

Request for draft answers to parliamentary questions prepared by Police staff

Legislation	Official Information Act 1982, ss 9(2)(f)(iv), 9(2)(g)(i)
Agency	New Zealand Police
Ombudsman	Anand Satyanand
Case number(s)	W49982
Date	28 July 2003

Section 9(2)(g)(i) applied—release would prejudice the free and frank expression of similar communications in future—no public interest override

Background

An MP asked the Police for draft answers to parliamentary questions on a pilot youth justice programme. The Police explained that this was a Ministry of Justice project, and so the draft replies prepared by Police staff had never been tendered. The Police withheld the draft replies under section 9(2)(g)(i) of the Official Information Act (OIA) and the requester complained to the Ombudsman.

Investigation

Section 9(2)(f)(iv) of the OIA usually applies to draft answers to parliamentary questions tendered by ‘officials’ to Ministers (see case [W45495](#)). The advice in this case had not been ‘tendered’, and there was a question about whether Police staff (whether sworn officers or civilians) were ‘officials’ (see [Postscript](#)). However, the ‘underlying constitutional issues’ were the same. The Ombudsman therefore considered the matter under section 9(2)(g)(i) of the OIA.

Section 9(2)(g)(i)

The key issue under section 9(2)(g)(i) is whether release of the information at issue would inhibit the future free and frank expression of opinions that are necessary for the effective

conduct of public affairs. Relevant factors include the nature and content of the information, the source of the information, and the context in which it was generated.

The draft answers were the opinions of Police staff on how they thought the Minister should respond to the questions. The drafts had never been submitted to the Police Executive or to the Minister, where further quality control processes may have been applied.

The Ombudsman was satisfied that release of the draft replies in the circumstances of this case would inhibit the generation and expression of free and frank opinions in similar circumstances in the future. He commented that *'Police staff must be able to prepare responses of this type for the Minister in a manner that allows the free and frank exchange of views, providing options to allow the best possible response for the Minister'*.

Public interest

While there may be a public interest in disclosure of information related to the performance of officials in the drafting of replies for their ministers, this did not outweigh the overall public interest in disclosure of information that would be likely in this case to undermine the ability of the Police to provide the Minister of Police in the future with their best advice on such matters. The public interest in disclosure was further lessened by the fact that the drafts were never submitted to the Minister.

Outcome

The Ombudsman formed the opinion that section 9(2)(g)(i) of the OIA provided good reason to withhold the draft answers.

This case note is published under the authority of the [Ombudsmen Rules 1989](#). 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.

Postscript, December 2020

In [496605](#) the Chief Ombudsman decided that Police staff could constitute *'officials'* for the purpose of section 9(2)(f)(iv). The Chief Ombudsman's view is that *'officials'* 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](#)).