



Police ‘Alco-link survey’ - public interest in information connecting arrests to last bar where alcohol consumed outweighs prejudice to commercial position

Legislation	Official Information Act, ss 4(a)(i),9(2)(b)(ii),9(1) Sale and Supply of Alcohol Act 2012, ss 4(1)(a), 4(1)(b),78(4), 102(1), 103, 105(h); Sale of Liquor Act 1989, s 4 (repealed).
Agency	New Zealand Police
Ombudsman	Professor Ron Paterson
Case number	403242
Date	May 2016

Summary

New Zealand Police (Police) refused a request for information linking the last bar a person had been drinking at before being arrested, otherwise known as the ‘Alco-Link survey’. The Police considered that, if released, the information would unreasonably prejudice the commercial position of the various bars and thus section 9(2)(b)(ii) of the Official Information Act (OIA) applied.

Ombudsman Ron Paterson considered that the need to protect the information was outweighed by public interest considerations favouring release. In forming this opinion, Professor Paterson had regard to the Sale and Supply of Alcohol Act 2012 (SSAA), which introduced significant changes to law and policies relating to the sale and supply of alcohol. This legislation specifically intended to increase community participation in licensing decisions and to minimise harm from the inappropriate and excessive use of alcohol. Professor Paterson was of the opinion that disclosure of relevant evidence, such as the Alco-Link survey, enables such informed participation by stakeholders, which is clearly in the public interest.

The Ombudsman considered that an explanatory statement released together with the Alco-Link survey explaining the Police concerns about the data would mitigate Police concerns about harm to reputation unreasonably prejudicing the commercial position of high ranking premises.

Background

1. In March 2015, The Dominion Post emailed the Police to request the following information:

Could you please supply a list, requested under the OIA, of Wellington arrests in 2014 when the last bar visited and/or drank in was noted by Police.

For each arrest, please supply the name of the bar, the charge if any, and (if available) the outcome in court. For drink-drive cases, please also supply the alcohol-blood/breath reading.

2. The Police considered that release would unreasonably prejudice the commercial position of the bars named in the Alco-Link survey and refused to supply the information, relying on section 9(2)(b)(ii) of the OIA. Police also noted that this information had been requested and refused before and that previous Ombudsmen had accepted that section 9(2)(b)(ii) applied, not outweighed by the public interest in release.
3. The Dominion Post complained about this decision, expressing the view that *'this is an inadequate reason to refuse as public interest in what bars people were in before they were arrested would be high'*.

Investigation

4. The Police provided the Ombudsman with a copy of the information at issue and a report setting out their concerns with release. In this report, the Police referred to an opinion by Ombudsman David McGee in 2010 concerning a request for the same information, where Mr McGee formed the opinion that:
 - a. publication of the ratings would be likely unreasonably to prejudice the commercial position of licensed premises featuring in the Alco-Link survey. The information gathered for Alco-Link surveys is not subject to robust standards of data gathering and accuracy and much of the information is obtained from persons under the influence of alcohol; and
 - b. the withholding of the information was not outweighed by public interest considerations.
5. Elaborating on the likely unreasonable prejudice to the bars if the information requested in this case were released, the Police stated:

The prejudice that would likely result would be unreasonable because the information gathered by the Alco-Link surveys is often not subject to robust standards of data gathering and accuracy. Much of the information gathered in the surveys is obtained from persons who are under the influence of alcohol. Businesses with high rankings in the survey would be likely to suffer diminished reputation and consequential loss of patronage from members of

the public who relied on the survey results. Given the inherent unreliability of the results such prejudice would be unreasonable.

6. The Police acknowledged that the introduction of the SSAA had facilitated greater public engagement in the regulation and conduct of the liquor interest through community consultation and the development of local alcohol policies.

Prejudice to commercial position: application of section 9(2)(b)(ii)

7. Section 9(2)(b)(ii) provides for withholding information where making it available ‘*would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information.*’
8. In a provisional opinion provided to the Police in May 2016, Ombudsman Paterson accepted with some hesitation that the Police were able to rely on s 9(2)(b)(ii) to withhold the Alco-Link survey. He stated:

I am sceptical about the claim that the data is inherently unreliable because the person who provided the information had been drinking. However, I agree that if the Alco-Link survey is released in its current form without contextual or explanatory information, the public could draw incorrect and prejudicial conclusions about the quality and reputation of (in particular) high ranking premises and whether licensed premises have not been abiding by the terms of their licence.

Public interest – application of section 9(1)

9. Having accepted that section 9(2)(b)(ii) applied to the requested information, the Ombudsman went on to consider whether public interest considerations rendered ‘*it desirable, in the public interest, to make that information available*’ (OIA, s 9(1)).

Reforms under the Sale and Supply of Alcohol Act 2012

10. Although he acknowledged that the earlier decision of Mr McGee was clearly relevant, Professor Paterson noted that there had been significant changes to law and policies relating to the sale and supply of alcohol since the decision was made in the 2010 case.
11. When it came in to force on 18 December 2013, the SSAA replaced the Sale of Liquor Act 1989 (SLA). Then Minister of Justice Judith Collins stated about the new legislation:

The reforms place more responsibility on those who may provide alcohol to young people and give parents more control. The changes also require the alcohol industry to play their part to ensure alcohol is used, sold and supplied safely and responsibly.

This Government has delivered a wide range of measures to reduce alcohol-related harm. But change cannot be achieved through legislation alone. Our reforms provide all parts of society – central and local government,

communities, parents, young people and industry – with tools to help make a change for the better.

12. Whereas the object of the SLA was limited to establishing a reasonable system of control over the sale and supply of liquor to the public with the aim of contributing to the reduction of liquor abuse, section 4(1) of the SSAA provides that the object of that Act is that *'the sale, supply and consumption of alcohol should be undertaken safely and responsibly'* and that *'the harm caused by excessive or inappropriate consumption of alcohol should be minimised'*. In this context, *'harm'* is defined to include any crime caused by excessive or inappropriate use of alcohol and any harm to society generally or the community caused by such crime. This is markedly different from the SLA in force at the time of Mr McGee's 2010 opinion.
13. In addition, the SSAA empowers councils to implement local alcohol policies after appropriate consultation with stakeholders, including members of the community, the Police, and others (see ss 78(4) and 103 SSAA). Such policies can see restrictions to availability of alcohol by way of controls on operation of particular licensed premises. District Licensing Committees must consider particular criteria (set out in SSAA, s 105) before issuing or renewing a licence, including *'whether the amenity and good order of the locality'* would be likely to be reduced by the effect of issuing a licence (see SSAA, s 105(1)(h), (i)). This opens the door for submissions and objections by members of the public on a decision to issue a licence.

Public concern and the media

14. The Ombudsman observed that media interest provides an indication of public interest in a topic and, in this case, considered there was an increased media scrutiny reflecting public concern about alcohol fuelled anti-social and criminal behaviour.

Public interest in the effective participation in the making and administration of laws and policies

15. Given the legislative intent of the SSAA to increase community participation in licensing decisions and the evidence of increasing public concern indicated by public agencies such as health boards, the Ombudsman said that his starting point was that there is a very high public interest in public participation in the laws and policies relating to alcohol in our communities.
16. It is a key purpose of the OIA that official information be progressively made available *'to enable ... more effective participation in the making and administration of laws and policies'* by the people of New Zealand (see OIA, s 4(a)(i)).
17. In the context of this case, Professor Paterson considered that all relevant evidence should be available to promote effective participation by the public in the consultation process before a local alcohol policy is implemented. Likewise, all evidence should be available to individuals objecting to an application for a licence or to call into question a

decision of a District Licensing Committee. The Ombudsman considered the Alco-Link survey was relevant evidence.

18. In addition, the Ombudsman observed that release of the information might enhance the reputation of licensees who do comply with the terms of their respective licenses and operate as responsible hosts. That is, the Alco-Link survey may enable early intervention by the Police and medical health officers and relevant regulatory agencies to identify and improve the performance of non-compliant licensed premise holders, such as provision of staff and management training or increased monitoring by Police of non-compliant premises.
19. Professor Paterson concluded that the public interest in this case was sufficient to override any unreasonable prejudice to the commercial position of the licensees that are the subject of the information. Although he accepted that the process by which the data is collected is not robust, he was persuaded that a statement released simultaneously outlining Police concerns about the data would mitigate prejudice to the commercial position of high-ranking premises because of harm to reputation.

Outcome

20. For the reasons outlined above, the Ombudsman formed the opinion that the interest to be protected under section 9(2)(b)(ii) of the OIA was outweighed by the public interest in release.
21. Professor Paterson advised the Police that, subject to its comments on his provisional opinion, he proposed to recommend release of the Alco-Link survey.
22. The Police accepted the opinion and released the Alco-Link survey to the requester with an explanatory statement that the information be regarded with some caution as it was gathered from people who, in many cases, may have been intoxicated to varying degrees.