

Request for handwritten notes of discussions between MFAT Chief Executive and Minister of Foreign Affairs

Legislation	Official Information Act 1982, s 9(2)(g)(i)
Agency	Ministry of Foreign Affairs and Trade
Ombudsman	Chief Ombudsman
Case number(s)	365853
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Request for handwritten notes of Chief Executive's discussions with Minister—confidentiality is necessary to protect the ongoing effectiveness and conduct of the relationship—public interest in disclosure not sufficient to outweigh s 9(2)(g)(i) interest

In 2012 the State Services Commission commenced an inquiry under the State Sector Act into the unauthorised disclosure of information related to the Ministry of Foreign Affairs and Trade (MFAT). A lawyer for one of the parties implicated in that investigation sought information about the MFAT Chief Executive's discussions with the Minister of Foreign Affairs about the inquiry. He complained to the Ombudsman when that request was refused under section 9(2)(g)(i).

The information at issue comprised handwritten notes of the Chief Executive's discussions with the Minister. The discussions took place in the context of the Chief Executive's routine, informal discussions with the Minister on matters affecting the Ministry's business.

The Chief Ombudsman accepted that for a relationship to function effectively between a Minister and Chief Executive there must be an expectation that, for the most part, and barring situations giving rise to strong public interest considerations, these one-on-one discussions can be conducted in private. In her opinion, disclosure of the information at issue had the potential to undermine the Minister/Chief Executive relationship, as neither party would have absolute confidence that they could raise issues during these conversations in an open and direct manner. The parties would be reticent about whether they should even raise particular issues, in case a record of the conversation might become public. Furthermore, the practice of note-

taking would likely be abandoned or curtailed and this would not be conducive to the effective conduct of public affairs. The application of section 9(2)(g)(i) did not turn on the content of these discussions. Often the discussion may not be particularly contentious but that is not an essential requirement of section 9(2)(g)(i). The fundamental rationale for the application of this provision to this type of discussion between Ministers and their chief executives was an acceptance that confidentiality is necessary to protect the ongoing effectiveness and conduct of the relationship.

The Chief Ombudsman distinguished an earlier case (276248), in which a summary of the discussion was disclosed in order to promote the accountability of the Minister. The circumstances were different in this case, and the Chief Ombudsman did not consider that there was a public interest in disclosure sufficient to outweigh the damage it would cause to the section 9(2)(g)(i) interest made out in this case. She concluded that section 9(2)(g)(i) provided good reason to withhold the notes.

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