

Health and Disability Commissioner not unreasonable to refer matter to Medical Council without advising complainant

Legislation	Ombudsmen Act 1975, Health and Disability Commissioner Act 1994
Agency	Health and Disability Commissioner
Ombudsman	Leo Donnelly
Case number(s)	433800
Date	September 2017

Whether the Health and Disability Commissioner legally or otherwise required to inform complainant of a referral made to the Medical Council of New Zealand—Ombudsman concluded HDC not bound to divulge this information

The complainant was concerned that the Health and Disability Commissioner (HDC) had disclosed personal information to the Medical Council of New Zealand ('the Council') when it decided to refer a complaint made by the complainant, to the Council.

The Ombudsman noted that HDC has authority under section 59(4) the Health and Disability Commissioner Act 1994 (the Act) to refer any matter brought to its attention to the appropriate person or authority (in this case the Council) if that is deemed necessary or desirable in the public interest.

The complainant believed that despite this authority (and in the absence of an explicit notice requirement under that provision), transmission of his personal information in connection with the referral raised public interest considerations which mean that HDC should have notified him of the referral.

The Ombudsman noted that the referral was in relation to a doctor in his role 'generally' rather than any specific concern raised by the complainant's complaint to HDC. The Ombudsman advised the complainant that the steps taken by the HDC were consistent with the function of the Council, which does not investigate individual complaints against doctors, but instead makes inquiries as to the general competence and fitness to practice of a doctor. This was

consistent with the role of the Council as the professional registration body for doctors – competence and fitness to practice being obvious requirements of ongoing registration.

It was clear to the Ombudsman that HDC was not referring the complaint he had received from the complainant to the Council, but rather was referring a general matter relating to a doctor, pursuant to a Memorandum of Understanding and section 59(4) of the HDC Act.

The complainant was also concerned about alleged disclosure of personal information. The Ombudsman explained that he is unable to investigate complaints regarding personal information, including disclosure of personal information by one organisation to another. This is a matter for the Privacy Commissioner under the Privacy Act.

Overall, the Ombudsman formed the final opinion that HDC was not legally or otherwise required to inform the complainant about the HDC's referral to the Medical Council. Furthermore, the Ombudsman did not consider that not informing the complainant of this referral was otherwise unreasonable.

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.