



Decision and Reasons for Decision

Citation:	<i>Underwood and Department of Housing and Public Works [2016] QICmr 48 (9 December 2016)</i>
Application Number:	312760
Applicant:	Underwood
Respondent:	Department of Housing and Public Works
Decision Date:	9 December 2016
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL TO DEAL WITH ACCESS APPLICATION - EFFECT ON AGENCY'S FUNCTIONS - whether work involved in dealing with application would, if carried out, substantially and unreasonably divert resources of agency from their use by the agency in performing its functions - section 41 and 42 of the <i>Right to Information Act 2009 (Qld)</i>

REASONS FOR DECISION

Summary

1. The applicant applied to the Department of Housing and Public Works (**Department**) under the *Right to Information Act 2009 (Qld)* (**RTI Act**) for 'the complete file' concerning two specified residential units, for the period from 25 February 2011 to the date of the application (**Access Application**), 14 December 2015. The Access Application included over two typed pages specifying the type of information sought.
2. The Department gave the applicant a written notice stating an intention to refuse to deal with the Access Application because the work involved would substantially and unreasonably divert its resources from their use in the performance of its functions, and then invited the applicant to narrow the scope of her request. After a period of correspondence – in which the applicant focused primarily on a point of contention concerning timeframes under the RTI Act – the applicant advised the Department that the application could not be changed.
3. The Department then decided to refuse to deal with the Access Application because the work involved in dealing with it would, if carried out, substantially and unreasonably divert its resources from their use by the Department in the performance of its functions.¹
4. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision.

¹ Under section 41(1)(a) of the RTI Act.

5. For the reasons set out below, I affirm the Department's decision to refuse to deal with the Access Application under section 41(1)(a) of the RTI Act.

Background

6. Significant procedural steps relating to the Access Application and external review are set out in Appendix A.

Reviewable decision

7. The decision under review is the Department's decision dated 10 February 2016² to refuse to deal with the applicant's Access Application under section 41(1)(a) of the RTI Act.

Preliminary issues

8. The applicant has made voluminous submissions to OIC concerning her contention that the Department made a deemed decision³ refusing access to the documents in issue on 21 January 2016⁴ and that this deemed decision is the decision under review.
9. I do not accept this. I am satisfied that the applicant was given written notice of the decision before the end of the processing period for the application.⁵ More particularly, I am satisfied that the 'prescribed consultation period', which is not counted as part of the 25 business day processing period, did not come to an end on 19 January 2016 as the applicant contends, but rather, that it was extended by agreement until 1 February 2016.⁶ While the distinction may appear technical, the practical effect of this is that the Department's decision was made within time, on day 22 of the 25 day processing period. A detailed timeline and explanation of this preliminary issue is set out in Appendix B.

Evidence considered

10. The evidence, submissions, legislation and other material I have considered in reaching this decision are referred to in these reasons (including footnotes and appendices).

Submissions concerning OIC and the review process

11. In her submissions⁷ the applicant raises numerous concerns about OIC's conduct, including that '*OIC's Decision-maker*' is:⁸

*...knowingly: devious; deliberate; deceptive and misleading in material matters: intended to pervert the course of justice and cause serious disadvantage to myself; ie. **it is false, because** decision-maker was acting: without the authority or permission of the legislation; dishonestly and negligently making this 'preliminary view of agency's decision' pursuant to RTI Act subsequent to agency issuing: a) a mandatory non-compliant 'Notice of intention to refuse to deal with my application'; b) which further fails to comply with RTI Act's*

² Which was posted to the applicant and received by her on 12 February 2016.

³ Under section 46 of the RTI Act.

⁴ Set out on page 19 of the applicant's submissions to OIC dated 11 April 2016.

⁵ Section 18 and section 46 of the RTI Act. The '*prescribed consultation period*' under section 42(6) of the RTI Act does not count as part of the processing period. In this case, I am satisfied that the prescribed consultation period was for the period from 6 January 2016 until 1 February 2016.

⁶ In this regard, I note that the applicant's letter to the Department dated 18 January 2016 requested further information and noted this '*then requires further consultation time to consider and evaluate whether a narrowing of the scope is possible*'. See Appendix B for further detail.

⁷ Submissions to OIC dated 11 April 2016.

⁸ At [139]. Footnotes omitted.

prerequisites in s42; and c) made a mandatory non-complaint obfuscated decision; and breaches a fiduciary trust established pursuant to the Public Service Act 2008. OIC is not a model litigant: a) does not adhere to principles of fairness; b) seeks to take advantage of an impecunious litigant.

12. The applicant raises similar concerns about the Department in her external review application and 62 page submission. To the extent that the applicant's concerns are relevant to the decision under review, I have addressed them below. In relation to the applicant's broader concerns about OIC alleging abuse of power, lack of procedural fairness, bias and denial of natural justice, they are refuted. The process, procedures and evidence considered in the course of this external review are set out in this decision.

Relevant law

13. It is Parliament's intention that if an access application is made to an agency, the agency should deal with the application unless this would, on balance, be contrary to the public interest.⁹ Sections 40, 41 and 43 of the RTI Act state the only circumstances in which Parliament considers it would, on balance, be contrary to the public interest to deal with an access application.¹⁰ Relevantly, section 41(1) 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, if carried out, substantially and unreasonably divert its resources from performing its functions.
14. Section 42 of the RTI Act sets out a number of procedural steps that an agency must take before deciding to refuse to deal with an application on this basis. The agency must:
- give the applicant written notice under section 42(1)(a) of the RTI Act
 - give the applicant a reasonable opportunity to consult with the agency;¹¹ and
 - as far as reasonably practicable, give the applicant any information that would help the making of an application in a form that would remove the ground for refusal.¹²
15. The written notice given under section 42(1)(a) of the RTI Act must:
- state an intention to refuse to deal with the application
 - advise that, for the prescribed consultation period¹³ for the notice, the applicant may consult with the agency with a view to making an application in a form that would remove the ground for refusal
 - state the effect of section 42(2) to (6) of the RTI Act, which is as follows:
 - following any consultation, the applicant may give the agency written notice either confirming or narrowing the application
 - if the application is narrowed, section 41 applies in relation to the changed application, but the procedural requirements in section 42 do not apply to it
 - if the applicant fails to consult¹⁴ after being given the notice, the applicant is taken to have withdrawn the application at the end of the prescribed consultation period.

⁹ Section 39(1) of the RTI Act.

¹⁰ Section 39(2) of the RTI Act.

¹¹ Section 42(1)(b) of the RTI Act.

¹² Section 42(1)(c) of the RTI Act.

¹³ Under section 42(6) of the RTI Act, the '*prescribed consultation period*' for a written notice under section 42(1)(a) is 10 business days after the date of the notice, or the longer period agreed by the agency and the applicant (whether before or after the end of the 10 business days).

¹⁴ Under section 42(5) of the RTI Act, failure to consult includes the applicant not giving written notice either confirming or narrowing the application under section 42(2) of the RTI Act.

Prerequisite steps

16. The Department's notice to the applicant dated 5 January 2016 (**Notice of Intention to Refuse to Deal**):
 - stated an intention to refuse to deal with the applicant's application¹⁵
 - advised that the applicant had:

*'...ten (10) business days from the date of this notice (ie to **Tuesday 19 January 2016**) to consult with [the Department] and make your application in a way that removes the grounds for refusal...'*
 - stated the effect of section 42(2) to (6) of the RTI Act.¹⁶
17. Accordingly, I am satisfied that the Notice of Intention to Refuse to Deal complies with the requirements of the RTI Act, as set out in paragraph 15 above.
18. The Department also gave the applicant a reasonable opportunity to consult, by providing the standard 10 business day *'prescribed consultation period'*, and extending this period to allow the applicant to consider further information.
19. I am satisfied that the Department, as far as was reasonably practicable, gave the applicant information that would help the making of an application in a form that would remove the ground for refusal. In particular, in a telephone call with the applicant,¹⁷ the Department sought to negotiate the scope of the Access Application. As agreed during this telephone call, the Department then wrote to the applicant¹⁸ to provide information to assist the applicant to remove the grounds for refusal, and provided a list of three categories of documents that may respond to the Access Application (with details of the types of documents included within each category), and offered four suggestions for narrowing the scope.
20. I do not accept that the information provided by the Department was *'insufficient'* or that it does not enable *'any further possibility to change the scope of the application'* as the applicant contends.¹⁹ Using this information, the applicant could have reduced the number of pages in issue by excluding one or more of the categories identified by the Department, or by taking up one of the suggestions put forward by the Department.
21. Further, I do not accept the contention that the Department was required to provide the applicant with the folders, locations or descriptions of the documents, or a description of their contents or indexes.²⁰ This would not be reasonably practicable and, given the large number of pages involved, providing this information would in itself amount to an unreasonable and substantial diversion of the Department's resources.
22. Finally, the applicant contends that the Notice of Intention to Refuse to Deal is *'non-compliant'* because it failed to provide any information that would help the making of an application in a form that would remove the ground for refusal.²¹ I do not accept this. Under section 42(1), this information is not required to be included in the notice, provided

¹⁵ The notice stated that it was *'a prerequisite notice before a decision to refuse to deal with your application is considered pursuant to section 41 of the RTI Act'*.

¹⁶ The notice stated that before the Department could refuse to deal with the application, it must undertake the steps outlined in section 42 of the RTI Act (a copy of the provision was also attached to the notice). The effect of these provisions was also summarised in the *'What you should do next'* section of the notice.

¹⁷ On 18 January 2016.

¹⁸ Letter from the Department to the applicant dated 28 January 2016.

¹⁹ As suggested in the applicant's letters to the Department dated 1 February 2016 and 3 February 2016.

²⁰ As suggested in the applicant's letters to the Department dated 18 January 2016, 1 February 2016 and 3 February 2016.

²¹ External review application dated 19 February 2016, page 17.

that it is given before the agency decides to refuse to deal with the application, and with enough time to provide the applicant with a reasonable opportunity to consult. In this case, the Department satisfied the requirement by the telephone call and subsequent letter discussed at paragraph 19 above.

23. On this basis, I am satisfied that the Department has fulfilled the relevant procedural requirements set out in paragraph 14 above.

Substantial and unreasonable diversion of resources

24. In determining whether dealing with the access application would substantially and unreasonably divert the Department's resources from their use by the Department in the performance of its functions, the Department:

(a) **must not** have regard to any reasons the applicant gives for applying for access, or the agency's belief about what are the applicant's reasons for applying for access²²

(b) **must** have regard to the resources that would be used for:

- identifying, locating or collating the documents
- 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; or
- notifying any final decision on the application.²³

25. In relation to paragraph 24(a) above, there is no information before me to suggest the Department has had regard to such reasons.

26. In relation to paragraph 24(b) above, the Department estimates that there are approximately 10,000 pages that respond to the Access Application.²⁴ Based on the Department's benchmark timeframe of five minutes per page,²⁵ this would amount to approximately 833 hours of work to deal with the Access Application.

27. Whether the work involved would, if carried out, substantially and unreasonably divert the resources of the Department is a question of fact in each individual case.²⁶ For example, in previous OIC decisions it has been held that processing between 2500 and 3000 documents in one case,²⁷ and 5828 documents in another case²⁸ would amount to a substantial and unreasonable diversion of resources. However, volume of documents is not the only consideration. For example, a relatively small number of documents may give rise to a very large number of third parties with whom consultation is required,²⁹ and in other cases, expert skills may be required to search for and retrieve documents from electronic storage. Accordingly, in each case, it is necessary to assess the work required to deal with the application in the context of the agency's functions and its resources.

²² Section 41(3) of the RTI Act.

²³ Section 41(2) of the RTI Act. This list is not exhaustive.

²⁴ While an agency is required to consider how much time an application is likely to take to process, a precise assessment is not required as this assessment may in itself substantially and unreasonably divert the agency's resources. An estimate is acceptable: *McIntosh v Victoria Police (General)* [2008] VCAT 916 at [10].

²⁵ This benchmark timeframe includes the time that it would take to retrieve the documents from departmental records and offsite storage facilities, decide whether to give, refuse or defer access to documents, redact or edit the documents, examine and undertake significant consultation with concerned third parties and make a decision on the release or otherwise of the documents.

²⁶ *Davies and Department of Prime Minister and Cabinet* [2013] AICmr 10 (22 February 2012) at [23] and [28].

²⁷ *Middleton and Building Services Authority* (Unreported, Queensland Right to Information Commissioner, 24 December 2010).

²⁸ *Mathews and the University of Queensland* (Unreported, Queensland Right to Information Commissioner, 5 December 2011).

²⁹ Under section 37 of the RTI Act.

Would the work substantially divert the resources of the Department?

28. Yes, for the reasons that follow.
29. Based on the Department's time estimate of 5 minutes per page, which amounts to approximately 833 hours of work, it would take an officer of the Department 114 work days, or between approximately 22 to 23 full-time work weeks to process the application.
30. This is a significant amount of time. Furthermore, I consider that this estimate may be conservative, as it does not take into consideration the time involved in identifying the documents that have already been provided to the applicant as a result of previous applications made to the Department.³⁰ There is no automated process by which this could be achieved. It involves taking each page released in each previous application and then comparing that page against the 10,000 other pages responsive to the Access Application in order to determine if it may be excluded from consideration.
31. I have also taken into account that:
- the searches cover a substantial timeframe (approximately 5 years)
 - searches of both hard copy and electronic systems would be required, including archived information
 - the applicant indicated that she would not agree to any extensions of time to the processing period, meaning that the Department would be required to process a very large application within the standard processing period of 25 business days provided by the RTI Act
 - multiple areas in the Department would be required to conduct searches, including the Chermiside Housing Service Centre, Legal Services and Building and Asset Services (**BAS**)
 - BAS has 70 separate planned and unplanned maintenance requests relating to the two relevant residential units and each maintenance request would give rise to a number of documents (including, for example, maintenance requests, quotations, consultation with contractors, invoices, purchase orders and work orders)
 - a number of individuals are named in the Access Application as holding responsive documents and each would be required to individually conduct searches; and
 - due to the broad range of documents sought,³¹ there is no centralised way of searching for relevant documents.
32. Given the above, I am satisfied that there would be a vast amount of work involved in dealing with the Access Application, and this would, if carried out, substantially divert the resources of the Department from their use in the performance of its functions.
33. However, as noted by the applicant,³² for section 41 of the RTI Act to apply, the work involved in dealing with the application must not only be a *substantial* diversion of resources, but it must also be an *unreasonable* diversion of resources of the Department.

³⁰ The Access Application excludes documents already provided in previous applications. These previous applications are detailed further in paragraph 52 of this decision.

³¹ The applicant included with her application over two typed pages listing the types of documents sought, including correspondence, photos, phone calls, emails, file notes, memos, discussions, reports regarding the relevant tenancies, Ministerial briefings, certain database entries, maintenance requests, reports and recommendations by BAS contractors, all inspections and resultant reports, medical reports and occupational therapy reports or appointments of any nature, property entry condition reports, documentation relating to rental reviews, call centre logged calls, complaints against the applicant, certain videos and tape recordings, diary notes of particular officers, submissions to OIC on previous RTI external review applications, certain policies, manuals and guidelines, and all emails relating to the applicant including to and from particular listed email addresses.

³² Applicant's external review application dated 19 February 2016, at paragraph [25] to [28], and submissions to OIC dated 11 April 2016, paragraphs [45] and [73] – [74].

Would the work unreasonably divert the resources of the Department?

34. Yes, for the reasons that follow.
35. In determining whether the work involved in dealing with an application is unreasonable, it is not necessary to show that the extent of the unreasonableness is overwhelming. Rather, it is necessary to weigh up the considerations for and against, and form a balanced judgement of reasonableness, based on objective evidence.³³
36. Factors that have been taken into account in reaching this balanced judgement of reasonableness are:³⁴
- a) whether the terms of the request offer a sufficiently precise description to permit the agency, as a practical matter, to locate the documents sought within a reasonable time and with the exercise of reasonable effort
 - b) the public interest in disclosure of documents relating to the subject matter of the request³⁵
 - c) whether the request is a reasonably manageable one, giving due but not conclusive, regard to the size of the agency and the extent of its resources usually available for dealing with access applications³⁶
 - d) the Department's estimate as to the number of documents affected by the request, and by extension the number of pages and the amount of officer time, and the salary cost
 - e) the reasonableness or otherwise of the agency's initial assessment and whether the applicant has taken a cooperative approach in redrawing the boundaries of the application
 - f) the timelines binding on the agency
 - g) the degree of certainty that can be attached to the estimate that is made as to the documents affected and hours to be consumed; and in that regard, importantly whether there is a real possibility that processing time may exceed to some degree the estimate first made; and
 - h) whether the applicant is a repeat applicant to that agency, and the extent to which the present application may have been adequately met by previous applications to the agency.

(a) Sufficiently precise terms

37. The scope of the information requested in the Access Application is extensive, and includes over two typed pages setting out the types of documents sought. These details are stated as '*in no way limiting*' the scope.³⁷ In addition, some of these details make little sense, eg. '*Details to date of email addresses of recipients of the emails and/or*

³³ *Smeaton v Victorian WorkCover Authority (General)* [2012] VCAT 1550 (**Smeaton**) at [30], citing *Re SRB and Department of Health, Housing, Local Government and Community Services* (1994) 19 AAR 178 at [34].

³⁴ These factors are not exhaustive. *Smeaton* at [39], adapting the factors listed in *Cianfrano v Premier's Department* [2006] NSWADT 137 (**Cianfrano**) at [62] to [63], recently cited in *Zonneville v Department of Education and Communities* [2016] NSWCATAD 49 at [29].

³⁵ This factor as set out in *Smeaton*, is altered from factor (b) in *Cianfrano*. In the latter case, O'Connor DCJ referred to the '*demonstrable importance of the requested documents to the applicant*'. This formulation is problematic in the Queensland context, given that under section 41(3) of the RTI Act, I must not consider the applicant's reasons for applying for access, or any belief about what these reasons are. Accordingly, I prefer and have adopted the wording and approach set out in *Smeaton* at [39] in relation to factor (b), as this relates to the objective public interest in the documents, rather than a subjective analysis of the importance of the documents to the individual applicant. That is not to say that the importance to the individual applicant may not also be relevant to the wider public interest. In this regard, see *Mathews and the University of Queensland* (Unreported, Queensland Right to Information Commissioner, 5 December 2011) at [31].

³⁶ This is only one of a number of factors taken into account. It is persuasive if the resources usually made available for dealing with access applications are reasonable in the circumstances.

³⁷ The attachment to the Access Application requests the '*complete files – in no way limiting it and to include the following...*'.

*forwarded emails – print outs of all emails received and/or sent together with any archived emails received and/or sent are required – no exceptions: relating to [the applicant] [the residential units] including and in no way limited to...*³⁸

38. Given this, I do not consider that there is a sufficiently precise description to permit the Department, as a practical matter, to locate the documents sought within a reasonable time and with the exercise of reasonable effort.

(b) Public interest

39. I acknowledge, as noted by the applicant,³⁹ that I do not have the documents requested under the Access Application in order to make an assessment concerning the public interest in their disclosure. To require the Department to identify and locate the documents would in itself result in a significant diversion of its resources.
40. I consider that there is public interest in the applicant having access to her own personal information, and I accept that the application may relate to matters which could potentially enhance the accountability and transparency of the Department.⁴⁰ However, the applicant has already received much of the information through various applications for similar documents as set out in paragraph 52 below.⁴¹ On this basis, I do not consider it likely that processing this Access Application will further the public interest to any degree that counters the significant resourcing issues examined in this decision.

(c) Reasonably manageable request

41. In determining whether the request is reasonably manageable, having regard to the resources available to the Department, I am not required to consider the whole of the resources of a large Department of State.⁴² Rather, I am required to consider the resources reasonably required to deal with an access application, taking into account other priorities. In this case, I do not regard 833 hours of work as reasonably manageable, particularly in light of the need to process other access applications within the statutory timeframes required by the RTI Act and the *Information Privacy Act 2009* (Qld) (**IP Act**) and to complete other agency functions.

(d) Estimate of documents

42. This is considered at paragraphs 29 to 30 above. As noted, this estimate may in fact be conservative, given the time required to determine whether documents were already provided in the previous eight access applications made by the applicant.

(e) Reasonableness of the initial assessment and whether the applicant has taken a cooperative approach

43. I am satisfied that the Department's initial assessment of the matter, as set out in the Notice of Intention to Refuse to Deal, was reasonable.
44. Conversely, on the information before me, I do not consider that the applicant has taken a cooperative approach to negotiating a manageable scope, despite the Department

³⁸ The Access Application then lists a large number of email addresses.

³⁹ In her submissions to OIC dated 11 April 2016 at paragraph [109].

⁴⁰ I note that matters of public interest to all or a substantial segment of the community can include matters of personal interest to an applicant.

⁴¹ In *Smeaton* at [39], where in considering factor (b), Proctor SM held that '*the issues of public interest raised by the Smeatons' experiences have been considered through a variety of avenues. It is unlikely that processing of this request will further the public interest.*'

⁴² *Re SRB and Department of Health, Housing, Local Government and Community Services* (1994) 19 AAR 178 at [29].

evidencing a willingness to work with her.⁴³ In particular, the applicant asked the Department to write to her with ideas to narrow the scope,⁴⁴ and noted that it was *'impossible to consult'* when the only information available is the number of pages. The applicant indicated that she would have *'envisaged some indication of the documents ie. folders/locations/descriptions etc and their contents/indexes etc'*. When the Department provided information in response, the applicant responded predominantly with technical arguments concerning the length of the *'prescribed consultation period'*⁴⁵ and stated that:⁴⁶

...the detailed information provided is insufficient, being very limited ie. there was no reference to the number of pages; thus failing to enable the application to be in a form that would remove the grounds of refusal...

45. For the reasons outlined in paragraph 20 above, I do not consider that the information provided by the Department was insufficient. It has previously been held that the Department is only required to provide information that would assist an applicant to reframe the scope of an application, and to meet this requirement, specific page identifiers are not required.⁴⁷
46. I consider that the applicant was in a position to narrow the Access Application. Even before the Department provided additional information to assist in making the application in a form that would remove the grounds for refusal, there were two ways that the applicant could have narrowed the scope that would have been evident: reducing the date range or reducing the number of properties. It was also open to the applicant to advise the Department with specificity which information she sought about the residential units.
47. The applicant's focus – both in correspondence with the Department and with OIC on external review – appears to have been on a perception of the Department's failure to meet certain timeframes under the RTI Act.
48. I acknowledge the applicant has concerns regarding the conduct of the Department, accusing it numerous times in her external review application of *'knowingly deliberate, devious, 'sleight of hand' manipulating contrived after-thoughts'*,⁴⁸ and that this mistrust may mean that co-operation is challenging. However, having reviewed the Department's correspondence in this matter, I consider it to be of a standard and reasonable nature, and that it attempted to afford the applicant opportunity to narrow the scope.
49. Given the above, I am satisfied that despite having the opportunity, the applicant did not work cooperatively with the Department to make the application in a form that would remove the ground for refusal.

⁴³ As evidenced by the Notice of Intention to Refuse to Deal, the Department's telephone conversation with the applicant on 18 January 2016 and letters from the Department to the Applicant dated 28 January and 2 February 2016.

⁴⁴ In the telephone conversation between the applicant and the Department on 18 January 2016, and the applicant's letter to the Department dated 18 January 2016.

⁴⁵ I do not accept the applicant's contentions concerning the length of the *'prescribed consultation period'*. See Appendix B.

⁴⁶ In her letter to the Department dated 3 February 2016.

⁴⁷ In *Mathews and the University of Queensland* (Unreported, Queensland Right to Information Commissioner, 5 December 2011) at [41], the Right to Information Commissioner held that it was not necessary for the agency to provide *'unique identifiers'* to the applicant to assist him in reframing the scope of his application.

⁴⁸ The applicant made similar claims in her submissions to OIC on external review dated 11 April 2016, including that the Department engaged in *'deliberate and devious conduct'*.

(f) Statutory time limit for making a decision

50. The standard ‘*processing period*’ for making a decision under the RTI Act is 25 business days.⁴⁹ Based on the agency’s estimate, the application would take approximately 114 work days to process. On the basis of this estimate, it would require approximately 4 or 5 full-time staff solely working on this Access Application to complete it within the processing period. Further, as noted above, the applicant indicated in her Access Application that she was not willing to provide any extensions of time beyond the 25 business day processing period ‘*under any circumstances whatsoever*’.

(g) Degree of certainty

51. While I consider the Department’s estimate is reasonable, and the best estimate that it is able to give, there is very little certainty that can be attached to it due to the broad subject matter (everything to do with two tenancies across almost five years) and range of documents sought. In particular, given the large number of documents that fall within the scope of the request, it is very difficult to determine an accurate estimate of the resources required to assess the documents and conduct consultations with an unknown number of relevant third parties as discussed at paragraphs 30 and 31 above. I consider there is a reasonable possibility the processing time may exceed to some degree the estimate first made.

(h) Repeat applicant to the agency

52. The applicant is a repeat applicant to the Department. She has made eight previous Access Applications under the RTI and IP Acts to the Department (or to previous Departments with the same relevant portfolio responsibilities)⁵⁰ for similar information.⁵¹ In each of these previous eight applications, the applicant sought information (covering different periods) concerning one of the residential units that is the subject of this Access Application.
53. I am satisfied that the Department has, over a number of years, allocated significant resources to dealing with the applicant’s many applications. To a large extent it has adequately dealt with this present application in the course of dealing with these previous applications. Following the reasoning of Proctor SM in *Smeaton*,⁵² this supports a finding that the diversion of resources that would be required for the Department to deal with this application would be unreasonable.

Finding on reasonableness

54. Based on each of the above factors, I am satisfied that the work involved in dealing with the application would, if carried out, unreasonably divert the resources of the Department.

⁴⁹ Section 18 of the RTI Act. If an agency needs to consult with a relevant third party, 10 business days will be added to the processing period.

⁵⁰ During the period that the applicant has made access applications for information concerning tenancies, there have been various machinery of government changes. Due to these machinery of government changes, six of these applications were made to the Department of Communities, Child Safety and Disability Services, which previously had administrative responsibility for the portfolio in which the relevant documents would be possessed or controlled.

⁵¹ As advised by the Department in its submissions to OIC dated 9 March 2016.

⁵² In *Smeaton* at [44], Proctor SM considered the agency’s allocation of resources to the applicant’s repeat requests for information over a number of years, and concluded that the request in issue was ‘*a straw which would unreasonably strain (but again I doubt break) the “camel’s back”*’.

Conclusion

55. For the reasons set out above, I am satisfied that:

- the Department has satisfied the procedural steps set out in section 42 of the RTI Act; and
- the work involved in dealing with the Access Application would, if carried out, substantially and unreasonably divert the resources of the Department from their use by the Department in the performance of its functions.

56. Accordingly, I find that the Department was entitled to refuse to deal with the Access Application under section 41(1)(a) of the RTI Act.

DECISION

57. I affirm the decision of the Department dated 10 February 2016 to refuse to deal with the Access Application under section 41(1)(a) of the RTI Act.

58. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

L Lynch
Assistant Information Commissioner

Date: 9 December 2016

APPENDIX A

Significant procedural steps

Date	Event
14 December 2015	The Department received the Access Application.
5 January 2016	The Department issued the Notice of Intention to Refuse to Deal.
18 January 2016	The Department made a telephone call to the applicant to negotiate scope, and the applicant requested information in writing. The applicant wrote to the Department requesting further and better information <i>'that would help the making of an application in a form that would remove the ground for refusal'</i> .
28 January 2016	The Department wrote to the applicant <i>'to provide...information which may assist in making [the] application in a form that would remove the grounds for refusal'</i> .
1 February 2016	The applicant wrote to the Department and disputed that the <i>'prescribed consultation period'</i> had been extended, indicated her view that the scope of the application could not reasonably be changed and that the consultation had <i>'lapsed'</i> .
2 February 2016	The Department wrote to the applicant attempting to clarify the prescribed consultation period.
3 February 2016	The applicant wrote to the Department advising that the application could not be changed and that her application was confirmed.
10 February 2016	The Department issued its decision to the applicant (received by the applicant on 12 February 2016).
19 February 2016	OIC received the application for external review from the applicant.
22 February 2016	OIC notified the Department that the external review application had been received and requested relevant procedural documents. OIC also advised the applicant that it had received the external review application.
1 March 2016	The Department provided OIC with the requested procedural documents.
8 March 2016	OIC advised the Department that OIC had accepted the application for external review and sought additional information concerning previous applications made by the applicant.
9 March 2016	The Department provided OIC with the additional information requested.
10 March 2016	The Department confirmed its estimate of the number of pages that would respond to the application.
10 March 2016	OIC advised the applicant that the application for external review had been accepted, and conveyed a preliminary view concerning the relevant procedural timeframes and that the Department was entitled to refuse to deal with the Access Application under section 41 of the RTI Act.
11 April 2016	The applicant provided submissions to OIC contesting the preliminary view.
13 April 2016	The applicant provided OIC further materials inadvertently omitted from her submissions.
2 June 2016	OIC provided the applicant with a written update on the status of the review.
26 July 2016	OIC provided the applicant with a written update on the status of the review.
9 September 2016	OIC provided the applicant with a written update on the status of the review.
1 November 2016	OIC provided the applicant with a written update on the status of the review.

APPENDIX B

Timeline of Processing Period

Date	Event	Timeframes under the RTI Act
14 Dec 2015	The applicant's access application became valid.	Beginning of the 25 business day 'processing period'. ⁵³
5 Jan 2016	The Department issued its Notice of Intention to Refuse to Deal. ⁵⁴	Day 13 of the processing period.
6 Jan 2016	Beginning of 'prescribed consultation period'. ⁵⁵ During this consultation period, the applicant may consult with the agency with a view to making an application in a form that would remove the ground for refusal.	This prescribed consultation period continues for the period of 10 business days after the date of the notice, or the longer period agreed by the agency and the applicant (whether before or after the end of the 10 business days). The prescribed consultation period is not counted as part of the processing period under the RTI Act. ⁵⁶
18 Jan 2016	The Department made a telephone call to the applicant and sought to narrow the scope of her application. During this call the applicant asked the Department to write to her. The Department requested a faster method of contacting the applicant, but no alternative method was provided, other than priority post.	Together, the telephone call and correspondence are evidence of an agreement between the applicant and the Department to extend the prescribed consultation period until after the Department had provided the further and better information requested, and the applicant had an opportunity to consider and evaluate whether a narrowing of the scope was possible.
18 Jan 2016	The applicant wrote to the Department acknowledging receipt of the Notice of Intention to Refuse to Deal and advising that she was not able to either confirm the application or narrow the scope of the application. The applicant requested further and better information that would help the making of an application in a form that would remove the ground for refusal. The applicant noted that this 'then requires further consultation time to consider and evaluate whether a narrowing of the scope is possible'.	
28 Jan 2016	The Department wrote to the applicant to provide 'information which may assist in making [the] application in a form that would remove the grounds for refusal'. In the letter, the Department provided an additional 10 business days for the applicant to respond. ⁵⁷	This occurred during the extended prescribed consultation period.
1 Feb 2016	The applicant wrote to the Department and disputed that the 'prescribed consultation period' had been extended, indicated her view that the scope of the application could not reasonably be changed and that the consultation had 'lapsed'.	This is the last day of the prescribed consultation period, as it is the day that the applicant indicated she did not wish to consult further. Accordingly, the processing period resumed, with the following day being day 14 of the processing period. ⁵⁸
2 and 3 Feb 2016	In further correspondence between the Department and the applicant, the Department attempted to clarify the prescribed consultation period, and the applicant insisted that the application could not be changed, and that the application was confirmed.	This correspondence arose as a result of confusion concerning the relevant statutory timeframes. It occurred after the applicant indicated that she did not wish to consult further, and is not relevant to calculating the processing period.
12 Feb 2016	The applicant was given written notice of the Department's decision. ⁵⁹	Day 22 of the processing period

⁵³ Under section 18 of the RTI Act.

⁵⁴ Under section 42 of the RTI Act.

⁵⁵ Under section 42(6) of the RTI Act.

⁵⁶ Section 18 of the RTI Act.

⁵⁷ By 11 February 2016.

⁵⁸ 2 February 2016.

⁵⁹ Dated 10 February 2016.