



Marsden Fund – adequacy of reasons for declining funding application

Legislation	Official Information Act 1982, s23
Agency	Minister of Science and Innovation
Ombudsman	David McGee
Case number(s)	322392
Date	March 2013

Summary

An unsuccessful applicant to the Marsden Fund sought information relating to the decision to not progress his application past the preliminary round. The Ombudsman accepted that the reasons that had been provided to the requester were as detailed as they could be in the circumstances, given the information available. However, the Ombudsman said that good administrative practice required that sufficient records be created and maintained to ensure the statutory obligations of section 23 of the Official Information Act 1982 (OIA) can be better met, including more detailed recording of information by the Panels in the future.

Background

1. An applicant who was unsuccessful in a Marsden Fund application (the requester) sought information about that decision from the then Minister of Science and Innovation, Dr Wayne Mapp (the Minister). The requester also asked for the titles of proposals submitted that were successful in the preliminary round.
2. The Marsden Fund is disbursed by the Royal Society, which is managed by the (then) Ministry of Science and Innovation, as agent for the Minister. As such, and further to initial discussion with the office of the Ombudsman, the Minister accepted responsibility for this request.
3. The Minister provided the requester with some information about the decision on his own application but withheld other information, namely the titles of the other proposals, pursuant to section 9(2)(ba)(i) of the OIA, on grounds of confidentiality.

4. The requester sought an investigation and review by the Ombudsman of this decision.

Investigation

5. When the Hon Steven Joyce was appointed as Minister, he advised the Ombudsman that he had revisited Dr Mapp's decision and did not consider it necessary to withhold on grounds of confidentiality the list of the Humanities applications that were successful in the 2011 preliminary round. However, he adopted Dr Mapp's decision in respect of the balance of the information, maintaining that the statement of reasons supplied as to the decision to decline to progress the requester's application was adequate and met the requirements of the OIA.

6. The first aspect of the request, namely for information as to why the requester's own application was unsuccessful, was in effect a request for a statement of reasons as provided for in section 23 of the OIA. It was appropriate for it to be addressed in this way, rather than as a request for personal information under the Privacy Act.

7. Section 23(1) provides:

Subject to section 6(a) to (d), section 7, section 9(2)(b), and section 10 and to subsections (2), (4), and (5), where a department or Minister of the Crown or organisation makes, on or after 1 July 1983, a decision or recommendation in respect of any person, being a decision or recommendation in respect of that person in his or its personal capacity, that person has the right to and shall, on request made within a reasonable time of the making of the decision or recommendation, be given a written statement of—

- (a) *the findings on material issues of fact; and*
- (b) *subject to subsection (2A), a reference to the information on which the findings were based; and*
- (c) *the reasons for the decision or recommendation.*

8. The Ombudsman accepted that the decision in respect of which reasons were sought did concern the requester in his personal capacity and, as such, that section 23 of the OIA was engaged. The question for the Ombudsman then was whether the reasons provided by the Minister were adequate for the purposes of section 23.

9. The Ombudsman said that he agreed that the reasons advanced by the Minister were relatively 'high-level'. The Ombudsman said

There is always a question in a statement of reasons under section 23 as to how far the provider of the statement must dig-down to justify the conclusions that were reached. The finding that there is 'substantial room for improvement' is itself presumably made on the basis of (perhaps varying) assessments of elements of your proposal. The same is true with other reasons given.

10. The Ombudsman's opinion was that a bare statement that the grant was not awarded because the panel did not think it was merited would clearly be inadequate – to comply with section 23, a statement of reasons must give a clear indication why the decision was taken.
11. However, section 23(2)(b) requires only that there be a 'reference to' the information on which the findings were based and in this case reasons were supplied with reference to the limited information that was available from which the statement could be compiled was provided. Although broadly worded, the findings did indicate what the panel considered to be the relative deficiencies with the requester's proposal.
12. Acknowledging that it will always be a question of fact as to whether a particular statement is sufficient to comply with section 23, in this case, the Ombudsman considered it did. In fact, the Ombudsman noted that the reasons provided expressly addressed the component parts of section 23.

Outcome

13. The Ombudsman advised the requester that it was his provisional opinion, later confirmed as final, that the statement of reasons was adequate in terms of section 23 of the OIA.
14. However, in forming his final opinion, the Ombudsman observed that the Minister's inability to provide more detailed reasons for the low score awarded to the requester's proposal was due to the lack of information that was recorded about this decision at the time – only the scores were available, no other information about the assessment existed. Enquiries with the Marsden Fund Panel that considered the requester's application did not assist as none of the Panel members could recall any further detail about their consideration of this particular proposal. As such, the Ombudsman had no option but to conclude that, despite the content of the statement of reasons, it was as full as it could be in the circumstances.
15. However, it was the Ombudsman's opinion that:

[g]iven the detailed application requirements listed on the Marsden Fund section of the Royal Society of New Zealand's website, I would expect Panels to be able to provide more detailed reasons for declining applications. While I accept that you could not provide any further reasons to [the requester] in regard to the refusal of his application, it does appear to me that the lack of information recorded by the Marsden Fund Panel impacts upon your ability to meet your obligations under section 23 of the OIA. Good administrative practice would suggest that sufficient records should be created and maintained to ensure you can better meet your statutory obligations.

I note that in 2012 the Marsden Fund Council received 1113 applications, across 10 areas assessed by different Panels. It does not appear to me that recording specific reasons why an application is declined would be unduly

onerous. I therefore suggest you consider the ways in which better recording of information by the Panels is achieved in the future.

16. The Ombudsman advised the Minister that good administrative practice requires sufficient records to be created and maintained to ensure the statutory obligations of section 23 of the OIA can be better met in relation to requests for which the Minister is responsible, including more detailed recording of information by the Panels.