

Decision D0122015 – Published in note form only

Re Caffery and Department of Culture and the Arts [2015] WAICmr 12

Date of Decision: 30 June 2015

Freedom of Information Act 1992: section 20

On 11 September 2014, Steve Caffery (**the complainant**) made nine applications to the Department of Culture and the Arts (**the agency**) under the *Freedom of Information Act 1992* (**the FOI Act**) for access to documents. On 4 October 2014 the complainant made a further two applications for access to documents. The documents sought included documents about the complainant himself; general information about certain projects and artefacts; specific documents relating to projects and artefacts; documents relating to methods used by the agency; and documents relating to particular individuals associated with the agency.

The agency dealt with three of the access applications and decided to give the complainant access to the documents located in relation to those applications either in full or in part. The complainant sought internal review of those decisions. By notice of decision dated 30 January 2015 the Director General of the agency confirmed the initial decisions on access in relation to the three applications that had been dealt with, and also decided to refuse to deal with the complainant's remaining eight access applications pursuant to section 20 of the FOI Act. As there is no right of internal review of a decision of the principal officer of an agency under section 39(3)(a) of the FOI Act, the complainant applied to the Information Commissioner (**the Commissioner**) for external review of the agency's decision. The Commissioner's decision in this matter relates only to the agency's decision to refuse to deal with the complainant's eight remaining access applications.

Following receipt of the complaints the Commissioner obtained the files maintained in respect of the complainant's access applications from the agency, and made further inquiries of the agency and the complainant. The Commissioner decided to deal with the matter in the first instance by requesting that the parties attend a conciliation conference. However, the matter was not resolved at that conference.

Section 20 provides that if, after taking reasonable steps to help the access applicant to change an application to reduce the amount of work required to deal with it, the agency still considers that the work involved in dealing with it would divert a substantial and unreasonable portion of the agency's resources away from its other operations, the agency can refuse to deal with the application.

On 21 May 2015, the Commissioner provided both parties with a letter setting out his preliminary view of the complaint, which was that the agency's decision to refuse to deal with the complainant's eight access applications pursuant to section 20 was justified.

The complainant was invited to provide the Commissioner with further submissions or withdraw his complaint. The complainant did not withdraw his complaint, and provided further submissions. After considering all of the information before him including the complainant's further submissions, the Commissioner was not dissuaded from his preliminary view.

The Commissioner was satisfied on the information before him that the agency had taken reasonable steps to help the complainant to change his access applications to reduce the amount of work needed to deal with them and that the work involved in dealing with the access applications would divert a substantial and unreasonable portion of the agency's resources away from its other operations. The Commissioner reached this view based on a number of criteria including the very broad nature of the applications, the number of applications and the period of time covered by some of the applications, together with the efforts made by the agency to initially attempt to deal with some of the complainant's applications. The Commissioner also noted that the complainant himself recognised that the nature and amount of information he sought was such that the agency would need to obtain additional staffing to deal with his applications.

The Commissioner confirmed the agency's decision to refuse to deal with the complainant's eight access applications under section 20 of the FOI Act.