Office of the Information Commissioner
Queensland

Decision and Reasons for Decision

Citation:	***Angelopoulos and Mackay Hospital and Health Service* [2016] QICmr 47 (8 November 2016)**
Application Number:	**312779**
Applicant:	**Angelopoulos**
Respondent:	**Mackay Hospital and Health Service**
Decision Date:	**8 November 2016**
Catchwords:	**ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL TO DEAL WITH ACCESS APPLICATION - EFFECT ON AGENCY'S FUNCTIONS - applicant sought access to documents relating to his late mother - agency refused to deal with the application under section 41 of the *Right to Information Act 2009* (Qld) - whether work involved in dealing with the application would, if carried out, substantially and unreasonably divert resources of the agency from their use by the agency in performing its functions - section 41 of the *Right to Information Act 2009* (Qld)**

REASONS FOR DECISION

Summary

1. The applicant applied to the Mackay Hospital and Health Service (**Hospital**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to all documents relating to his late mother, covering an 11 year period.

2. The Hospital refused to deal with the access application on the basis that the work involved in dealing with it would substantially and unreasonably divert the Hospital's resources from their use in the performance of the Hospital's functions.[1]

3. The applicant applied to the Office of the Information Commissioner (**OIC**) for an external review of the Hospital's decision.

4. For the reasons set out below, I affirm the Hospital's decision.

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

Background

5. The **Original Scope** of the applicant's access application sought all documents[2] relating to his late mother, covering the period from 2005 to 18 February 2016.[3]

6. In March 2016, the Hospital notified the applicant, under section 42 of the RTI Act, that it intended to refuse to deal with the access application under section 41 of the RTI Act (**Notice of Intention to Refuse to Deal**).[4] The Hospital invited the applicant to either confirm or narrow the scope of the access application.

7. The applicant confirmed[5] the Original Scope.

8. As noted in paragraph 2 above, the Hospital refused to deal with the access application, on the basis that that the work involved in dealing with it would substantially and unreasonably divert the Hospital's resources from their use in the performance of the Hospital's functions.

9. OIC consulted with the applicant in April 2016 about reducing the scope of the access application from the Original Scope to a narrower form. The applicant[6] proposed a narrowed scope for the access application,[7] which sought specific categories of information covering a shorter time period (**First Narrowed Scope**).[8]

10. In May 2016, OIC asked the Hospital[9] whether it would agree to process the access application with the First Narrowed Scope. The Hospital did not agree to process the access application with the First Narrowed Scope and submitted[10] that, based on its assessment that the majority of the information responsive to the Original Scope fell within the First Narrowed Scope, the work involved in processing the access application remained a substantial and unreasonable diversion of its resources. The Hospital instead suggested a different scope[11] (**Hospital's Scope**) that it would agree to process as a new access application.

11. Given the Hospital's response to the First Narrowed Scope, OIC invited the parties to consider further options to informally resolve the review. OIC asked the applicant[12] to advise whether he would accept the Hospital's proposal and make a new application for documents falling within the Hospital's Scope, or wished continue with the external review.

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[2] By email dated 17 February 2016, the applicant informed the Hospital that he sought access to all documents, not just medical records, and that this, in accordance with the definition of "document" in schedule 1 of the *Acts Interpretation Act 1954* (Qld), would include: (a) any paper or other material on which there is writing; (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for a person qualified to interpret them; and (c) any disc, tape or other article or any material from which sounds, images, writing or messages are capable of being produced or reproduced (with or without the aid of another article or device).

[3] A valid access application was received by the Hospital on 18 February 2016.

[4] By letter emailed to the applicant on 2 March 2016.

[5] By email to the Hospital dated 3 March 2016.

[6] By his solicitor.

[7] By a letter dated 29 April 2016, sent by the applicant's solicitor.

[8] Being '*Any and all documents held by the Mackay Hospital and Whitsunday Proserpine Health Service (also known as the Proserpine Hospital) in connection with or relating in any way to* [the applicant's late mother], *from April 2014 to current (i.e.* ***2 years****), including, but not limited to, the following documents: (a) Medical reports; (b) Nurse reports/observations/charts; (c) Discharge summaries; (d) Any correspondence between doctors, nurses or other employees of Queensland Health/State of Queensland; (e) Discs, tapes or other articles or any material from which sounds, images, writing or messages are capable of being reproduced; (f) Radiology/Xrays; and (g) Correspondence from any external bodies, such as Queensland Police Service and/or the Office of the Central Coroner*'. (emphasis added)

[9] By email dated 4 May 2016.

[10] By email dated 6 May 2016.

[11] Being the discharge summaries relating to the applicant's late mother for the 2 year period nominated in the First Narrowed Scope.

[12] By letter to the applicant's solicitor dated 18 May 2016, in which OIC confirmed that the Hospital did not accept the applicant's informal resolution proposal based on the First Narrowed Scope.

12. In June 2016, the applicant conveyed to OIC[13] a further proposal to narrow the scope of the access application (**Second Narrowed Scope**).[14] OIC asked the Hospital whether it could process an application for the Second Narrowed Scope. In July 2016, the Hospital agreed[15] that it could process the Second Narrowed Scope as a new application. In August 2016, OIC queried whether Hospital's position regarding the Second Narrowed Scope was contingent on the applicant making a new application and the Hospital confirmed that this was the case.

13. In August 2016, the applicant notified OIC[16] that he considered that the Hospital should be required to deal with the Second Narrowed Scope under his existing application—that is, on external review—and that he would not informally resolve the review by proceeding with a new application for the Second Narrowed Scope.

14. Significant procedural steps relating to the external review are set out in the Appendix.

Reviewable decision

15. The decision under review is the Hospital's decision dated 7 March 2016.

Evidence considered

16. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).

Issue for determination

17. The issue for determination in this review is whether the work involved in dealing with the applicant's access application seeking information falling within the Original Scope would, if carried out, be a substantial and unreasonable diversion of the Hospital's resources.

18. The applicant provided OIC with a number of submissions in support of his case.[17] I have carefully considered those submissions. I have summarised and addressed the applicant's submissions below to the extent they are relevant to the issue for determination.[18]

19. The applicant's submissions also state his objection to the Hospital requiring him to make a new application as the basis for informal resolution options proposed by the Hospital during the review.[19] The applicant's submissions in this regard stem from the applicant's belief that because:

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[13] By email dated 7 June 2016.
[14] Being '*Any and all documents held by the Mackay Hospital and Whitsunday Proserpine Health Service (also known as the Proserpine Hospital) in connection with or relating in any way to* [the applicant's late mother], *from 1 August 2015 to 30 January 2016 (i.e. **6 months**), including, but not limited to, the following documents: (a) Medical reports; (b) Nurse reports/observations/charts; (c) Discharge summaries; (d) Any correspondence between doctors, nurses or other employees of Queensland Health/State of Queensland; (e) Discs, tapes or other articles or any material from which sounds, images, writing or messages are capable of being reproduced; (f) Radiology/Xrays; and (g) Correspondence from any external bodies, such as Queensland Police Service and/or the Office of the Central Coroner*'. (emphasis added)
[15] By email dated 22 July 2016.
[16] By email dated 16 August 2016 and confirmed in a conversation with an OIC staff member on 17 August 2016.
[17] As set out in the Appendix.
[18] The applicant's submissions also raise the applicant's concerns about his late mother's care and the Hospital's record keeping systems and outline the separate complaint processes he has pursued or is pursuing. These concerns and separate complaint processes are not relevant to the issue for determination in this review and are not dealt with in these reasons for decision.
[19] The 'Background' section of these reasons for decision sets out the steps that were taken in an effort to informally resolve this review.

- he made an access application, paid an application fee and received no information from the Hospital; and
- the Hospital agreed on external review it could process an application for the Second Narrowed Scope,

the Hospital should be required to process his existing access application, as narrowed to the Second Narrowed Scope.

20. As explained to the applicant,[20] the RTI Act requires OIC to identify opportunities for early resolution and to promote settlement of external review applications.[21] To this end, OIC invited the parties to consider options to informally resolve the review. It was in the context of exploring these informal resolution options that the following proposals were made in turn:

a) the applicant proposed the First Narrowed Scope
b) the Hospital proposed processing a new application regarding the Hospital's Scope
c) the applicant proposed the Second Narrowed Scope
d) the Hospital proposed processing a new application for the Second Narrowed Scope.

21. As the applicant did not wish to accept the proposal at d) above, the external review was not informally resolved. The applicant rejected this proposal as he considers that the Hospital should be required to deal with the Second Narrowed Scope under his existing application—that is, the Hospital should be required to accept his proposal at c) above.[22] However, OIC cannot require a review participant to comply with an informal resolution proposal made by another party. By its nature, informal resolution involves the agreement of the participants. In the absence of such agreement, the issue for determination in this review remains whether the Hospital may refuse to deal with the access application for documents falling within the Original Scope. The steps taken to informally resolve the review are not relevant to this issue and are not dealt with further in these reasons.

Relevant law

22. Parliament intends that an agency receiving an access application will deal with that application unless dealing with the application would, on balance, be contrary to the public interest.[23] The limited circumstances in which dealing with an access application will be contrary to the public interest are set out in sections 40, 41 and 43 of the RTI Act.

23. Relevantly, section 41(1)(a) of the RTI Act permits an agency to refuse to deal with an access application if the agency considers the work involved in dealing with the application would, if carried out, substantially and unreasonably divert the resources of the agency from their use by the agency in the performance of its functions.

24. Before making a decision to refuse to deal with an application, an agency must satisfy certain procedural prerequisites.[24] Relevantly, an 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;[25] and

[20] In letters dated 2 and 16 August 2016.
[21] Section 90 of the RTI Act.
[22] By email dated 16 August 2016 and confirmed in a conversation with an OIC staff member on 17 August 2016.
[23] Section 39 of the RTI Act.
[24] Section 42 of the RTI Act.
[25] Section 42(1)(b) of the RTI Act.

- 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.[26]

25. 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 period[27] 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; and

    - 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; and
        - if the applicant fails to consult[28] after being given the notice, the applicant is taken to have withdrawn the application at the end of the prescribed consultation period.

26. In deciding to refuse to deal with an application on this basis, an agency:

    (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 access;[29] and

    (b) must have regard to the resources that would be used for:[30]

        - 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.

27. Whether the work involved in dealing with an application would, if carried out, substantially and unreasonably divert the resources of an agency is a question of fact in each individual case.[31] The volume of documents is not the only consideration. In each case, it is necessary to assess the work required to deal with the application in the context of the agency's other functions.

Procedural prerequisites

28. The Notice of Intention to Refuse to Deal complies with the requirements of the RTI Act, as set out in paragraph 25 above. In particular, the notice stated an intention to refuse

[26] Section 42(1)(c) of the RTI Act.
[27] 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).
[28] 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.
[29] Section 41(3) of the RTI Act.
[30] Section 41(2) of the RTI Act.
[31] *Davies and Department of the Prime Minister and Cabinet* [2013] AICmr 10 (22 February 2013) at [28].

to deal with the applicant's application,[32] gave the applicant a reasonable opportunity to consult with the Hospital[33] and stated the effect of sections 42(2) to (6) of the RTI Act.[34]

29. The Hospital, as far as was reasonably practicable, also gave the applicant information that would help the making of an application in a form that would remove the ground for refusal. In particular, the Notice of Intention to Refuse to Deal suggested a number of ways the Original Scope could be narrowed.[35]

30. On this basis, I am satisfied that the Hospital has fulfilled the relevant procedural requirements set out in paragraph 24 above.

Substantial and unreasonable diversion of resources

31. There is no information before me to suggest the Hospital has had regard to the factors referred to in paragraph 26(a) above.

What work would be involved in dealing with the access application?

32. The Hospital estimates that there are in excess of 4300 pages that respond to the access application and that dealing with the access application would require:

- 27 hours to search, retrieve and copy relevant documents from within the Hospital's records
- 72 hours to examine the estimated 4300 pages[36]
- 36 hours consultation with approximately 25 third parties
- 72 hours to mark up documents to reflect what information the Hospital considers can be released;[37] and
- 8 hours to prepare the written decision, including a statement of reasons and a schedule of documents.

33. Generally, the applicant does not accept the Hospital's processing estimate. More particularly, the applicant submits[38] that:

- OIC should conduct a check of the Hospital's computer system to confirm the Hospital's estimate
- OIC or some other external body should conduct an audit of the processing estimate (or aspects of it) to verify its accuracy; and
- statutory declarations should be obtained from the Hospital to verify the processing estimate.

34. I am satisfied that, while an agency is required to consider how much time an access application is likely to take to process, a precise assessment is not required. As such an assessment may, in itself, substantially and unreasonably divert the agency's resources, an estimate is acceptable.[39] I also consider that, in conducting a merits review of the

[32] In the Notice of Intention to Refuse to Deal, the Hospital's decision-maker stated '*… I have formed the view that the work involved in dealing with your application would substantially and unreasonably divert our agency's resources. I am writing to consult with you about this and give you an opportunity to alter or clarify your application. If your application is not changed then I intend to refuse to deal with it*'.
[33] The Notice of Intention to Refuse to Deal sought a response from the applicant by 23 March 2016, which was a period in excess of the standard 10 business day '*prescribed consultation period*' referred to in section 42(6)(a) of the RTI Act.
[34] Annexure B to the Notice of Intention to Refuse to Deal summarised the effects of these provisions.
[35] Including by reducing the date range or by excluding certain categories of documents.
[36] Based on examining 4300 pages, at 60 pages per hour being examined.
[37] Based on marking up 4300 pages, at 60 pages per hour.
[38] In conversations with an OIC staff member on 7 April 2016, 8 April 2016 and 17 August 2016. OIC requested that the applicant further enunciate these submissions in writing but the applicant has provided no written submissions in this regard.
[39] Refer to *McIntosh v Victoria Police (General)* [2008] VCAT 916 at paragraph [10].

Hospital's decision, it is necessary for me to determine whether the Hospital's processing estimate is reasonable.

35. In respect of the Hospital's estimate that in excess of 4300 pages respond to the access application and it would take 27 hours to search, retrieve and copy relevant documents, the applicant submits that relevant information could easily be transferred from the Hospital's computer system onto a disc. OIC requested further information from the Hospital about this submission. In response, the Hospital confirmed that:

- documents responsive to the access application were not contained in one computer system but would be located at multiple locations[40] and would be in both electronic[41] and hard copy form; and
- the Hospital's email records would also need to be searched.[42]

36. On the information before me, I accept that the Hospital's records are stored in this manner. In these circumstances, I consider that the Hospital's estimates that 4300 pages respond to the access application, and that it would take 27 hours to search, retrieve and copy relevant documents, are reasonable.

37. In respect of the Hospital's estimate that it would take 72 hours to examine responsive documents, a further 72 hours to redact information that the Hospital considers should be refused and 8 hours to prepare a written decision, the applicant submits that, as he requested all documents relating to his late mother, there is no need for the Hospital to peruse anything.

38. Under the RTI Act, a person's right to be given access to documents of an agency is not absolute; rather, it is a right of access unless access would, on balance, be contrary to the public interest.[43] The RTI Act sets out some limitations on the right of access, including grounds for refusal of access.[44] Given the nature of the right to access to documents under the RTI Act, after retrieving the documents, the Hospital would need to examine them to confirm their relevance to the scope of the application, and to determine if any grounds for refusal applied to any of the information in them. I acknowledge the applicant's submissions regarding the circumstances of this particular external review, and his view that such circumstances obviate the need for the Hospital to peruse any documents they locate.[45] However, the RTI Act's requirements regarding relevance and the possible application of grounds of refusal arise for consideration, regardless of the circumstances of any particular review.

39. The Hospital has estimated that 25 third parties would require consultation, and the consultation process[46] would take 36 hours. I have carefully considered the Hospital's submissions regarding consultation and accept that, in light of the nature of some of the

[40] The Hospital explained that the applicant's late mother was treated at a number of hospital facilities that the Hospital has responsibility for and that the responsive medical records at those facilities were estimated to be in excess of 1600 pages. Additionally, the Hospital explained that information relating to complaints made about the medical treatment of the applicant's late mother would be recorded in a number of locations and would not be confined to a complaints file.
[41] The Hospital explained that electronic records were contained on a number of separate electronic systems, rather than one central system for electronic records.
[42] In this regard, the Hospital estimated that in excess of 1500 emails would be responsive to the access application, which would include information regarding complaints made about the medical treatment of the applicant's late mother.
[43] Section 44 of the RTI Act. This is referred to as the 'pro-disclosure bias' and is the starting point in deciding access to information under the RTI Act.
[44] Set out in section 47(3) of the RTI Act.
[45] In particular, the applicant's submissions regarding his late mother's death while under the Hospital's care and noting the applicant's filial relationship with her. I note that these submissions may possibly raise public interest considerations favouring disclosure that require consideration when applying the public interest test under section 47(3)(b) of the RTI Act—however, the issue for determination in this review involves refusal to deal with the applicant's application, not refusal of access to documents responsive to that application.
[46] That is, consulting and considering any objections raised.

information responsive to the access application (that is, information regarding complaints about the medical treatment of the applicant's late mother, rather than her medical treatment per se), it appears reasonable that consultation with a number of third parties would be required.[47]

Would the impact on the Hospital's functions be substantial and unreasonable?

40. Yes. I am satisfied that processing the access application would substantially and unreasonably impact the Hospital's functions for the reasons set out below.

Would the work substantially divert the Hospital's resources?

41. Based on the Hospital's estimate, after spending 27 hours locating and collating documents, the process of assessing and marking up those located documents would take 144 hours. This equates to approximately 23.5 working days for one full time decision-maker working exclusively on the access application. Once the time required to consult with third parties and prepare a written decision is also taken into account, I am satisfied that the time required to deal with the application would well exceed the 25 business day processing period usually allowed for processing an application[48] to the exclusion of all other functions of that officer.

42. I have also taken into consideration that:

- the access application seeks information covering a substantial timeframe (11 years) and is very widely framed; and
- searches of multiple locations and of both hard copy and electronic systems would be required, including archived information.

43. Given the Hospital's estimate of the time required to deal with the application, and considering the Hospital's capacity to devote resources to processing applications under the RTI Act and *Information Privacy Act 2009* (Qld) relative to its other functions, I am satisfied that the work involved in dealing with the access application, in particular taking a decision-maker offline for such a long period to examine and mark up documents, would, if carried out, substantially divert the resources of the Hospital from their use in the performance of its functions.

Would the work unreasonably divert the Hospital's resources?

44. 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.[49]

45. Factors that have been taken into account in considering this question include:[50]

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[47] Under section 37 of the RTI Act. Under this section, consultation is required to be undertaken with a third party regarding disclosure of information which may reasonably be expected to be of concern to that third party.
[48] Under section 18 of the RTI Act, the processing period for an access application is 25 business days. Whilst this period can effectively be extended in certain circumstances as certain periods do not count as part of the processing period, it is relevant to have regard to this timeframe when considering whether the time involved in processing a single access application will have a substantial impact on an agency's resources.
[49] *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].
[50] *Smeaton* at [39].

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 request
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 applications
d) the agency's estimate of the number of documents affected by the request, and by extension the number of pages and the amount of officer time
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.

46. The above factors relating to the applicant, and then those relating to the agency, are considered below.

Factors regarding applicant

Repeat applicant

47. There is no evidence before me that the applicant is a repeat applicant to the Hospital.

Sufficiently precise terms

48. As noted in paragraph 42 above, the application is very widely framed. The applicant confirmed to the Hospital[51] that he sought access to **all** documents, not just medical records, relating to his late mother covering an 11 year period and that documents would include all written documents, as well as documents containing sounds, images, writings and messages capable of being produced or reproduced.

49. Given the wide scope of the application, I do not consider that there is a sufficiently precise description to enable the Hospital, as a practical matter, to locate the documents sought within a reasonable time and with the exercise of reasonable effort.

Cooperation

50. On the information before me, I do not consider that the applicant took a cooperative approach to negotiating a manageable scope with the Hospital. In particular, the Notice of Intention to Refuse to Deal suggested a number of ways in which the applicant could narrow the scope of the access application. I consider the applicant was in a position to narrow the access application at that time but did not agree to amend the scope of the access application.

[51] By email dated 17 February 2016 and the 3 March 2016 email responding to the Notice of Intention to Refuse to Deal.

Public interest

51. The applicant has indicated to OIC on a number of occasions that he is seeking the information for specific purposes. While I acknowledge the applicant's stated purposes, I cannot take this aspect of the applicant's submissions into account.[52]

52. However, in accordance with the factors noted above, I am able to consider the public interest in disclosure of the types of documents which are likely to be responsive to the access application. In this regard, I acknowledge that I do not have access to the documents requested under the access application, in order to make an assessment concerning the public interest in their disclosure. This is ordinarily the case when reviewing a matter of this kind. In such circumstances, my views are necessarily qualified, given they are based on my understanding of the nature of such documents, based on information provided in the parties' submissions, rather than a thorough awareness of their contents. Noting this qualification, I consider there is some public interest in the applicant having access to his mother's personal information, given his filial relationship with her and that her death occurred while she was under the Hospital's care. I also consider the access application may relate to matters which could potentially enhance the accountability and transparency of the Hospital. However, it also appears that such public interest may apply mainly in terms of the applicant and his family and may be of limited interest to all or a substantial segment of the community.[53] On this basis, I do not consider it likely that processing the access application will further the public interest to any significant degree.

Factors regarding agency

Reasonableness of initial assessment

53. I am satisfied that the Hospital's initial assessment of the matter, as set out in the Notice of Intention to Refuse to Deal, was reasonable. In this regard, I consider that the Hospital's suggestions for narrowing the scope of the application were practical and constructive.

Accuracy and certainty of estimate

54. As noted at paragraph 36 above, based on information provided by the Hospital, I consider the Hospital's estimate that 4300 pages are responsive to the access application is reasonable.

55. While I consider the Hospital's estimate is reasonable, and the best estimate that it is able to give, there is some uncertainty to it due to the wide framing of the access application. In particular, given the applicant is seeking all documents relating to his mother for an 11 year period, whether in written form or otherwise, 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.

[52] Given section 41(3) of the RTI Act, which provides that an agency 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 access.
[53] I also understand from the applicant's submissions that a coronial inquest was held or is being held into the death of his late mother.

Statutory time limit and manageability of request

56. The standard '*processing period*' for making a decision under the RTI Act is 25 business days.[54] Based on the Hospital's estimate, processing the applicant's application would exceed this period, most likely by a number of days.

57. In determining whether dealing with the access application is reasonably manageable for the Hospital, I am required to give due, but not conclusive, regard to the size of the agency and the extent its resources are usually available for dealing with access applications. In this case, if a decision-maker worked full-time on the application, and performed no other work on any other matters over this period, the time required to process the application would nevertheless exceed 25 business days. I consider that this would significantly impact the Hospital's ability to process other applications and attend to other Hospital functions. Accordingly, for the Hospital, I do not regard this amount of work as reasonably manageable.

Finding on reasonableness

58. Based on each of the above factors, I am satisfied that the work involved in processing the access application would, if carried out, be an unreasonable diversion of the Hospital's resources in the circumstances.

Conclusion

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

- the Hospital satisfied the procedural steps set out in section 42 of the RTI Act
- the work involved in dealing with the access application would, if carried out, substantially and unreasonably divert the Hospital's resources from their use in the Hospital's functions; and
- accordingly, the Hospital was entitled to refuse to deal with the access application under section 41(1)(a) of the RTI Act.

DECISION

60. For the reasons set out above, I affirm the Hospital's decision to refuse to deal with the access application under section 41(1)(a) of the RTI Act.

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

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Assistant Information Commissioner Corby

Date: 8 November 2016

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

APPENDIX

Significant procedural steps

Date	Event
18 February 2016	The Hospital received the access application. It sought all documents relating to his late mother covering a specified period (**Original Scope**).
2 March 2016	The Hospital issued a notice under section 42 of the RTI Act to notify the applicant that it intended to refuse to deal with the access application under section 41 of the RTI Act and invited the applicant to either confirm or narrow the Original Scope of the access application.
3 March 2016	The applicant confirmed the Original Scope of the access application.
7 March 2016	The Hospital issued its decision.
8 March 2016	**OIC received the external review application.**
9 March 2016	OIC notified the Hospital that the external review application had been received and requested relevant procedural information.
15 March 2016	OIC received the requested information from the Hospital.
16 March 2016	OIC notified the applicant and the Hospital that it had accepted the external review application.
7 April 2016	OIC conveyed a preliminary view to the applicant that the Hospital was entitled to refuse to deal with the application and invited him to provide, by 21 April 2016, submissions proposing a narrowed scope for the access application if he accepted the preliminary view, or supporting his case if he did not accept the preliminary view.
20 April 2016	The applicant's lawyer spoke with an OIC staff member and requested an extension of time to respond to OIC.
26 April 2016	OIC granted an extension to 29 April 2016 for the applicant to respond to OIC.
29 April 2016	OIC received a proposed narrowed scope for the access application from the applicant's lawyer (**First Narrowed Scope**).
4 May 2016	OIC asked the Hospital if it could process the applicant's First Narrowed Scope.
6 May 2016	OIC received the Hospital's notification that it could not process an application with the applicant's First Narrowed Scope. The Hospital suggested an alternative scope (**Hospital's Scope**) that it could process as a new application.
18 May 2016	OIC notified the applicant's lawyer of the Hospital's response to the applicant's First Narrowed Scope and its proposal that the applicant make a new application for documents falling within the Hospital's Scope. OIC asked the applicant's lawyer to confirm whether the applicant wished to proceed with Hospital's proposal or provide submissions addressing OIC's preliminary view regarding the Original Scope by 31 May 2016.
1 June 2016	OIC again asked the applicant's lawyer to confirm whether the applicant wished to proceed with the Hospital's proposal or provide submissions addressing OIC's preliminary view by 8 June 2016.
6 June 2016	The applicant spoke with an OIC staff member to advise his lawyer was no longer representing him in the review. The applicant requested copies of OIC's correspondence with his lawyer. He also indicated that he did not accept the scope suggested in the Hospital's proposal, but he may wish to propose an alternative scope.

7 June 2016	OIC provided the applicant with a copy of its 18 May 2016 letter to his lawyer and asked the applicant to confirm by 13 June 2016 the terms of any alternative scope he wished to propose. OIC received the applicant's proposal for an alternative scope (**Second Narrowed Scope**).
8 June 2016	OIC notified the Hospital that the applicant did not accept the Hospital's proposal regarding the Hospital's Scope and asked if the Hospital could process an application for the Second Narrowed Scope.
22 July 2016	OIC received the Hospital's notification that it agreed to process a new application with the applicant's Second Narrowed Scope. An OIC staff member spoke briefly to the applicant to advise the applicant of the Hospital's response but the applicant indicated that he could not discuss the review at that time and would call to discuss the review on 25 July 2016.
27 July 2016	An OIC staff member spoke briefly to the applicant but the applicant indicated he could not discuss the review until a later time.
28 July 2016	An OIC staff member spoke briefly to the applicant but the applicant indicated he could not discuss the review until a later time.
29 July 2016	An OIC staff member spoke to the applicant to confirm the Hospital's agreement to process his Second Narrowed Scope as a new application.
2 August 2016	OIC confirmed to the applicant the Hospital's agreement to process his Second Narrowed Scope and OIC's preliminary view regarding the Original Scope in his access application. OIC asked the applicant to confirm whether he wished to proceed with a new application for the Second Narrowed Scope or provide submissions addressing OIC's preliminary view by 16 August 2016.
16 August 2016	OIC received the applicant's request for the Hospital to process his existing access application with his Second Narrowed Scope.
17 August 2016	OIC confirmed to the applicant that the Hospital had agreed to process his Second Narrowed Scope as a new application and that if the applicant did not wish to proceed with the new application, OIC was unable to further consider the informal resolution option concerning this scope. OIC asked the applicant to provide submissions addressing OIC's preliminary view by 23 August 2016. The applicant spoke with an OIC staff member to advise he did not accept that the Hospital was able to request a new application for processing his Second Narrowed Scope and to reiterate his request for the Hospital to process his existing access application with that scope.
18 August 2016	An OIC staff member spoke with the Hospital, which confirmed the Hospital's agreement to process the applicant's Second Narrowed Scope was on the basis that it was a new application. OIC advised the Hospital that, in these circumstances, the applicant did not wish to make a new application.
19 August 2016	OIC confirmed its preliminary view regarding the Original Scope in the applicant's access application to the applicant and invited the applicant to provide submissions addressing the preliminary view by 23 August 2016. The applicant asked OIC for an extension of time to make submissions and provided reasons to support his request. OIC granted an extension to 20 September 2016 for the applicant to provide submissions addressing the preliminary view. The Right to Information Commissioner decided to suspend the external review until 20 September 2016.
20 September 2016	OIC ended the suspension of the external review.