

## Request for Police Commissioner's letter to the Minister about Deputy Commissioner

<b>Legislation</b>	Official Information Act 1982, s 9(2)(a)
<b>Agency</b>	Minister for Police
<b>Ombudsman</b>	Peter Boshier
<b>Case number(s)</b>	496725
<b>Date</b>	1 August 2019

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*Request for letter written by the Police Commissioner to the Minister of Police about response to Independent Police Conduct Authority (IPCA) findings on bullying complaints about Deputy Police Commissioner—s 9(2)(a) applied—information related to the employment relationship—however privacy interest was low due to the high-level nature of information at issue and the seniority of role—privacy interest outweighed by public interest in disclosure to promote accountability of Police for steps taken to address the IPCA's findings*

### Background

On 20 December 2018, the IPCA released its report on bullying complaints against the Deputy Police Commissioner.<sup>1</sup> On the same day, the Minister of Police announced that he had written to the Police Commissioner, asking how he intended to respond to the IPCA's findings.

A journalist asked the Minister for a copy of any correspondence received in response to his letter. The Minister released the Police Commissioner's response, but redacted two paragraphs under section 9(2)(a) of the Official Information Act (OIA), in order to protect the Deputy Police Commissioner's privacy. The journalist complained to the Ombudsman.

The Chief Ombudsman considered the redacted information and consulted the Privacy Commissioner,<sup>2</sup> before forming the provisional opinion that the Police should not have withheld any part of the letter.

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<sup>1</sup> See <https://www.ipca.govt.nz/Site/publications-and-media/2018-Reports-on-Investigations/2018-dec-20-complaints-wallace-haumaha.aspx>.

<sup>2</sup> See s 29B OIA.

## Privacy

Section 9(2)(a) of the OIA applies where withholding is necessary to maintain the privacy of natural persons.

There was a privacy interest in the information at issue, which related to the employment relationship between the Deputy Commissioner and the Police, and his performance in the role.

However, the privacy interest was low. The information read as high level summary of the fact that there had been discussions between the Commissioner and Deputy Commissioner, and ensuring the expectations of his role had been emphasised to him following the IPCA's findings. In addition, as a high-ranking member of the Police, a greater level of public scrutiny should be expected.

The Privacy Commissioner commented:

*I consider that there is a privacy interest in the withheld information since it involves [the Deputy Commissioner's] employment relationship and his performance. However, in my view, it is a low privacy interest that should be given a low weight. [The Deputy Commissioner] has a high-ranking public role and the withheld information is not particularly sensitive, rather it is the type of information one would expect from the Commissioner, in these circumstances, which lowers the privacy interest.*

The Chief Ombudsman found that section 9(2)(a) applied to the information at issue, but the privacy interest was not particularly strong.

## Public interest

Section 9(2)(a) is subject to a public interest test, which means the interest in favour of withholding needs be weighed against the public interest in release. If the public interest in release outweighs the interest in withholding, the information must be disclosed.

The Minister identified a public interest in rebuilding trust and confidence in the Police following the bullying allegations, but suggested a line should be drawn so the Deputy Commissioner had space to return to his role.

The Chief Ombudsman acknowledged this, but felt the correct balance between the competing private and public interests had not been struck. The IPCA made findings that the Deputy Commissioner had acted inappropriately and unprofessionally. While the complaints did not appear to meet the legal definition of 'bullying', the IPCA considered them to be consistent with the common usage of that word. In the Chief Ombudsman's view, the information at issue was directly relevant to the Police's accountability, and there was a strong public interest in the steps that had been taken to address the IPCA's findings with the Deputy Commissioner.

## Outcome

The Minister of Police accepted the Ombudsman's provisional opinion and agreed to release the letter in full. The Chief Ombudsman gave the Deputy Commissioner an opportunity to comment on his provisional opinion. After considering the Deputy Commissioner's comments, the Chief Ombudsman formed the final opinion that *'the public interest in this information is such that it should be released'*.

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