

PART 2C IMPROPER PRESSURE OR HARASSMENT

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Corresponding provision in LGOIMA

Section 9(2)(g)(ii) OIA = section 7(2)(f)(ii) LGOIMA

When does section 9(2)(g)(ii)¹ apply?

Section 9(2)(g)(ii) provides good reason to withhold information if, and only if:

- ❖ the withholding of the information requested is necessary to “*maintain the effective conduct of public affairs through the protection of such Ministers, members of organisations, officers, and employees from improper pressure or harassment*”; and
- ❖ the need to withhold the information to protect that interest is not “*outweighed by other considerations which render it desirable, in the public interest, to make that information available*”.

Both of these elements must be met before section 9(2)(g)(ii) provides good reason to withhold official information.

Is it necessary to withhold the information in order to “*maintain the effective conduct of public affairs through the protection of such Ministers, members of organisations, officers, and employees from improper pressure or harassment*”?

The purpose of this provision is not simply to provide protection against improper pressure or harassment, but to maintain the effective conduct of public affairs through such protection. If the section is to apply, there must not only be a reasonable likelihood of improper pressure or harassment, but a link must be made between the anticipated behaviour, the impact upon the person to whom it is directed, and the effective conduct of public affairs. This section will only apply if the improper pressure or harassment is so serious that it will place the effective conduct of public affairs at risk.

In considering whether it is “*necessary*” to withhold the information, an agency will need to take the following steps:

- (i) Decide whether release of the information would lead to the improper pressure or harassment of an identifiable person.

“*Improper pressure or harassment*” is something more than ill considered or irritating criticism or unwanted publicity. It is a course of conduct that has such an effect on the person against whom it is directed that he or she is unable to perform his or her duties effectively and hence the conduct of public affairs is at risk.

When considering whether release of the information is likely to lead to improper pressure or harassment, it is necessary to determine:

- (a) what sort of behaviour may be expected as a result of the release of this information;
- (b) whether that behaviour would be of such a nature that it can be described as “*improper pressure*” or “*harassment*”;
- (c) against whom the behaviour will be directed; and

¹ Section 7(2)(f)(ii) LGOIMA

- (d) whether that person or those persons fall within the categories specified in the legislation.

If an organisation considers that release of the information will cause improper pressure or harassment, and can provide a basis for that position in terms of the factors set out above, then this section may be applicable.

Before it can be said to apply, however, there must also be reason to believe that such pressure or harassment will place the effective conduct of public affairs at risk.

- (ii) Consider whether the effects of such improper pressure or harassment would have a detrimental impact upon the effective conduct of public affairs.

When considering whether the improper pressure or harassment is such that it will have a detrimental impact upon the effective conduct of public affairs, an organisation should consider the following points:

- (a) how the person to whom the pressure or harassment will be directed contributes to the effective conduct of public affairs; and
- (b) how that contribution is likely to be affected by the anticipated behaviour.

When assessing these factors, consideration may be given to the past behaviour and the effects of such behaviour either of the requesters or of others who may have access to the released information. This may provide assistance in making an assessment of the risk of future behaviour and consideration of whether that behaviour might amount to improper pressure or harassment sufficient to affect the effective conduct of public affairs.

- (iii) Assess how likely it is that the disclosure of the requested information would cause the predicted prejudice or harm to occur.

The agency must demonstrate that the prejudice or harm is so likely to occur that it is necessary to withhold the information in order to prevent that prejudice or harm from occurring. A mere possibility that prejudice could occur is not sufficient to meet the requirement under section 9 that withholding is *necessary*.

If the agency is satisfied that it is necessary to withhold the information in order to maintain the effective conduct of public affairs through the protection of Ministers, members of organisations, officers, and employees from improper pressure or harassment, then section 9(2)(g)(ii) is likely to apply.

Before section 9(2)(g)(ii) can be said to provide “*good reason*” for withholding information, the agency must go on to consider whether the interest in withholding the information is outweighed by other considerations which render it desirable in the public interest to make that information available.

Assess whether the need to withhold the information is “outweighed by other considerations which render it desirable, in the public interest, to make that information available”

In order to make this assessment, an agency will need to take the following steps:

- (i) Identify any considerations that may favour disclosure of the information in the public interest.
- (ii) Consider whether disclosure of the actual information requested would in fact promote those considerations. While there may be a public interest in release of some information about the particular situation, this may not necessarily be met by release of the specific information requested.
- (iii) Finally, consider whether, in the circumstances of the particular case, the considerations favouring disclosure outweigh, in the public interest, the need to withhold the information.

The need to withhold information in order to protect the interests set out in section 9(2)(g)(ii) must be weighed against legitimate public interest considerations favouring disclosure. There is no predetermined formula for deciding which interest will be stronger in a particular case. Rather, each case needs to be considered carefully on its own merits, taking into account the specific context.

Issues to consider when identifying and assessing the strength of public interest considerations are discussed further in Part 2D.

Summary Sheet
Section 9(2)(g)(ii) OIA and Section 7(2)(f)(ii) LGOIMA

Improper Pressure or Harassment

Always proceed on the basis that the information requested “*shall be made available unless there is good reason for withholding it.*”

1. Will release of the information requested be likely to lead to the improper pressure or harassment of an identifiable person?
2. Will the effects of such improper pressure or harassment have a detrimental impact upon the effective conduct of public affairs?
3. Assess how likely it is that the disclosure of the requested information would cause the predicted prejudice or harm to occur. Is the predicted prejudice so likely to occur that it is “*necessary*” to withhold the information.

If you can establish a link between the improper pressure or harassment that is reasonably anticipated if the information is released, and a resulting detrimental impact upon the effective conduct of public affairs, then section 9(2)(g)(ii) may apply.

You should then consider whether there are any public interest considerations, in terms of section 9(1), favouring release which outweigh the need to withhold.

4. Identify any considerations favouring disclosure of the information.
5. In light of such considerations, is there a public interest in disclosure of the specific information requested?
6. Consider whether, in the circumstances of the case, the public interest in disclosure of the information, in whole or in part, outweighs the need to withhold the information.

If so, release sufficient information to meet the public interest in disclosure.

If not, advise the requester of the decision to withhold.