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Determination

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

Applicant:	[REDACTED]
Agency:	SA Police
Ombudsman reference:	2026/00169
Agency reference:	[REDACTED]
Determination:	The determination of the agency is varied , the effect of which is that the whole of the application is refused to be dealt with.
Date of Ombudsman's determination:	26 June 2026
Issues considered:	Refusal to deal with application
Sections relied upon:	Section 18(1)
Legislation considered:	<i>Freedom of Information Act 1991</i>

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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:



2. On 16 October 2025, the application was amended to the following:

1. A copy of all triage sheets between 01/06/2018 and 22/08/2025 which show your attendance at [REDACTED] police station.
2. Reports and notes relating to you handing in a taser and a mobile phone to [REDACTED] police station.
3. Interview of you conducted by [REDACTED] in November 2024.

Background

3. For ease of reference, the procedural steps relating to the application 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. Pursuant to section 9(1) of the Ombudsman Act 1972, the Ombudsman has delegated her powers under the FOI Act to me to conduct this external review.

5. 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.

Provisional determination

6. I provided my tentative view about the agency's determination to the parties, by my provisional determination dated 12 June 2026. I informed the parties that subject to my receipt and consideration of submissions from the parties I proposed to vary the agency's determination.
7. The agency advised that it had no submissions. The applicant provided submissions in response. I note that some of the applicant's submissions relate to whether certain documents should have been located by the agency as part of his FOI request. Whether the agency adequately searched for documents is a complaint issue and as such, is not reviewable under the FOI Act and cannot form part of this external review.¹

Relevant law

8. A person has a legally enforceable right to be given access to an agency's documents in accordance with the FOI Act.²
9. However, section 18(1) of the FOI Act provides that agencies may refuse to deal with an application for access if certain conditions are met:

18—Agencies may refuse to deal with certain applications

(1) An agency may refuse to deal with an application if it appears to the agency that the nature of the application is such that the work involved in dealing with it within the period allowed under section 14 (or within any reasonable extension of that period under section 14A) would, if carried out, substantially and unreasonably divert the agency's resources from their use by the agency in the exercise of its functions.

(2) An agency must not refuse to deal with such an application without first endeavouring to assist the applicant to amend the application so that the work involved in dealing with it would, if carried out, no longer substantially and unreasonably divert the agency's resources from their use by the agency in the exercise of its functions.

10. Under section 48, the onus is on the agency to justify its determination 'in any proceedings'. This includes the external review process.

Documents in issue

11. The agency refused to deal with item 1 of the applicant's request relating to 'triage sheets.' It otherwise identified 4 documents falling within the scope of items 2 and 3 of the application and provided access to three documents in part and refused access to one document in full.

Consideration

Dealing with the application in part

12. The agency stated in its determination that:

In relation to this part of your request:

¹ *El Shafei v Central Adelaide Local Health Network* [2017] SACAT 5.

² *Freedom of Information Act 1991*, section 12.

1. A copy of all triage sheets between 01/06/2018 and 22/08/2025 which show your attendance at [REDACTED] police station.

South Australia Police (SAPOL) determined that to process your request would unnecessarily divert the agencies' resources away from their primary function and accordingly refused to deal with your request in accordance with Section 18(1) FOI Act.

13. I consider that this was a misapplication of section 18(1) of the FOI Act. Section 18(1) provides a mechanism for an agency to refuse to deal with 'an application'. The agency's approach in this instance raises a question as to whether it is permissible to refuse to deal with *part* of an application.

14. I have compared the operation of section 18 with other Australian jurisdictions. The Victorian Information Commissioner provides the following guidance in relation to the equivalent section of the *Freedom of Information Act 1982 (Vic)*:

1.17 Section 25A(1) can only be used to refuse access to the whole request. An agency or Minister cannot apply section 25A(1) to part of a request only, and process the documents falling within the remaining part of the request.

1.18 If the request comprises several parts, the agency or Minister should advise the applicant at the earliest possible time, the parts that would be able to be processed, so the applicant can consider not pursuing those parts that would bring the request within section 25A(1).³

15. In contrast, section 60 of the *Government Information (Public Access) Act 2009 (NSW)* expressly provides that:

An agency may refuse to deal with an access application (**in whole or in part**) for any of the following reasons (and for no other reason) [emphasis added]

16. As the FOI Act does not explicitly define or deal with whether 'an application' can be refused in part, whether or not such an action may be taken by an agency needs to be inferred from the context and operation of the FOI Act. In my view, the intent of the FOI Act is that a decision maker under the FOI Act is required to deal with 'an application' wholly, rather than in part. I draw this conclusion for the following reasons:

- the FOI Act refers to 'an application', it does not expressly refer to an application in part, in contrast to the NSW legislation
- an agency may *refuse to deal with an application* pursuant to section 18 and in doing so is making a determination for the purposes of the FOI Act⁴, the context of section 18 therefore allows an agency to refuse to deal with the entirety of an application if certain conditions are met; if those conditions are met, then no further action is required by the agency
- section 14A of the FOI Act provides an agency with the ability to extend time to deal with 'an application', it does not provide an agency with the ability to extend time to deal with *part* of an application
- the FOI Act does not appear to contemplate the making of multiple 'determinations' in response to a single request - the review functions under the Act refer to the review of 'a determination' singularly⁵.
- The effect of making multiple determinations would be to confuse the review pathways as each determination may be subject to different review pathways and timelines. For example, application for review of each determination may be made to different bodies and at different times; one may be subject to remission by the

³ [Section 25A - Office of the Victorian Information Commissioner](#)

⁴ See section 18(8) *Freedom of Information Act 1991*

⁵ See sections 29(2) and 39(2)

external review agency and the other may not. This could create inefficiency and confusion. If this was the intention of the FOI Act, it would have been explicit.

17. Accordingly, in my view, section 18(1) cannot be used to refuse to deal with part of an application. An agency must either refuse to deal with the whole of the application, or must accept the application and deal with it in its entirety.
18. I consider that the agency has made an error in refusing to deal with this application in part.
19. As the agency's purported determination to refuse access to the application in part was in error, I do not consider that it was a valid determination. Accordingly, for practical purposes, I consider the determination of the agency which is under review is a determination to refuse access to documents (by reason of exemptions, in relation to the documents which were specifically identified and by reason of sections 19(2) and 29(5) of the FOI Act in relation to any other documents within the scope of the request).
20. Nevertheless, the Ombudsman has powers to conduct external reviews *de novo*⁶; that is, I stand in the shoes of the decision maker and must make the correct and preferable decision on review. I consider that on review I have open to me the same decisions that were open to the agency on receipt of the application. This includes that on review I may determine, notwithstanding that an agency is taken to have refused access to documents, that the correct and preferable decision is that the agency was entitled to refuse to deal with the application pursuant to section 18(1).

Determination to refuse access pursuant to section 18(1)

Whether the agency complied with section 18(2)

21. In order to make a determination based upon section 18(1), I must first be satisfied that the agency has complied with section 18(2).
22. It is a question of fact as to whether the agency has endeavoured to assist the applicant to amend the application so dealing with it would not substantially and unreasonably divert the agency's resources from their use by the agency in the exercise of its functions. In assessing the agency's endeavours I consider the following are relevant:
 - has the agency advised the applicant that it intends to refuse to deal with the application under section 18(1)?
 - has the agency, as far as is reasonably practicable, given the applicant information to assist in making an application which would remove the grounds for refusal?
23. On 22 August 2025, the applicant submitted an application seeking 'all files and reports/statements' related to himself and a third party across a seven year period, including the 'triage sheet to show duties/times I have been into SAPOL stations for evidence/updates or any matter'.
24. On 12 September 2025, the agency advised in its determination to extend time to deal with the application that it was unable to process the FOI request without amending the scope and invited the applicant to narrow the time frame of the request. The determination to extend time advised:

⁶ *Attorney-General for the State Of South Australia v Seven Network (Operations) Ltd* [2019] SASCFC 36 at [37] and [62] - see also section 39(11) *Freedom of Information Act 1991*

SAPOL may hold over 2100 documents within the scope of this request. Please provide dates and approximate times of attendance to enable a search for the relevant document to occur.

25. Additionally, the letter advised that if a workable scope could not be agreed, then the application may be refused pursuant to section 18(1). The agency also spoke with the applicant over telephone on 17 September 2025 and appeared to reach an agreement with the applicant about an amended scope in relation to parts of their application, the amended scope still included the triage sheets. The applicant does not agree that a new scope was agreed upon, or at least, disagrees to the extent that the scope determined by the agency was what was agreed in email correspondence between the parties in September 2025. Notwithstanding this issue, I am satisfied that the agency put the applicant on notice of its request to narrow the triage sheets application.
26. In an email to the applicant on 16 October 2025, the agency wrote to the applicant again in an attempt to narrow scope of item 1 relating to the triage sheets, advising:

During our telephone call we discussed that your application was duplicitous to your previous application, and I wanted to gauge an understanding of what you were seeking further to the information we had already provided in determination 25-0382. My understanding of what you advised me is the following:

1. You believe there are more documents which were supplied from/to OPI and IIS. You wish to have a copy of the triage sheets from your attendance at [REDACTED] police station to prove that you attended on a particular date and time.
2. You handed in a taser and a mobile phone to [REDACTED] police station and you require a copy of the reports relating to these.

In relation to point 1. I have advised that to search through every triage sheet for the period you have requested looking for your name would be an onerous task that neither I or the operations manager for that police station are willing to commit to. I have suggested that if that dates are narrowed considerably this may be achievable.

27. While the email is absent an explicit reference to section 18(1) I consider that the agency had already put the applicant on notice that it intended to refuse to deal with the application if the scope was not narrowed by way of its extension of time determination.
28. The reply email of the applicant dated 16 October 2025, does not respond to the agency's request to narrow the timeframe for the triage sheets.
29. On 24 November 2025, the agency subsequently refused to deal with part of the application pursuant to section 18(1), noting that the applicant was unable to narrow the scope of their application in relation to the part requesting access to the triage sheets.
30. I consider that the steps the agency took to assist the applicant in amending the scope of the FOI request were reasonable, and as such I am satisfied that the agency has discharged its onus under section 18(2).

Whether the requirements of section 18(1) are met

31. The agency outlined the following:

On the 12th of September [t]he FOI Unit wrote to you and explained that the triage sheets are a local policy at [REDACTED] police station to allow the staff to know who is waiting to be seen and the reason for their attendance. These sheets are not required to be used and may not be used on every occasion. There are an estimated 2,100 such sheets filed roughly chronologically, each sheet has multiple entries. To search through all of those

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sheets would be an unreasonably labour intensive function. In that letter you were asked to narrow the scope of your request which you were unable to do.

32. The agency has submitted that to satisfy this part of the applicant's request, it would be required to search through approximately 2,100 triage sheets. When the agency was contacted to provide further information on these triage sheets, it explained that when a new customer enters the station, their details and requirements are written on the triage sheets. These sheets allow station staff to allocate the correct resource and time to each enquiry and also to ensure the next person in the queue is dealt with appropriately. The agency also advised that the sheets are stored physically in folders in approximately chronological order, and that the process for searching for the relevant documents would involve opening each page of each folder.
33. I consider that searching through over two thousand triage sheets would be a labour-intensive task, especially as the physical format of the documents would prevent any indexed methods of searching. The agency would be required to look through each triage sheet across a considerable time frame of seven years, as the applicant was unable to narrow down the dates of this aspect of his request.
34. I am therefore satisfied that carrying out this aspect of the FOI application would be a substantial and unreasonable diversion of the agency's resources.
35. Accordingly, I am satisfied that it was open for the agency to refuse to deal with the application on the basis that the work, if carried out, would substantially and unreasonably divert the agency's resources in the exercise of its functions.
36. I appreciate that this is not the outcome the applicant was hoping for, in particular because I have been unable to deal with part of the application where the agency purported to provide partial access to documents. The applicant has lost their review rights in relation to those documents because of the agency's mistake. While I sympathise with the applicant's position, my role is to make the correct and preferable decision on review. It is open to the applicant to reapply for a narrowed scope of documents.
37. The applicant has expressed his dissatisfaction with my findings in his submissions and intends to escalate this matter. Again, although I acknowledge the applicant's frustration, I note that the applicant may appeal the matter to the South Australian Civil and Administrative Tribunal if he wishes.

Determination

38. In light of my views above, I vary the agency's determination such that the whole of the application is refused to be dealt with pursuant to section 18(1).



Megan Carter
DEPUTY OMBUDSMAN

26 June 2026

APPENDIX

Procedural steps

Date	Event
22 August 2025	The agency received the FOI application.
12 September 2025	The Principal Officer determined to extend the time required to deal with the application to 22 November 2025. ¹
24 November 2025	The agency determined the application.
28 December 2025	The agency received the internal review application.
30 December 2025	The agency confirmed the determination.
8 January 2026	The Ombudsman received the applicant's request for external review.
13 January 2026	The Ombudsman advised the agency of the external review and requested submissions and documentation.
12 June 2026	The Ombudsman issued her provisional determination and invited submissions from the parties.
18 June 2026	The agency advised that it had no submissions.
18 June 2026	The applicant provided submissions in response to the provisional determination.

¹ *Freedom of Information Act 1991*, section 14A(1).