

## Request for officials' names in information about glyphosate

<b>Legislation</b>	Official Information Act 1982, ss 9(2)(a) and 9(2)(g)(ii)
<b>Agency</b>	Environmental Protection Authority, Ministry for Primary Industries
<b>Ombudsman</b>	Peter Boshier
<b>Case number(s)</b>	463601, 470939
<b>Date</b>	5 July 2019, 5 February 2019

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*Section 9(2)(a) OIA did not apply—not necessary to withhold staff names to protect their privacy—section 9(2)(g)(ii) did not apply—no information to suggest release would lead to improper pressure or harassment—possibility of public criticism not enough—officials should be reasonably robust—also significant public interest in release given concerns about conflicts of interest*

### Background

In 2016, the Environmental Protection Authority (EPA) commissioned a review of the evidence relating to the possible carcinogenicity of glyphosate (a weed killer marketed by Monsanto as Roundup). The report was peer reviewed by toxicologists from the EPA and the Ministry for Primary Industries (MPI).

The EPA and MPI subsequently received a request for information about glyphosate. They released the information but withheld the names (and, in the EPA's case, the job titles) of their own staff, and staff from the Ministry of Health, Auckland Regional Public Health Service, Waipa District Council, and the University of Otago, in order to protect their privacy.

The requester complained to the Ombudsman. He explained that his request was prompted by concerns about the EPA's review, including in relation to possible conflicts of interest with industry (particularly Monsanto) and other agencies, and he was seeking the names of individuals to assess and pursue those concerns.

The agencies argued that release of staff names could subject them to public scrutiny and harassment, because of the controversial nature of glyphosate. The redaction of names was not only to maintain individuals' privacy, but also due to the real possibility of harassment. The public interest was met, in their view, by disclosure of the substance of the information, and the names of staff with decision making responsibility.

## Privacy

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

The Chief Ombudsman noted that the view of successive Ombudsmen has been that the names of officials, including junior officials, should, in principle, be made available when requested. All such information normally discloses is the fact of an individual's employment and what they are doing in that role. Anonymity may be justified if a real likelihood of harm can be identified, but it is normally reserved for special circumstances. The likelihood of public criticism does not create a valid expectation of anonymity. In this case, there did not appear to be any need to withhold staff names or (in the EPA's case) job titles.

The Chief Ombudsman consulted the Privacy Commissioner, who said there was a low privacy interest in the names of officials, and in the circumstances it should be given no weight. He commented that *'...anonymity of public servants carrying out a specific task they are employed to do is usually only warranted in special circumstances where release of that information is likely to lead to some subsequent action or conduct that would intrude on the individual's privacy.'* In this case, there was insufficient material to support the likelihood that releasing the staff names would lead to any risk to those individuals, or their privacy.

The Chief Ombudsman formed the opinion that withholding names and job titles was not necessary to protect the privacy of staff.

## 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 Chief Ombudsman acknowledged the EPA's concern to protect staff members from distress. However, improper pressure or harassment is something more than unwanted scrutiny or criticism. In a participatory democracy such as we have in New Zealand, individuals have the right to express their opinions, including their opposition to particular decisions or actions of public officials. While it would be upsetting for individuals to be the subject of public criticism (the likelihood of which was purely speculative in this case), officials should be reasonably robust.

In cases where Ombudsmen have considered that officials' names could be withheld, there has

generally been a demonstrated likelihood of harm, such as physical attacks, harassment of officials or their families in their personal lives, or communications containing aggression and abuse. There was no material to support the proposition that the release of staff names in this case would lead to improper pressure or harassment, or compromise safety.

## Public interest

The Chief Ombudsman went on to consider the public interest in release, even though this was not strictly necessary. He identified a significant countervailing public interest in release of the officials' names and roles, to promote the EPA's and MPI's transparency and accountability, and in order for the requester to be able to assess his concerns about conflicts of interest in the decisions made by the EPA about glyphosate. Even if sections 9(2)(a) or 9(2)(g)(ii) had applied, it was likely that the need to withhold would be outweighed by the countervailing public interest in release.

The Chief Ombudsman referred to the case of *The Chief Executive of the Ministry of Social Development v L* [2018] NZHC 2528, in which the High Court held that members of Benefit Review Committees were not entitled to make anonymous decisions, notwithstanding the Ministry of Social Development's arguments that it must protect its staff from threatening and abusive communications, under the Health and Safety at Work Act 2015. The Court found that anonymous decisions were contrary to principles of natural justice, as people could not detect or challenge bias if they did not know who the decision makers actually were.

While this case did not involve the right to natural justice in the same way, in the Chief Ombudsman's view there was a significant public interest in the release of officials' names and roles in order for the requester to assess his concerns about conflicts of interest in the EPA's decisions about glyphosate.

The Chief Ombudsman formed the opinion that there was no good reason to withhold the names and job titles, and recommended their release.

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