Supplement to *Unreasonable interference with operations* guideline

The power to refuse access because of unreasonable interference with operations

Section 25(1) provides that a "public sector organisation may decide to refuse access to information because providing access would unreasonably interfere with the operations of the organisation".

On one view, the wording of this provision might be taken as providing grounds for refusal only if the act of providing access itself constitutes an unreasonable interference. In other words, an organisation could not rely on interference in the course of searching for documents, collating documents, consulting third parties or making the decision, as a basis for refusal.

However, my view is that organisations do have a discretion to refuse access on the basis of interference with operations that would be caused by such activities.

A perusal of freedom of information legislation in each other jurisdiction in Australia shows that each Act includes a corresponding provision that allows refusal on the basis of unreasonable diversion of resources. In all jurisdictions, the corresponding provision makes it clear that "processing" elements can be taken into account in deciding whether the diversion is unreasonable.

Some provisions talk in terms of refusing to deal with the application. Some talk in terms of "refusing access" in a similar manner to s.25(1). Most make it clear that what must be assessed is the work involved in dealing with the application, while the Tasmanian provision talks of "the work involved in providing the information", in a similar way to s.25(1). (The Tasmanian provision goes on to make it clear that processing elements are included.)

In my view, the wording of s.25(1) reflects an attempt to distil the essential features of the corresponding provisions in other jurisdictions, at least in so far as they allow the impact of processing the application on the operations of the organisation to be taken into account.

In his Second Reading Speech on the introduction of the *Information Bill* (Hansard, 14 August 2002), the then Attorney-General, Dr Toyne, stated:

> Applications may only be refused where the information falls under one of the public interest exemptions identified under Part 4 of the bill, or where providing access would unreasonably interfere with the operations of the organisation. The latter provision is aimed particularly to address concerns that applications for extensive documentation may cause disruption to the effective operation of an agency. However, the bill encourages dialogue between the agency and an applicant. A decision to refuse access on this basis cannot be taken unless the parties are unable to agree on an effective variation of the request.

It is also significant that s.17(4) provides that in fulfilling its duties under Part 3, "a public sector organisation is not expected to act in a manner that would unreasonably interfere with its operations."

Therefore, an organisation is entitled to refuse to provide access to the information sought in an application if, taking into account all elements involved in providing access (including all aspects of processing the application), to do so would unreasonably interfere with the operations of the organisation.

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