

Request for documents relating to footwear manufacturing operation at Prison

Legislation	Official Information Act, s 9(2)(i)
Agency	Department of Corrections
Ombudsman	Sir Brian Elwood
Case number(s)	W38354
Date	May 1998

Footwear manufacturing operation at Wanganui Prison was a commercial activity—s 9(2)(i) applied

The Department of Corrections refused a request for certain information relating to the tendering and purchase of assets and the setting up of a footwear manufacturing operation at Wanganui Prison. The request was refused under section 9(2)(i) of the OIA ‘to enable the Department ...to carry on without prejudice or disadvantage, commercial activities’. The information at issue consisted of asset purchase costs and tender amounts, an analysis of sales projections, details of overhead, administrative and production costs and volume production targets.

For section 9(2)(i) to apply, the Department first had to be able to identify the ‘commercial activity’ which it considered would be prejudiced or disadvantaged by release of the information at issue. The business plan for the footwear factory stated that one of its business goals was to:

Operate a commercially viable business which will meet all the objectives of our policy on inmate employment whilst making a financial return on investment and producing a profit commensurate with similar commercial enterprises.

The projected income statement for the first year of the factory’s operation also showed clearly that the business was intended to operate at a profit. Thus the first requirement for section 9(2)(i) to apply was satisfied.

The second requirement was to identify what the commercial prejudice to the Department would be if the information at issue were released. It was concluded that as the footwear industry operates in a fully competitive market, disclosure of analyses of projected sales and production costs, planned volume production targets, and projected income and profits would

provide direct competitors with information that they could use in a market situation to obtain a competitive advantage. It was also accepted that disclosure of the purchase prices for the assets used to set up the factory would enable competitors to better understand the Department's product costing methodologies and influence their own marketing strategies to the detriment of the Department's commercial position. This would compromise the Department's commercial position in respect of future restructuring proposals for the business then under consideration. It was accepted that section 9(2)(i) did apply.

During the course of the investigation the Department released 136 of the 152 pages of information involved. The question was whether there were any public interest considerations in terms of section 9(1) of the OIA which might outweigh the need to withhold the remaining information. It was concluded that while there was a public interest in how government departments and organisations spend public funds, given the amount of information which the Department had released, this was not sufficient, in the circumstances, to outweigh the need to withhold under section 9(2)(i), the prices paid by the Department for the assets needed to establish the footwear factory at the Prison.

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