

Decision D0152010 - Published in note form only

Re Cherian and Shire of Peppermint Grove [2010] WAICmr 15

Date of Decision: 30 April 2010

Freedom of Information Act 1992: section 20.

On 20 October 2009, the complainant applied under the *Freedom of Information Act 1992* ('the FOI Act') to the Shire of Peppermint Grove ('the agency') for access to a complete copy of the agency's file maintained by the Shire in respect of a property owned by the complainant. The file consisted of 4 volumes and contained in excess of 1000 folios.

Having received no decision on access from the agency, the complainant sought internal review of the agency's deemed refusal of access on 9 December 2009. The agency did not give the complainant a notice of decision within the permitted period and, on 29 December 2009, the complainant applied to the Information Commissioner for external review of the agency's deemed refusal of access.

The Commissioner obtained the file maintained in respect of the complainant's access application from the agency and the entire property file in dispute.

The Commissioner's office made inquiries with both parties to establish the scope of the complaint. The CEO of the agency confirmed that although the agency had failed – on two occasions - to give the complainant a notice of decision, the agency was of the view that the scope of the application was too large. The agency had made attempts to have the complainant reduce the scope of the application but without success. In effect, the agency's decision was to refuse to deal with the access application pursuant to s.20 of the FOI Act. Section 20 permits an agency to take that action if - after taking reasonable steps to help an access applicant to change the application to reduce the amount of work required to deal with it - the agency considers that the work involved in dealing with that application would divert a substantial and unreasonable portion of the agency's resources away from its other operations.

Initially, the complainant indicated to the Commissioner's office that she would consider reducing the scope of the access application to key documents associated with the building works on the relevant property. However, those negotiations ceased when the complainant maintained that she was entitled to have access to a full unedited copy of the requested property file.

On 30 March 2010, having considered the material before him, the Commissioner provided both parties with a letter setting out his preliminary view of the complaint. It was the Commissioner's view that the agency's decision to refuse to deal with the access application under s.20 of the FOI Act was justified.

The complainant was invited to provide the Commissioner with further submissions or withdraw her complaint. The complainant did not withdraw the complaint but made no further submissions. Since no new evidence was provided to the Commissioner, the Commissioner was not dissuaded from his preliminary view of the complaint.

The Commissioner was satisfied that the agency had taken reasonable steps to help the complainant to change the application to reduce the amount of work needed to deal with it and also 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 Commissioner confirmed the agency's decision to refuse to deal with the complainant's access application under s.20 of the FOI Act.