

Decision D0222017 – Published in note form only

Re Seven Network (Operations) Ltd and Public Transport Authority [2017] WAICmr 22

Date of Decision: 20 December 2017

Freedom of Information Act 1992: section 20

In February 2016, Seven Network (Operations) Ltd (**the complainant**) made six applications to the Public Transport Authority (**the agency**) under the *Freedom of Information Act 1992* (**the FOI Act**) for access to CCTV footage of various kinds of incidents that had occurred on the agency's train network. Such incidents included near misses; slips, trips and falls; assaults on trains or at railway stations; train surfing; and people falling between the train and the platform.

The agency corresponded with the complainant to assist it to reduce the scope of the access applications. The complainant agreed to withdraw one of its access applications. However, the parties did not reach an agreement in relation to any further reductions of the access applications. The agency decided to amalgamate all of the complainant's access applications (**the amalgamated application**).

In a detailed notice of decision dated 16 March 2016, the agency refused to deal with the complainant's amalgamated application under section 20 of the FOI Act on the basis that it would divert a substantial and unreasonable portion of the agency's resources away from its other operations. The agency detailed the manner in which it maintains CCTV footage; the resources available to it to deal with the amalgamated application; what it considered was the process necessary to deal with the CCTV footage sought by the complainant; and the number of other requests made outside the FOI Act, with which it was dealing, seeking access to CCTV footage. The agency also suggested how the complainant could reduce the scope of the amalgamated application to allow the agency to deal with it.

The agency again requested the complainant to reduce the scope of its amalgamated application and repeated its earlier suggestions as to how that may be achieved.

On 5 April 2016, the complainant applied for internal review of the agency's decision. The complainant complained that it was the agency's choice to amalgamate the access applications, which had resulted in the agency relying on section 20 of the FOI Act to refuse to deal with the amalgamated application.

In a notice of internal review decision dated 18 April 2016, the agency confirmed its decision to refuse to deal with the complainant's amalgamated application under section 20 of the FOI Act.

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.

On 27 April 2016, the complainant applied to the Information Commissioner for external review of the decision of the agency to amalgamate its access applications and to refuse to deal with the amalgamated application under section 20 of the FOI Act.

Following receipt of the complaint the former Information Commissioner (**the former Commissioner**) obtained the files maintained in respect of the complainant's amalgamated application from the agency, and made further inquiries of the agency and the complainant.

On 1 May 2017, after considering the information before him, the former Commissioner provided the parties with a letter setting out his preliminary view of the complaint. It was the former Commissioner's preliminary view that the agency's decision to refuse to deal with the complainant's amalgamated application pursuant to section 20 was justified.

The former Commissioner also noted that there is nothing in the FOI Act expressly dealing with whether or not an agency may amalgamate two or more access applications. The former Commissioner considered that it is not necessary to express a conclusion as to whether the agency was entitled to amalgamate the complainant's access applications. Instead, the former Commissioner considered that the question is whether the work involved in dealing with the totality of the complainant's access applications the subject of this external review would divert a substantial and unreasonable portion of the agency's resources away from its other operations.

For the reasons given in the preliminary view, the former Commissioner considered that the answer to this question should be independent of whether the applications are dealt with as a single application or as a series of separate applications that, between them, cover the same total scope. The total work involved would be identical or very close to it. Given that the applications were lodged at or around the same time, the total time available to the agency would also be identical or very nearly: see *Re Mineralogy Pty Ltd and Department of Industry and Resources* [2008] WAICmr 39.

The complainant was invited to provide the former Commissioner with further submissions or withdraw its complaint. The complainant did not withdraw its complaint, and provided further submissions. However, the submissions did not contain material that was relevant to the matters for determination in this complaint.

After considering all of the information before her, including the complainant's further submissions and the former Commissioner's preliminary view, the Acting Information Commissioner (**the A/Commissioner**) was not dissuaded from the former Commissioner's preliminary view.

The A/Commissioner was satisfied on the information before her that the agency had taken reasonable steps to help the complainant to change its amalgamated application to reduce the amount of work needed to deal with it. The A/Commissioner was also satisfied that the work involved in dealing with the amalgamated application would divert a substantial and unreasonable portion of the agency's resources away from its other operations. The A/Commissioner reached this view based on a number of criteria including the nature of the individual applications, the number of applications and the period of time covered by the applications, together with the efforts made by the agency to assist the complainant to change its applications.

The A/Commissioner confirmed the agency's decision to refuse to deal with the complainant's amalgamated applications under section 20 of the FOI Act.