

OFFICE OF THE INFORMATION COMMISSIONER (WA)

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

COMPLAINT No: F0061998

DECISION No: D0121998

PARTIES: Zoran Alexander KILPA

Complainant

WESTERN AUSTRALIAN MUSEUM

Respondent

Issue: Sufficiency of search

Relevant Section: s.26

Mr Kilpa ('the complainant') is an employee of the Western Australian Museum ('the agency'). By letter dated 29 October 1997, he lodged an application with the agency seeking access under the *Freedom of Information Act 1992* ('the FOI Act') to a copy of a particular complaint against him made to the agency.

The agency refused access to the requested document on the ground that it was exempt under clause 8(2) of Schedule 1 to the FOI Act. The agency's initial decision was confirmed following internal review. On 22 January 1998, after making preliminary inquiries into this matter, I accepted an application from the complainant seeking external review of the agency's decision.

**Review by the Information Commissioner**

After receiving this complaint, a preliminary conference was held with the agency to determine whether this matter could be resolved by conciliation between the parties. Following those discussions, the agency withdrew its claim for exemption and gave the complainant a copy of the requested document.

However, the complainant was dissatisfied with the access given by the agency because the copy of the document given to him by the agency was unsigned. This raised the issue of the sufficiency of the searches conducted by the agency to locate all of the documents that fell within the ambit of his access application and, in particular, the original document signed by its author.

Additional inquiries were conducted by my office in respect of this matter. On 15 April 1998, I informed the parties in writing of my preliminary view of this aspect of the complaint, including my reasons. It was my preliminary view that the searches conducted by the agency to locate the original document had been, in all the circumstances, reasonable. I was of the view that the document either did not exist or could not be found.

The complainant did not respond to my preliminary view. Therefore, I am not dissuaded from 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 of an agency in circumstances in which it is unable to locate the documents sought by an access applicant. That section provides:

***“Documents that cannot be found or do not exist***

26. (1) *The agency may advise the applicant, by written notice, that it is not possible to give access to a document if -*
- (a) *all reasonable steps have been taken to find the document; and*
  - (b) *the agency is satisfied that the document -*
    - (i) *is in the agency's possession but cannot be found;*

or

(ii) *does not exist.*

- (2) *For the purposes of this Act the sending of a notice under subsection (1) in relation to a document is to be regarded as a decision to refuse access to the document, and on a review or appeal under Part 4 the agency may be required to conduct further searches for the document.”*

If a complainant raises the issue of the existence of a document which has not been identified by the agency, in my view, there are two questions that must be answered. The first question is whether there are reasonable grounds to believe that the requested document exists or should exist and is, or should be, held by the agency. In circumstances where the first question is answered in the affirmative, the next question is whether the agency has taken all reasonable steps to find the document and is satisfied that it is in the agency's possession but cannot be found or that it does not exist.

I do not consider that it is my function to physically search for the requested document on behalf of the complainant. I take the view that, provided I am satisfied that the requested document exists, or should exist, within the agency, it is my responsibility to inquire into the adequacy of the searches conducted by the agency and to require further searches if necessary in order to satisfy me that the agency has acted in accordance with its obligations under the FOI Act, but that the document cannot be found.

### **Existence of the document**

The relevant document is a one page internal memorandum dated 27 December 1995. I consider it reasonable to expect that an original signed version of a document of the type requested by the complainant would exist in the agency. Inquiries with the author of the document indicate that a signed version of the document was created. The agency acknowledges the possibility that a signed version of the document may have existed, even though the agency is unable to confirm that it did.

### **Sufficiency of the searches**

The agency informs me that it conducted an extensive search of its record keeping systems, including making inquiries with the relevant officers of the agency. The only document found by the agency consists of an electronic copy stored on computer. That document was subsequently reproduced in written form, by printing it from the computer, and a copy was released to the complainant.

The author of that document recalls forwarding it to the Chief Executive Officer of the agency. However, he has not seen the document since that time nor has he any knowledge as to where it might be located now. The Chief Executive Officer of the agency informed my office that he could not recall receiving or dealing with the document, but informs me that if a document of the type described were directed to him, he would deal with it personally or in conjunction with the Manager, Human Resources. His usual practice is to keep such a document confidential with access given to a limited number of people. The document would not be placed in the normal filing system of the agency, but retained by him or the Manager, Human Resources.

Inquiries were made with the current Manager, Human Resources. That officer confirms that searches were made of the files kept by the Chief Executive Officer, the general filing system and the files in the Human Resources Section. No other possible locations for the document could be identified in order to conduct further searches.

Pursuant to section 26(2) of the FOI Act, I may require an agency to conduct further searches, if necessary, to satisfy myself that the agency has acted reasonably and in accordance with its obligations under the FOI Act. However, before I take such action, I must first be satisfied that the agency has not, in the first instance, conducted a reasonable search of its record keeping systems and taken all reasonable steps to locate the document.

In the circumstances of this matter, I did not require the agency to conduct additional searches. I am satisfied that the agency has taken all reasonable steps to locate the document and it cannot be found. On that basis, I confirm the agency's deemed decision to refuse access to the signed document.

B. KEIGHLEY-GERARDY  
INFORMATION COMMISSIONER  
6 May 1998