

Request for file on alleged informant

Legislation	Official Information Act 1982, ss 6(c), 10
Agency	Minister of Fisheries
Ombudsman	Sir Brian Elwood
Case number(s)	W39937
Date	June 1998

Request for file on alleged informant—Minister neither confirmed nor denied existence of information—any confirmation or denial that a person is or has been an informant for a law enforcement agency is likely to prejudice the interest protected by section 6(c)—appropriate for the Minister to neither confirm nor deny whether the file was in existence

A person convicted of offences in breach of the Fisheries legislation sought to obtain a rehearing of his case. In the course of a series of requests under the OIA relating to the background of his prosecution, he asked the Minister of Fisheries for *'the file'* on a named person whom he alleged was an informant.

The Minister declined to confirm the existence or non-existence of such a file in reliance upon section 10 of the OIA.

Reliance may be placed upon section 10 only where sections 6, 7 or 9(2)(b) of the OIA applies to the information requested or, would, if it existed, apply.

In this case, consideration was given to whether section 6(c) applied to the information at issue, or would apply if the information existed.

In order to fulfil its duties in maintaining the law, the Ministry of Fisheries, as the agency responsible for enforcing the particular law at issue, is very reliant upon members of the public coming forward to provide information relating to actual or suspected criminal activities. If official information which identifies informants directly, or from which the identity of informants may be deduced, is released, then potential informants are likely to be deterred

from assisting law enforcement agencies, thereby prejudicing *‘the maintenance of the law, including the prevention, investigation, and detection of offences’* within the meaning of section 6(c). For this reason, although each case must be considered on its own merits, Ombudsmen over the years have tended to take the view that such information may be withheld in reliance upon section 6(c).

The terms of the request under review imported the allegation that a certain named person was an informant for the Ministry of Fisheries. As noted above, any disclosure that a person is or has been an informant for a law enforcement agency is likely to prejudice the interest protected by section 6(c). However, a denial that a named person is or was an informant generally or in relation to a specific case is also likely to result in similar prejudice by reason of consequent deductions which may be made.

Applying the foregoing reasoning for the purpose of considering whether the Minister was entitled to rely on section 10, the view was formed that:

1. section 6(c) either applied to the information at issue or would apply if it existed; and
2. in the circumstances of the particular matter, the interest protected by section 6(c) would be likely to be prejudiced by the disclosure of the existence or non-existence of such information.

It was appropriate for the Minister to neither confirm nor deny whether the file was in existence.

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