

Decision D0182017 – Published in note form only

***Re Seven Network (Operations) Limited and Public Transport Authority [2017]*
WAICmr 18**

Date of Decision: 30 August 2017

Freedom of Information Act 1992 (WA): section 20

On 21 November 2016, Seven Network (Operations) Limited (**the complainant**) applied to the Public Transport Authority (**the agency**) under the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for access to ‘Notices requesting information – in relation to traffic infringements incurred by WA bus drivers from 1 January 2016 until the 30 June 2016’.

The agency asked the complainant to reduce the scope of the access application to a period of one month and advised that if it did not agree to reduce the scope the agency was likely to refuse to deal with the access application under section 20 of the FOI Act. The complainant did not agree to reduce the scope of the application but did agree to an extension of two weeks for the agency to deal with the application. The agency advised the complainant that the information to which it sought access was available on its website; however, the information requested, although similar, was not the same as that on the agency’s website. The complainant advised that it sought access to only the single page on each record that contained information about the bus, the speed the bus was travelling and the speed zone at that location.

By notice of decision dated 11 January 2017 the agency decided to refuse to deal with the complainant’s access application on the ground that to do so would divert a substantial and unreasonable portion of the agency’s resources away from its other operations.

On 16 January 2017 the complainant applied for internal review of the agency’s decision. By letter dated 30 January 2017 the agency confirmed its decision.

By letter dated 1 February 2017 the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency’s decision.

Following receipt of the complaint, the Commissioner obtained a copy of the agency’s FOI file maintained in respect of the complainant’s access application. A conciliation conference was conducted, but the matter was not able to be resolved.

Section 20 provides that if, after taking reasonable steps to help the 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.

After considering the information before him, on 23 June 2017 the Commissioner provided the parties with a letter setting out his preliminary view of the complaint. It was the Commissioner’s preliminary view that the agency’s decision to refuse to deal with the application pursuant to section 20 of the FOI Act was not justified. The Commissioner was satisfied that the agency had taken steps to assist the complainant to reduce the scope of the

access application, but did not consider that to deal with the application would divert a substantial and unreasonable portion of the agency's resources away from its other operations. Dealing with the application was a relatively simple administrative task, as it was unlikely that the documents would contain exempt information or information that would require the agency to consult with third parties.

The agency was invited to accept the Commissioner's preliminary view and proceed to deal with the access application in accordance with its obligations under the FOI Act. Alternatively, the agency was invited to provide the Commissioner with further written submissions.

The agency did not accept the Commissioner's preliminary view and provided further submissions. In particular, the agency focused on 'amalgamating' this application with a previous application from the complainant, in order to establish that it was justified in refusing to deal with the current application.

The Commissioner was not persuaded by this argument as the question that must be answered is whether dealing with the application before the agency would divert a substantial and unreasonable portion of the agency's resources away from its other operations. That is to be decided by reference to the workload of the agency, including its work on other FOI matters at that time, which may include applications from the same complainant.

Having regard to the agency's submissions about its resources and the work involved in dealing with this application the Commissioner was not persuaded that dealing with the matter would divert a substantial and unreasonable portion of the agency's resources away from its other operations.

The decision of the agency to refuse to deal with the complainant's access application under section 20 of the FOI Act was set aside. In substitution, the Commissioner found that the agency had to deal with the complainant's access application in accordance with the provisions of the FOI Act.