

## Griffin and City of Melville

### DECISION SUMMARY ISSUED BY THE INFORMATION COMMISSIONER (WA)

**Decision title and citation:** *Re Griffin International Pty Ltd and City of Melville [1999] WAICmr 12*

**COMPLAINT No:** F1691999

**DECISION No:** D0121999

**PARTIES:** GRIFFIN INTERNATIONAL PTY LTD

Complainant

CITY OF MELVILLE

Respondent

**Issues:** Charges for access

**Relevant Sections:** s.16(1)

Griffin International Pty Ltd ('the complainant') is the registered proprietor of the land and building known as the Kirin Centre in Melville. Construction of the Kirin Centre was completed about April 1997. Later that same year, a complaint was made to the City of Melville ('the agency') about parking entitlements at the Kirin Centre. I understand that the complaint resulted in certain official inquiries being conducted. I further understand that, as a result of those inquiries, the certificate of title for the Kirin Centre was removed from the public record and maintained in a separate record known as a "Registrar's Packet" in order to prevent further dealings on the title for the time being.

In a letter dated 22 June 1998, the complainant, through its solicitors, lodged an application with the agency seeking access under the *Freedom of Information Act 1992* ('the FOI Act') to documents relating to the Kirin Centre. On 3 August 1998, the agency informed the complainant of the broad nature of its access application. The agency informed the complainant that the charges payable for dealing with the application in that form would be \$4,410, and requested payment of an advance deposit of \$1,110.

The complainant disputed the agency's calculations of charges and the number of documents the agency had identified in relation to its requests and sought internal review. Subsequently, the internal reviewer decided that access to 27 documents would be granted, either in full or in part, upon payment of a reduced charge of \$732.20.

On 12 September 1998, the complainant lodged a complaint with the Information Commissioner seeking external review of the agency's decision.

#### Review by the Information Commissioner

After my receiving this complaint, various meetings were held with the parties to determine whether this complaint could be resolved by conciliation. In the course of dealing with this matter, the issues between the parties were narrowed to two. The first concerned the sufficiency of the searches conducted by the agency to locate documents believed by the complainants to exist. The second issue concerned the charges payable for providing access to 27 documents.

On 8 April 1999, I informed the parties in writing of my preliminary view of these two issues, including my detailed reasons. In respect of the first issue, it was my preliminary view that, although it was reasonable to expect documents of the kind requested to exist, the agency had taken all reasonable steps to locate the documents requested and they either did not exist or could not be found. In respect of the second issue, it was my preliminary view that the charges calculated by the agency did not appear to be justified.

Each party provided a further submission. Certain matters raised in the complainant's submission were discussed with the complainant's solicitor and, as a result, the complainant, although remaining of the view that more documents should exist, accepted my preliminary view in respect of the first issue. Accordingly, the only issue remaining in dispute is that of the charges sought to be imposed by the agency. Nothing in the agency's submission has dissuaded me from my preliminary view on that issue. A summary of my reasons, already given in detail to the parties, follows.

## Charges for the giving of access

Initially, the agency informed the complainant that the work already undertaken to deal with its access application totalled 37 hours resulting in a cost of \$1,110. Without giving any further explanation, the agency then advised the complainant that it estimated an additional 108 hours might be required to complete the research resulting in a total cost of \$4,410. The agency requested an advance deposit of \$1,110 be paid. Following internal review, the agency reduced the charges to \$732.20

Regulation 5 of the *Freedom of Information Regulations 1993* ('the Regulations'), provides that the charges set out in column 2 of item 2 of the Schedule to the Regulations are the prescribed charges under s.16 of the FOI Act. Item 2 sets out charges for: (a) dealing with the application; (b) supervised access; (c) photocopying; (d) transcribing from a tape or other device; (e) duplicating a tape, file or computer information; and (f) delivery, packing and posting. Those are the only activities for which charges are prescribed and, in my view, the only activities for which a charge may be imposed by the agency. In my decision in *Re Hesse and Shire of Mundaring* [1994] WAICmr 7 I discussed what I consider to be involved in "dealing with" an access application.

The agency informed me that its charges were calculated on the basis of reviewing files, identifying appropriate documents, reviewing exemptions, drafting a notice of decision and photocopying. By the time that the agency had informed the complainant of the reduced amount of \$732.20, it had listed on a schedule all documents held by it relevant to the Kirin Centre. Many of those documents pre-dated the complainant's interest in the property. In my view, the process of considering the 27 documents identified by the complainant, and making a decision on each, drafting the notice of decision, necessary consultation and photocopying the relevant documents is the action for which the agency may impose charges under the Regulations.

The agency could have, and probably should have, declined to deal with the complainant's access application in its original form, rather than expending time and effort on identifying documents that were not relevant to the complainant's request. The FOI Act does not require an agency to deal with broad requests where to do so would result in an unreasonable diversion of an agency's resources.

I consider the agency's action of preparing a schedule of documents in order to assist the complainant to narrow the scope of its access application to be commendable and in keeping with the spirit of the legislation. However, if the agency had communicated with the complainant upon receiving the access application, it could have avoided the work involved in scheduling a significant number of the documents which a simple inquiry would have revealed were not sought by the complainant. I do not consider that an agency is justified in imposing charges on an applicant for work that it is not required under the FOI Act when some early communication between it and a complainant could easily clarify the exact nature of the documents required and reduce the amount of work involved.

In this case, once the complainant had narrowed the scope of the application to 27 documents, the agency was entitled to charge for dealing with the access application in respect of those 27 documents. No charges are prescribed in the Regulations for searching for, identifying or collating documents. Therefore, in my view, the agency was not entitled to charge for those activities and its charges based on 22.2 hours of searching for, identifying and collating documents are not justified. However, I find that the charge of \$66.20 imposed by the agency for dealing with the access application by making its decision on 27 documents, deleting exempt matter, preparing a notice of decision and photocopying is justified, for the reasons I have given to the parties.

Therefore, I set aside the decision of the agency in respect of charges payable and in substitution decide that the only charges payable by the complainant for access to the 27 documents is \$66.20.

B. KEIGHLEY-GERARDY  
INFORMATION COMMISSIONER

19 May 1999