

Redacted Determination

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

Applicant	The applicant
Agency	Central Adelaide Local Health Network
Ombudsman reference	2018/02250
Agency reference	CALHN/FOI/1718/017
Determination	The determination of the agency is varied.

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:

All contracts between Central Adelaide Health Network/Royal Adelaide Hospital (or one of their associated agencies or entities) and St Andrews Hospital in relation to the use of the Da Vinci Surgical Robot at St Andrews Hospital.

Background

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

Jurisdiction

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

Provisional determination

4. I provided my tentative view about the agency's determination to the parties, by my provisional determination dated 5 March 2018. I informed the parties that subject to my receipt and consideration of submissions from the parties I proposed to vary the agency's determination.
5. By email sent 6 March 2018 the applicant's solicitor informed me that the applicant supported my provisional determination. The agency did not provide me with submissions.

Relevant law

6. A person has a legally enforceable right to be given access to an agency's documents in accordance with the FOI Act.¹
7. The applicant, through his solicitor, made his application on 18 January 2018. On 9 February 2018 the agency's principal officer wrote to [the applicant's solicitor] advising of her determination to extend the time within which the agency would otherwise have had to deal with the application until 26 March 2018. This determination was made pursuant to section 14A(1) of the FOI Act, which provides:

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 -

- (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.
8. Under section 48, the onus is on the agency to justify its determination 'in any proceedings'. This includes the external review process.
 9. 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

10. The issue in this review is whether the agency's determination to extend the time within which the application would otherwise have had to be dealt with is justified by reference to the terms of section 14A of the FOI Act.

Consideration

11. In her determination to extend the usual time limit for dealing with FOI applications, the agency's principal officer stated:

Your application is for access documents to which consultation will be required (sic). Accordingly this work will not be able to be completed within the original 30 day deadline without unreasonably diverting resources to deal with the application.

12. Upon receipt of the application for external review my Senior Legal Officer telephoned the agency's Accredited FOI Officer. During this telephone call, the FOI Officer advised that she was unaware of how many documents might fall within the scope of the applicant's application because she was awaiting advice from the agency's procurement section. The FOI officer had not been receiving satisfactory responses from the procurement section and had had to copy the agency's Chief Executive Officer into her emails in an effort to obtain information.²

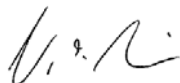
¹ *Freedom of Information Act 1991*, section 12.

² Telephone call on 26 February 2018.

13. During the same telephone call the agency's FOI officer conceded that it was likely that the agency would only have to consult with a single interested party, namely St Andrews Hospital.
14. On 28 February 2018 the agency's FOI officer emailed my Officer to advise that she had received the single document that falls within the scope of the application. She confirmed that she would have to consult with St Andrews Hospital before determining whether to disclose the document to the applicant.
15. Given this information, I take the view that the determination made under section 14A of the FOI Act is not justified. The application is not for access to a large number of documents nor does it necessitate a search through a large quantity of information. Although the application is for access to a document in relation to which consultation is required, there is only one interested party who must be consulted.
16. The agency appears to have made the determination in this matter due to staff delay in responding to the FOI officer's internal search for documents. In my view the applicant should not have to bear the delay caused by the agency's internal management of his application. This issue was discussed in the Ombudsman's 2014 FOI audit.³
17. In my view it is reasonable to allow the agency one week to consult with St Andrews Hospital and a further week to provide the applicant with its determination. This two week period should be taken to have commenced on 1 March 2018, the day after the FOI officer was provided with the document in issue. This means that the agency should provide the applicant with its determination by 15 March 2018.

Determination

18. In light of my views above, I vary the agency's determination.



Wayne Lines
SA OMBUDSMAN

14 March 2018

³ See 'An audit of state government departments' implementation of the *Freedom of Information Act 1991* (SA), May 2014 available at <http://www.ombudsman.sa.gov.au/wp-content/uploads/An-audit-of-state-government-departments-implementation-of-the-Freedom-of-Information-Act-1991-SA1.pdf>

APPENDIX

Procedural steps

Date	Event
22 January 2018	The agency received the FOI application dated 18 January 2018.
9 February 2018	The agency's principal officer determined to extend the period in which the agency would otherwise have had to deal with the application.
23 February 2018	The Ombudsman received the applicant's request for external review dated 23 February 2018.
26 February 2018	The Ombudsman advised the agency of the external review and requested submissions and documentation.
26-28 February 2018	The agency provided the Ombudsman with its submissions and documentation.
5 March 2018	The Ombudsman issued his provisional determination and invited submissions from the parties.