

CUNNINGHAM AND RAFCORP

OFFICE OF THE INFORMATION COMMISSIONER (WA)

Decision summary issued pursuant to s.76(8) of the *Freedom of Information Act 1992*

COMPLAINT No: 95249

DECISION No: D02996

PARTIES: Patrick Pinda Cunningham

Complainant

Rural Adjustment and Finance Corporation

Respondent

No. of documents in dispute: Not applicable

Exemption clause(s) : Not applicable

On 22 August 1995, Mr Cunningham ('the complainant') lodged an access application with the Rural Adjustment and Finance Corporation ('the agency') seeking access under the *Freedom of Information Act 1992* ('the FOI Act') to documents relating to his dealings with the agency. The agency informed the complainant that his request involved 7 volumes of files and sought a clarification of the type of information requested by the complainant. The agency was informed by the complainant's assistant that he would be able to identify the documents requested with more particularity. However, further attempts by the agency to contact the complainant and his assistant to clarify the precise nature of the documents to which access was sought were not successful.

On 10 October 1995, the complainant and his assistant visited the agency and were provided with copies of documents relating to the application for, and granting of, loans to the complainant's farming business and copies of documents relating to the settlement statement following the sale of the complainant's property. On the occasion of that visit the complainant was granted supervised access by inspection to one volume of the files. However, the complainant did not inspect the remaining 6 volumes and, by letter dated 12 October 1995, the complainant confirmed that he required access to all volumes.

On 17 October 1995, the agency informed the complainant that, pursuant to s.20(2) of the FOI Act, it refused to deal with his access application and refunded the monies paid in respect of that application. On 18 December 1995, the complainant applied to the Information Commissioner for external review of the agency's decision to refuse to deal with his access application.

Refusal to deal with an access application

Section 20 of the FOI Act, so far as is relevant, provides:

"Agency may refuse to deal with an application in certain cases

20 (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."

Review by the Information Commissioner

When considering a complaint about an agency's refusal to deal with an access application, my function is to decide whether that agency took reasonable steps to help an access applicant to change an application to reduce the amount of work needed to deal with it and whether the agency 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. The first question involves a consideration of the history of the matter between the parties from the date the application was received, and includes the nature and degree of assistance offered to the applicant by the agency. The second involves a consideration of the number and type of documents involved in the access

application, the usual work of the agency and an estimate of the resources to be devoted to the task of dealing with the application in accordance with the statutory requirements of the FOI Act.

Following my investigation of this complaint, the parties were informed of my preliminary view that the agency had taken reasonable steps to assist the complainant to change his application to reduce the amount of work required to deal with it, and that the agency was justified in refusing, under s.20, to deal with it. The parties were informed of my reasons for that view and the findings on material questions of fact underlying those reasons, with reference to the material on which those findings were based. The complainant has provided nothing further sufficient to dissuade me from that view. In summary, my reasons are as follows.

The assistance offered by the agency

From the information before me, I am satisfied that the agency took reasonable steps to help the complainant to change his access application. Those steps included writing letters to the complainant on 22 August 1995, 30 August 1995, 8 September 1995 and 21 September 1995 to which no response was received until the complainant telephoned the agency on 4 October 1995. Further, the agency allowed the complainant inspection of one volume of files in order to assist him to identify the type of documents required. However, the complainant has made no attempt to narrow the scope of his application and maintains his claim for access to all documents on those files.

Substantial and unreasonable diversion of resources

In his submissions to me the complainant raised his general right of access to documents of the agency and the public interest associated with a person obtaining access in circumstances where the documents concern the access applicant and his or her livelihood. The complainant also contends that the request in its current form would not involve a substantial and unreasonable diversion of the resources of the agency and has suggested that all the agency need do to satisfy his request is photocopy all of the documents on the files and make those documents available to him.

I am informed by the agency that the access application in its current form involves approximately 2000 folios. The agency further informs me that matter contained within the files includes legal opinions, sensitive material relating to the deliberative processes of the agency and personal information about third parties. Having considered the description of documents provided to me by my Investigations Officer and her report to me following an inspection of the documents concerned, I am satisfied that some of those documents may be exempt under one or more clauses of Schedule 1 to the FOI Act. Therefore, I am satisfied that the agency would be required to do more than merely photocopy each folio in order to satisfy the complainant's right of access. I am further informed that the agency consists of approximately 23 employees. However, due to the nature of the documents concerned, the person required to deal with the access application must have some knowledge of the matter between the parties and must be able to make informed judgments about granting access. I am informed that one person in the agency is able to perform that task and that one volume of documents would take approximately 14 hours of actual decision-making and processing time.

I recognise and have considered the public interests raised by the complainant. However, based on the material before me, I am satisfied that the agency has attempted to assist the complainant to change his application to reduce the amount of work involved but the complainant has not in fact, reduced the ambit of his request. I am also satisfied that if the agency were to deal with the complainant's request in its current form, the agency would be required to divert a substantial and unreasonable portion of its resources away from its other operations. Further, I am satisfied that the agency has attempted to assist the complainant to change his application to reduce the amount of work involved but that the complainant has not in fact, changed his access application.

Accordingly, I confirm the decision of the agency to refuse to deal with the complainant's access application in its current form because to do so would divert a substantial and unreasonable portion of the agency's resources away from its other operations.

B. KEIGHLEY-GERARDY
INFORMATION COMMISSIONER

27th May 1996