

## Request for external monitor's report on University graduate diploma

<b>Legislation</b>	Official Information Act 1982, s 9(2)(i)
<b>Agency</b>	University of Canterbury
<b>Ombudsman</b>	Professor Ron Paterson
<b>Case number(s)</b>	347237
<b>Date</b>	June 2015

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*University research contracts and trading can be commercial activities—the provision of education to full fee-paying international students may be a commercial activity—but providing tertiary education to domestic students is not a commercial activity—s 9(2)(i) does not apply*

A requester sought the external monitor's report on the University of Canterbury College of Education's Graduate Diploma in Teaching and Learning, and complained to the Ombudsman when this request was refused under section 9(2)(i) of the OIA (commercial activities), among other grounds.

The University was concerned that release of the report would result in reputational damage, which would prejudice its 'usual commercial activities' including recruiting and maintaining the student population and securing research contracts. The University stated:

*While our primary purpose is to not make a profit but to provide education, if we do not attract enough students we lose government funding and student fee revenue, putting the organisation's staffing, programmes and reputation at risk. Our reputation is fundamental to our existence and the primary selling point to students as a quality and competitive international University with excellent teaching programmes.*

The University noted that it is required to maintain a surplus of revenue, which is the 'exact equivalent of profit, albeit by another name'.

The Ombudsman accepted that the requirement of the Tertiary Education Commission (TEC) that universities each year have an operating surplus of between 3-5 percent is a profit in plain language. He also noted that section 166 of the Education Act 1989 clarifies that universities have all the abilities of corporations.

University research contracts and trading are clearly commercial activities, which may directly assist with the surplus requirement. All universities now have commercial entities to manage their research outputs.

The Ombudsman also noted that the University charges international students more in fees than domestic students for the equivalent course (section 288 of the Education Act 1989 requires that foreign students are not subsidised by domestic students). It is possible that the provision of education to full fee-paying international students could be categorised as a commercial activity.

However, the surplus is an indicator of financial health which ensures that universities operate within a safety margin. There is no requirement for universities to pursue a profit in all their activities, as might be expected with a business. The University had not argued that domestic student fees (which are approved by the TEC) are set with a profit in mind, although no doubt the required surplus is a contextual factor.

While the University undertakes commercial activities, and is required to make an overall surplus/profit, the Ombudsman did not consider that providing tertiary education to domestic students was a commercial activity.

The report itself did not have wider application than the quality of the Graduate Diploma in Teaching and Learning. Like other educational courses provided by the University, the majority of the costs are recovered through government funding, with the balance coming from domestic student fees. While this structure contributes to the financial viability of the University, in all the circumstances, the Ombudsman was not persuaded that delivering teachers' training was a commercial activity of the nature contemplated by section 9(2)(i) of the OIA.

The Ombudsman also observed that there was a strong public interest in transparency, and said that *'independent reports of this nature on the performance of a public institution should be publicly available'*.

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