



1 December 2025

Ms Hanyu Liu



*By email only to: [helloluna520@gmail.com](mailto:helloluna520@gmail.com)*

Dear Ms Liu

**FREEDOM OF INFORMATION ACT 1992 (WA)  
EXTERNAL REVIEW – DEPARTMENT OF PRIMARY INDUSTRIES AND  
REGIONAL DEVELOPMENT**

I refer to your email dated 9 November 2025, requesting external review.

I have decided to deal with your application for external review as a complaint made under section 65 of the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) against a decision of the Department of Primary Industries and Regional Development (**the agency**) dated 7 November 2025.

In particular, you have made a complaint against the agency's decision to refuse you access to documents under section 26 of the FOI Act.

To assist you to understand the limited role that this office has in dealing with a decision of this kind, I attach an information guide that describes how this office deals with this kind of matter on external review.

The agency has been notified of your complaint. I have requested a copy of the agency's FOI file maintained in respect of your access application. I have also asked the agency to provide this office with its response to the submissions made in your application for external review.

Once these documents have been received from the agency, they will be examined and your complaint assessed further. However, this may take some time due to resourcing constraints. As such, I am unable to give you a precise timeline for the progression of your complaint. I recognise this may cause inconvenience to you and thank you for your patience.

If you wish to check the status of your matter, please contact this office by email at [info@oic.wa.gov.au](mailto:info@oic.wa.gov.au) or by telephone on 6551 7888.

Finally, I enclose a guideline 'External Review Procedure' that outlines the procedures adopted by this office in dealing with a complaint. The guideline is general in its terms and application, as a certain amount of flexibility in the procedures is required because of the variance in nature and complexity of each complaint received.

Yours sincerely



Rachel Crute  
ACTING INFORMATION ACCESS DEPUTY COMMISSIONER

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# External Review Procedure

## Guide for parties

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This is a general guide to the procedures used by the Information Commissioner (**the Commissioner**) when conducting an external review of an agency's decision under section 65 of the *Freedom of Information Act 1992 (WA)* (**the FOI Act**).<sup>1</sup> In this guide the term 'Commissioner' may include the Commissioner's officers. The term 'complainant' refers to the person who has applied for external review.

### What is expected of you as a party?

The Commissioner expects all parties to an external review to be actively engaged in the external review process.

This includes:

- participating in negotiations constructively and flexibly in a genuine effort to resolve the matter;
- being available to attend and participate in meetings and Conciliation Conferences; and
- promptly providing additional information to the Commissioner when requested.

For agencies this will also include:

- preparing and providing documents to the Commissioner in a timely manner and in a form that enables ready review of the documents.

The Commissioner usually deals with applications for external review in three stages, as outlined below.

### Stage 1 – Assessment

- 1.1 When a valid application for external review has been made, the Commissioner will notify the parties in writing. If an agency has claimed an exemption under clause 3 or clause 4 of Schedule 1 to the FOI Act, *it is the agency's responsibility* to notify any third parties that an application for external review has been made to the Commissioner.
- 1.2 If the agency's notice of decision does not comply with the requirements of section 30 of the FOI Act and does not contain sufficient reasons for its decision, the Commissioner will require the agency to provide further information to justify its decision. This may include preparing a schedule of disputed documents.
- 1.3 The Commissioner will usually require the agency to provide a complete copy of the disputed documents and a complete copy of the agency's FOI file, together

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<sup>1</sup> The FOI Act refers to an application for external review as a 'complaint'.

with a Statement of Certification completed by an officer of the agency that states that the disputed documents produced are true and complete copies of the original documents.

## **Stage 2 – Investigation**

- 2.1 The Commissioner will usually make preliminary inquiries to determine whether it is possible to resolve the matter by conciliation. It is essential for both parties to keep an open mind at this point. Matters open to negotiation may include:
  - the form of access that could be provided;
  - charges that may be payable;
  - the type of document required;
  - whether information can be provided in another form; and
  - whether the agency is prepared to exercise its discretion to disclose a document that may be technically exempt, if no harm is likely to follow.
- 2.2 The Commissioner may hold meetings with representatives of the agency and with the complainant, separately or together, to:
  - identify disputed documents;
  - resolve inconsistencies; and
  - clarify issues and reduce misunderstandings.
- 2.3 The parties to an external review may also be required to attend a compulsory Conciliation Conference.
- 2.4 Where it is practicable and appropriate, the Commissioner will communicate with the parties by email. Therefore, all parties should ensure that the Commissioner's officer assigned to their matter has been provided with a current email address that is regularly monitored.
- 2.5 Agencies are expected to provide contact details of alternate officers where the primary officer is not available.
- 2.6 Complainants are also expected to notify the Commissioner of changes to any contact details previously provided, in particular the postal address.
- 2.7 The Commissioner has the power to require any person to attend before the Commissioner or to produce information or documents to the Commissioner that the Commissioner considers relevant to the matter. Failure to comply with such a requirement is an offence.
- 2.8 Parties are expected to comply with time frames set by the Commissioner, but may seek extensions in exceptional cases. A request for an extension of time must be in writing and include persuasive reasons as to why the time frame cannot be met.
- 2.9 If a complainant does not respond to communications from the Commissioner in the time frame set, the Commissioner may proceed on the basis that the complainant no longer wishes to proceed with the external review and close the file.
- 2.10 If a complainant is unable to participate in the external review process because of other commitments, they need to ensure that someone else is authorised to act

on their behalf. Alternatively, they can inform the Commissioner in writing of the reasons for their unavailability so that consideration can be given to suspending proceedings.

- 2.11 Where it is considered appropriate, the Commissioner may provide details of any submissions received to the other parties to the external review. It is not the Commissioner's usual practice to provide each party with a complete copy of each other's submissions.<sup>2</sup>
- 2.12 If the matter has not been resolved by this stage, after considering all of the material and the disputed documents, the Commissioner may inform the parties of her preliminary view of the matter, including reasons. Each party then has the option of reconsidering their position and may withdraw or provide additional material in support of its view.

### Stage 3 – Finalisation

- 3.1 If any matters remain in dispute, after considering any further information and submissions, the Commissioner will formally determine the issues in dispute between the parties.
- 3.2 The Commissioner informs the parties in writing of her final decision and the reasons for it. The agency is then responsible for giving effect to the decision.
- 3.3 The Commissioner is required to have her decisions published in full or in an abbreviated, summary or note form. The decisions are published at <https://www.oic.wa.gov.au>.
- 3.4 It is the usual practice of the Commissioner to identify all of the parties to the external review in the published decision. However, where the issues involve certain kinds of sensitive or private matters, the Commissioner may decide not to publish the identity of one or more parties in order to protect their privacy.
- 3.5 The Commissioner may also decide to stop dealing with any external review, which does not relate to a matter the Commissioner has power to deal with, or is frivolous, vexatious, misconceived or lacking in substance.
- 3.6 An appeal lies to the Supreme Court on any *question of law* arising out of a decision of the Commissioner. That is, an appeal to the Supreme Court is not a further full merits review. There is no appeal to the Supreme Court in relation to decisions on a deferral of access, imposition of charges, or the payment of a deposit. The Rules of the Supreme Court stipulate the time within which an appeal can be lodged.

**Office of the Information Commissioner**

Phone: (08) 6551 7888

Free call (WA country): 1800 621 244

Email: [info@oic.wa.gov.au](mailto:info@oic.wa.gov.au)

Web: <https://www.oic.wa.gov.au>

Address: Albert Facey House, 469 Wellington Street, Perth WA 6000

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<sup>2</sup> See this office's publication [Exchange of submissions and procedural fairness – Guide for parties](#) (May 2021)



# Documents that cannot be found or do not exist

## External review guide for access applicants

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### Overview

The *Freedom of Information Act 1992 WA (the FOI Act)* gives the public a right to access documents of an agency, subject to some limitations which allow the agency to refuse access.<sup>[1]</sup> One situation when an agency can refuse access is if the document cannot be found or does not exist. This is set out in section 26 of the FOI Act.

This issue may also be raised if you believe the agency has not conducted reasonable searches to find the documents you asked for.

### When does section 26 allow an agency to refuse access to a document?

Section 26(1) of the FOI Act allows an agency to refuse access if:

- The document requested did or does exist but cannot be found (for example, where a document is lost or has been destroyed under a retention and disposal schedule approved under the *State Records Act 2000 (WA)*).
- The document requested in the access application does not exist (for example, because it was never created).

If, after internal review,<sup>[2]</sup> you believe a document exists and the agency has not conducted reasonable searches to find it, you can apply to the Information Commissioner (**the Commissioner**) to review the agency's decision to refuse you access.

### What will the Commissioner do on external review?

The Commissioner will assess whether there are reasonable grounds to believe that the requested document exists or should exist and is, or should be, held by the agency. If reasonable grounds exist, the Commissioner will make inquiries with the agency to assess whether it has taken all reasonable steps to find the documents.<sup>[3]</sup> The Commissioner may also require the agency to conduct further searches for documents.<sup>[4]</sup> The Commissioner does not physically conduct the searches.

What are 'all reasonable steps' is assessed on a case by case basis. On external review, the Commissioner will usually ask the agency to provide specific information about the record keeping systems it uses and the searches it conducted.

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<sup>[1]</sup> Section 10 of the FOI Act

<sup>[2]</sup> Unless internal review is not available.

<sup>[3]</sup> Agencies are required to take all reasonable steps to find the requested documents, not every possible step.

<sup>[4]</sup> Section 26(2) of the FOI Act

In some cases, poor record keeping, misfiling or inadequate training in records management may mean an agency cannot find a document that does or did exist. In those situations, the Commissioner may draw to the agency's attention any identified deficiencies in its recordkeeping practices. However, if the Commissioner is satisfied that the agency has taken all reasonable steps to find the document, there is nothing further the Commissioner is required to do on external review.

In cases where the Commissioner is satisfied that there are no reasonable grounds to believe that the document exists or should exist, the Commissioner may not make further inquiries with the agency about the adequacy of its searches. You will be advised of this and given the opportunity to provide further information to the Commissioner before the matter is finalised.

### **What will the Commissioner ask for on external review?**

The Commissioner may ask you to provide information about the document you claim exists, why you believe it exists, and why you consider the agency has not conducted adequate searches for the document.

This information will help the Commissioner make appropriate enquiries and specifically target any additional searches they ask the agency to conduct. General assertions that there must be more documents, without any supporting material, will generally not be enough for the Commissioner to require further searches. Where the Commissioner asks you for more information, you are required to assist with those inquiries. Where you do not cooperate with a reasonable request of the Commissioner, the Commissioner may decide not to continue with the external review.

### **Does an agency have to create a document?**

No, it does not. The FOI Act creates a right of access to existing documents of an agency, not access to information. This means that an agency is not required to create a document to satisfy an access application, where no such document exists. As a result, the Commissioner will only consider the existing documents of an agency when assessing the adequacy of the agency's searches.

### **Does an agency have to keep every document?**

No, it does not. There are specific rules about when documents must be retained, and for how long, and when they can be destroyed. These are set out in the *State Records Act 2000* (WA) and in retention and disposal schedules approved by the State Records Commission.

Retention and disposal schedules set out how long certain records must be retained by agencies and when and how records can be destroyed at the end of the minimum retention period. The Commissioner may consider the relevant retention and disposal schedule if the agency has relied on this to explain why documents cannot be found.

### **Can I ask for extra documents at external review?**

No, you cannot ask for more documents at external review than you applied for originally.

It is not unusual for documents disclosed under an FOI application to raise new issues or suggest that there may be other documents of interest to the applicant. If this happens, you will have to make a new FOI application to the agency; you cannot ask for those extra documents as part of your external review.

This is a general guide to the procedures used by the Commissioner when dealing with external reviews under the FOI Act.<sup>[5]</sup>

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<sup>[5]</sup> We acknowledge that this publication is partially based on material developed by the Queensland Office of the Information Commissioner. It has been modified to describe the requirements of the FOI Act (WA).