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| Request by unsuccessful tenderer for copies of tender submissions for removal of bodies |
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| Legislation Official Information Act 1982, s 9(2)(b)(ii)  Agency New Zealand Police  Ombudsman John Robertson  Case number(s) W2793  Date Published April 1993 |

*Format of the tender in this particular case was such that disclosure of the prices would be likely to prejudice the successful tenderer’s commercial position—s 9(2)(b)(ii) applies*

This investigation and review illustrates neatly the case by case approach which is adopted to investigations and reviews of decisions on requests for information under the OIA. The request was made by an unsuccessful tenderer for copies of the other tenders submitted to the Police for the contract to remove bodies of deceased persons. There was, in fact, only one other tender.

In applying the general approach to tender information to this specific case, and in looking at the prejudice which disclosure of the tender prices would have on the commercial position of the successful tenderer, the Chief Ombudsman found that the format of the tender in this particular case was such that disclosure of the prices would be likely to prejudice the successful tenderer’s commercial position.

The tender itself was in a ‘multi-headed’ format that enabled each tenderer to structure the prices for particular headings according to its commercial strengths, practices and strategies for new business. There was no single amount that standing alone could appropriately be called the ‘tender price’. The ‘mufti-headed’ nature of the pricing part of the tender document would therefore reveal the pricing strategy and thereby disclose to competitors the tenderer’s commercial strategy. The Chief Ombudsman was therefore satisfied that the requirements of section 9(2)(b)(ii) of the OIA had been made out in respect of both the full tender documents and the prices shown on the tender cover sheet.

The Chief Ombudsman then considered whether there were any public interest considerations favouring disclosure that outweighed the above prejudice.

In most cases of bulk tendering the disclosure of prices does not raise the issues of prejudice that were validly raised in this case. Moreover, in this case the integrity of the tendering process used by the Police was not in doubt. Consequently, the public interest in the need for disclosure had to be judged to be compelling before it could apply as a countervailing factor. The Chief Ombudsman did not think that was the case here. In reaching that conclusion, he noted that:

1. The public interest requires that there be a quick and sensitive method adopted by the Police for handling bodies. This had been achieved in this case.
2. The market in the specific area was small for such tenders. Although release of the tender at issue might lead to more competitive tenders, there was also the chance that a price war could lead to co-operation, in which the Police and the public interest might be prejudiced.
3. The integrity of the tendering process and the public awareness of such integrity was also in the public interest. While there would be a public interest in accountability in the disclosure of information that evidenced a lack of integrity in the tendering process, in this case there was no such information. The Police tendering system itself followed well-established rules and procedures that provided a fair basis for tendering and deciding on the successful tenderer, and in this case a substantially lower tender than the requester’s had been accepted.

The Chief Ombudsman therefore concluded that section 9(2)(b)(ii) provided good reason to withhold the requested information.

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