

Request for names of members of advisory committee on national standards for abortion services in New Zealand

Legislation	Official Information Act 1982, s 9(2)(g)(ii)
Agency	Abortion Supervisory Committee
Ombudsman	David McGee
Case number(s)	178434
Date	3 August 2009

Section 9(2)(g)(ii) OIA applied— Abortion Supervisory Committee provided evidence of past instances of harassment—reasonable likelihood that release would lead to improper pressure or harassment which would impact on the ability and willingness of committee members to perform their functions—no public interest override

Background

Right to Life New Zealand asked the Abortion Supervisory Committee (the ASC) for the names of the members of an advisory committee appointed, under section 15 of the Contraception, Sterilisation, and Abortion Act 1977, to advise on the development of national standards for abortion services in New Zealand. The ASC withheld the names under section 9(2)(g)(ii) of the OIA and the requester complained to the Ombudsman.

The ASC explained that the members of the committee had expressed concern about the effect that release of their names would have on them and their families. One member reported their family members experiencing harassment in the past because of their association with the provision of abortion services. The committee also said it would not continue as a committee if members' names were released because of the perceived threat of pressure or harassment.

The Ombudsman sought additional supporting material to establish the likelihood of improper pressure or harassment arising from disclosure of the members' names. He asked for copies or details of any threats or harassment levelled against those connected directly or indirectly with

the provision of abortion services in New Zealand. He noted that, given the names of ASC members and certifying consultants are publicly available, there should be ample evidence if threatening, intimidating, or violent behaviour had occurred in the past.

During the Ombudsman's investigation, the ASC's concern was realised when the members of the committee refused to continue as a committee. Notwithstanding this, the Ombudsman proceeded to form an opinion, after receiving the additional material requested from the ASC.

Improper pressure or harassment

Section 9(2)(g)(ii) of the OIA applies if withholding is *'necessary to ... maintain the effective conduct of public affairs through ... the protection of [Ministers, members of organisations, officers or employees of agencies] from improper pressure or harassment'*.

First, the Ombudsman considered whether the committee members fell within the classes of persons protected under section 9(2)(g)(ii). The ASC is an *'organisation'* for the purposes of the OIA. The committee was deemed to be part of that organisation under [section 2\(3\) of the OIA](#). Members of the committee were, therefore, *'members of an organisation,'* and clearly among the categories of persons capable of claiming the protection afforded by section 9(2)(g)(ii).

Secondly, the Ombudsman considered whether there was a reasonable likelihood that release of the information would expose the committee members to improper pressure or harassment. The Ombudsman acknowledged and accepted assurances that Right to Life New Zealand had no desire to pressure or harass members of the committee. However, it was not possible to confine consideration of the likely effects of release of the information to release to the requester alone. There was a reasonable chance the information could be disseminated more widely in the community. Other people may have been less responsible in how they used the information.

The Ombudsman noted that *'improper pressure or harassment'* is something more than unwanted scrutiny or criticism. Individuals have the right to access information to enable their effective participation in the making and administration of laws and policies (subject to certain necessary limitations), and the right to express their opposition to particular laws and policies. However, the ASC had provided examples of situations where the boundaries of legitimate protest appeared to have been challenged (if not crossed), and individuals associated with the provision of abortion services in New Zealand had been personally targeted, and subjected to behaviour that was perceived to be threatening and intimidating.

The examples included: protest activity outside doctors' private residences, including the erection of crosses; phone calls late at night; death threats; attacks on a doctor's children; and mail drops stating real estate values would decrease in the neighbourhoods of abortion service providers. The ASC also provided a copy of a *More* magazine article titled *Dirty Tactics*, which reported a number of instances of a similar nature. Admittedly, the article dated back to October 1994. However, it demonstrated that there was a history of individuals associated with the provision of abortion services in New Zealand being personally targeted and subjected to threatening and intimidating behaviour.

The Ombudsman acknowledged that the examples provided related to behaviour directed at operating surgeons and certifying consultants, rather than members of an advisory committee. However, the evidence demonstrated the type of action that opponents of abortion had taken in the past, and such action had understandably led to the perception of a threat of pressure or harassment on the part of the members of the committee.

On the basis of documented past behaviour, the Ombudsman was prepared to accept that there was a reasonable likelihood of future behaviour amounting to improper pressure or harassment if the names of the members of the committee became publicly available. That was certainly the genuinely-held and, in the circumstances, not unreasonable belief of the members themselves.

Lastly, the Ombudsman considered the impact this might have on the effective conduct of public affairs. He accepted that the work of the committee would have contributed to the effective conduct of public affairs, and that any improper pressure or harassment that eventuated would have had a detrimental impact on the ability and willingness of the members of the committee to perform their functions. Indeed, there could be no more tangible evidence of this detriment than the fact that the members had already refused to continue their work because of the prospect that their identities would be disclosed to the world at large. In effect, this meant the ASC could not develop the national standards through the preferred means of an advisory committee.

The Ombudsman therefore considered that section 9(2)(g)(ii) of the OIA applied.

Public interest

Section 9(2)(g)(ii) is subject to a public interest test. This means the need to withhold must be balanced against the countervailing public interest in release. If the countervailing public interest weighs more heavily, the information must be released. If not, it can be withheld.

The Ombudsman noted the starting point that *'except in exceptional circumstances, the identities of members of statutory committees ought to be publicly known'*. Public identification of members of statutory committees is necessary *'...to promote the accountability of ... officials, and thereby to enhance respect for the law and to promote the good government of New Zealand'* (section 4 of the OIA refers). On a more practical level, it ensures that members are seen to be qualified and competent to carry out the duties of the appointment, and are unbiased and not subject to any actual or perceived conflicts of interest.

However, the Ombudsman was not persuaded that the public interest in disclosure outweighed the need to withhold the information in this case. The statutory committee in this case was the ASC. While the advisory committee was appointed pursuant to statute, it remained *'in all matters'* subject to the control and direction of the ASC. Any standards document would be promulgated by the ASC, and any feedback or commentary on that document could be provided to the ASC. Lack of knowledge of the identities of the members of the advisory committee would not have prevented Right to Life New Zealand from scrutinising and questioning the substantive merits of the standards document.

In addition, while not technically relevant to the Ombudsman's investigation and review, which focused on the ASC's decision to withhold at the time, it was important to note that the advisory committee was no longer formally constituted. The Ombudsman stated: *'the public interest in knowing the identities of former members of a committee that no longer exists is considerably weakened.'*

Having carefully considered the matter, the Ombudsman concluded that section 9(2)(g)(ii) of the OIA provided good reason to withhold the names of the committee members.

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