

Request to Police for information regarding alleged threats made against Judge

Legislation	Official Information Act 1982, s 6(c)
Agency	New Zealand Police
Ombudsman	Anand Satyanand
Case number(s)	W45324
Date	June 2002

Request for information provided to Police concerning alleged threats made by person/s connected with the requester's family—refused on the basis that disclosure would reveal identity of the informant—mixture of 'personal information' and 'official information'—joint investigation with Privacy Commissioner

The requester, along with some members of the requester's family, had been convicted of certain criminal offences. The presiding trial Judge stepped down after the jury's guilty verdict and another Judge was appointed to decide sentencing in respect of those convictions. The family were then informed by their legal counsel that the reason the trial Judge had declined to be involved in sentencing was because he had been advised by the Police that they had received information from an informant that threats had allegedly been made by person/s connected with the requester's family against the Judge. The family denied any threat was ever made and the Police did not question any members of the requester's family in relation to the alleged threats, nor did it lay any charges.

The requester asked to be provided with the information that the Police had received in relation to the alleged threats. However, when making the request, the requester specifically advised that there was an expectation that all details relating to the identity of the informant would be withheld.

The Police refused to provide this information to the requester, relying upon section 6(c) of the OIA, among other reasons. The Ombudsman was asked to review this decision.

Upon review the Ombudsman found that the information provided by the informant related not only to the requester but also to person/s connected with the requester's family. The Ombudsman consulted with the Privacy Commissioner and it was agreed that the information at issue comprised an inseparable mix of both '*personal information*' about the requester and '*official information*' about other people. Therefore, it was necessary for the Privacy Commissioner and the Ombudsman to conduct a joint investigation.

The Ombudsman began his investigation by considering the concerns of the Police with release. The Police contended that, while the requester had not directly sought the name of the person who had advised Police about the alleged threat, disclosure of the requested information would be likely to reveal the person's identity. The Police argued that if details identifying the informant were released or, more generally, if members of the public were to know that the Police released details which identified those persons who assisted the Police with their enquiries, this would discourage members of the public from providing information regarding possible offences in the future.

The Ombudsman was satisfied that the disclosure of the information would be likely to reveal the identity of the informant and, by doing so would jeopardise the continued supply of similar information from the public to the Police. As a result, the ability of the Police to discharge their statutory functions with regard to maintenance of the law, including the prevention, investigation, and detection of offences, would be prejudiced.

The Ombudsman therefore upheld the decision of the Police to withhold the information pursuant to section 6(c) of the OIA. The Privacy Commissioner also upheld the decision of the Police under section 27(1)(a) of the Privacy Act 1993.

Comment

Generally, the identity of an informant and information provided by an informant is '*personal information*' about the person who is the subject of the information at issue. If that person then requests the information the matter falls within the scope of the Privacy Act. However, if another person who is not the subject of the information requests that same information, it would fall for consideration under the provisions of the OIA.

Successive Ombudsmen have generally accepted that agencies which have statutory law enforcement functions rely heavily on the public for information to assist them to discharge those functions. Much of this information is supplied on a confidential basis. It has therefore been accepted that any prejudice to the free flow of information from the public to law enforcement agencies would, in turn, prejudice the maintenance of the law, including the prevention, investigation and detection of offences. The general approach has been to accept that disclosure of the identity of an informant, or any information which may lead to the identification of an informant, '*would be likely*' to prejudice the maintenance of the law.

The Privacy Commissioner's consideration of the matter focused on section 27(1)(c) of the Privacy Act, which provides that an agency may refuse to disclose any information requested pursuant to principle 6 of the Privacy Act if the disclosure of the information '*would be likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial*'. The Commissioner considered that keeping the identity

of informants confidential *'is important for maintaining that flow of information because if it became generally known that informant identities were disclosed, many people would be hesitant to provide information to those agencies and they would be prevented from carrying out this function'*. The Commissioner was of the view that the information at issue may identify the informant and therefore the Police had good reason to withhold the information under section 27(1)(a) of the Privacy Act 1993.

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