

Request for public submissions on draft standard

Legislation	Official Information Act 1982, s 9(2)(g)(i)
Agency	Standards New Zealand
Ombudsman	David McGee
Case number(s)	179363
Date	August 2009

Members of the public with a vested interest in developing standards would not be deterred from expressing their opinions in future

A requester sought public submissions received by Standards New Zealand (SNZ) in relation to a draft standard. SNZ refused the request under section 9(2)(g)(i) and the requester complained to the Ombudsman. SNZ argued that disclosure before the Standards Committee had completed its analysis of the public submissions would:

- prejudice the free and frank consensus-decision making process;
- inhibit people from making submissions in the future; and
- inhibit individuals from volunteering to serve on standards committees.

The Ombudsman did not accept these arguments.

Disclosure would prejudice the free and frank consensus-decision making process

The Ombudsman noted that standards committee members are usually experts on the topic, drawn from a range of professional groups, industry bodies, central and local government agencies and community groups, and are either experienced practitioners or academics, or have other relevant expertise or knowledge. People of this calibre are not likely to be easily

swayed or inhibited by public discussion or debate about the accuracy or otherwise of various submissions. In addition, the terms of reference for standards committees recognise that discussion at committees is confidential. Given the relative seniority and levels of experience and expertise of the Committee members and the protection afforded by the committees' terms of reference, the Ombudsman was not persuaded that disclosure of the public submissions would be likely to pressure, or inhibit, Committee members from representing their nominating organisations and expressing their opinions in a free and frank manner during committee meetings if required.

Disclosure would inhibit people from making submissions in the future

The Ombudsman accepted that section 9(2)(a) of the OIA could apply to the names, addresses and contact details of individuals who made submissions on a personal basis. However, he saw no evidence that disclosure of the submissions would inhibit members of the general public from making submissions in the future. It is a requirement of the Standards Act 1988 for SNZ to seek public comment as part of the process of approving a standard. It seems likely that people who make submissions on a draft standard do so because the draft standard has implications for some aspect of their professional or personal life. A number of the submissions at issue were made by energy companies, those involved in wind farm developments and groups that oppose wind farms. These individuals all had a vested interest in alerting the standards committee to any concerns they may have with the draft standard to ensure that, as far as possible, the standard met their needs. It did not appear that any of the submissions were provided to SNZ under an obligation of confidence, and SNZ's general practice is to disclose the public submissions once the committee has concluded its deliberations. In these circumstances, the Ombudsman was not persuaded that disclosure of the submissions would inhibit people from making a submission in the future on an issue that affects them. The Ombudsman suggested that in future SNZ consider releasing such submissions proactively on its website (having warned submitters in advance that this is its practice and thus giving them an opportunity to raise any confidentiality concerns they have).

Disclosure would inhibit individuals from volunteering to serve on standards committees

The Ombudsman noted again that members of standards committees are experts who have presumably reached levels of some seniority or experience in their particular fields. He reiterated that people of this calibre are unlikely to be easily swayed, or inhibited, by public discussion or debate about the accuracy or otherwise of various submissions. For the most part, committee members appear to represent organisations that have an interest in ensuring standards are technically and scientifically robust and meet the needs of those who will be using them. The members of the committees who work for central or local government bodies will be familiar with the application of the official information legislation and the requirement

that information must be disclosed unless there is good reason to withhold it. Bearing these factors in mind, the Ombudsman was not convinced that disclosure of the public submissions would be likely to inhibit such people from volunteering to serve on standards committees in the future.

The Ombudsman formed the final opinion that section 9(2)(g)(i) did not provide good reason to withhold the public submissions and recommended their disclosure.

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