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| Request for counselling guidelines published by the Abortion Supervisory Committee |
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| Legislation Official Information Act 1982, s 18(d)Agency Abortion Supervisory CommitteeOmbudsman Sir Brian ElwoodCase number(s) W38820Date April 1998  |

*Request for counselling guidelines published by the Abortion Supervisory Committee—information withheld on grounds it would soon be publicly available—whether draft documents are ‘official information’—interpretation of ‘soon be publicly available’*

The requester sought a copy of draft counselling guidelines to be issued by the Abortion Supervisory Committee. The Committee refused the request under section 18(d) of the OIA on the ground that the information requested *‘will soon be publicly available’*. The Committee took the view that it did not feel it was appropriate to have to release drafts of work in progress when the Committee had not yet had the opportunity to consider them or before it had agreed on the content of the guidelines. The Committee also advised that it did *‘not agree that the definition of official information as set out in s 2(1) of the Official Information Act 1982 could possibly include drafts of work in progress which in some cases are only thoughts on paper’*.

Section 2(1) of the OIA defines *‘Official Information’* to mean;

(a) ... any information held by—...

(iii) an organisation;...

As the Committee was an *‘organisation’* subject to the OIA and *‘held’* the information at issue, it was official information, as none of the specified exclusions under section 2(1) applied. There is no exclusion under the OIA for information on the basis that it is in a draft document, even if only a very preliminary draft.

Section 18(d) of the OIA provides that a request made in accordance with section 12 of the OIA may be refused if ‘*the information requested is or will soon be publicly available’*. This provision is not a good reason for withholding information, but is simply authority for refusing a request made under section 12 in particular circumstances, for example because release of information is imminent or the information at issue is being printed so that there would be difficulties in providing it immediately.

Section 18(d) therefore presupposes an element of certainty when the information will be publicly available and given that the principle of availability set out in section 5 requires that *‘information shall be made available unless there is good reason for withholding it’*, and that section 18(d) is not a *‘good reason’*, its use as a ground for refusal of a request should not undermine any of the purposes of the OIA set out in section 4. If refusal of information relying upon section 18(d) has the effect of thwarting the purposes of the OIA, it would be contrary to the spirit and intent of the legislation.

The Committee ultimately published its Counselling Guidelines. The requester received a copy and was satisfied with this outcome. No formal determination was required.

*This case note is published under the authority of the* [*Ombudsmen Rules 1989*](http://legislation.govt.nz/regulation/public/1989/0064/latest/DLM129834.html?src=qs)*. It sets out an Ombudsman’s view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.*