

Request for Court Registrar's report

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| Legislation | Official Information Act 1982, s 9(2)(g)(i) |
| Agency | Department of Justice |
| Ombudsman | Nadja Tollemache |
| Case number(s) | W1888 |
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Report on aborted trial released with deletions—'free and frank expressions of opinion' by Registrar—no public interest override

In May 1989 the requester wrote to the Justice Department requesting a copy of a report written by the Registrar of the Napier High Court on the aborting of the trial of 18 Mongrel Mob members in mid-April. The department provided the requester with a copy of the report. Two sections were deleted from the report. Sections 9(2)(g)(i) and 9(2)(ba) of the OIA were cited as the reasons for withholding the deleted information.

The requester asked the Ombudsman to investigate the department's decision to withhold the deleted information.

In the course of the investigation it became clear that the most apposite provision in relation to the withholding of the deleted information was section 9(2)(g)(i). The Ombudsman therefore concentrated upon the possible application of that section to the information at issue.

Having considered the report, it was clearly a communication between officials acting in the course of their duty. It was also very clear that all the information in the deleted paragraphs was *'opinion'*. The two paragraphs consisted entirely of the personal views (opinions) of the author of the report. Indeed the author expressly stated that they were personal views and they were expressed in particularly *'free and frank'* terms. The Ombudsman was of the view that they would certainly have been expressed differently had disclosure been contemplated.

The Ombudsman considered carefully the context in which the report by the Registrar, including the opinions, was made. An enormously expensive and meticulously planned trial had been aborted and transferred to another venue. The Head Office of the Justice Department needed immediate and frank information about what had *'gone wrong'*, that is, the reasons why the trial had been aborted. This was vital not only to the particular case, in order to enable proper planning of the trial at the new venue, but also more generally to establish whether the Department needed to review or change any of its procedures for the organisation of trials, and particularly, large trials. The information had to be provided quickly and in the context of considerable publicity and media interest. The Department was (and had to be) very much aware of the need to ensure that there were no *'hitches'* in the relocated trial and that the right of the accused to a fair trial was not jeopardised in any way. Against that background, the Registrar, as well as giving the Department objective information about the reasons for the decision to abort the trial, also proffered subjective opinions.

The Ombudsman accepted that disclosure of the opinions in this case would inhibit the provision of equally frank opinions in similar situations in the future. She also accepted that affecting candour in such cases would have a prejudicial implication for the conduct of public affairs, that is, for the proper administration/organisation of criminal trials, ensuring the right to a fair trial. Accordingly, withholding the deleted information in this case was necessary to maintain the effective conduct of public affairs through the free and frank expression of opinion.

Having reached that view, the Ombudsman went on to consider whether, in the circumstances of the particular case, the withholding of the information was outweighed by other considerations which rendered it desirable, in the public interest, to make the information available (section 9(1) of the OIA). She considered, for example, whether making the withheld information available would promote the accountability of officials (section 4(a)(ii) of the OIA). In the Ombudsman's view the information at issue did not raise any public interest considerations which would render it desirable for it to be made available.

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