

Request for literature review on youth desistance

Legislation	Official Information Act 1982, ss 18(e), 9(2)(g)(i)
Agency	Department of Corrections
Ombudsman	Dame Beverley Wakem
Case number(s)	375243
Date	September 2014

Draft review provided to successful tenderer as starting point for an external research project—information not in the nature of free and frank opinions—disclosure would not undermine interest in s 9(2)(g)(i)—release accompanied by contextual statement

A requester asked the Department of Corrections for the literature review on youth desistance. The Department declined the request on the basis that staff were still working on it and it was not complete.

The requester queried this advice, noting her understanding based on tender documents published on the GETS website, that the literature review had been completed and would be available to the successful tenderer. The Department replied that a draft literature review had been provided to the successful tenderer, but this was incomplete. A completed literature review would form part of the successful tenderer's final report.

The requester asked the Department for the OIA grounds it was relying on. The Department advised that, as the literature review was still being drafted, the request was refused under section 18(e) of the OIA, because the document alleged to contain the information did not exist. The requester complained to the Ombudsman.

The Ombudsman's staff explained to the Department that while the final literature review might not exist, the draft clearly did, and the requester had made her desire to obtain the draft quite clear. In these circumstances, section 18(e) of the OIA could not apply.

The Department maintained in the alternative that it was necessary to withhold the draft under section 9(2)(g)(i) of the OIA. It explained that the draft was *'not yet in a complete enough state to be released'*. It needed fleshing out in some areas, reorganising of material in other areas, and had not been edited. The Department argued that withholding the draft document was important to ensure the free and frank expression of opinions within the literature review, which would result in a more robust document. The Department also noted the reputational risk if the draft was released.

The Chief Ombudsman was not persuaded that section 9(2)(g)(i) of the OIA applied.

The information at issue was a draft literature review prepared by the Department's Research Unit. This document was provided to the successful tenderer as a starting point for an external research project. The researcher would engage in additional research, and further develop the draft literature review into a final document.

Much of the literature review simply summarised the findings of various studies, and existing research into the subject of youth desistance. This information was not in the nature of free and frank opinions.

The Chief Ombudsman was not persuaded that disclosure would inhibit the generation and expression of free and frank opinions so as to deter Department staff from contributing to such reviews in the future.

The Chief Ombudsman considered that the Department's concerns could be managed through the provision of a contextual statement explaining the purpose of the document, and the limitations it carried in its current form. This statement could accompany the Department's release of the draft literature review.

After considering the Chief Ombudsman's opinion, the Department agreed to release the draft literature review, and the complaint was resolved.

This case note is published under the authority of the [Ombudsmen Rules 1989](#). 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.