search	Relevant Sections: s.20(1); s.26

For some time there has been an on-going dispute between Mr Morrissey ('the complainant') and the Legal Aid Commission ('the agency'). During that time, the complainant has lodged a number of applications with the agency seeking access under the *Freedom of Information Act 1992* ('the FOI Act') to various documents of the agency. Whilst he has been given access to some documents, access to others has been refused.

By letter dated 30 July 1998, the complainant lodged another application with the agency seeking access to various documents, including all of the agency's management files dealing with his past FOI requests. The agency refused under s.20 of the FOI Act to deal with part of the application and, in respect of the balance of the access application, the agency refused access on the basis that the requested documents do not exist. The agency's initial decision was confirmed following internal review. Thereafter, on 1 September 1998, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

Review by the Information Commissioner

After receiving this complaint, discussions were held with the parties to determine whether this complaint could be resolved by conciliation. The agency agreed to deal with the complainant's request providing he reduced its scope so that the amount of work needed to deal with it would also be reduced. However, the complainant did not agree.

On 2 February 1999, I informed the parties in writing of my preliminary view of this complaint, including my reasons. It was my preliminary view that the agency's decision to refuse to deal with the access application appeared justified. It was also my preliminary view that the agency's decision to refuse access to some documents on the basis that those documents did not exist was also justified.

The complainant provided a further written submission. In the circumstances, I am not dissuaded from my preliminary view. The parties have been fully informed in writing of my reasons for that view. A summary of my reasons follows.

Refusal to deal with an access application

Section 20 of the FOI Act provides that an agency may refuse to deal with an access application if the work involved would divert a substantial and unreasonable portion of the agency's resources away from its other operations. However, an agency is required by s.20 to take reasonable steps to help an applicant to change the application to reduce the amount of work required before it can justify a refusal to deal with the application.

I am informed that, in response to numerous previous access applications by the complainant, the agency reviewed its entire file concerning him and gave him a copy of that file, save for those documents for which it claimed exemption. However, on this occasion, the agency did not attempt to help the complainant to change the application to reduce the amount of work needed to deal with it. After my office made approaches to the parties, the agency offered to deal with the application in a reduced form. The complainant did not accept the agency's offer to assist in that way and would not reduce the scope of his request.

The documents identified by the agency as falling within the scope of one part of the complainant's request consist of 7 files containing in excess of 500 folios. Many of those documents have previously been released to the complainant, and some have previously been claimed by the agency to be exempt as a result of previous access applications by the complainant. Others consist of copies of numerous letters to the agency from the complainant. In order to deal with that part of the access application, an officer of the agency would have to inspect each and every document in those 7 files and make a decision on each one. Considering the contents of those files and the documents already released to the complainant, in my view such a requirement is unreasonable.

Further, the complainant's request for access to documents recording the time spent by officers of the agency in dealing with his matters would involve the examination of every time sheet held by the agency for a period of approximately 4 years. Even if the scope of the request were narrowed to the time spent by two particular officers, it would involve some 400 documents. Even if that were done, it is unlikely that any information relating to the complainant's file could be isolated because the time spent is recorded in relation to activities, not individual cases.

To deal with the complainant's request for access to all communications with a particular person would involve searching 3 volumes a file to much of which the complainant has already been given access. The complainant provided no evidence that any other such documents should exist elsewhere in the agency.

Taking into account the nature and extent of the agency's other operations and its resources, I find that the amount of work that would be required to deal with the access application would be substantial and, in the particular circumstances of this matter, an unreasonable diversion of resources from the agency's other operations. Therefore, I confirm the decision of the agency to refuse under s.20 of the FOI Act to deal with that part of the application. Further, in my view, the agency could have also refused to deal with the request until an application fee of \$30 had been paid because, in its broadest terms, it clearly involved a request for access to documents containing non-personal information.

Documents that cannot be found or do not exist

Section 26 of the FOI Act deals with the requirements upon an agency in circumstances where it is unable to locate the documents sought by an access applicant. Section 26 provides that an agency may advise an applicant in writing that it is not possible to give access to a document if all reasonable steps have been taken to find the document and the agency is satisfied that either the document is in its possession but cannot be found, or the documents do not exist. The sending of such a notice is to be regarded as a decision to refuse access to the documents.

I have discussed my view of the requirements of s.26 in previous decisions concerning documents that cannot be found. I remain of the view that, when dealing with such an issue, there are two questions, which must be answered. The first question is whether there are reasonable grounds to believe that the requested documents exist or should exist and are, or should be, held by the agency. In circumstances where the first question is answered in the affirmative, the next question, in my view, is whether the agency has taken all reasonable steps to find those documents.

I do not consider that it is my function to physically search for the requested documents on behalf of the complainant. Provided I am satisfied that the requested documents exist, or should exist, I take the view that it is my responsibility to inquire into the adequacy of the searches conducted by the agency in a particular instance, and to require further searches if necessary.

The existence of the documents

The complainant sought access to documents described as "Complaints/Quality Practice Standard Compliance files" and time sheets relating to his files. I understand from the agency that no separate Complaints/Quality Practice Standard Compliance files relating to the complainant exist and that all complaints from the complainant are filed on the agency's file 94FM0005. Access to that file has been provided to the complainant previously, save for matter claimed to be exempt. I am also informed that separate time sheets for the complainant's files are not kept. Rather, a record is kept of the time spent by officers performing particular kinds of work, which is logged against one of fourteen codes. The complainant provided no evidence that documents of either kind exist or should exist.

Based on the uncontested material before me, I am satisfied that the requested documents do not exist. Accordingly, I confirm the decision to refuse access to those documents on the ground that they do not exist.

B. KEIGHLEY-GERARDY

INFORMATION COMMISSIONER
2 March 1999

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