

## Ministry of Health decision not to respond to ‘open letter’ on baby food not unreasonable in circumstances

<b>Legislation</b>	Ombudsmen Act 1975
<b>Agency</b>	Ministry of Health
<b>Ombudsman</b>	Sir Brian Elwood
<b>Case number(s)</b>	W47366
<b>Date</b>	2001

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*Complainant wrote open letter to Ministry of Health expressing concerns about potential soy toxicity in baby food—no reply received—Ombudsman’s assistance sought—Ombudsman considered wording of letter—no specific information requested—Official Information Act did not apply—Ombudsman noted considerable correspondence on issue had already been exchanged between Ministry and complainant—open letter appeared to be a continuation of debate with Ministry—Ministry’s failure to respond unlikely to be unreasonable in the circumstances—Ombudsman exercised discretion under s.17(1)(b) Ombudsmen Act not to continue enquiries*

For a number of years a man concerned about the level of soy toxicity in various foods had been exchanging correspondence with the Ministry of Health about this issue. In one instance, the man detailed his concerns in what he described as an ‘open letter’ to the Ministry. Six weeks after sending that letter the man had not received a reply. He wrote to the Ombudsman asking him to investigate and review the Ministry’s failure to respond.

The Ombudsman carefully considered the contents of the open letter. He noted that it did not appear to seek specific information held by the Ministry. Rather, it appeared to be a letter in which the complainant further expressed criticisms of the Ministry’s response to his concerns about soy baby foods and sought to continue a debate on the clear difference between his position on this matter and that of the Ministry. The Ombudsman explained to the complainant that his function under the Official Information Act is to investigate and review decisions by holders of official information not to make information available to requesters.

Given that it did not appear any information had been sought or refused, the Ombudsman advised that he was unable to consider the complaint under the Official Information Act.

However, it was open to the Ombudsman to investigate whether the failure of the Ministry to respond to the complainant's letter was administratively unreasonable under the Ombudsmen Act. The Ombudsman first arranged for informal enquiries to be made of the Ministry in order to establish the reasons for the failure to respond to the letter and to establish whether there was a basis on which the Ombudsman could usefully initiate an investigation. In response, the Ministry advised that it had not intended to respond to the open letter because it did not consider it raised any new or further issues to which the Ministry had not responded in past correspondence with the complainant.

The Ombudsman then considered the exchange of correspondence that had already been entered into between the complainant and the Ministry on the subject of soy baby foods. He noted the correspondence was detailed and considerable.

Given the general nature of the letter at issue, in particular the fact that it appeared to be an attempt to continue a debate with the Ministry on the issue of soy toxicity, the Ombudsman did not consider there were grounds to suggest the approach taken by the Ministry was unreasonable. As a result, the Ombudsman decided it would be appropriate to exercise the discretion available to him under section 17(1)(b) of the Ombudsmen Act not to pursue this matter further.

*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.*