

CAMPBELL AND POLICE

OFFICE OF THE INFORMATION COMMISSIONER (WA)

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

COMPLAINT No: F1701998

DECISION No: D0261998

PARTIES: Alfred Robert Arthur CAMPBELL

Complainant

POLICE FORCE OF WESTERN AUSTRALIA

Respondent

Issue: Sufficiency of search

Relevant section: s.26

Sometime in early 1992, police issued Mr Campbell ('the complainant') with a work order in respect of his motor vehicle. Since then, the complainant has sought information from the Police Force of Western Australia ('the agency') about various matters, including vehicle standards.

By letter dated 19 September 1998, the complainant applied to the agency under the *Freedom of Information Act 1992* ('the FOI Act') seeking access to documents described as "*police specification(s) for brake pedal adjustment applicable to an earlier HQ Holden sedan (with drum brakes to four wheels).*" The agency advised the complainant that police officers apply the provisions of the *Road Traffic Act 1974* ('the Traffic Act') and the *Vehicle Standards Regulations 1977* ('the Regulations') when inspecting vehicles, and explained that the relevant test is applied according to the conditions and circumstances at the time.

The agency also identified one other document, being an extract from a Department of Transport training manual that is used by police in the performance of vehicle inspection duties, and gave the complainant a copy of that document. The agency also repeated its earlier advice to the complainant that no other written specifications existed.

The complainant sought internal review of the agency's decision and, on 16 November 1998, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

Review by the Information Commissioner

The complainant is dissatisfied with the level of access given to him by the agency and claims that additional documents specifying the minimum amount of brake pedal adjustment required on vehicles should exist in the agency. Therefore, the complainant's complaint concerns the sufficiency of the searches conducted by the agency to satisfy his access application and his rights under the FOI Act.

On 14 December 1998, after considering the material before me, I informed the parties in writing of my preliminary view, including my reasons. It was my preliminary view that there is no probative material before me to support the complainant's contention that further documents exist as documents of the agency. Further, I was of the preliminary view that even if it could be shown that other relevant documents should exist in the agency, the agency has made all reasonable attempts to locate the documents. Accordingly, I did not consider it necessary for the agency to conduct any further searches, because I was of the view that the agency had made a genuine effort and had taken all reasonable steps to locate the requested documents.

The complainant responded to my preliminary view, and he did not withdraw his complaint. Having considered the complainant's final submission, I am of the opinion that he has not provided any new material that dissuades me from my preliminary 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.”*

I have discussed, in a number of my formal decisions, the question of the sufficiency of an agency's search for documents. Most recently I discussed the issue in my decisions in *Re Kilpa and Western Australian Museum* (8 May 1998, unreported, D0141998), *Re Kilpa and Western Australian Museum* (6 May 1998, unreported, D0121998), *Re Stubbs and Department for Family and Children's Services* (20 January 1998, unreported, D0041998), *Re Napier and Shire of Ravensthorpe* (17 December 1997, unreported, D03797) and *Re Brearley and Sir Charles Gairdner Hospital* (9 December 1997, unreported, D03497).

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 which are required to be answered. The first question to be answered 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, in my view, 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.

Existence of the document

Clearly, police officers must apply the provisions of the Traffic Act and the Regulations when inspecting vehicles. Further, the enforcement of the Traffic Act and Regulations is within the discretionary authority of police officers. I am informed that officers follow and apply the Regulations and use their skill, judgment, training and experience to determine whether any work is required to be done on vehicles to make those vehicles safe and roadworthy. The agency informs me that no other written specifications exist to assist police in performing vehicle inspections, except for the document to which the complainant has already been given access.

Based on the material before me, I am not satisfied that any other document of the type requested by the complainant exists or should exist in the agency. In my view, it is not reasonable to expect that such a document must exist, and nor is there any evidence before me to suggest otherwise. The discretionary decisions made by police officers about such matters depend on so many variables that such detailed guidelines may be not practical or workable.

I am satisfied that the agency has taken all reasonable steps to find any documents of the kind requested by the complainant, but that, other than the document given to the complainant, the documents do not exist. In the circumstances of this matter, I do not require the agency to conduct further searches. Accordingly, I confirm the decision of the agency to refuse access on the ground that the document does not exist.

B. KEIGHLEY-GERARDY

INFORMATION COMMISSIONER

23 December 1998