

- (4) The Governor may, by order, appoint a person to be the commissioner of a local government until the offices of members of the council are filled for the first time and the council holds its first meeting.

2.7. Role of council

- (1) The council —
- (a) governs the local government's affairs; and
 - (b) **is responsible for the performance of the local government's functions.**
- (2) Without limiting subsection (1), the council is to —
- (a) **oversee the allocation of the local government's finances and resources; and**
 - (b) determine the local government's policies.

[Section 2.7 amended: No. 17 of 2009 s. 4.]

2.8. Role of mayor or president

- (1) The mayor or president —
- (a) presides at meetings in accordance with this Act; and
 - (b) provides leadership and guidance to the community in the district; and
 - (c) carries out civic and ceremonial duties on behalf of the local government; and
 - (d) speaks on behalf of the local government; and
 - (e) performs such other functions as are given to the mayor or president by this Act or any other written law; and
 - (f) liaises with the CEO on the local government's affairs and the performance of its functions.
- (2) Section 2.10 applies to a councillor who is also the mayor or president and extends to a mayor or president who is not a councillor.

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Freedom of Information Act 1992*.

2. Commencement

The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation.

3. Objects of Act

- (1) The objects of this Act are to —
 - (a) enable the public to participate more effectively in governing the State; and
 - (b) make the persons and bodies that are responsible for State and local government more accountable to the public.
- (2) The objects of this Act are to be achieved by —
 - (a) creating a general right of access to State and local government documents; and
 - (b) providing means to ensure that personal information held by State and local governments is accurate, complete, up to date and not misleading; and
 - (c) requiring that certain documents concerning State and local government operations be made available to the public.
- (3) Nothing in this Act is intended to prevent or discourage the publication of information, or the giving of access to documents (including documents containing exempt matter), or the amendment of personal information, otherwise than under this Act if that can properly be done or is permitted or required by law to be done.

4. Agencies, duties of when applying Act

Agencies are to give effect to this Act in a way that —

- (a) assists the public to obtain access to documents; and
- (b) allows access to documents to be obtained promptly and at the lowest reasonable cost; and
- (c) assists the public to ensure that personal information contained in documents is accurate, complete, up to date and not misleading.

5. Crown bound

This Act binds the Crown.

6. Access rights etc. in Parts 2 and 4 do not apply to documents that are already available

Parts 2 and 4 do not apply to access to documents that are —

- (a) available for purchase by the public or free distribution to the public; or
- (b) available for inspection (whether for a fee or charge or not) under Part 5 or another enactment; or
- (c) State archives to which a person has a right to be given access under Part 6 of the *State Records Act 2000* despite this Act; or
- (d) publicly available library material held by agencies for reference purposes; or
- (e) made or acquired by an art gallery, museum or library and preserved for public reference or exhibition purposes.

[Section 6 amended: No. 53 of 2000 s. 6.]

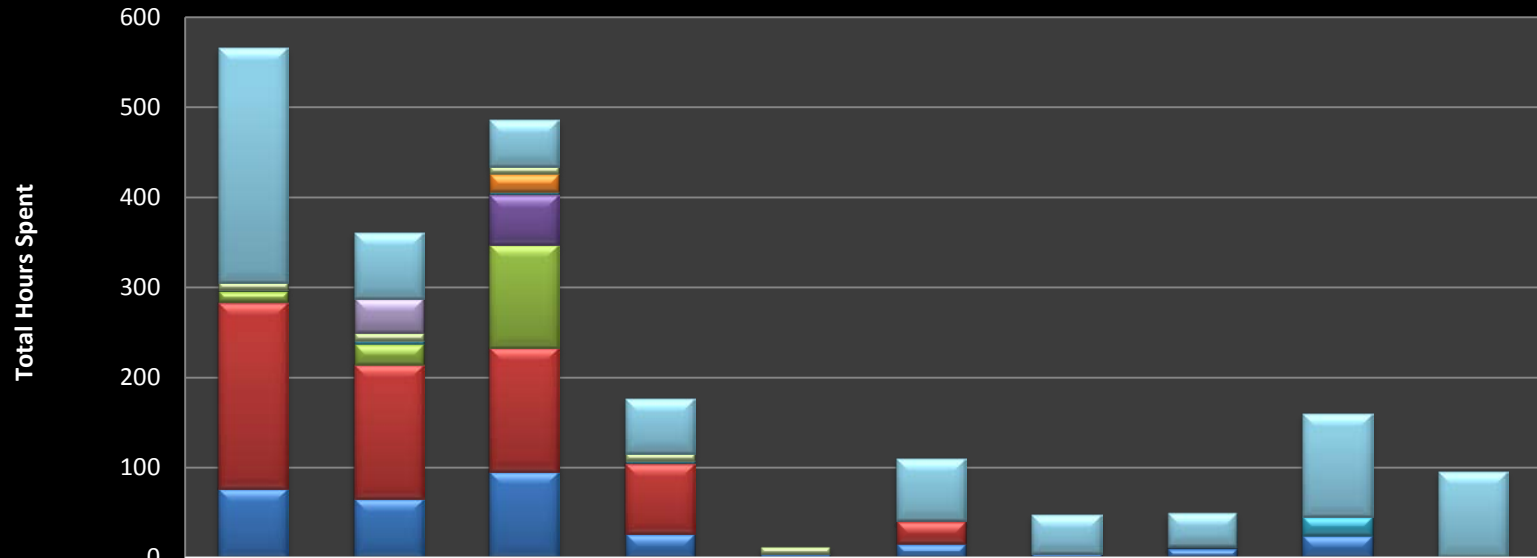
7. Access rights in Parts 2 and 4, application of to private collections

If Parts 2 and 4 apply to documents in a private collection that is held by an art gallery, museum, library or other prescribed

CITY OF MELVILLE	
COSTS OF RESPONDING TO QUESTIONS AND ISSUES RAISED BY A GROUP OF TEN RESIDENTS / ENTITIES	
To	Chief Executive Officer (CEO) and Financial Management Audit Risk and Compliance Committee (FMARCC)
From	BMS Improvement Officer and Process Improvement Auditor
Subject	Costs of answering questions to a group of 10 residents / entities
Date	1 September 2017

	Background
(1)	Local Governments receive information requests and provide answers to the person(s) seeking information in a variety of formats and they include Public Question Time, phones, emails, letters, customer requests (Pathway), Freedom of Information (FOI) requests, State Administrative Tribunal (SAT) matters, legal proceedings, subpoenas, etc.
(2)	In the last three years, the City has experienced increasing number of questions from within a small group of the community. Recognising his responsibility under Section 5(2)(a) of the Local Government (Financial Management) Regulations 1996 which requires the CEO to ensure the resources of the local government are effectively and efficiently managed, the CEO commissioned a project undertaken by the BMS Improvement Officer (in-house statistician) to collect data to estimate the costs to the City in providing information to this group. To ensure objectivity of this project, the CEO also commissioned the Process Improvement Auditor to review the data collection process and verify the reasonableness of these estimates.
	Terms Of Reference
(3)	<p>The terms of reference for this project / review are:</p> <p>BMS Improvement Officer:</p> <ul style="list-style-type: none"> (a) To collect relevant data to estimate the costs to the City of providing information to this group of ten entities; (b) The period covered is 14 months to 31 July 2017; and (c) To include questions / answers via various means including question time, emails, customer requests, FOI, SAT, legal proceeding etc.

Total Hours Spent to Serve this 10 Entities - Breakdown by Type of Requests from Jun 2016 to Jul 2017



	Resident 1	Resident 2	Resident 3	Resident 4	Resident 5	Resident 6	Resident 7	Resident 8	Resident 9	Resident 10
Questions times	261	74.25	51.75	60.75	0	69.75	42.75	38.25	114.75	94.5
Court case including preparation		38.27								
Media communication	8	8	8	8	8	0	0	0	0	0
Ombudsman requests	0	0	20	0	0	0	0	0	0	0
Pathway requests	1.5	3.75	3	2.75	0	0.25	0.5	0.75	21.25	0
Subpoena	0	0	56	0	0	0	0	0	0	0
SAT matters	12	23	114	0	0	0	0	0	0	0
FOI requests	207	149	138	78	0	25	0	0	0	0
Correspondence registered in ECM	77.25	66	96	27.5	4.5	16	5	11.5	24.75	1.5

4.2 Freedom of Information (FOI)

73. Concerns from a Freedom of Information (FOI) applicant were raised regarding the City's handling of FOI requests. In particular, it was alleged that the City refused to provide information requested.
74. The Authorised Persons observed that applications received from the applicant were often very broad and requested a large amount of information. The City has often requested the FOI applicant narrow the scope of the application for access to documents in accordance with the *Freedom of Information Act 1992* (FOI Act).
75. Upon receipt of the City's decision regarding a FOI application, it was observed that the applicant generally requested an internal review of the decision. Upon internal review, the City can either affirm or amend the FOI officer's original decision and City advises that the internal review is conducted by the City's 'Internal Ombudsman' who also fulfils the role of Executive Manager Governance and Legal Services. The applicant often sent the internal reviewer's decision to the Information Commissioner for an external review as allowed for under the FOI Act.
76. Although numerous concerns regarding the City's compliance with the FOI Act have been received by the Department, it is not for the Department nor the inquiry to intervene or make determinations on the City's compliance with the FOI Act as this falls within the Information Commissioner's jurisdiction.

Finding 11: The Authorised Persons note that the City has clear processes regarding FOI requests. Any complaints regarding FOI should be sent to the appropriate oversight body being the Information Commissioner.

5. Inquiry findings into the City's complaint handling processes

5.1 Adequacy of Council's complaint handling policy

77. There is no legislative requirement under the Act for a local government to implement a policy to manage complaints. The City's Council adopted its current policy – *Complaints Management Policy* (CP-101) on 15 November 2016.
78. CP-101 provides the policy's objectives and scope and provides a definition of a complaint. It also includes a Policy Statement which provides the following principles:
 - a. Fairness and objectivity
 - b. Confidentiality
 - c. Data collection
 - d. Remedies and resolution of complaints
 - e. External review
 - f. Reporting to Council
79. The City also has a Customer Charter and Internal Procedure which are recognised by the Authorised Persons to be adequate frameworks.

5.2 City's adherence to Policies and Procedures

80. The City provided a register of complaints against City staff during the inquiry period from the City's complaints management system - Pathway. This register demonstrated that the City did action the complaints it received.
81. The Authorised Persons observed that the City appropriately recorded and processed complaints received through the Pathway system.

6 PUBLIC QUESTION TIME

P 7

6.1 Questions Received with Notice

6.2 Questions Received at the Meeting

6.3 Questions Taken on Notice at Previous Meeting
13 December 2023 Ordinary Meeting of Council

6.3.1 Mr M McLerie, Bicton

Question 1

Why did the Chief Executive Officer effectively reaffirm the advice he gave to council at least week's ABF in response to an Elected Member's questions about specific provisions of the FOI Act, along the lines of:

"City officers who are no longer employees of the City are now considered private individuals and it is appropriate that their names are redacted in this version of the Weir Report that we are asking Council to decide to put out to the public.

Without double checking that advice prior to pre-emptively responding to an email the day after the ABF that the CEO accessed and read without the knowledge of the resident sender or the sole Elected Member recipient of that email?

Response

At the Ordinary Meeting of Council held 13 December 2023, in relation to the above question Mr McLerie submitted a copy of an email between himself and an Elected Member and questioned "why did you pre-emptively access, read and respond to an email that was sent from the resident to an Elected Member without their knowledge or consent?"

The City does not screen, intercept or monitor Elected Member exclusive communications.

The City technology team have undertaken an investigation into this matter and identified that an email handling rule independently created by an Elected Member had the unexpected consequence of sending an email copy to the City administration in certain circumstances. This was not obvious to the recipient officer so was handled according to relevant practice by the CEO.

Question 2

I note the FOI Act does specifically enable the identities and positions of past employees of the City to be included in any material released in under the FOI, but does not state the past employees of the City employees should be considered as private individuals. Please correct me if I am wrong.

Response

P 8

This is correct. This question is in relation the publication of the Weir Report as discussed at the 13 December 2023 Ordinary Meeting of Council. It is outlined in the associated Council Item [M22/5927 Independent Review – Weir Legal and Consulting Report](#) that the version of the Weir Report proposed for publication be redacted to remove details that could personally identify the individuals or officers associated with the report.

In his responses the CEO made it clear that the Weir report had been redacted over and above the requirements of the FOI Act.

7 AWARDS AND PRESENTATIONS

8 APPLICATIONS FOR NEW LEAVES OF ABSENCE

9 CONFIRMATION OF MINUTES

9.1 Minutes of Ordinary Meeting of the Council – 13 December 2022
[OMC Minutes – 13 December 2022](#)

That the minutes of the Ordinary Meeting of Council held 13 December 2022 be confirmed as a true and accurate record

9.2 Minutes of Special Meeting of the Council – 1 February 2023
[SMC Minutes – 1 February 2023](#)

That the minutes of the Special Meeting of Council held 1 February 2023 be confirmed as a true and accurate record.

9.3 Minutes of Annual General Meeting of Electors – 6 February 2023
(The Minutes of the Annual General Meeting of Electors will be available on Friday, 10 February 2023)

That the minutes of the Annual General Meeting of Electors held 1 February 2023 be confirmed as a true and accurate record.

9.4 Notes of Agenda Briefing Forum – 14 February 2023
(The Notes of the Agenda Briefing Forum will be available on Friday, 17 February 2023)

That the minutes of the Agenda Briefing Forum held 14 February 2023 be confirmed as a true and accurate record.

Application for Access to Building Related Documents Pursuant to Part 11 of the Building Act 2011

Please complete the relevant part below and either email it to melinfo@melville.wa.gov.au, hand it to counter staff at the Civic Centre 10 Almondbury Rd, Booragoon, or post it to City of Melville, Locked Bag 1, Booragoon WA 6954.

The City will aim to deal with your application within 10 working days. Note that incomplete forms will be returned.

Applicant's Name: _____

Applicant's Postal Address: _____

Applicant's Contact Telephone Number: _____

Applicant's Email Address: _____

Property Details:		
Lot Number:	Unit Number:	House Number:
Street:		Suburb:
Postcode:		
If the property is a block of units or subdivided block, please specify:	<input type="checkbox"/> Front	<input type="checkbox"/> Rear
	<input type="checkbox"/> Left side	<input type="checkbox"/> Right side <input type="checkbox"/> Centre
Is it a corner block?: <input type="checkbox"/> Yes <input type="checkbox"/> No		

PART 1 – Application under subsection 129(2) of the Building Act 2011 for a copy of a building permit, demolition permit, occupancy permit or certificate of building approval granted by the City of Melville, or a building order made by the City of Melville, and kept on the register specified in section 128 of that Act.

Relevant legislative provisions in the Building Act 2011:

128. Register of permits, building approval certificates, building orders

(1) A permit authority must keep a register of all building permits, demolition permits, occupancy permits and building approval certificates granted by it, and all building orders made by it.

129. Inspection, copies of permits, building approval certificates in register

(2) A permit authority may, on application by any person and on payment of the prescribed fee, if any, provide to the person a copy of a building permit, a demolition permit, an occupancy permit, a building approval certificate or a building order that is kept in the register.

Type of document requested:

- Building Permit Demolition Permit
- Occupancy Permit Building Approval Certificate
- Building Order

Copy to be sent by: Email Post

Application for Access to Building Related Documents Pursuant to Part 11 of the Building Act 2011

P 9

PART 1 – Application under subsection 129(2) of the Building Act 2011 for a copy of a building permit, demolition permit, occupancy permit or certificate of building approval granted by the City of Melville, or a building order made by the City of Melville, and kept on the register specified in section 128 of that Act.

Relevant legislative provisions in the Building Act 2011:

128. Register of permits, building approval certificates, building orders

(1) A permit authority must keep a register of all building permits, demolition permits, occupancy permits and building approval certificates granted by it, and all building orders made by it.

129. Inspection, copies of permits, building approval certificates in register

(2) A permit authority may, on application by any person and on payment of the prescribed fee, if any, provide to the person a copy of a building permit, a demolition permit, an occupancy permit, a building approval certificate or a building order that is kept in the register.

The Building Register, as required by s.128 (1) can be inspected online

<https://www.melvillecity.com.au/planning-and-building/planning-and-building-registers>

Copies of permits and approvals that are kept in the register may be obtained by making a Freedom of Information Application [Online for non-Personal Information](#)

PART 2 – Application under subsection 131(2) of the Building Act 2011 for a copy of a prescribed building record as defined in section 130 of the Building Act and prescribed in Regulation 12 of the Building Regulations 2012. Note that this application may be made only by an interested person (as defined in subsection 131(1)).

Relevant legislative provisions in the Building Act 2011:

130. Building records to be kept

A permit authority must keep in the manner and for the prescribed period such of the prescribed documents that comprise, accompany, are provided for in, are issued as a result of, or otherwise relate to the building or incidental structure that is the subject of —

- (a) an application for a building permit or demolition permit; or
- (b) an application of a kind mentioned in Part 4 Division 2; or
- (c) an inspection of a prescribed kind.

131. Inspection, copies of building records

(1) In this section —

building record means a document mentioned in section 130;

interested person means —

- (a) an owner of the building or incidental structure to which the building record relates; or
- (b) a person who has the written consent of an owner mentioned in paragraph (a) to inspect, or receive a copy of, a building record relating to the owner; or
- (c) a person, or a person belonging to a prescribed class of persons.

(2) A permit authority may, on application by an interested person and on payment of the prescribed fee, if any —

- (a) allow the interested person to inspect a building record; and
- (b) provide to the interested person a copy of a building record.

Documents currently prescribed under Regulation 12 of the Building Regulations 2012:

P 9

DA-103 Inspection and Copies of Building Information

Delegator:	Council as permit authority	Delegation No. DA – 103
Process Owner:	Director Urban Planning	Last Review Date: 15 June 2021
Description	Authority to: <ol style="list-style-type: none"> 1. provide a copy of a permit, building approval certificate or building order kept in the register specified in section 128, and 2. allow an <i>interested person</i> (as defined) to inspect and be provided with a copy of a building record as defined in section 130. 	
Statutory Power or Duty Delegated	<i>Building Act 2011</i> Section 129(2) – Copies of permits, certificates in register Section 131(2) – Inspection, copies of building records	
Statutory Power to Delegate	<i>Building Act 2011</i> Section 127(1) A local government may delegate any of its powers or duties as a permit authority. Section 127(3) A local government may only delegate its powers or duties to a local government employee	
Delegated to	Chief Executive Officer	
Statutory Power to sub delegate:	<i>Building Act 2011</i> Section 127(6A) The CEO of a local government may delegate to any other local government employee a power or duty that has been delegated to the CEO.	
Sub Delegated to:	Director Urban Planning Manager Building and Environmental Health Services Building Services Coordinator Senior Building Surveyor	
Conditions on Delegation/Sub Delegation		
Compliance links	Building Regulations 2012 Regulations 12, 13	
Policy Reference	Nil	
Recordkeeping	Records of exercise of delegated authority and associated contracts to be retained in ECM index: COUNCIL ADMINISTRATION – Delegated Authority – Exercises 5.119 P PLANNING AND DEVELOPMENT – General Enquiries – 20.115 10D	
Period of Validity	Ongoing	
Adopted by Council	Special Meeting of Council	27 March 2013 P12/3298
Substantive Amendments	Ordinary Meeting of Council	16 June 2020 M20/5749 Amended to include authority under s.129 to provide copies of documents on register.

8.3.1 *Mr McLerie, Bicton, representing the City of Melville Residents and Ratepayers Association (Inc) continued*

P 11

Question 3

The Community Annual Report does provide some statistics on FOI applications received by the City, though some key performance metrics are missing, so please confirm;

- a. What number and percentage of the FOI applications were fully resolved (ie do not go to internal review) and were delivered within the legislated 45 day or 30 day time periods.*
- b. What number and percentage of the requests for internal review were fully resolved (ie do not go to external review) were delivered within the legislated 15 day time period.*
- c. As of 30 June 2022, what were the ages of any unresolved FOI applications at the external review stage; how many were over 6, 12, 18 or 24 months since the date of the initial FOI application lodged with the City?*

Response

The City maintains statistical performance information in accordance with the FOI Act (1992) and are provided to the Office of the Information Commissioner on an annual basis. The Information Commissioner reports to parliament on agency performance and publishes comparative information for all agencies including Local Governments. The information contained in the Annual Report (Page 74) is the information as prescribed for reporting to the Office of the Information Commissioner.

Resolution of any matter within the FOI Act (1992) is not purely determined by timeframe with agreements with applicants to vary timeframes being reached for both initial decisions and reviews. Where extensions to timeframes are agreed the details are not statistically held. An analysis has identified 16 decisions that exceeded the permitted period for an initial application with the applications still being determined. The statistical information available identifies 9 of 12 internal review applications being finalised within the permitted period. Where an application is itself still pending, the internal review may itself be delayed ensuring a clear decision.

Where an applicant is not satisfied with a notice of decision or an internal review decision, they are not required to advise the City if they have referred a matter to external review.

The City does not hold any information on the status or progress of external review requests. This is the responsibility of the Office of the Information Commissioner.

Question 4

The Annual Financial Report makes mention of the FMARC and Governance Committees on page 13, but considering the legislated (LG ACT Part 7.1.A Audit Committee, first legal delegated authority) requirement of Local Governments to establish an Audit Committee, as we see embedded in our FMRAC committee along with the others FMARC assigned authorities and duties provided in the Terms of Reference/Charter, this FMARC committee, together with the Governance Committee with similar Term of Reference/Charters, are 'hidden away' and contrary to what we see in other WA councils. Denying public access and participation in such committees, contrary to the legislated intentions and the principles of transparency, is behaving in a manner that can best be described as 'clandestine council meetings', so we ask when is Council going to open Council committees to the public and publish the agenda, minutes and recordings of those meetings?



2 December 2021

Enquiries: bruce.taylor@melville.wa.gov.au

Our Ref: 20210010

P 12

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXXXXXXXXXX

Freedom of Information Act 1992 (FOI Act) Internal Review Requests of 17 November 2021. Date of Application 2 October 2021 - 12 Beach St Bicton Development Applications (incl. DA-2020-19)

I refer to your 17 November 2021 email requesting an internal review of the last Notice of Decision issued on 16 November 2021.

I advise that in this instance, I am the appointed officer in accordance with s41 of *the Act* to conduct the review on behalf of the City. Section 43 of the Act provides that under the review process I can only **confirm, vary or reverse** the original decision.

In your request for an internal review you indicate that documents may not have been provided up to and including the date of the decision, being 16 November 2021. Documents that are within the scope of an application and any internal review are up to and including the date of an application, which in this case is 2 October 2021.

I advise that in this instance I **confirm** the Coordinators decisions in the first instance to provide edited access to some documents in accordance with Clause 3(1) of Schedule 1 of the *FOI Act* and in the second instance to refuse you access to others under S26(1) of the *FOI Act* because these do not exist or cannot be found.

I concur with the FOI Coordinator's search methods including requesting individuals of provide information together with the search parameters used to source other system information using the development approval as a keyword that no other document shave been found.

If you are not satisfied with this internal review decision, you have the right to lodge a complaint with the Information Commissioner seeking an external review of my decision.

Thursday, 28 March 2019
Enquiries: Louis Hitchcock – 9364 0625
Louis.hitchcock@melville.wa.gov.au
Our Ref: 5023427

P 13

~~XXXXXXXXXXXXXXXXXXXX~~
~~XXXXXXXXXXXXXXXXXXXX~~

Application for Internal review - Freedom of Information Act (FOI Act)

Dear ~~XXXXXXXXXXXXXXXXXXXX~~,

I refer to your application for Internal Review dated 17 March 2019 concerning your FOI Act application dated 29 January 2019. Your request is for a review of the FOI Decision made by the City's Freedom of Information Coordinator, Mr Peter Meyerkort, dated 14 March 2019.

In that decision access was refused to Document 8 as Privileged under Clause 7(1) of Schedule 1 of *the Act* and access refused to other documents as they were "not found" s26(1).

I Louis Hitchcock, am the appointed officer in accordance with Section 41 of *the Act* to conduct the review on behalf of the City and that Section 43 of *the Act* provides that under the review process I can only **confirm, vary or reverse** the original decision. This review is of the decision made by Mr Meyerkort and not of additional comments made by you that were an attachment to your 17 March 2019 request for the internal review.

I agree with and confirm the decision in relation to Document 8, that the document is Privileged, under Clause 7(1) of Schedule 1 of *the Act*, because the advice with the document is from a qualified legal practitioner who is the City's external legal counsel.

In relation to the email dated 16 December 2017 3:48PM Subject: FW: City of Melville – "Council caught in political web" – The Weekend West Paul Murray article (page 87) I have undertaken a further search of the City's email archival system. I have searched under

- the names of the addresser and addressee of the email
- the email Subject index title of the email and
- variations of that email Subject title.

No documents were discovered as a result of this search.

Also I confirm that the source of this document cannot be verified and I draw this conclusion by the scan reference "CC-SVR-PRT Canon IR-ADVC5240UFR II-CEO-Office (Output6) 4005 001 (2).pdf". This is a file name automatically allocated by the photocopier in the CEO's office. This is also supported by a search of City information systems which do not indicate an incoming digital copy of this document into the City's record systems.

From my search and for this reason, I agree with and confirm the s26(1) decision that apart from the scanned copy of the above document, no other documentation could be found.

17 December 2012

Enquiries: Louis Hitchcock – 9364 0625

Our Ref: 2893163

Your Ref:

NNNNNNNNNNNNNNNNNNNNNNNNNNNNNN
NNNNNNNNNNNNNNNNNNNNNNNNNNNNNN
NNNNNNNNNNNNNNNNNNNNNNNNNNNNNN

P 14

Dear NNNNNNNNNNNNNNNNNNNNNNNNNNNNN

Notification of Outcome of Internal Review of Decision (under Freedom of Information Act 1992 Section 43)

I refer to your application received on 9 December 2012 for a review of our FOI decision dated 6 December 2012 regarding your request for access to “dividing fence between 14 (14A) Beach St Bicton specifically DA-2005-550, BA-2005-606 or any other building approvals related to the fence”.

I advise that I am the appointed officer in accordance with Section 41 of *the Act* to conduct the review on behalf of the City and that Section 43 of the Act provides that under the review process I can only **confirm, vary or reverse** the original decision.

A review has been conducted and in accordance with Section 43 of *the Act* I confirm the initial decision to provide edited access to the documents requested.

Only your details which may have been contained in the documents provided would have been supplied. I confirm as correct the removal of information relating to other parties and for the reasons given to you previously.

I also confirm the initial decision to refuse to provide you with copies of plans due to copyright. I note that arrangements were made with you to inspect the plans and that you attended the City of Melville Civic Centre at 1:30pm on 11 December 2012 and viewed the plans, which satisfies the requirements of *the Act*.

I do comment that access to plans is only provided on the basis that the person given access does not have sight of any information which is personal or may be considered to be a possible breach of security of the owners of the property (as per Clause 5(1)(f) of Schedule 1 of *the Act*).

The additional information requested in your letter dated 9 December 2012 is outside the scope of your original application so I am unable to consider it as part of the internal review process.

