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| Request for submissions made by *‘interested parties’* on Preliminary Accident Report |
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| Legislation Official Information Act 1982, s 9(2)(ba)(i)  Agency Transport Accident Investigation Commission  Ombudsman Anand Satyanand  Case number(s) W33853  Date June 1995 |

*Request for submissions made by ‘interested parties’ on Preliminary Accident Report— request refused under s 9(2)(ba)(i)—obligation of confidence established—‘Interested parties’ would be likely to be less forthcoming if they knew there was a possibility their comments would be made available to the public—s 9(2)(ba)(i) applied and not outweighed by public interest factors—requirements of natural justice already met—inquisitorial nature of Commission’s investigations*

Following a helicopter accident, the Transport Accident Investigation Commission investigated the accident and issued a Preliminary Accident Report upon which it invited submissions from *‘interested parties’*, that is, any person who is referenced, whether by statement or inference, in a preliminary report as having contributed to the cause of a transport occurrence. The pilot of the helicopter requested copies of any submissions made and of any other information held by the Commission relating to its communications with those parties. This request was declined in reliance upon section 9(2)(ba)(i) of the OIA.

Having reviewed the information at issue, it was necessary to look at the question of whether it *‘was subject to an obligation of confidence’*. An examination of the nature of the information and the circumstances of its supply led to the view that it was so subject. The following factors were relevant in this regard.

* New Zealand is a signatory to the Convention on International Civil Aviation. It conducts its investigations pursuant to the principles set out in Annex 13 of that Convention. One of the principles requires information obtained in the course of an investigation not to be made available except for the purposes of the investigation *‘unless the appropriate authority for the administration of justice in* [the country concerned] *determines that … disclosure outweighs the adverse domestic and international impact such action may have on that or any future investigations’*.
* The covering letter seeking submissions from *‘interested parties’* and the policy document accompanying that letter referred to the confidential nature of the consultative process.

Clearly, there is a public interest in the continued supply of information to the Commission from *‘interested parties’*. The Commission’s principle purpose is to ‘*determine the circumstances and causes of accidents and incidents with a view to avoiding similar occurrences in the future …’*. It therefore needs to ensure that *‘interested parties’* will supply information freely and candidly for the purposes of an inquiry. *‘Interested parties’* would be likely to be less forthcoming, particularly with comments about potentially controversial matters, if they knew there was a possibility their comments would be made available to the public. This possibility is recognised in the Convention on International Civil Aviation. In light of the foregoing factors, it was concluded that section 9(2)(ba)(i) applied to the information at issue.

As required by section 9(1) of the OIA, consideration was then given to whether there were any factors which, in the public interest, outweighed the established interest in withholding the information. In this respect, the requester had argued that there was such a public interest, namely, the interest in natural justice. However, section 14(5) of the Transport Accident Investigation Commission Act 1990 ensures that the requirements of natural justice are met by requiring the Commission to seek the views of any person who is referenced in its preliminary report as having contributed to the cause of a transport occurrence. As a general rule, the Commission does not refer one party’s comments or representations on a preliminary report to any other party. However, where one party’s response is critical of another person, and that material influences the Commission’s final report, the Commission will give the party criticised the opportunity to comment.

However, the submissions at issue in this case did not result in any new or critical information about the pilot being added to the final draft report. Accordingly, the Commission did not consider that natural justice required release of the submissions.

Another factor which was taken into account in striking the balance between the competing public interest considerations for and against disclosure was the inquisitorial rather than adversarial nature of the Commission’s investigations. The Commission conducts its investigations in private and makes such inquiries as it thinks necessary before reaching its own conclusions. Whether one interested party’s submissions should be revealed to another interested party in such circumstances was a question on which the Privy Council deliberated in *Public Disclosure Commission v Isaacs* [1989] 1 All ER 137.

After assessing the competing considerations, the view was formed that there were no countervailing public interest considerations that outweighed the need to withhold the information at issue.

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