Ombudsman
Fairness for all

Case note

Request for draft briefings to incoming government

Legislation	Official Information Act 1982, s 9(2)(g)(i)
Agency	The Treasury
Ombudsman	John Belgrave
Case number(s)	173358
Date	May 2006

Disclosure of draft briefings to the incoming government would make officials reluctant to be so free and frank in expressing their initial and untested views and cause them to prefer less efficient and transparent verbal exchanges—section 9(2)(g)(i) applies

The Treasury proactively published its 2005 post-election briefing to the incoming government. This prompted a request for draft versions of the document, which the Treasury refused under section 9(2)(g)(i) of the OIA. The requester complained to the Chief Ombudsman.

The Chief Ombudsman formed the opinion that section 9(2)(g)(i) provided good reason to withhold the draft versions. He was in no doubt that if the drafts were disclosed this would be foremost in the minds of officials when they came to draft the next post-election briefing. There was a real and substantial risk that this would:

- make officials reluctant to be so free and frank in expressing their initial and untested views, particularly where those views had an element of sensitivity or controversy; and
- cause officials to prefer less efficient and transparent verbal exchanges (at least in the initial stages), and to thereby delay the formal drafting process until consensus had been reached on the overall direction and content of the briefing.

Disclosure would have an unacceptably chilling effect on the process of drafting future post-election briefings to incoming Ministers.

It is in the interests of the effective conduct of public affairs for the process of drafting briefings to incoming Ministers to be as robust as possible. Post-election briefings to incoming Ministers provide a valuable opportunity for government departments. It is generally accepted that they represent the one time in the three-yearly electoral cycle where departments are able express their opinions independently of requests for advice from Ministers, and across the entire sphere of their policy and legislative influence. It is important that officials feel able to debate and accept or reject particular approaches in a free and frank manner, without being concerned that their early and untested opinions and draft briefings could be made publicly available. If officials feel inhibited in this process, then ultimately the quality of the end product and the quality of the record will suffer. This would prejudice the effective conduct of public affairs. The Chief Ombudsman accepted that a degree of confidentiality in the drafting process was necessary to protect the willingness and ability of officials to canvass and rigorously test the full range of options and ideas, and then to work through these in order to produce their best and most considered advice for the incoming Minister.

There was nothing in the drafts or the progression of the drafting process that gave rise to a public interest in disclosure sufficient to outweigh the need to withhold.

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