



Request for policy on settling disputes

Legislation	Official Information Act 1982, ss 9(2)(h) and 22
Agency	New Zealand Customs Service
Ombudsman	Sir Brian Elwood
Case number(s)	W42240
Date	October 1999

Request for policy on settling disputes—information withheld on basis of legal professional privilege—consideration of s 22 and relationship with s 9(2)(h)

The requester sought a copy of the originating ‘*internal directive or memorandum or letter*’ which related to a process whereby the New Zealand Customs Service settled disputes involving seized vehicles. The Service withheld the information at issue in reliance upon section 9(2)(h) of the OIA for the reason that it was necessary to maintain legal professional privilege.

A preliminary point arose from the wording of the request. It appeared that the requester was seeking a document within the scope of section 22 of the OIA, namely one which contained ‘*policies, principles, rules or guidelines in accordance with which decisions or recommendations are made in respect of any person or body of persons in his or its personal capacity*’. Official information within section 22 may only be withheld for one of the reasons identified in that section, and section 9(2)(h) is not included in the list of available reasons.

The information at issue was examined, and it appeared that the document fell within the scope of information covered by section 22. Although the document was signed by the Office Solicitor, his signature was appended not as legal adviser, but ‘*for Comptroller of Customs*’. The document as a whole was in the nature of a general direction to relevant officials. It could not be said to be confidential legal advice provided as a result of the relationship of solicitor and client. Although the document included a sentence which read ‘*This memo is ...in the nature of legal advice and it is to be treated as subject to legal privilege*’, the inclusion of such a statement does not of itself affect the essential nature of a document. In this case, the substance was such that it did not have the essential character of legal advice and therefore fell outside the ambit of documents for which privilege could properly be claimed.

In the circumstances, it was concluded that no part of the document was subject of legal professional privilege. In the absence of any other reason to withhold in terms of the OIA, the Service accepted that the document should be made available to the requester.

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