

Request for information in electronic form

Legislation	Official Information Act, ss 12, 16(2), 18(d), 18(h)
Agency	Minister of Education
Ombudsman	Sir Brian Elwood
Case number(s)	W37113
Date	August 1998

Request refused on grounds that requester making a second request for information already made available in a different form—where information is held in electronic form, a requester is entitled to request that the information be made available in that manner

In response to a request from an Opposition Member of Parliament for information relating to the formula for the Special Education Grant, the Minister of Education made available relevant material, including a 43-page table (of detailed data relating to schools) entitled ‘*Modelling of the Special Education Grant Formula on School Decile Ranking*’. The requester then asked the Minister for a copy of the table in electronic form. This request was refused on the ground that it fell outside the scope of the OIA. The requester sought a review of that decision on the basis that the information was only useable in electronic form.

The Minister’s essential concern was that he did not believe that the OIA permitted a requester to make a second request for information which has been made available to the requester previously, albeit in a different form. He believed that to release the information again would set a precedent whereby material already released under the OIA would have to be collated again and supplied again in a different format. He was concerned that if this became accepted practice, with technological developments, requests could be repeated seeking the same information in different formats and this would become costly.

A number of questions had to be addressed in reviewing the decision to decline the request:

1. Was the request a valid request for official information in terms of the requirements of section 12?
2. To the extent that a critical element of the request was the manner in which the requester had asked for the information to be made available, was there any reason

under section 16(2)(a)-(c) to decline to make the information available in the manner requested?

3. Given the principle of availability in section 5, was there any other valid reason under the OIA for declining the request?

In terms of the requirements of section 12(1), there was no doubt the requester was entitled to make a request under the OIA for specified official information and the information at issue had been requested with due particularity. In addition, section 12 does not preclude a person from making a second request for information already made available.

Where information is held in electronic form, a requester is entitled, under section 16, to request that such information be made available in that manner. The only reasons permitted under the Act for declining to make available information in the manner preferred by a requester are those set out in section 16(2)(a)-(c).

In respect of section 16(2)(a), there did not seem to be any basis for suggesting that making available the spreadsheet data at issue in electronic form would *'impair efficient administration'*. Similarly, in respect of section 16(2)(b), making available the information in electronic form would not be contrary to any legal duty of the Ministry or the Minister. Finally, in respect of section 16(2)(c), there was no argument advanced, and none was identified, to suggest that making available the information in electronic form would prejudice any of the interests protected by sections 6, 7 and 9 of the OIA.

Consideration was given to the possible relevance of the reasons for refusal under section 18, but none of them applied. The two reasons that seemed most relevant to the Minister's stated concerns that the information was already available were sections 18(d) and 18(h).

In respect of section 18(d), the Minister had argued that the request was inappropriate because the information was already in the public arena. However, while the Minister may have previously released the information at issue in paper document form, the information was not publicly available in electronic form. Accordingly, the view was formed that section 18(d) did not apply in respect of the specific request.

In respect of section 18(h), if a requester had no good reason for making a subsequent request for information made available to him or her previously, then the section may apply on the basis that the subsequent request is frivolous or vexatious. However, in this case it was apparent that the requester had been unaware, at the time he made his request, that the information included 43 pages of spreadsheet data. Had he known the extent of the information involved, he would have requested it in electronic form at the outset. This would have enabled the information to be analysed properly so that informed responses could be prepared to government policy initiatives and alternative policy initiatives developed. In the light of these factors, the view was that the subsequent request for the information in electronic form was not frivolous or vexatious and that section 18(h) did not therefore apply.

The Minister drew attention to paragraphs 76 and 77 of the Law Commission's report *'Review of the Official Information Act 1982'*, where the issue of a requester, who has been given the information requested in paper form and then requests a copy of the information on computer

disk, is discussed. He noted that the Law Commission's view was that where information had already been provided in accordance with the original request, a further request for the same information on computer disk did not have to be complied with. He therefore believed his decision was consistent with the Law Commission's view of the requirements of the OIA.

Clarification was sought from the President of the Law Commission as to whether paragraphs 76 and 77 supported the position taken by the Minister. He commented:

My own view is that if there is good reason to believe that the principle of availability is better achieved by the supply on disk the request is a proper one that should be met.

However, he also commented that:

... if the utility of the information received in hard copy were just as good as its receipt by way of disk there would be no particular reason to furnish a second time.

In other words, each case has to be considered on its merits. In this case, the reasons given by the requester as to why he had made a further request for the information in electronic form were considered valid. A recommendation was made to the Minister that he make the information available to the requester in electronic form. The Minister accepted the recommendation.

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