

## Request for DHB draft annual plan

<b>Legislation</b>	Official Information Act 1982, s 9(2)(ba)(ii)
<b>Agency</b>	District Health Board
<b>Ombudsman</b>	Sir Brian Elwood
<b>Case number(s)</b>	A9003
<b>Date</b>	December 2001

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*District Health Board—draft annual plan—need for Board and Minister of Health to reach agreement on plan prior to release—New Zealand Public Health and Disability Act 2000*

The information at issue in this case consisted of a District Health Board's draft annual plan which had been prepared by the Board for the purpose of discussions with the Minister of Health. It was withheld from the requester in reliance upon section 9(2)(ba)(ii) of the OIA.

The requested information was subject to an obligation of confidence. This was the general expectation on the part of both the Board and the Minister of Health and appeared to be consistent with section 39 of the New Zealand Public Health and Disability Act 2000 (NZPHDA). While there is provision in that section for final annual plans to be made publicly available, the Act does not envisage release of the draft plan.

In considering the application of section 9(2)(ba)(ii), it was necessary to assess whether disclosure of the information in the draft plan 'would be likely ... to damage the public interest'. The relevant public interest was in the Minister of Health and the Board being able to reach a reasoned and timely agreement on the ultimate contents of the plan. This public interest is reflected in section 39(1) of the NZPHDA, which provides for the Minister of Health and district health boards to 'agree on an annual plan of the DHB for each financial year'. The requirement to 'agree' necessarily means that there is a process of consultation and negotiation between the parties prior to agreement being reached.

It was accepted that disclosure of the draft plan would be likely to undermine the ability of the Board and the Minister of Health to reach agreement on the final contents of the annual plan. Release of the proposals contained within the plan, which could be subject to considerable modification, would likely result in pressure on the parties to adopt a particular position on specific issues, thus impeding the consultation and negotiation process.

In terms of section 9(1) of the OIA, consideration was given to whether or not the public interest in withholding the information was *‘outweighed by other considerations which render it desirable, in the public interest, to make that information available’*. One such consideration was in members of the public being able to comment on proposals concerning health issues, thereby permitting participation in the policy making process. Although members of the public are undoubtedly capable of making valid suggestions or contributions in respect of health issues, the relevant legislation clearly contemplates agreement on annual plans being reached between two parties only, the Board and the Minister. Account was also taken of specific provisions in the NZPHDA that require public consultation on district health board proposals in certain circumstances. Specifically:

1. consultation on draft district strategic plans, as distinct from annual plans, is required to be carried out in accordance with the special consultative procedure set out at section 716A of the Local Government Act 1974 (section 38(3) and (4) NZPHDA);
2. an annual plan *‘must not be inconsistent with the DHB’s district strategic plan’* (section 39(8) NZPHDA). Consequently, where consultation is required to be carried out in respect of a district strategic plan, it is not unlikely that the results will be reflected to some extent in the relevant annual plan; and
3. public consultation is required where significant changes to a board’s *‘most recent annual plan’* are proposed (section 40 NZPHDA).

On balancing the competing interests, the view was that the public interest in the Board and Minister being able to reach a reasoned agreement on the annual plan, free from additional pressures, was not outweighed by the countervailing public interest.

The final opinion was that good reason existed under section 9(2)(ba)(ii) for the Board to withhold the draft annual plan.

### **Comment**

While each complaint must be considered on its merits, this case illustrates a set of circumstances where draft material was properly withheld by a government organisation. The draft plan was, in effect, a discussion document that formed the initial basis upon which negotiations and discussions with a Minister of the Crown were to take place. Premature release would have had an adverse effect on this process.

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