Ombudsman
Fairness for all

Case note

Request for names and address for service of two Police officers

Legislation	Official Information Act 1982, ss 9(2)(a), 9(2)(g)(ii)
Agency	New Zealand Police
Ombudsman	Peter Boshier
Case number(s)	455668
Date	10 January 2018

Section 9(2)(a) and 9(2)(g)(ii) OIA applied—past conduct suggested the requester would publish information targeting or encouraging others to target the officers in a way that would breach their personal privacy, and subject them to improper pressure or harassment which would prejudice their ability to discharge their duties effectively—no public interest override

Background

A requester asked the New Zealand Police for the names and addresses for service for two Police officers that had appeared in the requester's YouTube video.

The Police refused the request under sections 6(c) and 9(2)(a) of the OIA, noting that other videos posted to the requester's YouTube channel included the names, identification numbers, and email addresses of Police officers in the comments section, along with encouragement to contact those officers directly.

The requester complained to the Ombudsman, saying he needed the information to pursue a private prosecution. The Chief Ombudsman considered the most relevant withholding grounds were sections 9(2)(a) and 9(2)(g)(ii) of the OIA.

Privacy and improper pressure or harassment

Section 9(2)(a) applies if withholding is *'necessary to protect the privacy of natural persons'*.

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 Chief Ombudsman noted that successive Ombudsmen have considered that the names of officials should, in principle, be made available when requested. All such information will ordinarily disclose is the fact of an individual's employment and what they are doing in that role. Such details will not normally raise privacy concerns nor, on their own, result in improper pressure or harassment. Anonymity may be justified if a real likelihood of harm can be identified, but it is normally reserved for special circumstances.

The Chief Ombudsman reviewed the requester's YouTube channel, noting that he had posted details of Police officers where these had been obtained in the past, and encouraged third parties to target the officers for personal criticism or abuse. It appeared that the requester went out of his way to engage with Police and film his interactions with them, even where he was clearly not the subject of the Police's inquiries in question. The videos contained numerous allegations of corruption against individual officers, threats of 'arrest' and 'prosecution', as well as a general disrespect for Police throughout.

The Chief Ombudsman acknowledged that, in general:

- Police officers have a public-facing role and therefore can be photographed or videoed at any point in time;
- Police officers are often subjected to extreme behaviours from people with whom they interact in their professional capacity, particularly from people who are in heightened states of agitation, stress, or intoxication; and
- successive Ombudsmen have noted that *'improper pressure or harassment'* is something more than ill-considered or irritating criticism or unwanted publicity.

However, the Chief Ombudsman saw a difference between Police encountering such issues in the day-to-day carrying out of their duties and functions, and being specifically targeted for such behaviour by parties as a consequence of videos and comments published on YouTube.

The Chief Ombudsman noted that the requester's comments and videos frequently incited others to resist or actively thwart attempts by Police to execute their duties and functions. While he appreciated the requester's stated intention to mount a private prosecution, his past conduct provided little confidence that he would not instead publish information on YouTube which targeted, or encouraged others to target, individual Police officers in either their private or professional capacity.

The Chief Ombudsman, therefore, considered it was necessary to withhold the identities and contact details of the Police officers to protect their privacy, and prevent improper pressure or harassment that would prejudice their ability to discharge their duties as Police officers effectively.

Public interest

Sections 9(2)(a) and 9(2)(g)(ii) of the OIA are 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 Chief Ombudsman noted that public identification of officials is often 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). 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.

The Police also acknowledged *'the importance of those in public service being accountable for decision making, and the public interest in release of the names and details of those individuals within the Police who are responsible for decisions of public interest.'* However, in this case, the Police officers were going about their normal business and had no intention of speaking with the requester. There was nothing to suggest they had acted unlawfully or improperly.

The Chief Ombudsman concluded that the need to withhold the information to protect the officers' privacy and prevent improper pressure or harassment was not outweighed by the public interest in disclosure, and sections 9(2)(a) and 9(2)(g)(ii) of the OIA provided good reasons for withholding.

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