

SKIBA AND SUBIACO

OFFICE OF THE INFORMATION COMMISSIONER (WA)

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

COMPLAINT No: 96072

DECISION No: D03696

PARTIES: Bronislaw Skiba

Complainant

City of Subiaco

Respondent

No. of documents in dispute: Not Applicable

Exemption clause(s) : Not Applicable

On 20 December 1995, Mr Skiba ('the complainant') lodged an access application with the City of Subiaco ('the agency') seeking access under the *Freedom of Information Act 1992* ('the FOI Act') to documents concerning a planning application he had made to the agency. In the course of dealing with his application, the agency gave the complainant assurances that certain of the requested documents do not exist. The agency says the complainant accepted those assurances and withdrew his application in respect of some documents specified in his access application. On 29 January 1996, the agency informed the complainant that it was of the view that he had been provided with access to copies of all documents relating to his request.

The complainant did not apply to the agency for internal review of its decision within the statutory period of 30 days. However, the complainant remained dissatisfied with the outcome of his access application and, on 2 April 1996, he formally sought internal review of the agency's decision. The principal officer of the agency accepted the request for internal review, although it was out of time. On 17 April 1996, the principal officer, Mr Walker, confirmed the agency's initial decision that the complainant had been provided with access to all information requested. On 29 April 1996, the complainant applied to the Information Commissioner for external review of the agency's decision.

Although the complainant raised a number of issues with me relating to the administration of the agency, the only matter which I consider to be within my jurisdiction is the complainant's claim that he has not been given access to all documents within the ambit of his access application.

After receiving this complaint, my Investigations Officer visited the agency and inspected its record-keeping system and made inquiries with various officers of the agency. The agency made some further searches for relevant documents. On 30 May 1996, after considering all of the material before me, I provided the parties with my preliminary view of this matter and the detailed reasons for my view. My view was that the agency had taken all reasonable steps to locate all the documents requested and, if any documents had not been identified by the agency, those documents either do not exist or cannot be found. The complainant was given the opportunity to provide additional material for my consideration. However, no submissions were received and there is nothing additional before me that dissuades me from my preliminary view on this complaint. My reasons are summarised as follows.

The sufficiency of the searches by the agency

Section 26 of the FOI Act deals with the obligations of an agency in circumstances in which it is unable to locate the documents sought by an access applicant. That section provides as follows:

"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."*

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 document exists 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 document reasonable in all the circumstances?

The complainant does not accept the assurances of the agency that he has been given access to all documents of the agency which are within the scope of his access application. In particular, the complainant claims that the agency has not provided him with access to a document which he alleges would confirm his belief that he has been unjustly dealt with by the agency. The complainant contends that the existence of the "missing" document was brought to his attention by a former councillor of the agency. However, my Investigations Officer spoke with the former councillor concerned, who said that he has no knowledge of the existence of the document to which the complainant refers. Inquiries were also made with other officers of the agency and those officers confirmed that, if a document of the type described by the complainant existed, that document would be placed on the relevant property file. The relevant property file was searched by the agency and inspected by my Investigations Officer, and no such document, nor any indication that any such document ever existed, was found.

Accordingly, whilst I am not satisfied that the document referred to by the complainant actually exists, I am satisfied that the searches conducted by the agency have been, in all the circumstances, reasonable. Based on the material before me, I do not require the agency to conduct any further searches to find the document concerned.

For the reasons previously given to the parties and summarised above, I confirm the decision of the agency to refuse access to the document concerned on the ground that that document either does not exist or cannot be found.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

19th June 1996