

Request from a prisoner unable to access publicly available information

Legislation	Official Information Act, ss 18(d), 30(1)(b)
Agency	New Zealand Police
Ombudsman	Chief Ombudsman Peter Boshier
Case number(s)	444073
Date	June 2017

Summary

A prisoner requested information from New Zealand Police. As the material was available on its website, Police refused the request on an administrative basis, namely that it was publicly available (s 18(d) of the Official Information Act (OIA)). However, being a prisoner, the requester could neither access the internet, nor therefore the information.

As the information was clearly publicly available, the Chief Ombudsman accepted that it was open to Police to refuse the request on this basis. However, the Chief Ombudsman noted that s 18(d) **permits** but does not require refusal on public availability grounds. In the particular circumstances of this case, the Chief Ombudsman's opinion was that the decision to refuse the request solely on that basis was unreasonable in terms of s 30(1)(b) of the OIA.

Background

1. The requester sought information contained within three documents, two of which were publicly available on the Police website.
2. Police responded to the request providing excerpts from the one document that was not on its website but refused the remaining aspects of the request on grounds that the information was publicly available (s 18(d) OIA).
3. The requester complained that, as a prisoner without access to the internet, the information could not be considered publicly available **to him** and, as such, the decision to refuse his request on this basis was unreasonable.

Investigation

4. Section 18(d) of the OIA provides that a request may be refused if *'the information requested is or will soon be publicly available'*. The wording of the provision is permissive - there is no obligation or duty under the OIA to refuse a request on these grounds.
5. Section 30(1)(b) of the OIA states that, after investigating a complaint made under section 28 of the OIA, an Ombudsman may form the opinion that the decision complained of is *'unreasonable or wrong'*.
6. The Chief Ombudsman considered the context in which the agency had decided to refuse the request. In this case, the prisoner was not able to use the internet and therefore had no way to access the information he sought, notwithstanding its general availability to members of the wider public.
7. The information at issue was not excessive in volume and, the Chief Ombudsman noted, it would have imposed little additional administrative burden on Police to print and include this material with the information it did supply in response to the request.
8. The provisional opinion of the Chief Ombudsman was therefore that, on the particular facts before him, although section 18(d) undoubtedly applied, the decision to refuse the request solely on that basis was nevertheless unreasonable under section 30(1)(b).

Outcome

9. Police accepted the Chief Ombudsman's provisional opinion and released the information that was initially refused. The Chief Ombudsman confirmed his provisional opinion as final.
10. Given that the agency had already provided the information at question to the requester, no recommendation was made.