

Decision D0092024 – Published in note form only

Re City of Melville Residents and Ratepayers Association Inc and Department of Local Government, Sport and Cultural Industries [2024] WAICmr 9

Date of Decision: 27 June 2024

Freedom of Information Act 1992 (WA): section 20 and section 26

On 10 December 2022, the City of Melville Residents and Ratepayers Association Inc (**the complainant**) applied to the Department of Local Government, Sport and Cultural Industries (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to two categories of documents. By Part 1 of the access application, the complainant sought all records associated with a particular meeting in September 2022 between the agency and the City of Melville (**the City**). By Part 2 of the access application, the complainant sought records between the agency, the City, the Minister for Local Government (**the Minister**) and other State Government agencies relating to the complainant's communications with the agency and the Minister about various matters associated with the City since January 2021 'or any other related matter mentioned in the communications be they current or past matters'.

By notice of decision dated 14 February 2023, the agency decided to refuse to deal with the complainant's access application under section 20 of the FOI Act (**section 20**).

On 16 March 2023, the complainant sought internal review of the agency's decision. In its internal review decision, the agency referred to the two parts of the complainant's access application. In relation to Part 1, the agency decided to give access to edited copies of three documents. In relation to Part 2, the agency confirmed its decision under section 20 to refuse to deal with that part of the access application.

On 13 April 2023, the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency's decision to refuse to deal with Part 2 of the complainant's access application. The complainant also claimed that there were further documents within the scope of Part 1 of its access application. That was, in effect, a claim that the agency had refused the complainant access to documents under section 26 of the FOI Act (**section 26**).

The Commissioner obtained the agency's FOI file maintained in respect of the access application.

After considering the material then before the Commissioner, one of the Commissioner's officers advised the complainant of her assessment of the agency's decisions. It was the officer's assessment that the agency's decisions under sections 20 and 26 were justified. The complainant did not accept the officer's assessments and made further submissions.

The Commissioner reviewed all of the material before her and agreed with her officer's assessment.

Section 20

The agency identified approximately 900 documents, comprising 3500 pages, as potentially coming within the scope of Part 2 of the access application.

The Commissioner noted that Part 2 of the access application was very broad and that, based on its wording, it was not surprising that an extensive amount of documents would come within its scope.

The Commissioner was satisfied that the agency had taken reasonable steps to assist the complainant to change its access application to reduce the amount of work needed to deal with it, as required by section 20(1). The agency had provided suggestions on at least seven 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 or file notes; limiting the specific parties named in the documents; and identifying a certain event, occurrence or project.

Having regard to the substantial number of documents identified by the agency as potentially coming within the scope of the application, the Commissioner accepted that it would be a significant task for the agency to examine 3500 pages to assess whether each document comes within the scope of the application, in the first instance, and then to examine each document to determine whether any of the exemptions in Schedule 1 to the FOI Act apply to any or all of the documents.

As the complainant excluded personal information from the scope of its application, the agency was not required to consult with third parties under section 32 of the FOI Act about the disclosure of their personal information in the requested documents. However, as the requested documents were likely to contain an extensive amount of personal information (including personal information about officers of the agency and officers of other agencies), there would still be a significant amount of work involved in editing the documents to delete personal information.

Accordingly, based on all of the material before her, the Commissioner was satisfied that the work involved in dealing with the complainant's access application would divert a substantial and unreasonable portion of the agency's resources away from its other operations, pursuant to section 20(2).

Section 26

Section 26 provides that an agency may refuse access to a document if all reasonable steps have been taken to locate the document, and it is satisfied that the document is either in the agency's possession but cannot be found, or does not exist.

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 observed that an agency's decision to refuse access to documents under section 26 will be justified, even where there are reasonable grounds to believe further documents exist or should exist, if the agency has taken all reasonable steps to find the documents.

The agency advised that the officers who attended the meeting in question confirmed that the meeting was an informal discussion and that an agenda for the meeting was not created and no minutes or notes of the meeting were created.

The Commissioner accepted that there were reasonable grounds to believe that further documents within the scope of Part 1 of the complainant's access application should exist. Even if the purpose of the meeting in question between the agency and the City was an informal discussion, the Commissioner considered it was reasonable to expect that, at the very least, a basic record would have been created to capture the outcome of the meeting and the key points discussed, in accordance with the agency's obligations under the *State Records Act 2000 (WA) (SR Act)*. The Commissioner noted that good record-keeping underpins the right of access to documents under the FOI Act.

Having regard to the searches and inquiries undertaken by the agency in this matter, the Commissioner was satisfied that the agency had taken all reasonable steps in the circumstances to find the documents within the scope of Part 1 of the complainant's access application and that further documents either cannot be found or do not exist.

Accordingly, the Commissioner confirmed the agency's decision to refuse the complainant access to documents under section 26 of the FOI Act.

In addition, the Commissioner confirmed the agency's decision to refuse to deal with Part 2 of the complainant's access application under section 20 of the FOI Act.