

Notice of Decision and Reasons for Decision

Applicant:	'BK8'
Agency:	Zoological Parks and Gardens Board
Decision date:	7 April 2020
Provision considered:	Section 19
Citation:	'BK8' and Zoological Parks and Gardens Board (<i>Freedom of Information</i>) [2020] VICmr 105 (7 April 2020)

FREEDOM OF INFORMATION – creation of document – data extracted to create document – cause of animal deaths

All references to legislation in this document are to the *Freedom of Information Act 1982 (Vic)* (**FOI Act**) unless otherwise stated.

Notice of Decision

I have conducted a review under section 49F of the Agency's decision to refuse access to documents requested by the Applicant under the FOI Act.

I am satisfied a document or documents falling within the terms of the Applicant's request do not exist in a discrete form and cannot be created in accordance with section 19.

Accordingly, the Agency is not required to process the Applicant's request.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

7 April 2020

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency for access to the following documents:

Documents providing the cause and circumstances of the deaths of all animals that died in Healesville sanctuary, Melbourne Zoo and Werribee Open Range Zoo from [date range].
If required, I consent in advance to the removal of any personal information (names, email addresses, phone numbers, etc)

2. By letter dated 1 December 2019, the Agency wrote to the Applicant advising it proposed to refuse to grant access to documents sought under section 25A(1) as it considered the work involved in processing the request would substantially and unreasonably divert the resources of the Agency from its other operations.

3. In accordance with section 25A(6), the Applicant was invited to consult with the Agency with a view to remove the proposed grounds for refusal.

4. By email dated 6 December 2019, the Applicant responded to the Agency with the following proposed request:

I would like to amend my request to include only: mammals that a[re] permanent zoo animals at Melbourne Zoo and Werribee that died of other-than-natural causes (e.g. exclude old age & birth-related death), but including injury and disease. I'd also like to restrict the period to the [specified period].

5. By email dated 13 December 2019, the Agency responded to the Applicant's proposed narrowed request. The Agency advised the Applicant no discrete document exists that falls within the terms of the Applicant's request:

...there is no report that can be easily generated to satisfy your Amended Request without Zoos Victoria reviewing every document for animal death that occurred from [date range] to determine the cause of death and whether the death was attributed to injury or disease.

...

To help you further refine the scope of your request we have provided a copy of the Inventory Report...This report includes information about any changes in the numbers of animals housed at our properties, including deaths.

6. The Applicant did not respond to the Agency's further invitation to consult as they advised later that they were [redacted - personal information].

7. In its decision dated 31 January 2020, the Agency refused to grant access to the documents in accordance with section 25A(1) on grounds 'that there is no report that can be easily generated to satisfy your amended request without Zoos Victoria reviewing every document for animal death that occurred from [date range] to determine the cause of death and whether the death was attributed to injury or disease'.

Review

8. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
9. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.

10. I have considered all communications and submissions received from the parties, including:
 - (a) the Agency's decision on the FOI request;
 - (b) correspondence between both parties during consultation conducted under section 25A(6);
 - (c) information provided with the Applicant's review application; and
 - (d) the Agency's submission dated 25 February 2020.
11. The Agency relied on section 25A(1) to refuse to grant access to the request as it determined the process to generate a document under section 19 would unreasonably and substantially divert resources from the Agency's other operations.
12. In conducting my review, I have had regard to the object of the FOI Act, which is to create a general right of access to information in the possession of the Government or other public bodies, limited only by exceptions and exemptions necessary to protect essential public interests, privacy and business affairs.

Section 19

13. During the review, OVIC staff engaged with the Agency to clarify whether a document, which falls within the terms of the Applicant's request, could be produced in accordance with section 19.
14. Based on the Agency's response, I am satisfied the appropriate provision that applies in this matter is section 19, rather than section 25A(1), or a combination of both.
15. Section 19 provides:

Requests involving use of computers etc.

Where—

 - (a) a request is duly made to an agency;
 - (b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in documents of the agency; and
 - (c) the agency could produce a written document containing the information in discrete form by—
 - (i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or
 - (ii) the making of a transcript from a sound recording held in the agency— the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.
16. The phrase 'document of the agency' is defined in section 5 to mean 'a document in the possession of an agency, or in the possession of the agency concerned, as the case requires, whether created in the agency or received in the agency'.
17. Importantly, section 19 does not require an agency to create a document or documents through the manual search for and collation or assembling of information or data. Rather, it provides for an agency to 'produce a written document containing the information in discreet form by use of a computer or other equipment' (e.g. by conducting a search of a computer database).

Agency submission and further inquiries

18. In its submission dated February 2020, the Agency states:

We stated that no one report gives the Applicant all the information requested. Multiple reports need to be created from our animal records database to cover the information sought in the FOI request that:

1. Show the ages of mammals that died:
 - To determine those deaths of newborn animals;
 - To determine those deaths associated with aged/geriatric animals (report may need to be cross-referenced with other information to confirm the longevity of that species); and
2. Show the cause of death of those mammals whether through injuries or disease (other than those listed above); may require further investigation to obtain the information for the FOI request.

19. While the Agency's submission was directed at the application of section 25A(1), the information provided is relevant to determining the steps involved in the Agency producing a document in accordance with section 19.
20. In response to further inquiries made by OVIC staff, the Agency confirmed the terms of the Applicant's request concern documents that do not exist in discreet form and cannot be produced by the use of a computer or other equipment that is ordinarily available to the Agency for retrieving or collating stored information.
21. Given the terms of the Applicant's request, and based on further inquiries made by OVIC staff with the Agency, I accept the Agency's submission and am satisfied no document or documents exist in discreet form that falls within the terms of the request.
22. Further, given the Agency's description of the steps required to create a document meeting the terms of the request, I accept it is not possible for the Agency to do so in accordance with section 19, namely, through 'the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information'. Rather, the task of producing such a document or documents to satisfy the Applicant's request would involve a number of manual steps to be taken by the Agency that go beyond the obligation imposed upon it under section 19.
23. Therefore, I am satisfied a document or documents falling within the terms of the Applicant's request does not exist in a discrete form and cannot be created in accordance with section 19.
24. Given my decision in relation to section 19, I am satisfied section 25A(1) does not apply in these circumstances.

Conclusion

25. On the information before me, I am satisfied a document or documents falling within the terms of the Applicant's request do not exist in a discrete form and cannot be created in accordance with section 19.
26. Accordingly, the Agency is not required to process the Applicant's request.

Review rights

27. If either party to this review is not satisfied with my decision, they are entitled to apply to the Victorian Civil and Administrative Tribunal (**VCAT**) for it to be reviewed.¹
28. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.²
29. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.³
30. Information about how to apply to VCAT is available online at www.vcat.vic.gov.au. Alternatively, VCAT may be contacted by email at admin@vcat.vic.gov.au or by telephone on 1300 018 228.
31. The Agency is required to notify the Information Commissioner in writing as soon as practicable if either party applies to VCAT for a review of my decision.⁴

When this decision takes effect

32. My decision does not take effect until the relevant review period (stated above) expires. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

¹ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

² Section 52(5).

³ Section 52(9).

⁴ Sections 50(3F) and (3FA).