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Editorial

A GENERAL RELEASE OF INFORMATION MAY NOT SATISFY A SPECIFIC INFORMATION REQUEST

From time to time, public sector agencies and Ministers considering requests for certain official information decide to make a general release of information on the matter.

A “package” of information that the public sector agencies may consider relevant is collated for this purpose. Such packages are frequently provided to requesters in response to specific requests they may have made.

This has caused concern for some requesters who have complained that there is no way of assessing whether general releases of information to the public or news media address fully the specific requests they have made.

If the public sector agency’s response refers to the proposed general release and confirms that it will include all information covered by the specific request, then there can be little basis for complaint.

However, the requester may have valid cause for concern in circumstances where the response either:-

- (a) advises that the general release covers “most of the material” relevant to the matter in which the requester seems to have an interest; or
- (b) makes no reference at all to whether the general release covers all the information sought in the specific request.

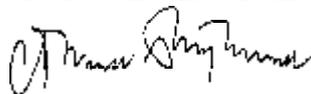
Although there is nothing in the scheme of the Official Information legislation to preclude general releases of information, departments and organisations and Ministers are still under an obligation to address specific requests and to respond directly to the requester.

Therefore if, in a particular case, the response provided does not confirm whether the general release includes all items covered by the specific request, a requester is entitled to ask the department or organisation or Minister concerned to confirm whether or not that is the position.

If a requester is dissatisfied with the response or otherwise has reason to believe that information covered by the specific request has not been disclosed in the general release, then the requester can ask an Ombudsman to investigate and review the matter under the Official Information Act.



Sir Brian Elwood
Chief Ombudsman



Anand Satyanand
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TRIVIAL INFORMATION

Requests to departments for “all the information” held on a particular topic are becoming more and more frequent, but often the information covered by a wide request will include large amounts of trivial information.

A common example of such trivial information are e-mails between officials who may be arranging meetings to discuss issues and options and which refer to the topic. Because of the growing use of computers, much more information of this nature is created than was the case in the past. Conversations by telephone that were not recorded may now have a permanent record via e-mail.

In several recent cases, public sector agencies have refused requests on a blanket basis without explaining that the information covered by the wide request included:

- Specific information which they believe required protection under the Official Information Act (OIA); and
- Other trivial information in which the requester probably had no real interest.

S18(h) of the OIA provides scope for a request to be declined (in full or in part) if "the information requested is trivial."

To the extent that much trivial information may be encompassed by a widely-framed request, the request as it relates to the trivial information, should be declined specifically.

An alternative approach is for the organisation to contact the requester, tell them that the request covers trivial information, and to invite them either to waive the request in respect to it or to identify with greater specificity the information being requested.

Such action may enable access to the important information covered by the request more quickly.

Transferring Requests

Where a broadly worded request involves information held by more than one department, as happens quite frequently, departments often will transfer the request to the extent that it relates to information generated by another department.

In a number of recent cases, the way in which the transfer has been carried out has caused concern.

If a department does decide to transfer the request, it should first ensure that it has identified any relevant information that it holds. It should identify that information when making the transfer, and explain whether:-

- (a) It will retain responsibility for responding to the request for that information; or
- (b) It is transferring responsibility for responding to the request for that information.

It should also advise the requester which organisation is responsible for answering which part of the request.

In this way, the too-frequent and considerable potential for confusion by all parties can be reduced.

Use of the Name "Ombudsman"

The use of the name "Ombudsman" is protected by law. The name cannot be used except as permitted by an Act or with the prior consent of the Chief Ombudsman.

The Chief Ombudsman has published new guidelines to assist those seeking his approval to use the name.

There are two significant additional guidelines, requiring the Chief Ombudsman's consent to future modification of a scheme, and provision for revocation of consent to use the name "Ombudsman" in the event of breach of the consent that may have been granted formerly.

Copies of the new guidelines are available from the Office of the Ombudsmen on request.

What to do with Unsolicited or Anonymous Information

A government organisation recently sought advice from the Ombudsmen on how it should treat certain unsolicited and anonymous correspondence it had received.

The correspondence contained allegations about various current and former members of the organisation's staff. The organisation considered that much of the correspondence was highly defamatory, unreliable and scurrilous.

In particular, advice was sought by the organisation as to whether:-

- It was required to treat unsolicited and/or anonymous correspondence as personal information under the Official Information Act (OIA) and therefore retain it;
- In the absence of any good reason to withhold the information under the OIA, it was required to release that material, particularly when requested by the person subject to accusation; and
- Whether there was any obligation to inform the subject of such correspondence, in particular with a view to seeking their consent on retaining or destroying the material.

While it was not appropriate, because of the investigative functions of the Ombudsmen, to provide specific advice as to the approach that should be taken to requests for such information, some general observations were made and are now repeated below to assist organisations which find themselves in similar situations.

The OIA can apply to "*unsolicited information*" received by an organisation. The general approach by the Ombudsmen has been that if the organisation retains the information, then it is deemed to be "*held*" by the organisation and is therefore "*official information*" on terms of the OIA. As such, it can be requested under the OIA and an organisation must consider any such request in terms of the principles and purposes of the legislation.

The extent to which the Privacy Act, rather than the OIA, will apply to any such request will depend upon the identity of the requester. A request for information only falls to be considered under the Privacy Act if it is requested by the person to whom the information relates. If the information is sought by a third party, then it will be "*official information*" and will fall under the OIA.

The question then arose as to whether an organisation is obliged to retain unsolicited information or whether, reasonably, it can return or destroy it.

This will depend on the circumstances of each particular case, when two issues will need to be considered:-

- (a) In some cases, such as where unsolicited information alleges misconduct or corruption, some assessment as to whether the information should be a catalyst for initiating inquiries needs to be made. In such cases, it may be necessary to retain the information. Destroying it might be questionable.
- (b) In other cases, unsolicited information may be totally irrelevant to the proper functions of the organisation, to the extent that there is no reason to retain it. In such circumstances, returning or destroying the information might be reasonable.

It is emphasised that the course of action to be taken will depend on the individual circumstances of a specific case. However, three general observations can be made:-

- On receiving anonymous or unsolicited information, a judgement needs to be made as to whether it is or is likely to be in the future relevant for any proper purposes of the organisation;
- If it is relevant, then the information should be retained and held with such degree of confidence as the circumstances warrant; and
- If it is not relevant, then it should be returned or destroyed.

There is no obligation on an organisation to retain information which is irrelevant to its operations. Whether or not it is relevant is for the organisation to determine in accordance with good administrative practice – having regard to the general law applicable to information, including the Official Information Act, the Local Government Official Information and Meetings Act, the Privacy Act and the Archives Act.

If an organisation decides that the information is not relevant and it is appropriate either to return or destroy it, it would be prudent for the organisation to keep a record of what it did, explaining the reasons for its decision.

Communications with Auditor-General

A department properly refused a request under the Official Information Act (OIA) for copies of comments it had provided to the Auditor-General on a draft audit report (in part) of the conduct of that department.

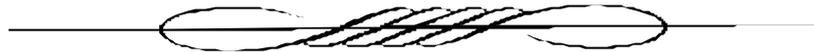
Section 9(2)(ba)(i) of the OIA protects information subject to an obligation of confidence, or which any person has been or could be compelled to provide under any enactment, where release would prejudice the supply of similar information from the same source and it is in the public interest that such information should continue to be supplied.

The Ombudsman acknowledged the Auditor-General's view that the "clearance" stage of one of his reports is central to the auditing process.

Confidentiality in the process is designed to ensure accuracy and balance in the final report and to meet the legal requirements of procedural fairness and natural justice. The Auditor-General offers confidentiality to respondents and insists on it from them.

From the perspective of the public interest, the Chief Ombudsman accepted that disclosure of the information in this case would be likely to prejudice the supply of similar information or information from the same source.

It was accepted that it is essential for the Auditor-General to establish a relationship of trust with all parties, so as to obtain the information needed to conduct full and comprehensive inquiries.



Unreasonable Regime

Prison inmates should not be placed in a harsher regime than that in which they meet the appropriate criteria.

An inmate complained that it was unreasonable for him to be placed in a regime that catered for the most disruptive inmates in the penal system.

There had been an incident in which the inmate had disagreed with an officer over the collection of some rubbish. A technical assault had occurred and the inmate had been placed in restrictive conditions.

Before such a placement can occur, two criteria have to be met – the existence of a maximum security classification and an exhibition of extremely disruptive behaviour.

The Ombudsman discovered neither criterion had been met and, when this was pointed out to the prison authorities, the inmate was returned to the mainstream of the prison.

Voluntary Release of Personal Information

Information about an individual released voluntarily by a department, rather than in a response to a request under the Official Information Act (OIA), that may cause harm to individuals, may fall for consideration by the Privacy Commissioner.

This matter arose where names of individuals involved in a maritime collision were released voluntarily. The individuals lodged a complaint with the Privacy Commissioner.

An Ombudsman may, however, become involved in considering a complaint about the voluntary release of the names of individuals by way of a complaint under the Ombudsmen Act that such a release constituted an unreasonable administrative action.
