

Price and Local Government Association of Queensland Inc.

(S 111/01, 29 June 2001, Deputy Information Commissioner)

(This decision has been edited to remove merely procedural information and may have been edited to remove personal or otherwise sensitive information.)

1.-2. These paragraphs deleted.

REASONS FOR DECISION

Background

1. By letter dated 10 May 2001, the applicant (Mr Price) made an FOI access application to the LGAQ in the following terms:

I make a new FOI application for all documents of your agency related to myself, my family and/or my property etc that is held by your agency and solicitors, who are common with and/or collectively common etc, to your members such as, the Gatton Shire Council and the Laidley and Esk and Toowoomba Shire Councils.

I submit that as your agency is made up in part by the Gatton Shire Council etc then I may access all documents related to myself that are documents that have passed to and from the law firm King & Co and any part of your organisation or parts of your organisation.

...

I do not believe that you can refuse to produce all documents related to myself etc related to your agents. If it takes part transfers then so be it, you have no way out.

2. By letter dated 14 May 2001, the Executive Director of the LGAQ informed Mr Price that:

... this agency does not hold any other documents related to yourself, your family or your property, that have not already been addressed in my responses to your previous Freedom of Information Requests (your Application Nos. FOI 11.02.2000; FOI 11.12.2000; FOI 10.04.2001).

5. By letter dated 16 May 2001, Mr Price applied for review, under Part 5 of the FOI Act, of the LGAQ's decision dated 14 May 2001.

External review process

-

1. In his application for external review, Mr Price stated that he believed the LGAQ *"has missed the legal points in regards just what documents have been applied for..."*. Mr Price also made the following submission:

The different Shire Councils and Aboriginal Councils which make up the LGAQ are the employers of such agencies as King & Co. Such a make up is legally different in law to King & Co. representing different firms [sic] in the normal sense.

2. In a letter to Mr Price dated 18 May 2001, I drew his attention to the terms of s.77(1) of the FOI Act (which are reproduced at paragraph 12 below), and said:

On the basis of my preliminary assessment of your application for review dated 16 May 2001, and the decision dated 14 May 2001 by the [LGAQ], I consider that your application for review is vexatious, misconceived and lacking in substance. I will briefly state my reasons for holding that view and I will then give you the opportunity to provide me with a written submission and/or documentary evidence which might persuade me not to exercise the power under s.77(1) of the FOI Act so as to refuse to deal with your application for review of the LGAQ's decision dated 14 May 2001.

Your application for external review dated 16 May 2001 relates to your FOI access application to the LGAQ dated 10 May 2001. (You also referred in your letter dated 16 May 2001 to your FOI access application to the LGAQ dated 10 April 2001. However, the access application dated 10 April 2001 is already the subject of external review: my reference S 108/01.)

Your FOI access application to the LGAQ dated 10 May 2001 was for "all documents of your agency related to myself, my family and or my property etc that is held by your agency and solicitors...". The relevant time period for documents that would be responsive to the terms of your FOI access application is 11 April 2001 to 10 May 2001 inclusive (since external review S 108/01 accounts for the time period prior to 10 April 2001). The LGAQ, in its decision dated 14 May 2001, has informed you that the LGAQ "does not hold any other documents related to yourself, your family or your property, that have not already been addressed in ... responses to your previous Freedom of Information Requests...". From the information available to me from dealing with your series of review applications involving the LGAQ, I have no reason to doubt that that is the case.

3. I then referred to Mr Price's submission (set out at paragraph 6 above) and continued:

..., I understand you to be suggesting that your FOI access application to the LGAQ should include (in addition to documents held by King & Co. that came from and/or were sent to the LGAQ) documents held by King & Co. (concerning yourself, your family and your property) that have come from and/or were sent to any other Council that is a member of the LGAQ.

If so, then, with respect, it is you, rather than the LGAQ, who has misapprehended the correct legal position on this occasion.

While many local government authorities in Queensland are members of the LGAQ, the LGAQ is a distinct legal entity, and a distinct agency for the purposes of the FOI Act, in its own right. An FOI access application lodged with the LGAQ may request documents in the possession or control of the LGAQ (and that may extend to particular documents in the possession of a firm of solicitors retained by the LGAQ, if the legal ownership of those documents vests in the LGAQ according to the principles explained in Re Price and Nominal Defendant (1999) 5 QAR 80), but it cannot extend to documents in the possession or control of the local government authorities who are members of the LGAQ (or to documents in the possession of a firm of solicitors retained by any of those local government authorities) because they are distinct legal entities, and distinct agencies for the purposes of the FOI Act. To suggest that it does would be as absurd as suggesting that an FOI access application lodged with the Queensland Law Society Inc extends to all responsive documents held by all practising solicitors in Queensland, because all practising solicitors are members of the Queensland Law Society Inc.

When King & Co. act as solicitors for the LGAQ, that firm enters into a distinct lawyer-client relationship with the LGAQ, and when King & Co act as solicitors for different local government authorities, the firm enters into a distinct lawyer-client relationship with each local government authority.

If your purpose is to seek access to documents held by King & Co. that relate to a matter in which that firm has been retained to advise or represent a particular local government authority, you must make the relevant FOI access application to the particular local government authority (whereupon the principles explained in Re Price and Nominal Defendant should be applied in determining whether any documents in the possession of King & Co. are documents in which legal ownership vests in the particular local government authority, and, if so, whether they are exempt from disclosure under s.43(1) of the FOI Act or other exemption provisions).

9. I concluded my letter to Mr Price (dated 18 May 2001) by advising that, unless Mr Price was able to provide me by 31 May 2001 with a written submission and/or documentary evidence which might persuade me not to exercise the power conferred by s.77(1) of the FOI Act, I did not propose to further consider his application for external review.
10. In a telephone call to this office on 30 May 2001, Mr Price requested an extension of time to 18 June 2001 for lodging his written submission. In a return telephone call to Mr Price (on 30 May 2001), a member of my staff informed Mr Price that an extension of time to 18 June 2001 was granted, but that no further extensions of time beyond 18 June 2001 would be allowed.

1. On 18 June 2001, Mr Price sent a letter to my office with a header containing the reference nos for this application for review. However, the contents of that letter included little of relevance to the issue I had raised in my letter dated 18 May 2001, or to this external review generally. Mr Price ended the letter with a request that I "*not require any submissions until late August*". By letter dated 19 June 2001, I informed Mr Price that his request for an extension of time until late August was refused. I reminded Mr Price that he had previously been informed that no further extensions of time beyond 18 June 2001 would be allowed.

Application of s.77(1) of the FOI Act

12. Section 77(1) of the FOI Act provides:

77.(1) The commissioner may decide not to review, or not to review further, a decision in relation to which an application has been made under section 73 if the commissioner is satisfied that the application is frivolous, vexatious, misconceived or lacking in substance.

13. I accept Mr Hallam's statement that the LGAQ has no new documents that came into its possession or control between 10 April 2001 (the date of Mr Price's prior application to the LGAQ) and 10 May 2001 (the cut off date for Mr Price's FOI access application dated 10 May 2001), that are responsive to the terms of Mr Price's FOI access application dated 10 May 2001. Any responsive documents that were in the possession or control of the LGAQ prior to 10 April 2001 have been dealt with in finalised, or soon-to-be finalised, applications for review to my office.
14. There is a suggestion in the fourth paragraph of Mr Price's letter dated 18 June 2001 that, because he applied again for all documents of the LGAQ related to himself *et cetera*, he is entitled to have reconsidered, in this application for review, the issues that were resolved by my decision dated 17 May 2001 which finalised application for review no. S 52/00 (which stemmed from Mr Price's first FOI access application to the LGAQ, dated 11 February 2000).
15. Such an application by Mr Price would clearly be vexatious, and contrary to the principle that a decision by a court or tribunal resolves the issues in dispute between the parties. A litigant cannot seek multiple hearings of the same issues between parties - that is vexatious and oppressive to the other party and to the relevant court or tribunal, and unfair to other citizens waiting their turn to use the dispute resolution services, provided from public funds, by courts and tribunals. To the extent that Mr Price is seeking to re-open the issues that were dealt with in my decision dated 17 May 2001, which finalised application for review no. S 52/00, I decide, under s.77(1) of the FOI Act, not to review further those issues on the ground that the application is vexatious.
16. The LGAQ has (in my view, quite properly) treated each successive FOI access application lodged with it by Mr Price as one for responsive documents that came into the possession or control of the LGAQ in the intervening period since lodgment of Mr Price's

most recent prior FOI access application. It is equally vexatious and oppressive to agencies to make repeated applications for the same documents, and, although agencies do not have a power similar to s.77(1) of the FOI Act enabling them to refuse to deal with a vexatious FOI access application, the agency is entitled to seek to persuade the Information Commissioner (or his delegate) to apply s.77(1) of the FOI Act if an actual or constructive refusal by an agency to process a vexatious part of an FOI access application becomes the subject of an application for review under Part 5 of the FOI Act.

17. In Mr Price's letter dated 18 June 2001, he asserted that the LGAQ's failure to part transfer his FOI access application, despite his requiring that the LGAQ do so, is a breach of the FOI Act by the LGAQ. That is an incorrect assertion on Mr Price's part. Section 26 of the FOI Act clearly sets out the basis on which a transfer of an FOI access application between agencies may occur. An agency has a discretion to seek to transfer an FOI access application to another agency, and the potential receiving agency is entitled to refuse consent to the transfer. An access applicant under the FOI Act has no legal entitlement to require one agency to transfer an FOI access application to another agency or agencies. Moreover, a refusal by an agency to transfer an FOI access application is not a decision in respect of which an aggrieved applicant is entitled to seek review by the Information Commissioner: see s.71 of the FOI Act.
18. There is nothing in Mr Price's letters dated 18 June 2001 and 20 June 2001 amounting to a legal point of substance that might warrant reconsideration of my statement (in my letter to Mr Price dated 18 May 2001 - reproduced at paragraph 8 above) of the correct legal position as to the status of the LGAQ, and its member Councils, as distinct legal entities for the purposes of the FOI Act. I am satisfied that Mr Price's application for review dated 16 May 2001, in respect of Mr Hallam's decision on behalf of the LGAQ dated 14 May 2001, is vexatious, misconceived and lacking in substance.

DECISION

19. In accordance with s.77(1) of the FOI Act, I decide not to review further the decision (i.e., the LGAQ's decision dated 14 May 2001) in relation to which Mr Price's application for review dated 16 May 2001 has been made, because I am satisfied that that application is vexatious, misconceived, and lacking in substance.