

## Determination

### External review - section 39 *Freedom of Information Act 1991*

Applicant	Ms Vickie Chapman MP
Agency	Department of Planning, Transport and Infrastructure
Ombudsman reference	2013/04129
Agency reference	2013/07011/01
Determination	The determination of the agency is reversed.

## REASONS

### Background

1. By application under the *Freedom of Information Act 1991* **the FOI Act**) received by the agency on 2 April 2013, the applicant requested access to:

All reports provided to the State Government by 'Interfleet' regarding the rail electrification project.

2. By determination dated 22 April 2013, Mr Rod Hook, Chief Executive Officer of the agency relied on section 14A of the FOI Act to extend the period that he was required to deal with the application by 40 days, from 2 May 2013 to 11 June 2013 (**the agency's determination**). The basis for the extension was that:

The application has captured documents requiring consultation. It is not reasonably practicable to process this application within the legislated 30 day timeframe. Section 14A(1)(b) of the FOI Act allows for an extension of time for the purposes of consultation with third parties.

### External review

3. By application dated 22 April 2013, the applicant requested my external review of the agency's determination under section 39 of the FOI Act.
4. Under section 48 of the FOI Act the onus is on an agency to justify its determination in my external review.
5. To justify its determination, the agency must give reasons for its determination and show the findings on any material questions of fact underlying these reasons, together with a reference to the sources of information on which those findings are based. This is a requirement of an agency in the determination process under the FOI Act; and in my opinion, it is equally applicable in an external review.
6. Section 39(11) of the FOI Act provides that I may confirm, vary or reverse the agency's determination in an external review, based on the circumstances existing at the time of review.

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## The agency's submissions

7. By email to the agency's Senior Policy Officer dated 23 April 2013, my Legal Officer wrote:

In order to justify the agency's extension of time under section 14A, could you please provide me with the following ...:

1. detailed reasons about the agency's determination of 22 April 2013 to extend the period for dealing with the FOI application by an extra 40 days, these submissions should address:
  - the number and types of documents captured by the application; and
  - the number and identities of interested parties the agency considers it necessary to consult.

8. By way of response, the Senior Policy Officer wrote:

The application was received on 2 April 2013, and extended on 22 April 2013 for a period of 40 days to 11 June 2013 to allow for consultation to occur.

There are 12 reports captured by the application and sourcing of those reports has only just been completed. The majority of the reports were located in a suburban office.

The reports are quite technical in nature and the Transport Strategic Projects group indicated that Interfleet (the consultee) would require a reasonable amount of time to respond.

The 40 day extension was required because:

- The documents have only just arrived from the site office.
- The consultation letter is unlikely to reach the consultee until next week.
- We are providing the consultee with 2 weeks to respond (plus 2 week for slippage due to the technical nature of the documents).
- We require a week at the end to prepare the determination.

This takes us to 7 June 2013. The 11 June 2013 is simply the next business day.

9. On 24 April 2013, my Legal Officer inspected the agency's file in relation to the FOI application.
10. Based on the information contained within the agency's file, it appears that:
- on 2 April 2013 the application was received by the FOI unit
  - on 3 April 2013 the FOI unit acknowledged the application and sent internal emails to the various areas of the agency requesting copies of documents that fell within the scope of the application
  - on 9 April 2013 the Senior Project Officer for the project to which the documents relate, received copies of the documents captured by the scope of the application
  - on 16 April 2013 an internal memorandum was sent to the Chief Executive Officer requesting an extension of time under section 14A of the FOI Act
  - on 22 April 2013 the agency's section 14A determination was made
  - on 23 April 2013 the relevant documents were delivered to the FOI unit.
11. As I understand it, the agency has identified 11 reports that fall within the scope of the application and one party to consult. Consultation has not yet occurred.
12. It appears that the FOI unit was prompt in addressing the application, but the relevant divisions of the agency that held documents within the scope of the application were slow in responding.

## Section 14A

13. For the purposes of my review, the relevant parts of section 14A of the FOI Act provide:

### 14A—Extension of time limit

- (1) The principal officer of an agency that is dealing with an application may extend the period within which the application would otherwise have to be dealt with under section 14 if satisfied that—
  - (a) the application is for access to a large number of documents or necessitates a search through a large quantity of information and dealing with the application within that period would unreasonably divert the agency's resources from their use by the agency in the exercise of its functions; or
  - (b) the application is for access to a document in relation to which consultation is required under Division 2 and it will not be reasonably practicable to comply with Division 2 within that period.
- (2) An extension under subsection (1) must be for a reasonable period of time having regard to the circumstances.

### Consideration of submissions

14. While I appreciate that the FOI unit began processing the application immediately, it appears that there was delay in the relevant divisions within the agency responding to the FOI unit's search requests. In my view, the applicant should not have to bear the delay caused by agency's internal management of the application.
15. Having considered the nature of the documents, I am satisfied that consultation is required under Division 2 of the FOI Act; however, in light of the relatively small number of documents, and fact that there is only one interested party to consult, in my view, this could, and should have occurred within the 30 day time period provided for by the Act.
16. Section 14A of the FOI Act does not provide for the agency to extend the time for dealing with an application on the basis that the divisions within the agency are slow to provide the relevant documents.
17. I am not satisfied that the period of time as extended by the agency is reasonable having regard to the circumstances.

### Determination

18. In light of the above, I reverse the agency's determination pursuant to section 39(11) of the FOI Act.

Richard Bingham  
**SA OMBUDSMAN**

26 April 2013

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