

Decision D0242014 – Published in note form only

Re Walters and Shire of York [2014] WAICmr 24

Date of Decision: 22 December 2014

Freedom of Information Act 1992: section 6; Glossary

On 8 August 2013, Ms Patricia Walters (**the complainant**) applied to the Shire of York (**the agency**) under the *Freedom of Information Act 1992* (**the FOI Act**) for access to certain financial records relating to the Forrest Oval Recreation and Convention Centre in York.

By notice of decision dated 25 September 2013, the agency decided that the information requested by the complainant was publicly available and therefore, pursuant to section 6 of the FOI Act, was not subject to the access procedures in the FOI Act. In effect, the agency refused to deal with the complainant's access application (**the access application**). As the then Chief Executive Officer made the decision, internal review was not available to the complainant. On 16 November 2013, 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 the FOI file maintained by the agency in respect of the access application. The Commissioner decided to deal with the matter in the first instance by requesting that the parties attend a conciliation conference. However, the matter was not resolved at that conference.

The Commissioner's office made further inquiries with the agency with respect to the records that the agency holds within the scope of the access application, including inquiries about the agency's databases. The agency maintained that the information requested by the applicant was available in minutes, agendas and reports of the Council that are available on its website.

Section 6 of the FOI Act provides that the access procedures set out in the FOI Act do not apply to documents that are available to the public, either for purchase or free distribution. The Commissioner considers that the fact that some information contained in a document may be available publicly, or on public record elsewhere, does not mean that section 6 of the FOI Act applies to that document. This is because section 10(1) of the FOI Act provides a right of access to documents rather than information and section 6 applies to documents that are publicly available, rather than information which is publicly available (see also *Re Kolo and Department of Land Administration* [1994] WAICmr 2 and *Re Collins and Ministry for Planning* [1996] WAICmr 39).

The Commissioner provided the parties with a letter setting out his preliminary view of the complaint. The Commissioner considered that the information stored in the agency's databases came within the scope of the complainant's access application and that the databases were documents as defined in the Glossary to the FOI Act. The Commissioner was also satisfied that the databases themselves were not available to the public, either for purchase or free distribution. Accordingly, it was the Commissioner's preliminary view, based on the information before him, that the agency's decision to, in effect, refuse to deal with the access application under section 6 of the FOI Act was not justified because not all of the requested documents were publicly available.

The Commissioner invited the agency to reconsider whether it wished to maintain its position or to make further submissions. The agency made further submissions. However, those submissions did not address whether or not section 6 of the FOI Act applied to all of the documents within the scope of the access application.

The Commissioner reviewed all of the information before him, including the agency's further submissions, and was not dissuaded from his preliminary view. Accordingly, the Commissioner set aside the agency's decision to, in effect, refuse to deal with the complainant's access application. In substitution, the Commissioner found that section 6 of the FOI Act did not apply to all of the requested documents and the agency was required to deal with the access application in accordance with Part 2 of the FOI Act.