

Request for corporate culture information contained in bus tender submissions

Legislation	Local Government Official Information and Meetings Act 1987; s 7(2)(b)(ii)
Agency	Greater Wellington Regional Council
Ombudsman	Leo Donnelly
Case number(s)	437752
Date	June 2018

Competitors could use the information to compare and refine their own submissions, potentially reducing the successful tenderers' competitive advantage in future tender rounds—this would be likely unreasonably to prejudice the commercial position of the successful tenderers— s 7(2)(b)(ii) applies—public interest in accountability for the Council's decision required release of a summary statement

The Tramways Union requested corporate culture information contained in tender submissions made by two bus companies awarded contracts by the Greater Wellington Regional Council. The Council withheld the corporate culture information under numerous grounds, the most relevant of which was section 7(2)(b)(ii) (prejudice to commercial position). The Union complained to the Ombudsman.

The companies explained the competitive nature of the market in which they competed for contracts across New Zealand. They had developed significant experience in the industry and put a great deal of effort into developing their tender strategy over time. Considerable resources went into refining the content and presentation of their tender proposals to gain a competitive edge, particularly in regards to their corporate culture submissions.

The Ombudsman accepted that the information revealed a component of the tenderers' 'pitch' that formed part of their overall market strategy. Access to this information would enable their competitors to compare and refine their own submissions, potentially reducing the successful tenderers' competitive advantage in future tender rounds. This would be likely unreasonably to prejudice the commercial position of the successful tenderers.

Having concluded that section 7(2)(b)(ii) applied, the Ombudsman considered the countervailing public interest in disclosure. The Ombudsman noted that the Council's assessment of the quality of the tenderers' submissions was based partly on their corporate culture statements. This was an important factor weighted in the quality score, in part because the Council is accountable to the wider Wellington community, ratepayers and the incumbent workforce, for awarding contracts to tenderers that can demonstrate that they comply with the 'good employer' principles, and can effectively engage with unions and maintain effective working relationships.

There was a public interest in promoting accountability for the Council's decision to award the contracts to these companies. While this interest did not outweigh the need to withhold the specific information at issue, it did warrant disclosure of a summary statement demonstrating that the companies satisfied all lawful requirements (as prospective employers), and that their submissions were not inconsistent with what could be reasonably expected in terms of fulfilling these quality components of the evaluation.

The Council accepted the Ombudsman's opinion and released a summary statement.

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.