

Report of Inquiry into Spring Hill Prison riot - no good reason to withhold; strong public interest in release

Legislation	Official Information Act, ss 6(c), 9(2)(ba)(i), 9(2)(g)(i)
Agency	Department of Corrections
Ombudsman	Chief Ombudsman Peter Boshier
Case number(s)	437269
Date	May 2017

Summary

In June 2016, a requester sought a copy of the Department of Corrections' report into the Spring Hill prisoner riot of 2013. He complained to the Chief Ombudsman when the Department released summary information and withheld the full report under sections 6(c) and 9(2)(ba)(i) of the OIA.

Because the Department's concerns related to the need to preserve the flow of *'free and frank'* information during internal audits and operational reviews, the application of section 9(2)(g)(i) was considered. The Chief Ombudsman was not persuaded that section 9(2)(g)(i) applied, but considered that even if it did, there was a strong public interest in release of information that set out the Department's analysis of how the riot occurred, the quality of the response, and the lessons learned from the operational review. That public interest had not been addressed by the release of summary information. As such, the Chief Ombudsman was not persuaded that good reason existed under the OIA to refuse all of the report.

However, the Chief Ombudsman did consider that certain limited information would, if released, prejudice the maintenance of the law as it would prejudice undermine operational security.

The Department published the full report on its website, subject to some redactions under section 6(c) of the OIA in order to maintain operational security.

Background

The event

1. On 1 June 2013, a riot broke out in a particular unit at Spring Hill prison. During the riot, which involved over 20 inmates, property was damaged and a number of fires were lit. The Department's Advanced Control and Restraint (ACR) teams were mobilised. The progression of the fires meant that the lives of inmates still locked in their cells were at risk. The New Zealand Fire Service Commander directed immediate intervention. The ACR teams implemented an extraction plan, the riot was brought under control and the unit was evacuated. Some ACR team members and some prisoners sustained injuries.

The Inquiry

2. Following the riot, the Department conducted an Inquiry to establish the reasons and causes of the riot and to assess how it was managed. The Inquiry examined the events immediately before, during and after the riot, including the Department's incident response and the operating context at Spring Hill prison at the time of the riot.
3. The Inquiry findings were presented in a report (the Inquiry report) in March 2014. The Department published a summary of the Inquiry report on its website in May 2014.

Previous complaint on refusal of the full Inquiry report

4. In June 2014, former Chief Ombudsman, Dame Beverley Wakem received a complaint regarding the Department's refusal of a copy of the full Inquiry report under sections 6(c) and 9(2)(ba)(i) of the OIA. The reasons given for refusing the request were :

....The full report cannot be released as it contains security information relating to the prison infrastructure and tactics used by the Department when responding to emergency situations. We are also concerned that release of these types of reports would hinder the flow of information for future inquiries. It is important that such investigations are conducted in a way that encourages frank examination of all aspects of an incident.

5. Dame Beverley commenced an investigation into this complaint. At the time of her investigation, a number of prisoners involved in the riot were facing court proceedings relating to the event. It was understood that information referred to in the Inquiry report was likely to form part of the evidence submitted in those proceedings.
6. Dame Beverley considered that there was a significant risk that disclosure of the Inquiry report would prejudice the legal proceedings then underway, which in turn, would prejudice the maintenance of the law. Disclosure at that time might also have prejudiced the prisoners' right to a fair trial. On this basis, Dame Beverley had indicated to the requester that she was likely to accept that section 6(c) could be relied on to refuse the full report.

7. Dame Beverley did not form a final opinion in this case prior to her departure from the role of Chief Ombudsman in December 2015 and the investigation was subsequently discontinued when a fresh complaint on the same matter was received in 2016.

Subsequent complaint

8. On 28 June 2016, a different requester asked for a copy of the Inquiry report through the FYI.org.nz website. Although matters had moved on, the Department refused this request for identical reasons to its 2014 decision, directing the requester to the summary of the report available on its website.
9. The requester complained to Chief Ombudsman Peter Boshier. An investigation of the fresh complaint allowed the Chief Ombudsman to consider the circumstances at the time of the 2016 refusal, rather than being limited to consideration of the circumstances in 2014.

Investigation

10. The Department was notified that a new complaint had been received about the refusal of the Inquiry report and of the Chief Ombudsman's intention to investigate this decision.
11. The Chief Ombudsman observed that the events at Spring Hill had occurred three years ago, and court proceedings in train at the time of Dame Beverley's investigation had finished. Further, the Department had advised that all recommendations from the report had been enacted and robust procedures had been put in place to prevent another incident of this nature. The Chief Ombudsman surmised that, if so, then presumably at least some of the vulnerabilities identified in the operational review were no longer an issue.
12. While the reasons for withholding the full Inquiry report in June 2014 may have been sound, the Chief Ombudsman noted that his investigation related to the Department's refusal of the Inquiry report in June 2016. It was therefore incumbent upon the Department to consider the circumstances as they applied at the time of the request, rather than relying on its earlier position.
13. However, the Department remained concerned at the prospect of releasing any further information, not only for security reasons but also to ensure the flow of free and frank information during future operational reviews.
14. The Chief Ombudsman formed a provisional opinion on the complaint which was provided to the Department for comment. The Department accepted the provisional opinion and agreed to publish the full report on its website with some redactions under section 6(c) of the OIA in order to maintain operational security.
15. The Chief Ombudsmen then provided a provisional opinion to the requester in relation to the redactions made by the Department under section 6(c) and invited comments.

16. On receipt of the requester's comments, the Chief Ombudsman formed a final opinion on the complaint.

Analysis

Confidentiality and an atmosphere of frankness

17. The Department relied on section 9(2)(ba)(i), which is aimed at protecting the confidential supply of information, in order to refuse the full Inquiry report. However, given the Department's concern to protect the flow of free and frank information during internal audit exercises, section 9(2)(g)(i) was considered the more relevant ground.
18. Section 9(2)(g)(i) may be relied on to avoid prejudice to the generation and expression of free and frank opinions which are necessary for the effective conduct of public affairs. Officers or employees of any department must, in the course of their duty, be able to express their opinions on relevant issues without inhibition.
19. The Department submitted that release of the full report would have a chilling effect on the willingness of individuals involved in an operational review to be forthcoming about what might have gone wrong. The purpose of an operational review is to learn from what happened in order to improve responses to similar incidents in the future. It is in the public interest that this process is as robust as possible.
20. The Chief Ombudsman accepted that if release of information were likely to inhibit individuals from expressing their free and frank opinions, or imparting crucial information, then this would be detrimental to the effectiveness of an operational review process. However, the Chief Ombudsman considered this would be more likely to occur if the information disclosed included copies of working material and source information. In this case, the information was a final report which summarised an internal review process. The information was not generally attributable to particular individuals, but rather represented the considered conclusions and advice of the authors of the review.
21. The Chief Ombudsman stated:

Participants in an operational review exercise should be aware that they are working in an environment where the OIA applies. In that environment there are no absolute guarantees of confidentiality. Moreover, where the incident in question is as serious as a prison riot, they should be aware that the public interest may nevertheless require the release of information.
22. The Inquiry report identified a number of organisational and systemic issues. There was nothing in the report that singled out any individual for blame, nor was it possible to identify any particular individual as a source of information for the review. The Chief Ombudsman was therefore not persuaded that disclosure of the report would be prejudicial to the efficacy of future operational reviews.

Public interest

23. Even if section 9(2)(g)(i) did apply the Chief Ombudsman considered the need to withhold the full report would be outweighed by the public interest in release of much of the information. The Chief Ombudsman disagreed with the Department's suggestion that the public interest in release had diminished because the riot occurred three years ago. He also rejected the argument that the small number of OIA requests received for the report was indicative of the low level of public interest in release. He commented:

A prison riot is one of the most serious events that can occur in any custodial system. It indicates a breakdown in the core responsibilities to manage offenders safely and humanely. The potential for harm to prison staff, emergency services and inmates cannot be understated. In this case, a number of staff and prisoners were injured, some seriously, and there was clearly a potential for loss of life, especially once the fires took hold.

24. In his provisional opinion, there was a strong public interest in release of information that set out the Department's analysis of how the riot occurred, the quality of the response, and the lessons learned from the operational review. That public interest had not been addressed by the release of summary information.

Security concerns

25. The Department accepted the Chief Ombudsman's opinion and published a copy of the report on its website. However it relied on section 6(c) to redact some of the information from the published report. Section 6(c) provides a conclusive reason for withholding information if release of the information would be likely *'to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial'*.
26. The requester advised that this version of the report did not resolve matters and that he still sought unrestricted access to a full copy of the report.
27. The Chief Ombudsman carefully considered the redactions made and formed the provisional opinion that release of some of the detailed information from the Inquiry report would pose a risk to security by exposing vulnerabilities that could be exploited.
28. Release of this information would make it harder for Corrections staff to implement the necessary controls to address fighting or rioting within a prison. It might also enable prisoners to evade security measures in place for the protection of staff and inmates against violence and assaults. Finally, some of the redacted information could potentially be used to plan an escape.
29. The requester expressed concern that some of the redactions may be contrary to the principles of open and transparent government in that they may contain information unflattering to the Department and damaging to its reputation. The Chief Ombudsman responded on this point as follows:

Neither I, nor previous Ombudsmen have accepted that section 6(c) can be invoked purely on the basis that disclosure has the potential to damage the reputation of an agency and thereby undermine its ability to maintain the law. Such arguments are essentially self-serving and at odds with the OIA itself. Section 6(c) is not a shield behind which to hide incompetence or administrative failure.

30. The Chief Ombudsman acknowledged the requester's comments and agreed that, in his opinion, any information that shed light on how the operation was handled (whether positive or not) ought to be released unless its release would clearly pose a security risk.
31. In reaching the final opinion that section 6(c) justified the redaction of some information, the Chief Ombudsman noted that the threshold for concluding that section 6(c) applies is not lightly met. He explained that where information that might pose a security risk, but might also provide some further information about the Department's management, he had considered whether the security risk was such that the information could be justifiably withheld. In some cases a balance was struck by release of information that described the issue in general terms but not the detail.

Outcome

The Department accepted the Chief Ombudsman's provisional opinion in relation to section 9(2)(g)(i). It agreed to publish the report with some redactions under section 6(c) of the OIA in order to maintain operational security. The Chief Ombudsman formed the final opinion that the redactions were justified under that provision.