



## Request for independent report into care and treatment given to convicted murderer

<b>Legislation</b>	Official Information Act 1982, s 9(2)(a); Privacy Act 1993, s 7(1)
<b>Agency</b>	District Health Board
<b>Ombudsman</b>	David McGee
<b>Case number(s)</b>	133048
<b>Date</b>	28 June 2013

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*Section 9(2)(a) OIA applied—high privacy interest in offender’s health information—public interest in release of summary information to promote accountability of the DHB for the standard of care provided, given the gravity of the offences and the proximity of their commission to his discharge from care*

### Background

The parents of a murder victim requested a copy of a report commissioned by a District Health Board (DHB) into the care and treatment that had been provided to the convicted murderer of their child.

The DHB offered to release an edited version of the report (with staff names removed), subject to the condition that it not be disclosed beyond the parents and their lawyer. The parents were not satisfied with this and complained to the Ombudsman.

### Investigation

The Ombudsman requested a copy of the information at issue and an explanation of the reasons for withholding. He also consulted the Privacy Commissioner and the offender before forming his opinion.

After further consideration, the DHB argued that sections 9(2)(a) and 9(2)(ba) of the Official Information Act (OIA) provided good reason to withhold the report, and that the public interest could be addressed by releasing a summary of the recommendations.

## Interaction between the OIA and the Privacy Act

Counsel for the offender argued that disclosure of the report would be unlawful as it was prohibited by Privacy Principle 11 of the Privacy Act 1993 (limits on disclosure of personal information). The Ombudsman did *'not agree that the provisions of the Privacy Act are an impediment to release of the report (or a summary)'*. Section 7(1) of the Privacy Act provides that *'nothing in ... principle 11 derogates from any provision that is contained in any enactment and that authorises or requires personal information to be made available'*.

The OIA provides for official information to be made available on request unless one of the reasons set out in section 18 applies. Section 7(1) of the Privacy Act makes it clear that the relevant privacy principles do not prevent release of personal information in accordance with an authorisation or requirement of other legislation. While there were valid privacy concerns about release of the information at issue in this case, these fell for consideration under section 9(2)(a) of the OIA, not the Privacy Act.

## Privacy

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

The Ombudsman said there was *'unquestionably'* a privacy interest in the report. It contained detailed discussion of the offender's medical care and treatment over a period of years. It was based on hospital notes, clinical reports and other information held by the DHB about the offender. It was also based on interviews with staff involved in providing care and treatment to the offender. The Ombudsman agreed with the Privacy Commissioner that the privacy interest in the report was *'very strong'*. He concluded that withholding was necessary to protect the offender's privacy.

## Public interest

Section 9(2)(a) 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 the gravity of the offender's crimes and the proximity of their commission to his discharge from care indicated that, at the very least, the DHB should account to the parents and the public as to the nature of the care and treatment provided, so that a judgement could be formed as to whether the DHB had acted appropriately.

However, the very serious nature of the crimes did not mean that the offender had lost all rights to privacy or the protection from disclosure of the information that he provided in confidence to DHB staff.

In the Ombudsman's view release of the report itself would go further than was necessary to satisfy the public interest in this case. It would entirely set aside the offender's privacy interests in a way that was more extreme than the public interest in the DHB's accountability

required. The Ombudsman concluded that section 9(2)(a) provided good reason to withhold the report.

While there was good reason to withhold the report itself, the Ombudsman considered (and the Privacy Commissioner agreed) that the DHB should release a summary of its recommendations. This would provide an appropriate means of striking the correct balance between the parents' and the public's need for an assurance about the way in which the DHB had acted, and the offender's right to privacy.

## Outcome

The DHB accepted the Ombudsman's opinion that, while section 9(2)(a) of the OIA provided good reason to withhold the report, the public interest required disclosure of summary information about its recommendations, and agreed to release such a summary.

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