

Participants:

**Christopher Ballam**  
Complainant

- and -

**Shire of Toodyay**  
Respondent

### **DECISION AND REASONS FOR DECISION**

FREEDOM OF INFORMATION - refusal to deal with application - documents relating to credit card payments - section 20 - reasonable steps to change application - diversion of a substantial and unreasonable portion of agency's resources.

*Freedom of Information Act 1992* (WA): ss.11, 20, 32, 33, 35.  
*Freedom of Information Regulations 1992*

*Re Mineralogy Pty Ltd and Department of Industry and Resources* [2008] WAICmr 39

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

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

*Langer and Telstra Corporation Ltd* [2002] AATA 341

*Re McDonald and City of Joondalup* [2006] WAICmr 2

*Re Hesse and Shire of Mundaring* [1994] WAICmr 7

*Re Butcher and Agriculture Western Australia* [2000] WAICmr 62

## DECISION

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

JOHN LIGHTOWLERS  
A/INFORMATION COMMISSIONER

19 FEBRUARY 2009

## REASONS FOR DECISION

1. This complaint arises from a decision by the Shire of Toodyay ('the agency') to refuse to deal with an application for access to documents made to the agency under the *Freedom of Information Act 1992* ('the FOI Act') by Mr Christopher Ballam ('the complainant').

## BACKGROUND

2. On 18 July 2008, the complainant applied to the agency, under the FOI Act, for access to "...copies of the actual statements provided by the bank, generated by all Mastercards, used by the Shire of Toodyay, which are drawn against the Shire of Toodyay accounts, for the period 31<sup>st</sup> December 2007 to 30<sup>th</sup> June 2008, together with the corresponding ledger entries showing where the items listed in the statements have had a budgetary allocation."
3. By letter dated 29 July 2008, the agency's Chief Executive Officer ('the CEO') wrote to the complainant and advised him that the agency "...operates with the use of four (4) Corporate Credit Cards. Each transaction on each card would involve third parties. As a consequence, to comply with your request would require the Shire of Toodyay to seek consent in writing from each of the third parties prior to the release of the requested information. This would divert a substantial and unreasonable amount of the Shire of Toodyay's resources away from our other operations." The CEO asked the complainant to reduce the scope of his access application to specific transactions or specific dates.
4. On 4 August 2008, the complainant wrote to the agency requesting an estimate of the charges likely to be made by the agency should it deal with his access application and confirming that he would not reduce the scope of the access application further.
5. The agency's FOI Coordinator replied by letter of 16 September 2008 confirming that the complainant's access application, as set out in paragraph 2 above, would divert a substantial and unreasonable amount of the agency's resources away from its other operations. Further, the agency advised the complainant that "... it is extraordinarily difficult to provide an estimate of total costs. However, at \$30.00 per hour and possibly as much as two hundred (200 hours) it is possible that costs could be in the vicinity of \$6,000.00." Again, the agency invited the complainant to reduce the scope of his access application to specific transactions and/or specific dates.
6. The complainant wrote to the agency on 19 September 2008 and said that the estimate of \$6,000.00 was unreasonable. In addition, the complainant noted that the agency's decision on internal review could not be made by an officer who is subordinate in rank to the initial decision-maker; that the agency could apply under s.35 of the FOI Act to the Information Commissioner for a waiver of the requirement to consult; and that, to date, the agency had taken 60 days to deal with his access application.

7. On 2 October 2008, the CEO wrote to the complainant and said that an internal review had been conducted of the decision contained in the letter of 16 September 2008 from the agency's FOI Coordinator. The CEO confirmed that decision on the basis that the access application was too broad. The CEO also said that he did not support the view that an application under s.35 of the FOI Act should be made to the Information Commissioner because:

*"...It is not considered prudent to seek an exemption from requiring third party approvals as you suggest due to most transactions having an element of personal information implicated in the transactions.*

*As personal and business interests could be adversely affected by revealing same, the Freedom of information Act is clear as to the processes that need to be undertaken.*

*Consequently, Council is unable and unwilling to seek such a waiver as requested from the Freedom of Information Commission."*

8. On 10 October 2008, the complainant applied to the Information Commissioner for external review of that decision.

#### **REVIEW BY THE A/INFORMATION COMMISSIONER**

9. Following the receipt of this complaint, I required the agency to produce to me its FOI file maintained in respect of the complainant's access application. After reviewing and examining the documents retained on the agency's FOI file, my Investigations Officer sought further information from the agency. Amongst other things, the agency provided me with copies of the credit card statements which come within the scope of the complainant's access application. It also provided me with submissions regarding how it manages ledger entries for credit cards used by authorised officers of the agency.
10. The agency contends that it has not refused to deal with the access application but, rather, is still in the process of negotiating a reduced ambit with the complainant. However, in my view, the effect of the agency's letter of 16 September 2008 and its decision on internal review as contained in its letter of 2 October 2008 - which expressly states that an internal review has been conducted - was that the agency decided to refuse to deal with the access application under s.20 of the FOI Act.
11. The complainant has sought access to, amongst other items, ledger entries by the agency relating to the relevant credit card transactions. The agency submits that such ledger entries would comprise an excessively large volume of records that would be very time consuming to separately identify and extract. In response to a suggestion from my officer, the complainant did not agree to withdraw or modify his request for access to the ledger entries. He did, however, agree to being given access to the account numbers, or split accounts, for each entry from the credit card statements, rather than the actual ledger entries. In my view, that would not reduce in a significant extent the amount of work required by the agency to provide the complainant with access to the requested documents,

because each separate entry would still need to be identified, extracted, and considered.

12. The agency was invited to consider dealing with the access application, by providing access to edited copies of the monthly credit card statements, with only the names and contact details of the bank employees, the credit card number and the account number deleted. The agency maintained that the application, in that form, was still too large for it to deal with.
13. Therefore, because conciliation of this matter was not possible, it is now necessary for me to determine whether the decision of the agency to refuse to deal with the access application, in its current form, under s.20 of the FOI Act is justified.

## SECTION 20

14. Section 20 provides:

***“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.”*

15. In my view, the purpose of s.20 is to ensure that the operations of government agencies are not unduly impeded by agencies having to deal with unreasonably voluminous access applications. It is one of a number of provisions aimed at striking a balance between, on the one hand, the public interest in open and accountable government – and, to that end, people being able to exercise their rights under the FOI Act – and on the other hand, the public interest in the ongoing effective operation of agencies.
16. When considering a complaint about an agency’s refusal to deal with an access application, my function is to decide whether the agency:
  - (1) 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 Mineralogy Pty Ltd and Department of Industry and Resources* [2008] WAICmr 39; and

- (2) took reasonable steps to help an access applicant change an application to reduce the amount of work needed to deal with it.
17. In *Re Conservation Council of Western Australia and Department of Conservation and Land Management* [2005] WAICmr 5 at [20], the former A/Information Commissioner said:
- “A decision made by an agency under section 20 of the FOI Act cannot be justified where the agency has not satisfied its obligation under subsection 20(1). That is, 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.”*
18. In other words, an agency may be justified in claiming 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 but, if the agency has not taken reasonable steps to help the applicant change the application to reduce the amount of work needed to deal with it, the agency is not justified in refusing to deal with that application under s.20.

***Has the agency taken reasonable steps to help the complainant reduce the scope of the access application?***

19. Following the receipt of the complainant’s application, the agency wrote to the complainant on 29 July 2008 and explained why it considered the scope of the application was too large. To assist him to reduce the scope, the agency suggested that he limit his request to specific transactions and specific dates. In a letter dated 4 August 2008, the complainant did not accept that suggestion, indicating that he had already reduced the scope of his access application from a full 12 month period to six months. The complainant also requested an estimate of charges.
20. By letter dated 16 September 2008, the agency advised that it remained of the view that the scope of the access application was too broad and suggested that the complainant seek specific transactions and/or specific dates. It also stated that providing an estimate of charges at this stage was difficult, but based on \$30.00 per hour, dealing with the access application could take approximately 200 hours, particularly given the number of third parties with whom consultation would be necessary.
21. On 19 September 2008, the complainant wrote to the agency advising that he considered the estimate of charges to be unreasonable and reminded the agency that it could apply to the Information Commissioner under s.35 of the FOI Act for a waiver of the requirement to consult.
22. On 2 October 2008, in its notice of internal review decision, the agency confirmed the initial decision to refuse to deal with the access application in its current form and again suggested a way of reducing the scope of the application in order that the agency could deal with it.

23. Having examined the correspondence between the agency and the complainant and having reviewed the actions taken by the agency in response to the complainant's access application, I am satisfied that the steps taken by the agency to help the complainant make a valid access application in accordance with s.11 of the FOI Act, were reasonable in the circumstances.

***Would the work involved in dealing with the application in its present form divert a substantial and unreasonable portion of the agency's resources away from its other operations?***

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

25. I consider that statement to be a useful guide to the interpretation of s.20 of the FOI Act.

***The complainant's submissions***

26. The complainant submits that his access application was small and covered only a six-month period. He considers that there are a number of alternatives available to the agency to assist it in dealing with his access application. For instance, the agency could apply to the Information Commissioner under s.35 of the FOI Act for a waiver of the requirement to consult with the third parties.

***The agency's submissions***

27. The agency submits that it does not have the resources to deal with the access application because it is too broad. The four credit cards are assigned to various officers of the agency who have authority to incur expenditure on behalf of the agency. The agency's bank issues a separate monthly statement for each of those four credit cards. Each statement consists of two to three pages each month (a total of some 12 pages each month or 72 pages over six months). The statements are received in paper form and are stored in archives physically located outside the offices of the agency. It is only the most recent credit card statements which the agency physically retains on its premises. There are only two officers of the agency who have access to the credit card statements, being the CEO and the Manager of Finance and Administration.

28. The agency submits that in one month it is possible for the CEO to have made over 100 purchases on his credit card. Based on my examination of a sample of the credit card statements, there are approximately 20 entries on each statement for each month, other than the CEO's credit card statements, which would mean that there are approximately 180 third parties identified on each credit card statement. There are a significant number of such statements.
29. I understand that for every entry on the credit card statement there are two journal entries – a debit and a credit entry. For example if the item purchased is fuel then it would be entered in the journal as an expense against the relevant vehicle. Then the cost of running that vehicle is allocated to the job undertaken or to a particular department or program – that is, another separate entry. The entries for the CEO are entered into a journal in Administration and then reallocated to another set of journals. Consequently, there are two or three sets of journal entries for every item. I acknowledge that the complainant has modified his access application to the extent that he does not seek the ledger entries themselves but rather the account numbers for each of those entries.
30. The agency submits that the type of information sought by the complainant is already monitored by the Audit Committee of the Council of the agency. The agency has advised me that the Audit Committee consists of four councillors of the agency and that one of the committee members is a Certified Practising Accountant. The agency is also subject to internal audit and annual external audits of its accounts.
31. The agency employs a total of 38 staff. The agency advised me that it is the usual practice of the agency for its FOI Coordinator to make the initial decision on access in consultation with any relevant technical officers of the agency depending on the nature of the documents requested. A different officer makes the internal review decision. The agency advised me that generally it is the CEO who is the internal review decision maker.
32. The agency makes available to members of the public a monthly list of cheques made out to creditors of the agency. I have obtained a copy of such a list from the agency's publicly accessible website. It details and makes available to ratepayers and the general public outside the FOI process the name of the creditor and the amount of money paid to it by the agency. In contrast, while the agency routinely makes publicly available the amount and creditor details in respect of each cheque payment, it does not make the equivalent information publicly available in respect to each credit card transaction. In the course of dealing with this complaint, my office suggested to the agency that it consider making available to its ratepayers, copies of its credit card statements with identifying particulars - such as the name and telephone contact of the agency's bank, the credit card number and bank account number - deleted from each statement. The agency advised me that it did not have sufficient resources to edit the credit card statements on a monthly basis and to then make those statements available to ratepayers.



33. In further support of its decision, the agency referred me to the former A/Information Commissioner's decision in *Re McDonald and City of Joondalup* [2006] WAICmr 2, which held that in the circumstances of that particular complaint the agency was justified in relying on s.20 of the FOI Act.

### *Consideration*

34. Factors which I consider are relevant 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 this 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.
35. 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.
36. In *Re Hesse and Shire of Mundaring* [1994] WAICmr 7, the former Information Commissioner ('the former Commissioner') described the various administrative procedures for dealing with an access application for which charges may be imposed. I consider that to be a useful guide as to the work involved in dealing with an access application. The former Commissioner listed the relevant procedures as follows:
- Consulting with third parties (but only if consultation is required).
  - Examining the documents, exercising judgement and making a decision about access.
  - Deleting exempt matter where appropriate.
  - Preparing a notice of decision in the required form if access is refused.
  - Providing access in the manner required by the applicant (or in an alternative manner).
37. In *Re Butcher and Agriculture Western Australia* [2000] WAICmr 62, the agency dealt with 25 documents (239) folios and the former Commissioner took the view that a reasonable estimate of time to deal with those documents would be 7 hours at \$30.00 and hour and a reasonable charge, including photocopying charges, would be \$257.80.

38. In my opinion, based on 72 folios and using a similar – although inevitably a rough – calculation to that in *Re Butcher*, I calculate that the time required for the agency to identify, locate, collect copy, collate and edit (see my comments below at paragraphs 44 to 46) the credit card statements would take, approximately 1 to 2 hours. However, the access application is not limited to seeking access to only the credit card statements; the complainant also seeks access to “*just the account numbers for entries from the Mastercard statements rather than the actual ledger entries themselves, and of course with any split accounts the numbers for each of them.*”
39. Based on the information provided by the agency, and my examination of the credit card statements provided to me by the agency, there are approximately 400 entries for the period of the access application. To locate a transaction and the relevant account numbers for each entry that has been allocated directly to a General Ledger, a search on the relevant general ledger account would be conducted to locate the specific item. If the transaction has gone to a plant or job number, then a search on the relevant plant or job number would be conducted to locate the item. A further search would then be conducted on the associated General Ledger that the plant or job number relates to and therefrom the account numbers for entries. The agency estimates that it would take approximately 4 hours for one staff member to gather that information for the month of January. The time taken for each month may vary given the purchases made on each credit card may vary. However, given an estimate of 4 hours for each month, over the period of the access application – 6 months – that is a total of 24 hours for a qualified staff member to deal with that aspect of the access application. That is, it would take 3 full time working days to deal with that aspect of the access application. Given the nature of the information, I accept that there is only one staff member in the agency qualified to be able to locate, identify and extract the relevant account numbers for ledger entries from the credit card statements.
40. Therefore, in my view, based on the above calculations, I consider that it would take 30 hours or 4 days of full time work to deal with the access application in its current form (and the charge to the complainant would be in the order of \$900 at the prescribed rate of \$30 per hour, not including the costs of photocopying at 20 cents per page under the *Freedom of Information Regulations 1992*).
41. On the facts outline above, and having regard to the criteria outlined in paragraph 34, I find that the agency has taken reasonable steps to help the complainant to change his application but that the application, if dealt with in its current form, would divert a substantial and unreasonable portion of the agency’s resources away from its other operations and the agency’s refusal to deal with the access application pursuant to section 20 of the FOI Act is justified.

### **Determination**

42. I find that the agency was justified in deciding that the work involved in dealing with the complainant’s access application in its 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 the application in accordance with section 20 of the FOI Act.

**Comment**

43. In the alternative, it was open to the agency to negotiate with the complainant for access to edited copies of the requested documents with third party information deleted. Although the editing of the documents would have incurred costs in terms of staff time, that cost would be significantly less than the cost of consulting with each third party. In addition, it was also open to the agency to apply to the Information Commissioner under s.35 for a waiver of the requirement to consult with the third parties – a suggestion made to the agency by both the complainant and my office. Had such an application been received by me, it is likely that I would have given approval for the agency to make its decision on whether to give access to a document without complying with ss.32 and 33 of the FOI Act. However, the Information Commissioner cannot direct an agency to make such an application.
44. In my view, in order to resolve this matter so that the complainant is given access to some documents, the complainant could withdraw from that part of his access application relating to the ledger entries or individual account numbers and the agency could then deal with the credit card statements. In that event, the complainant may have to accept access to edited copies of those statements because some information in those statements may be exempt information. The agency could provide access to edited copies of the credit card statements, with exempt information, such as the account number, the name and contact details of the bank staff member and the credit card number, deleted.
45. Given that the agency already provides through its administrative processes to its ratepayers (and therefore to the public generally or to a section of the public) a list of creditors in respect to cheque payments, it is more likely than not that some of the names of the businesses with which the agency has transacted business would not be exempt because these are already publicly available in the context of the information already published by the agency. The public interest in members of the public, including the complainant, having access to information about financial transactions of the agency could thereby be substantially served through the publication of that material.

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