

Request for CERA property valuation reports

Legislation	Official Information Act 1982, s 9(2)(j)
Agency	Canterbury Earthquake Recovery Authority
Ombudsman	Dame Beverley Wakem
Case number(s)	356243
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Much of the information already available to the requesters—disclosing the remaining information about how the valuations were reached would not prejudice or disadvantage CERA in negotiations with property owners, but make the negotiations more robust with both sides fully informed—strong public interest in disclosure to address power disparity between negotiating parties—s 9(2)(j) does not provide good reason to withhold

The former Canterbury Earthquake Recovery Authority (CERA) refused requests by property owners for valuation reports in respect of properties subject to compulsory acquisition notices. The property owners complained to the Ombudsman.

The valuations were undertaken for the purpose of negotiating a sale/purchase with the property owners. It was understood that if agreement could not be reached, CERA would proceed with compulsory acquisition. CERA argued that release of the valuation reports would prejudice or impair its ability to negotiate a sale/purchase with the property owners. In CERA's view, these transactions were no different from other sale and purchase transactions, where each party obtains their own valuation *'to assist with the negotiation of a price for their own benefit'*.

The Chief Ombudsman commented that *'when it comes to the application of the OIA, CERA has to do more than simply claim that there will be prejudice if the information is released'*. CERA is obliged to specify how the claimed prejudice or disadvantage would occur if the information at issue was released.

The valuation reports comprised the property descriptions, the methodology, and the valuation figure. The Chief Ombudsman noted that much of this information, including the valuation figure, had already been released to the requesters, or was publicly available through Land Information New Zealand. Release of this information could not prejudice or disadvantage CERA in its negotiations with the property owners.

The withheld information contained more detail than what had been disclosed previously about how the valuation had been calculated. However, it did not seem to follow that providing an explanation of how a certain value was reached would be damaging to negotiations, as opposed to making the negotiations more robust with both sides fully informed.

The Chief Ombudsman also noted that the argument that valuation reports are not usually disclosed was vigorously disputed by the requester's lawyer, who maintained that he had been involved in about 100 Public Works Act acquisitions, and it was standard practice for valuation reports to be exchanged at the preliminary stages when there is an attempt to reach agreement. The lawyer had acted consistently with this practice by providing his client's valuation report to CERA, and requesting CERA's valuation report in exchange.

The Chief Ombudsman also considered that, even if section 9(2)(j) was engaged, there were strong public interest considerations in favour of release. She noted that this was not '*a buyer and seller of property meeting on equal ground*'. There was a significant power disparity, with the Crown (despite initially negotiating under a '*willing buyer, willing seller*' model) having, as a back-up, the power and certainty of making a compulsory acquisition. As market competition between prospective purchasers was not a factor in this situation, it was reasonably conceivable that disclosure of the reports would not impair CERA from acting in a fiscally sound manner in relation to these property owners and others with whom CERA was negotiating.

Further, these negotiations were occurring against a broader backdrop of considerable trauma and vulnerability for property owners in Christchurch '*red zones*'. Given this, there was social value in those affected property owners being able to walk away from their land believing that they had been treated fairly. Providing the property owners with valuation reports would enable those required to sell their land to the Crown with a possible reassurance that they were getting a fair deal in the circumstances, and an assurance that the Crown was acting in good faith in negotiating these matters. The reports should help them to understand, for themselves, how the valuation methodologies had been applied and the basis for the Crown's offer. Such information, at an early stage in the acquisition process, could encourage property owners to reach agreement on a valuation which would expedite the acquisition process.

In keeping with this, release would also demonstrate transparent and accountable decision making by CERA and a continuation of its stated intent of engagement with property owners in a collaborative and constructive relationship. Transparency would serve to increase public confidence in CERA's dealings with property owners throughout the Canterbury region.

After considering the Chief Ombudsman's opinion, CERA agreed to release the valuation reports.

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