

**Decision D0102021 – Published in note form only**

***Re Polglaze and Public Trustee Western Australia* [2021] WAICmr 10**

**Date of Decision: 27 August 2021**

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

On 26 July 2019, Raymond Polglaze (**the complainant**) applied to the Public Trustee Western Australia (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to all versions of two particular policies/procedures since 1994 and all documents relating to the revisions or changes, including any internal or external communications or notifications to individuals, clients of the agency (as an executor), agencies or other organisations.

The agency requested the complainant narrow the scope of his access application, and provided four documents, which the agency had identified from a search of its computer base. The complainant did not agree to reduce the scope of his application and sought internal review of the agency's deemed decision to refuse him access.

The agency informed the complainant of the searches it had conducted and the potential diversion of resources it would take to deal with the complainant's application and again requested that the complainant narrow the scope of his access application. The complainant did not agree to do so.

By internal review decision dated 23 October 2019, the agency decided to refuse to deal with the complainant's access application pursuant to section 20 of the FOI Act.

On 20 December 2019, the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency's decision. Following receipt of the application for external review, the Commissioner obtained a copy of the agency's FOI file maintained in respect of the complainant's access application.

After considering the information before her, on 24 June 2021, the Commissioner provided the parties with her preliminary view of the matter. It was the Commissioner's preliminary view that the agency's decision to refuse to deal with the access application pursuant to section 20 was justified.

The complainant did not accept the Commissioner's preliminary view and provided further submissions. Among other things, the complainant contended that the Commissioner's preliminary view was inconsistent with decisions of the Australian Information Commissioner (**AIC**) and the FOI Guidelines issued by the AIC under s 93A of the *Freedom of Information Act 1982 (Cth)*. The Commissioner noted that, although the FOI Guidelines and decisions of the AIC may be of guidance, they are not binding on the Commissioner and that access applications made to Western Australian agencies must be dealt with under the FOI Act of this State, with each application dealt with on its merits and on its own particular facts: *Re Brincat and Ministry of Justice* [1997] WAICmr 2 at [10].

After considering the complainant's further submissions and all of the material before her, the Commissioner was not dissuaded from her preliminary view.

In deciding whether the agency's decision 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, in the circumstances, the agency had taken reasonable steps to assist the complainant to change his access application to reduce the amount of work needed to deal with it. The agency had informed the complainant of the manner in which its records were stored, the searches it had conducted and the potential diversion of resources it would take to deal with his access application, including the further searches that would be required. Referring to *Re Park and SMHS - Royal Perth Hospital* [2014] WAICmr 18, the Commissioner noted that there is a corresponding obligation upon applicants to work cooperatively with an agency and, in this case, the complainant had advised that he was not willing to reduce the scope.

The agency claimed 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 on the basis that the majority of records relating to the application would be stored in archives and would be in paper form; those archives were not indexed in specific topics and would require a search to be made of all the archives to ensure that all documents within the scope were identified; the agency is a small agency with no dedicated FOI officer; the agency was dealing with other, large applications, made by the complainant; and the agency had searched its electronic files and provided the complainant with access to the information identified from that search.

The Commissioner observed that the factors taken into account in section 20 matters include the resources available to an agency to deal with FOI applications, the size of the agency, the number of applications it has on hand, the nature of the access application and the actual work involved. While the Commissioner did not consider that an agency's poor record-keeping or an inefficient filing system of themselves provide grounds for a claim under section 20, the Commissioner accepted that the requested documents in this case could not be easily identified or assessed. The Commissioner considered that the time period to which the application related (25 years), the location of the potential documents covered by the application and the nature in which those documents are stored by the agency were all relevant factors: see *Re Mineralogy Pty Ltd and Department of Industry and Resources* [2008] WAICmr 39 at [48].

On the material before her, the Commissioner accepted that the work required to deal with the complainant's 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 complainant's access application under section 20 of the FOI Act.