

STUBBS AND FAMILY/CHILDREN

OFFICE OF THE INFORMATION COMMISSIONER (WA)

Decision summary issued pursuant to s.76(8) of the *Freedom of Information Act 1992*

COMPLAINT No: 97164

DECISION No: D0041998

PARTIES: Michelle Sandra STUBBS

Complainant

DEPARTMENT FOR FAMILY AND CHILDREN'S SERVICES Respondent

Issue: Sufficiency of search

Relevant Section: Section 26

By letter dated 12 June 1997, Ms Stubbs ('the complainant') applied to the Department for Family and Children's Services ('the agency') seeking access under the *Freedom of Information Act 1992* ('the FOI Act') to copies of documents from the Bridgewater Assessment Centre ('Bridgewater') and relating to her placement in Nyandi Detention Centre ('Nyandi') in October 1981. As I understand it, upon the closure of Bridgewater, documents relating to clients were transferred to the head office of the agency.

Although it appears that the complainant had previously been given access to the relevant file outside the FOI process, the agency dealt with her access application in accordance with the FOI Act. By letter dated 28 July 1997, the agency granted the complainant full access to some documents and access to edited copies of others.

The complainant sought internal review and was subsequently granted full access to all documents. However, the agency could not find additional documents which the complainant sought and, therefore, it refused access to those documents under s.26 of the FOI Act on the ground that the documents either do not exist or cannot be found.

On 18 September 1997, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision. In particular, the complainant contends that there should be further documents held by the agency in relation to Bridgewater and the involvement of the then Minister in the decision to place the complainant in Nyandi in October 1981.

Review by the Information Commissioner

The basis of the complainant's complaint to my office concerned the sufficiency of the searches conducted by the agency to locate the documents requested. Therefore, I directed a member of my staff to make inquiries into the nature and extent of those searches. Following those inquiries and after considering the material before me, on 13 November 1997, I informed the parties in writing of my preliminary view, including my reasons. It was my preliminary view that the agency had taken all reasonable steps to find the requested documents and that they either do not exist or cannot be found.

Although the complainant was given an extended period in which to respond to my preliminary view of her complaint, I received nothing further from her. Therefore, I have not been dissuaded from my preliminary view that the requested documents either do not exist or cannot be found. Both parties have been fully informed in writing of my reasons for that view. A summary of my reasons follows.

Documents that do not exist or cannot be found

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 document does not exist.

For the purposes of the FOI Act, the sending of such a notice is to be regarded as a decision to refuse access to the document and, on external review or an appeal under Part 4 of the FOI Act, the agency may be required to conduct further searches for the document.

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 agency has confirmed that it is likely that additional Bridgewater documents should exist, although, for a number of reasons, the agency has been unable to locate those documents. Following a number of inquiries by the agency, it has been able to establish whether the Nyandi documents ever existed and, if they did, whether they still exist in the agency.

Inquiries were unable to establish the nature of the record-keeping practices in the office of the relevant Minister at that time, and no documents from the former Minister's office were located.

I am unable to determine whether the complainant's view about the existence of additional documents is correct. If the requested documents existed in 1981 in the Minister's office and I cannot be sure that they did, they do not seem to exist now.

Sufficiency of search

It is my understanding that Bridgewater closed in the mid 1980's. Certain documents associated with the complainant's stay in Bridgewater appear on the files identified by the agency and the complainant has been given access to those documents.

However, no other documents relating to Bridgewater have been found by the agency. Searches have been made in the current and archival records and inquiries have been made with former employees who worked at Bridgewater without success. Inquiries were also made at two other institutions that may have received documents from Bridgewater on its closure. None were located. I am therefore satisfied that the agency has taken all reasonable steps to locate the requested documents. There is nothing before me to warrant my requiring the agency to conduct any further searches for those documents.

Conclusion

I confirm the decision of the agency to refuse access to those documents pursuant to s.26 of the FOI Act, on the basis that the documents either do not exist or cannot be found.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER
20 January 1998