

**OFFICE OF THE INFORMATION  
COMMISSIONER (W.A.)**

**File Ref: F2014230  
Decision Ref: D0182014**

Participants:

**Eileen Park**  
Complainant

- and -

**SMHS - Royal Perth Hospital**  
Agency

## **DECISION AND REASONS FOR DECISION**

FREEDOM OF INFORMATION – refusal to deal with application – documents relating to the complainant – section 20 – agency’s obligations to help applicant to change application – corresponding obligation on complainant to work cooperatively with agency – element of reasonableness to be implied into process – diversion of a substantial and unreasonable portion of agency’s resources.

*Freedom of Information Act 1992*: sections 13(3), 20, 24, 32 and 70(5)(c)

*Freedom of Information Act 1989 (NSW)*

*Freedom of Information Act 1982 (Cth)*

*Cainfrano v Director General, Premier's Department* [2006] NSWADT 137

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

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

*SRB and SRC and Department of Health, Housing, Local Government and Community Services* (1994) 33 ALD 171 at 179

## DECISION

The agency's decision is confirmed. I find that:

- the agency has taken reasonable steps to assist the complainant to change the application to reduce the amount of work needed to deal with it; and
- 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.

Sven Bluemmel  
INFORMATION COMMISSIONER

16 October 2014

## REASONS FOR DECISION

1. This complaint arises from a decision made by the South Metropolitan Health Service – Royal Perth Hospital (**the agency**) to refuse to deal with an access application made by Mrs Eileen Park (**the complainant**) under the *Freedom of Information Act 1992* (**the FOI Act**).

### BACKGROUND

2. The complainant lodged a personal access application but her husband Mr Ray Park had authority to act on her behalf. He negotiated with the agency and contacted my office on the complainant's behalf. He also provided several written submissions to my office in the course of the external review.
3. On 27 May 2014 the complainant applied to the agency under the FOI Act for '... all unedited records while I was a patient in the Emergency Ward at the Royal Perth Public Hospital...'
4. The complainant further said in her access application

*[P]lease Note also, that all my complete records of Mrs Eileen Park includes, all medical filed, all Computer documentation, all Consultants and Doctors Files and there (sic) Computer Documentation, all the Nurses Medical Files Documents Medical problems etc that I had received in Hospital, all file Documents and computer Documentation from the Private Patients Liaison Officer, all file Documents and computer Documentation from the Complaints department, section, and all file Documents and computer Documentation of my entire Medical tests, chest x-rays, scans etc, being the complete entire documentation in files and on the Computer, as there would be a large number of them etc, and any other tests, x rays, documentation etc.*

*Finally, as there was a large number of Correspondence, Tests, reports and the X-ray, Scans etc documentation missing out of the previous documentation that you supplied to my Husband Mr Ray Park earlier on, and now we need the Entire Documentation...*

5. The agency does not appear to have issued a notice of decision to the complainant as required by section 13(3) of the FOI Act, which requires an agency to provide its notice of decision within 45 days of receipt of an access application, failing which by subsection (2) the agency is deemed to have refused to give access to the documents.
6. The agency has conceded that it was late in providing the complainant with a notice of decision, stating in its internal review decision dated 31 July and sent on 6 August 2014:

*The failure to provide a Notice of Decision by the due date (12 July 2014) is directly related to the high demand for FOI requests into the RPH office, which are to be practicably actioned in respect to the pursuant 4(a), (b) and (c) of the FOI Act.*

7. The references to 4(a), (b) and (c) of the FOI Act above are references to agencies' duties when giving effect to the FOI Act.
8. The agency decided to deal with the access application in two parts.
9. Part One was the complainant's medical record consisting of five volumes of documents and radiology images to be copied to five disks.
10. The agency provided the complainant with full access to all five volumes of her medical record and five disks containing scan images.
11. It seems that the complainant sent all the documents to a relation in the USA and then asked the agency for another set of documents. The agency copied all the documents again and provided another set to the complainant on or about 23 July 2014. It provided copies of four disks containing scan images, and recently provided a further copy of the fifth disk to the complainant on or about 3 September 2014. The documents comprising Part One of the complainant's access application are therefore not in dispute and I will not consider them further.
12. I understand that Part Two of the access application consists of several large files of documents relating to a formal complaint made by Mr Park against the agency. The agency considered that dealing with Part Two would divert a substantial and unreasonable portion of its resources away from its other operations. It comprised approximately 300 documents, so the agency invoked section 20 of the FOI Act and refused to deal with that part of the complainant's application.
13. By letter dated 18 August 2014 the complainant applied to me for external review of the agency's decision.

#### **REVIEW BY THE INFORMATION COMMISSIONER**

14. Following my receipt of this complaint, the agency produced to me its FOI file maintained in respect of the complainant's access application.
15. In accordance with my office's usual practice, my Principal Legal Officer endeavoured to arrange a conciliation conference between the parties.
16. The agency agreed to attend but Mr Park on the complainant's behalf indicated that he was not prepared meaningfully to participate in a conciliation conference.
17. That being so, I considered that, although I have the power to direct the parties to attend compulsory conferences under section 70(5)(c) of the FOI Act, in this case it would be unproductive to convene a conciliation conference when one party was unwilling or unprepared to take a meaningful role in resolving the complaint.
18. Further, the complainant's husband Mr Park refused to speak to my office by telephone, requesting that all communications be in writing. In accordance with his wishes as the complainant's representative, this was done.

19. I provided the parties with my preliminary view by letter dated 23 September 2014. I invited the parties to make any further relevant submissions, by 8 October 2014. I received four further submissions from the complainant, one each on 6 and 7 October 2014 and two dated 8 October 2014.
20. The second submission dated 8 October 2014 requested an extension of time to provide me with further submissions. The extension of time was not granted but the complainant was advised that if any further submissions were received before I finalised my decision, they would be taken into account.
21. On 15 October 2014 I received a further submission from the complainant, which contained no new and relevant information for my consideration.
22. The agency made no further submissions.

### **THE DISPUTED DOCUMENTS**

23. The disputed documents, referred to at paragraph 12 of this notice of decision, consist of approximately 300 documents contained in a number of volumes of files dealing with Mr Park's complaint against the agency.

### **SECTION 20 – REFUSAL TO DEAL WITH AN APPLICATION**

24. The agency has refused to deal with Part Two of the complainant's access application pursuant to section 20 of the FOI Act, which provides as follows:
  - (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.*

#### ***The agency's submissions***

25. The agency's submissions are set out in its internal review decision made on 31 July 2014 and sent on 6 August 2014. In summary, the agency submits as follows:
  - many of the pages contained third party information and/or require third party consultation;
  - the time involved to deal with Part Two of the access application is estimated at approximately 38 hours;
  - the agency deals with more than 2300 access applications each financial year and to date the office has received more than 280 access applications with approximately 255 outstanding and approximately 150 files waiting to be copied;

- staff resources are limited and there is one FOI Coordinator for the agency who is required to undertake other duties in addition to their FOI responsibilities.

### *The complainant's submissions*

26. The complainant's submissions are set out in her letter to me seeking external review dated 18 August 2014, her further letters dated 3 and 12 September 2014, and her submissions in response to my preliminary view, dated 6,7, 8 and 15 October 2014.
27. In summary, the complainant submits as follows:
  - she applied through Freedom of Information on two occasions to 'get the entire Medical Documentation';
  - she listed all the documentation she sought, which is printed in full at paragraph 4 of this decision; and
  - she claimed that 'there was a large number of Correspondence, tests, Reports and the X ray scans etc and Documentation missing out of the previous Documentation that the Freedom of Information supplied earlier on'.
28. The complainant provided extensive details of her medical history and the consequences of her medical treatment by the agency. However, the submissions did not contain any evidence about the specific documentation she believed was missing from the documents she has already received, nor did the complainant address the agency's decision to refuse to deal further with her application under section 20 of the FOI Act.
29. Despite a specific request to the complainant following my preliminary view to provide me with relevant submissions, the complainant's submissions of 6, 7, 8 and 15 October 2014 merely repeat earlier submissions and provide no new material to assist me in my decision.

### *Consideration*

30. When I provided the complainant with my preliminary view dated 23 September 2014, I advised the complainant that, if I did not receive a meaningful response to my preliminary view, it was open to me to decide to stop dealing with the complaint, under section 67(1)(b) of the FOI Act on the basis that the complaint is now lacking in substance. Although I do not consider that the complainant has provided a meaningful response to the preliminary view, in the circumstances I have decided to determine the matter and publish my decision.
31. Section 20 is designed 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, on the other hand, the public interest in the ongoing effective operation of agencies.

32. A decision made by an agency under section 20 of the FOI Act cannot be justified where the agency has not satisfied its obligations under section 20(1). That is, when an agency receives an access application that is considered to involve a diversion of a substantial and unreasonable portion of resources in order to deal with the application, the agency is required to take reasonable steps to help the applicant to change the application to reduce the amount of work needed to deal with it: see *Re Conservation Council of Western Australia and Department of Conservation and Land Management* [2005] WAICmr 5.
33. When considering a complaint about an agency's refusal to deal with an access application in accordance with section 20, I must decide whether the agency:
- took reasonable steps to help the access applicant change the application to reduce the amount of work needed to deal with it; and
  - 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.

**Has the agency taken reasonable steps to help the complainant change her access application?**

34. The first question for my consideration is whether the agency took reasonable steps to help the complainant change the application to reduce the amount of work needed to deal with it.
35. My officer was advised that the agency's FOI coordinator met with the complainant's husband on several occasions and had a number of lengthy conversations with him in attempts to resolve the complaint. In addition, the agency provided the complainant, on two separate occasions, with sets of extensive documentation, comprising complete copies of the contents of five files of her medical history material and five computer disks of images.
36. While section 20 of the FOI Act places agencies under a duty to assist applicants, I consider that there must be a corresponding obligation upon applicants to work cooperatively with an agency and an element of reasonableness must be implied in the process, if the legislation is to work satisfactorily. In *Cainfrano v Director General, Premier's Department* [2006] NSWADT 137, President O'Connor of the Administrative Decisions Tribunal of New South Wales reviewed a decision by an agency to refuse to deal with an FOI application under the equivalent to section 20 in the *Freedom of Information Act 1989* (NSW). In examining the factors relevant to an assessment of the kind required in that case, President O'Connor considered that whether the applicant has taken a co-operative approach in redrawing the boundaries of an application is a relevant factor. I agree with that view.
37. I understand in this case, despite repeated attempts by the agency to work with the complainant to reduce the scope of the access application, she refused to do so and maintained her claim for access to all the documents within scope.
38. While the agency appears to have discharged its duty to assist the complainant, unfortunately it appears that the complainant has done little to work co-operatively with

the agency to reduce the scope of the access application. While members of the public have a statutory right under the FOI Act to obtain information from an agency, there is a corresponding obligation upon an access applicant to work reasonably and cooperatively with the agency.

39. My decision is that the agency has taken all reasonable steps to help the complainant to change the application to reduce the amount of work needed to deal with it.

### **Substantial and unreasonable diversion of resources**

40. The second issue for my consideration is whether 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.

41. The words 'substantial' and 'unreasonable' have been the subject of much judicial consideration: see, for example, the cases referred to in *Langer and Telstra Corporation Ltd* [2002] AATA 341 (**Langer**). In *Langer's* case, the Deputy President of the Commonwealth Administrative Appeals Tribunal (**the AAT**), having considered 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 Cth FOI Act**) – the equivalent to section 20 of the FOI Act – said at [115]:

*[I]t 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 ...*

42. I consider that statement to be a useful guide to the interpretation of section 20 of the FOI Act.
43. In *SRB and SRC and Department of Health, Housing, Local Government and Community Services* (1994) 33 ALD 171 at 179, the full AAT stated that the resources, the subject of section 24 of the Cth FOI Act

*... cannot mean the whole of the resources of a large Department of State. To find this would make the section meaningless. We consider it means the resources reasonably required to deal with an FOI application consistent with attendance to other priorities.'*

I agree with that view.

44. As noted above, I understand that Part Two of the complainant's application involves 300 documents. Given the nature of these documents, it is reasonable to expect that they contain a significant amount of personal information about individuals other than the complainant or her husband. Section 32 of the FOI Act would require the agency to take reasonable steps to obtain the views of those individuals, if it proposed to give the complainant access to that information. I consider that the agency's estimate that it would take approximately 38 hours to deal with Part Two of the complainant's application to be reasonable.

45. The agency's sole FOI Coordinator held numerous meetings with Mr Park in an endeavour to resolve the complainant's issues. Mr Park confirmed by his submissions of 6 October 2014 that he had sent a number of faxes to the FOI Coordinator at the agency and, in his submissions of 7 and 8 October 2014 respectively, stated that he also had visited the FOI Coordinator at the agency a number of times. Given that the agency has only one FOI Coordinator who is currently managing in excess of 255 files alone, the agency has already expended considerable resources and time in trying to assist the complainant, possibly to the disadvantage of other equally deserving access applicants.
46. In reaching my decision I have had regard for the number of other FOI matters the agency is currently dealing with, the level of resources dedicated to FOI matters, and the considerable amount of assistance already extended to the complainant by the agency.
47. I have also had regard for the complainant's age, state of health, and the difficult situation in which she now finds herself. However, the complainant's submissions regrettably shed no further light on the matter but merely repeat the demand for an extensive list of documentation contained in her access application. The complainant has not provided me with any evidence to support her assertions or to assist me coming to a decision.
48. For the reasons given above, I consider that the work involved in dealing with Part Two of the complainant's application would divert a substantial and unreasonable portion of the agency's resources away from its other operations.

## CONCLUSION

49. The agency's decision is confirmed. I find that:
  - the agency has taken reasonable steps to assist the complainant to change the application to reduce the amount of work needed to deal with it; and
  - 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.

\*\*\*\*\*