

Request for hydrological data

Legislation	Local Government Official Information and Meetings Act 1987, ss 7(2)(b)(ii), 7(2)(c)(i), 7(2)(c)(ii)
Agency	District Council
Ombudsman	Sir Brian Elwood
Case number(s)	C6482
Date	September 2001

Request for hydrological data—supplier of information to local authority opposed to release to the requester—prejudice to future supply

A request was made for hydrological data held by a District Council. The data had been supplied to the Council by a resident of the district who had collected it over a number of years with the intention of developing a hydroelectric scheme. The requester sought the information to support a competing resource consent application. He argued that the data was a matter of public record, having been recorded on equipment provided by the Council, evaluated by Council staff and stored at Council expense. The request was refused by the Council in reliance upon sections 7(2)(c) and 7(2)(b)(ii) of LGOIMA.

It was clear that disclosure of the information could affect the person who supplied the data to the Council. The individual concerned was consulted to identify any concerns he may have had about release of the information and in particular how release would affect his commercial position. He explained that the data had been supplied to the Council on the understanding that it would be used for Council purposes only and that any requests for external use would be referred to him for approval. It was confirmed that he no longer provided the data to the Council because of concerns about the possibility of it being released to a third party without his consent.

A preliminary view was formed that sections 7(2)(c)(i) and (ii) did not apply because there was insufficient evidence to conclude that the information was supplied subject to an obligation of confidence. It was also considered that section 7(2)(b)(ii) did not apply because the connection between release of the information and prejudice to the supplier's commercial position was not established.

In response, the Council provided a much more detailed explanation as to how the obligation of confidence arose at the time the data was initially supplied to the Council. The Council also explained how release of the data would prejudice the future supply of similar information or information from the same source and why it was in the public interest for such information to continue to be supplied. The Council advised that there were significant implications if data were not supplied in future as a result of the release of the information at issue in this case. The site from which the data was collected was unique and there was no other data available. On the basis of the further information provided by the Council it was accepted that the grounds for withholding under section 7(2)(c)(i) were made out.

An assessment was then made in terms of section 7(1) of LGOIMA as to whether the interest in withholding was outweighed by public interest considerations favouring disclosure. Although it was clearly of interest to the requester, no wider public interest in release could be identified.

Comment

When conducting investigations under LGOIMA and the OIA it is important for organisations to provide full and correct information from the commencement of the investigation. In this investigation it was only after the preliminary view was sent to the Council that further consultations were undertaken and a full explanation provided. If the information had been provided by the Council to the complaint at the outset it would have led to a more expeditious conclusion.

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