

Decision D0012024 – Published in note form only

Re Grainger and Department of Water and Environmental Regulation [2024] WAICmr 1

Date of Decision: 31 January 2024

Freedom of Information Act 1992 (WA): section 20

On 17 April 2023, Aaron Grainger (**the complainant**) applied to the Department of Water and Environmental Regulation (**the agency**) under the *Freedom of Information Act 1992* (WA) (**the FOI Act**) for access to all correspondence since January 2022 that mentions the complainant, his company, a particular property or prospecting license. The complainant did not exclude personal information, company information or prescribed details from the scope of his application.

On 9 May 2023, the agency informed the complainant that a preliminary search had identified over 1000 documents within the scope of his application and that the agency was unable to deal with an application of this size. The agency asked the complainant to narrow the scope of his application, pursuant to section 20(1) of the FOI Act. The agency suggested that, to reduce the application to a manageable level, the complainant consider limiting his request to a specific clearing permit application; reduce the date range of the requested documents; and include only internal emails which referred to the intended decision on the permit application.

Following discussions between the parties, the complainant amended the scope of his application. On 30 May 2023, the agency informed the complainant that the relevant business unit had identified over 400 documents, many with attachments, within the amended scope. The agency advised that the work needed to deal with this number of documents was ‘beyond [the agency’s] resourcing’ and again asked the complainant to reduce the scope of his application. The agency repeated its earlier suggestions of how the scope could be reduced to a manageable level and additionally asked the complainant to consider excluding correspondence with a specified third party company, drafts, duplicates, and ‘administrative-type’ emails and ‘consider only the last email chain when it include[d] all communication’.

On 31 May 2023, the complainant agreed to reduce the date range of the requested documents. On 30 May 2023, the complainant made three new access applications to the agency, which were very similar in nature to the earlier application but with different date ranges. The new date ranges meant that the effective date range of all of the requested documents was the same as the initial application. For the purposes of this note, the totality of the complainant’s access applications are referred to as **the access application**.

By notice of decision dated 14 June 2023, the agency decided to refuse to deal with the access application under section 20 of the FOI Act (**section 20**). As the decision was made by the agency’s principal officer, internal review was not available, pursuant to section 39(3) of the FOI Act. On 15 June 2023, the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency’s decision.

The Commissioner obtained the agency’s FOI file maintained in respect of the access application. One of the Commissioner’s officers provided the complainant with her assessment of the matter, which was that the Commissioner was likely to consider that the

agency's decision was justified. The complainant did not accept the officer's assessment but did not make any submissions that were relevant to the question of whether the agency's decision was justified.

In deciding whether the agency's decision to refuse to deal with the access application under section 20 was justified, the Commissioner was required to determine whether (a) the agency took reasonable steps to help the complainant to change his application to reduce the amount of work needed to deal with it; and (b) whether 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.

The Commissioner was satisfied that the agency had taken reasonable steps to assist the complainant to change the access application to reduce the amount of work needed to deal with it. The agency provided practical suggestions on at least two occasions on how the scope of the application could be reduced to a manageable level. Although the complainant reduced the date range of the requested documents for his first application, the result of making three new, similar applications, which effectively covered the date range originally specified in his first application, was that the work involved in the agency dealing with the applications had not been materially reduced. The Commissioner was of the view that the complainant's approach was not cooperative in the circumstances. While section 20 places agencies under a duty to assist applicants, the Commissioner considered, that if the legislation is to work satisfactorily, there must be a corresponding obligation on applicants to work cooperatively with an agency and an element of reasonableness must be implied in the process: *Re Ravlich and Attorney General; Minister for Corrective Services* [2009] WAICmr 17 at [15].

In considering the work involved in the agency dealing with the access application, the Commissioner considered that the relevant question was whether the work involved in dealing with the totality of the applications would divert a substantial and unreasonable portion of the agency's resources away from its other operations. The Commissioner considered that the answer to this question should be independent of whether the applications are dealt with as a single application or as a series of separate applications that, between them, cover substantially the same total scope. The total work involved would be close to being the same. Given that the applications were lodged at or around the same time, the total time available to the agency would also be almost the same: see *Re Mineralogy Pty Ltd and Department of Industry and Resources* [2008] WAICmr 39.

Having regard to the work involved in dealing with the totality of the applications; the broad nature of the applications; the large number of documents identified by the agency; the time involved in assessing all of the documents located; the time required to edit those documents and/or consult with third parties under sections 32 and 33 of the FOI Act (noting that third party personal information or commercial information were not excluded from the scope); and the agency's workload dealing with a large number of access applications under the FOI Act, the Commissioner was satisfied 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.

Accordingly, the Commissioner confirmed the agency's decision to refuse to deal with the access application under section 20 of the FOI Act.