

Price and Criminal Justice Commission

(S 73/01, 22 November 2002, Assistant Commissioner Shoyer)

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

1.- 2. These paragraphs deleted.

Background

3. The applicant, Mr Price, has made a number of applications for external review by the Information Commissioner, under Part 5 of the FOI Act, of decisions or deemed decisions of the Criminal Justice Commission (the CJC), the predecessor of the Crime and Misconduct Commission (the CMC), refusing him access to matter under the FOI Act. A number of those applications for review have previously been finalised by decisions of the Information Commissioner or his delegate.
4. By letter dated 11 December 2000, the applicant sought access under the FOI Act, to "*all records and documents etc related to myself kept and or recorded by the Chairmen/Heads of the CJC from its inception to now*".
5. By letter dated 21 December 2000, Mr R Kenzler informed the applicant of his decision that the CJC had no such documents in its possession. By letter dated 24 December 2000, the applicant sought internal review of Mr Kenzler's decision. Having received no internal review decision by 26 March 2001, the applicant sought review by the Information Commissioner, under Part 5 of the FOI Act, of the CJC's deemed affirmation of Mr Kenzler's decision: see s.52(6) of the FOI Act.

External review process

6. Progress of this review was delayed while this office progressed numerous other applications involving the applicant and various agencies, and applications by other applicants. Work in relation to this and other reviews involving the applicant and the CMC recommenced after finalisation of earlier reviews involving the applicant.
7. By letter dated 16 September 2002, I informed the applicant of my preliminary views with regard to the issues remaining in dispute in this and other external reviews involving the applicant and the CMC. I informed the applicant of my preliminary view that:
 - there are no reasonable grounds for believing that documents of the type he sought in his access application dated 11 December 2000 exist in the control or possession of the CMC;
 - the CMC was entitled to refuse to deal with that access application under s.28(2) of the FOI Act because the work involved in dealing with it would substantially and unreasonably divert the resources of the CMC from their use by the CMC in the performance of its functions.
8. Following receipt of my letter dated 16 September 2002, the applicant complained about the time allowed him to respond and I granted him an extension of time. In detailed submissions dated 30 September and 21 October 2002, the applicant made submissions in relation to his files concerning the Queensland Police Service (the QPS) and the CMC, and applied for the

Information Commissioner and his office to disqualify themselves from further involvement in the applicant's external reviews. (I have addressed the application for disqualification in a separate letter to the applicant dated 28 October 2002.) However, the applicant did not address the issues I raised regarding this review and did not refine or limit the terms of his access application in any way.

9. In his letter dated 21 October 2002, the applicant again complained about the time allowed him to make submissions. I addressed this issue in my letter dated 28 October 2002. In brief terms, the applicant was granted an extension of time which meant that he was allowed 5 weeks to make submissions in relation to outstanding issues in respect of his CMC files. This is in a context where:
 - he has previously lodged very extensive submissions and evidence in the course of over 80 applications for external review, which he has indicated should be taken into account in dealing with this and other outstanding reviews;
 - many of the issues remaining in dispute are similar to issues previously raised with the applicant in the course of those reviews;
 - the issues remaining in dispute are relatively limited in nature.
10. In the circumstances, I consider that the applicant has been given an adequate opportunity to present his case.
11. In making my decision, I have taken into account the submissions of the applicant dated 21 October 2002, along with all other materials provided by the applicant in relation to this external review and other external reviews.

Scope of the access application

12. In his internal review application, the applicant contended that his access application extended to include documents and records of all persons contacting the Chairmen of the CJC and recording such information. I do not accept that the terms of the access application dated 11 December 2000 can be interpreted to extend that far. That access application specifically stated that it sought access to documents "*kept and or recorded by the Chairmen/Heads of the CJC*". This clearly would not extend to documents created by other people concerning discussions with CJC chairmen. The Information Commissioner has held that an access applicant cannot unilaterally (i.e., without the consent of the agency) extend the terms of an FOI access application during a subsequent review of an agency's decision in response to the FOI access application: see *Re Robbins and Brisbane North Regional Health Authority* (1994) 2 QAR 30, at paragraph 17.

Substantial and unreasonable diversion of resources

13. In his decision dated 21 December 2000, Mr Kenzler stated:

The diaries of the chairpersons of the Criminal Justice Commission typically record dates and times of meetings with the Commission officers and others. The subject matter of the meetings is invariably not recorded. They are diaries in the sense of containing dates and times of appointments. They do not provide commentary on the daily professional life and thoughts of the chairpersons

... I find it rather curious that you would apparently think that you would figure in such diaries.

14. My experience with regard to the information which senior executives usually record in their diaries, accords with the statement of Mr Kenzler. Information of the type the applicant seeks is more likely to be kept in diaries of agency investigators who are frequently called on to take notes in the field, although even in such cases they may use some means other than a diary.

15. At the time the applicant made his FOI access application, s.28(2) of the FOI Act provided:

28.(2) If—

(a) an application is expressed to relate to all documents, or to all documents of a specified class, that contain information of a specified kind or relate to a specified subject matter; and

(b) it appears to the agency or Minister dealing with the application that the work involved in dealing with the application would, if carried out—

(i) substantially and unreasonably divert the resources of the agency from their use by the agency in the performance of its functions; or

(ii) interfere substantially and unreasonably with the performance by the Minister of the Minister functions;

having regard only to the number and volume of the documents and to any difficulty that would exist in identifying, locating or collating the documents within the filing system of the agency or the office of the Minister;

the agency or Minister may refuse to deal with the application.

16. While the CMC has a significant annual budget, its resources do not approach those of most State government departments. It has one officer dedicated to dealing with FOI access applications. It is fair to say that the applicant has made a number of FOI applications (including 16 applications for external review) which have already involved a significant commitment of those resources by the CMC.

17. To comply with the terms of this access application, it would be necessary for the FOI officer to first obtain, and then search through, all hardcopy and electronic diaries and similar documents of the various chairs of the CJC (from the inception of the CJC in 1989 up to 11 December 2000) in order to locate any reference that may have been made to the applicant. In addition to physical searches and searches of computer records, this would be likely to involve contacting former chairmen, and probably their support staff, in order to identify or follow-up possible avenues for search.

18. All of this work would be undertaken in order to pursue the remote possibility that there may be some reference to the applicant, somewhere in these documents. As I have indicated above, given the nature of the documents, I consider it unlikely that any reference to the applicant exists in the documents, let alone any reference that might be of some significance.

19. In the circumstances, I find that the work involved in dealing with the access application would substantially and unreasonably divert the resources of the CMC from their use by the CMC in the performance of its functions, having regard only to the difficulty that would exist in identifying, locating or collating the documents. The applicant has identified no likely benefit to the public interest or to himself that might persuade me to find that the substantial diversion of CMC resources involved in dealing with his access application dated 11 December 2000 would nevertheless be a reasonable diversion of resources. I therefore find that the CMC should refuse to deal with that access application, in accordance with s.28(2) of the FOI Act.

DECISION

20. I decide to vary the decision under review (being the deemed decision affirming the decision of Mr R Kenzler on behalf of the respondent dated 21 December 2000) by finding that the CMC should refuse to deal with that access application under s.28(2) because the work involved in dealing with it would substantially and unreasonably divert the resources of the CMC from their use by the CMC in the performance of its functions, having regard only to the difficulty that would exist in identifying, locating or collating relevant documents.