

Decision D0062017 – Published in note form only

Re Macdonald and City of Joondalup [2017] WAICmr 6

Date of Decision: 21 March 2017

Freedom of Information Act 1992 (WA): sections 16(1) and 26
Freedom of Information Regulations 1993 (WA): regulation 3

On 6 November 2015, Ms Doris Macdonald (**the complainant**) applied to the City of Joondalup (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to the official minutes of Council meetings held on 6 October 2015 and copies of two reports, including all attachments and documents mentioned in the body of those reports.

The agency provided the complainant with an estimate of charges and reduced the amount by 25% because the complainant is the holder of a pensioner concession card. The complainant sought internal review, and subsequently external review, of the agency's decision to impose charges.

The Commissioner provided the parties with his preliminary view in that matter. The Commissioner's preliminary view was that the agency's decision to impose charges was justified and, subsequently, the Commissioner wrote to the parties closing his file on the basis that the complaint was now lacking in substance.

Following the complainant's payment of the required deposit, the agency gave the complainant its notice of decision which was to provide the complainant full access to the documents it identified within scope.

The complainant applied for internal review of the agency's decision and the agency confirmed its decision. On 11 August 2016 the complainant applied to the Commissioner for external review of the agency's decision on the basis that she believes additional documents exist and the agency failed to consider whether she was impecunious.

The Commissioner considers that, in dealing with section 26, the following questions must be answered. First, whether there are reasonable grounds to believe that the requested documents exist or should exist and are, or should be, held by the agency. Where those questions are answered in the affirmative, the next question is whether the agency has taken all reasonable steps to find those documents.

The Commissioner's office made enquiries with the agency about the documents it holds and the searches it undertook to find all documents within scope. Following discussions with my office, the agency provided the complainant with an additional document.

On 25 January 2017 the Commissioner advised the parties of his preliminary view. It was his preliminary view that the agency's decision to refuse access to documents on the basis they cannot be found or do not exist is justified. It was also his preliminary view that the agency is not required to consider reducing its charges further on the basis the complainant is impecunious for the following reasons.

Section 16(1)(g) of the FOI Act provides that a charge must be waived or reduced if the

applicant is impecunious. The discretion to either waive or reduce a charge is that of the agency, as long as it does one or the other.

Regulation 3 of the *Freedom of Information Regulations 1993* provides that if, in the opinion of the agency to which the application is made, the applicant is impecunious or the holder of a prescribed concession card, the charge payable under the Regulations is to be reduced by 25%. That is, the agency must reduce the charge by 25% if the applicant either produces evidence to satisfy it that he or she is impecunious or produces a prescribed concession card. It is to be noted, however, that as a result of regulation 3 of the Regulations the agency is only required to reduce the charge by 25%. There is no obligation on an agency to completely waive the charges or reduce the charge by any amount in excess of 25%. Such action lies solely within the discretion of the agency.

The agency reduced the amount of its charges by 25% when it required payment. Therefore, even if the Commissioner were to determine that the complainant is impecunious, the agency would not be required to reduce the charges further because it had already reduced them by 25% as required by the Regulations.

The complainant was invited to reconsider whether she wished to pursue her complaint or to provide the Commissioner with further submissions relevant to the matter for his determination.

The complainant provided further submissions to the Commissioner on 8 February 2017. Following his review of the complainant's submissions and further enquiries with the agency, the Commissioner was not dissuaded from his preliminary view.

The Commissioner found that the agency's decision to refuse access to documents under section 26 was justified. The Commissioner also found that the agency was not required to reduce its charges further because it had already reduced its charges by 25% in accordance with the Regulations.