

Request for names of frontline forestry officers in information about the felling and milling of kauri

Legislation	Official Information Act 1982, s 9(2)(g)(ii)
Agency	Ministry for Primary Industries
Ombudsman	Ron Paterson
Case number(s)	381628
Date	27 May 2016

Section 9(2)(g)(ii) OIA applied—MPI provided evidence of past instances of harassment and comments from the staff concerned—reasonable expectation that release would lead to improper pressure or harassment which would be detrimental to MPI’s administration of the law—no public interest override—other information about the decision was released—Auditor-General had inquired into the substantive issues

Background

The Northland Environmental Protection Society (NEPS) complained about the decision of the Ministry for Primary Industries (MPI) to withhold certain information about the felling and milling of kauri, including the names of MPI staff.

After meeting with the Ombudsman, MPI agreed to release the names of managers and head office staff, but explained that it was particularly concerned to protect the names of frontline forestry officers because of rising tension in the Northland community, and the impact this was having on staff. MPI provided evidence of this tension, and comments from the affected staff, in support of its decision to withhold. The Ombudsman formed the opinion that there was good reason to withhold the names of frontline forestry officers under section 9(2)(g)(ii) of the OIA, in order to protect them from improper pressure or harassment.

Improper pressure or harassment

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

The Ombudsman acknowledged that there was nothing to indicate that the requester or other members of NEPS intended to improperly pressure or harass the affected staff. However, it was not possible to confine consideration of the likely effects of release of this information 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, MPI had provided examples of situations where the boundaries of legitimate protest or scrutiny appeared to have been challenged, if not crossed.

MPI alerted the Ombudsman to a number of instances where its staff and other public sector employees had been targeted for abuse, harassment, and even physical violence, in relation to their work around the swamp kauri extraction industry. This behaviour was primarily directed at certain frontline staff, some of whom worked almost exclusively out in the field where they were most vulnerable.

The instances included:

- a highly publicised attack on a Northland District Council resource consent compliance officer, who was run off the road while driving a Council vehicle, had bleach thrown in his eyes and a knife held to his throat. At the time of the attack, the worker was driving to Whangarei to act as the key witness in an Environment Court hearing against two Far North men accused of illegally draining a wetland for swamp kauri;
- an environmental activist having a *'restraining order'* placed on them as a result of them *'harassing a swamp kauri operator's wife'*;
- an MPI staff member being verbally abused about their involvement in swamp kauri while attending their child's school production;
- MPI alerting its staff not to approach a particular individual who *'has become involved with swamp kauri and is considered highly dangerous by police'*;
- repeated and unsubstantiated allegations of *'corruption'* made against MPI staff in the media. One staff member said his integrity had been questioned by his own parents and wider family as a result of publications in the media, which he found most distressing; and

- the Northern Advocate newspaper and Radio New Zealand each retracting stories about a swamp kauri sawmiller/exporter, which referred to information apparently provided to NEPS under the OIA.

The evidence revealed a history of individuals being personally targeted and subjected to threatening and intimidating behaviour by members of the public over their links to the extraction and milling of swamp kauri in Northland. It was clear that parties with particularly strong views of the swamp kauri industry had taken extreme and even violent actions in the past. These actions had understandably led to the perception of a threat of pressure or harassment towards public sector officials.

In addition, the evidence demonstrated that information released under the OIA had ended up circulating in the community at large, and that the information had been misused by third parties who were not privy to the initial disclosure.

The Ombudsman was satisfied that there was a real risk of future behaviour amounting to improper pressure or harassment if the names of the frontline staff were released. That was certainly the genuinely held and, in the circumstances, not unreasonable belief of the affected staff themselves.

The Ombudsman noted that forestry compliance work under the Forests Act 1949 is necessary for the effective conduct of public affairs. This reflects the clear intention shown by Parliament when it enacted section 59 of the Forests Act, which makes it an offence to assault, obstruct, threaten or attempt to intimidate forestry officers. Parliament has seen fit to grant forestry officers special protection from threats and intimidation on top of the protections generally afforded to individuals at law. This is a clear signal from Parliament that the Forests Act may only be properly administered where officials are able to perform their statutory functions free from threats or intimidation.

The Ombudsman considered that MPI's ability to attract and retain compliance officers was also a relevant factor. One of the affected staff members said he would consider leaving his position if his name was to be made publicly available. MPI cannot effectively perform its statutory functions if it cannot attract or retain skilled staff out of their reasonably held fear that they will be subjected to improper pressure or harassment if they are employed in that role.

The Ombudsman concluded that section 9(2)(g)(ii) applied to the names of the frontline forestry officers, on the basis that disclosure would result in improper pressure or harassment which would be detrimental to MPI's administration of the law.

Public interest

Section 9(2)(g)(ii) of the OIA 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 commented that, in general, the identities of members of public sector agencies ought to be publicly known. Public identification of officials 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 public sector officials are seen to be unbiased and not subject to any actual or perceived conflicts of interest.

However, he did not think the public interest in disclosure outweighed the need to withhold the information in this case.

Most of the information about the decision making process had already been released. This was not a situation where lack of knowledge of the identities of the decision makers prevented the requester from scrutinising and questioning the substantive merits of the decision. In addition, the Auditor-General had recently inquired into the substantive concerns that prompted the request (*Request for inquiry into the regulation of the ancient swamp kauri industry*, 2015). The Ombudsman considered that the Auditor-General's careful consideration of the underlying concerns had met the public interest in accountability. Notably, the Auditor-General explicitly considered allegations of systemic failures and of suspected corruption by officials, and found that those allegations did not warrant further consideration.

The Ombudsman concluded that the public interest considerations favouring disclosure had already been met through release of much of the information at issue, and also by the Office of the Auditor-General inquiring into allegations about the swamp kauri industry. Section 9(2)(g)(ii) of the OIA therefore provided good reason to withhold the names.

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