OFFICE OF THE INFORMATION COMMISSIONER (W.A.)

File Ref: F1452000
Decision Ref: D0622000

Participants:

Michael James Butcher
Complainant

- and -

Agriculture Western Australia
Respondent

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION – complaint against decision to require payment of the deposit – estimate of charges – principles of administration of FOI Act in relation to charges – agencies to assist the public to obtain access to documents promptly and at lowest reasonable cost – charges for access.

Freedom of Information Act 1992 (WA) ss. 3(1), 3(2)(a), 4, 13(1), 16(1), 17(3), 18(1), 18(2), 19(1)(b), 20(1) and 112.
Freedom of Information Regulations 1993 Regulation 5; Schedule 1, items 2 and 3.

Re Hesse and Shire of Mundaring [1994] WAICmr 7
Re Ravlich and Crown Solicitor's Office [2000] WAICmr 8

DECISION

The decision of the agency is set aside. The deposit the agency may require the complainant to pay on account of the charges for dealing with the complainant's access application is $64.50

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

22 November 2000

REASONS FOR DECISION

1. This is an application for external review by the Information Commissioner arising out of a decision made by Agriculture Western Australia ('the agency') to require Mr Butcher ('the complainant') to pay an advance deposit of $345 for it to deal with an access application made by the complainant under the *Freedom of Information Act 1992* ('the FOI Act').

2. In a letter dated 17 May 2000, solicitors acting on behalf of the complainant made an application to the agency under the FOI Act for access to certain documents. The agency responded to that request by informing the solicitors that it would not process the request until confirmation had been received that the solicitors were authorised to act on behalf of the complainant and until material confirming the identity of the complainant had been provided. The agency also indicated, in its letter, that, *"…given the breadth of your request, significant costs would be incurred in mounting a search for the documents and a decision made on their release"* and suggested that the scope of the request be reconsidered with a view to reducing it.

3. The solicitors, on behalf of the complainant, subsequently provided proof of the complainant's identity and reduced the scope of the original access application. The redefined application by the complainant was for access to documents described as:

> *" 1. Minutes of the Agriculture Protection Board (APB) relating to the Bait Production Unit, the distribution or retail of 1080, or the use of 1080 by pest control operators from the period May 1999 until this date.*
>
> *2. Reports provided to the APB relating to point 1 above.*
>
> *3. Any e-mail correspondence from or to the Chairman of the APB, Mr Greg Pickles, Mr Simon Merewether or Mr Dennis Rafferty relating to Animal Pest Management Services, myself, sales or supply of 1080, or legislative changes, responsibilities or liabilities relating to 1080 for the period from September 1999 to this date.*
>
> *4. Reports, letters, e-mail or memos from or to Mr Rob Delane or Mr Greg Pickles relating to the policies, procedures or legislation of 1080 for the period 1 January 2000 to this date."*

4. In a letter dated 26 June 2000, the agency gave the complainant notice of its decision to require the payment of a deposit in the sum of $345 on account of the charges for dealing with the access application. The agency did not specify the number of documents coming within the scope of the access application, but the internal review decision contained a reference to 500 folios. The complainant was informed that the deposit was 25% of the estimated charges of

$1,380 for dealing with the access application. The agency listed and described the activities for which it had estimated charges would be imposed as follows:

• Identify and retrieve documents	18 hours
• Sort and evaluate	15 hours
• Decision	5 hours
• Photocopying	5 hours
• Prepare copies	3 hours
Total Cost	46 hours @ $30/hr = $1,380

5. The complainant's solicitors sought internal review of the decision and asked the agency to endeavour to find some method of reducing the time it claimed would be involved in dealing with the access application. The complainant's solicitors suggested that the agency specify where the greatest costs would be incurred and identify those documents which would require the most time to be spent on their retrieval so that the complainant could reconsider his request in respect of those documents.

6. Under cover of a letter dated 12 July 2000, the agency gave the complainant's solicitors notice of its decision to confirm the original decision. The only option identified by the agency for reducing the charges payable for dealing with the application was for the scope of the request to be further limited. However, no information or advice was given to assist the complainant to narrow the scope of the application.

7. On 7 August 2000, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

REVIEW BY THE INFORMATION COMMISSIONER

8. After receiving this complaint, the then Acting Information Commissioner formally notified the agency that it had been received and required the production of the agency's FOI file maintained in respect of the complainant's access application. The Acting Information Commissioner also required the agency to provide additional information to justify its estimate of charges including a detailed explanation of the activities involved in the preparation of copies, a detailed explanation of the difference between the steps of "evaluation" and "decision", and an explanation of the basis for the agency's estimate of 5 hours to photocopy approximately 500 pages, as set out in its notice of decision following an internal review.

9. The Acting Information Commissioner also informed the agency that, on the information then available to him, the agency's estimate of charges and its decision to require the payment of a deposit based on that estimate did not appear to be justified. The Acting Information Commissioner noted that the agency appeared to have based its estimate on a search time of 18 hours and that the Information Commissioner had previously decided that that was not an

activity for which charges were payable under the FOI Act. It was also noted that the agency had estimated a charge of $45 for its "internal review costs" and that s.44 of the FOI Act provided that no application fee or other charge was payable in respect of an application for internal review.

10. The Acting Information Commissioner subsequently met with the agency's Executive Director, Corporate Services, who had made the initial decision, and he made verbal submissions on behalf of the agency seeking an extension of time to provide the required information. Following that meeting, on 25 August 2000, a letter was received from the agency providing information, making submissions in support of its estimate of charges and requesting that I refer to the Supreme Court of Western Australia the question of whether an agency is entitled to impose charges for searching for, identifying and locating requested documents.

11. In response to the request from the Acting Information Commissioner for further information, the agency explained that:

> *"1.* 'Preparation of copies' *relates to the task of compiling the copies that have been produced by photocopy machine into an appropriate set of documents so that those documents are properly ordered and collated.*
>
> *2. The distinction between the term "evaluation" and "decision" relates primarily to the person undertaking the task. When all files have been retrieved an employee undertakes a process of evaluating those documents and sorting them into the appropriate categories as outlined in the application and for the decision-maker to review. Another person, usually at a different level in the hierarchy of the organisation, subsequently reviews these documents to decide their status for release or otherwise.*
>
> *3. The estimated cost of photocopying 500 pages was based on an estimate of 100 pages per hour which includes the task of removing the documents from the file, removing any paper clips, staples or similar fasteners, copying the document, reconstructing the document and returning it to the file."*

12. In my letter dated 5 October 2000 to the agency, a copy of which was sent to the complainant, I gave my preliminary view of this complaint, including my reasons. It was my preliminary view that the agency's decision to require the payment of a deposit in the sum of $345 was not justified because the deposit had been calculated on the basis of an estimate of charges which included activities for which the agency is not entitled to impose a charge. It was also my preliminary view that, in any event, the estimated charges were calculated on the basis of excessive estimates of the time it would take to undertake each activity. I also decided that, in the circumstances of this matter, I need not refer any question of law to the Supreme Court of Western Australia and gave my detailed reasons to the agency.

13. It appeared to me that the agency's decision-makers did not fully understand the objects and intent of the FOI Act and had based some of their estimates on activities for which the agency was not entitled to impose charges and also that the time estimated by the agency for dealing with the application was not justified or reasonable. It also appeared to me that the agency had made no real effort to comply with the principles of administration in s.4 of the FOI Act, which require the agency's decision-makers, among other things, to administer the FOI Act in such as way as to assist the public to obtain access to documents promptly and at the lowest reasonable cost.

14. Subsequently, I met with the Chief Executive Officer of the agency who informed me that there had been no change of policy in the agency with respect to charges payable under the FOI Act for providing access to documents. He agreed to review the agency's estimate of charges and to explain, in more detail, the tasks involved in dealing with the application, the number and nature of the documents identified and the time it would take to deal with those documents.

15. On 27 October 2000, I received a written response from the agency. Although the agency reduced its charges from $1380 to approximately $800-900, it had included in its latest calculations a number of administrative activities for which, in my view, no charges were payable and had provided no material to me to show that its revised estimates were justified. As a result, I required the agency to produce for my inspection the documents the subject of the access application. Those documents, which totalled 25 (239 folios), were delivered to my office on 1 November 2000, together with the 4 files from which the documents had been extracted.

ADVANCE DEPOSITS

16. Section 17(3) of the FOI Act requires that, if an agency estimates that the charges for dealing with an access application might exceed $25, or such greater amount as is prescribed then, whether or not a request has been made under s.17(1), the agency has to notify the applicant of its estimate, and the basis on which its estimate is made, and inquire whether the applicant wishes to proceed and notify the applicant of the requirement of s.19(1)(b). Section 19(1)(b) provides that if intention to proceed is not notified within 30 days (or such further time as the agency allows) after the day on which the notice was given, the applicant is to be regarded as having under s.17(3) withdrawn the access application.

17. Section 18(1) of the FOI Act allows an agency, in a notice given under s.17(3), to require the applicant to pay a deposit of a prescribed amount or at the prescribed rate on account of the charges for dealing with the application. The rate prescribed by the *Freedom of Information Regulations 1993* ('the Regulations') is 25% of the estimated charges in excess of the application fee (item 3 of the Schedule).

GENERAL PRINCIPLES OF ADMINISTRATION OF THE FOI ACT

18. The FOI Act states in its long title, that it is "[a]*n Act to provide for public access to documents…"*, and its objects are to enable the public to participate more effectively in governing the State and to make the persons and bodies that are responsible for State and local government more accountable to the public (s.3(1)). Those objects are to be achieved by, *inter alia*, creating a general right of access to State and local government documents (s.3(2)(a)). Section 4 of the FOI Act obliges agencies to give effect to the Act in a way that, among other things, assists the public to obtain access to documents and allows access to documents to be obtained promptly and at the lowest reasonable cost.

19. Those principles and various other provisions of the FOI Act impose a duty on agencies to assist people who make applications under the FOI Act to obtain access to documents promptly and at the lowest reasonable cost. Most relevantly to this matter, s.18(2) of the FOI Act requires an agency that has required an applicant to pay a deposit to, at the request of the applicant, discuss with the applicant practicable alternatives for changing the application or reducing the anticipated charges. Section 20(1) provides that, if the agency considers that the work involved in dealing with an access application would divert a substantial and unreasonable portion of the agency's resources away from its other operations, the agency must take reasonable steps to help the applicant to change the application to reduce the amount of work needed to deal with it.

20. I have examined the agency's file maintained in respect of the complainant's access application. I can find nothing in that file to show that either the initial decision-maker or the internal reviewer made any attempt to discuss with the complainant or his solicitor practical alternatives for changing the application or reducing the anticipated charges. The Chief Executive Officer of the agency informed me that the complainant was a former officer of the agency who would be well aware of the kind of documents that exist and where those documents would be located. The Chief Executive Officer stated that a number of his officers had had prior dealings with the complainant and that a considerable amount of time would need to be spent by his officers identifying and retrieving relevant email messages described by the complainant because those documents had been archived and were stored on the computer hard disk. However, I pointed out to the Chief Executive Officer that the kind of electronic documents requested by the complainant should be printed and filed as hard copies. If that had occurred, it would be unnecessary to conduct the extensive search proposed by the agency.

CHARGES UNDER THE FOI ACT

21. Section 112(2) of the FOI Act provides that the Governor may make regulations including, but not limited to, regulations prescribing fees for lodging access applications and charges for dealing with access applications or rates to be used in calculating such charges. Section 16(1) of the FOI Act provides that any

charge that is, in accordance with the Regulations, required to be paid by an applicant before access to a document is given, must be calculated in accordance with the principles in paragraphs (a)-(h) of that section. Those principles include a requirement that a charge must be waived or reduced if an applicant is impecunious (which does not apply in this case) and that a charge must not exceed such amount as may be prescribed by regulation from time to time.

22. Regulation 5 of the Regulations provides that the charges set out in column 2 of item 2 of Schedule 1 are prescribed as payable under s.16(1) of the FOI Act. Item 2 of Schedule 1 to the Regulations prescribes the charges payable under the FOI Act as follows:

"Type of charge		***$***
(a)	*Charge for time taken by staff dealing with the application (per hour, or pro rata for a part of an hour)*	*30.00*
(b)	*Charge for access time supervised by staff (per hour, or pro rata for part of an hour)… plus the actual additional cost to the agency of any special arrangements (e.g. hire of facilities or equipment) .*	*30.00*
(c)	*Charges for photocopying –*	
	(i) per hour, or pro rata for a part of an hour of staff time; and	*30.00*
	(ii) per copy	*00.20*
(d)	*Charge taken for time taken by staff transcribing information from a tape or other device (per hour, or pro rata for part of an hour)*	*30.00*
(e)	*Charge for duplicating a tape, film or computer information*	*Actual cost*
(f)	*Charge for delivery, packaging and postage*	*Actual cost."*

23. In my view, the Parliament of Western Australia clearly intended that, although charges may be payable for access, those charges would not, and should not, be calculated so as to frustrate the objects and intent of the FOI Act. Such intent is clearly evident from a reading of *Hansard* containing the Parliamentary debate on this legislation. For example, the Hon C Edwardes, Member for Kingsley, said:

> *"The sentiment that the costs are kept as low as possible is important. There was never any intent to have full recovery of the costs of providing the information by the agency. That has been discussed over a number of months during briefings from the Minister's staff and other jurisdictions..."* [Hansard, 10 November 1992, p 6505].

24. Clearly, in my opinion, it was never intended that agencies apply a strict "user-pays" approach to calculating charges under the FOI Act. In my decision in *Re Hesse and Shire of Mundaring* [1994] WAICmr 7, I described the various administrative procedures for dealing with an access application and the

processes for which charges may be imposed under the Regulations. I consider those procedures to be the administrative steps of :

(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).

25. In my view, a decision to impose a charge on an access applicant seeking to exercise his or her legitimate rights under the FOI Act for administrative procedures which an agency has both the capacity and a duty to control should be a decision that both accords with the legislation and reflects the spirit and intent of this legislation. In the circumstances of this complaint, I do not consider that the agency's decision accords with the legislation or reflects its spirit and intent.

The agency's revised estimate of charges

26. In its letter sent to me on 27 October 2000, following my meeting with the Chief Executive Officer, the agency itemised and described the activities for which it proposed to impose charges for dealing with the complainant's access application. The activities and agency's estimates are as follows:

(i)	Create FOI file, register application and notify applicant	0.5 hour
(ii)	Search, identify and retrieve documents	11 hours
(iii)	Sort and evaluate documents by officers other than decision maker	2 hours
(iv)	Consultation with agency officers	1 hour
(v)	Consultation and correspondence with applicant re estimated costs	1 hour
(vi)	Preliminary document preparation – deconstruction, reconstruction of files including photocopying and collation	5 hours
(vii)	Examination of all documents to ensure that they fall within the scope of the access application	3 hours
(viii)	Identifying exempt matter (highlighting), photocopy twice of all documents	0.7 hour
(ix)	Assessment, decision making and identification of exempt matter	2 hours
(x)	Scheduling/listing of documents - access/exemption	1 hour
(xi)	Preparing notice of decision	1 hour
(xii)	Document preparation – deletion of exempt matter	0.7 hour

(xiii) Document preparation – final photocopying to provide access 0.7 hour

27. The agency informs me that the revised costs are based on a very careful estimation of the time required to complete those tasks by a competent officer and that the agency would ensure the relevant officer is highly skilled and suitably trained to perform those tasks so that any increase in the time required could not be related to the competence of the officer concerned. The agency also advises me that, whilst it is convenient for the agency to photocopy the documents three times, it only proposes to charge the complainant for one set of copies.

28. In my view, for the following reasons, the agency is not entitled to impose charges for the activities described at points (i), (ii) (iii), (iv), (v) and (vi). Further, I consider that certain of the proposed activities identified by the agency in paragraph 26 above, are duplicated and are, in fact, unnecessary steps. For example, item (iii) and item (vii) and, with regard to the identification of exempt matter, item (viii) and item (ix).

Charges for creating an FOI file, searching, identification and retrieval

29. In my view, the activities identified in point (i) are administrative activities that are included in the application fee of $30 that is payable for access to non-personal information. I consider that a separate charge is not warranted in respect of those activities, which are a part of the normal administrative costs of operating any government agency. I have previously decided that the agency is not entitled to impose a charge for searching for and retrieving documents as set out in point (ii) and, accordingly, the estimated time for that activity should not be included in the calculation of estimated charges: see *Re Hesse*. The agency submits that it is entitled to charge for searching for documents in response to an access application. The agency argues that regulation 5 specifically provides that Schedule 1 to the Regulations ('the Schedule') is prescribed pursuant to section 16(1) of the FOI Act, and the Schedule ought therefore to be construed so as to give effect to the principles set out in that section.

30. The agency contends that, as s.16(1)(a) provides that an agency can charge for time spent in "conducting a routine search" and item 2(a) of the Schedule does not exclude charging for a routine search, the appropriate interpretation must be that item 2(a) allows an agency to charge for such a search. In the alternative, the agency submits that the phrase "dealing with", when used in either section 13(1) or item 2(a) of the Schedule cannot be construed to mean that a decision-maker only "deals with" an application once the decision-maker begins to consider or decide the issue of access, but that to make any real sense of section 13(1), "deal with" must mean the whole of the process of managing the application from receipt of the application through to making a decision on access and photocopying documents.

31. I have considered the arguments that the agency has submitted and have reviewed my previous decisions in *Re Hesse and Shire of Mundaring* [1994]

WAICmr 35 and *Re Ravlich and Crown Solicitor's Office* [2000] WAICmr 8, in respect of this issue. However, I remain of the view that, although s.16(1) of the FOI Act clearly contemplates that a charge for conducting a routine search may be required to be paid by an applicant, no charge for searching for documents is presently prescribed by the Regulations and, therefore, an agency is not entitled to impose a charge for searching for and retrieving requested documents.

32. Section 16(1) of the FOI Act states that any charge that is, in accordance with the Regulations, required to be paid by an applicant before access is given, must be calculated in accordance with the principles set out in paragraphs (a)-(h). In other words, the Regulations prescribe the types of charges that can be imposed and s.16(1) sets out the principles to be applied when calculating those charges. Regulation 5 states:

> *"The charges set out in column 2 of Item 2 of Schedule 1 are prescribed as payable under s.16(1) of the Act for the purposes set out opposite that charges in column 1 of that item."*

33. In my view, Regulation 5 does not have the meaning contended by the agency. I do not consider that s.16(1) prescribes charges. Rather, it sets out the principles to be followed by agencies when calculating the amount of "[a]*ny charge that is, in accordance with the regulations, required to be paid…"*. In other words, s.16(1) provides that the charges prescribed by the Regulations (which are made under s.112 of the FOI Act) <u>are payable</u> under s.16(1) in accordance with certain principles. If a charge is, in accordance with the Regulations, required to be paid, then the principles in s.16(1) must be applied by the agency when calculating that charge. The agency's claim, as I understand it, is that the phrase *"prescribed as payable under s.16(1)"* in Regulation 5 means that the principles in paragraphs (a)-(h) of s.16(1) are prescribed matters for which an agency may impose a charge. However, I consider that claim to be misconceived for the reasons I have given. As I have said previously, the Regulations do not require a charge to be paid for searching for or retrieving documents.

34. The Regulations prescribe a rate to be charged for dealing with an access application. Section 13(1) of the FOI Act sets out what is involved in "dealing with" an application for the purposes of the FOI Act and, therefore, for which a charge may be imposed.

35. In my view, the agency's argument ignores the plain and ordinary meaning of the words "to deal with…by" in s.13(1) where "by" indicates that a specified method or procedure follows. In this case the specified method for dealing with an access application is by:

> *"13. (1)…*
>
> *(a) considering the application and deciding-*

(i) whether to give or refuse access to the requested documents; and

(ii) any charge payable for dealing with the application;

and

(b) giving the applicant written notice of the decision in the form required by section 30."

36. In my opinion, activities such as creating an FOI file, conducting searches and retrieving documents are mechanical, administrative steps preliminary to dealing with the application. It is quite clear from the Parliamentary debates that full cost recovery for processing applications under the legislation was never the intention of Parliament.

37. Further, if I were to accept the agency's argument that "[r]*egulation 5 specifically provides that the Schedule of Costs is prescribed pursuant to s.16(1), and the Schedule of Costs ought therefore to be construed so as to give effect to the principles set out in s.16(1)",* then, whilst an agency might charge for conducting a routine search, there could be no charge imposed by the agency for considering the documents, determining whether or not they contained exempt matter, editing documents to delete exempt matter, consulting with third parties where required or preparing a notice of decision as none of those activities is provided for in s.16.

38. On the agency's argument, charges under the Regulations could be made only for a routine search for documents, supervising inspection of the matter to which access is granted and supplying copies of documents, making arrangements for viewing documents or providing a written transcript of the words recorded or contained in documents. I do not accept that to have been the intent of the legislation.

39. Further, I do not accept the agency's argument that "[t]*o make any real sense of section 13(1), 'deal with' must mean the whole of the process of managing the application, from receipt of the application through to making a decision on access and photocopying any documents."* If that were the case, then there would be no need to detail separately in the Regulations, as has been done, charges for access time supervised by staff, photocopying, transcribing information and duplicating tapes. Those activities are clearly carried out subsequent to the application being dealt with, not as part of dealing with the application.

40. As I have said, in my opinion, dealing with the application means dealing with it by undertaking the activities mentioned in s.13(1) of the FOI Act. There are charges specifically prescribed for activities undertaken after dealing with the application, but there are presently no charges prescribed for the preliminary activities undertaken before dealing with the application. For these reasons, having considered the agency's submission, I remain of the view that at present

an agency is not entitled to charge for searching for documents in response to an access application.

41. Even if I were to accept that the agency is entitled to impose a charge for searching (which I do not), then I do not accept that 11 hours is a reasonable amount of time for a routine search. On 3 November 2000, after examining the documents and the agency's files, I visited the agency. The agency's Record Manager explained the computerised records management system to me and demonstrated its searching capabilities by using key words from the complainant's access application to identify the number of potential matches and the location of those records. The Records Manager is an experienced FOI Coordinator and, during the course of my visit, I asked him to estimate the time it would take him in this case to conduct a routine search and to retrieve the requested documents. The Records Manager estimated that a routine search would take him no more than 2 hours as he was reasonably familiar with the system and the location of the records identified by the computer. Using a variety of terms and fields to narrow the search to relevant documents, I estimate that it would take around 40 minutes to identify and retrieve the documents, plus additional time of around 30-40 minutes to retrieve documents from the Agricultural Protection Board, which are filed in a separate area of the agency.

42. As I have said, although s.16(1) of the FOI Act clearly contemplates that a charge may be required to be paid for an agency conducting a routine search, no charge for searching is prescribed by the Regulations. In my view, therefore, an agency is not presently entitled to impose a charge for that activity. The access laws in this country were enacted at a time when government record-keeping systems were largely paper-based and considerable costs could be incurred by government agencies in giving effect to a person's right of access under FOI laws. However, in many agencies, there are now computerised systems that significantly reduce the length of time it takes to find records that are requested under the FOI Act. Clearly, that is the case in the agency.

43. Accordingly, even if the agency were entitled to charge for a routine search to locate the documents requested by the complainant, and I do not consider that it is entitled to do so, at the most the charge that could be imposed for that activity would be between $30-$60 for 1-2 hours search time.

Sorting and evaluating

44. Similarly, I do not accept that the agency is entitled to charge for "sorting and evaluating" the documents retrieved. I consider those to be preliminary administrative steps and not part of actually dealing with the access application. Again, even if I were to accept that the agency is entitled to impose a charge for those activities, then I do not accept that it would take competent, appropriately skilled and experienced officers 2 hours to sort 25 documents *"…into the appropriate categories as outlined in the application and for the decision maker to review."*

Consultation with agency officers

45. The agency has not explained to me why it is necessary or desirable that officers of the agency be consulted about the complainant's access application, or the nature of the consultation suggested. If it is for the purpose of ensuring that all relevant documents are found, in my opinion an internal email message to all staff to that effect would suffice. If it is to seek advice from other officers because the decision-maker does not have the capacity to make the decision, then the complainant should not have to pay for that. In any event, having examined the documents produced to me by the agency, I do not accept that consultation is necessary, or that the complainant should be charged for that activity if it is undertaken. This is not an activity required by the FOI Act and, if the agency chooses to undertake it, it is a preliminary step to dealing with the application. There is simply nothing put before me by the agency to justify a charge of that nature.

Consultation and correspondence with complainant

46. In respect of the estimate of charges for this activity, I do not consider that it is authorised or justified. Clearly, the agency is under a duty to assist the complainant to change the application by discussing practicable alternatives for changing the application or reducing the anticipated charges. In my view, the FOI Act does not and should not allow an agency to charge an applicant for discussing with the applicant, either verbally or in writing, his or her access application, particularly with a view to reducing the charges. Once again, this is a preliminary administrative step. I note that in the 7 years of operation of the FOI Act to date, I have not become aware of any other agency seeking to impose a charge for such activities.

Preliminary document preparation – deconstruction, reconstruction of files, including photocopying and collation

47. Nothing has been put before me by the agency to explain or justify a period of 5 hours to undertake those activities. The agency's Record Manager informs me that documents are not filed with staples and that the time taken to extract relevant records from a file is minimal. Even on the basis of the agency's initial estimate of 500 folios, I do not accept that 5 hours would be required for removing those folios from the files, photocopying them, returning them to the files and collating the copies. I do not accept that it would take 5 hours to remove 25 documents consisting of 239 unstapled folios from 4 files, photocopy them, return them to the files and to collate those copies. In any event, as in the case of items (i)-(v) of the agency's revised estimate, I do not consider this to be an activity for which a charge may be imposed. It is a preliminary administrative step which should be able to be performed relatively quickly by a competent officer in preparation for the decision-maker dealing with the access application.

A reasonable estimate of charges in this instance

48. I consider that items (vii)-(xiii) of the agency's revised estimate include matters for which a charge may be imposed. Further, I consider that items (vii)-(ix) of the revised estimate – that is, examining the documents to ensure that they are within the scope of the application, assessing them, making a decision on access and deleting exempt matter – are all activities that can be undertaken together. That is, they require one examination of the documents, not three separate examinations as the estimated times for each suggest. Further, the identification of exempt matter is included in both items (viii) and (ix), an unnecessary and unjustified duplication.

49. In my opinion, a charge may be imposed for item (x) – preparing a schedule – if it is done as a necessary or desirable part of preparing a notice of decision. Items (x) and (xi) should therefore be undertaken together.

50. Having considered the documents described by the complainant, the information provided to me by the agency about its estimate of charges, the agency's record-keeping system, the advice of the agency's Records Manager, and having examined the 25 documents produced to me and the files from which those documents were extracted, I consider that a reasonable estimate of the time for the agency to deal with the application is 7 hours. In my view, a reasonable estimate of the time required to undertake the activities for which the agency may impose a charge are:

Examination of documents, exercising a judgement, identifying exempt matter and making a decision on access	4 hours
Preparing notice of decision, including a schedule	1.5 hours
Deleting exempt matter (identified by decision-maker) and photocopying documents	1.5 hours

51. As the charges prescribed for those activities are $30 per hour, I consider a reasonable estimate of charges to be $210. The agency is also entitled to charge 20 cents per copy for photocopies of the documents. Therefore, if the agency ultimately decides to give the complainant access to all 239 folios, it will be entitled to charge $47.80 for those photocopies. Therefore, I consider that the advance deposit, which the agency may require the complainant to pay on account of the charges for dealing with the access application, is 25% of $257.80 or approximately $64.50.

52. Finally, by way of comment, I consider that both the agency and my office in dealing with this particular complaint have expended a considerable amount of time, effort and resources when that ought not to have been necessary. It is clear to me that there have been administrative costs to agencies associated with the enactment of the FOI Act. However, in all but a few instances, public sector agencies have generally accepted that the benefits flowing from a more open and transparent government in Western Australia outweigh the administrative costs of FOI. When delivering services to the public, agencies are expected, and must be seen, to act fairly, consistently, objectively and according to law. Those

requirements mean that economic efficiency is not the only goal of effective public administration. It should be apparent to officers in agencies by now that accountability, whether through the FOI process or other means, is not a cost to public administration. It is an integral part of it.

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