|  |
| --- |
| Request for ocean manifests filed with Customs |
|  |
| Legislation Official Information Act 1982, s 9(2)(b)(ii) Agency New Zealand Customs ServiceOmbudsman Sir Brian ElwoodCase number(s) W40894Date November 1998  |

*Request by solicitors on behalf of a shipping company for ocean manifests filed with the New Zealand Customs Service for vessels berthing at a container terminal on a certain day—information withheld to protect commercial interests—no countervailing public interest*

Solicitors for a shipping company asked the New Zealand Customs Service to provide ocean manifests filed for vessels berthing at a container terminal on a particular day. The shipping company sought to identify the types and volumes of cargo to assist in its strategic planning. The request was refused by Customs under section 9(2)(b)(ii) of the OIA on the ground that, having consulted with the shipping line for the one vessel that berthed on the day in question, disclosure of the manifest would unreasonably prejudice the commercial position of that shipping line.

It was considered that the release of the detail in the ocean manifest to a competitor, including information identifying the shipping line’s customers, would prejudice that shipping line as it would enable the competitor to target the shipping line’s customer base. As to whether that prejudice was *‘unreasonable’*, it was established that shipping lines are under no statutory duty to provide Customs with ocean manifests in relation to cargo. Therefore the same disclosure would not necessarily be available to other shipping lines, including the shipping line responsible for the manifest at issue.

Similarly, disclosure of a manifest’s contents would not necessarily be available to all shipping lines through requests under the OIA. The prejudice to the shipping line which created the manifest was therefore considered to be *‘unreasonable’* in terms of section 9(2)(b)(ii).

It was therefore necessary to consider whether the need to protect the manifest pursuant to section 9(2)(b)(ii) was outweighed by public interest considerations favouring disclosure in terms of section 9(1) of the OIA. It was argued that these public interest considerations might include giving effect to New Zealand Government policy, namely the promotion of competition and the attainment of efficient markets in which information flows freely to all parties.

The purpose of the OIA as set out in section 4(a) is *‘to increase progressively the availability of official information to the people of New Zealand in order to enable their more effective participation in the making and administration of laws and policies; and to promote the accountability of Ministers of the Crown and officials, and thereby to enhance respect for the law and to promote the good government of New Zealand’*. In that light the OIA does not seek to promote current government policy, nor the efficiency of the market place. The public interest consideration identified favouring release of the manifest did not outweigh the reason for withholding it pursuant to section 9(2)(b)(ii).

*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.*