

Decision D0122000 – Published in note form only

***Re Kean and Department of Environmental Protection*[2000] WAICmr 12**

Date of Decision: 10 March 2000

Freedom of Information Act 1992; section 20

In October 1999, the complainant made an application to the agency for access to various documents, consisting of approximately 1305 pages, relating to three tailings dams in Kalgoorlie owned by a mining company. The agency sought agreement from the complainant to deal with the application over a longer time-frame, rather than trying to assist him to further reduce the scope of his request and hence the amount of work needed to deal with it.

The complainant responded to the agency's invitation by applying for internal review. The agency subsequently refused under s.20 of the FOI Act to deal with the access application.

During the external review process, the agency prepared a list of categories of documents which was given to the complainant so that he could redefine the scope of his application. Subsequently, the complainant reduced the scope but the Information Commissioner found that the revised application involved 3 volumes of files containing approximately 425 folios.

The agency submitted that many of those documents dealt with complex technical issues relating to the business and commercial interests of third parties. The agency had only one officer to deal with FOI applications on a part-time basis and that officer was then dealing with a number of FOI applications that required her to spend an inordinate amount of time on them, such that her other duties remain unattended. Due to the technical nature of the documents, there was only one senior officer with the necessary degree of knowledge and experience available to perform the task of reviewing the documents and making a decision on access. However, his normal duties could not reasonably be put aside to deal with the complainant's request.

When considering the portion of the agency's resources that would be diverted away from its other operations if the application were to be dealt with, the Information Commissioner took into account, among other things, the number of documents involved, the number of other access applications on hand in the agency and the resources available to the agency to deal with the application, including the limited number of staff with the necessary knowledge to make an informed judgement about the granting of access. The Information Commissioner was satisfied that reasonable steps had been taken to assist the complainant to change the application to reduce the amount of work required to deal with it but that, if the agency were to deal with the revised application, it would be required to divert a substantial and unreasonable portion of its resources away from its other operations. The Information Commissioner confirmed the decision of the agency to refuse to deal with the request.