



## Decision and Reasons for Decision

---

**Application Number:** 310382

**Applicant:** Middleton

**Respondent:** Building Services Authority

**Decision Date:** 24 December 2010

**Catchwords:** ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL TO DEAL WITH ACCESS APPLICATION – EFFECT ON AGENCY’S FUNCTIONS – applicant sought access to all documents concerning various legal proceedings, all complaints against specified builders and all documents concerning her home – agency refused to deal with the application under section 41 of the *Right to Information Act 2009 (Qld)* – whether the work involved in dealing with the application would, if carried out, substantially and unreasonably divert resources of the agency from their use by the agency in performing its functions

### Contents

REASONS FOR DECISION .....	2
Summary .....	2
Background .....	2
Reviewable decision .....	4
Evidence considered.....	4
Findings.....	5
DECISION.....	8
Appendix 1.....	9
Appendix 2.....	11

## REASONS FOR DECISION

### Summary

1. In her access application<sup>1</sup> (**Access Application**) to the Building Services Authority (**BSA**) the applicant sought copies of all documents relating to her property, all complaints against two building companies and various other documents.
2. BSA gave the applicant written notice of its intention not to deal with the Access Application unless the scope was narrowed and attempted to consult with the applicant.
3. Despite BSA's attempts to assist the applicant to frame her application in terms that would enable the agency to process her application, the applicant's amended terms reduced the volume of documents but not the complexity of the application and included extensive consultation. BSA subsequently decided not to deal with the application on the grounds that dealing with the application would substantially and unreasonably divert BSA's resources from their use in performing its functions.
4. Having considered the terms of the amended application, information provided by both parties and the relevant legislation, I affirm the BSA's decision. Accordingly, BSA is not required to deal with the Access Application as subsequently amended by the applicant.

### Background

5. In her Access Application<sup>2</sup> to BSA the applicant requested:
  - all documents relating to court matters involving a company director
  - all documentation on file relating to a specified Supreme Court hearing
  - all documentation, including any complaints that BSA received between 1 January 1985 and 20 July 2010 relating to two identified building companies;<sup>3</sup> and
  - all documents relating to the applicant's property.
6. BSA identified 450 files relevant to the application and gave the applicant written notice<sup>4</sup> of its intention not to deal with the application (**Notice**), explaining BSA estimated that dealing with the application would involve processing at least 45,000 documents. To provide a point of reference, BSA indicated to the applicant that in the year 2009-2010, their four full-time RTI officers had processed a total of 48,000 documents. In the Notice, BSA's Manager, Right to Information and Privacy, explained the relevant consultation provisions,<sup>5</sup> invited the applicant to reconsider the terms of the application to enable BSA to process it, gave an example of how the terms might be amended and invited the applicant to contact her with any queries.

---

<sup>1</sup> Lodged on 21 July 2010.

<sup>2</sup> Lodged on 21 July 2010.

<sup>3</sup> The applicant indicated that any former complainants could contact the applicant at a specified email address.

<sup>4</sup> Dated 13 August 2010.

<sup>5</sup> Section 42 of the RTI Act.

7. In her response,<sup>6</sup> the applicant referred to other RTI applications she had made and issues surrounding a previous application to BSA. She also sought an immediate response to a series of questions.
8. By letter dated 26 August 2010, BSA responded to the applicant's questions as well as concerns she had raised about the consultation period and again sought to consult with the applicant to clarify the scope of her application
9. In a further response, the applicant amended her application by confining the request to initial letters of complaint and forms in relation to the two building companies for a 15 year period. The applicant indicated in her letter that BSA could do a database search for the complainant details, export to excel and perform a mail merge for the letters to the complainants. The applicant added '*For your convenience, I have included a letter than (sic) can be sent with your letter. Understandably, not all those contacted will respond.*'
10. By letter dated 3 September 2010, BSA's Manager, Right to Information and Privacy, again sought to consult with the applicant regarding the scope of the Access Application. In doing so, she:
  - acknowledged the applicant's effort to amend the scope of the application
  - explained that although the new scope limited the number of pages, the content still related to 450 complaints concerning residential homes
  - indicated that processing the application would involve BSA consulting 450 third parties, which in turn would require:
    - undertaking searches and inquiries for current contact details for a proportion of complainants
    - compiling the correspondence and forwarding by registered post with return receipt arrangements; and
    - collating written responses and responding to telephone calls
  - explained that acting on the applicant's proposal that BSA include the letter she provided BSA in the consultation documents would place BSA in breach of its obligations under the *Information Privacy Act 2009 (Qld)* and be inappropriate, given its role as industry regulator
  - indicated that although the amended scope reduced the volume of documents, it did not reduce the complexity of the request
  - indicated again that on the basis of the substantial diversion of resources necessary to process this single application, BSA would refuse to deal with the application
  - explained in some detail the basis on which the position above was reached
  - put forward an alternative proposal that would alleviate the need to consult and therefore allow the application to be processed, provided the applicant was agreeable to allowing BSA further time to process the application
  - indicated again that if the application was not amended to remove the ground for refusal, the application would be refused; and
  - invited the applicant to respond and to contact her if she had any queries.
11. The applicant responded to BSA's further attempt to consult by:
  - indicating that her 'losses have been substantial and unreasonable'
  - raising issues regarding the sewerage system in her area

---

<sup>6</sup> Letter dated 14 August 2010.

- declining to agree to the proposal put by BSA or to agree to any additional time for BSA to process her application
  - refuting BSA's explanation regarding its privacy obligations
  - disputing BSA's assessment of the time involved in processing the Access Application
  - amending her Access Application by significantly expanding the scope beyond the terms outlined in paragraph 9 above (**Changed Application**);<sup>7</sup> and
  - providing information about the building companies and builders, the subject of her application.
12. On 9 September 2010, BSA issued a written notice to the applicant refusing to deal with her Changed Application.
13. OIC received the applicant's external review application on 22 September 2010. On external review, the applicant submitted that it would not be unreasonable for BSA to process her application and sought review of BSA's decision.

### Reviewable decision

14. The decision under review is BSA's decision to refuse to deal with the application under section 41(1)(a) of the *Right to Information Act 2009 (Qld)* (**RTI Act**).<sup>8</sup>

### Evidence considered

15. In reaching a decision in this external review, I have considered the following:
- Access Application
  - Changed Application
  - external review application and supporting documents
  - correspondence exchanged between the applicant and BSA
  - BSA's decision, as identified at paragraph 14 above
  - print-out of BSA case search results from 7 December 2010; and
  - relevant sections of the RTI Act.

### The Relevant Law

16. Parliament intends that an agency receiving an access application will deal with that application unless dealing with the application would, on balance, be contrary to the public interest. The limited circumstances in which dealing with an Access Application will be contrary to the public interest are set out in sections 40, 41 and 43 of the RTI Act.
17. Relevantly, section 41 of the RTI Act permits an agency to refuse to deal with an Access Application if it considers the work involved in dealing with the application would substantially and unreasonably divert the resources of the agency from performing its functions.<sup>9</sup>
18. Before making a decision to refuse to deal with an application, an agency must state in writing to the applicant its intention to refuse to deal with the application and offer a

---

<sup>7</sup> See section 42(3) of the RTI Act. The terms of the changed application

<sup>8</sup> A decision refusing to deal with an application under chapter 3, part 4 of the RTI Act is a reviewable decision; Schedule 6.

<sup>9</sup> Section 41(1)(a) of the RTI Act.

period for the applicant to consult with the agency, with a view to amending an application to remove the grounds for refusal.<sup>10</sup>

19. Sections 41 and 42 of the RTI Act are set out in Appendix 1.

## Findings

### ***Did the BSA complete the prerequisites before refusing to deal with the application?***

20. The answer to this question is 'yes', for the reasons that follow.

21. Section 42 of the RTI Act sets out a number of procedural steps an agency must comply with before refusing to deal with an access application. These steps include giving the applicant a written notice stating its intention to refuse to deal with the application, advising the applicant of the consultation period and explaining the effect of particular paragraphs in section 42.

22. The steps taken by BSA, as set out at paragraphs 5 to 12 above, are evidence of BSA's compliance with the requirements of section 42. Specifically BSA:

- issued a written notice to the applicant stating its intention not to deal with the Access Application
- invited the applicant to consult with the BSA on the terms of the application to remove the grounds of refusal
- allowed the prescribed consultation period; and
- stated the effect of subsections (2) to (6) of section 42 of the RTI Act.

### ***Would dealing with the application substantially and unreasonably divert BSA's resources from their use in its functions?***

23. The answer to this question is 'yes' for the reasons set out below.

24. In determining whether dealing with the Changed Application would substantially and unreasonably divert BSA's resources from its functions, BSA:

- a) **must not** have regard to any reasons the applicant gives for applying for access or BSA's belief about what the applicant's reasons are for applying for access.<sup>11</sup>
- b) **must** have regard to the resources that would be used for the following:<sup>12</sup>
  - identifying, locating or collating any documents in BSA's filing system
  - making copies, or edited copies of any documents
  - deciding whether to give, refuse or defer access to any documents, including resources that would have to be used in examining any documents or conducting third party consultations;<sup>13</sup> and
  - notifying any final decision on the application.

25. In relation to a) above, I have seen no evidence to suggest BSA has had regard to such factors and am therefore satisfied that BSA has not had regard to such factors.

---

<sup>10</sup> Section 42 of the RTI Act.

<sup>11</sup> Section 41(3) of the RTI Act.

<sup>12</sup> Though this is not an exhaustive list: section 41(2) of the RTI Act.

<sup>13</sup> Under section 37 of the RTI Act.

26. In relation to b) above, in its dealings with the applicant and OIC, BSA has provided the following information about its estimation of the resources involved in processing the application:
- *identifying, locating or collating any documents in BSA's filing system and making copies, or edited copies of any documents*
    - BSA has identified 450 files as relevant to the application, of which some are archived files and which would need to be retrieved
    - dealing with the application will involve processing 2500 to 3000 documents, though this is a conservative estimate as BSA notes that complainants usually attach their own defects lists and reports
    - a number of the relevant documents were created prior to June 2008 and are not available electronically, so once they are located they will need to be scanned into BSA's database for further editing
    - according to BSA's data from 2009, it takes BSA administrative staff 2.5 hours to prepare (remove staples, markers etc) and scan 600 documents
    - all correspondence via telephone or mail would need to be 'declared' and in this instance, such declarations must be made to two files, involving 2 to 3 minutes per record
    - for this application alone, it would take BSA's part-time administration officer approximately 5 to 6 weeks to process the 2500 to 3000 documents to be ready for checking by decision makers
  - *deciding whether to give, refuse or defer access to any documents, including resources that would have to be used in examining any documents or conducting third party consultations*
    - BSA calculates that if the 3.5 full time equivalent decision makers were to (in addition to assessing other applications) check at least 45 to 50 application forms each day, it would take them 4 weeks to complete the task, even without allowing for staff leave during this period
    - conducting third party consultation in relation to documents from 450 files would involve writing and sending acknowledgement and consultation letters and writing request for information letters to relevant departments
    - given the age of the documents sought, BSA would need to locate the most up to date addresses of complainants to ensure the security of the correspondence<sup>14</sup>
    - BSA's experience has been that consulting with 20 parties involves a large amount of time collating the written responses, answering phone calls, following up with file notes and prescribed written notices and as such, consultation on 450 files would create a substantial and unreasonable diversion of BSA's resources.
27. The applicant contests BSA's assessment of the work involved in processing the Changed Application, indicating that in her view, BSA has made 'unrealistic' assumptions<sup>15</sup> about the work involved in dealing with her application.
28. In her external review application the applicant included an extract of a 2003 decision of the Queensland District Court which refers to BSA holding approximately 200 complaint files in the relevant matters.

<sup>14</sup> As is appropriate given BSA's obligations under the *Information Privacy Act 2009* (Qld).

<sup>15</sup> Applicant's letter to BSA of 6 September 2010.

29. BSA has provided OIC with a print-out of its case search results from 7 December 2010 (**Case Search Results**). The Case Search Results show that there are approximately 450 complaints which are relevant to the application. BSA's records are current and I accept the Case Search Results as evidence that BSA would be required to deal with approximately 450 complaint files.
30. The applicant also points to BSA's response in relation to a previous application as evidence that BSA can reasonably process her application. On this point I note that the relevant considerations for determining whether BSA can refuse to deal with the Changed Application are set out above. The applicant's submission is not relevant to the issues at hand.
31. The applicant also dismisses BSA's efforts to explain the steps it takes to ensure those consulted receive the documents intended for them, including, for example, sending the documents by registered post and attempting to find current addresses for recipients to reduce the incidence of mail being accessed by unintended recipients. BSA's processes, as described, are appropriate and commendable.
32. I accept BSA's submissions at paragraph 26 above regarding the time involved in processing the application. In reaching its estimations, BSA has appropriately had regard to data it has previously collected regarding time taken for specific tasks and has used this to inform its estimates.
33. Data from the Case Search Results indicates that BSA would also be required to consult a minimum of 315 third parties. The time involved in contacting each of these parties, responding to any enquiries and collating and considering responses could reasonably be expected to be very substantial.
34. In summary, BSA estimates (conservatively) that the time involved in processing the Changed Application is as follows:
  - 5 to 6 weeks for a part-time administration officer to locate and prepare all relevant documents
  - 4 weeks for 3.5 full-time equivalent decision makers to review the documents, giving the application exclusive attention each day during that period (at the rate of 50 complaints per day); and
  - very substantial time to conduct third party consultation with at least 315 parties.
35. BSA has an RTI Manager and 3.5 full-time equivalent decision-makers and 1.5 full-time equivalent administrative staff to respond to access applications.<sup>16</sup>
36. Processing this application involves a large volume of documents in relation to which significant consultation would need to be undertaken. Locating and preparing the documents alone is quite a substantial task. As the documents contain individual's personal information, decision-makers would need to check the documents carefully and have them redacted. The redactions would need to be checked. In view of the number and type of documents involved, the administrative processes needed to identify and deal with those documents and the extensive consultation required, I am satisfied that BSA's estimate of the resources and time required is quite realistic.

---

<sup>16</sup> BSA is also in the process of training an additional .5 full-time equivalent administrative staff member to address the increased number of applications received, size of the files, complexity of applications and processing times required.

37. I am also satisfied that dealing with the Changed Application would divert BSA resources from their use in BSA's functions and that such diversion would be both substantial, in the sense of being of considerable size,<sup>17</sup> and unreasonable, given BSA's resources which must be used in processing all applications, not just the applicant's.
38. The applicant quotes in her external review application from her letter of 6 September 2010:

*I put it to you that the intention to refuse to deal with my RTI application is not the amount of work that it will create but rather the potential it has to cause embarrassment to the government.*

There is no evidence whatsoever to support the applicant's contention.

## **DECISION**

39. For the reasons set out above, I affirm BSA's decision to refuse to deal with the Changed Application under section 41 of the RTI Act on the basis that it would substantially and unreasonably divert BSA's resources from their use by the agency in performing its functions.

---

**Jenny Mead**  
**Right to Information Commissioner**

**Date: 24 December 2010**

---

<sup>17</sup> Online Macquarie Dictionary, accessed 23 December 2010.



## Appendix 1

### Relevant provisions of the RTI Act

Section 41 of the RTI Act provides:

#### **41 Effect on agency's or Minister's functions**

*(1) An agency or Minister may refuse to deal with an access application or, if the agency or Minister is considering 2 or more access applications by the applicant, all the applications, if the agency or Minister considers the work involved in dealing with the application or all the applications would, if carried out—*

- (a) substantially and unreasonably divert the resources of the agency from their use by the agency in the performance of its functions; or*
- (b) interfere substantially and unreasonably with the performance by the Minister of the Minister's functions.*

*(2) Without limiting the matters to which the agency or Minister may have regard in making a decision under subsection (1), the agency or Minister must have regard to the resources that would have to be used--*

- (a) in identifying, locating or collating any documents in the filing system of the agency or the Minister's office; or*
- (b) in deciding whether to give, refuse or defer access to any documents, or to give access to edited copies of any documents, including resources that would have to be used--*
  - (i) in examining any documents; or*
  - (ii) in consulting in relation to the application with a relevant third party under section 37; or*
- (c) in making a copy, or edited copy, of any documents; or*
- (d) in notifying any final decision on the application.*

*(3) In deciding whether to refuse, under subsection (1), to deal with an access application, an agency or Minister must not have regard to--*

- (a) any reasons the applicant gives for applying for access; or*
- (b) the agency's or Minister's belief about what are the applicant's reasons for applying for access.*

Section 42 of the RTI Act provides:

#### **42 Prerequisites before refusal because of effect on functions**

- (1) An agency or Minister may refuse to deal with an access application under section 41 only if-*
  - (a) the agency or Minister has given the applicant a written notice--*
    - (i) stating an intention to refuse to deal with the application; and*
    - (ii) advising that, for the prescribed consultation period for the notice, the applicant may consult with the agency or Minister with a view to making an application in a form that would remove the ground for refusal; and*
    - (iii) stating the effect of subsections (2) to (6); and*
  - (b) the agency or Minister has given the applicant a reasonable opportunity to consult with the agency or Minister; and*
  - (c) the agency or Minister has, as far as is reasonably practicable, given the applicant any information that would help the making of an application in a form that would remove the ground for refusal.*
- (2) Following any consultation, the applicant may give the agency or Minister written notice either confirming or narrowing the application.*
- (3) If the application is narrowed, section 41 applies in relation to the changed application but this section does not apply to it.*

- (4) *If the applicant fails to consult after being given notice under subsection (1), the applicant is taken to have withdrawn the application at the end of the prescribed consultation period.*
- (5) *Without limiting subsection (4), the applicant is taken to have failed to consult if, by the end of the prescribed consultation period, the applicant has not given the named officer or member written notice under subsection (2).*
- (6) *In this section--*  
*prescribed consultation period, for a written notice under subsection (1)(a), means--*
  - (a) *the period of 10 business days after the date of the notice; or*
  - (b) *the longer period agreed by the agency or Minister and the applicant whether before or after the end of the 10 business days mentioned in paragraph (a).*

## Appendix 2

The terms of the Changed Application are as follows:

1. copies of all documentation on your file that relates to a tribunal hearing about a specified builder
2. all documentation on file relating to a specified Supreme Court hearing
3. all initial letters of complaint or complaint forms, forms, that the Queensland Building Service Authority received between 1 January 1985 and 3 September 2010 relating to two specified building companies
4. the BSA's computer records for all complaints and/or disputes made in relation to the two building companies. The computer records are to include the following information:
  - Date of Complaint
  - Property's Suburb
  - DN File No
  - Defect
  - Full name
5. all documentation on file that relates to the applicant's address. Any documents that I have written or provided the BSA can be excluded. Any documents that the BSA has previously sent me can be excluded.