



OmbudsmanSA

Determination

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

Applicant	Mr Paul Goldwater
Agency	Kangaroo Island Council
Ombudsman reference	2014/05757
Agency reference	KIC 116732
Determination	The determination of the agency is reversed.

REASONS

Application for access

1. By application under the *Freedom of Information Act 1991* (the FOI Act) the applicant requested access from the agency to:

Documents including, but not limited to letters, emails, memos, facsimiles, notes of meetings, records of telephone conversations or diary notes relating to Development Application 520/0041/2013 in relation to a proposal to construct a tourist accommodation facility on land located on Allotment 4 in Filed Plan 18549 Hundred of Dudley including but not limited to, any documents created in correspondence between Council officers (including a consultant acting on behalf of Council) or between Council officers (including a consultant acting on behalf of Council) and staff within the Department of Planning, Transport and Infrastructure (including but not limited to, staff within the Assessment Branch, the Kangaroo Island Futures authority and any staff acting in a 'case management' role in respect of the proposal) between 11 July 2013 and the date on which this application is made.

2. On 9 July 2014, Mr Ted Botham, Acting Chief Executive Officer of the agency, relied on section 14A of the FOI Act to extend the period within which the agency was required to deal with the application by, from 27 July 2014 to 25 September 2014.

Background

3. For ease of reference, procedural steps relating to the application and the external review are set out in the appendix.

Jurisdiction

4. This external review is within the jurisdiction of the Ombudsman as a relevant review authority under section 39 of the FOI Act.

Relevant law

5. A person has a legally enforceable right to be given access to an agency's documents in accordance with the FOI Act.¹

¹ Freedom of Information Act 1991, section 12.

6. Section 14A of the FOI Act states:

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.

7. Under section 48, the onus is on the agency to justify its determination 'in any proceedings'. This includes the external review process.
8. Section 39(11) provides that the Ombudsman may confirm, vary or reverse the agency's determination in an external review, based on the circumstances existing at the time of review.

Issues in this review

9. The issue for me to consider is whether the agency has justified its determination to extend the date on which its determination is due from 27 July to 25 September 2014, in accordance with section 14A of the FOI Act.

The agency's determination and submissions

10. In its determination, the agency wrote:

Kangaroo Island Council has formed the view that it is not possible to deal with your application in the time period. Therefore I am determining to extend the time period to deal with your application until 25th September 2014.

...

Section 14A of the Act allows me as the Principal Officer of Kangaroo Island Council, for the purpose of the Freedom of Information Act 1991, to extend the time period in two circumstances. They are:

- (a) If '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) If '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'.

Processing of your application so far has revealed that:

- (1) the application is for access to a large number of documents and dealing with your application by 27th July 2014 would unreasonably divert the

agency's resources from their use by the agency in the exercise of its functions.

- (2) the application necessitates a search through a large quantity of information and dealing with your application by 27th July 2014 would unreasonably divert the agency's resources from their use by the agency in the exercise of its functions.

Section 14A allows me to extend the time for a 'reasonable period of time having regard to the circumstances', the circumstances that have been taken into account when the timeframe was extended are as follows:

- o Council has a single human resource for processing FOI applications.
- o Council's other human resources are fully engaged in their normal duties.

11. In light of the requirements of section 14A, by letter dated 14 July 2014, I sought submissions from the agency addressing:

- the number and types of documents captured by the application
- the number and identities of interested parties the agency considers it necessary to consult; and
- the documents which, in the agency's view, require consultation.

12. On 15 July 2014, the agency advised:

The situation that the Kangaroo Island Council faces in requesting an extension to the FOI request is as follows.

1. Of the Council Officers that are responsible FOI transactions;
 - in the period from late 2013 to early 2014 one separated from Council and another took Maternity Leave;
 - the 3rd, Mr Aaron Wilksch, is our Development Services Manager. He has had direct involvement in the Lot 4 Development Application and, as I understand it, would be in conflict if he were to address the FOI request..
 - one HR Officer has just completed FOI training and has been tasked with addressing this FOI. Considering the number of agencies that this Officer will need to consult with to gather all the documentation [see below], it was considered by management that the task required an extension to 25th September.
2. The agencies involved with the Lot 4 Baudin Beach Development Application along with Council are:
 - Development Assessment Commission [the principal Planning Authority in this case]...
 - Kangaroo Island Futures Authority
 - DPTI [Transport]
 - DPTI [Planning]
 - Coast Protection Board

13. Further, by email dated 18 July 2014, the agency wrote:

At the current count we have 27 documents, predominantly emails and letters, from 11 people across 3 agencies [DAC, DPTI (Planning and Transport) and CPB]. This does not take into account the indeterminable amount of correspondence and files internal to Council where direct or indirect reference to this case must be searched for relevance.

As noted in a previous email; we have only 1 Council Officer qualified to work on this FOI application and, as the FOI responsibility is only one of several responsibilities that she is tasked to undertake, she is not in a position to action the application full time.

It is due to these reasons that management has determined that the sufficient time required to address the application brings us to 25th September 2014. If the file can be completed prior to that date, Council will be in a position to provide the documents to the Mr & Mrs Goldwater at that time.

14. On 23 July 2014, my legal officer spoke with the agency's Development Services Manager about this review. The Development Services Manager confirmed that the agency had identified 27 documents within the scope of the application, however, maintained that an extension of 60 days was reasonable in the circumstances due to the requirement to conduct consultation² and a lack of staff resources. I have considered the agency's submissions.

Consideration

15. Section 14A allows for an extension of time where the application is for access to a large number of documents, or necessitates a search through a large quantity of information, or requires consultation that could not reasonably occur within the statutory timeframe.
16. The agency has identified 27 documents and four parties that may require consultation. Further, the scope of the application only relates to one development application. The agency has not provided sufficient evidence to satisfy me that this application concerns a large number of documents, necessitates a search through a large quantity of information, or requires extensive consultation.
17. It appears that the agency has made a determination under section 14A of the Act because it does not have the staff resources to process the request within the 30 day statutory timeframe.
18. While I appreciate that the agency may be operating under resource constraints, the applicant should not have to bear the delay caused by this.
19. 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 it does not have the resources.
20. Based on the evidence provided, I am not satisfied that the agency could reasonably rely on section 14A to extend the time to deal with the application.

Determination

21. In light of my views above, I reverse the agency's determination to extend the time to deal with the application.



Megan Philpot
ACTING SA OMBUDSMAN

24 July 2014

² See Freedom of Information Act 1991, section 25.

APPENDIX

Procedural steps

Date	Event
27 June 2014	The agency received the FOI application dated 25 June 2014.
9 July 2014	The agency made a determination under section 14A of the FOI Act to extend the period within which the agency was required to deal with the application by, from 27 July 2014 to 25 September 2014.
14 July 2014	The Ombudsman received the applicant's request for external review.
14 July 2014	The Ombudsman advised the agency of the external review and requested submissions and documentation.
15 July 2014	The agency provided the Ombudsman with its submissions and documentation.

