



Decision and Reasons for Decision

Application Number: 210910

Applicant: Tabcorp Casinos Division

Respondent: Treasury Department

Decision Date: 18 December 2009

Catchwords: **FREEDOM OF INFORMATION - ACCESS TO DOCUMENTS - CONSULTATION** - agency decided to grant access to documents contrary to views of a third party - deferral of access where third party objects to disclosure of documents - third party applied to Information Commissioner for external review - at time of external review application documents had already been released by the agency - whether documents released before the end of the 'review period' in section 51 of the *Freedom of Information Act 1992 (Qld)*

FREEDOM OF INFORMATION - EXTERNAL REVIEW - CONDUCT OF REVIEW - COMMISSIONER MAY DECIDE NOT TO REVIEW - whether external review application is lacking substance - whether Information Commissioner should decide not to deal further with application for review under section 77(1)(a) of the *Freedom of Information Act 1992 (Qld)*

Contents

REASONS FOR DECISION.....	2
Summary	2
Background.....	2
Information considered	4
Relevant law	4
External Review Application	5
Findings of fact and application of the law.....	7
Were the documents in issue released to the FOI Applicant before the end of the Review Period?	7
When was notice of the Internal Review Decision given to the ER Applicant?	7
Was the External Review Application lodged before the end of the review period?	8
Consultation	9
OIC guidelines.....	10
Section 77(1)(a) of the FOI Act	11
'Lacking substance'	11
DECISION.....	12

REASONS FOR DECISION

Summary

1. In the course of processing a freedom of information (**FOI**) application, Treasury Department (**Department**) consulted Tabcorp Casinos Division (**ER Applicant**) in relation to part of the documentation sought by an FOI applicant. The ER Applicant objected to disclosure and subsequently sought internal review of the Department's decision to release documents contrary to the views of the ER Applicant.
2. After receiving the internal review decision, the ER Applicant's legal representatives, Mallesons Stephen Jaques (**Mallesons**), advised the Department of the date they received the internal review decision, their client's intention to seek external review of the internal review decision and the date by which the external review application had to be made.
3. There was a difference of views between the Department and Mallesons regarding the date by which an external review application had to be made. The Department relied on the advertised service standard of Australia Post as the time service of the internal review decision would be effected, whereas Mallesons relied on, and advised the Department of, the actual date service was effected.
4. Although on notice that the ER Applicant intended seeking external review by the Information Commissioner, the Department released the documents in issue to the FOI applicant prior to the end of the review period, in the belief that the review period had ended and that the Department was under a legal obligation to release the documents.
5. As there is no meaningful remedy available to the ER Applicant in this review under the FOI Act and no real basis on which the review can proceed, the external review application is not dealt with further on the basis that it is lacking substance.

Background

6. The Department received a freedom of information application dated 1 January 2009 for documents relating to the Queensland gaming industry in 2007 and 2008 (**FOI Application**).
7. On or about 26 March 2009 the ER Applicant became aware of the FOI Application.
8. The Department was initially of the view that it was not necessary, for the purposes of section 51 of the *Freedom of Information Act 1992* (Qld) (**FOI Act**), to consult with the ER Applicant regarding documents responding to the FOI Application. However, following discussions between Mallesons and the Department, the ER Applicant was afforded an opportunity to provide a response for the purposes of section 51 of the FOI Act.
9. By letter dated 2 April 2009, Mallesons provided a formal response to the Department objecting to the release of particular documents on the basis that the documents were outside the scope of the FOI Application or exempt under various provisions of the FOI Act.
10. By letter dated 14 April 2009 (**Original Decision**), Mr Roy Tunney, FOI Decision Maker

at the Department, notified the FOI applicant of his decision to:

- partially release particular documents
 - defer access to particular documents on the basis that the ER Applicant objected to their release; and
 - fully release the remainder of the documents.
11. By letter dated 15 April 2009, the initial decision-maker wrote to the ER Applicant indicating that they had decided to release material concerning the ER Applicant and that access to the documents in issue was deferred to afford the ER Applicant an opportunity for review.
 12. By letter dated 12 May 2009 (**Internal Review Application**) the ER Applicant applied for internal review of the Department's decision to release the documents in issue.
 13. By letter dated 4 June 2009,¹ Mr Gerry Cottle, Manager of FOI at the Department, notified the ER Applicant of his decision (**Internal Review Decision**). The Internal Review Decision varied the Original Decision by identifying further documents responding to the FOI Application, however, the Original Decision was substantially affirmed.
 14. By letter dated 5 June 2009, the Department provided the ER Applicant with copies of the documents it proposed to release to the FOI applicant (**Release Documents**).
 15. By facsimile dated 2 July 2009,² Mallesons advised the Department of the date they received the internal review decision, their client's intention to seek external review of the internal review decision and the date by which the external review application had to be made, that is, 7 July 2009. Mallesons confirmed that the Department was required to defer giving access to the documents in issue until the application for external review was fully disposed of.
 16. On 6 July 2009, the Department provided Mallesons with copies of the documents released that day to the FOI applicant.
 17. By letter dated 7 July 2009, a facsimile copy of which was received by the OIC on 7 July 2009, Mallesons applied on behalf of the ER Applicant for external review of the Internal Review Decision (**External Review Application**).
 18. By letter dated 10 July 2009, I provided the ER Applicant with information about the external review process and, in view of the unusual circumstances outlined in the External Review Application, I allowed the ER Applicant until 7 August 2009 to advise the OIC as to whether they wished to proceed with the external review.
 19. On 3, 4 and 5 August 2009, I discussed with Mr Justin McDonnell and Ms Priscilla Lal of Mallesons, the Information Commissioner's jurisdiction, various provisions of the FOI Act and how an external review could be progressed, if at all.
 20. In response to a request received on 7 August 2009, the ER Applicant was granted a further week to consider whether to proceed with the External Review Application.
 21. By letter dated 14 August 2009, Mallesons confirmed that the ER Applicant wished to proceed with the external review.

¹ Which is date-stamped by the ER Applicant on 9 June 2009.

² Faxed on 3 July 2009.

22. By letter dated 27 August 2009, enclosing a copy of the External Review Application, I notified the Department that the External Review Application had been accepted and asked the Department to provide submissions in response to the concerns raised by Mallesons in the enclosed letter.
23. By letter dated 27 August 2009, Mallesons was advised that the ER Application had been accepted.
24. By letter dated 3 September 2009 the Department provided a response to the points set out in the letter at paragraph 22 above (**Department's Response**).

Information considered

25. In reaching a decision in this external review, I have given consideration to:
 - the Internal Review Application and External Review Application
 - the Original Decision and Internal Review Decision (which is stamped as having been received by Mallesons on 9 June 2009)
 - Mallesons' letter dated 2 April 2009 to the Department
 - the Department's letter to Mallesons dated 15 April 2009
 - Mallesons' letter dated 2 July 2009 to the Department indicating that their client intended seeking external review by the Information Commissioner and fax transmission report confirming transmission of this letter on 3 July 2009
 - the submissions made by Mallesons on behalf of the ER Applicant during telephone discussions with the OIC
 - the Department's Response; and
 - relevant provisions of the FOI Act, case law and decisions of the Information Commissioner as referred to in this decision.

Relevant law

26. Section 39A of the *Acts Interpretation Act 1954* (Qld) (**AI Act**) provides that:

(1) If an Act requires or permits a document to be served by post, service—

(a) may be effected by properly addressing, prepaying and posting the document as a letter; and

*(b) is taken to have been effected at the time at which the letter would be delivered in the ordinary course of post, **unless the contrary is proved.***

[my emphasis]

27. Section 73(1)(d) of the FOI Act provides that:

(1) An application for review must—

...

(d) be made within 28 days from the day on which written notice of the decision is given to the applicant, or within the longer period the commissioner allows.

28. Section 51 of the FOI Act relevantly provides that:

51 Disclosure that may reasonably be expected to be of substantial concern

(1) *An agency or Minister may give access to a document that contains matter the disclosure of which may reasonably be expected to be of substantial concern to a government, agency or person only if the agency or Minister has taken such steps as are reasonably practicable to obtain the views of the government, agency or person concerned about whether or not the matter is exempt matter.*

(2) *If—*

(a) *the agency or Minister decides, after having sought the views of the government, agency or person concerned, that the matter is not exempt matter; and*

(b) *that government, agency or person believes that the matter is exempt matter;*

the agency or Minister must—

...

(e) *defer giving access to the document until after—*

(i) *the agency or Minister is given written notice by the government, agency or person concerned that the government, agency or person concerned does not intend to make any application for review under this Act; or*

(ii) *if notice is not given under subparagraph (i) and no application for review under this Act is made by the end of the review period—the end of the review period; or*

(iii) *if an application for review is made by the end of the review period—the application is finally disposed of.*

(3) *In this section—*

...

review period *means the period within which any application for review under this Act may be made.*

...

External Review Application

29. In the External Review Application Malleasons express concern that “[u]nfortunately, prematurely and in our view, unlawfully, the Department released the documents the subject of the review yesterday morning to [the FOI applicant] without any prior notice to either ourselves or our client.”

30. Malleasons contends that the Department failed to allow the ER Applicant its rights of review under the FOI Act by prematurely releasing the documents, as:

- the External Review Application was due on 7 July 2009, because the Internal Review Decision was received by Malleasons on 9 June 2009;
- the information sheet included in the Original Decision provided that “*You must apply in writing to the Information Commissioner, within 28 days of receiving the internal review decision*”; and
- the “*Department was well aware that an external review application was to be made*” as Malleasons sent a fax to the Department on 2 July 2009 putting the Department “*on notice that [the ER Applicant] intended to make an external review application, the date the internal review decision was received and the timeframe in which it would make the external review application*”.

31. In addition, Malleasons indicates that:

- the Release Documents provided did not include all of the documents to be released and *“at least an additional 50 documents were provided to the access applicant”*; and
- *“several of the documents released (and which [the ER Applicant] had not previously seen) concern active investigations and prosecution proceedings currently underway in Queensland Courts”* and the ER Applicant *“has serious concerns that the release of those documents will directly prejudice those legal proceedings.”*

The Department's Response

32. Regarding the timeliness of the External Review Application, the Department indicates that:

- *“[the Department] made the internal review decision on 4 June 2009 and sent the decision letter to Mallesons by post that morning. Allowing notice to be given on 5 June 2009 the 28 day timeframe then commenced. Acting in good faith, this was done pursuant to section 39A of the Acts Interpretation Act 1954 where notice is taken to be ‘given’ at the time at which the letter would be delivered in the ordinary course of business, unless the contrary is proved. Australia Post states that mail is delivered within 1 business day when mailed and delivered within Brisbane. This was clearly the case here, and in reality allowed 29 days for an application for review.”*
- the letter sent on 3 July 2009 giving notice of the intention to apply for external review *“had no meaning until such time as a formal external review application was made to the Office of the Information Commissioner”*
- the Department *“contacted the [OIC] by email at 2.03pm on 3 July 2009 and specifically requested that [the Department] be notified if an application for external review were lodged”* and *“[t]his email was followed up shortly after with a phone call from [the Department] to the [OIC] to confirm its receipt. [The Department] was assured that all review staff and the OIC would be made aware should an application for external review be forthcoming.”*
- the FOI applicant *“was aware of the timeframes involved and arrived at Treasury offices on Monday 6 July 2009 requiring production of the documents which Treasury considers it was legally obliged to produce. Treasury advised Mallesons on the same day and even provided a CDROM containing copies of the material released concerning Tabcorp, as not all documents were about Tabcorp.”*; and
- *“the guidelines provided by the Office of the Information Commissioner clearly provide advice concerning when notice is given”*.

33. In response to the contention that the Department did not properly consult with the ER Applicant pursuant to section 51 of the FOI Act, the Department submits that:

- *“[the Department] wrote to [the ER Applicant] on 26 March 2009 to consult with them about documents that they may have been concerned about”*; and

- “[o]n 5 June 2009, to assist further, [the ER Applicant] was provided a large number of documents which were proposed to be released to the applicant following the internal review decision the previous day.”

Findings of fact and application of the law

34. For the reasons set out below I do not accept the Department’s submission that notice of the internal review decision was given on 5 June 2009, nor do I accept that the letter sent by Mallesons to the Department on 3 July 2009 giving notice of the ER Applicant’s intention to apply for external review “had no meaning”. This is a matter where the pre-emptive actions of the Department deprived the ER applicant of their right under the legislation to have the Department’s decision reviewed.

Were the documents in issue released to the FOI Applicant before the end of the Review Period?

35. I am satisfied the answer to this question is ‘yes’.
36. If an agency consults with a third party in relation to documents that are the subject of a freedom of information application, but subsequently decides to release those documents against the objections of the third party, access to the documents in issue must be deferred in accordance with paragraph (e) of section 51(2) of the FOI Act.
37. In this instance, the Department did not have written notice that the ER Applicant did not intend making an application for external review. On the contrary, Mallesons clearly indicated to the Department that their client intended to apply for external review, stating that an “application for external review of the Decision must be made to the Information Commissioner by 7 July 2009”. Therefore, the Department was required, before releasing the documents in issue, to ascertain whether the ER Applicant had made an application for external review before ***the end of the review period***.
38. For the purpose of section 51 of the FOI Act, the ‘review period’ is the period within which any application for review under this Act may be made. Section 73(1)(d) of the FOI Act provides that an application for external review must be made within 28 days from the day on which written notice of the decision is given to the applicant, or within the longer period the commissioner allows.

When was notice of the Internal Review Decision given to the ER Applicant?

39. For the reasons that follow, I find that notice of the Internal Review Decision was given to the ER Applicant on 9 June 2009.
40. The Internal Review Decision was dated 4 June 2009. I accept the Department’s submission that the Internal Review Decision was posted on the morning of Thursday, 4 June 2009 and that in the ordinary course of the post, it is reasonable to expect that the Internal Review Decision would have been received by the ER Applicant on Friday 5 June 2009, as delivery was within Brisbane’s metropolitan area. Applying section 39A(1) of the AI Act, this means that the date of service is 5 June 2009, **unless the contrary is proven**.
41. Tuesday 9 June 2009 was the first business day after 5 June 2009 because Monday 8 June 2009 was a public holiday. I accept that Mallesons did not receive the decision on 5 June 2009, as evidenced by the date stamp on the Internal Review Decision

showing the date of receipt as 9 June 2009. Therefore, although service was expected to have been effected on Friday 5 June 2009 in accordance with the general service standards of Australia Post,³ in this instance there is contrary evidence to show that it was not. I accept that Mallesons' date stamp on the Internal Review Decision shows that service was effected on 9 June 2009. I also accept that Mallesons' notice to the Department of the date of service of the Internal Review Decision was a sufficient basis for the Department to form a view that service had not occurred in accordance with the ordinary course of the post.

Was the External Review Application lodged before the end of the review period?

42. I am satisfied that the answer to this question is 'yes'.
43. As Mallesons received the Internal Review Decision on 9 June 2009, the ER Applicant retained their statutory right to an external review until 7 July 2009, that is, 28 days from the day the Internal Review Decision was received. In counting the 28 days, the day on which the Internal Review Decision was received is not included, however, the day on which the application is to be lodged is counted.⁴ Post 7 July 2009, it became the Information Commissioner's discretion as to whether or not an external review would be conducted.
44. Section 73(1)(d) of the FOI Act confers a discretion on the Information Commissioner to extend the time for an applicant to apply for external review. While the statutory time period protects an applicant's automatic entitlement to an external review, and applicants should not delay in acting on their rights, from time to time issues arise in relation to external review applications that result in the application being lodged outside of the 28-day time frame. Where applicants have a reasonable excuse for the delay, the delay is not long, the interest of other parties will not be prejudiced and there is some merit to the application for external review, the Information Commissioner would ordinarily exercise the discretion conferred by section 73(1)(d) of the FOI Act and accept the application out of time. This is not a matter where such a discretion had to be exercised as the ER Applicant had acted to protect its statutory right of external review by lodging the application within time.
45. I accept the Department's submissions that requests were made both by email and telephone to the OIC to notify the Department if an external review application was received in this matter. However, these steps were taken before the end of the review period. Regrettably by the time the OIC received the external review application, the Department had already released the documents in issue to the FOI applicant.
46. Mallesons provided the OIC with a copy of a letter which they faxed to the Department on 3 July 2009 conveying:
- their client's intention to make an external review application
 - the date the internal review decision was received; and
 - that an application for external review of the Internal Review Decision must be made to the Information Commissioner by 7 July 2009.

³ In *Bowman v Durham Holdings Pty Ltd (1973) 131 CLR 8, 14-15*, the High Court held that the words "the ordinary course of post" are not concerned with the particular idiosyncrasies of a particular addressee, but rather with the general delivery practices of the postal service. Assuming Australia Post's performance substantially mirrors its published service standards, the time period in this case would be 1 business day.

⁴ See section 38 of the AI Act.

47. The Department acknowledges receiving the letter on 3 July 2009 but indicates that the letter had no meaning until such time as a formal external review application was lodged and that the Department had no obligation to respond to Mallesons' letter. On the contrary, Mallesons' letter put the Department on notice that the ER Applicant had received the Internal Review Decision on 9 June 2009 and at that stage should have re-calculated the statutory time period within which the ER Applicant's statutory review rights were alive.
48. Mallesons' letter also put the Department on notice that they and the ER applicant had a different view on when the review period ended. Only a short amount of time was involved, but the consequences for the ER Applicant – the loss of their review rights – were potentially significant. To ensure the ER Applicant was treated fairly, it was incumbent on the Department to take appropriate steps prior to releasing the documents in issue to be certain that the review period had ended. Such steps would include reviewing the Department's calculation of the review period, taking into account the information provided in Mallesons' letter and, if there was a difference in views about when the review period ended, contacting Mallesons to give their client the option of lodging their application early, if necessary, so as to ensure their rights were maintained.
49. The rights of citizens to seek review of government decisions that affect them are a critical check on government power. Merits review promotes transparency and accountability in government decision-making, whilst judicial review, which has been described as lying '*at the heart of administrative law*,⁵ allows the courts to determine whether '*power properly conferred on an official has been lawfully exercised*'.⁶ Given the significance of the review rights conferred by both the FOI Act and the *Judicial Review Act 1991* (Qld), it is imperative that agencies administer the law respectfully and in keeping with the law's spirit and object. Pre-emptive administrative action which annuls statutory rights and avoids the accountability of review is not in the public interest and can undermine the public's confidence in the public service's fair and equitable administration of laws.
50. The object of the FOI Act is to extend as far as possible the right of the community to have access to information held by Queensland government agencies. Taking steps to ensure timely access to information furthers this object. However, the objects clause also specifically recognises that in relation to disclosure of information, there are competing interests. This is because disclosure in some instances would have a prejudicial effect on the private or business affairs of members of the community, about whom information is collected and held by government. The balancing of these competing interests is achieved through the Act. If one party is deprived of their rights of review under the FOI Act, the balancing of competing interests is thwarted.
51. The release of the documents in issue in this external review was pre-emptive and effectively deprived the ER Applicant of its review rights. However, there is no evidence that the release of the documents in issue in this matter resulted other than from a misunderstanding or miscalculation of what the Department's obligations to the parties required in the circumstances.

Consultation

52. The ER Applicant also expressed the concern that it was not consulted in relation to a number of documents that were released to the FOI applicant and that the possible

⁵ WB Lane and S Young, *Administrative Law in Queensland* (2001), p. 11.

⁶ *Ibid.*

release of these documents only came to their notice on 6 July 2009. Mallesons indicate in their letter of 7 July 2009 that “several of the documents released (and which [the ER Applicant] had not previously seen) concern active investigations and prosecution proceedings currently underway in Queensland Courts” and the ER Applicant “has serious concerns that the release of those documents will directly prejudice those legal proceedings.”

53. I have not called for or examined the documents to which the ER Applicant refers and so cannot make findings as to whether the Department erred in its view that the ER Applicant would not have had substantial concern about the release of those documents.
54. A decision on whether to consult a third party in relation to a particular application is a matter of judgement for the decision maker having carefully considered the relevant documents in issue and the requirements of section 51 of the FOI Act. The decision maker must consult if s/he forms a view that the disclosure of the information ‘may reasonably be expected to be of substantial concern to a person’. This is a matter where the Department had formed an earlier view that the disclosure of documents would not reasonably be expected to be of substantial concern to the ER applicant, only to find out from the ER applicant that it did hold substantial concerns. I acknowledge that the Internal Review Decision shows that the decision-maker gave careful consideration to the issue of consultation. Though clearly, there was a second difference of views as to whether the release of the latter documents may reasonably be expected to be of substantial concern to the ER Applicant.
55. In circumstances where, as here, a third party has previously expressed concern about the possible release of documents, it would have been prudent for the decision-maker to discuss the release of the additional documents with the ER applicant, even if it had not formed the relevant view. Good administration can entail doing something more than taking a technical approach to applying the provisions in the Act. Careful review of all documents to which the freedom of information relates and a dialogue with the third party to fully take account of all relevant issues would have informed the Department in exercising its judgement as to whether to consult the third party in relation to particular documents.
56. Whilst a third party can apply under the FOI Act to the Information Commissioner for review⁷ of a decision to disclose documents where the agency should have, but has not, taken steps to obtain the views of a person under section 51 of the FOI Act, it is preferable that the relevant issues and views are taken into account at the earliest stage possible in the decision-making process.
57. My comments at paragraph 49 above regarding the care necessary to ensure review rights of third parties are preserved are also relevant in relation to consultation issues.

OIC guidelines

58. I have taken account of the Department’s submission at paragraph 32 above regarding the OIC guidelines. The Guideline entitled ‘Time-frames for access and amendment’ provides at paragraph 5.3.1 that:

Where an Act allows a document to be served by post, service is carried out by properly addressing, prepaying and posting the document as a letter. Notice is taken to be ‘given’ at the time at which the letter would be delivered in the ordinary course of business,

⁷ See section 101C(1)(k)(ii).

unless the contrary is proved. Australia Post states that mail is delivered within 1 business day when mailed and delivered within Brisbane.

[my emphasis]

An example is also provided:

A city-based agency puts a notice of decision in a mail box addressed to an applicant living in Spring Hill in Brisbane on Tuesday 1 July. Notice would be taken to be 'given' on Wednesday 2 July.

59. I am satisfied that paragraph 5.3.1 above accurately reflects the requirements under the AI Act. I will arrange for a further example to be included in the guideline which illustrates a circumstance where service is not effected in the ordinary course of the post because the 'contrary is proved'.

Section 77(1)(a) of the FOI Act

60. Section 77(1)(a) of the FOI Act provides that:

77 Commissioner may decide not to review

(1) The commissioner may decide not to deal with, or not to further deal with, all or part of an application for review if—

(a) the commissioner is satisfied the application, or the part of the application, is frivolous, vexatious, misconceived or lacking substance;

...

61. From a practical perspective, whilst the ER Applicant is still entitled to pursue its review rights, such a course of action would be futile in view of the documents in issue having already been released to the FOI applicant. Mallesons acknowledge this and have indicated that, in the circumstances, the ER Applicant does not seek to pursue matters that could otherwise have formed the basis of a fresh merits review of the Internal Review Decision. For the reasons that follow, I have decided not to further deal with this application for review on the grounds that it is lacking substance.

'Lacking substance'

62. Under section 77(1)(a) of the FOI Act, the Information Commissioner may decide not to further deal with an application for review if satisfied that the application is 'lacking substance'.
63. The words 'lacking substance' in section 77(1)(a) of the FOI Act are not defined in the Act. However, as explained in *DeVere Lawyers v Whitsunday Regional Council*,⁸ (**De Vere**) the expression "frivolous, vexatious, misconceived or lacking in substance" appears in various pieces of Australian legislation and the meaning of the individual terms in this sequence has been considered in a number of cases in various jurisdictions.
64. The different tests that have been formulated to determine whether a matter is vexatious, misconceived or lacking in substance were discussed in *De Vere*. Whilst it was acknowledged in *De Vere* that these tests can provide useful guidance in determining whether a matter lacks substance for the purposes of section 77(1)(a) of

⁸ *DeVere Lawyers v Whitsunday Regional Council* (Unreported, Information Commissioner of Queensland, No. 210798, 19 March 2009).

the FOI Act, it was also noted that there must be regard to *'the words of the statute in the context of the particular circumstances of the case'*.⁹

65. The FOI Act sets up a statutory framework for access to, and amendment of, documents and at the same time, seeks to strike a balance between the competing interests discussed at paragraph 50 above. Rights of review are integral to achieving the balancing of those competing interests. As the documents in issue in this external review have already been released to the FOI applicant, there is no meaningful remedy available to the ER Applicant under the FOI Act. Understandably, in the circumstances, the ER Applicant does not wish to press their arguments. In view of these circumstances, I am satisfied that the External Review Application is lacking substance because there is no basis on which the matter can progress and no remedy is available to the ER Applicant under the FOI Act.

DECISION

66. In accordance with section 77(1)(a) of the FOI Act, I decide not to further deal with this application for review on the basis that it is lacking substance.
67. I have made this decision as a delegate of the Information Commissioner, under section 90 of the FOI Act.

Suzette Jefferies
Acting Assistant Commissioner

Date: 18 December 2009

⁹ In *Assal v Department of Health Housing and Community Services* (1992) EOC 92-409 at 78, Sir Ronald Wilson cautioned *'it is unwise to postulate any rules intended to guide the exercise of the power in question. That exercise must be governed by the words of the statute itself in the context of the particular circumstances of the case.'*