



Decision and Reasons for Decision

Application Number: 210173

Applicant: M Crockford

Respondent: Environmental Protection Agency

Decision Date: 28 September 2007

Catchwords: **FREEDOM OF INFORMATION – Sufficiency of Search - whether reasonable basis to believe that further documents exist in the Environmental Protection Agency’s possession or control – whether searches have been reasonable in all the circumstances of the case**

Contents

Background	2
Steps taken in the external review process	3
Findings	4
Decision	6

Reasons for Decision

Background

The relevant background to this review is as follows:

1. On or about 17 September 2001 the Environmental Protection Agency (the Agency) issued an Environmental Protection Order (the Order) to a tyre company (the Company). The Order dealt with the relocation of waste tyres.
2. Section 4(a) of the Order required the following to be provided to the Agency:
'documentation including receipts and invoices which accurately details:
 - *who transported the tyres and the quantity of tyres transported*
 - *the facility where the tyres were received and the number of tyres received'*.
3. The documentation required under section 4(a) of the Order was to be received by the Agency by 5pm on 2 November 2001.
4. On 26 October 2006 the applicant lodged a freedom of information (FOI) application with the Agency requesting copies of documents constituting the *'results of Environmental Protection Order section 4(a) as attached.'*
5. The Agency located 13 folios responsive to the applicant's request and on 15 December 2006 Mr J Abbotts wrote to the applicant advising him of his decision to release the 13 folios in full. Mr Abbotts advised the applicant that he was required to pay a further \$222.91 processing fee, and that access to the documents would be provided when that fee was received by the Agency.
6. On 22 December 2006 the applicant paid the outstanding fee and copies of the 13 folios were provided to him on 2 January 2007. No receipts or invoices were contained in the documentation provided to the applicant.
7. On 18 January 2007 the applicant requested an internal review of Mr Abbotts' decision. The application for review did not specify any grounds for seeking a review.
8. On 19 February 2007 Mr P Arthur wrote to the applicant advising that he had conducted an internal review of the decision of Mr Abbotts dated 15 December 2006 and arranged for further searches to be conducted. In that letter Mr Arthur advised the applicant that he had decided to release a further three documents (five folios) to the applicant.
9. On 23 February 2007 the applicant applied to this Office for external review of Mr Arthur's decision. He attached a number of documents to his application including a copy of the relevant page of the Order, with section 4 highlighted.

Steps taken in the external review process

10. To clarify the grounds upon which the applicant sought external review, this Office wrote to the applicant on 5 March 2007. That letter asked the applicant to identify what aspects of his internal review he contested and wished this Office to consider.

11. By letter dated 7 March 2007 the applicant confirmed that he was seeking the receipts and other documentation provided to the Agency in accordance with section 4 of the Order.
12. During the course of this external review a number of telephone conversations occurred between this Office and the applicant and this Office and the Agency to primarily clarify aspects of this review. On some occasions the applicant also made submissions to this Office during telephone conversations with staff members of this Office which have also been taken into account in making this decision.
13. On 2 July 2007 this Office wrote to the Agency requesting copies of documents already provided to the applicant, evidence of the searches undertaken to locate the documents (specifically, receipts and invoices) and reasons as to why the documents can not be located or do not exist.
14. On 20 July 2007 the Agency provided this Office with a response to the letter of this Office dated 2 July 2007, including documents previously released to the applicant and extensive evidence of the searches undertaken by the Agency. However, no further documents had been located; specifically no receipts or invoices were located.
15. By letter dated 9 August 2007 the Agency provided a copy of the letter from the Agency to the applicant dated 2 January 2007.
16. By letter dated 17 August 2007 I advised the applicant that I had formed a preliminary view that:
 - the applicant had been provided with all documents that could be located by the Agency
 - the search efforts undertaken by the Agency were reasonable in all the circumstances
 - the applicant had been provided with all documents of the Agency that are responsive to his FOI application.

The letter requested that, if the applicant did not accept the preliminary view, he should make written submissions by 7 September 2007 addressing the preliminary view.

17. Five emails from the applicant were received by this Office between 5 September 2007 and 7 September 2007, in response to the preliminary view. All of these emails are almost identical. The final email, received at 3.28pm on Friday 7 September 2007, made the same submissions as the previous emails. I have treated this final email as constituting the applicant's objection to the preliminary view, however I have also considered the content of each individual email.
18. In the email at 3.28pm on Friday 7 September 2007, the applicant objected to the preliminary view and:
 - reiterated his previous submissions that the documents should exist
 - made submissions on the importance of government transparency and environmental challenges such as climate change.
19. The issue in this review for my consideration is the sufficiency of the searches undertaken by the Agency for documents relating to section 4(a) of the Order issued by the Agency to the Company on or about 17 September 2001.

20. In making my decision in this review, I have taken into account the following:

- the applicant's initial FOI application dated 26 October 2006
- initial decision of Mr Abbotts dated 15 December 2006
- the applicant's application for internal review dated 18 January 2007
- internal review decision of Mr Arthur dated 19 February 2007
- the applicant's application for external review dated 23 February 2007
- documents released to the applicant in accordance with the decision of Mr Abbotts dated 15 December 2006 and the decision of Mr Arthur dated 19 February 2007
- written correspondence exchanged between this Office and applicant and the Agency during the course of this review
- file notes of telephone conversations held between staff members of this Office and the Agency and the applicant during the course of this review

Findings

21. The Information Commissioner explained the principles applicable to 'sufficiency of search' cases in *Shepherd and Department of Housing, Local Government & Planning* (1994) 1 QAR 464 (paragraphs 18 and 19) as follows:

It is my view that in an external review application involving 'sufficiency of search' issues, the basic issue for determination is whether the respondent agency has discharged the obligation, which is implicit in the FOI Act, to locate and deal with (in accordance with Part 3, Division 1 of the FOI Act) all documents of the agency (as that term is defined in s.7 of the FOI Act) to which access has been requested. It is provided in s.7 of the FOI Act that:

"document of an agency' or 'document of the agency' means a document in the possession or under the control of an agency, or the agency concerned, whether created or received in the agency, and includes -

- (a) a document to which the agency is entitled to access; and
- (b) a document in the possession or under the control of an officer of the agency in the officer's official capacity;"

In dealing with the basic issue referred to in paragraph 18, there are two questions which I must answer:

- (a) *whether there are reasonable grounds to believe that the requested documents exist and are documents of the agency (as that term is defined in s.7 of the FOI Act);*

and if so

- (b) *whether the search efforts made by the agency to locate such documents have been reasonable in all the circumstances of a particular case.*

Whether there are reasonable grounds to believe that the requested documents exist and are documents of the agency

22. Given the requirements of the Order, I consider that it was reasonable to expect that receipts and other documentation should have been provided to the Agency, and should therefore be accessible under the FOI Act.

Whether the search efforts made by the agency to locate such documents have been reasonable in all the circumstances

23. The applicant, in his submissions received by email on 7 September 2007 at 3.28pm raised concerns that the documentation previously released to him regarding the conditions set out in section 4(a) of the Order is inadequate and noted the significance of specific environmental issues.
24. In relation to concerns previously raised by the applicant during this external review regarding the sufficiency of searches that had been undertaken by the Agency to locate documents relating to his application, this Office required, by letter dated 2 July 2007, the Agency to provide evidence of searches undertaken to locate the documents and reasons as to why the documents could not be located or do not exist.
25. On 20 July 2007 the Agency provided this Office with a response that included extensive evidence of the searches made by the Agency. I have carefully considered this evidence and I consider that the Agency has conducted thorough and comprehensive searches of hard copy and electronic records across all relevant areas of the Agency to locate the documents the applicant seeks. However, no further documents were located; specifically no receipts or invoices have been located.
26. The Order required 'documentation including receipts and invoices' to be provided. I note that the Agency has provided the applicant with documents which, although they are not receipts and invoices, nevertheless fit the general requirements of section 4 of the Order. That is, the documents show 'who transported the tyres and the quantity of tyres transported.' Specifically, I refer to the following documents:
 - Letter dated 31 October 2001 from the Company giving details of the truck which would be used to transfer waste tyres within the Cloncurry Shire.
 - Monthly Division and Significant Issues Report dated October 2006 which shows that the Order issued to the Company resulted in the removal of over 2500 illegally stored tyres.
27. Both of the above documents were provided to the applicant on 19 February 2007. I note that the letter from the Company is dated 31 October 2001 and would therefore appear to be written with the intention of being provided to the Agency to meet the imminent deadline of 2 November 2001 under part 4 of the Order.
28. I note that in his external review application the applicant also referred to page 5 of the '*Waste Management – Managing Waste Tracking in Queensland Guideline*', which provides that prescribed information regarding the disposal of waste must be provided and kept for at least five years by the 'waste receiver'. In relation to this guideline, the Agency referred to page 3 of this Guideline, which shows that the waste tracking system for 'all trackable waste' (which included tyres) was not introduced until 1 July 2002. As the Order was made prior to this, the system did not apply at the relevant time.
29. I note the applicant's clear submission that further documents must exist. However, based on the evidence before me, I am satisfied that the applicant has been provided with all documents that could be located by the Agency and that the search efforts undertaken by the Agency have been reasonable in all the circumstances.

Conclusion

30. Accordingly I find that:

- the search efforts undertaken by the Agency to locate receipts and invoices were reasonable in all the circumstances
- the applicant has been provided with several documents which, although they are not receipts and invoices, appear to have been submitted to the Agency in general compliance with section 4(a) of the Order
- the applicant has been provided with all documents of the Agency that could be located by the Agency and are responsive to his FOI application.

Decision

31. I affirm the decision under review (being Mr Arthur's internal review decision dated 19 February 2007) by finding that:

- the search efforts undertaken by the Agency to locate receipts and invoices have been reasonable in all the circumstances
- the applicant has been provided with all documents of the Agency that could be located by the Agency and are responsive to his FOI application.

R Rangihaeata
Acting Information Commissioner

Date: 28 September 2007