

Copland and Queensland Health & Ors

(S 111/98-S 118/98, 5 August 1998, Information Commissioner)

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

1. On 22 July 1998, I received from Dr Copland by facsimile transmission a letter (erroneously dated 31 May 1998) applying for review of a deemed refusal of access by Queensland Health to documents requested in Dr Copland's FOI access application dated 14 April 1998.
2. Preliminary inquiries of Queensland Health established that the FOI access application had (early in June) been part-transferred, in accordance with s.26 of the *Freedom of Information Act 1992 Qld* (the FOI Act) to eight other agencies. One of those, the Royal Brisbane District Health Service gave Dr Copland a notice of decision dated 11 June 1998. The other seven agencies (which are listed above), and Queensland Health, have exceeded the time frames stipulated in s.27(4) and s.27(7) of the FOI Act for dealing with the FOI access application dated 14 April 1998. In accordance with s.27(4) and s.79(1) of the FOI Act, they are deemed to have refused Dr Copland access to the requested documents, and on that basis I would have jurisdiction to deal with Dr Copland's application for review received on 22 July 1998.
3. However, by letter dated 30 July 1998, Queensland Health, on behalf of itself and the other seven agencies, has applied to me for a grant of further time to deal with Dr Copland's FOI access application dated 14 April 1998. The making of such an application is provided for in s.79(2) of the FOI Act:

(2) If an application is made under this section, the commissioner may on the application of the agency or Minister concerned, allow fur/her time to the agency or Minister to deal with the application.

4. On 31 July 1998, I wrote to Dr Copland forwarding a copy of Queensland Health's letter dated 30 July 1998 and giving him the opportunity to respond. Having taken into account Dr Copland's response dated 3 August 1998, the application letter from Queensland Health dated 30 July 1998, and what is apparent on the face of Dr Copland's FOI access application dated 14 April 1998, I have decided to exercise the discretion conferred on me by s.79(2) of the FOI Act so as to allow Queensland Health, and the other seven agencies, further time to deal with Dr Copland's FOI access application dated 14 April 1998.
5. Dr Copland's FOI access application dated 14 April 1998 is divided into some 120 distinct sections, covering 23 closely typed pages. It was accompanied by a six page letter containing material necessary to the understanding of the FOI access application itself. In my letter to Dr Copland dated 31 July 1998, I commented that it is by far the longest, most detailed, and most demanding FOI access application I have witnessed in 5½ years of

discharging the role of Information Commissioner, and that, in my view, it placed an oppressive burden on the agencies which are required to deal with it, while still undertaking their normal functions. (This type of oppressive use of the FOI Act tends to prompt senior officials within government to lobby for changes to the legislation, such as more onerous charging regimes to inhibit access applications, and expansion of the grounds on which an agency can refuse to deal with an access application: changes which would be to the detriment of the vast majority of users of the FOI Act who are restrained and reasonable in the framing of the terms of their FOI access applications.)

6. In his response dated 3 August 1998, Dr Copland stated that it was not his intention to divert any significant resources from the agencies concerned, and that it was his understanding that the information required in the application had already been gathered and therefore was readily available as part of the normal process of officers taking study leave. Dr Copland's reference to diversion of significant resources suggests that he had in mind s.28(2) of the FOI Act which provides:

(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) *substance daily 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.

7. Dr Copland's FOI access application dated 14 April 1998 seeks access to what is arguably an excessive number and volume of documents. However, on the face of the application, one would not expect any excessive difficulty in identifying, locating or collating the requested documents within the filing systems of the relevant agencies. The terms of s.28(2) mean that considerations such as the time involved in consulting (as required by s.51 of the FOI Act) with a large number of medical officers and others who are likely to

have substantial concerns with disclosure to Dr Copland of information concerning them, and in examining a vast number of documents with a view to assessing whether they contain exempt matter and whether or not access should be refused to exempt matter (and in formulating reasons for decision accordingly), cannot be taken into account as grounds for refusing to deal with an FOI access application under s.28(2). However, such considerations are quite appropriate to be taken into account in the exercise of the discretion conferred on me by s.79(2) to grant an agency additional time to deal with an FOI access application which, on its face, is certain to make excessive demands in terms of consultation, decision-making time, and related demands in its processing.

8. Dr Copland has asserted, in his letter dated 3 August 1998, that the documents he has requested are essential for him to defend himself against false accusations made against him, and expressed his fear that action will be taken against him in the absence of such information. From what I understand of the accusations made against Dr Copland, very few of the requested documents could be properly described as essential to defend himself against those accusations. Some of the documents he has requested might be regarded as helpful in that regard. Many of the requested documents (e.g., those requested in sections 184 to 199 inclusive) warrant neither description. If Dr Copland had been prepared to confine himself to an application targeted precisely at information that was truly essential, or genuinely helpful, for the purpose of assisting his defence against the alleged false accusations, he might have avoided the delays that were inevitable once he chose to frame an FOI access application in such excessive length and detail. He has elected to make demands that, in my view, the relevant agencies could not reasonably be expected to accommodate within the ordinarily appropriate time-frames stipulated in s.27(4) and s.27(7) of the FOI Act.
9. Queensland Health has asked for an additional six weeks for itself and the other seven affected agencies to process Dr Copland's FOI access application dated 14 April 1998. I think that is a reasonable request in the case of Queensland Health, and the Gold Coast District Health Service, which have by far the largest burden in terms of the extent of the distinct access requests that they have been asked to deal with. Other agencies have fewer distinct access requests to deal with, and probably do not require quite as much time. However, since it may be necessary for the agencies to consult with each other in the interests of adopting a consistent approach to questions of access, I have decided to exercise my discretion under s.79(2) of the FOI Act so as to grant each affected agency further time, until 14 September 1998, to deliver to Dr Copland their respective notices of decision (in accordance with s.34 of the FOI Act) on the parts of the FOI access application dated 14 April 1998 with which they are required to deal. I trust that the agencies which have a lesser burden will use their best endeavours to deliver notices of decision as quickly as possible.
10. If Dr Copland is dissatisfied with any of the decisions he receives, he must pursue the normal review rights available under the FOI Act as provided for in s.52, s.71 and s.73 of the FOI Act. If, however, any of the agencies fail to deliver a notice of decision under s.34 to Dr Copland by close of business on 14 September 1998, Dr Copland will be entitled to apply again to me on the basis of a deemed refusal of access under s.79(1) of the FOI Act.

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DECISION

11. For the foregoing reasons, I decide to exercise the discretion conferred on me by s.79(2) of the FOI Act so as to:
 - (a) in application for review no. S 111/98, grant the Gold Coast District Health Service further time, until 14 September 1998, to deal with those parts of Dr Copland's FOI access application dated 14 April 1998 which were transferred to it under s.26 of the FOI Act;
 - (b) in application for review no. S 112/98, grant the Prince Charles Hospital and District Health Service further time, until 14 September 1998, to deal with those parts of Dr Copland's FOI access application dated 14 April 1998 which were transferred to it under s.26 of the FOI Act;
 - (c) in application for review no. S 113/98, grant the Sunshine Coast District Health Service further time, until 14 September 1998, to deal with those parts of Dr Copland's FOI access application dated 14 April 1998 which were transferred to it under s.26 of the FOI Act;
 - (d) in application for review no. S 114/98, grant the Redcliffe-Caboolture District Health Service further time, until 14 September 1998, to deal with those parts of Dr Copland's FOI access application dated 14 April 1998 which were transferred to it under s.26 of the FOI Act;
 - (e) in application for review no. S 115/98, grant the Princess Alexandra Hospital and District Health Service further time, until 14 September 1998, to deal with those parts of Dr Copland's FOI access application dated 14 April 1998 which were transferred to it under s.26 of the FOI Act;
 - (f) in application for review no. S 116/98, grant the Logan-Beaudesert District Health Service further time, until 14 September 1998, to deal with those parts of Dr Copland's FOI access application dated 14 April 1998 which were transferred to it under s.26 of the FOI Act;
 - (g) in application for review no. S 117/98, grant the Cairns District Health Service further time, until 14 September 1998, to deal with those parts of Dr Copland's FOI access application dated 14 April 1998 which were transferred to it under s.26 of the FOI Act;
 - (h) in application for review no. S 118/98, grant Queensland Health further time, until 14 September 1998, to deal with Dr Copland's FOI access application dated 14 April 1998.