

Request for footage of battle of Baghak

Legislation	Official Information Act 1982, s 2(4)
Agency	New Zealand Defence Force
Ombudsman	Peter Boshier
Case number(s)	411501
Date	November 2017

NZDF deemed to hold battle footage recorded by soldiers on their personal devices in their official capacity

A requester sought full footage of the battle of Baghak. While some footage was supplied, the New Zealand Defence Force (NZDF) advised that *'footage captured on personal devices ... is not footage held by the NZDF'*. The requester complained to the Ombudsman.

The Chief Ombudsman concluded that battle footage recorded by soldiers was official information, notwithstanding that it may have been recorded on a personal device. It did not matter that the footage was not physically held by the NZDF.

The footage was *'official information'* because the NZDF was deemed to hold it under section 2(4) of the OIA, which provides that agencies are deemed to hold information held by their officers, employees or members in their official capacity:

...the individual soldiers who carried out the filming and captured the footage were in a position to do so solely due to their presence at the Battle in an official capacity. The footage at issue is filmed evidence of a live conflict. But for the fact of the soldiers' official position as members of NZDF, they would not have had access to events at Baghak or been in a position to capture the footage.

It was irrelevant that the soldiers may not have appreciated that the OIA would apply, and may have intended the footage for their personal use only:

While those soldiers may not have turned their minds to the application of the OIA, it remains the case that the footage forms part of the official record of events at Baghak. It cannot be a satisfactory answer to a request under the OIA for footage concerning the operations of a branch of the New Zealand government and depicting the actions of personnel in an official capacity while on duty, to maintain that the footage was intended for personal use only and therefore is not subject to the OIA. Taken to an extreme this would allow a dangerous situation to develop where information could be recorded on a personal device by personnel who were acting in their official capacity at all relevant times, but withheld from public scrutiny upon assertion that it was intended only for personal use.

The Chief Ombudsman required the NZDF to take steps to collect any footage held by its serving members at the time the request was received.

Of the 60 operational and support personnel involved with the engagement at Baghak, 45 members were still serving at the time the request was received. Thirty-five of them had since left. The NZDF made direct enquiries of its 10 still-serving members. It attempted to communicate with the 35 former members by posting public notices on its Facebook page, the Veterans' Affairs website, the *Army News* magazine and the RSA newsletter. As a result of this process, the NZDF was able to confirm that the footage recorded by soldiers on their personal devices was amongst that previously released, and there was in fact no additional information held. The Chief Ombudsman discontinued his enquiries.

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