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| Request for draft answer to parliamentary question tendered by HNZ staff  |
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| Legislation Official Information Act 1982, ss 9(2)(ba)(ii), 9(2)(f)(iv) Agency Housing New ZealandOmbudsman Anand SatyanandCase number(s) W44156Date December 2001 |

*Request to Housing New Zealand Limited for alternative Parliamentary answers prepared for Minister of Housing—request refused under s 9(2)(g)(i)—ss 9(2)(f)(iv) and 9(2)(ba)(ii) discussed—meaning of ‘officials’—obligation of confidence applied—s 9(2)(ba)(ii) applied—parliamentary process satisfied public interest*

This case raised similar issues as case [W45495](https://www.ombudsman.parliament.nz/resources/request-draft-answer-parliamentary-question). A political party researcher asked Housing New Zealand (HNZ) for a copy of all alternative answers to a parliamentary question that it had provided to the Minister of Housing. HNZ had prepared two alternative answers, and the Minister had decided which one to present. The request was refused pursuant to section 9(2)(g)(i) of the OIA.

During the course of the investigation, it became evident that the primary concern regarding release of the alternative answer was the impact that release would have upon the ability of the Minister to consider the options available for responding to a parliamentary question. As is noted in relation to case [W45495](https://www.ombudsman.parliament.nz/resources/request-draft-answer-parliamentary-question), it is a Minister’s task to determine how a particular question should be answered. The practice of providing alternative answers allows the organisation to suggest different ways of approaching the issues involved. As these concerns did not specifically relate to the interests protected by section 9(2)(g)(i), consideration was given to whether any other withholding grounds were applied.

The relevance of s 9(2)(f)(iv) of the OIA in this context was considered. At the time the request was made HNZ was a company registered under the Companies Act 1993. This meant that its staff were employees of the company rather than *‘officials’*. The OIA makes a distinction between *‘officials’* and *‘employees’* in certain subsections of section 9. Section 9(2)(f)(iv) only applies to advice tendered by Ministers of the Crown and officials.

However, it was not necessary to form a final view on this point because it was clear that the information was subject to an obligation of confidence between HNZ and the Minister of Housing. In the circumstances, consideration was given to section 9(2)(ba)(ii) and the relevant issue was whether release of the alternative answer would *‘otherwise damage the public interest’.* In the context of this case, it was observed that:

* While it is common for organisations and departments to prepare draft answers to parliamentary questions, it is the Minister who must answer the question in Parliament and the Minister who makes the final decision as to the content of that answer. If an alternative answer were released, Ministers would be less likely to seek such assistance in the future. This would undermine the ability of Ministers to answer parliamentary questions, which would undermine the quality of accountability to Parliament. Such a result would damage the public interest.
* It was also noted that if the alternative answer was released, HNZ would itself be placed in the political arena. As a result, the Minister would likely lose confidence in the impartiality of the organisation. This outcome would also damage the public interest.

For these reasons, the view was formed that release of the information would *‘otherwise damage the public interest’* and section 9(2)(ba)(ii) was considered to apply.

It was then necessary to assess whether the need to withhold the information was outweighed by other considerations which, in the public interest, favoured its release. The starting point for a consideration of the countervailing public interest in this case was the purposes of participation and accountability set out in section 4(a) of the OIA.

It was noted that the content of the alternative answer did not raise any public interest considerations—it did not contradict the answer given in Parliament by the Minister and was not exceptional in comparison. As the content of the information did not raise any public interest considerations favouring disclosure, the public interest in this case was confined to ensuring that the Minister is accountable for his response to Parliament. The view was formed that the parliamentary process had sufficiently held the Minister to account for the answer he gave or chose not to give. Further disclosure under the OIA was not necessary to satisfy the public interest.

*This case note is published under the authority of the* [*Ombudsmen Rules 1989*](http://legislation.govt.nz/regulation/public/1989/0064/latest/DLM129834.html?src=qs)*. It sets out an Ombudsman’s view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.*

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| Postscript, December 2020The Ombudsman’s view now is that *‘officials’*,for the purpose of section 9(2)(f)(iv) of the OIA, *‘is a broad term that includes members of public service and those who have a relationship with their Ministers that are akin to that’* (see our [Confidential advice to Government guide](https://www.ombudsman.parliament.nz/resources/confidential-advice-government-guide-section-92fiv-oia)).  |