

Request for Police review on importation of firearms

Legislation	Official Information Act 1982, s 9(2)(f)(iv)
Agency	New Zealand Police
Ombudsman	John Robertson
Case number(s)	W2159
Date	Published April 1993

Request for access to Police review on importation of firearms—release of recommendations would undermine s 9(2)(f)(iv) but not the release of background information—public interest in disclosure outweighs need to withhold recommendations—issue of firearms control is one in which the principle of public safety is paramount—greatest possible transparency required in the making of laws and policies

In 1989 the New Zealand Shooters Rights Association asked the Chief Ombudsman to investigate and review the refusal of the Police to make available a copy of the review prepared by the Police for the Minister of Police regarding the importation of military style semi-automatic rifles. The Police had refused this request under section 9(2)(f)(iv) of the OIA. Essentially the ground for the Police decision was that the review recommendations were still under consideration by the Minister of Police.

In the course of the investigation the Chief Ombudsman was told that the review was prepared on the instructions of the then Minister, following expressions of concern about a number of firearms related issues, including the importation of semi-automatic weapons. The review was completed in July 1989 and submitted to the Minister; however, neither he nor his two successors in office had made any decisions in respect of it.

After a preliminary assessment, the Chief Ombudsman told the Police that he did not accept that withholding factual and background material was necessary under the OIA. The Police accepted that there was no reason to withhold the factual part of the review and, indeed, its disclosure would be beneficial to public debate and hence be in accordance with the principles

of the Act. The Chief Ombudsman concluded, however, that the recommendations contained in the review should be protected in the meantime. He accepted that the question of banning firearms importation was sensitive and controversial. Although the power to ban firearms is not, strictly speaking, vested in the Minister, the Police had nevertheless decided that the issue was of such difficulty that a policy decision by the Government was desirable before any action would be taken. The Chief Ombudsman was satisfied that disclosure of the recommendations before a decision was taken would undermine the constitutional convention protecting the confidentiality of advice by officials to Ministers. One of the reasons for the existence of this convention is to enable Ministers to give undisturbed consideration to the options available on a particular matter, especially where that matter is sensitive. This particular issue seemed to be one where undisturbed Ministerial consideration was of some importance. However, once a decision had been made and announced, there would be no obstacle to full disclosure.

Under section 9(1) of the OIA, *'good reason'* will only exist to withhold the information if, in the circumstances of the particular case, the withholding of the information is not outweighed by other considerations which render it desirable, in the public interest, to make that information available.

The usual starting point for consideration of the public interest is the purposes of the Act and in particular those in section 4(a)(i) and (ii) of the OIA which refer to the interests in participation in the making and administration of laws and policies, and promotion of the accountability of Ministers of the Crown and officials. These interests are acknowledged as contributing toward respect for the law and good government. On initial perusal, it seemed to the Chief Ombudsman that the public interest as defined in these terms was in fact satisfied by the partial disclosure which the Police agreed to make.

The release of all of the factual information on which the recommendations to the Minister were based was undoubtedly beneficial and would, in itself, enable the requester to make its own approaches to the Minister on the issue of firearms importation, and to express its own views on whether there was any need for change to the relevant laws and policies. Having said that, however, it was clear that disclosure of the recommendations made by the Police would add to the requester's knowledge and would sharpen the issues which it needed to address were it to approach the Minister.

On the wider level, disclosure of the recommendations and the accompanying comments would assist in public debate generally on the issue of firearms importation. The issue is an extremely important one that has implications for security and public safety.

In respect of the interest in accountability, there was no doubt that disclosure of the information would promote the accountability of the Police in matters relating to the administration of the Arms Act. The Chief Ombudsman noted that the power to ban importation of specific firearms under that Arms Act was vested in the Police, not the Minister. However, the Police were right to seek the Minister's views on issues such as this, and the Police were ultimately accountable for the administration of the Arms Act and for specific decisions which are made in consequence.

Having identified and defined the public interest in this case, the Chief Ombudsman went on to assess the relative weight of the competing interests. He acknowledged that the issue of firearms control was a sensitive and at times, emotive one. This was underlined by the information itself and must be taken into account when assessing the effect which disclosure of the recommendations and comments would have on the ability of the Minister to consider the advice that he had been given. On matters of particular sensitivity, the constitutional convention protecting confidentiality of advice by officials is there to protect the Minister against premature disclosure interfering with his ability to make a sound decision. However, in considering the weight given to section 9(2)(f)(iv), the Chief Ombudsman considered that account should also be taken of the passage of time. The report was nearly one year old. It had awaited consideration by three successive Ministers of Police. This lessened somewhat the strength of the *'necessity'* to withhold the information.

Balanced against that are the interests in participation and accountability and these are strong in relation to a matter of this nature. The issue of firearms control is one in which the principle of public safety is paramount, and in the Chief Ombudsman's opinion that required the greatest possible transparency in the making of laws and policies.

For these reasons the Chief Ombudsman formed the opinion that the withholding of the information was outweighed by other public interest considerations, and accordingly that good reason did not exist to withhold the deleted information under section 9(2)(f)(iv). The Police accepted the Chief Ombudsman's opinion that this request should not have been refused and information was made available.

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