



# Request for information about academic misconduct by international students

<b>Legislation</b>	Official Information Act, ss 15, 18(f)
<b>Agency</b>	Victoria University of Wellington
<b>Ombudsman</b>	Leo Donnelly
<b>Case number(s)</b>	400121
<b>Date</b>	8 February 2017

---

## Summary

The Ombudsman considered a complaint about the decision of Victoria University of Wellington (the University) to charge for the supply of information sought under the Official Information Act 1982 (OIA) about academic misconduct by international students.

The Ombudsman formed the opinion that the decision to fix a charge was reasonable, as was the amount of the charge, as amended during the course of the investigation. He did not consider that the University was required, for public interest reasons or otherwise, to reduce or cancel the charge.

## Background

1. On 5 February 2016, the Ombudsman began an investigation into the University's decision on a request for information about academic misconduct. The University had provided the requester with some information, namely the total number of students who were investigated and penalised or disciplined for academic misconduct in each of the years 2012, 2013 and 2014. However, the University refused to provide information showing how many were international students, relying on section 18(f) of the OIA—that the information could not be made available without substantial collation or research.
2. On 3 March 2016, the University advised the complainant that, following enquiries by this Office, it had reconsidered the request and that it would grant the request, but that

a charge would be fixed. It explained that, in accordance with section 15(2) of the OIA and the Ministry of Justice *Charging Guidelines*,<sup>1</sup> 14 hours of staff time would be required to collate the information. The charging rate applied by the University was \$38 per half hour, bringing the total charge to \$1064.

3. The requester complained that the decision to charge was unreasonable. He noted that other universities had been able to supply the information without charge, and he did not believe it would take 14 hours to collate the information.
4. On 15 March 2016, the Ombudsman's investigation into the decision to partially refuse the request was discontinued, and the focus of the investigation became the decision to charge for supply of the information.

## Comments from the University

5. The University explained its reasons for charging and its calculation of the charge. Key points included the following:
  - a. Information about academic misconduct is held in the University's Academic Misconduct Register (AMR). This does not show whether a student is domestic or international, so collation of the information would involve manually cross-checking the AMR with the central student record system.
  - b. The University considered that the cross-checking of information across two databases is actually the creation of information, which the OIA does not require agencies to do. Notwithstanding this, it had decided to try to facilitate the request.
  - c. The University considered whether it should modify or waive the charge but did not believe that there was good reason to do so.
  - d. To calculate the charge, the University had allowed one minute per student (a total of almost 11 hours) and a further three hours for unexpected contingencies, such as automatic log outs and difficulties in ascertaining the domestic/international status for any particular student.
  - e. The University accepted, however, that the total time should have been reduced by one hour, as required by the clause 2.1(b) of the *Charging Guidelines*, bringing the charge to \$988.

---

<sup>1</sup> Available at <https://www.justice.govt.nz/about/official-information-act-requests/directory-of-official-information/charging-guidelines-for-oia-requests/>.

## Analysis

6. The legislative basis for charging for the provision of official information is set out in section 15 of the OIA.
7. Section 15(2) of the OIA provides:

*Any charge fixed shall be reasonable and regard may be had to the cost of the labour and materials involved in making the information available...*
8. The Chief Ombudsman has published a guide on charging for the supply of official information.<sup>2</sup> As noted in that guide, charging under the OIA is not generally about full cost-recovery. That would be inconsistent with the purpose of the legislation, which is to progressively increase the availability of official information to the people of New Zealand.
9. The guide also notes that in most cases a charge will be reasonable if it has been set in accordance with the current government charging guidelines (or equivalent charging policy), and with due regard to any circumstances warranting remission.

## Not information creation

10. The Ombudsman agreed that the OIA does not require agencies to create information in response to a request. Rather, it requires agencies to provide (or withhold under any applicable withholding provisions), information held by them that already exists. However, he did not accept the University's submission in respect of this request, that the cross-checking of information across two databases amounted to the creation of information.
11. In previous cases where an Ombudsman has accepted that responding to a request would require the creation of information, the work required to generate the information was significantly more complex or specialised. Examples include data programming and analysis by a specialist with a high degree of skill and knowledge of the raw data, or the development and testing of new code to extract the relevant data from a database.
12. In this case, the Ombudsman noted that the information could be generated by a simple cross-checking exercise. Although the University stated that there were only two senior members of staff who could complete the work, that was due to the University's restrictions on access to the AMR, not the complexity of the task.

---

<sup>2</sup> [Charging—A guide to charging for official information under the OIA and LGOIMA](#).

## Calculation of charge

13. The Ombudsman was satisfied that a manual cross-checking of the two databases was required to collate the requested information. That process was demonstrated to staff from the Ombudsman's Office who considered that the one-minute estimate to check and record the result for each of the 625 students concerned was not unreasonable.
14. The Ombudsman also considered it was reasonable for the University to include an allowance of three hours for unexpected contingencies.
15. In previous cases, Ombudsmen have found that it is unreasonable for a requester to bear any costs associated with an agency's administrative inefficiency or incomplete record-keeping.<sup>3</sup> However, that was not the case here. The University's database appeared to be working as intended. Staff confirmed that the allowance for difficulties ascertaining the domestic/international status of a student did not relate to the records being incomplete, but rather to the fact that a student's status may have changed subsequent to the recording of the academic misconduct.
16. The Ombudsman did not expect it to take more than 14 hours to collate the information but said that rather than having to increase a charge, it is preferable for an agency to calculate the maximum charge and revise the charge down if fewer hours are actually required (and refund the unused component if the charge has been paid upfront).<sup>4</sup>
17. In these circumstances, the Ombudsman considered that the calculation of an estimated 14 hours appeared reasonable.

## Remission of charge

18. The Ombudsman then considered whether the charge should have been reduced or cancelled, either because of a compelling public interest in making the information available or because meeting the charge would be likely to cause hardship to the requester.
19. There was no reason to believe that imposing a charge would cause the requester financial hardship.
20. The Ombudsman acknowledged that the University's decision to charge for the information could appear unsatisfactory when set against other universities' decisions to provide the same or similar information without charge, but noted there were reasons why other universities may not have charged, including that:
  - a. the time required to collate the information was significantly less due to:
    - i. a smaller volume of information; or

---

<sup>3</sup> See our [Charging](#) guide at p 7.

<sup>4</sup> See our [Charging](#) guide at p 14.

- ii. different information collection and storage systems, meaning the information requested was able to be retrieved more easily; or
  - b. the universities opted to bear the costs of supplying the information themselves.
- 21. One university confirmed that the domestic/international status of students found to have committed academic misconduct is recorded within its misconduct register. Accordingly, the information requested was able to be readily retrieved.
- 22. However, the Ombudsman considered that the fact other universities had no reason to charge or opted not to do so did not automatically mean that the decision of the University in this case was therefore unreasonable. If the University's AMR included the students' domestic/international status, collating the information requested would have been less time-consuming. However, with no reason to conclude that the University **should** have been recording that information in the AMR, the Ombudsman did not consider that it could be criticised for not doing so.
- 23. The Ombudsman agreed with the University that there is a public interest in ensuring that instances of academic misconduct are identified, investigated and concluded appropriately, but agreed that it is not necessary for those purposes to identify whether the students involved are domestic or international.
- 24. The Ombudsman considered whether there is a public interest in the University itself knowing the domestic/international breakdown of students involved in academic misconduct, to determine whether its efforts to prevent misconduct are appropriately targeted. However, he accepted that the University had other mechanisms for addressing academic misconduct, and services that could potentially pick up on, and respond to, particular concerns or trends (eg, issues with specific courses or departments, types of misconduct, or groups of students).
- 25. The Ombudsman concluded that there was no countervailing public interest in making the information available, such that, in the circumstances of this case, it was unreasonable for the University to decide against reducing or cancelling the charge.

## Outcome

- 26. The Ombudsman formed the final opinion that the (amended) charge of \$988 fixed by the University for supplying the information requested was reasonable.