

Decision D0072018 – Published in note form

Re McLerie and City of Melville [2018] WAICmr 7

Date of Decision: 6 July 2018

Freedom of Information Act 1992 (WA): section 20

Background

On 21 August 2017, Mark McLerie (**the complainant**) applied to the City of Melville (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to documents relating to 13 different issues (**the application**). The 13 different categories included multiple documents in each category. Where a timeframe was specified, it spanned from April 2013 to the date of the application.

On 11 September 2017, the agency informed the complainant that dealing with the application as it was, would divert a substantial and unreasonable portion of the agency's resources away from its other operations, as described in section 20 of the FOI Act (**section 20**).

The complainant replied to the agency on 19 September 2017, stating that he had set out as much detail as possible in the application to assist the agency in locating documents. The complainant offered to meet with the agency but did not agree to narrow the scope of the application.

On 13 October 2017, the agency re-stated that it may be entitled to rely on section 20 to refuse to deal with the application and requested the complainant to narrow the application. The agency also explained to the complainant why a meeting would not assist in narrowing the scope of the application and described the kinds of documents it held that may fall within the scope of the application. The agency estimated that the time it expected to take to deal with the application would be approximately 95 hours.

On 6 November 2017, the agency made a decision to refuse to deal with the application on the grounds set out in section 20.

On 8 November 2017, the complainant applied to my office for external review of the agency's decision to refuse to deal with the application. Following receipt of the complaint, the agency provided my office with a copy of its FOI file maintained in respect of the application. My officer also made enquiries of the agency about the work involved in dealing with the application.

Section 20 provides that if, after taking reasonable steps to help an access applicant to change an application to reduce the amount of work required to deal with it, the agency still considers 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, the agency can refuse to deal with the application.

On 11 June 2018, I wrote to the parties setting out my preliminary view and the reasons for that view. It was my preliminary view that the agency's decision to refuse to deal with the application pursuant to section 20 was justified (**preliminary view**). The complainant was

invited to accept my preliminary view or to provide further submissions. The complainant did not accept my preliminary view and made further submissions dated 28 June 2018.

Consideration

Section 20 requires that agencies take reasonable steps to help access applicants change the application to reduce the amount of work needed to deal with it. There is a corresponding obligation on applicants to work cooperatively with an agency (see: *Park v RPH* [2014] WAICmr 18).

When considering an agency's refusal to deal with an access application under section 20, my function on external review is to decide whether the agency took reasonable steps to help an access applicant to change an application to reduce the amount of work needed to deal with it; and if it is justified in deciding 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 wrote to the complainant on 11 September, 13 October and 6 November 2017, asking him to reduce the scope of the application. The agency's letter of 13 October 2017, explained the nature and type of documents it held and gave the complainant information relating to the electronic documents that fell within the categories of requested documents.

I have examined the correspondence between the parties and considered the actions taken by the agency in response to the application. I am satisfied that the agency took reasonable steps to help the complainant to change the application to reduce the amount of work needed to deal with it.

The agency estimated the number of potentially relevant documents, following a search of the agency's electronic documents management system, using key words relevant to the application. For example, a search for one request in the application identified approximately 1000 documents. The agency would then be required to examine each of those documents to confirm whether they were relevant to the application. In addition, given the subject matters of the requested documents, the agency would be required to consult with third parties, where the documents contain personal information or commercial and business information of third parties, if it contemplated giving access to those documents.

The complainant's submissions are set out in his application for external review and the submissions of 28 June 2018. The complainant submitted, in part, that the agency was not required to expend substantial or unreasonable resources to deal with the application. At no stage has the complainant agreed to reduce the scope of the application.

I have read and considered the complainant's submissions of 28 June 2018 and in so far as they relate to matters within my jurisdiction under the FOI Act no new information has been provided and I am not persuaded by the matters raised.

I have considered all of the material before me, including the complainant's submissions; however, I am not dissuaded from my preliminary view.

I find that the material facts underlying my reasons are as set out in my preliminary view and above. For the reasons given in both the preliminary view and above, I am satisfied that the

agency has taken reasonable steps to help the complainant to change the application to reduce the amount of work needed to deal with it; and 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.

Decision

The decision of the agency to refuse to deal with the complainant's application under section 20 of the FOI Act is confirmed.