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| Request for information concerning patients believed ineligible for publicly funded healthcare |
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| Legislation Official Information Act 1982, ss 9(2)(a), 18(g)  Agency Ministry of Immigration  Ombudsman Anand Satyanand  Case number(s) W40599  Date February 2000 |

*Request for information from Immigration Service concerning patients believed ineligible for publicly funded healthcare—some information withheld on privacy grounds—some information not held—balance to be struck between public interest in release of information to the extent necessary to confirm eligibility for public funding and privacy interest—release of statement satisfied public interest*

A Crown Health Enterprise (CHE) sought information from the New Zealand Immigration Service relating to eight individuals whom the CHE believed were ineligible for publicly funded healthcare. The request was for:

* the current residence status, including the nature of any permit currently held;
* confirmation of whether or not residence would or was likely to be granted; and
* an explanation for any likely delay in this process.

In respect of those individuals found not to be eligible for publicly funded healthcare, the CHE requested further information to assist in debt collection efforts. This information included:

* the individual’s full name and date of birth;
* address and telephone number in New Zealand;
* place of origin; and
* the name, telephone number and address of the sponsor.

The Service refused the request citing section 9(2)(a) of the OIA.

Of the eight names provided by the CHE, the service held records for four individuals with the same names and dates of birth and one individual with the same date of birth and very similar name as those provided. No records existed in respect of the remaining three individuals. The view was formed that the request for information relating to the three individuals for whom records were not held, could be refused under section 18(g).

The Service’s residential status records of the five individuals included information that would normally be considered personal and private. After consultation with the Privacy Commissioner it was agreed that section 9(2)(a) applied and that the information related to the privacy of natural persons.

Having determined that a privacy interest existed under section 9(2)(a), it was then necessary to establish whether there was a countervailing public interest in release under section 9(1) of the OIA. This interest arose from the criteria established by the Minister of Health for determining a person’s eligibility for public health funding. New Zealand citizens and residents are generally eligible for funding under these criteria. Other people in New Zealand may be eligible depending on their particular immigration status and other circumstances. The CHE argued that the information requested was needed in order to apply the eligibility criteria to the individuals concerned. It noted that:

In the absence of clear and reliable information, the statutory directive from the Minister of Health becomes either meaningless, or unenforceable.

Logic suggests the purpose of the eligibility criteria would be defeated if a public health care provider could not determine a person’s eligibility for such care. Accordingly the view was formed that there was a public interest in release of the information at issue, to the extent that this might indicate whether the persons named were eligible for publicly funded healthcare. Consideration therefore had to be given to whether this consideration outweighed the need to withhold the information in order to protect the individuals’ privacy.

In respect of the four individuals about whom the Service and CHE held the same dates of birth and names, it was suggested that the Service release a brief statement to the CHE advising, in respect of each individual, whether or not it appeared from its records that their immigration status rendered them eligible for public health funding at the time the services were provided. The Service agreed to release such a statement. On this basis the view was formed that release of this statement had satisfied the identified public interest in release of information in terms of section 9(1).

With regard to the information held by the Service about a person with a very similar name and the same date of birth as that provided by the CHE, there was not an absolute certainty that the two records related to the same individual. Accordingly the view was formed that the public interest in disclosure did not outweigh the privacy interest. There was therefore good reason in terms of section 9(2)(a) for all the information concerning the immigration status of this individual to be withheld.

The second part of the request was for further personal details including the full name and date of birth of those individuals who were not eligible for public health funding. The statement released by the Service identified three individuals whose immigration status did not appear to render them eligible for public health funding at the time the debts were incurred.

It was noted that the information held by the Service concerning the individuals’ full names and dates of birth was virtually identical to that provided by the CHE. In these circumstances, the Service agreed it was not necessary to withhold this information in order to protect the privacy of natural persons. The information was released to the CHE.

It was noted that the address and telephone numbers of two of the three individuals concerned were already known to the CHE. The Service agreed that it was not necessary to withhold this information in order to protect the privacy of natural persons, and released the information to the CHE.

In relation to the remaining information concerning addresses and telephone numbers, it was noted that the information had been supplied for the purpose of having immigration applications considered by the Service. Having regard to this purpose, and the fact that the information was being sought by the CHE in order to collect a debt, the view was formed that there were privacy interests requiring protection in terms of section 9(2)(a) and that the information should be withheld.

Consideration then had to be given to any countervailing public interest considerations in terms of section 9(1). There was clearly a public interest in the CHE being able to collect debts incurred by people who were ineligible for publicly funded healthcare. The CHE had advised that its inability to recover these debts prejudiced the level of services available to legitimate users. Thus, it was in the public interest to release any information which might assist the CHE in its debt collection efforts. However, the public interest in release was diminished by:

* the Service’s advice that the contact details it held were out of date.
* the availability of other means for pursuing the collection of debts; and
* the CHE’s ability to issue proceedings in the District Court for recovery of the debts without knowing the individuals’ current address, by way of substituted service.

While it was accepted that there was a demonstrable public interest in release of the information, on balance the view was formed that the public interest in release did not outweigh the need to withhold the information in order to protect the privacy of natural persons. Thus, it was concluded that there was good reason for the Service to withhold the remaining information relating to addresses and telephone numbers.

In regard to the request for sponsor information, the Service held information in respect of one individual. The information had been provided to the Service by the sponsor for the purpose of an immigration application assessment. The fact that a person has sponsored an immigrant, and in doing so provided their contact details, was considered information of a personal nature in which there is a privacy interest in terms of section 9(2)(a).

However, a public interest in release of the information was also identified. When an application for a visa or permit to visit New Zealand is made, sponsorship by a New Zealand citizen or resident is required in the absence of the applicant providing evidence of having sufficient funds for maintenance and accommodation. Sponsors are required to complete a sponsorship form, giving an undertaking of formal responsibility for the visitor, for the whole period of their visit to New Zealand. In this case the sponsorship form included an undertaking to *‘provide full financial support for the visitor(s)’*, and stated:

If you fail to carry out your responsibilities to the visitor(s), you could have action taken against you to recover the cost of their accommodation, financial support, or return fares.

A release of the sponsor information might therefore assist the CHE in its debt collection efforts. Furthermore, it was considered that there was a public interest in ensuring that people are held to account for the formal undertakings they have given when an application is made to the Service for permission to visit New Zealand. However, there were factors that diminished the public interest in release of the information. First, it did not seem that the sponsor could be held legally liable for the debt. Thus, the information requested would only be of assistance in seeking a voluntary payment from the sponsor, or help in locating the individual concerned. Secondly, it did not seem sufficiently clear that the undertaking given in the sponsorship form to provide *‘full financial support’* would have been understood to specifically include the costs of any health care.

After weighing the competing interests, the view was formed that the public interest in disclosure of the information did not outweigh the need to withhold it in order to protect the privacy of natural persons. Accordingly, it was concluded that there was good reason in terms of section 9(2)(a) to withhold the information relating to the sponsor.

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