

Request for sale and purchase agreement and deed of lease

Legislation	Official Information Act 1982, ss 9(2)(b)(ii), 9(2)(i) and 9(2)(j)
Agency	New Zealand Post
Ombudsman	Nadja Tollemache
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Request for NZ Post property agreements—ss 9(2)(b)(ii), 9(2)(i) and 9(2)(j)—no good reason to withhold either the deed of lease or the agreement for sale and purchase.

The Ombudsman received a complaint from a Post Office Action Committee to investigate and review a decision by New Zealand Post not to make available details of the Sale and Purchase Agreement for Oamaru’s Chief Post Office and for the purchase of land and buildings in Ribble Street by New Zealand Post.

New Zealand Post said the information sought by the Committee, ‘*frankly ... is none of their business.*’ Contrary to normal practice, New Zealand Post did not initially supply the Ombudsman with the information at issue. Following a telephone call, a representative of New Zealand Post said he would only give the Ombudsman the information:

On the basis (to which you agreed) that the undermentioned confidential commercial information will not be conveyed to the ... committee without prior consultation... .

It appeared that New Zealand Post had relied on sections 9(2)(i) and 9(2)(b)(ii) of the OIA to withhold the information from the requester. It considered that: the lease agreement for Ribble Street and the sale and purchase agreement were private contracts between two parties; that New Zealand Post was under a moral obligation not to disclose the information; and that New Zealand Post’s reputation would suffer if it released the information. New Zealand Post seemed concerned that as settlement had yet to be effected on the sale of the Post Office, release of the agreement now might cause the other party to breach the contract.

The Ombudsman explained to New Zealand Post the general approach which the Office had adopted to sections 9(2)(i) and 9(2)(b)(ii) and the information she required to enable her to form a view as to whether either provision applied to the information at issue. The Ombudsman also advised that she had written to the third parties asking for their comments and referred to the then recently decided case of *Wyatt v Queenstown Lakes District Council* [1991]2 NZLR 180.

The lessor of the Ribble Street property phoned and said the rental details were his only concern. The purchaser phoned and said in its present form the agreement was incorrect and he would be happier if it were released in a more accurate form. The Ombudsman was of the view that these concerns could be met by releasing the information with an explanation.

In response to further enquiries, New Zealand Post Properties Ltd advised the Ombudsman that:

In our business all contracts with other parties are sacrosanct. Such contracts are between the parties involved and are not the business of any third party.

In answer to the Ombudsman's specific questions the company advised:

"1. For the reason given above, the release of information ... would prejudice the commercial operations of New Zealand Post Properties Ltd and its parent company.

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The specific prejudice and disadvantage is that release of information about a binding contract without the consent of the other party involved, could lead to New Zealand Post acquiring a reputation of not being trustworthy. It will also mean that the flood gates could open and any New Zealand Post Limited contract could be the subject of an inquiry by any member of the public. The types of contracts which may become subject to public scrutiny can range from mail service delivery, transport operations, purchase of commodities for sale at Post Shops, to agency operations, etc.

After further correspondence with the third parties and another meeting with an officer of New Zealand Post Property Services, the Ombudsman wrote to the Managing Director, New Zealand Post and the third parties outlining her view. She sought comment within ten days and offered to meet should it be required. In the Ombudsman's view, there was no good reason under the OIA to withhold either the deed of lease or the agreement for sale and purchase.

In response, the Managing Director advised that he was not willing to release the information until negotiations had been completed. Once settlement had taken place, he said he would be agreeable to releasing particulars of the sale and lease. In support of his position, the Managing Director referred to the Valuation of Land Act, Land Transfer Act and conveyancing practice in the legal profession. These all proceed on the basis that 'notices of sale' setting out sale price and lease particulars do not enter the public arena until forwarded to the Valuation Department and that occurs within 30 days after the sale is settled. The Managing Director also pointed out that *'the actual memorandum of transfer enters the public arena upon*

lodgment for registration at the Land Transfer Office and only at that stage does the consideration and the purchaser become public knowledge'. He concluded:

I shall comply with those well-settled statutory regimes. The time-honoured conveyancing practices of the legal profession will be followed. This is in accordance with the Company's statutory obligations under the State-Owned Enterprises Act to operate as a successful business and be as efficient as comparable businesses. Sale and lease information will be released once settlement is effected. Settlement should be in about two months.

The Ombudsman did not consider this reply advanced any new and compelling grounds for reconsideration of the preliminary view she had expressed. The Ombudsman pointed out that sections 9(2)(i) or 9(2)(j) provide that information may be withheld to protect against prejudice or disadvantage to commercial activities or negotiations, but New Zealand Post had not provided sufficient information to enable her to satisfy herself that any such prejudice would arise. Accordingly, pursuant to section 30(1) of the OIA, the Ombudsman recommended that the information should be made available to the requester. In reply, the Managing Director replied that settlement of the sale had now been effected and that the Ombudsman's recommendation could be complied with immediately.

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