

Request for details of compensation for breach of privacy

Legislation	Official Information Act 1982, s 9(2)(ba)(ii)
Agency	Department of Work and Income
Ombudsman	Anand Satyanand
Case number(s)	W42207, W42212
Date	July 1999

Request for details of compensation for breach of privacy—obligation of confidence—interest in withholding not outweighed by public interest considerations

The Department of Work and Income (WINZ) invited members of the public to come forward and provide information about persons who might be receiving benefits to which they were not entitled.

A member of the public duly provided some information relating to a particular person, and the informant requested that his identity be kept confidential. However, when the subject of the information sought access to his file, the name of the informant was accidentally released.

It was alleged in media reports that WINZ subsequently paid a sum of money to the informant as compensation for breach of privacy in releasing his name. Two newspapers requested details of the amount of any compensation paid. The name of the informant was not requested.

The informant settled his claim against WINZ, and the terms of settlement included a specific confidentiality clause at the request of the claimant. For the purposes of the investigation, the informant was consulted for his current views upon disclosure of the information at issue. The informant said that he remained anxious for the details of the settlement to remain confidential. He explained that the limited degree to which his name had become known to some persons had already caused turmoil in his personal life. There had been considerable media publicity over the incident, and he feared a resurgence of unwanted and distressing

attention upon him. Where parties are in dispute, it is not unusual for such dispute to be discussed and ultimately settled in confidence. Confidentiality tends to promote proper discussion of the issues involved and ultimately assists in the reaching of an agreement acceptable to all concerned. The ability to achieve settlement of disputes without the need for recourse to full Court or tribunal hearings is in the public interest. Although each case must be considered on its own merits, as a general principle, if such confidentiality were to be lightly put aside, then persons would be less likely to enter into such agreements and consequently the public interest would be prejudiced.

The motives of a party in seeking confidentiality will vary with each case, but in the present instance the person had made his concerns quite clear. The essence of the dispute related to his claim of an improper disclosure of his affairs. It was argued that any further dissemination of details about the matter would have inevitably added to his fundamental grievance about the original wrongful disclosure. In the circumstances, it was accepted that the settlement was *'subject to an obligation of confidence'* and disclosure of any detail of it *'would be likely ... to damage the public interest'* within the meaning of section 9(2)(ba)(ii) of the OIA.

By virtue of section 9(1) of the OIA, it was necessary to consider whether in the circumstances of the particular case, the withholding of that information was outweighed by other considerations which rendered it desirable, in the public interest, to make that information available.

There was an interest in the public knowing the amount of any payment by WINZ in settling the matter in terms of the accountability of WINZ. However, the question pursuant to section 9(1) was whether that interest outweighed the reason to withhold the information pursuant to section 9(2)(ba)(ii). This required a balancing of competing interests, which in this instance was particularly difficult. Set against the unusual facts on which this complaint was based and the public interest in WINZ being able to resolve the complainant's grievance on terms acceptable to the complainant, it was decided that the interest in withholding the information was not outweighed by public interest considerations within the meaning of section 9(1) which favoured release. As a consequence, WINZ was entitled to withhold the information at issue.

This case note is published under the authority of the [Ombudsmen Rules 1989](#). 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.