

Request for access to papers deposited in National Archives

Legislation	Official Information Act 1982, s 18(c)(i)
Agency	Department of Internal Affairs
Ombudsman	Anand Satyanand
Case number(s)	W34706
Date	December 1999

Request for access to certain papers deposited in National Archives—request declined on basis that access to the papers was restricted—condition made by former Minister at time of deposit that access subject to his consent—he declined to give consent—release would be contrary to specified enactment—Archives Act 1957, s 20(1)

In this case a request had been made to National Archives for certain departmental papers which it was understood had been deposited together with other papers by a former Minister of the Crown in National Archives. The request was declined on the basis that access to the papers was restricted under section 8(3) of the Archives Act 1957 as negotiated between the former Minister and the Chief Archivist at the time the papers were deposited. The information deposited by the former Minister was subject to the condition that there be no access without his written permission.

All information held by National Archives is ‘official information’, unless it is held solely as agent or solely for the purposes of safe custody on behalf of a person or body not subject to the OIA. However, section 52(3)(b)(i) of the OIA provides:

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...

(3) *Except as provided in sections 50 and 51, nothing in this Act derogates from—*

...

(b) *any provision which is contained in any other Act of Parliament or in any regulations within the meaning of the Regulations*

(Disallowance) Act 1989 (made by Order in Council and in force immediately before 1 July 1983) and which—

- (i) imposes a prohibition or restriction in relation to the availability of official information; ...*

Effectively, this means that the provisions of the Archives Act will prevail where there is any conflict between it and the OIA in respect of access to information deposited in National Archives.

Section 20(1) of the Archives Act provides for public access to archives ‘*subject to the conditions under which any archives are deposited*’. In this case, the former Minister had imposed the condition that access to the information he deposited was subject to his written consent. The requester had sought his consent, but he had declined to give it. Accordingly, access to the information was restricted by the condition in terms of section 20(1) of the Archives Act and, by virtue of section 52(3)(b)(i) of the OIA, section 20(1) of the Archives Act prevailed. The information could not therefore be released in the absence of the former Minister's consent. The view taken was that the request was properly refused pursuant to section 18(c)(i).

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