

## Ministry of Social Development should make ex-gratia payment for accidental disclosure of an informant's identity

<b>Legislation</b>	Ombudsmen Act 1975
<b>Agency</b>	Child Youth and Family
<b>Ombudsman</b>	Beverley Wakem
<b>Case number(s)</b>	171992 (W53520)
<b>Date</b>	May 2006

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*Whether Child Youth and Family (CYF), a service of the Ministry of Social Development (MSD) which received information from an informant about alleged offending by another individual, was reasonable to accidentally disclose the identity of this informant to the alleged offender – Ombudsman found CYF's procedures for protecting the identity of informants had not been followed in this case*

The complainant (the informant) was concerned that CYF had mistakenly released her signature when a staff member forgot to delete it from the bottom of a document sent to CYF. As a result of the accidental disclosure, the informant was subjected to verbal abuse and threatening behaviour from the alleged offender. The informant then complained to the Ombudsman about CYF's failure to adequately remove her identity from the documents before disclosing these to the alleged offender.

The Ombudsman accepted that, before the disclosure of the informant's signature, members of her community had their suspicions about the identity of the informant. However, these suspicions were confirmed when the signature was disclosed and, in the Ombudsman's opinion, the agency could not reasonably argue that the action of releasing the signature caused no adverse consequences to the informant. The Ombudsman was satisfied that there was a causal link between the disclosure of the informant's signature and the retaliatory action that followed.

The Ombudsman formed the opinion that CYF's failure to follow its own procedures and to delete the informant's identity from papers which were disclosed to the alleged offender was wrong.

After consultation with the Privacy Commissioner, the Ombudsman suggested some changes to CYF's policies to prevent mistakes of this nature occurring in the future, including that: where reasonably practicable, providers of information should be given the opportunity to view the information and provide comments before it is disclosed; staff should be made aware that there are different ways to release information and that, where legally justifiable, this should be done in a manner which protects the identity of informants (for example, disclosure by way of summary may provide better means of protecting the identity of informants in some cases); and there should be a quality assurance process for any information that is proposed to be disclosed.

By way of remedy, the Ombudsman asked MSD to reconsider its decision not to make an ex-gratia payment to the informant. MSD accepted the Ombudsman's views. MSD made an ex-gratia payment to the informant to cover her legal costs and to recognise the stress and humiliation caused by its actions. MSD also explained that it was reviewing its management of requests under both the Privacy Act and the OIA and that the Ombudsman's recommendations would form part of that view.

*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.*