

**OFFICE OF THE INFORMATION
COMMISSIONER (W.A.)**

**File Refs: F2008163;
F2008164; and F2008165
Decision Ref: D0392008**

Participants:

Mineralogy Pty Ltd
Complainant

- and -

**Department of Industry and
Resources**
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION - refusal to deal with six access applications - documents relating to State Mining Agreement Act – documents relating to several third party commercial entities - section 20 - reasonable steps to change applications - diversion of a substantial and unreasonable portion of agency's resources.

Freedom of Information Act 1992 (WA): sections 11(2), 11(3), 12, 14, 17(3), 18(2), 20, 24, 32, 33, 65(1), 66(6), 70

Freedom of Information Act 1982 (Cth): section 24

Re Conservation Council of Western Australia and Department of Conservation and Land Management [2005] WAICmr 5

Re "R" and Department of Family and Children's Services [1996] WAICmr 45

Wright and State Electricity Commission of Victoria [1998] VCAT 162

Langer and Telstra Corporation Ltd [2002] AATA 341

Re SRB and SRC and Department of Health, Housing, Local Government and Community Services (1994) 33 ALD 171

Re Hesse and Shire of Mundaring [1994] WAICmr 7

Shewcroft and Australian Broadcasting Corporation [1985] AATA 42

Secretary, Department of Treasury and Finance v Kelly [2001] VSCA 246

DECISION

The agency's decisions to refuse to deal with the complainant's access applications, in accordance with section 20 of the *Freedom of Information Act 1992*, are confirmed.

JOHN LIGHTOWLERS
A/INFORMATION COMMISSIONER

15 September 2008

REASONS FOR DECISION

1. These three complaints arise from decisions made by the Department of Industry and Resources ('the agency') to refuse to deal with six access applications made to the agency under the *Freedom of Information Act 1992* ('the FOI Act') by Mineralogy Pty Ltd ('the complainant').
2. In the first complaint, the complainant seeks external review of a decision made by the agency's internal review decision-maker on 26 March 2008. By that decision, the internal review decision-maker confirmed two decisions made on 25 February 2008 by the agency's initial decision-maker to amalgamate two access applications made to the agency by the complainant on 9 January 2008 and to refuse to deal with those two amalgamated access applications, in accordance with section 20 of the FOI Act.
3. In the second complaint, the complainant seeks external review of a second decision made by the agency's internal review decision-maker on 26 March 2008. By that decision, the internal review decision-maker confirmed two decisions made on 25 February 2008 by the agency's initial decision-maker to amalgamate three access applications made to the agency by the complainant on 9 January 2008 and also to refuse to deal with those three amalgamated access applications, in accordance with section 20 of the FOI Act.
4. In the third complaint, the complainant seeks external review of a decision made by the agency's internal review decision-maker on 26 March 2008. By that decision, the internal review decision-maker confirmed two decisions made on 25 February 2008 by the agency's initial decision-maker to refuse to deal with an access application made to the agency by the complainant on 9 January 2008, in accordance with section 20 of the FOI Act.
5. As all three of these complaints involve the same agency and the same complainant and as all of the complaints relate to the complainant's access applications to the agency, I have decided - for convenience - to deal with all three complaints in the one decision, although they remain separate complaints.

BACKGROUND

6. On 9 January 2008, the complainant lodged eight access applications with the agency. Six of those eight applications were requests for access to:
 - "...all documents concerning Mineralogy Pty Ltd for the entire period since 1 January 2006" (application A);
 - "...all documents concerning Clive Palmer for the entire period since 1 January 2006" (application B);
 - "...all documents concerning Sino Iron Ore Pty Ltd for the entire period since 1 January 2006" (application C);

- “...all documents concerning Citic Pacific Limited for the entire period since 1 January 2006” (application D);
 - “...all documents concerning CP Mining Management Pty Ltd for the entire period since 1 January 2006” (application E); and
 - “...all documents concerning Mineralogy Pty Ltd, Sino Iron Ore Pty Ltd and Citic Pacific Limited in relation to all documents and correspondence which include the words ‘Cape Preston’ and/or which relate to the ‘Iron Ore Processing (Mineralogy Pty Ltd) Agreement Act 2002 for the entire period since 1 January 2006” (Application F).
7. On 4 February 2008, the agency’s FOI co-ordinator wrote three letters to the complainant, advising that:
- the documents described in applications A and B were intertwined and, accordingly, the agency had decided to amalgamate those two applications and deal with them as the one application;
 - the documents described in applications C, D and E were also intertwined and, accordingly, the agency had also decided to amalgamate those three applications and also deal with them as one application;
 - the agency considered the amalgamated applications, and application E, were too large for the agency to deal with because, at that stage, the agency had identified forty five different agency files, containing approximately 200 folios on each file, which contained the documents falling within the scope of the complainant’s access applications.
8. The agency provided the complainant with some additional information in an endeavour to assist it to narrow or reduce the scope of its access applications. In response, by letters 12 February 2008, the complainant advised the agency that it did not agree with the agency’s decisions to amalgamate applications A and B and applications C, D and E but that it was prepared to exclude from the scope of its access applications any correspondence sent to the complainant by the agency and correspondence sent to the agency by the complainant.
9. On 15 February 2008 the agency’s FOI co-ordinator again wrote to the complainant, advising it that the agency still considered the scope of its access applications were too large for the agency to deal with because the work involved in dealing with those applications would take a significant amount of staff resources away from their usual duties within the agency, in order to identify all of the documents that would fulfil the complainant’s access applications. The agency’s FOI co-ordinator sought to further assist the complainant to narrow or reduce the scope of its access applications and she advised the complainant that the agency had “...stopped the clock” in relation to the complainant’s access applications until a revised scope had been agreed upon between the agency and the complainant.

10. On 21 February 2008, the complainant wrote to the agency, objecting to the agency's decision to "stop the clock" in relation to its access applications. The complainant advised the agency that if the agency was seeking to rely on section 20(3) of the FOI Act, the complainant expected a prompt decision to be made by the agency, on or before the expiration of the 45 day permitted period.
11. By letters dated 25 February 2008, the agency's FOI co-ordinator notified the complainant that the agency had decided to refuse to deal with applications A, B, C, D, E and F, under section 20 of the FOI Act, on the ground that the scope of the complainant's applications was so broad that the searches for documents of the kind requested would require staff from several divisions of the agency to spend a considerable amount of time away from their usual duties to locate the requested documents.
12. By letters dated 17 March 2008, the complainant applied to the agency for an internal review of the agency's three decisions in relation to applications A, B, C, D, E and F and, on 27 March 2008, the agency confirmed the initial decisions to refuse to deal with those applications, for the reasons previously given to the complainant by the agency. Following that, by letters dated 27 May 2008, the complainant applied to the Information Commissioner, seeking external reviews of the agency's decisions to refuse to deal with its access applications.

REVIEW BY THE A/INFORMATION COMMISSIONER

13. After receiving these complaints, pursuant to my powers under section 72 of the FOI Act, I required the agency to produce to me, for my examination, the original FOI files maintained by the agency in relation to each of the complainant's access applications. After reviewing and examining the documents retained on the agency's FOI files, my Senior Legal Officer, to whom this complaint was assigned, sought further information from the agency in relation to the complainant's complaints.
14. By letter dated 12 June 2008, my Senior Legal officer wrote to the complainant, seeking further advice and information from the complainant about the scope and nature of four of its access applications. My Senior Legal officer also sought advice from the complainant as to whether it would be prepared to accept access to edited copies of some or all of the requested documents, in accordance with the provisions of section 24 of the FOI Act. No response was received from the complainant in response to those inquiries by my officer.
15. My Senior Legal Officer sought a signed authority from Mr C Palmer, authorising the complainant to act on his behalf in relation to the complaint made to me in response to the agency's decision to refuse to deal with application B. On 15 July 2008, the complainant advised my office, by email, that it acted for Mr Palmer. However, the requested signed authority from Mr Palmer, authorising the complainant to act on his behalf, has not been provided to me.

16. In early, June 2008, my Senior Legal Officer sought further information from the agency's Records Management Officers, in relation to the agency's claims that the work involved in dealing with the complainant's access applications would divert a substantial amount of resources away from the agency's other operations. In response to his requests for further information, the agency provided my officer with additional information and a complete list of all of the files which the agency had identified as the files containing the documents described in the complainant's access applications to the agency.
17. By letter dated 30 June 2008, my Senior Legal Officer wrote to the complainant and, with the consent of the agency, he provided the complainant with a copy of the list of agency files produced by the agency. My Senior Legal Officer asked the complainant to review that list of files, with a view to narrowing the scope of its access applications to the agency. My Senior Legal Officer also advised the complainant that, based upon the information recorded in the agency's list of files, there appeared to be at least sixty five agency files, containing in excess of twelve thousand two hundred folios which would have to be examined by the agency in order to identify the documents relevant to applications A and B and that there also appeared to be at least thirty two other agency files, containing in excess of seven thousand two hundred folios which would also have to be examined by the agency in order to identify the documents relevant to applications C, D, E and F.
18. My Senior Legal Officer advised the complainant that, in his opinion, the work involved in dealing with its access applications would be substantial because, if an officer of the agency undertook a brief, but diligent, examination of each folio on each of the files described on the agency's list of files, taking no more than say 30 seconds per folio, it would take that officer approximately 160 hours (or 32 days at 5 hours per day) to complete the initial document examination. My Senior Legal Officer asked the complainant whether it was prepared to review the agency's list of files, with a view to narrowing the scope of its access applications to the agency, in order to reduce the amount of work required of the agency to deal with each of its access applications.
19. My Senior Legal Officer advised the complainant, if it was not prepared to narrow or reduce the scope of its access applications to the agency and it was of the view that the work involved in dealing with its access applications would not divert a substantial and unreasonable portion of the agency's resources away from its other operations, it was invited to provide the Information Commissioner with submissions as to why the complainant believed that was the case. By email dated 15 July 2008, the complainant advised my office that it was prepared to review the agency's list of files, with a view to reducing the scope of its access applications. However, nothing further has been heard from the complainant and the agency advises me that it has not heard from the complainant since these complaints were received.
20. On 10 July 2008, my Senior Legal officer attended at the agency, for the purpose of examining the files listed and described in the agency's list of files.

21. My Senior Legal Officer examined both hard copy paper files and electronically scanned files in the possession of the agency, in order to be satisfied that the files identified by the agency, as listed and described in the list of files provided to me and to the complainant, contained documents of the kind described in the complainant's access applications to the agency. Having examined the agency's files, my Senior Legal Officer was satisfied that, with the exception of a small number of documents which clearly fell outside the time period specified in the complainant's access applications to the agency, all the files listed and described in the agency's list of files, contained documents of the kind described in the complainant's six access applications to the agency.
22. By letter dated 28 August 2008, my Senior Legal Officer wrote to the complainant. He advised the complainant of his preliminary view of these complaints. In essence, it was my Senior Legal Officer's preliminary view that, on the basis of the information then before him:
 - the agency had taken reasonable steps, in the first instance, to assist the complainant to change its access applications in order to reduce the amount of work needed to deal with those applications;
 - the provision of additional information and the list of agency files to the complainant, for its consideration and response, confirmed my Senior Legal Officer's view that the agency had taken reasonable steps to assist the complainant to change its access applications;
 - the agency does not have unlimited time, money and resources such that it can spend significant time dealing with the complainant's applications in their present form and that he considered that to do so would divert a substantial amount of the agency's resources away from its other operations; and
 - nothing in the FOI Act prohibits an agency deciding to amalgamate two or more access applications and that decisions in other FOI jurisdictions in Australia supported the agency's decision to amalgamate the complainant's access applications.
23. My Senior Legal Officer advised the complainant that, in his opinion, given the lack of any response and assistance from the complainant, it had exhibited little, if any, real purpose or interest in pursuing its complaints to the Information Commissioner in a timely and diligent manner and, in the absence of any response from the complainant in relation to his preliminary view letter, he intended to refer all of the complainant's complaints to me, for a decision, without further notice to the complainant.
24. In light of all of the above factors, it is my view that all reasonable efforts had been made by my Senior Legal Officer and by the agency to try and resolve these complaints but it is equally clear that these complaints will not be resolved by conciliation and that the complainant has not continued to actively pursue its complaints to me. Having examined the complaint files maintained

by my office in relation to these matters, I consider that the complainant has been given ample opportunity to participate in this external review process and provide submissions to me in support of its complaints. Accordingly, I have decided to proceed directly to a decision on this complaint.

25. In my view, the only FOI matter arising from these complaints which requires my determination is whether the agency's decisions to refuse to deal with the complainant's access applications, in accordance with section 20 of the FOI Act, was justified.

SECTION 20

26. Section 20 of the FOI Act provides as follows:

“20. Agency may refuse to deal with an application in certain cases

(1) If the agency considers that the work involved in dealing with the access application would divert a substantial and unreasonable portion of the agency's resources away from its other operations, the agency has to take reasonable steps to help the applicant to change the application to reduce the amount of work needed to deal with it.

(2) If after help has been given to change the access application the agency still considers that the work involved in dealing with the application would divert a substantial and unreasonable portion of the agency's resources away from its other operations, the agency may refuse to deal with the access application.”

27. The purpose of section 20 in the FOI Act is to relieve an agency from the administrative burden of having to divert a substantial and unreasonable amount of its resources away from the agency's other operations, in order to deal with an access application made to the agency.
28. However, the former A/Commissioner said that a decision made by an agency under section 20 of the FOI Act cannot be justified where the agency has not satisfied its obligations under subsection 20(1) of the FOI Act. That is, the agency receiving an access application that is considered to involve a diversion of a substantial and unreasonable portion of resources in order to deal with the application has to take reasonable steps to help the applicant to change the application to reduce the amount of work needed to deal with it (see: *Re Conservation Council of Western Australia and Department of Conservation and Land Management* [2005] WAICmr 5).
29. In addition, the former Information Commissioner said that when considering a complaint about an agency's refusal to deal with an access application, in accordance with section 20 of the FOI Act, the Information Commissioner's function on external review is to decide whether the agency:

- (1) took reasonable steps to help an access applicant to change an application to reduce the amount of work needed to deal with it; and
 - (2) was justified in deciding that 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 (see: *Re "R" and Department of Family and Children's Services* [1996] WAICmr 45).
30. In *Re "R"*, the former Information Commissioner said that the first question involves a consideration of the history of the matter between the parties from the date the access application was received and includes a consideration of the nature and degree of assistance offered to the applicant by the agency. The second question involves a consideration of the number and type of documents involved in the access application, the usual work of the agency and an estimate of the resources to be devoted to the task of dealing with the application in accordance with the statutory requirements of the FOI Act.

Did the agency take reasonable steps to help the complainant reduce the scope of its access applications?

31. The FOI Act imposes an obligation on agencies to assist applicants, where necessary, to reduce the scope of an access application or to formulate their requests in more precise terms, for example, by explaining, subject to any exemptions, the nature and types of documents held, such as, by meeting to discuss the application; by advising an applicant on how its recordkeeping system operates; by indicating the kind of documents it holds; and by assisting an applicant to focus on the category or categories of document most likely to contain the information sought.
32. However, section 12 of the FOI Act provides, among other things, that an access application has to give enough information to enable the requested documents to be identified. In other words, there is a requirement that access applicants describe the documents they are seeking with sufficient particularity to enable the agency to locate those documents and deal with them under the FOI Act.
33. In providing assistance to an access applicant, an agency is not obliged, under the FOI Act, to list all possible documents of relevance, identify the precise number of documents falling with the scope of an access application or provide inspection of those documents to enable an applicant to select those that he or she may be interested in, since to do so would defeat a key purpose of section 20, which is to avoid processing of FOI access applications that would divert substantial and unreasonable resources away from operational activities.
34. Nevertheless, as both the former Information Commissioner and the former A/Commissioner observed, the FOI Act places the onus upon an agency to assist an access applicant to change the access application.

35. Accordingly, the first question for my determination in relation to these complaints is whether the agency took 'reasonable' steps to help the complainant to change its six access applications, in order to reduce the amount of work required of the agency to deal with those applications.
36. In my view, the assistance given to the complainant by the agency in the first instance was sufficient to meet the requirements of the FOI Act. Following receipt of the complainant's access applications, on 15 January 2008, the agency's FOI Coordinator telephoned a representative of the complainant, seeking to assist the complainant to narrow the scope of its access applications. Following that, the FOI co-ordinator wrote to the complainant, advising it that the agency considered the scope of those applications to be too large to deal with and explained why that was the case.
37. By letter dated 4 February 2008, the agency's FOI co-ordinator offered information and suggestions to the complainant to assist it to reduce the scope of its access applications, such as confining its applications to one Branch of the agency, such as Major Projects, Tenements or Environment; by nominating a particular subject matter of interest to the complainant; by nominating a particular type or kind of document or by reducing the date range of its access applications. At the end of that letter, the FOI co-ordinator invited the complainant to contact her for the purpose of further discussing the complainant's applications.
38. In response to the FOI co-ordinator's request, by letter dated 12 February 2008, the complainant objected to the agency's decision to amalgamate its access applications but agreed to exclude from the scope of its access applications any correspondence sent to the complainant by the agency and correspondence sent to the agency by the complainant. The complainant said that without knowing what information existed, it was unable to narrow the scope of its applications any further.
39. By letter dated 15 February 2008, the FOI co-ordinator explained to the complainant the reasons why the agency decided to amalgamate the access applications and she offered some additional information and suggestions to the complainant to assist it to reduce the scope of its access applications. The complainant responded by advising the agency that the information set out in its letter of 15 February 2008 merely repeated the advice provided to the complainant on 4 February 2008.
40. Although under no duty or obligation under the FOI Act to do so, the agency's FOI co-ordinator subsequently prepared and, through my office, provided the complainant with a complete list of all relevant files, showing the categories of documents held on the files relevant to the complainant's access applications, in an endeavour to assist the complainant to select the files or categories of documents of most interest to the complainant, thereby reducing the scope of the complainant's access applications.
41. Having examined the correspondence exchanged between the agency and the complainant, which is retained on the agency's FOI files, having reviewed the

actions taken by the agency in response to the complainant's access applications and taking into account the assistance provided to the complainant by the agency during the external review process, by giving the complainant a copy of the complete list of all relevant agency files, I am satisfied that the steps taken by the agency to help the complainant to change its access applications to reduce the amount of work required to deal with those applications were reasonable in the particular circumstances of these applications.

Would the work involved in dealing with the complainant's applications in their present form divert a substantial and unreasonable portion of the agency's resources away from its other operations for the purposes of section 20(1) and (2) of the FOI Act?

Consideration

42. The words 'substantial' and 'unreasonable' have been the subject of much judicial consideration: see, for example, the cases referred to in *Wright and State Electricity Commission of Victoria* [1998] VCAT 162 and in *Langer and Telstra Corporation Ltd* [2002] AATA 341. In *Langer's* case, the Deputy President of the Commonwealth Administrative Appeals Tribunal ('the AAT'), having considered the authorities in connection with the interpretation of the phrase "...substantially and unreasonably divert the resources of the agency" in section 24 of the Commonwealth *Freedom of Information Act 1982* ('the Commonwealth FOI Act') - the Commonwealth equivalent to section 20 of the WA FOI Act - said at [115]:

"... it seems to me that the work involved in processing a request will only substantially and unreasonably divert the resources of an agency if the work is real or of substance and not insubstantial or nominal and if it is unreasonable having regard to factors, such as workload ..."

43. I consider that statement to be a useful guide to the interpretation of section 20 of the WA FOI Act.
44. In *Re SRB and SRC and Department of Health, Housing, Local Government and Community Services* (1994) 33 ALD 171 at 179, the Full AAT stated that the resources, the subject of section 24 of the Commonwealth FOI Act:

"... cannot mean the whole of the resources of a large Department of State. To find this would make the section meaningless. We consider it means the resources reasonably required to deal with an FOI application consistent with attendance to other priorities." I agree with the view expressed by the AAT in *Re SRB*.

45. On 4 February 2008, the agency's FOI co-ordinator advised the complainant that, at that point in time, the agency had identified at least 45 files within the scope of its access applications and that each file contained approximately 200 folios.

46. Following further inquiry by my office during the external review process, it was established that the agency had significantly understated the true number of documents potentially falling within the scope of the complainant's access applications. Those inquiries identified that there were approximately sixty five agency files, containing in excess of twelve thousand two hundred folios, which would have to be examined by the agency in order to identify the documents relevant to applications A and B and at least thirty two other agency files, containing in excess of seven thousand two hundred folios, which would also have to be examined by the agency in order to identify the documents relevant to applications C, D, E and F.
47. My Senior Legal Officer advised the complainant that, in his opinion, the work involved in dealing with its access applications would be substantial because, if an officer of the agency undertook a brief, but diligent, examination of each folio on each of the files described on the agency's list of files, taking no more than say 30 seconds per folio, it would take that officer approximately 160 hours (or 32 days at 5 hours per day) to complete the initial document examination.
48. Relevant factors to indicate that the work involved in dealing with an access application would divert a substantial and unreasonable portion of an agency's resources away from its other operations include such things as:
 - the time period to which the application relates;
 - the number of documents or potential documents covered by the application;
 - the ease with which the specific documents can be identified and assessed;
 - the location of those documents and the nature in which they are stored by the agency;
 - the number of people competent to identify the documents and the normal duties of those people;
 - the need to take legal advice and/or consult with third parties.
49. No individual factor, on its own, usually will be sufficient and determinative to establish that dealing with a particular access application would divert a substantial and unreasonable portion of an agency's resources away from its other operations.
50. Initially, the agency briefly described the difficulties it envisaged if it were to deal with the complainant's access applications. The agency provided the complainant with an indication of the number of files that had been identified by the agency and the approximate numbers of folios held on each file. The agency advised the complainant – correctly in my view – that each document would have to be examined; where necessary, third parties consulted; and the documents edited and exemptions claimed.
51. In its notices of decision, the agency did not provide the complainant with a detailed estimate of the number or types of documents or the amount of time that it considered it would take to deal with its access applications. Rather, the agency described the task in more general terms and referred the complainant to

the need for staff of several divisions of the agency to spend a considerable amount of time away from their usual duties to locate the requested documents.

52. In *Re Hesse and Shire of Mundaring* [1994] WAICmr 7, the former Information Commissioner described the various administrative procedures for dealing with an access application:
- (i) consulting with third parties (but only if consultation is required);
 - (ii) examining the documents, exercising judgment and making a decision about access;
 - (iii) deleting exempt matter where appropriate;
 - (iv) preparing a notice of decision in the required form, if access is refused; and
 - (v) providing access in the manner required by the applicant (or in an alternative manner).
53. Based upon the information recorded in the list of files provided to me by the agency and the inspection of most of those files by my Senior Legal Officer, I am satisfied that there are at least sixty five agency files, containing in excess of twelve thousand two hundred folios, which would have to be examined by the agency in order to identify the documents relevant to applications A and B and that there are at least thirty two other agency files, containing in excess of seven thousand two hundred folios, which would have to be examined by the agency in order to identify the documents relevant to applications C, D, E and F.
54. Using a more conservative analysis than that applied by my Senior Legal Officer, if an officer of the agency undertook the task of examining the documents retained on the files identified by the agency and he or she took no more than one minute per folio, it would take that officer approximately 320 hours (or 64 days at 5 hours per day) to complete the initial document examination. In addition, in the event that the agency decided to give the complainant access to edited copies of all of the requested documents, after deleting any potentially exempt matter, it would be necessary to add an additional and, in my opinion, substantial period of time for deleting any exempt matter but no additional time for third party consultation because the agency would not be required to consult with any third parties once the exempt matter has been deleted from the documents (see sections 32(6) and 33(4) of the FOI Act).
55. In the alternative, if the agency decided to give the complainant full access to all of the requested documents, the agency would then be required to consult with all third parties in accordance with sections 32 and 33 of the FOI Act and it would, therefore, become necessary to allow an additional, substantial, period of time for those third party consultations to take place.
56. As regards the resources currently available to the agency to deal with FOI applications, I am advised by the agency and - in the absence of any information to the contrary - I accept that the agency has only one FOI co-ordinator to deal with all access applications made to the agency. Over the past 3 financial years

the agency's FOI co-ordinator dealt with 85 access applications in 2005-2006, 55 access applications in 2006-2007 and 106 access applications in 2007-2008.

57. I am also advised that the Director of Investment Facilitation for the agency considers that there are only two officers of the agency in that particular section who would have the requisite knowledge and skills to conduct searches for the relevant documents in that part of the agency; that there are also 2 officers of the agency in the Environment division of the agency who would have the requisite knowledge and skills to conduct searches for the relevant documents in that part of the agency and, finally, that there are 1 or 2 officers of the agency who would have the requisite knowledge and skills to conduct searches for the relevant documents in the Mineral and Title Services divisions of the agency.
58. On the basis of the information presently before me, I accept that it is more probably than not that those officers have other tasks and duties to perform as officers of the agency and that to require those officers to search through some 65 agency files in order to first identify, and then make decisions on access, in respect of approximately 19,500 folios would divert those officers away from their other work at the agency. I am also of the view that the time and resources required to deal with the complainant's access applications would be significant. The agency does not have unlimited time, money and resources such that it can spend significant time dealing the complainant's applications in their present form and I consider that to do so would divert a substantial amount of the agency's resources away from its other operations.
59. Although it advised my Senior Legal officer, in mid-July 2008, that it was willing to examine the agency's list of files, in order to reduce the scope its access applications, no further correspondence has been received by my office from the complainant in that regard and it has not contacted the agency's FOI coordinator .

Determination

60. I find that the agency was justified in deciding that the work involved in dealing with the complainant's access applications in their present form would divert a substantial and unreasonable portion of the agency's resources away from its other operations. Accordingly, I confirm the agency's decision to refuse to deal with those applications in accordance with section 20 of the FOI Act.

THE AGENCY'S DECISION TO AMALGAMATE THE ACCESS APPLICATIONS

61. Section 65(1) of the FOI Act provides, among other things, that a complaint may be made to the Information Commissioner, against an agency's decision to refuse to deal with an access application; to refuse access to a document; to defer giving access to a document and to impose a charge or require the payment of a deposit. However, there is nothing in the FOI Act which provides that a complaint may be made to the Information Commissioner, against an agency's decision to amalgamate one or more access applications.

62. I have made my determination in relation to the agency's decisions to refuse to deal with the complainant's access applications. However, as this issue was raised by the complainant in its dealings with the agency, I consider it appropriate to express an opinion on this aspect of the manner in which the agency dealt with the complainant's access applications under the FOI Act.
63. However, I do not consider that the external review processes should be clogged by requiring my officers to make enquiries into submissions made by the complainant, in circumstances where, on the available evidence, there are no reasonable grounds or supported factual material put forward to lend weight to those submissions. In the absence of any objective evidence to support those allegations, I do not find that the amalgamation of the access applications in this instance was improper or outside the processes permitted by the FOI Act.
64. Nothing in the FOI Act prohibits an agency from amalgamating two or more access applications. Moreover, the question of whether an agency is entitled to amalgamate or deal with several FOI applications made at the one time, from the same applicant seeking access to generally related documents, has been considered in other FOI jurisdictions in Australia. In *Shewcroft and Australian Broadcasting Corporation* [1985] AATA 42, the AAT considered, among other things, the Australian Broadcasting Corporation's decision to amalgamate eight separate access applications made to the Australian Broadcasting Corporation under the Commonwealth FOI Act by Ms Shewcroft, a former legal adviser to the Australian Broadcasting Corporation.
65. In *Shewcroft's* case, Sir William Prentice, Senior Member of the AAT said:
- "...I believe that the respondent's approach in treating the eight requests together as a general or "global" request, accords with the facts. And it appears to me that the spirit of the [Commonwealth FOI] Act calls for them to be so considered, when deciding whether s.24 (the Commonwealth FOI equivalent of section 20 of the WA FOI Act) be applicable to the situation existing once the requests had been made.*
- It would appear to make a nonsense of that Section [section 24] if in a case where it would clearly apply to a request for a huge volume of nominated documents, that application of s.24 could be avoided by the mere breaking down of such an overall request to a multitude of virtually contemporaneous requests for single documents or parcels of them which would aggregate the whole."*
66. In Victoria, which has had an FOI Act in operation since 1982, the Full Court of the Court of Appeal of the Supreme Court of Victoria considered the question of whether the appellant in that case could properly characterise multiple related requests for access to documents under the Victorian *Freedom of Information Act 1982* as, effectively, a single request (see: *Secretary, Department of Treasury and Finance v Kelly* [2001] VSCA 246).
67. The Full Court of the Supreme Court of Victoria referred to the AAT's decision in *Shewcroft's* case and noted that section 25A of the Victorian FOI Act (the

Victoria equivalent of section 20 of the WA FOI Act) had been inserted into the Victorian FOI Act in order to:

“ ...strike a balance between the objects of the Act to which reference has already been made and the need to ensure that the requests under the Act did not cause substantial and unreasonable disruption to the day to day workings of the government through its agencies.

It would defeat all or much of that purpose if the provision [section 20] were to be read so as to enable a person to avoid its operations simply by dividing what would otherwise obviously be a "voluminous" request which would fall within s.25A(1)(a), into several parts none of which, by itself, would offend the provision, but all of which, if considered together, would substantially and unreasonably divert the agency's resources from its other operations”.

68. Having regard to the decisions in *Shewcroft's* case and in *Kelly's* case, in my opinion, the views expressed in those two cases are useful guides to applying the WA FOI Act. In my view, the Parliament of Western Australia could not have intended that the effect of section 20 of the FOI Act would be defeated if that section was to be read so as to enable a person to avoid section 20 simply by dividing what would otherwise obviously be a “voluminous” access application into several parts, none of which, by itself, would offend the provision, but all of which, if considered together, would substantially and unreasonably divert an agency’s resources away from its other operations.
69. In my opinion, although I am not required to determine this question, the agency was entitled, because of the coincidences of time, parties and subject matter of the access applications, to amalgamate the complainant’s access applications for the purpose of determining whether the processing those applications would divert a substantial and unreasonable portion of the agency’s resources away from its other operations.
