

Request for the number of days Peter Thiel spent in New Zealand before gaining citizenship

Legislation	Official Information Act 1982, ss 9(2)(a), 9(1)
Agency	Department of Internal Affairs
Ombudsman	Leo Donnelly
Case number(s)	446634
Date	July 2017

Summary

Radio New Zealand asked the Department of Internal Affairs (the Department) for the number of days Peter Thiel had spent in New Zealand in two specified periods before being granted citizenship. Radio New Zealand complained to the Ombudsman after the Department refused the request under section 9(2)(a) of the Official Information Act 1982 (OIA) in order to protect the privacy of Mr Thiel.

The Ombudsman formed the final opinion that the request should not have been refused. The Ombudsman considered that Mr Thiel had a low privacy interest in the information, which the Privacy Commissioner agreed with, and that this privacy interest was outweighed by the high public interest in accountability and transparency in decision making (sections 9(1) and 9(2)(a) refer).

Background

1. Peter Thiel applied for New Zealand Citizenship in January 2011. His application was approved by then Minister of Internal Affairs Nathan Guy under section 9(1)(c) of the Citizenship Act on 20 June 2011.

2. On 1 February 2017, the Department publicly released information relating to Mr Thiel's application.¹ Some information was redacted from these documents under sections of the OIA. The number of days that Mr Thiel had spent in New Zealand in two periods before his application was redacted under section 9(2)(a).
3. Radio New Zealand requested the figures for these two periods. The Department again refused to provide this information under section 9(2)(a), to protect the privacy of Mr Thiel.

Investigation

4. The Ombudsman notified the Department of the complaint and sought the requested information, copies of internal decision-making papers and details of any consultation the Department had undertaken in order to make its decision on the request.
5. In investigating this complaint, the Ombudsman consulted with, and received comments from, the Privacy Commissioner (as required by section 29B of the OIA), as well as Mr Thiel and the current Minister of Internal Affairs.
6. Section 9(2)(a) of the OIA provides good reason to withhold information if, and only if:
 - a. it is '*necessary*' to protect the privacy interests of natural persons; and
 - b. this interest is not outweighed by other considerations which render it desirable, in the public interest, to make the information available (section 9(1)).
7. The Ombudsman accepted that disclosure of the information would reveal personal information about Mr Thiel and that section 9(2)(a) applied. Accordingly, the Ombudsman considered two issues:
 - a. the extent to which the disclosure of the information would interfere with Mr Thiel's privacy interest; and
 - b. whether this privacy interest was outweighed by the public interest in the information.

Nature and strength of privacy interest at issue

8. In general a citizenship application is highly personal. In this case, however, the majority of Mr Thiel's application had been released, and his privacy interest in the matter was therefore diminished. Taking into account information that was already available at the time of the request, disclosure of the information withheld by the Department would reveal only the total number of days Mr Thiel spent in New Zealand in two specified time periods.

¹ Department of Internal Affairs. '*New Zealand Citizenship of Mr Peter Thiel*' 1 February 2017. Retrieved on 3 July 2017 from from <https://www.the Department.govt.nz/Citizenship-of-Mr-Peter-Thiel>

9. The Ombudsman considered that disclosure of the total number of days spent in New Zealand within specified timeframes would not reveal where or when he was in New Zealand, nor would it reveal his manner of entry or departure, the number of trips he made, or whether he was staying in New Zealand for that time or was merely in transit.
10. Additionally, the duration of Mr Thiel's stay had been disclosed to some extent simply through the physical size of the redactions in the publicly released documents. It was clear from the physical size of the redactions that the length of Mr Thiel's residence in New Zealand over the five-year period was in the double digits, and that his residence in the 20-month period was in the single digits. Therefore, the additional interference to Mr Thiel's privacy interest in disclosing the specific number of days was marginal.
11. The Ombudsman also considered whether disclosure of the information at issue would impact on Mr Thiel's privacy interest in avoiding unwanted attention. It was accepted that Mr Thiel has a high public profile, and that the citizenship issue has previously attracted much media attention both in New Zealand and abroad. It was therefore likely that release of the information would lead to further media articles and public debate, and speculation about Mr Thiel's intentions and the genuineness of his connection to New Zealand. Mr Thiel would in turn be subjected to further scrutiny in the public domain, which is an interference with his privacy.
12. However, given that the media had already traversed the issue, and that Mr Thiel obtained New Zealand citizenship in full knowledge that applying under exceptional circumstances would draw media attention, the Ombudsman was of the view that the interference to Mr Thiel's privacy interests was low. Any additional attention he attracted would be focused solely on Mr Thiel's connection to New Zealand, a factor of which Mr Thiel was aware when he obtained citizenship.
13. The Privacy Commissioner, John Edwards, agreed that Mr Thiel's privacy interest in the information requested was low. Mr Edwards advised that it was well known that Mr Thiel had never lived in New Zealand, that he fell short of the ordinary requirements for citizenship and that he had visited New Zealand four times.
14. Mr Edwards agreed that disclosure of how many days Mr Thiel had been in New Zealand over the two periods '*did not reveal particularly personal details about his whereabouts or movements*', it only showed that he was in the country at some stage during these periods.
15. Mr Edwards also commented that the release of the information would likely subject Mr Thiel to further public scrutiny, therefore infringing on Mr Thiel's interest in avoiding unwanted attention. Mr Edwards, however, agreed that this infringement to Mr Thiel's privacy was low given that the matter had already been publicly traversed and that Mr Thiel should have been aware that obtaining citizenship in such circumstances would attract public attention.
16. Consequently, the Ombudsman accepted that Mr Thiel had a privacy interest in the information at issue, albeit at a low level, and section 9(2)(a) applied to protect that information.

Public interest

17. The Ombudsman then considered whether the need to withhold the information in order to maintain Mr Thiel's privacy was outweighed by the public interest in release (section 9(1)).
18. The Ombudsman was of the opinion that there was a strong public interest favouring the disclosure of the number of days Mr Thiel spent in New Zealand in the relevant timeframes, to promote the transparency of, and accountability for, the Minister's decision to grant citizenship to Mr Thiel as an exception under section 9(1)(c) of the Citizenship Act 1977.
19. Mr Thiel was plainly not eligible for citizenship under section 8 of the Citizenship Act, and so applied as an exception under section 9(1)(c). To highlight the exceptional nature of this kind of application, the Department's website stated that the Minister had approved 92 such applications since 2012, out of 632 applications that asked the Minister specifically to consider section 9(1)(c).² Clearly the provision is invoked infrequently by applicants and is granted in only a minority of cases.
20. Section 9(1)(c) provides the Minister with a broad discretion to grant citizenship if he or she is satisfied that it would be in the public interest because of '*exceptional circumstances of a humanitarian or other nature relating to the applicant*'. When making this decision, the Minister '*may have regard to such of the requirements of section 8(2) (as subject to section 8(3) to (9)) as the Minister thinks fit*' (section 9(2)(a) refers). However, this is permissive and not mandatory and the Minister therefore is free not to consider the timeframes specified in section 8(2) and 8(7) of the Citizenship Act when deciding such an application.
21. Notwithstanding the Minister's broad discretion not to consider such factors, it was clear that the Department considered the duration of Mr Thiel's presence in New Zealand to be a key consideration for his citizenship application. When deciding whether to release the information, internal documents showed that the Department noted:

The fact of [Mr Thiel's] time of NZ is a critical piece of information that goes to his eligibility ... The time relates not just to his ability to meet the presence test, but his physical presence in NZ is something that we take into account when considering whether to recommend a grant under exceptional circumstances.
22. However, the Department ultimately concluded that the proposed release of the number of days Mr Thiel spent in New Zealand was '*borderline*', and that if Mr Thiel objected to its disclosure, it should be withheld in order to protect his privacy interest in that information.

² Department of Internal Affairs. 'New Zealand Citizenship of Mr Peter Thiel' 1 February 2017. Retrieved on 19 May 2017 from <https://www.the Department.govt.nz/Citizenship-of-Mr-Peter-Thiel>

23. The Ombudsman considered that there was a very strong public interest in the public knowing that the Minister's broad discretion under section 9(1)(c) of the Citizenship Act was exercised in a fair and reasonable way, on a proper basis, and without inappropriate factors or considerations being taken into account. Citizenship is not, and should not be, conferred lightly. This reflects the fact that New Zealand citizenship carries with it a range of fundamental benefits and rights, including civil and political rights.
24. In Mr Thiel's case, there had been and continued to be some public disquiet that the Minister granted him citizenship in circumstances where his connection to New Zealand was not publicly known and, even in hindsight, was not obvious, and when it remained unclear to what extent Mr Thiel had been resident in New Zealand in the specified timeframes.
25. The Ombudsman concluded that the public interest outweighed Mr Thiel's privacy interest and required the disclosure of the information at issue. This would allow the public to assess the Minister's exercise of his discretion under section 9(1)(c) of the Citizenship Act in light of the full relevant facts of the case, and to get a better sense of the weight the Minister attributed to the special circumstances that triggered the grant of citizenship to Mr Thiel as an exception under the Act.

Outcome

26. The Ombudsman formed the final opinion that the Department did not have good reason under the OIA to withhold the number of days Mr Thiel had spent in New Zealand in two periods before being granted citizenship.
27. It was accepted that Mr Thiel had a low privacy interest in the information, but that this was outweighed by the high public interest in accountability and transparency in decision making in this case.
28. The Ombudsman recommended release of the information to Radio New Zealand. The Department complied with this recommendation.