

Participants:

Mitchell Sideris
Complainant

- and -

City of Joondalup
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal to deal with application - documents relating to the Mullaloo Tavern - section 20 - reasonable steps to change application - diversion of a substantial and unreasonable portion of agency's resources.

Freedom of Information Act 1992 (WA): sections 11(2), 11(3), 12, 14, 17(3), 18(2), 20, 32, 33, 65(1), 66(6), 67(1)(b), 70, 71(4)(a)

Freedom of Information Act 1982 (Cth): section 24

Re Conservation Council of Western Australia and Department of Conservation and Land Management [2005] WAICmr 5

Re "R" and Department of Family and Children's Services [1996] WAICmr 45

Wright and State Electricity Commission of Victoria [1998] VCAT 162

Langer and Telstra Corporation Ltd [2002] AATA 341

Re SRB and SRC and Department of Health, Housing, Local Government and Community Services (1994) 33 ALD 171

DECISION

The agency's decision to refuse to deal with the complainant's access application, in accordance with section 20 of the *Freedom of Information Act 1992*, is confirmed.

In addition, pursuant to section 67(1)(b) of the FOI Act, I have decided to stop dealing with the remaining aspects of this complaint on the ground that they are lacking in substance.

JOHN LIGHTOWLERS
A/INFORMATION COMMISSIONER

14 January 2008

REASONS FOR DECISION

1. This complaint arises from a decision by the City of Joondalup ('the agency') to refuse to deal with an application for access to documents made to the agency under the *Freedom of Information Act 1992* ('the FOI Act') by Mr M Sideris ('the complainant').

BACKGROUND

2. On 12 February 2007, the complainant applied to the agency, under the FOI Act, for access to certain documents in the following terms:

"This Access Application is made in respect of the documents clearly specified in detail in the attached list, in order to make this application easy to process, especially since all the documents referred to are allegedly held electronically under a multi-million dollar electronic document management system that is said to conform to all Australian standards on Corporate Governance, and to meet all the necessary requirements of the Local Government Act, the Building Act and ATO requirements, amongst others.

References to the Mullaloo Tavern relate to the property at 10 Oceanside Promenade, Mullaloo, being Lot 100 on Diagram 48638 and being the whole of the land currently comprised in Certificate of Title Volume 2157 Folio 46, otherwise known as the Mullaloo Beach Village development or the Mullaloo Beach Hotel or any other name.

Any reference to the documents requested pre Lot 100 amalgamation refer to Lots 9, 10, and Lot 11 - formerly West Coast Hwy, Mullaloo.

This application is intended to include any documents held by, or held on behalf of, the City of Joondalup, and its Council, current or previous, or received from or supplied to any Government Department or Ministers or Courts whatsoever, relating to any of CoJ functions or ever received by any of them in relation to any matter in the attached listing.

Let me make clear that I am making application to access every document ever or currently held or ever or currently referred to or ever accessed by the CoJ in relation to the specified documents, except where so stated in the attached list.

NB A Reference to 'All documents' is held to include all, including copies and reproductions, and is not restricted to, file notes, diary entries or staff, memorandums (inter and intra office and otherwise), records and reports held electronically and on paper, correspondence, receipts, personal notes, plans, drawings, photo's, meeting records (minutes and file notes), emails and the like, transcripts, letters and written messages associated with any interaction between the CoJ and/or other persons, businesses or agencies in respect of the documents clearly specified in the attached list.

This FOI application also includes every document up to the date that I finally receive a listing of all the documents to which I am entitled to receive under the FOI Act in order to make sure that I am not charged by the CoJ for documents already in my possession, or which my application specifically excludes in relation to any of the matters listed, since the CoJ has a documented record of blatantly

ignoring the requirements of the WA FOI Act. These recorded breaches include the deliberate and systematic overcharging of FOI applications, the deliberate concealment of records held and the refusal to process FOI applications in the statutory time allowed, in order to conceal the ongoing maladministration of delegated State duties by the COJ.

Definitions of Key Word

All - 'the whole quantity, and 'every one of a class', and 'the totality or whole'.

If the CoJ on receipt of this FOI application has any questions whatsoever relating to the ambit or meaning relating to anything contained in it, please note that I require the COJ to raise these concerns immediately with me, in writing, as required by the FOI Act.

Also note that all words contained in this FOI application are dictionary defined and not open to reinterpretation or redefinition at a later date by anyone including the Acting Information Commissioner or any other person. Neither is it open to anyone to rewrite the purpose of meaning of any of the statements contained in this application at a later date without my express approval as I claim copyright on this document, and its accompanying listing as they stand.

Finally please note that I further claim copyright on all documents that I have submitted to your office, and will submit in future in pursuit on the FOI application and that I refuse anyone's right to selectively publish or publicly display any of these future submissions in an edited or altered form, that fails to clearly express the detail and intention of what is actually written.

If anyone wish's to publish or publicly display any of my submissions or any subsequent correspondence in relation to this matter in any part or in a form that does not fully reflect its content or intention accurately then they must contact me for approval, since I note such retransmission and alteration routinely occurs in such FOI matters in WA in a manner designed solely to misrepresent and denigrate FOI applicants."

The requested documents were listed and described in a 9 page attachment to the complainant's access application and referred to 64 separate items.

3. By 20 February 2007, the agency's FOI Coordinator responded to the complainant's access application and advised him as follows:

"Thank you for your Freedom of Information application received on 12 February 2007 seeking access to documents relating to 10 Oceanside Promenade Mullaloo.

Due to the large scope of your application, I am seeking your cooperation in its reduction.

Although 64 'issues' have been listed, it is likely that a search of the City's records will return multiple documents relevant to an issue. From the commencement of the City's electronic recordkeeping system to today's date there are 2845 documents relating to the property retained electronically. The amount of documents not retained electronically is unknown at this stage.

It is the City's opinion that the work involved in locating all the documents and assessing whether they can be made available in an edited or unedited version would divert a substantial and unreasonable proportion of the City's resources away from its other operations. The workload of the FOI Coordinators, who would be dealing with your application, as well as staff absences, means that the City is unable to deal with your application in its present form.

I am available to discuss ways in which your application can be amended to make it more manageable."

4. The agency's FOI Coordinator also advised the complainant that:

"The Freedom of Information Act 1992 also requires the City to advise you of an estimate of the charges that would be imposed. \$30 per hour (or part thereof) for the decision making on access to each document is applicable, with a photocopying charge of 20 cents per page also being applied.

At this stage it is not possible to provide an exact amount, with the following being a best guess:

- *Decision making for 2 paged document = 2 minutes*
- *Decision making for 4 paged document = 4 minutes, and so on*
- *Decision making on 64 documents with 2 pages = 128 minutes*
- *Decision making on 64 documents with 4 pages = 256 minutes, and so on*
- *Decision making on 64 documents with 2 pages = \$64.00*
- *Decision making on 64 documents with 4 pages = \$128.00, and so on*
- *Photocopying for 64 documents with 2 pages = \$25.60*
- *Photocopying for 64 documents with 4 pages = \$51.20, and so on*
- *Total cost for 64 documents with 2 pages = \$89.60*
- *Total cost for 64 documents with 4 pages = \$179.20, and so on*

Keeping in mind, if you are unable to reduce the scope of your application, the amounts of \$89.60 or \$179.20 would be the minimum, as there would be more than 64 documents and also some documents may have more than 4 pages. An agreement will be required to be reached on the charges that will be imposed.

To be able to process your application it is requested that:

1. *You reduce the scope of the application to a more manageable level;*
2. *You agree to an additional 14 calendar days if you are unable to reduce the scope;*
3. *You agree that charges will be imposed in accordance with the attached schedule of fees and a deposit will be required at the commencement of the process, with final payment due before the documents are provided.*

Normally the process time commences upon the receipt of the payment of the application fee, but due to both parties needing to reach agreement on the above issues, the time period will not commence until such agreement is reached. A written response addressed to myself is required by Friday 2 March 2007."

5. The complainant responded to the agency, by e-mail on 2 March 2007, as follows:

“In reference to your recent letter refusing to proceed with the processing of my FOI application, I note that you have refused to identify any of the documents clearly identified in my access application and instead to date the COJ has improperly chosen only to guess at the amount of money that it may be legally entitled to charge me.

On the basis of purely that guesswork the COJ now requires me to legally agree in writing;

- 1. to an extension in time to process my FOI application without providing any legally valid reason*
- 2. to reduce the scope of my FOI application without providing any legally valid reason and*
- 3. to agree to pay the COJ deliberately inflated charges based solely on the alleged guesswork of the COJ.*

Since there are no legally acceptable reasons for me to agree to any of these demands based on the refusal to date of the COJ to both properly identify the documents covered by my access application or to provide me with a copy of the printout from the COJ's electronic document management system as per Council Policy on FOI processing in order to assist me to reduce the ambit of my application, before I can agree to anything I wish to be supplied promptly with the following information.

- 1. Why is the COJ seeking to charge me improperly for documents which are over 25 yrs old, and deemed to be State Archival Records but which have never been freed to the Archive by the COJ, contrary to the FOI Act?*
- 2. Why has the COJ declined to date to properly identify the 64 odd specifically identified documents covered by the ambit of my FOI application?*
- 3. Why is the COJ seeking to charge for reviewing the electronic printout from the City's RMS dated from April 2005 to the date of receipt of this FOI application, and for photocopying it when it can be supplied to me electronically as requested in the application?*
- 4. Why has the COJ refused to supply this electronic printout in full to me ALREADY in order to assist me to reduce the ambit of my application for some 64 odd documents, as it now demands, when it can be supplied to me electronically without any cost, as requested?*
- 5. Why has the COJ elected to charge me for documents of Council which are supposed to be publicly available, and yet again for reviewing them, when legally they require no review because they are deemed to be public documents and require no review?*
- 6. Why has the COJ required me to agree in writing to an extension in time to process my FOI application without providing me with any legally valid reason, and why should not this demand now be seen as blackmail?*

7. Why has the COJ required me to agree to reduce the scope of my very small FOI application without providing me with any legally valid reason, and without providing me with any assistance whatsoever contrary to Council Policy, and why should not this demand also now be seen as blackmail?

8. Why has the COJ to date required me to agree in writing to pay charges based solely on the stated guesswork of the COJ, charges which are legally incorrect, invalid and deliberately inflated in an attempt to force me to agree to reduce the ambit of my very small and specific FOI application, and to delay its processing?

9. Why has the COJ to date required me to agree to pay charges based solely on the guesswork of the COJ, charges which are legally incorrect, invalid and deliberately inflated in order to force me to agree to reduce the ambit of my very specific application, and to delay its processing and insisted that I MUST agree to them all in writing in order to get my very small FOI application processed, and why should not all these demands now not only be seen as blackmail, but as a deliberate attempt by the COJ to conceal the ongoing planning and building corruption currently taking place inside it?

Please acknowledge receipt by return email.”

6. By letter dated 8 March 2007, the agency’s FOI Coordinator wrote to the complainant clarifying a number of points raised in his e-mail. Amongst other things, the FOI Coordinator informed him that the agency had not refused to deal with his access application but, rather, the agency’s letter dated 20 February 2007 was a genuine attempt to reduce the resource impact upon the agency through a negotiation process; that the agency did not share the complainant’s view that his application was a ‘very small and specific’ but, rather, was an application of high complexity because of the effort required to locate the requested documents, including age, number and location of such documents; the amount of consultation required with the complainant and the agency’s staff; the extent of editing that may be required; the extent of potential legal issues; and the likelihood of involvement of a number of third parties.
7. The agency’s FOI Coordinator also advised the complainant that she had an obligation to reduce the complexity and scope of access applications, which in turn will reduce the impact on the agency and, in response to the complainant’s statement that the agency had refused to provide him with a copy of the printout from the agency’s electronic document management system in accordance with ‘Council Policy on FOI processing’, the FOI Coordinator advised the complainant that the agency did not have a policy on FOI and that the agency does not provide for such printouts to be provided to applicants.
8. The FOI Coordinator also provided answers to the complainant’s nine questions and, to further assist him to identify the documents most likely to satisfy his requirements, the FOI Coordinator provided the complainant with a table in which she had endeavoured to place the requested documents into separate categories and she requested the complainant to provide his response to the agency by 16 March 2007.

9. The Chief Executive Officer ('the CEO') of the agency wrote a separate letter to the complainant, on 15 March 2007, in the following terms:

"I refer to your recent correspondence in relation to your freedom of application of 12 February 2007.

Your FOI application alleges the City has 'a documented record of blatantly ignoring the requirements of the WA FOI Act. These recorded breaches include the deliberate and systematic overcharging of FOI applicants, the deliberate concealment of records held and the refusal to process FOI applications in the statutory time allowed, in order to conceal the ongoing maladministration of delegated State duties by the COJ'.

In order for the City to conduct a proper investigation of allegations of breaches of the law, it is necessary for the complainant to provide supporting evidence. In this case, you would have needed to provide:

- the names of applicants who had been allegedly overcharged;*
- examples of where the City had concealed records, including details of the records, the officers involved, dates etc.*
- examples of where the City had decided to refuse to deal with a FOI application.*

Your letter makes a very general accusation that the City has 'blatantly' breached the FOI Act without providing the requisite evidence as identified above. With respect to the allegation contained in your letter of 2 March 2007 that the City is attempting to 'conceal the ongoing planning and building corruption currently taking place', again you have not provided any evidence to support this allegation.

In previous correspondence, you have also made a number of allegations that the City has breached the State Records Act 2000. I refer to your email of 21 August 2006 sent to all elected members which states:

Bearing in mind the now disproved claims made by the City recently it would additionally appear that the City also keeps false records of emails and documents it has in fact never sent....

The City's contempt for the State Record Act is now obvious, making it impossible for this Council to make any claim at all to be providing good corporate Governance to ratepayers unless it is now seen publicly to take strong action over these blatantly corrupt record keeping practices of the City.

...

...the City to continue to breach its Record Keeping plan, the stated requirements of the State Records Act, the FOI Act, and even its own written resolutions in order to continue to conceal improper and corrupt planning processes.

On 10 September 2006, in an email to all elected members alleging unconscionable conduct on the part of the City, you state:

Consequently while it was the responsibility of the current elected Council to act quickly and responsibly in this matter and take up the matters raised in this complaint to ensure that the endemic corruption taking place in the City of Joondalup was constrained, and to compel it to immediately desist from

the standover tactics it is now employing against this group of concerned residents, clearly it has chosen not to do so.

On 10 December 2006, you wrote to elected members:

This Council has by its documented behaviours over this redevelopment in the last year knowingly covered up the wholesale corruption of any proper application of its planning and health and safety policies...

I am concerned and disappointed when members of the public make accusations of corruption within the City in the absence of substantiating evidence. Allegations of this nature, while not substantiated, still have the potential to damage not only the reputation of individual officers, but the City as a whole.

While the City encourages the community to question City's structures, policies and practices, as Chief Executive Officer, I have a duty to ensure that that line of communication occurs in an open, honest and constructive way.

Your correspondence in recent times contains repeated and broad statements of corruption, which have largely been bare allegations without corroborating evidence. The nature of this correspondence is counter-productive, unacceptable and will no longer be tolerated. Accordingly, I formally request that you refrain from making spurious allegations about the City in the future. If you have specific evidence to support allegations of misconduct or corruption, the Corruption and Crime Commission (CCC) is the body that has jurisdiction to investigate these matters.

Should you continue to make such allegations in contravention of this warning, I will have no hesitation in using the full force of the law to address this conduct."

10. On 16 March 2007, the complainant sent an email to the agency's FOI Coordinator as follows:

"...since you have reiterated your decision to refuse to continue processing my FOI access application because you state that the 64 odd documents for which access is sought places an excessive workload on the City despite it only receiving on average less than 3 FOI applications per month, please note the attached reduced ambit of my FOI application.

In addition and further to your written decision, dated 8 March, in which you state is based on the written advice of the Acting Information Commissioner, to refuse to continue processing my FOI access application because you state that granting access to only some 64 odd documents is excessive I have reduced it to the number you state is now specified by the Acting Information Commissioner i.e. 50 - a reduction of approximately 25%.

Please therefore resume processing my reduced FOI application until you supply me with an amended proper estimate of costs, which of course necessitates that you finally identify the 50 odd documents to which access is now sought.

Finally please supply me with the relevant clause of the FOI Act which empowers the Acting Information Commissioner to physically set such a specific figure for the number of documents for which FOI processing will be allowed to continue, since your written claim of only 50 seems amazingly low. Indeed, it appears to me, that if your written claim in this respect is true then the Acting Information Commissioner

has not only exceeded her legislative authority but deliberately set out to undermine the stated intent and operation of the FOI Act in order to cover up the widespread documented corruption now taking place in all areas of the West Australian Government.

Therefore I consider it essential that you supply me with this specific information as requested, in writing, within the next 5 days, so I may properly exercise my FOI appeal rights in an informed manner.”

11. By letter dated 26 March 2007, the agency’s FOI Coordinator wrote to the complainant. The FOI Coordinator again informed the complainant that the agency had not refused to proceed with processing his application but was attempting to assist him in reducing the scope of his application. The FOI Coordinator also advised the complainant that the agency’s advice that his application would divert a substantial and unreasonable proportion of its resources away from its other operations was based upon the workload of the FOI Coordinators and staff absences; that the FOI Coordinators had responsibilities other than that of processing applications, which are required to be completed on a daily basis; that one of the FOI Coordinators has been acting in other positions away from the Records Services Section, but still continues to process some applications.
12. The agency’s FOI Coordinator informed the complainant that the agency’s letter dated 8 March 2007 did not state its decision was based upon written advice of the then A/Information Commissioner; that advice of that kind had been previously received when dealing with other applications, as well as attending training courses developed by the Office of the Information Commissioner when dealing with large access applications; and that the agency had not received written advice from the Office of the Information Commissioner to date in relation to his application.
13. The FOI Coordinator also gave the complainant examples of how the agency would calculate charges for 50 documents of varying size. She said:

“Although you have reduced the scope of your application from 64 ‘issues’ to 50 ‘issues’, I again request it be reduced further, as most of the issues will result in multiple documents being discovered. For example, issue 2 of your reduced application requests (1) set of all briefing notes and (2) presented documents, while issue 3 requests (1) Reserve fund voucher 88 (2) Reserve fund voucher 83 (3) Reserve fund voucher 86 (4) Reserve fund voucher 87 (5) Reserve fund voucher 89 (6) Reserve fund voucher 90 (7) Reserve fund voucher 91 and (8) Reserve fund voucher 92.”
14. The FOI Coordinator asked the complainant to look again at the categories of document she had identified and to consider reducing the scope of his application still further. On 9 April 2007, the complainant sent a brief email to the agency’s FOI Coordinator, advising her that “...FOI request Feb 12 has been referred as a formal complaint”.

15. By email letter dated 5 April 2007, the complainant submitted an application for external review to the former A/Information Commissioner ('the former A/Commissioner'), in the following terms:

"A/Information Commissioner

Enclosed please find a formal complaint lodged under Section 65 of the FOI Act against the City of Joondalup, regarding its refusal to process my FOI application in the time allowed under the Act, and in the manner referred to in Section 10 of the Act. A copy of both the original FOI application, and a second revised FOI application, reducing the ambit of the original FOI application by over 20% are enclosed.

Complaint is also made against the same Agency under Section 65 in respect of the Agency actions in;

- 1. Excessive charging for multiple copies of the same document,*
- 2. The Agencies refusal to make a formal decision as required by the FOI Act in the time allowed,*
- 3. The deliberate exaggeration of the number of documents allegedly covered by the ambit of my application, an illegal procedural requirement specifically designed to reduce the ambit of my application in order to conceal documents of significant public interest scrutiny from any public scrutiny.*
- 4. The Agencies refusal to physically identify the true number of the documents covered by my very specific FOI application.*
- 5. Excessive charging for documents over 25 years old which constitute State records and which should already be publicly available without restriction.*
- 6. Excessive charging for a deposit which bears absolutely no relation to the true number of documents sought. Since the true number of documents covered by my FOI application has never been determined by the Agency, as they are not listed in the deposit calculations provided, the deposit I am being forced to pay can only be deemed to be a deliberate attempt to obtain money from myself under false pretences through a deliberate overcharging of the amounts specified under the FOI Act..*

Unfortunately the origin of all the above procedural irregularities according to the Agency itself is your own Office – the Office of the Information Commissioner. Furthermore the same procedural irregularities identified above have also been accepted by you upon appeal as currently acceptable administrative techniques in the so called processing of an individuals FOI application, even though they blatantly fetter the intended operation of the WA FOI Act, and are clearly designed to prevent the release of Government records which may be of significant public interest.

Notwithstanding these matters of fact the current legal requirement in this matter is to place this matter before you as a list of serious and detailed complaints in writing. However since you have previously displayed no desire to deal with such factual complaints in a timely manner, I see no reason why the time needed for you to make a full determination in respect of all the above clearly listed complaints

should be allowed to exceed the time allowed by law to process an FOI application completely i.e. 45 days – a period you will note which has already been exceeded by the Agency without any indication of when it will ever make any formal decision about anything.

I have made this determination because if you now decide not to act in a timely manner in regard to the above listed examples of administrative corruption, your actions can only be described as both rewarding the Agencies current deliberate attempts to circumvent the requirements of the FOI Act in order to conceal ongoing serious planning and development corruption in the ways identified above, and to deliberately legitimise their intended future use

I look forward to receiving your response.”

16. Following receipt of that email application, by letter dated 10 April 2007, the Senior Legal Officer wrote to the complainant, advising him that his application did not comply with the requirements of section 66(1) of the FOI Act, because he had not provided the former A/Commissioner with a copy of the notice of decision provided to him by the agency, which he sought to have reviewed by the A/Commissioner. The Senior Legal Officer advised the complainant that until he provided the former A/Commissioner with a copy or copies of the agency’s notice or notices of decision which he sought to have reviewed, he had not lodged a valid complaint and the A/Commissioner could not proceed to deal with his application. The complainant was invited to provide the former A/Commissioner with copies of the relevant notice or notices of decision.
17. By email dated 12 April 2007, the complainant responded to the Senior Legal Officer in the following manner:

“I assume from your letter that you are the assigned OIC legal Officer dealing with my complaint as lodged and accepted last week. I also note your request for copies of the correspondence in question and enclose them for your attention since you state you will not process my complaints until they are provided.

I also note your written insistence that this correspondence should include what I shall term ‘essential terminology’ and that it should include the term Notice of Decision or contain this specific terminology - Notice(s) of Decision somewhere within it. However in my complaint as already lodged with the OIC, you will see that I am not appealing against such a specifically labeled Notice of Decision, since I have to date never received one, as you are well aware, and have also to date been denied all the details that should normally accompany the issue of such specific notices as prescribed under the FOI Act.

Instead I have lodged complaints with your office under Section 65 of the Act, with particular reference to the clear refusal of the agency under the apparent guidance of the Office of the Information Commissioner, (OIC) namely

(a) to give access to all the documents clearly specified without making any specific claims for their exemption or issuing any proper legal notices of decision for their refusal;

(c) to deal with a very specific access application in a reasonable manner;

- (d) to give any access to an unspecified number of documents; and
- (e) to defer the giving of any access to the documents clearly specified in a timely manner; and
- (g) to impose excessive State charges based on fraudulent figures obviously intended to obtain money from me under false pretences and to frustrate the intended operation of the FOI Act, and to similarly also require the payment of an excessive deposit for an as yet unidentified number of documents.

I can find nothing in the FOI Act that prevents any FOI applicant making, when necessary, complaint against any Agency to the FOI Commissioner in the first instance for such deliberate and systematic abuse of the FOI process, and note that the refusal of an Agency to make proper decisions within the prescribed period relating to all the above is, once again, clearly covered by the FOI Act itself under section 65.

Indeed it is clearly legally impossible for even the OIC to interpret or apply any subordinate FOI Regulation in such a manner as to constrain the normally accepted meaning of the FOI Act as it is currently written, or to prevent it from being applied in the manner in which it was intended with regard to the right to make such valid complaints under Section 65.

It would appear from your initial response however, that once again the OIC is retrospectively inserting meaning into the so called enabling Regulations in such a manner as to frustrate the written meaning of the FOI Act itself. Your latest response indicates that the OIC remains keen to refuse to deal with legally valid complaints regarding the refusal of Government agencies to ensure the proper operation of the FOI Act, by making the OIC's acceptance of such legally valid complaints apparently conditional on an agency's use of what the OIC have self defined as 'essential terminology' i.e. the phrase 'Notice of Decision' in any agency's refusal to process an FOI application.

In this complaint as you are already aware the Agency have clearly expressed in writing a clear decision not to proceed with processing my FOI application, and have also imposed excessive fees and charges based on a deliberate exaggeration of the number of documents involved and have done all this without any use at all of that specific terminology.

It is a reasonable and obvious expectation that such concerted and deliberate FOI procedural abuse by any Government agency is clearly intended to be prevented from repetitively occurring by your Office, and in this respect the claims made by this agency in respect of the OIC currently being both the origin and the architect of such premeditated procedural abuses in regard to the proper application of the FOI Act in WA, should already be a serious cause of concern to you.

Accordingly I look forward to hearing from you as soon as possible with specific advice as to where precisely in the FOI Act itself, there is any contingent requirement placed on all the types of complaints as detailed under Section 65 of the Act, whereby they only become legally valid when the Agency employs such specified terminology when refusing to properly proceed in processing an applicants FOI access application.

The alternative of course would be that all Government agencies are currently being deliberately allowed by the OIC to ignore which ever FOI applications they choose, and to act in a manner whereby these applications are then not properly processed, and are subsequently procedurally refused and forcibly altered in a hidden manner, as long as these Agency's do not employ the OIC's self adopted 'essential' terminology.

Up to the point that the OIC can provide the detail of this information within the FOI Act itself to me it would appear plain that the OIC itself may be currently acting to curtail the proper operation of the FOI Act itself by adopting a procedural requirement which was never intended to exist in law, in order to conceal and ignore legally valid complaints like mine with the end result being that all Government Agency's are now left free to thwart the intended operation of the FOI Act, and to avoid any public disclosure of the records sought whenever they so desire. If this is indeed the case then this Agency's written proposition that the OIC is itself the architect of strategies designed to enable them to avoid the disclosure of documents under the FOI Act would appear to gather considerable strength."

18. On 10 April 2007, the agency posted its notice of decision to the complainant. That decision said that the agency refused to deal with the complainant's application under s.20 of the FOI Act, on the ground that the work involved in dealing with it would divert a substantial and unreasonable portion of the agency's resources away from its other operations.
19. By letter dated 16 April 2007, the Senior Legal Officer wrote to the complainant, advising him that as he had not then applied to the agency for internal review of the agency's initial decision on access, his application to the former A/Commissioner was, in effect, an application to the former A/Commissioner under section 66(6) of the FOI Act. Section 66(6) of the FOI Act provides that an applicant may apply to the Information Commissioner for approval to allow a complaint to be made even though internal review has not been applied for or has not been completed if the applicant shows cause why internal review should not be applied for or should not be completed. The Senior Legal Officer advised the complainant that, if he wished to proceed with his section 66(6) application, he was invited to make written submissions as would show cause why his application under section 66(6) should be accepted. The Senior Legal Officer copied his letter to the agency.
20. By email dated 23 April 2007, the complainant wrote to the Senior Legal Officer alleging that the Senior Legal Officer had misrepresented the basis of his complaints against the agency. The complainant set out nine pages of "...serious procedural complaints" he made against the agency and this office. In summary, the complainant asserted that the agency had allegedly refused:
 - (a) to give access to the clearly specified documents without making any specific claims for exemption or issuing proper, legal notices of decision;
 - (b) to deal with a very specific access application in a reasonable manner;
 - (c) to give any access to an unspecified number of documents;

- (d) to defer access to the clearly specified documents in a timely manner; and
 - (e) to provide the complainant with any assistance to redefine his initial application for 64 documents.
- The agency had allegedly imposed excessive charges “...based on fraudulent figures obviously intended to obtain money from me under false pretences and to frustrate the intended operation of the FOI Act, and to similarly also require the payment of an excessive deposit for an as yet unidentified number of documents.”
 - The agency had allegedly attempted to obtain money from him on false grounds by including documents not covered by his application and illegally demanding that this sum be paid.
 - The agency had allegedly committed administrative fraud by its reference “...to very specifically requested documents as ‘issues’ in order to fraudulently inflate the number of documents ... in order not to process [the complainant’s access application].”
 - The agency had allegedly deliberately rewritten his access application “...so that it may deliberately conceal gross and possibly criminal maladministration of State and Federal laws.”
 - The agency had allegedly made a deliberate misrepresentation “about the legal requirement to reduce the ambit of [the complainant’s] FOI application to only 50 documents...”.
 - The CEO of the agency had allegedly made illegal threats against him.
 - The Information Commissioner’s office had allegedly refused to recognise “...the additional illegal activities of the Agency in illegally forcing the reduction of the ambit of [the complainant’s] FOI application under [this office’s] illegal instructions...”; and refused to answer certain questions put to this office by the complainant.
 - The Information Commissioner’s office allegedly had a “...predilection for deliberately misrepresenting dates and times in respect of OIC correspondence in order to undermine and ignore [the complainant’s] serious lawful complaints”; covered up illegal activities in this matter; and acted in concert with the agency to provide a fraudulent notice of decision.
 - The Senior Legal Officer had allegedly misrepresented the basis of his complaints and had drafted a misleading response to him.
21. Given the nature of the complainant’s allegations, including those he made against the agency, the Senior Legal Officer forwarded a copy of the complainant’s response to the agency for its consideration and response. By

letter dated 26 April 2007, the agency responded to the Senior Legal Officer, refuting each of the allegations the complainant had made against the agency.

22. Following that, by letter dated 4 May 2007, the Senior Legal Officer wrote to the complainant and advised him that the accusations and allegations made against this office and him, personally, were unsupported by any probative material or objective evidence and were, therefore, rejected. The Senior Legal Officer urged the complainant to provide any evidence that he might have to support his allegations of improper, corrupt, illegal or other misconduct on the part of the Senior Legal Officer or on the part of any other officer of the Office of the Information Commissioner to the Crime and Corruption Commission or to the Police Force of Western Australia.
23. The Senior Legal Officer gave the complainant a detailed explanation of the steps taken by the agency to deal with his access application, including the steps taken by the agency to assist him to reduce the scope of that application. The Senior Legal Officer also explained to the complainant how charges were levied under the FOI Act. With regard to the question of charges, the Senior Legal Officer advised the complainant that:

“I note that you have not put any evidence before me to establish that the agency has actually required you to pay any charges or to pay an advanced deposit on account of charges. Having examined the letters sent to you by the agency, it is clear to me that the agency’s FOI Coordinator did not require you to pay either charges or an advanced deposit but, rather, she asked you to agree that charges would be imposed and a deposit required, before the commencement of the process. Given the language of the FOI Coordinator’s letters to you, I consider your allegations that the agency has decided to impose ‘...excessive charges for multiple copies of the same document ...excessive charges for documents over 25 years old ...excessive State charges based upon fraudulent figures’ are also without substance.”

24. At the conclusion of his letter, the Senior Legal Officer, advised the complainant that, pursuant to his delegated power under section 66(6) of the FOI Act, he had decided to refuse the complainant’s application under section 66(6) of the FOI Act on the ground that he had shown no cause or reason why his complaint should be accepted without internal review first having been applied for and completed by the agency. The Senior Legal officer also advised the complainant that, on the basis of the information which the complainant had then provided to him, the Senior Legal Officer considered that all of the complainant’s allegations against the agency were without substance.
25. On 7 May 2007, the complainant asked the agency to give him an extension of 14 days within which to lodge an application for an internal review of its initial decision on access. By e-mail response the same day, the agency granted the complainant an extension of time until 21 May 2007. On 16 May 2007, the complainant telephoned the agency and again asked for an additional extension of time, until 28 May 2007, within which to lodge an application for an internal review. The agency also granted him the requested additional extension of time.

26. On 27 May 2007, the complainant e-mailed the agency seeking “...a complete review of the CoJ’s illegal refusal to provide me with any of the documents specified in my FOI application made Feb. 12 2007”. At the same time, the complainant made further allegations of fraud, corruption and illegality on the part of the agency. Amongst other things, the complainant again alleged that the agency was demanding an illegal advance payment and he also made allegations of collusion between the agency and the Office of the Information Commissioner’s in “...both the process of demanding money under false pretences from FOI applicants and the wholesale corruption of the current administration of the FOI Act, in order to assist them in concealing the corrupt planning and building practices routinely taking place in the City of Joondalup and, in all probability, elsewhere in the State.” The complainant gave the agency four pages of particulars of the reasons why he sought internal review of the agency’s initial decision to refuse to deal with his access application.
27. On 14 June 2007, the agency provided the complainant with its notice of decision on internal review. The agency’s internal review decision-maker confirmed the initial decision to refuse to deal with the complainant’s access application. The agency’s internal review decision-maker advised the complainant as follows:

“You have sought an internal review of the Notice of Decision dated 10 April 2007, which was to refuse to deal with your application as per section 20 of the Freedom of Information Act 1992.

This Notice of Decision indicated the main reason for refusal was due to the size of the scope of the application, which requested documents from 1980 to the completion date of the notice of decision. The Notice also indicated that dealing with this application would divert substantial resources away from the City’s Records Services Section and the Office of the CEO.

The Notice also indicated that on three separate occasions assistance was provided to you to reduce the scope of your application. This included categorising the documents into subject matter, as well as into document type.

It is acknowledged that on March 2007 you did provide a reduced scope.

In your request for an internal review you raised allegations of illegal and corrupt processes and illegal threats of the City, of which I will not respond to. The City’s Principal Legal and Compliance Officer will review these allegations.

I do not agree that the City altered the scope of your application when the word ‘issues’ was used. The documents listed in your application were categorised to assist you with the document discovery process and to assist you in reducing the scope of your application.

The process used to determine an estimate of costs was made in good faith and calculated using 50 documents as the minimum number. The costs for photocopying and decision-making were based upon those listed in the City’s Schedule of Fees and Charges.

Whilst the Notice of Decision was dated more than 45 days from the date you lodged your application, the City’s letter dated 20 February 2007 did state that:

“Normally the process time commences upon the receipt of the payment of the application fee, but due to both parties needing to reach an agreement on the above issues, the time period will not commence until such agreement is reached”.

This was again reiterated in the City’s letters dated 8 and 26 March 2007. It is accepted that the City should have provided a written determination within the permitted period as defined in the Freedom of Information Act 1992, but a great detail of effort was being made to assist you in reducing the scope of your application, rather than refusing the deal with your application in the first instance.

In relation to documents you defined as State Records, the access to these were not refused, but as a reduced scope could not be agreed to, access was not forthcoming. Past actions show that the City has openly provided access to documents that are more than 25 years old, having had several requests for documents from other parties.

Based on my assessment of your application and comments mentioned in this letter as part of the internal review process, I confirm the Notice of Decision dated 10 April 2007 to refuse to deal with your application.

You have the right to appeal this decision by lodging an external appeal in writing to the Office of the Information Commissioner within 60 calendar days of this Notice of Decision (please see attached brochure for more information).

28. On 13 August 2007, the complainant applied to the former A/Commissioner, under section 65(1) of the FOI Act, for an external review of the agency’s decision, by email. That email included a series of complaints and allegations against the agency, against this office and against the former A/Commissioner, as follows:

“Application for formal complaint (external Review) Access Application City of Joondalup dated February 12 2007.

Please acknowledge receipt by return email Attached are copies of all correspondence related to this matter, and the City of Joondalup in regard to its refusal to process my FOI application in the time allowed under the Act, and in the manner referred to in Section 10 of the Act.

A copy of both the original FOI application, and a second revised FOI application, reducing the ambit of the original FOI application by over 20% are enclosed.

Complaint is also made against the same Agency under Section 65 in respect of the Agency actions in;

- 1. Excessive charging for multiple copies of the same document,*
- 2. The Agencies refusal to make a formal decision as required by the FOI Act in the time allowed,*
- 3. The deliberate exaggeration of the number of documents allegedly covered by the ambit of my application, an illegal procedural requirement specifically designed to reduce the ambit of my application in order to conceal documents of significant public interest scrutiny from any public scrutiny.*

4. *The Agencies refusal to physically identify the true number of the documents covered by my very specific FOI application.*
5. *Excessive charging for documents over 25 years old which constitute State records and which should already be publicly available without restriction.*
6. *Excessive charging for a deposit which bears absolutely no relation to the true number of documents sought. Since the true number of documents covered by my FOI application has never been determined by the Agency, as they are not listed in the deposit calculations provided, the deposit I am being forced to pay can only be deemed to be a deliberate attempt to obtain money from myself under false pretences through a deliberate overcharging of the amounts specified under the FOI Act..*

Unfortunately the origin of all the above procedural irregularities according to the Agency itself is your own Office - the Office of the Information Commissioner. Furthermore the same procedural irregularities identified above have also been accepted by you upon appeal as currently acceptable administrative techniques in the so called processing of an individuals FOI application, even though they blatantly fetter the intended operation of the WA FOI Act, and are clearly designed to prevent the release of Government records which may be of significant public interest for the reasons made clear below.

Accordingly as legally required by the WA FOI Act, I wish to seek a complete review of the COJ's illegal refusal to provide me with any of the documents specified in my FOI application made earlier this year.

It should be noted at the outset that my legal rights in respect of seeking this review have been grossly affected by the outright refusal of the Office of the Information Commissioner to provide me with any information contained in the FOI Act that defines or limits the specific number of the documents that I am legally entitled to receive under a single FOI application to under 50 documents. This outright refusal to provide me with this reference in the FOI Act that the City is applying under their direction is completely illegal, and serves to inform this process of just how corrupt the COJ's administration of the requirements of the FOI Act has become under the direction of the current Acting Commissioner.

Since ignorance of the requirements of the FOI Act is no excuse under the Law no one in the COJ involved in refusing to properly provide me with the required access to the documents I am seeking is excused their individual responsibility in this matter by reason of the illegal advice and guidance of the current Office of the Information Commissioner.

It should also be noted that the CEO of the COJ has already chosen to make illegal threats in writing in respect of this FOI application, and made false statements in regard to its administration.

The reason for these actions is to prevent the specific documents sought being made public so as to conceal the ongoing planning and building corruption routinely place in the City of Joondalup.

In order to wholly conceal the specific documents sought under the WA FOI Act the COJ has deliberately altered my written FOI application in order to expand the number of documents that it claims that I am seeking access to. This is completely illegal.

Having made this corrupt determination the COJ has then demanded an advance payment based entirely on a wholly fraudulent estimate of the costs involved. These charges are determined and controlled under the FOI Act, and since the financial demands are made on a deliberately fraudulent estimate of the number of documents that are sought, the written charges levied represent a criminal conspiracy to obtain money from me under false pretences.

The Office of the Information Commissioner is well aware of all these actions by the COJ and can now be clearly seen to be colluding with this Government Agency in both the process of demanding money under false pretences from FOI applicants and the wholesale corruption of the current administration of the FOI Act, in order to assist them in concealing the corrupt planning and building practices routinely taking place in the City of Joondalup, and in all probability elsewhere in the State.

The basis of this legal FOI review request is found in the COJ's own documentation, and in the FOI Act which it declines to properly administer because of its own self interest in the concealment of the contents of the documents to which access is sought. Namely under section 65 of the FOI Act - with particular reference to the clear refusal of the agency under the apparent guidance of the Office of the Information Commission, namely

- (a) to give access to all the documents clearly specified without making any specific claims for their exemption or issuing any proper legal notices of decision for this refusal;*
- (c) to deal with a very specific access application in a reasonable manner;*
- (d) to give any access to an unspecified number of documents; and*
- (e) to defer the giving of any access to the documents clearly specified in a timely manner; and*
- (g) to impose excessive State charges based on fraudulent figures obviously intended to obtain money from me under false pretences and to frustrate the intended operation of the FOI Act, and to similarly also require the payment of an excessive deposit for an as yet unidentified number of documents'.*

It should be noted that Section 3 of the FOI Act - Objects and intent - dictates The objects of this Act are to — enable the public to participate more effectively in governing the State; and make the persons and bodies that are responsible for State and local government more accountable to the public. The objects of this Act are to be achieved by — creating a general right of access to State and local government documents; providing means to ensure that personal information held by State and local governments is accurate, complete, up to date and not misleading; and requiring that certain documents concerning State and local government operations be made available to the public.

And Section 4 of the FOI Act requires that

- 4. Principles of administration Agencies are to give effect to this Act in a way that — assists the public to obtain access to documents; allows access to documents to be obtained promptly and at the lowest reasonable cost;*

and in particular Section 10 of the FOI Act provides a legal right.

Right of access to documents

A person has a right to be given access to the documents of an agency (other than an exempt agency) subject to and in accordance with this Act.

Subject to this Act, a person's right to be given access is not affected by — any reasons the person gives for wishing to obtain access; or the agency's belief as to what are the person's reasons for wishing to obtain access.

Since Sections 3, 4, and 10 of the WA FOI Act have been ignored by this Agency in pursuit of the protection of their own self interests, the onus resides with the agency to now provide me with material evidence of their documented claims to refuse me access – which they still have not done to date and cannot do.

In the notice of decision that this Agency finally issued to me out of time and only after proper complaint was made to the OIC, the Agency admits that it has illegally altered my very specific FOI application. The agency refers to all my very specifically requested documents in an altered manner as 'issues' in order to fraudulently inflate the number of documents that the Agency can claim falls under the ambit of my application, solely in order not to process my FOI application. Having committed that administrative Fraud the Agency has then attempted to obtain money from me under false pretences for documents that are not covered by my application and further illegally demanded that I pay this sum regardless of whether these documents it has deliberately falsely identified fall under the ambit of my application.

These claims are, as you are already well aware, statements of fact as made crystal clear by the definitions of the terms 'document', 'report', and 'requested documents' reproduced below in the glossary of the FOI Act. There is no mention of the word 'issue' or the right to subsequently alter the terms or the wording of the 'requested documents' anywhere in the FOI Act, in order to prevent any Agency from evading full disclosure under the FOI Act by such fraudulent redefinition.

“document” means —

any record;

any part of a record;

any copy, reproduction or duplicate of a record; or any part of a copy, reproduction or duplicate of a record; “edited copy”, in relation to a document, means a copy from which exempt matter has been deleted under section 24;

“record” means any record of information however recorded and includes the following — any paper or other material, including affixed papers on which there is writing; any map, plan, diagram or graph; any drawing, pictorial or graphic work, or photograph; any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; any article or material from which sounds, images or writing can be reproduced whether or not with the aid of some other article or device; any article on which information has been stored or recorded, either mechanically, magnetically or electronically;

“requested documents” means the document or documents requested in an access application;’

For example my revised FOI application reads for the first 10 specifically identified requested documents

A full electronic report from the City’s electronic recordkeeping system detailing all documents entered from April 2005 to the date of receipt of this FOI access application in respect of the development at Lot 100 (10) Oceanside Promenade Mullaloo, with all personal third party details – peoples names – only - removed.

NOTE - ONLY the electronic report is required NOT the documents listed in the report This specific report or requested document according to my dictionary and the FOI Act cannot be referred to nonspecifically or redefined vaguely as an ‘issue’. It is completely specific and defined.

Complete Legible set of all the briefing notes and presented documents supplied to elected members at the Special Meeting of Council 23 06 2006. Copies of all published public answers, Reports, Press Releases or other documents already in the public domain in relation to this meeting are excluded from this part of this FOI application.

These specifically requested documents according to my dictionary and the FOI Act cannot be referred to nonspecifically or redefined vaguely as an ‘issue’ since they even date limited. They are completely specific and defined.

Legible Copy of Reserve Fund (voucher 88) dated September 1981 as presented to Council at the Special Meeting of Council 23 06 2006, and referred to subsequently in published answers. Also included under this part of the request are for the supply of Legible Copies of Reserve Account vouchers 85, 86, 87, 89, 90, 91, and 92. Copies of all published public answers, Reports, Press Releases or other documents already in the public domain in relation to this meeting are excluded from this part of this FOI application.

These specifically requested documents or vouchers according to my dictionary and the FOI Act cannot be referred to nonspecifically or redefined vaguely as an ‘issue’. They are completely specific and defined. A total of 8 slips only. Copies of all documents and briefing documents presented to current elected members individually (Mayor included) - not as Council – in regard to the Mullaloo tavern and prior to the decision being made by the SAT on Sept 22 2006 – Copies of all published public answers, Reports, Press Releases or other documents already in the public domain are excluded from this part of this FOI application.

These specifically requested documents according to my dictionary and the FOI Act cannot be referred to nonspecifically or redefined vaguely as an ‘issue’. They are completely specific, defined and date limited.

Unedited copy of the Minutes to-date of the suspended Special Meeting of Council 23 06 2006.

These specifically requested documents or minutes according to my dictionary and the FOI Act, cannot be referred to nonspecifically or redefined vaguely as an ‘issue’. These minutes are completely specific, defined, and even date limited.

Complete copy of the independent Acoustic report that confirms the Planning Officers statements made regarding “the reducing any noise that may emanate from the bottleshop or the exit driveway of the existing development.” Refer item CJ165 - 09/06 PROPOSED ROOF OVER including full copies of all the invoices presented and paid by the City to these consultants for the production of these further reports. This specific report or requested document according to my dictionary and the FOI Act cannot be referred to nonspecifically or redefined vaguely as an ‘issue’. It is completely specific and defined.

All site inspections reports during the construction and post construction phase up to and including the point that all current certificates for approval to occupy were issued for the development – in part or in whole for any section - that confirms compliance or otherwise – with all the required Development Planning conditions imposed and required. Copies of all published public answers, Reports, Press Releases or other documents already in the public domain are excluded from this part of this FOI application.

These specifically requested documents according to my dictionary and the FOI Act cannot be referred to nonspecifically or redefined vaguely as an ‘issue’. They are completely specific and defined.

All site inspections reports during the construction and post construction phase up to and including the point that a certificate of occupancy was issued for the development – in part or in whole - that confirms compliance - or otherwise – with all the Building License and BCA Building Code Australia requirements. Copies of the relevant and specified sections of the BCA referred to in these reports are to be included as part of this request. Copies of all published public answers, Reports, Press Releases or other documents already in the public domain are excluded from this part of this FOI application.

These specifically requested documents according to my dictionary and the FOI Act cannot be referred to nonspecifically or redefined vaguely as an ‘issue’. They are completely specific and defined.

All site inspections reports during the construction and post construction phase up to and including the point that certificate of occupancy were issued for that section of the development that confirms compliance - or otherwise – with all the required Health Act provisions. Copies of all published public answers, Reports, Press Releases or other documents already in the public domain are excluded from this part of this FOI application.

These specifically requested documents according to my dictionary and the FOI Act cannot be referred to nonspecifically or redefined vaguely as an ‘issue’. They are completely specific and defined.

A copy of all Certificate of classification issued in accordance with Regulation 20 to-date for each stage occupancy of the development including each Certificate revoked and reissued in accordance with Regulation 20.

Copies of all published public answers, Reports, Press Releases or other documents already in the public domain are excluded from this part of this FOI application. These specifically requested documents or certificates according to my dictionary and the FOI Act cannot be referred to nonspecifically or redefined vaguely as an ‘issue’. They are completely specific and defined.

These are just the first 10 documents sought under the FOI Act as you are well aware – the rest of the requested documents or certificates according to my dictionary and the FOI Act also cannot be referred to nonspecifically or redefined vaguely as an ‘issue’ or just as ‘issues’. They are all completely specific and defined.

The Agency has clearly deliberately rewritten my FOI application in order to justify the fraudulent inflation of the number of documents it claims falls under my very specific document requests in order to avoid making any disclosure under the FOI Act, so that it may deliberately conceal gross and possibly criminal maladministration of State and Federal Laws. It has in fact claimed that every document identified on its system – some 4,500 in relation to this address - falls under the ambit of my requests by rewriting and redefining my very specific and even dated document requests, as defined in writing under the FOI Act.

I therefore seek review of this agencies deliberately corrupt redefinition of all the specific documents to which I sought access to, under the blanket term issues, and would query why this was acceptable to the Office of the Information Commissioner.

Having performed this illegality it has then demanded an advance payment based on this complete corruption of the FOI process. This can only be referred as a criminal conspiracy to obtain money from me under false pretences. I therefore seek review of this agencies deliberately fraudulent cost estimates.

It should also be noted that this Agency has already lied to me about the legal requirement to reduce the ambit of my FOI application to only 50 documents and since this requirement is in fact illegal it forced me to reduce my initial FOI application by deception, and I now retract that agreement made through deception because it was made on fraudulent information.

I have repeatedly made complaint over this particular matter to the OIC and to date the OIC has refused to confirm this agencies claims in this matter or provide any reference to the FOI Act that bestows on that Agency the power to issue any guidance or instruction to this Agency that fetters the stated and intended as written operation of the FOI Act.

Since the OIC has by its illegal refusal to provide any evidence of this Agencies written claims to me, this Agency stands wholly alone at this point in having applied this illegal requirement to my application, which it has already admitted to repeatedly in writing in its correspondence to me.

I therefore also seek review of its earlier application.

I would also point out that this FOI application was lodged many months ago, before certain related legal processes were completed, and it was the intention of this Agency to keep all these documents secret until such time as these related legal processes were complete for their own purposes.

Finally it should also be noted that a number of the specified documents in my FOI application are in fact 25 years old and older and are in fact legislatively defined as State archival records, and are already supposed to have been placed in the public domain.

However this Government agency has very selectively declined to place certain critical financial records into the public domain for this specific address for many years, and has provided no reason for this selective failure to place them into the public arena.

State archival records cannot be routinely withheld from public scrutiny and neither are access charges are supposed to be applied for their supply, except in this case, and with the usual full acquiesce of course of the OIC.

It is clear from all the attached documents that the current OIC has deliberately put into place procedures which are completely inconsistent with the intended operation of the WA FOI Act as it is written, and completely fettered its intended legislated operation and in so doing the Acting FOI Commissioner has blatantly exceeded their legal authority and totally ignored the written will and directions of the Parliament of WA.

This legally required FOI appeal is therefore doomed to failure, not because any part of it is incorrect but because the as written intended operation of the WA FOI Act has been wholly subverted by the many procedural changes implemented by the current FOI Commissioner without any legal mandate whatsoever, apart from the political support of the current Attorney General, and that same current FOI Commissioner will of course solely adjudicate on this matter, in their own favour, without the true legal authority to do so.”

29. The complainant advised the former A/Commissioner office that he had retracted his agreement to reduce the requested ‘documents’ to 50 and he requested an external review of the agency’s decision to refuse to deal with his original application for 64 ‘documents’.

REVIEW BY THE A/INFORMATION COMMISSIONER

30. Following the receipt of this complaint, the agency was required to provide the former A/Commissioner with the FOI file maintained in respect of the complainant’s access application. After reviewing and examining the documents retained on the agency’s FOI file, the Legal Officer to whom this complaint was assigned sought further information from the agency in relation to the complainant’s complaint.
31. Once that additional information was received from the agency, the Legal Officer wrote to the complainant, on 20 August 2007, seeking a meeting with him. The Legal Officer advised the complainant that she wished to discuss with him ways the matter could be progressed, as she considered that such a meeting would be more productive in that the complainant and the Legal Officer could canvass proposals and responses in such a meeting and the Legal officer could also answer any queries that the complainant may have in relation to those proposals.
32. The Legal officer sought a meeting with the complainant as it is, and has been for some considerable time, the usual procedure for the Information Commissioner’s officers to arrange to meet with the parties to a complaint, especially the complainant, early in the external review process, so that efforts can be made to resolve a complaint by conciliation or negotiation between the

parties, as a result of the intervention of the Information Commissioner's office (see: section 71 of the FOI Act). The complainant did not reply to the Legal Officer and, accordingly, the Legal Officer wrote to him, again, on 31 August 2007, seeking to arrange the proposed meeting.

33. On 6 September 2007, the complainant sent an email letter to the Legal officer as follows:

"To date I have not yet received your registered letter therefore I do not know its contents. I would also point out in respect of your highly irregular first letter dated 20th August that the Office of the Information Commissioner has wholly refused to date to deal with a number of the serious administrative issues raised in my letter of appeal.

According to this letter a government agency rewriting the protected terms of a very specific FOI application is no longer a matter of concern for the Office of the Information Commissioner.

Also removed from any consideration by the Office of the Information Commissioner to date in this matter is the documented fact that the Office of the Information Commissioner has reduced the number of documents that may be supplied to any applicant under any FOI application to fewer than 50.

While this highly illegal approach was predicted in my letter of appeal the arrogance you display in flagrantly ignoring the documented and factual basis of that written appeal to date is breathtaking. Clearly your Office no longer has any interest in fulfilling the stated functions of the WA FOI Act as quoted in my appeal....

Indeed the decisions of the Office of the Information Commissioner as stated in writing to date in respect of this appeal are not in any way in accordance with Sections 3, 4 and 10, and in fact completely undermine their intended operation.

To then further require me alone to refer parts of my FOI appeal to another Agency (the CCC) which has no jurisdiction to consider the inappropriate FOI administrative processes that your Office has now adopted confirms the fact that not only are you training Government Agencies to Not supply information in accordance with the provisions of the WA FOI Act but are determined to continue to do so unlawfully for only one logical reason.

Quite why you then now express to me in writing the belief that I will meet with you 'off the record' to merely discuss what issues the Office of the Information Commissioner has carefully cherry picked to acknowledge from my lawful and valid letter of appeal I do not know or understand.

You personally do not have the delegated power to ignore all these highly relevant facts relating to this matter. Indeed neither does the Commissioner. The Office of the Information Commissioner is bound by its enabling law to perform delegated and defined functions prescribed under the WA FOI Act. Obviously the Office of the Information Commissioner is deliberately no longer performing its statutory duties in any acceptable manner let alone the legally required ones.

The fact is that every letter now issuing from the Office of the Information Commissioner ignoring these clearly identified procedural anomalies, purely introduced to deliberately frustrate the intended operation of the WA FOI Act, only confirms the extent of the illegal basis of the Offices current operations.

References to the real world outcomes of the procedural abuses that the Office of the Information Commissioner has introduced under the current Commissioner as somehow being the factual basis for my legitimate complaint are somewhat laughable. Whilst you allege that I merely made wild allegations like

collusion between this office and the agency in, among other things, the wholesale corruption of the current administration of the FOI Act in order to conceal the corrupt planning and building practices routinely taking place in the agency and probably elsewhere in the State.

I in fact wrote that:

“The Office of the Information Commissioner is well aware of all these actions by the COJ and can now be clearly seen to be colluding with this Government Agency in both the process of demanding money under false pretences from FOI applicants and the wholesale corruption of the current administration of the FOI Act, in order to assist them in concealing the corrupt planning and building practices routinely taking place in the City of Joondalup, and in all probability elsewhere in the State.

The basis of this legal FOI review request is found in the COJ’s own documentation, and in the FOI Act which it declines to properly administer because of its own self interest in the concealment of the contents of the documents to which access is sought.”

You will note my reference to FOI processing documentation which the Office of the Information Commissioner is already in possession of, but is discernibly no longer concerned with, as you have now made clear in writing. The similarities to the rewriting of my FOI application and the rewriting of my appeal by both Agencies are now also made clear, with the legally applicable terms of ‘documents’ and ‘records’ being illegally changed to the non specific and woolly words ‘issues’ and ‘items’. Which Dictionary is your Office now using, and for what purpose exactly, since such broadening terms now being imposed on my very specific FOI application, and subsequent appeals by the Office of the Information Commissioner clearly conflict with the stated requirements and the internal definitions contained in the WA FOI Act?

In addition, confirm to me the date that your Office supplied all this documentation and your request by the FOI Commissioner to the Corruption and Crime Commission to investigate into this very serious matter as required by the Public Sector Standards Act. Presumably this request from the Office of the Information Commissioner to the CCC will also detail why the FOI Commissioner deems all investigation of these procedural FOI policies introduced unlawfully to now wholly lie outside the remit of her Offices. You can rest assured however that if you fail to supply me with this written confirmation and the date that it was sent within the next 7 days then I will take the appropriate action over your confirmed written failure to act responsibly in regards to what you deem very serious concerns.

I also wrote in my appeal that;

‘Since sections 3, 4, and 10 of the WA FOI Act have been ignored by this Agency in pursuit of the protection of their own self interests, the onus resides with the agency to now provide me with material evidence of their documented claims to refuse me access – which they still have not done to date and cannot do.’

Your agency to date has behaved in exactly the same manner. The Office of the Information Commissioner has clearly deliberately chosen to ignore the factual basis of a very serious and legitimate administrative complaint, and in so doing has exposed itself.

To date the Office of the Information Commissioner has supplied no explanation for any of the decisions it has made to date in this matter, despite repeated written requests. These repeated refusals by the Office of the Information Commissioner to explain its written decisions to me as requested are also illegal under the WA FOI Act.

The Office of the Information Commissioner will deal with all the issues raised in my letter of complaint properly or face the consequences of its actions. Every day that passes without it doing so confirms its complete contempt for its legally required duties, since it has already knowingly allowed this Agency to conceal documents completely unlawfully and against the Public Interest without the provision of any valid legal reason for over 6 months already.

Finally since the Office of the Information Commissioner has had ample time to inspect the file and the fifty odd documents requested under the reduced ambit of my revised FOI application it will also now be well aware by this time that in fact many of the documents I have sought access to do not in fact exist at all, but are only claimed to exist for legal purposes by the Agency in pursuit of its previously alluded to unlawful objectives.

However since the Office of the Information Commissioner also declines to even acknowledge to date that my completely refused FOI application in fact had its ambit reduced to only some 50 documents then such relevant facts are unlikely to ever intrude upon its justification for their continued concealment from all public scrutiny even though some of them are State Records.

I of course have a number of documents which confirm this to be the case, and when the Office of the Information Commissioner clarifies to me in writing precisely why it supports this Agency’s blatantly unlawful actions in respect of concealing every one of these very specific documents, relating to very serious allegations of planning fraud, which your Office has now had ample opportunity to responsibly request and inspect, but apparently declined to do so, despite the seriousness of the matter, then I will only be to willing to share them.”

34. The complainant made no mention of a meeting and, by email letter dated 6 September 2007, the Legal Officer again asked the complainant for a meeting, by asking him to “...please confirm that you are prepared to meet with me to discuss how to progress this matter and provide me with a time and date that is convenient for you.” The Legal Officer advised the complainant that she would

be taking leave, for approximately two weeks, and that the Senior Legal Officer would be acting in her place, if necessary.

35. The complainant responded to the Legal Officer, by email letter on 7 September 2007 saying, among other things:

“Please provide the reasons - in writing - why I should now waste my time meeting with you when you devote less than 1 minute of consideration per type written page of legal submissions and simply continue to misrepresent the full facts of this serious complaint to me.”

36. The Legal Officer responded to the complainant, by return email, as follows:

“The reason I would like to have a meeting with you is because I think that that is the best way for us to progress this matter. I have a number of ideas I would like to discuss with you about the way in which the agency might handle this application so as to give you access to the documents sought by you.”

37. On 1 October 2007, the complainant advised the Legal Officer, by email, as follows:

“I didn’t bother writing while you were away because of your disinterest in considering my submissions properly ... In fact I see absolutely no reason to meet you until such time as you and your office actually acknowledges in writing in detail the complete documented basis of my complaint.”

38. On 2 October 2007, the Legal Officer wrote again to the complainant and said:

“Although you consider, in your email to me of 6 September 2007, that there are only about 50 documents in contention in this matter, that is not, in fact, the case. In order to progress this matter, I need to sit down and discuss with you what the situation is and how best to deal with it to give you access to documents. In my view, it is not possible to have that discussion by way of correspondence with you.”

39. In dealing with this complaint, the Legal Officer formed the view that it was not possible to deal with the complainant’s complaint by way of correspondence only. Therefore, in accordance with her delegated authority under section 71 of the FOI Act, by letter and notice dated 2 October 2007, the Legal Officer issued the complainant with a Notice of Requirement to attend a Compulsory Conference at the Information Commissioner’s office. Pursuant to section 71(4)(a) of the FOI Act, the Legal Officer advised the complainant that:

“If you choose not to attend that meeting, the A/Information Commissioner may take the view that your application is vexatious and, consequently, may decide to stop dealing with it further.”

40. On 19 October 2007, the Legal Officer held the Compulsory Conference, which the complainant attended, at the office of the Information Commissioner. That Compulsory Conference was also attended by another officer of the Information Commissioner, who took minutes of the proceedings. The Legal Officer explained to the complainant that the documents sought were not limited to 64

or 50 in number, as the complainant claimed. For example, it was noted that - following a random check of several items by the agency at the suggestion of this office - the agency had identified 110 electronic documents for item 12 on the complainant's application, which sought access to "[a]ll site inspection reports during the construction and post construction phase up to and including the point that a certificate of occupancy was issued for the development - in part or in whole - that confirms compliance - or otherwise - will all the Building License and BCA Building Code Australia requirements. Copies of the relevant and specified sections of the BCA referred to in these reports are to be included as part of this request."

41. It was agreed at the compulsory conference that the complainant would select a reduced number of the items from his access application and the agency would be asked to identify the exact number of documents that came within the scope of those items, with the intention of determining whether those documents could then be identified and dealt with by the agency.
42. In addition, during the compulsory conference, the complainant asked the Legal Officer for a copy of a spreadsheet document that had been created by the agency - and provided to this office - to show the number of electronic documents on its database that could be relevant to his application. That document listed over 1000 electronic documents and did not include any hardcopy documents held by the agency that might also come within the scope of the complainant's application. The complainant considered that it would assist him to reduce the scope of his application if he had access to that particular document and it was agreed to approach the agency to see if it would give the complainant access to a copy.
43. Toward the end of that Compulsory Conference, the Legal Officer handed the complainant a list, summarising the 'complaints' the complainant made had made against the agency and against this office, in his letter seeking external review, dated 13 August 2007. In summary, the Legal Officer advised the complainant, amongst other things, that:
 - a number of his 'complaints' had been dealt with in, some detail, by the Senior Legal Officer in his letter to the complainant dated 4 May 2007;
 - a person's right to access documents under section 10 of the FOI Act is a right which is expressed to be "...subject to and in accordance with" the FOI Act, including being subject to the agency's right to rely on section 20 of the FOI Act, as it did in this case;
 - there was no evidence, other than the complainant's unsupported assertions, to establish that the agency has ignored sections 3, 4 and 10 of the FOI Act;
 - the Office of the Information Commissioner rejected the complainant's allegations of collusion, or of acquiescence in any wrongdoing, between the agency and the Office of the Information Commissioner, as his

allegations were unsupported assertions based on no probative evidence;
and

- if the complainant still wished to pursue his allegations regarding collusion and wrongdoing on the part of this office, he should take those allegations to the Corruption and Crime Commission or to the Police.

44. Following the Compulsory Conference, the Legal Officer undertook further discussions with the agency, with the view of endeavouring to resolve this complaint by conciliation and negotiation between the parties. In particular, the Legal Officer asked the agency whether it would be prepared to give the complainant access to an edited copy of the spreadsheet previously provided to this office by the agency, in order to assist the complainant to narrow the scope of his access application.
45. By email letter dated 7 November 2007, the Legal Officer advised the complainant that, following further discussions between the Legal Officer and the agency, it had agreed to provide him with an edited copy of the spreadsheet, to assist him to narrow the scope of his access application. The Legal Officer asked the complainant to advise her which of the documents listed in the spreadsheet he sought access to in order that inquiries could then be made with the agency as to whether the agency would deal with his access application.
46. By email letter dated 7 November 2007, the complainant wrote to the Legal Officer and said:

"I note your continued refusal to address the fact that following the refusal of the agency to release any of the specific documents I was seeking access to originally in March 2007 I voluntarily reduced the number of documents that I was seeking access to under the no longer operated WA FOI Act from a paltry 64 documents to just 50 documents.

You have done this deliberately in your usual attempt to present me as being difficult, and not willing to conciliate, because you only represent the government agency and no longer follow the WA FOI Act.

The only people being difficult in this matter are your office on behalf of the agency, and the agency themselves.

That is because the agency has much to hide, and it is obviously in the public interest to make these documents known.

Further evidence of this fact of your now obvious representation of only the interests of Government employees and not of the State of WA is found in your ever changing use of terminology.

You refer to my request for the release of just 50 documents as indeed documents. Unfortunately you have also repeatedly allowed your client the agency to change my legally protected use of the term documents to issues, in order to amplify the ambit of my FOI application, and in this contrived manner to increase the number of documents it claims are now covered, so that it assert that it doesn't have to process my small request.

It is little wonder that governance in this state has now plummeted to depths no longer found in many third world countries.

I repeat an extract from my last email as evidence of just how corrupt a process you now operate, since it makes plain that you just ignore all those facts you do not like.

'I therefore repeat for you and the OIC yet again, that the similar document to the one that you are withholding from me – document 1 on my list of 50 - is being sought from the agency with the specific aim being to identify which one or two of the specific documents to which I am seeking access, (using exactly the same words as employed in my copyrighted FOI application), identifies some 2750 additional documents, as the Agency has claimed in writing, and which assertion, however unlikely and improbable, the OIC [you] has as ever blindly accepted as fact without any proper investigation and without any question whatsoever, because the OIC are discernibly no longer a neutral and impartial adjudicating agency, but rather a legal defence team, operating for all government agencies, in a blatantly improper manner, solely designed to assist these Agencies in frustrating the expressed intention of Parliament as duly written in the WA FOI Act.'

47. On 8 November 2007, the Legal Officer wrote to the complainant, by email, advising him that:

The issues raised by you in your email to me of 7 November 2007 were discussed at our meeting and I do not intend to keep going over that ground.

I am unclear from your email whether you have received my email of yesterday's date confirming that the agency is now prepared to give you access to an edited copy of the document list that it provided to me, to assist you to reduce the scope of your application. Once you have received that email, please advise me which of the documents on that list you are seeking access to."

48. By email dated 12 November 2007, the complainant responded to the Legal Officer's email of 7 November 2007 as follows:

"Since I have not received anything to date, and it is at this time impossible to believe that this unknown document that you have possession of and promised will in some way assist me gain access to the 50 documents sought I have identified some 10 of the 50 documents below that I should have already received, save for your office's OIC flagrant disregard of the FOI Act.

I have made notes next to most of them explaining why these 10 should be released under the proper administration of the WA FOI Act, although I am well aware that the OIC will as usual ignore everything I write, save for the odd line that you will later misrepresent.

Document 14 of 50 -already released to public but not to me despite my FOI application. Released after private legal action by COJ completed. Perhaps you can guess why?

Full and unedited copy of the complete final O'Neil Report(s) to the CEO of Joondalup City Council as originally promised to the participants involved. Copies of all published public answers, Reports, Press Releases or other documents already in the public domain relating to this are excluded from this part of this FOI application.

What is the OIC going to do about this breach?

*Document 3 of 50 -being a State Archive Record still held by the City of Joondalup and not available from the State Archive because the City of Joondalup has retained all possession of all key State Archives related to this redevelopment until after private legal action by COJ completed.
Perhaps you can guess why?*

Legible Copy of Reserve Fund (voucher 88) dated September 1981 as presented to Council at the Special Meeting of Council 23 06 2006, and referred to subsequently in published answers. Also included under this part of the request are for the supply of Legible Copies of Reserve Account vouchers 85, 86, 87, 89, 90, 91, and 92. Copies of all published public answers, Reports, Press Releases or other documents already in the public domain in relation to this meeting are excluded from this part of this FOI application.

What is the OIC going to do about this breach?

Document 37 of 50 -being a State Archive Record still held by the City of Joondalup and not available from the State Archive because the City of Joondalup has retained all possession of all key State Archives related to this redevelopment until after private legal action by COJ completed.

Perhaps you can guess why?

Full copy of the original State record detailing the perpetual parking agreement cash in lieu approval by Council dated 25 September 1980 for the original restaurant development on the old Lot 9 West Coast Highway, Mullaloo. Copies of all published public answers, Reports, Press Releases or other documents already in the public domain relating to this are excluded from this part of this FOI application.

What is the OIC going to do about this breach?

*Document 38 of 50 -being a State Archive Record still held by the City of Joondalup and not available from the State Archive because the City of Joondalup has retained all possession of all key State Archives related to this redevelopment until after private legal action by COJ completed.
Perhaps you can guess why?*

Full copy of the original State record of "the Council's Approval to Commence Development as issued on the 14 October 1980 including full details of all the Conditions imposed on the restaurant development on the old Lot 9 West Coast Highway, Mullaloo at that time. Copies of all published public answers, Reports, Press Releases or other documents relating to this already in the public domain are excluded from this part of this FOI application.

What is the OIC going to do about this breach?

*Document 23 of 50 -being a State Archive Record still held by the City of Joondalup and not available from the State Archive because the City of Joondalup has retained all possession of all key State Archives related to this redevelopment until after private legal action by COJ completed.
Perhaps you can guess why?*

The State records that enabled the CEO to publicly and repeatedly claim in the press "that the current Tavern" currently owned by Rennet "had already 34 bays off site (across the road) in the early 1980s" reference Joondalup Times (community newspaper) 06 07 2006, including a legible copy of the perpetual written reciprocal car parking agreement of 1981 between the old Shire (City) of Wanneroo and Mr. M Belombra. Copies of all published public answers, Reports, Press Releases or other documents already in the public domain relating to these records are excluded from this part of this FOI application.

What is the OIC going to do about this breach?

In addition to the above 5 State records that you have declined to make any reference too in your so called processing of my FOI appeal - being some 10% of the total application, I enclose another 5 documents which again consist of only a few pages. This is interesting because you assert on behalf of the agency that my FOI application has an ambit of 3000 documents when in fact the whole redevelopment file is made up of 3000 documents. Since I did not seek access to all documents in this file perhaps you could explain why using a computer to going through a list of documents of some 3,000 has suddenly become an acceptable reason to the Office of the Information Commissioner to deny all access under the FOI Act to all 50 documents sought?

Document 5 of 50 - A public record deemed to be unavailable by the COJ and the Department of Local Government without any reason being provided.

Unedited copy of the Minutes to-date of the suspended Special Meeting of Council 23 06 2006. What is the OIC going to do about this breach?

Document 13 of 50 - A public record deemed to be unavailable by the COJ and the Department of Local Government without any reason being provided. Unedited Page 1 of C Terelinck's file note of the informal briefing dated 26 May 2003 of various elected members File Reference 02089. Copies of all published public answers, Reports, Press Releases or other documents already in the public domain are excluded from this part of this FOI application.

What is the OIC going to do about this breach?

Document 6 of 50

Complete copy of the independent Acoustic report that confirms the Planning Officers statements made regarding "the reducing any noise that may emanate from the bottleshop or the exit driveway of the existing development." Refer item CJ165 - 09/06 PROPOSED ROOF OVER including full copies of all the invoices presented and paid by the City to these consultants for the production of these further reports.

Document 31 of 50

Full copies of all independent Traffic Engineers' reports and file notes which identifies the DDA and Australian Standards for on site disabled parking, and that of the development at Lot 100 (10) Oceanside Promenade Mullaloo. The review being that as mentioned in answer A2b as published in the Agenda of 31 10 2006, if not already supplied under a previous reference. Copies of all published public answers, Reports, Press Releases or other documents relating to these already in the public domain are excluded from this part of this FOI application.

Document 44 of 50

A full copy of all the independent planning consultants review reports to Council which determined that "the additional 4 apartments will increase parking demand but that this additional car parking requirements will produce no overall adverse public impact" - reference Town Planning Appeal Tribunal matter known as the Mullaloo Tavern Appeal September 2003, Included in this part of this application are requests for copies of all Taxable invoices (Accounts) received from the independent planning consultants engaged to conduct the above TPAT review and to report. Copies of all published public answers, Reports, Press Releases or other documents already in the public domain relating to these are excluded from this part of this FOI application.

The 10 specifically identified documents above are all very specifically identified, and dated, and represent 20% of my total application.

Why won't you even ask for them to be sent to you? The legal matter misrepresented by the COJ has now been determined without the true facts of the redevelopment being disclosed, so what's the point of you playing games with me about this still? What happened to the WA FOI Act by the way?

Do you think these 10 documents - including 4 State Archives, 1 now released into the public domain, 2 Council documents already supposed to be in the public domain - will be more than 70 sides of paper in total?

49. On 12 November 2007, the agency sent the complainant a copy of one of the documents he had listed on his original application, together with a copy of the spreadsheet requested at the meeting with my Legal Officer, edited by the agency to delete personal information about third parties. At 10.23 pm on 12 November 2007, the complainant sent a further email to the Legal Officer, advising her that:

"I note your blatant misrepresentation but I have not reduced the ambit of my outstanding FOI application at all.

I just selected 10 documents from the 50 as directed by you and which you stated to me represents 600 documents (being 20% of 3,000) from the 50 specific documents I requested nearly a year ago simply in order to demonstrate the blatant refusal by the OIC to act at all for me in a reasonable impartial manner for nearly a year.

Lo and behold in less than 24 hours you secured a document for me.

I resubmit the next 9 documents yet again for your immediate attention. That would leave 40 more documents to go.

The 9 specifically identified documents below are all very specifically identified, and dated, and represent nearly 20% of my total application. Why won't you even ask for them to be sent to you? The legal matter misrepresented by the COJ has now been determined without the true facts of the redevelopment being disclosed, so what's the point of playing games with me about this still? and exactly what happened to the WA Freedom of Information Act by the way?

Do you think these 10 documents - including 4 State Archives, 1 now released into the public domain, 2 Council documents already supposed to be in the public domain - will be more than 70 sides of paper in total?

The complainant then repeated much of the text of the email he sent to this office earlier on the 12th of November 2007.

50. By email letter dated 13 November 2007, the Legal Officer then wrote to the complainant, advising him that:

"I am simply trying to ascertain whether:

(a) you wish to see whether the agency is prepared to deal with the documents particularised by you in your email to me of 12 November 2007; or

(b) you wish instead to select individual documents from the list now provided to you by the agency,

in order to see whether your complaint can be conciliated.

It is up to you.

Please advise me whether you prefer (a) or (b) as the way to go."

51. The complainant responded by email, as follows:

"Further to your email of the 13th November 2007 I note your decision that I must agree to either your proposal a) or b).

(a) you wish to see whether the agency is prepared to deal with the documents particularised by you in your email to me of 12 November 2007; or

(b) you wish instead to select individual documents from the list now provided to you by the agency.

Accordingly please provide me with the legal reasons for your decision in writing under letter head as legally required of your Agency of the WA State Government under State Law.

Thank you

As regards the documents finally hand delivered to me I place before you and require you to note the following facts.

1. The report now provided to me is a fraud.

It includes a large number of documents clearly identified as being excluded by my very specific FOI application.

It also includes a large number of documents clearly identifiable as being well outside any reach of any of the documents specified in my very specific FOI application. The only reason for their inclusion on this manufactured report is the address of the redevelopment.

It is attached for your file.

2. This manufactured report including all the above legally excluded documents, now specifies that it now consists of only some 1000 odd documents, which is very curious and bizarre since the 50 documents I sought under FOI Act haven't changed since this farce began. Only a few weeks ago the OIC officially described this number as being around 3,000.

Clearly these documents now selected at random to make up this manufactured report number serve no purpose save only to afford the OIC some fraudulent correspondence to refer to. This is administrative fraud at its worst.

3. The report produced as provided to me in no way assists me to gain any access to the documents sought under FOI since the report is also incomplete and has in fact been edited to remove a number of the documents sought. This fact confirms that this report has been produced for no other purpose than to mislead and this action is administrative fraud at its worst.

4 The covering letter also received from the City of Joondalup has no legal standing at this time, and represents no genuine commitment to supply me with any of the documents requested in my legally valid FOI application. It is therefore up to the OIC to decide if you wish to respond to it. It further contains absolutely no stated intention to provide me with any access at all to the documents sought.

I therefore attach it to this reply and place it before the OIC, for the OIC to deal with, since it is absolutely nothing to do with me, and has obviously been manufactured with OIC involvement. If OIC wish to dispute its legal standing to me then please do so in writing under letter head with the reasons for the OIC decision - before the 23rd November 2007 of course.

5. The 1 document supplied to me to date by the WA government agency concerned is not the one specified in my FOI application. Copy supplied for your file - please note it is not signed or dated as a consultant does routinely, and is not therefore the original, and has been edited to remove details.

Clearly the OIC an agency of the WA State Government has no interest whatsoever in enforcing State FOI legislation, and ensuring the good governance of WA."

52. The Legal Officer then contacted the complainant advising that, in light of his advice, she had asked the agency to identify the documents referred to in his prioritised list. On 20 November 2007, the Legal Officer sent an email to the complainant advising him as follows:

"We are currently engaged in seeing whether this matter can be resolved by the agency agreeing to deal with your application.

At our meeting you suggested that the matter would be straightforward if the agency provided you with the list of documents that it had given me.

It was agreed that if the agency would not give you that document, you would select a number of the documents referred to on your application to see if the agency would agree to deal with those. As it happened, the agency gave you the relevant list after you had given me your selected documents.

Since then I have been seeking your advice as to how you would like to proceed. That is, select documents from the list given to you by the agency or go with the documents you selected from your application. Since you have now advised me that the agency's list unhelpful, I have asked it to locate the documents you have selected. That is the situation. I have made no decision as you suggest. If you have an alternative procedure to propose - in place of my two options -then I am happy to go with that if it is likely to achieve the desired result.

However, if you no longer wish to participate in this conciliation process, please advise me”.

53. By email letter dated 20 November 2007, complainant responded to the Legal Officer and said:

“For conciliation to be entered into both sides must agree to it, and demonstrate good faith.

The WA government agency that initially rejected in full my FOI application also rejected conciliation over 6 months ago when I reduced the number of documents that I sought access to, and the agency illegally maintained that the number of documents sought remained exactly the same.

You have to date ignored these facts.

You then forced only me to attend a meeting you then labeled in a deliberately misleading fashion a conciliation meeting with only one party by threat of a \$6,000 fine.

No proper or legal agreements were ever entered into at that compulsory meeting because my attendance was only achieved under duress and you subsequently declined to share any of the information you said your office held with me.

You did this in order to conceal the now obvious fact that you are only defending this WA government agency from its legal requirements under the FOI Act, because the OIC is obviously no longer independent in any way of the WA government.

The illegal strategy you are pursuing is designed to force me to reduce the number of documents sought to enable this WA government to cover up fraud and planning corruption.

This strategy of your WA government office centres on abusing the proper concept of conciliation in an attempt to force me to abandon the 50 documents sought or to label me as unwilling to conciliate when in fact no recognised process of conciliation has ever been attempted let alone started by your office.

Your latest response is nothing more than an attempt to force me to reduce the number of documents that I have a legal right to access.

If you have made no decision then I do not have to agree to either of your choices, and I still expect your office to obtain proof from the WA government Agency concerned as to which specific document of the 50 to which access is sought is drawing in some 2500 other documents, as they still claim.

Your office has not been dealing with this matter properly now for nearly a year now in order to cover ongoing WA government corruption, and I am afraid I must now ask you directly what is the extent of your offices formal involvement in the orchestrated WA government management plan set in formal motion back in March / April 2007.

Please pass this direct question onto your new acting Commissioner, since clearly your office has no intention whatsoever of dealing with this appeal properly or why would you now be provocatively asking me for my suggestions when for the past year you have been ignoring everything that I have written to your office, and clearly defending the agency, and writing nothing but verbiage to me in a pretence of following some sort of due process.”

54. In light of the complainant’s advice to the Legal Officer, it was my view that, by that stage, all reasonable efforts had been made by the Legal Officer to try and resolve this complaint by conciliation or negotiation between the parties; that those efforts parties were then exhausted; and that this complaint could not be resolved by conciliation. Having examined the complaint file maintained by my office in relation to this matter, I consider that the complainant has been given ample opportunity to explain his views and the agency to respond to those views. Accordingly, I have decided to proceed directly to a decision on this complaint.
55. In my view, there are two FOI matters arising from this complaint which require my determination. The first of those matters is whether the agency’s decision to refuse to deal with the complainant’s access application, in accordance with section 20 of the FOI Act, was justified. The second of those matters is whether there is any substance to the complainant’s complaints that:
- (a) the agency allegedly refused to process his access application, in accordance with its obligations and responsibilities under the FOI Act;
 - (b) the agency and this office allegedly altered the terms of his access application, so as to deliberately exaggerate the number requested;
 - (c) the agency allegedly deliberately withheld state archival records from him, which should be publicly available;
 - (d) the agency allegedly imposed excessive charges for multiple copies of the same documents and excessively charged him for a deposit;
 - (e) the agency allegedly demanded an advance payment, based on a fraudulent estimate of costs, which the complainant asserts was a criminal conspiracy to obtain money under false pretences.

- (f) the Information Commissioner's office allegedly refused to advise the complainant whether the specific number of documents that can be applied for under the FOI Act is limited to 50;
- (g) the Information Commissioner's office allegedly colluded with the agency in relation to the agency's alleged conspiracy to obtain money under false pretences;
- (h) the Information Commissioner's office allegedly deliberately put in place procedures that the complainant says are completely inconsistent with the intended operation of the FOI Act; and, finally
- (i) the former A/Commissioner allegedly exceeded her authority and ignored the written will and directions of the Parliament of WA and that, in the complainant's view, the former A/Commissioner has no true legal authority to adjudicate on this matter.

THE FIRST MATTER – THE AGENCY'S DECISION TO REFUSE TO DEAL WITH THE COMPLAINANT'S FOI APPLICATION

SECTION 20

56. Section 20 provides:

“20. Agency may refuse to deal with an application in certain cases

- (1) If the agency considers that the work involved in dealing with the access application would divert a substantial and unreasonable portion of the agency's resources away from its other operations, the agency has to take reasonable steps to help the applicant to change the application to reduce the amount of work needed to deal with it.*
- (2) If after help has been given to change the access application the agency still considers that the work involved in dealing with the application would divert a substantial and unreasonable portion of the agency's resources away from its other operations, the agency may refuse to deal with the access application.”*

57. Clearly, the purpose of s.20 is to relieve an agency from a substantial and unreasonable diversion of its resources from its other operations. However, in *Re Conservation Council of Western Australia and Department of Conservation and Land Management* [2005] WAICmr 5, the former A/Commissioner said that a decision made by an agency under section 20 of the FOI Act cannot be justified where the agency has not satisfied its obligation under subsection 20(1). That is, the agency receiving an access application that is considered to involve a diversion of a substantial and unreasonable portion of resources in order to deal with the application has to take reasonable steps to help the applicant to change the application to reduce the amount of work needed to deal with it.

58. In *Re “R” and Department of Family and Children’s Services* [1996] WAICmr 45, the former Information Commissioner said that when considering a complaint about an agency’s refusal to deal with an access application, in accordance with section 20 of the FOI Act, the Information Commissioner’s function on external review is to decide whether the agency:
- (1) took reasonable steps to help an access applicant to change an application to reduce the amount of work needed to deal with it; and
 - (2) was justified in deciding that the work involved in dealing with the application in its present form would divert a substantial and unreasonable portion of the agency’s resources away from its other operations.
59. The former Commissioner also said, in *Re “R”*, that the first question involves a consideration of the history of the matter between the parties from the date the application was received, and includes the nature and degree of assistance offered to the applicant by the agency. The second involves a consideration of the number and type of documents involved in the access application, the usual work of the agency and an estimate of the resources to be devoted to the task of dealing with the application in accordance with the statutory requirements of the FOI Act.

Has the agency taken reasonable steps to help the complainant reduce the scope of the access application?

60. The FOI Act imposes an obligation on agencies to assist applicants, where necessary, to reduce the scope of an application or to formulate their requests in more precise terms, for example, by explaining, subject to any exemptions, the nature and types of documents held, such as, by meeting to discuss the application; by advising an applicant on how its recordkeeping system operates; by indicating the kind of documents it holds; and by assisting an applicant to focus on the category or categories of document most likely to contain the information sought.
61. However, section 12 of the FOI Act provides, among other things, that an access application has to give enough information to enable the requested documents to be identified. In other words, there is a requirement that access applicants describe the documents they are seeking with sufficient particularity to enable the agency to locate those documents and deal with them under the FOI Act. However, in providing such assistance to an access applicant, an agency is not obliged, under the FOI Act, to list all possible documents of relevance, identify the precise number of documents falling with the scope of an access application or provide inspection of those documents to enable an applicant to select those that he or she may be interested in, since to do so would defeat a key purpose of section 20, which is to avoid processing of FOI access applications that would divert substantial and unreasonable resources away from operational activities.

62. Inspection is a form of access under the FOI Act (see: section 27(1)(a) of the FOI Act) and, once inspection has been given, access has been given. It would then be problematic, to say the least, for an agency having given an applicant access to documents by way of inspection, to subsequently claim exemption for those documents in an endeavour to resist giving access by way of copies. In addition, if documents are inspected by an applicant and those documents contain personal or business information about third parties, those third parties must be consulted by the agency and consent to such inspection, before inspection is given, in accordance with the requirements of sections 32 and 33 of the FOI Act. In short, although outside the FOI Act an agency can choose to allow inspection of its documents, once an access application has been made to the agency under the FOI Act that application has to be “dealt with” in accordance with the provisions of the FOI Act before a decision to give access by way of inspection can be made.
63. Nevertheless, as I have said, the FOI Act places the onus upon an agency to assist an access applicant to change the access application. The first question for my determination is, therefore, whether the agency has taken ‘reasonable’ steps to help the complainant to change his application to reduce the amount of work needed to deal with it.
64. In my view, having regard to the steps taken by the agency and the responses of the complainant, the assistance given to the complainant by the agency was sufficient to meet the requirements of the FOI Act. Following receipt of the complainant’s access application, the agency’s FOI Coordinator wrote to him on 20 February 2007 advising that the agency considered the scope of the application to be too large to deal with and, among other things, offered to discuss with him ways in which the scope of the application could be reduced. In the alternative, the agency suggested that the complainant grant it an extra 14 days within which to deal with his application.
65. Although under no duty or obligation under the FOI Act to do so, the agency’s FOI Coordinator, in her letter dated 8 March 2007 to the complainant, answered the nine questions posed by him in his email dated 2 March 2007 and she also provided the complainant with a table showing 22 categories of documents compiled from the 64 “items” listed on his access application, to assist the complainant to select the categories of documents of most interest to him in an attempt to reduce the scope of the application.
66. On 26 March 2007, the agency again asked the complainant, in effect, to select from the 22 categories of documents in order to reduce the scope of his complaint. The complainant responded to that request by referring the matter to the former A/Commissioner for external review.
67. Following the Legal Officer’s Compulsory Conference with the complainant, at the request of my office, the agency gave the complainant an edited copy of the spreadsheet it had previously compiled for the Legal Officer, listing and describing the documents taken from its electronic database of documents likely to be relevant to the complainant’s application, in a further effort to assist the complainant to select the documents of interest to him and thereby narrow the

scope of his application. The agency also gave him access to a copy of a document on his list which had become a public document.

68. The agency explained to the complainant and to this office the problems it considered were involved in dealing with his application. It offered to discuss with him ways to assist him to reduce the scope of his application. The agency also offered an alternative approach if the scope could not be reduced. When the agency's offer to discuss the ways in which the scope could be reduced was not taken up by the complainant, the agency suggested that he look at the different categories of documents covered by his request and select those of most interest to him from those categories. The agency gave the complainant access to a spreadsheet of documents that it had compiled and which he had requested. In addition, the agency responded to all of the complainant's allegations, queries and complaints that related to this application.
69. Having examined the correspondence exchanged between the agency and the complainant, which are retained on the agency's FOI file and having reviewed the actions taken by the agency in response to the complainant's access application, and taking into account the assistance provided to the complainant by the agency, by giving him an edited copy of the spreadsheet provided to this office, I am satisfied that the steps taken by the agency to help the complainant were reasonable in the circumstances.

Would the work involved in dealing with the application in its present form divert a substantial and unreasonable portion of the agency's resources away from its other operations for the purposes of section 20(1) and (2) of the FOI Act?

The complainant's submissions

70. The complainant asserts that he made only very a small access application to the agency, purportedly amounting to a request for access to somewhere between 50 to 64 documents at most.
71. The complainant says that his 'list' of documents comprised 64 documents and that any reference to these as "items" misrepresented the scope of his application. Some of the 'documents' listed and separately numbered in the complainant's access application appear to relate to a single document. For example, Document 1 is described as: "*A full electronic report from the City's electronic recordkeeping system detailing all documents entered from April 2005 to the date of receipt of this FOI application in respect of the development at Lot 100 (1) Oceanside Promenade Mullaloo, with all personal third party details - peoples names - only - removed.*"
72. Other numbered 'documents' listed in the complainant's access application consist of multiple documents. For example, Document 7 is described as: "*A complete set of the original Planning Approval (development approval) documents dated (September) 1980 for the original Restaurant approval situated on Lot 9 West Coast Highway Mullaloo. Copies of all published public answers, Reports, Press Releases or other documents already in the public domain are excluded from this part of this FOI application.*"

Consideration

73. The words ‘substantial’ and ‘unreasonable’ have been the subject of much judicial consideration: see, for example, the cases referred to in *Wright and State Electricity Commission of Victoria* [1998] VCAT 162 and in *Langer and Telstra Corporation Ltd* [2002] AATA 341. In *Langer*’s case, the Deputy President of the Commonwealth Administrative Appeals Tribunal (the AAT’), having considered the authorities in connection with the interpretation of the phrase “*substantially and unreasonably divert the resources of the agency*” in section 24 of the *Freedom of Information Act 1982 (Cth)* (‘the Commonwealth FOI Act’) - the Commonwealth equivalent to section .20 of the FOI Act - said at [115]:

“... it seems to me that the work involved in processing a request will only substantially and unreasonably divert the resources of an agency if the work is real or of substance and not insubstantial or nominal and if it is unreasonable having regard to factors, such as workload ...”.

74. I consider that statement to be a useful guide to the interpretation of s.20 of the FOI Act.
75. In *Re SRB and SRC and Department of Health, Housing, Local Government and Community Services* (1994) 33 ALD 171 at 179, the Full AAT stated that the resources, the subject of section 24 of the Commonwealth FOI Act “... cannot mean the whole of the resources of a large Department of State. To find this would make the section meaningless. We consider it means the resources reasonably required to deal with an FOI application consistent with attendance to other priorities.” I agree with the view expressed by the AAT.
76. On 20 February 2007, the agency advised the complainant that there were a total of 2845 documents retained on the agency’s electronic recordkeeping system which related to the Mullaloo Tavern property. The edited copy of the agency’s spreadsheet that was provided to the complainant during the external review process lists and describes 1048 documents selected from that total, which the agency’s FOI Coordinator identified as documents likely to be relevant to the complainant’s application. Having reviewed that spreadsheet in conjunction with the complainant’s application, I am satisfied that the agency has made a *bona fide* and reasonable attempt to identify the documents in its possession with those requested by the complainant.
77. In addition, I am satisfied that the complainant’s list of 50 ‘documents’ significantly understates the true number of documents potentially falling within the scope of his access application, based upon the agency’s assessment of the documents relevant to that application. I accept the agency’s estimate as to the number of documents to be reasonable. In that regard, I also note that the agency has also advised the complainant that no hardcopy documents are included in either of those totals.

78. In the course of dealing with the complainant's application, he queried the agency's advice that "...with respect to large applications, which are defined as those requesting more than 50 documents, the scope should be reduced." The agency said that the measure of a large application (more than 50 documents) had been obtained from this office. However, I consider that advice on the part of the agency to be the result of a misunderstanding or a mistake. The Information Commissioner's office has consistently stated, in the course of training sessions given to FOI officers and decision-makers, that there is no upper limit placed on the number of documents which an agency will deal with before relying on section 20 of the FOI Act. There is no policy of the Information Commissioner's Office in that regard. Each access application lodged with State and local government agencies must be dealt with on its merits and in light of the particular documents and circumstances applicable at the time, rather than being decided under a blanket 'policy' or rule of thumb such as refusing to deal with more than, for example, 50 documents.
79. Even if such advice had been mistakenly been given by this office, this would not, in my opinion, be sufficient of itself for me to determine that the agency cannot refuse to deal with the application under section 20(2). The complainant himself withdrew his earlier agreement to limit the scope of his application to 50 documents. In any event, I find, as a fact, that there are many more than 50 or 64 documents involved in the scope of the complainant's access application.
80. On each occasion where an agency receives an access application that may be broad or ill-defined, the agency receiving such an application is required to consult with the access applicant (see: sections 11(2) and 11(3) of the FOI Act); the ambit of application may be reduced by agreement with the applicant (see: section 14 of the FOI Act) and, if the agency considers that the work involved in dealing with the application would divert a substantial and unreasonable portion of its resources away from its other operations, the agency has to take reasonable steps to help the applicant change the application to reduce the amount of work required to deal with it (see: section 20(1) of the FOI Act). The circumstances of each access application will vary from application to application and case to case and, therefore, a blanket policy that fixes a quantitative limit of say, 50 documents, cannot apply.
81. Relevant factors to indicate that the work involved in dealing with an access application would divert a substantial and unreasonably portion of an agency's resources away from its other operations include such things as:
- the time period to which the application relates;
 - the number of documents or potential documents covered by the application;
 - the ease with which the specific documents can be identified and assessed;
 - the location of those documents and the nature in which they are stored by the agency;
 - the number of people competent to identify the documents and the normal duties of those people;
 - the need to take legal advice and/or consult with third parties.

No individual factor, on its own, usually will be sufficient and determinative to establish that dealing with a particular access application would divert a substantial and unreasonable portion of an agency's resources away from its other operations.

82. However, I do not accept the complainant's submission that the requested documents were limited by him in number to 50 documents (or 64 documents, as set out in his application for external review). The terms of the complainant's access application make it clear that a number of the requested 'documents' refer to various classes or categories, and incorporate more than a single document. For example, in item 12 on the complainant's list is:

"All site inspection reports during the construction and post construction phase up to and including the point that certificate of occupancy were issued for that section of the development that confirms compliance - or otherwise - with all the required Health Act provisions."

Inquiries made with the agency have established that item 12 of the complainant's request covers 110 agency electronic documents and that this total does not include any hard copy documents that might also exist at the agency.

83. I also note that some of the items sought by the complainant would not readily be identifiable from the language of his access application. For example, item 31 is a request for:

"[t]he legible State records that enabled the CEO to publicly claim in the press 'the term 'Wangara land transaction' or the concept of 'gifting of a public parking area to private developers'. Neither issues had been suggested at any time to the council or the City' - reference Joondalup Times (community newspaper) 06 07 2006, taking into account his personal knowledge of the O'Neill report, and those papers already presented to the [State Administrative Tribunal] and to the Council by [the Mullaloo Progress Association] in June and July 2006."

84. It is not clear on the fact of the complainant's access application, what specific document or documents the complainant is seeking access to as regards that particular item. Another example is item 15, which is a request for access to:

"[c]opies of all internal file notes letters emails and other State records of any CoJ Officers and elected members that were involved in dealing with the ACCC investigation of the Unconscionable conduct complaint from the [Mullaloo Progress Association] in 2006."

An examination of the text of item 15 indicates that the agency would be required to first identify all of the relevant officers and elected members of the agency, from other sources, who "...were involved in dealing with the ACCC investigation" before the agency could undertake the process of identifying the requested documents falling within that item of the complainant's access application.

85. In its notice of decision dated 10 April 2007, the agency described its available resources, as follows:

“The City has limited resources to deal with such a large application, as one of the officers involved in processing applications is also responsible for the daily operation and coordination of the City’s Records Services Section. The main responsibility of this section is to process inwards correspondence on the day of receipt, which currently requires six officers to perform. As well as processing other applications, this officer is required to assist officers of the City with recordkeeping matters, whose role is primarily in existence for its essential operations to be conducted. The other officer who would be involved is no longer working within the Records Services Section and is currently responsible for the coordination of the Office of the CEO. This officer is currently dealing with other applications as well as their [sic] daily duties.

The City would need to divert a substantial part of those resources to deal with your application in its present form as it is estimated that potentially weeks of work would be involved for these officers to gather and review all the documents subject to your request and make a decision on access. Due to the other responsibilities of the decision makers, this work would be required to be completed outside of normal office hours.”

86. In light of that advice, the agency was required to provide me with further information as to how it calculated or estimated the amount of time the agency considered it would take to deal with the complainant’s application in its present form. The agency said that it would need to undertake the following activities:

- print and sort the electronic documents;
- check the agency’s offsite archives;
- consult with agency officers and locate and copy hardcopy documents (at this stage the agency is unable to say how many hardcopy documents there would be);
- consult with a small number of third parties;
- liaise with the agency’s legal advisers;
- examine each of the identified documents and make a judgment as to whether it contains exempt matter;
- delete exempt matter where appropriate;
- prepare a notice of decision in the form required;
- consultation with complainant, if necessary

87. The agency advises me that it can only provide an approximate estimate of the time that would be necessary to deal with the complainant’s application because the number of folios is not known to the agency. However, the agency has advised me that, based on a random sample of 11 of the first 100 documents, the average number of folios per document is four. The agency has, therefore, provided me with the following estimate of the time it considers would be required to deal with the complainant’s access application.

“Electronic Documents

There are approximately 1000 electronic documents. The number of folios is not known but based on a random sample of 11 of the first 100 documents, the average is 4 folios.

1.1 *To print each folio (4000 in total) would take 9 working days – based on one minute per folio.*

1.2 *To sort each document (1000 in total) would take 2 working days – based on one minute per document*

11 working days

Hardcopy Documents

The number of hardcopy documents is not known, therefore half the number of electronic documents will be used – 500. The number of folios will be based on the average of the electronic documents – 4 folios. The City’s Archives are retained onsite and in Welshpool.

2.1 *To search the database for files would take 1 working day.*

2.2 *To have files delivered from offsite would take 2 working days.*

2.3 *To locate the files retained onsite would take 1 day.*

2.4 *To print each folio (2000 in total) would take 4 working days – based on one minute per folio.*

2.5 *To sort each document (500 in total) would take 1 working day – based on one minute per document*

9 working days

Decision Making

The combined number of documents is 1500, with an average of 4 folios each, totalling 6000 folios.

3.1 *To examine each folio, make judgement on access and delete exempt matter would take 13 working days – based on one minute per folio.*

3.2 *To double check judgement on selected documents (if required) would take 2 working days.*

15 working days

Consultation / Liaison

Consultation and / or liaison would be required with City officers, the City’s legal advisors, third parties and possibly the applicant.

4.1 *To consult with City officers regarding documents requested would take 1 working day per officer, with approximately 4 officers identified at this stage.*

4.2 *To consult with the City's legal advisors would take 5 days.*

4.3 *To liaise with third parties would take 10 working days (this is the City's normal timeframe for third parties to provide comments).*

4.4 *To liaise with the applicant would take 5 days.*

24 working days

Notice of Decision

5.1 *To prepare the document schedule for the Notice of Decision would take 5 working days.*

5.2 *To prepare the letter for the Notice of Decision would take 1 working day.*

6 working days

Estimate of time to process application is 65 working days.

88. Having examined the complainant's access application, I am satisfied that a number of items sought by the complainant are likely to be the subject of exemption claims and might reasonably be expected to require the agency to take legal advice. For example, item 62 which seeks access to:

"Copy of all the written instructions from the City and Council to [a legal firm] to act and provide legal services for the City of Joondalup in the Supreme Court matter ...".

89. In my view, the complainant has, to date, been less than helpful or constructive in his dealings with the agency. He has been unable or unwilling to reduce the scope or ambit of his access application, despite having been given ample opportunity by the agency and by this office to do so. It would have taken the agency some time to prepare responses to the allegations and complaints made against the agency by the complainant which are, in my view, without substance. No probative material has been put before the former A/Commissioner, the Senior Legal Officer, the Legal Officer or me by the complainant to establish that there is any basis for the allegations and complaints he has made.

90. I acknowledge that the agency's initial decision was out of time but, taking into account the time that the agency would have spent addressing his ongoing complaints and allegations, his denial that the number of documents he sought amounted to no more than 64 or 50 in total and his incapacity in being able to discern the difference between being charged for documents and being given an explanation of how charges (not having been requested or imposed) would be made, all contributed to the delay in the agency issuing a notice of decision to the complainant. In my view, there can be little doubt that the complainant's

approach to his dealings with the agency in relation to his access application would have added to the agency's work in dealing with his access application and in responding the matters raised by the complainant during the course of this complaint.

Determination

91. I find that the agency was justified in deciding that the work involved in dealing with the complainant's access application in its present form would divert a substantial and unreasonable portion of the agency's resources away from its other operations. Accordingly, I confirm the agency's decision to refuse to deal with that application in accordance with section 20 of the FOI Act.

THE SECOND MATTER – THE COMPLAINTS AGAINST THE AGENCY AND THIS OFFICE

92. Section 65(1) of the FOI Act provides, among other things, that a complaint may be made to the Information Commissioner, against an agency's decision to refuse to deal with an access application; to refuse access to a document; to defer giving access to a document and to impose a charge or require the payment of a deposit. Section 63(3) of the FOI Act further provides that if, in dealing with a complaint, the Information Commissioner forms the opinion that there is evidence that an officer of an agency has been guilty of a breach of duty, or of misconduct, in the administration of the FOI Act, the Information Commissioner may take such steps as he or she considers appropriate to bring the evidence to the notice of the principal officer of the agency or, where the person is the principal officer of the agency, to the Minister responsible for the agency.
93. I have already made my determination in relation to the agency's decision to refuse to deal with the complainant's access application. Accordingly, it remains for me to consider the complainant's claims that the agency imposed excessive charges; that the agency required him to pay an excessive deposit on account of the charges; that the agency failed to deal with his application in accordance with the requirement of the FOI Act, finally, that officers of the agency and officers of this office allegedly colluded to conceal and ignore his legal valid complaint, with the end result being that all government agencies will allegedly be left free to thwart the intended operation of the FOI Act and avoid any public disclosure of documents whenever they so desire.
94. I have examined the documents held on the agency's FOI file maintained in relation to the complainant's access application and the documents retained on the complaint file maintained by this office in relation to this complaint. Nothing in any of the agency's correspondence to the complainant or to this office establishes that there is any basis for the complainant's allegations about the alleged excessive charges imposed by the agency or that the agency allegedly required him to pay an excessive deposit on account of those charges.

95. In her letter to the complainant dated 20 February 2007, the agency's FOI Coordinator advised the complainant, amongst other things, that the FOI Act required the agency to advise the complainant of an estimate of charges that would be imposed and that an agreement would be required to be reached on the charges to be imposed. The FOI Coordinator gave the complainant a "*best guess*" estimate of the possible charges that the agency considered might apply.
96. Although not specifically referred to in the FOI Coordinator's letter, section 17(3) of the FOI Act imposes a duty upon an agency to notify an access applicant about any potential charges that may apply, in circumstances where the agency receiving the access application estimates that the charges for dealing with that application might exceed \$25.00 and inquire whether the applicant wishes to proceed with the application. Similarly, section 18(2) of the FOI Act provides that if an agency has required an applicant to pay a deposit on account of charges, the agency has to, at the request of the applicant, discuss with him or her practical alternatives for changing the application or reducing the anticipated charges.
97. Nothing on the face of the FOI Coordinator's letter dated 20 February 2007 to the complainant states that the agency required the complainant to pay either charges or an advanced deposit. To the contrary, the FOI Coordinator's letter of 20 February 2007 correctly advised him that charges would be imposed (his access application not being a request for access to personal information only) and of the basis of the estimate of those charges. The FOI Coordinator offered to discuss with the complainant ways in which his application could be amended to make it more manageable.
98. There is also nothing in the agency's correspondence to the complainant which states that he was required to pay either charges or an advanced deposit and he has not put any probative evidence before me to supporting the complainant's contention that the agency required him to pay any charges or to pay an advanced deposit on account of charges. Accordingly, I find that the agency's FOI Coordinator did not require the complainant to pay either charges or an advanced deposit but, rather, asked the complainant to agree that charges would be imposed and a deposit required, before the commencement of the process.
99. In my opinion, the complainant's claims on this aspect of his complaint are without substance and, in accordance with my power under section 67(1)(b) of the FOI Act, I have decided to stop dealing with this aspect of the complainant's complaint.
100. In his letter to the complainant dated 4 May 2007, the Senior Legal Officer advised the complainant that the Senior Legal Officer had considered all of the documentary evidence the complainant had put before him in support his claim that the agency had 'illegally and improperly' dealt with his access application. The Senior Legal Officer advised the complainant, for the reasons given in his letter that having examined the documents and the submissions provided to Senior Legal Officer by the complainant, that the Senior Legal Officer was not persuaded there was any substance to any of the allegations the complainant made against the agency.

101. Notwithstanding the Senior Legal Officer's advice to the complainant, he has continued to assert that the agency and this office have engaged in illegal and fraudulent conduct both in the process of dealing with his access application and during the external review process. The complainant also asserts that he was allegedly 'forced' to attend the Compulsory Conference under duress, because of a threat of a \$6000.00 fine and that the agency and this office have deliberately embarked on a course of illegal and collusive activity in order to deprive him of his legal rights and entitlements under the FOI Act.
102. Section 70(1) of the FOI Act provides, among other things, that in order to deal with a complaint, the Information Commissioner may make such investigations and inquiries, and obtain information from such persons as the Information Commissioner thinks fit. In addition, section 70(3) provides that the Information Commissioner has to ensure that the parties to a complaint are given a reasonable opportunity to make submissions to the Information Commissioner. Section 70(4) provides that the Information Commissioner may determine the procedure for investigating and dealing with complaints and give any necessary directions as to the conduct of proceedings.
103. When this complaint was accepted, both the agency and the complainant were provided with a copy of a written guide entitled "Complaints Procedure". That guide is a general guide published by this office describing and outlining the procedures used by the Information Commissioner when dealing with complaints. That document refers to the conciliation process usually followed by this office, in the following terms:
- “2.1 Investigation Officers will make preliminary inquiries to determine whether it is possible to resolve a complaint by conciliation. It is essential for both parties to keep an open mind at this point. Some matters suitable for conciliation might be 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, especially when no harm is likely to follow.*
- 2.2 Meetings may be held with representatives of the agency and with the complainant to identify disputed documents, resolve inconsistencies, clarify issues and reduce misunderstandings that may have occurred.”*
104. For the conciliation process described above, to succeed, in my view, a complainant, an agency and any third parties who may be joined as parties to a particular complaint, must approach the issues with an open mind and the parties must frame their requests within reasonable and practicable bounds.
105. However, I do not consider that the external review processes should be clogged by requiring my officers to make enquiries into unsubstantiated allegations of the kind made by the complainant, in circumstances where, on the available

evidence, there are no reasonable grounds for believing that officers of the agency or officers of the Information Commissioner's office allegedly deliberately embarked on a course of illegal and collusive activity in order to deprive the complainant of his legal rights and entitlements under the FOI Act. In the absence of any objective evidence to support his allegations, I do not give credence to those allegations, which I find to be spurious.

106. In my opinion, the complainant's allegations against the agency and against this office are unsupported speculation and conjecture and they are without substance. No probative material has been put before me by the complainant sufficient for me to form the opinion that there is evidence that an officer of the agency or an officer of my office has been guilty of a breach of duty, or of misconduct, in the administration of the FOI Act in relation to his access application to the agency or in relation to his subsequent complaint against the decision of the agency. Therefore, pursuant to my power under section 67(1)(b) of the FOI Act, I have also decided to stop dealing with this aspect of the complainant's complaint.
