

**Decision D0052024 – Published in note form only**

***Re City of Melville Residents and Ratepayers Association Inc and Minister for Local Government [2024] WAICmr 5***

**Date of Decision: 28 March 2024**

***Freedom of Information Act 1992 (WA): section 20***

On 27 December 2022, the City of Melville Residents and Ratepayers Association Inc (**the complainant**) applied to the Minister for Local Government (**the Minister**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to any records in relation to the City of Melville or records associated with any other Member of Parliament or State agency in connection with the City of Melville.

Between January 2023 and April 2023, various communications took place between the parties in an attempt to narrow the scope of the complainant's access application, in accordance with section 20(1) of the FOI Act. Ultimately, agreement could not be reached on the terms of a revised scope.

During their discussions, the complainant agreed to give the Minister an extension of time to deal with the application.

By notice of decision dated 10 July 2023, the Minister decided to refuse to deal with the complainant's access application under section 20 of the FOI Act (**section 20**).

On 16 July 2023, the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the Minister's decision. The Commissioner obtained the Minister's FOI file maintained in respect of the access application.

On 27 February 2024, the Commissioner provided the parties with her preliminary view of the matter, which was that the Minister's decision was justified. The complainant did not accept the Commissioner's preliminary view and made further submissions. After considering those submissions and all of the material before her, the Commissioner was not dissuaded from her preliminary view.

Section 20 provides that:

- (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 application.

Section 20 is designed to ensure that the operations of government agencies are not unduly impeded by agencies having to deal with unreasonably voluminous access applications. It is one of a number of provisions in the FOI Act aimed at striking a balance between, on the one hand, the public interest in open and accountable government and, on the other hand, the public interest in the ongoing effective operation of agencies: *Re Ravlich and Attorney General; Minister for Corrective Services* [2009] WAICmr 17 at [15].

The Commissioner observed that Parliament has decided that, when the two requirements in section 20 are satisfied, the general right to access documents, created by section 10 of the FOI Act, is subordinate to an agency's effective operations.

Under section 12 of the FOI Act, an access application has to give enough information to enable the requested documents to be identified: section 12(1)(b). 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: see *Re Sideris and City of Joondalup* [2008] WAICmr 1 at [61].

The Commissioner was satisfied that the Minister 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 Minister had provided suggestions on at least five occasions on how the scope of the application could be reduced to a manageable level. Those suggestions included limiting the requested documents to specific document types such as meeting minutes, emails, letters and briefing notes; reducing the date range of the requested documents; and limiting the requested documents to those that contained particular words.

The Minister's office identified over 1300 documents as potentially coming within the scope of the access application. The Minister explained that a manual review would be required of many of the documents to ascertain which documents came within the scope of the application. The Commissioner noted that the number of documents or potential documents covered by an application, and the ease with which the specific documents can be identified and assessed, are relevant to the question of whether the work involved in dealing with an access application would divert a substantial and unreasonable portion of an agency's resources away from its other operations: see *Re Ballam and Shire of Toodyay* [2009] WAICmr 4 at [34].

Based on the information before her, the Commissioner accepted the Minister's general submission that the scope of the complainant's application meant that dealing with the application would involve a substantial and unreasonable diversion of the Minister's resources.

The Commissioner also accepted the Minister's submission that the manual process to be applied to each of the 1300 documents located including the cataloguing and appraisal; the detailed inspections of documents to identify exempt matter; the editing of documents; and potential third party consultations meant that the work involved in dealing with the complainant's access application would divert a substantial and unreasonable portion of the Minister's resources away from their other operations.

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