|  |
| --- |
| Request for company’s annual report |
|  |
| Legislation Local Government Official Information and Meetings Act 1987, s 7(2)(b)(ii)  Agency Hutt City Council  Ombudsman David McGee  Case number(s) 176901  Date December 2008 |

*Releasing cost of sales, expenses and revenue would enable competitors to determine the underlying cost of the company’s products and undercut them thereby prejudicing their commercial position—s 7(2)(b)(ii) applies*

Hutt City Council refused to disclose a company’s annual report on the basis that it would be likely unreasonably to prejudice the company’s commercial position (section 7(2)(b)(ii)). The council held the report because it was a minority shareholder in the company. The requester complained to the Ombudsman.

During the Ombudsman’s investigation, the Council accepted that parts of the report could be disclosed without prejudice, for example, the contents page, the company directory, the notes to the financial statements, and the auditor’s report.

The Ombudsman concluded the remaining information was properly withheld under section 7(2)(b)(ii). While the Companies Act 1993 requires that a company’s annual report must be made available to its shareholders, it does not require that it be made publicly available.

The company was established to deploy fast, open-access broadband. It was described at the time as a fledgling company with limited capital operating in a very competitive market. The annual report contained detailed financial information about the company’s sales, expenses and revenue.

Disclosure of this information would enable the company’s direct competitors, who were much larger telecommunications companies, to price their own competing products at a level that the company would find hard to sustain financially and thus attempt to force it out of business. This would be likely unreasonably to prejudice its commercial position.

*This case note is published under the authority of the* [*Ombudsmen Rules 1989*](http://legislation.govt.nz/regulation/public/1989/0064/latest/DLM129834.html?src=qs)*. 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.*