



Request for interviews with potential child abuse victims

Legislation

Official Information Act 1982, ss 9(2)(a), 9(2)(ba)(i)

Agency

Ministry of Social Development (Child, Youth and Family)

Ombudsman

Ron Paterson

Case number(s)

336970

Date

21 January 2014

Section 9(2)(ba)(i) OIA applied—high level of confidentiality attaches to interviews with potential child abuse victims—release would deter potential child abuse victims from participating in interviews—it is in the public interest for child protection and law enforcement agencies to continue to receive this information—s 9(2)(a) applied—sensitive personal information about potential child abuse victim and others—release would infringe their privacy and potentially re-victimise the child who was now an adult—no public interest override—good reason to withhold

Background

A requester who had been convicted of sexual offences some years prior requested video footage of interviews with two children, that had not been used or admitted as evidence in the criminal trial.

The video footage was no longer held, but the Ministry of Social Development (Child, Youth and Family) managed to find a written record of an evidential interview with, and statements provided by, one of the children. It withheld this information under section 6(c) of the Official Information Act (OIA), and the requester complained to the Ombudsman.

Investigation

The Ombudsman requested a copy of the information at issue and an explanation of the reasons for withholding.

The Ministry acknowledged that section 6(c) was not an appropriate withholding ground in circumstances where the Police investigation and court proceedings had long since concluded. Instead it relied on sections 9(2)(a) (privacy) and 9(2)(ba)(i) (confidentiality) of the OIA.

The Ombudsman noted that some of the information at issue contained personal information about the requester. He therefore transferred the complaint, in part, to the Privacy Commissioner, for consideration under the Privacy Act 1993. Some personal information was released to the requester as a result of the Privacy Commissioner's investigation.

The Ombudsman considered whether sections 9(2)(a) and 9(2)(ba)(i) of the OIA applied to the remaining information at issue.

Privacy and confidentiality

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

Section 9(2)(ba)(i) applies when releasing information that is '*subject to an obligation of confidence*' would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied.

The Ombudsman accepted that section 9(2)(ba)(i) applied to the information at issue, stating:

The general position, in cases involving interviews with potential child abuse victims, is that a high level of confidentiality would be presumed by both parties. It is also clear that disclosure of such information would be likely to undermine the ability of child protection and law enforcement agencies to obtain a similar quality of interviews in future cases. This is because potential victims of child abuse may be deterred from participating if it was known that such disclosures would be made available under the OIA. Given the child protection role of the Ministry, it is in the public interest that it continues to gather and receive this type of information in confidence.

The Ombudsman also accepted that section 9(2)(a) would apply: '*Information relating to the investigation of alleged child abuse and to victims in particular, will attract a high privacy interest*'. The records comprised sensitive personal information about a potential child abuse victim and other individuals. Release of that information would prejudice the privacy of those involved, and potentially re-victimise the child, who was now an adult.

Public interest

Sections 9(2)(a) and 9(2)(ba)(i) 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 Ombudsman acknowledged that '*it is in the interests of natural justice that [an accused person] knows the full extent of the allegations made against [them]*'. However, the requester had not faced charges in relation to these allegations. In addition, the public interest in people having access to information about allegations made against them had been met by the Privacy Commissioner's investigation. The requester had received the information to which he was entitled under the Privacy Act as a result of that investigation.

Therefore, the Ombudsman did not consider that there was a public interest in disclosure sufficient to outweigh the high privacy interest and confidential nature of the information at issue.

Outcome

The Ombudsman formed the opinion that sections 9(2)(a) and 9(2)(ba)(i) of the OIA provided good reason for withholding the information.

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