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Editorial

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

Both the Official Information Act (OIA) and Local Government Official Information and Meetings Act (LGOIMA) seek to “*increase progressively the availability of official information to the people of New Zealand.*” However, the principle of availability recognises that in certain circumstances there may be “*good reason*” for withholding information that has been requested.

The difficulty that often arises for requesters when their requests are refused is that they do not understand the need to withhold the information. This may depend on how full the explanation provided by the department, organisation, Minister or local authority concerned is.

In practice, many refusals simply refer to the withholding provision under the legislation without any explanation of the grounds for believing a particular provision is applicable to a particular case. This can make it difficult for a requester to understand why the request has been refused or to accept that the refusal is reasonable.

The concern that causes requesters to seek review of refusals is often not so much the actual refusal itself but the lack of any adequate explanation of the basis for the refusal.

The OIA and LGOIMA require holders of information to give requesters the reasons for any refusal. However, there is no accompanying obligation to give the grounds in support of the reason for refusal unless the requester specifically asks for them.

In many cases, requesters do not realise they need to request such grounds for refusal specifically. Indeed, requests are usually made on the presumption that the information requested can be made available. Therefore, requesters are unlikely to think of including in the request an additional request that, in the event of a refusal, grounds in support of that reason should be provided.

As a matter of good administrative practice, sufficient detail about the underlying grounds for refusal should always be provided, so that the requester can understand the basis for the refusal.

There will be some cases where grounds cannot be given without prejudice to the very interest that requires protection. However, such cases are exceptional.

In most cases, fuller explanation of the reasons why a request has been refused is practicable. This will allow requesters to understand better how and why a particular outcome has been reached and whether that outcome is reasonable. If a decision is explained adequately, then it is more likely to be accepted as being reasonable.



Sir Brian Elwood
Chief Ombudsman



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Inadequacy of adoption brochure

The Child Youth and Family Service (CYFS) brochure on adoption will be improved so that it sets out more completely the veto provisions of the Adult Adoption Information Act.

A complaint was received from a woman who, in the mid-1960s, placed her daughter in adoption.

The complainant had placed a veto against future contact at the time the Act was passed - in March, 1986. She did not renew the veto when it expired in 1996 after she had married, left the country, and no longer had any ties with New Zealand.

Recently, she received a letter from CYFS advising that it was trying to contact a person with her first name and a similar birth place. CYFS asked her to advise whether or not she was that person – which she confirmed.

She then restated her wish that the veto on the release of any information about her be renewed or reinstated, only to learn that her daughter had already received information about her.

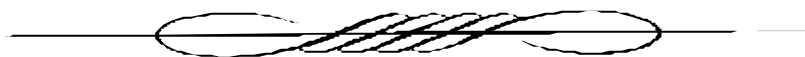
She had not known that under the Act, CYFS was able to use its resources to track down birth parents and provide personal details to children without reference to the parent.

The mother complained both over the disclosure of information about her and that she had not been properly advised of her rights. When dissatisfied with CYFS's response, she complained to the Ombudsman.

The Ombudsman did not think CYFS had acted unreasonably or inappropriately in its handling of the daughter's request for information. The daughter obtained her birth certificate after the veto had expired, as was her right, and had then sought the help of the Adult Information Services Unit to search for her mother's present name and address.

The complainant also raised questions about the adequacy of the brochure in informing about the full effects of the Adult Adoption Information Act. The brochure did not make it clear that a person who had placed a veto had a right to renew the veto, or that without renewal the veto would lapse.

She considered that while the brochure helped adopted people search for their birth parents, it excluded information about the rights of birth parents. The Ombudsman agreed and approached the Department. CYFS is amending its brochure.



Benefit Review Committees subject to OIA

Because it is not a "*Tribunal*" performing judicial functions but an administrative committee performing administrative functions, a Benefit Review Committee (BRC) will be subject to the Official Information Act.

The Ombudsmen, considering a request for information, learned that two of the three members of each committee must be Department employees who, on their own, form a quorum for a meeting of a BRC.

Although the normal principles of natural justice might apply to BRC reviews, they have no formal statutory procedure for hearing the parties, calling evidence or cross-examining witnesses.

Natural justice, however, applies as much to administrative functions that affect individuals as it does to judicial functions.

Also, the departmental members of a BRC are appointed by the chief executive "*from time to time; or in respect of the particular review*" while the non-Department member is appointed by the Minister to hold office "*during the Minister's pleasure*." Both these factors detract from the independence that would be required of people expected to perform a judicial function.

As a BRC has administrative rather than judicial functions, it is not a "*Tribunal*," so information held by a BRC would be official information held by the Department of which the BRC is a part.

Local government needs to consult residents

Local authorities need to have systems established to advise property owners and residents of planned changes to property numbers.

The proprietors of a beach resort complained that their local council had changed their property number without consulting them. Just before they learned of the change, they had received a batch of new advertising brochures, costing \$2,000, which now required correction.

The council said the change had been necessary because of housing development in the area. This had put the housing numbers out of sequence. The council's major concern had been to ensure that properties could be located easily, especially by emergency services.

New or changed street numbers normally come into effect more or less immediately, because at the end of each month Land Information New Zealand is advised of any new numbers allocated.

The council was asked if it could give property owners more notice of proposed numbering changes. It said it was not possible to give lengthy notice as changes often involved other property owners who were waiting for a number to be allocated. This could be inconvenient, as telephone connections were not provided unless the property had a street number, and property owners were unable to supply an address to people who wished to contact them.

The Ombudsman suggested that the council look at whether it could give property owners a minimum of six weeks' notice of any proposed change, or adopt a practice whereby notification of the change would take effect from the end of the month, unless there was any objection, in which case it would be the following month. The council agreed with both suggestions.

Opinion may be Protected from Disclosure

The manner in which opinion is expressed by departmental advisers may be capable of protection under the Official Information Act (OIA), even if the broad nature and content of that opinion can be released.

Such opinion may be withheld under S9(2)(g)(i) in order to "*maintain the effective conduct of public affairs through the free and frank expression of opinions ...*"

The Ombudsman was approached when a department declined to release some paragraphs from a letter to its Minister, although a summary describing the broad nature and content of the opinions was released.

The Ombudsman considered S9(2)(g)(i) of the OIA protected the ability of officials and advisers to express their views in a particularly blunt manner, where such frankness was required for the effective conduct of public affairs.

The release of a summary did not detract from the need to protect the ability of departmental staff to express their views in a free and frank fashion in the future, and at the same time satisfied the test that rendered it desirable in the public interest for information to be made available.

Unfair taxation penalties

A complaint was made to the Ombudsman that, although all the correct procedures had been followed, a taxpayer had been paid at too high a level of family assistance and then been expected by the IRD to pay interest on the resulting debt once the overpayment had been identified.

The Ombudsman felt a taxpayer should not be penalised when, through no fault of their own, the level of their taxable State-paid income had been higher than that to which they are entitled.

On review, the IRD agreed and wrote off the debt under the relief provisions of the Tax Administration Act.

Access to School Records

Access by a non-custodial parent to a child's school records may be an issue of privacy, but there may also be a public interest in advising the parent of school decisions about the child and the reasons for them.

The Ombudsman was approached when a school refused a request by a non-custodial parent for information about events leading up to the child's suspension from the school. The parent had not learned of the suspension until after the event.

The refusal was on the basis of protecting the child's privacy, and the school was acting in accordance with the child's request that the non-custodial parent not be given any information.

But as the non-custodial parent was still a guardian of the child and had rights of access, the Ombudsman took account of S77 of the Education Act, which requires that parents be *"advised of matters that are slowing a student's progress or harming their relationships with teachers or other students."*

It was clear that the events leading up to the child's suspension from school were such *"matters"* and, as such, there was a public interest in the release of sufficient information to the parent.

The Ombudsman suggested that, in order to satisfy this public interest, the school provide a statement to the parent which described the events which had led to the suspension.

Official information that cannot be found

It sometimes happens that official information that is known to exist cannot be found.

This situation arose when the father of one of the young people killed at the Cave Creek tragedy asked the Police for their final report on the matter. They declined to supply it on the grounds that they could not find it.

It was established that such a report had existed but exhaustive searches in Christchurch, where the report had been compiled, and subsequently in Greymouth, where the Cave Creek Commission of Inquiry had conducted its hearings, failed to locate the document.

Assuming that copies of the report had been made and filed in other places, the Ombudsman suggested that the search be extended to the Commission of Inquiry itself, the counsel assisting the inquiry, the Crown Law Office and Police headquarters in Wellington. There was no trace of the report at any of them.

In these circumstances, the Ombudsman accepted that the report could not be found and that the Police had reason under s18(e) of the Official Information Act to decline the request to provide it.