

Request for reports of unannounced inspections of rest homes and hospitals

Legislation	Official Information Act 1982, s 9(2)(b)(ii)
Agency	Ministry of Health
Ombudsman	David McGee
Case number(s)	287978
Date	March 2011

Release of adverse findings might damage providers' reputations and therefore their commercial position, but this would not be unreasonable—s 9(2)(b)(ii) does not apply—public interest in promoting public safety and consumer protection

Consumer New Zealand asked the Ministry of Health for full reports of unannounced inspections of rest homes and hospitals in 2009. Of the 12 unannounced inspections in 2009, the Ministry refused to release five full reports because summaries of those reports were publicly available. It released seven reports for which summaries were not publicly available, but withheld the names of the providers. The Ministry relied on section 9(2)(b)(ii) of the OIA (unreasonable commercial prejudice). Consumer New Zealand asked the Ombudsman to investigate and review this decision. It noted that it was not seeking to obtain the names of any individuals.

The Ministry confirmed that the providers, which included three limited companies and two charitable trusts, provided their services for a fee and operated to make a profit. The Ministry argued that, as the unannounced inspection reports contained adverse findings, disclosure would be likely to affect the reputations of the providers and their ability to compete with other service providers, thus unreasonably prejudicing their commercial positions. The likelihood of consumers choosing alternative providers would be increased if Consumer New Zealand published the reports with the adverse findings. The Ministry considered that the public interest was met by publishing summaries of the inspection reports on its website.

The Ombudsman accepted that the predicted prejudice might eventuate, but not that it would be *'unreasonable'* if it did. He stated:

I think it would be accepted that consumers have a right to know whether the private facilities that they or their family members are considering using provide safe and responsible levels of service ... It therefore seems reasonable to me that they should have the opportunity to draw their own conclusions from information about the quality of the health care services provided by particular rest homes and hospitals. If the choices of consumers are affected by adverse information about private facilities which (after following a proper process) have been found not to meet service standards, it does not follow that the prejudice occasioned by the release of this information is unreasonable.

The Ministry suggested that providers would be subject to an *'arbitrary process'*, as they might not be able to respond to any adverse comment generated by the publication of the reports. However, the Ombudsman noted that the inspection process itself provided the opportunity for providers being investigated to comment on draft reports. Given that there were procedural safeguards in place for the benefit of the providers before reports were finalised, any claimed *'arbitrary process'* post-publication did not amount to a flaw in the report itself.

The Ombudsman accepted that some harm might be suffered by providers on publication of the reports to the public at large. If the impact of publication was to draw some unfair comment such harm has to be weighed against the countervailing public interest considerations favouring disclosure. The Ombudsman also noted that this risk could be mitigated by disclosure of appropriate contextual information.

The Ombudsman concluded that section 9(2)(b)(ii) of the OIA did not apply, and that even if it did, the need to withhold would be outweighed by the public interest in disclosure. There was a strong public interest in assuring the public that facilities which receive public funding to care for vulnerable people are held properly accountable for the provision of a service that meets quality and safety requirements. The disclosure of inspection reports was a critical element in meeting that interest.

It was also necessary to ensure that the public had confidence in the unannounced inspection process. This was best achieved by the process being as transparent as possible, thereby helping to dispel any possible scepticism about whether a full and searching inspection had taken place, and about the extent to which the provider had been made accountable and required to remedy the deficiencies in its service standards.

The Ombudsman did not consider that the public interest was met through publication of the summary reports. The summaries at issue were not full and complete. They did not specify in any detail how particular standards were or were not fully attained, and what particular steps were required to be taken to resolve those issues. They also did not explain how the required remedial actions would be monitored or what the relevant timeframes were.

The summaries effectively asked consumers to accept on faith that certain deficiencies had been identified and would be remedied. They did not provide the detail contained in the inspection reports which would enable consumers to be more confident that they are making a

decision about the suitability of a particular facility for themselves or a family member with as much information as possible.

The full inspection reports not only included *'findings'* but also the objectives, limitations and methodology of the process and the particular corrective actions required. In the Ombudsman's opinion, all of that information, if disclosed, would serve to enhance the public's perception of the transparency of the process and increase its confidence that providers are held to account.

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