

Request for drafting instructions on the Injury Prevention, Rehabilitation and Compensation Bill

Legislation	Official Information Act 1982, 9(2)(h)
Agency	Ministry of Business, Innovation and Employment
Ombudsman	Peter Boshier
Case number(s)	469770
Date	13 February 2019

Parliamentary Privilege Act 2014 did not provide a statutory bar on the Ombudsman’s investigation of a complaint under the OIA—section 9(2)(h) applied—withholding necessary to maintain legal professional privilege—no public interest override

A requester sought the drafting instructions on the Injury Prevention, Rehabilitation, and Compensation Amendment Bill. The Ministry of Business, Innovation and Employment withheld the instructions under section 9(2)(h) of the OIA, on the basis that it was necessary to maintain legal professional privilege. The requester complained to the Ombudsman.

Parliamentary privilege

The Chief Ombudsman noted that the information at issue constituted ‘*proceedings in Parliament*’, as defined in the Parliamentary Privilege Act 2014 (PPA). He considered first whether the PPA gave rise to any limitation on his ability to investigate the withholding of that information. He consulted the Speaker who advised:

I do not see a general conflict with parliamentary privilege arising from the Ombudsman performing the duties of that office, including conducting investigations into the handling of official information that may also be a proceeding of the House.

The Chief Ombudsman then considered whether section 9(2)(h) of the OIA provided good reason to withhold the drafting instructions.

Section 9(2)(h)

Section 9(2)(h) of the OIA applies where withholding is necessary to maintain legal professional privilege. Generally, the withholding of legally privileged information will be necessary to maintain the privilege, unless it has been waived.

The drafting instructions were subject to legal professional privilege. Section 61(2) of the Evidence Act 2012 makes it clear that drafting instructions are subject to legal professional privilege. There was no indication that privilege had been waived in this case. Accordingly, withholding was necessary to maintain the privilege.

Public interest

The requester pointed out ambiguity in the legislation that had been amended, and argued that the drafting instructions would be a useful tool in understanding the intention behind the treatment injury provisions.

The Chief Ombudsman was not persuaded that there were sufficiently strong public interest considerations favouring the availability of the instructions to outweigh the need to withhold the information on the grounds of maintaining legal professional privilege.

If the instructions were the only indication of the intentions behind the relevant provisions, then the public interest in them might be strengthened. However, the instructions were only one of a number of different sources of information that may assist with the courts' interpretation of the provisions, and the Chief Ombudsman did not consider that the instructions alone would provide a decisive indication.

The Chief Ombudsman formed the opinion that section 9(2)(h) of the OIA provided good reason to withhold the drafting instructions.

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