Information Act 2002 Guideline

Unreasonable interference with operations

Information Commissioner NORTHERN TERRITORY

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A public sector organisation can refuse to provide access to information if, taking into account all elements involved in providing access (including all aspects of processing the application[1]), to do so would unreasonably interfere with its operations – see s25(1) and s17(4) of the *Information Act 2002* (the Act).

However, before doing so, the organisation must consult with the applicant to attempt to agree on an acceptable variation of the application – s25(2) s17(1) and s17(2).

What is "unreasonable" interference?

Public sector organisations are required by the Act to facilitate open and accountable government as part of the performance of their core functions. Resources therefore need to be allocated to ensure that:

- records are appropriately managed, facilitating search and retrieval of government information; and
- FOI applications are responded to promptly, fairly and openly.

Consequently, an organisation cannot refuse to deal with an application on the basis of "unreasonable interference" with its functions merely because it:

- has poor records management practices; or
- has not allocated sufficient resources to handle FOI applications.

However, the Act recognises that there may be cases in which dealing with an application would cause such a significant level of interference with an organisation's operations as to make compliance unreasonable.

While this discretion will not be exercised frequently, it is an important mechanism for protecting public resources, particularly in the case of very large applications.

The fact that the organisation may charge a processing fee does not preclude a decision that providing access would unreasonably interfere with its operations.

In many cases, the $25 per hour processing fee will not cover the costs involved in dealing with an application. An organisation can decide that the commitment of public resources that would be required to process an application would be too great even if a fee is recoverable.

Some factors that may give rise to unreasonable interference

When assessing whether there would be unreasonable interference, an organisation must consider all relevant factors. Factors that may be relevant in a particular case include:

- the amount of information sought is very large;
- the information is not easy to retrieve through existing filing systems;
- the information is not easy to retrieve through existing computer systems;
- a large number of third parties need to be located and consulted;
- the organisation is small and has limited resources;
- the documents in question are fragile and difficult to duplicate.

[1] Refer to the Supplement to Unreasonable interference with operations guideline for the intent of these provisions in the Act

Steps in assessing unreasonable interference

1. Determine the scope of the application and form a realistic estimate of the resources needed to comply. It is important that any estimate be reliable. It may be useful to:

    - undertake a representative sample of the work involved to establish a reliable estimate as to the time or costs that would be involved;
    - obtain quotes for any special services or equipment that may be required;
    - if a variety of different kinds of searches are required, ensure that the data used is accurate for each different kind of search.

    The assessment should not be based on what can be reasonably achieved within the 30 day time period. An organisation has the power to extend time on the basis that complying with the 30 day period would unreasonably interfere with the conduct of its operations. Make sure you include the applicant in the discussion or negotiation about extending the timeline.

2. Determine what resources are available to process the application. What is reasonable for a large organisation may be unreasonable for a smaller organisation. The organisation must look at *all* its available resources. Merely assessing the current resources assigned to FOI is not useful.

3. If resources must be diverted from other business functions, consider the extent to which they would be impaired, and the impact the impairment of those functions would have on the community. In other words, what are the *public interest implications* of diverting resources away from these functions?

4. What is the *benefit in disclosing the information*? If there is significant public interest in disclosure, or the individual applicant would suffer a significant detriment if the information is not disclosed, this may justify commitment or diversion of additional resources.

Need to consult before refusing access

A public sector organisation may only decide to refuse access on the basis of unreasonable interference if the organisation and the applicant are unable to agree on a variation of the information identified in the application.

An organisation that considers dealing with an application would cause unreasonable interference with its operations should consult with the applicant as early as possible.

The organisation should explain in some detail the difficulties that would be faced in responding to the application (or a particular part of it) in its present form.

It will usually be important to

1. inform the applicant of the types of information held by the organisation,
2. provide information about its record keeping systems and methods of storage and retrieval.

This may enable the applicant to identify the information sought more specifically or to isolate information that can be retrieved more easily.

The organisation should explore options that will allow the applicant to re-scope or narrow their application so that the organisation is in a position to deal with it. In some cases, it may be possible to agree on a staged approach, with different parts of the application dealt with at different times. If agreement on a variation is reached, it should be confirmed in writing, so that the varied scope of the application is clear.

Approach on complaint to Commissioner

On any complaint, the Commissioner will look at two issues — whether providing access would unreasonably interfere with operations, and whether adequate steps have been taken by the organisation to attempt to reach agreement with the applicant on an acceptable variation.

Previous decisions

Some decisions on corresponding provisions in other jurisdictions are listed below. Readers should be aware that the wording of those provisions differs from the provisions of the *Information Act 2002*, and that they contain a requirement for interference to be "substantial" as well as "unreasonable".

- Large volume of documents – allowed access to some documents to identify document types that might seek access to – no variation – refusal affirmed. *Re Cunningham and Rural Adjustment and Finance Corporation* [1996] WAICmr 29 http://www.austlii.edu.au/au/cases/wa/WAICmr/1996/29.html
- Large volume of documents – staged approach. *Re Geary and Australian Wool Corporation* (V86/575, 1987, Cth AAT No.3842), unreported http://www.austlii.edu.au/au/cases/cth/aat/unrep3124.html
- Large volume of documents – refusal affirmed. *Re Swiss Aluminium Australia Ltd v Department of Trade* (1986) 10 ALD 96 http://www.austlii.edu.au/au/cases/cth/aat/unrep2478.html
- Retrieval would require diversion of existing computer systems – refusal affirmed. *Re 'LUC' and Royal Brisbane Hospital and District Health Service* (S 204/99, 28 June 2000, Deputy Information Commissioner Sorensen), unreported http://www.oic.qld.gov.au/indexed/decisions/pdf/S%20204-99.pdf
- Retrieval of information would require manual searches of thousands of files – refusal affirmed**.** *Re Price & Nominal Defendant* (S 97/97, 24 November 1999, Information Commissioner Albietz), unreported, paragraphs 25-31 http://www.oic.qld.gov.au/indexed/decisions/pdf/S%2097-97.pdf
- Many categories of information sought – refusal affirmed. *Re Allanson and Queensland Tourist & Travel Corporation* (1997) 4 QAR 220 http://www.oic.qld.gov.au/indexed/decisions/pdf/97020.pdf
- Large volume of documents – scope reduced – refusal on basis of varied application affirmed. *Re Hoey and Canegrowers* (S 89/98, 22 March 2000, Information Commissioner), unreported http://www.oic.qld.gov.au/indexed/decisions/pdf/S%2089-98.pdf
- Large volume of documents relating to job applications – refusal affirmed. *Re Perkins and Queensland Rail* (S 58/98, 22 September 2000, Information Commissioner Albietz), unreported, http://www.oic.qld.gov.au/indexed/decisions/pdf/S%2058-98.pdf

See also OAIC Guideline Part 3 at 3.111 for the discussion where *Resource impact of processing request would be substantial and unreasonable*, being mindful of the addition of substantial.

This guideline is produced by the Information Commissioner to promote awareness and understanding about the *Information Act 2002*. It is not a substitute for the Act. You should read the relevant provisions of the Act to see how it applies in any particular case.

Any views expressed in this guideline about how the Act works are preliminary only. In every case, the Commissioner is open to argument by a member of the public or a public sector organisation that a different view should be taken.