

LIDINGTON 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: 96051

DECISION No: D02796

PARTIES: **Dennis George Lidington**

Complainant

Department of Family and Children's Services

Respondent

No. of documents in dispute: Not applicable

Exemption clause(s) : Not applicable

This complaint to the Information Commissioner concerns the sufficiency of the searches conducted by the Department of Family and Children's Services ('the agency') to locate documents requested under the *Freedom of Information Act 1992* ('the FOI Act').

On 19 January 1996, Mr Lidington ('the complainant') applied to the agency under the FOI Act for access to documents recording the dates he visited the agency for assistance and the names of the officers of the agency to whom he spoke on those visits. In the terms of the request, the complainant applied to the agency for the provision of information rather than a document. Notwithstanding the terms of the request, the agency accepted the application and attempted to satisfy the request. The agency granted the complainant access to edited copies of documents containing the information requested, with exempt matter deleted from those documents. On 1 March 1996, the complainant sought internal review of the agency's decision because he believed that the agency had not located all documents containing the information he had requested. On 22 March 1996, the agency confirmed its initial decision granting access to edited copies of the documents and informed the complainant that no other documents containing further information of the type sought could be found. The complainant remained dissatisfied with that decision and, on 22 March 1996, he applied to the Information Commissioner for external review of the agency's decision.

I obtained copies of the documents to which the complainant had been granted access and a copy of the agency's file from which those documents had been taken. My investigations officer made inquiries with with officers of the agency and met with the complainant in an attempt to conciliate this complaint. Relevant files of the agency were inspected and the agency explained to my investigations officer the manner in which it records information related to a case.

Section 26 of the FOI Act deals with the requirements of an agency in circumstances in which it is unable to locate documents requested by an access applicant. Section 26(2) provides that the agency may be required to conduct further searches for documents where it is considered necessary to do so.

On 7 May 1996, based on the material before me, the parties were informed of my preliminary view that the documents requested either could not be found or did not exist. The parties were informed of the reasons for my view and the findings of fact on which those reasons were based. In the circumstances, I was satisfied with the searches conducted by the agency and did not require further searches to be conducted. However, the complainant remains of the view that the records provided to him by the agency are incomplete because he claims that he has not had access to documents recording some of the visits he made to the agency in 1994. Accordingly, the matter for my determination is whether the searches conducted by the agency have been, in all the circumstances, reasonable.

Sufficiency of searches

As I have said before, to deal with a complaint against a decision of an agency to refuse access on the basis that documents either do not exist or cannot be found, I consider there are two questions that must be answered. Firstly, are there reasonable grounds to believe that the requested documents exist or should exist? Secondly, in

circumstances in which the first question is answered in the affirmative, were the searches conducted by the agency to locate the documents reasonable in all the circumstances?

Whilst I do not consider that it is my function to physically search for the requested documents on behalf of an access applicant, nor to examine in detail the agency's record-keeping system, if I am satisfied that the requested documents exist, or might exist, in an agency, it is my responsibility to inquire into the adequacy of the searches conducted by an agency, to require further searches if necessary and to satisfy myself that the agency has discharged its obligations under the FOI Act.

Do the requested documents exist?

The complainant insists that he attended at the agency on 4 occasions in 1994 and he seeks documentary evidence from the agency recording aspects of those visits. To support his claims he provided my office with photocopies of photographs allegedly depicting the interior of the agency's branch office at Mandurah including a person then performing counselling services for the agency. The complainant also provided me with a submission, including a Statutory Declaration, in which he specified his recollection of events on certain dates which, in his opinion, confirm his attendance at the agency for case-related discussions.

The agency does not dispute the claim that the complainant has visited the Mandurah branch office on numerous occasions and possibly on the dates in question. However, the agency states that unless those visits were for a purpose directly related to a case file of the agency, a record of the visit would not ordinarily be made.

I have examined the agency's case file. The records in that file appear in chronological order and no documents appear to be missing from the file, nor is there any evidence of tampering with that file. Even if I were to accept that the photocopies of the photographs provided by the complainant are what he claims them to be, those photographs are not evidence of the dates on which he claims to have visited the agency. If the complainant did visit the agency on those dates, the absence of a record of those visits has, in my view, been explained by the agency.

Further, the submissions provided by the complainant do not confirm the existence of documents, but only that he may have attended on a certain date. No evidence has been given to me which goes towards establishing the existence of documents recording the claimed visits on the dates in question.

Therefore, I am not satisfied, on the material available to me, that the requested documents exist or should exist within the agency. However, even if I were satisfied on that point, I consider in any event that the searches conducted by the agency to locate documents containing the information requested by the complainant were, in all the circumstances, reasonable.

Accordingly, I confirm the decision of the agency to refuse access to the requested documents on the ground that those documents either do not exist or cannot be found.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER
16th May 1996