

Request for information about earthquake-prone building survey

Legislation	Local Government Official Information and Meetings Act 1987, s 7(2)(b)(ii)
Agency	Horowhenua District Council
Ombudsman	Sir Brian Elwood
Case number(s)	W41286
Date	December 1998

Request for information about an earthquake-prone building survey—survey findings challenged—information withheld to avoid prejudice to the commercial interests of the owners of those buildings whose status was unresolved pending outcome of challenge

This request was made to a District Council by a journalist who sought a copy of an engineering survey of 186 buildings in the District’s commercial sector, to identify those which might present an earthquake risk. The survey determined that 67 buildings were potentially at risk, and the owners of those buildings were given the opportunity to comment on the survey results.

Twenty property owners challenged the findings of the survey. The information on those properties was withheld from the journalist, but the rest of the survey information was made available. The investigation therefore focused only on that part of the survey which related to the 20 properties under challenge.

The Council submitted that the information should be withheld in terms of section 7(2)(b)(ii) of the LGOIMA. It submitted that if the survey findings being challenged were subsequently found to be erroneous, their release could seriously and unfairly damage the commercial interests of the owners concerned. Consideration of the information at issue suggested that the effect of release might be to cause a drop in the value of the buildings and therefore a lowering in the level of rents yielded by those buildings. In addition, members of the public might be less willing to enter the buildings to conduct their business. The commercial position of the owners would thereby be prejudiced, and that prejudice could be seen as unreasonable until such time as the physical condition of the buildings was confirmed or otherwise by a review.

Having formed the view that it was necessary to withhold for the time being the survey information on the 20 properties in question to protect the commercial position of the owners,

consideration had to be given to the question of any countervailing public interest considerations favouring disclosure, in terms of section 7(1) of the OIA. The Council acknowledged that there is a public interest in knowing the structural condition of commercial buildings which members of the public may enter. It advised that for this reason it did not wish to see any further delay in resolving the status of the 20 buildings than was necessary to be fair to the owners. It also advised that when the review procedure being undertaken with respect to those buildings was complete, it was expected that the information then being withheld would be released in full.

As the Council expected to resolve expeditiously the status of the 20 buildings for which challenges had been lodged, it was accepted that the public interest in knowing the results of the survey did not outweigh the need to protect the commercial position of those owners the status of whose buildings remained unresolved. In the event, the review process was completed and the information released three months after the official information investigation was concluded.

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