

Request for Customs' staff engagement survey

Legislation	Official Information Act 1982, s 9(2)(ba)(i)
Agency	New Zealand Customs Service
Ombudsman	Leo Donnelly
Case number(s)	433532
Date	5 October 2016

Section 9(2)(ba)(i) OIA applied—express obligation of confidence—release of personalised comment that could be attributed to particular individuals would be likely to prejudice the future supply of similar information—it is in the public interest for agencies to be able to seek and receive information in response to staff surveys—public interest met by release of the remaining information from survey—good reason to withhold personalised comments

Background

A journalist asked the New Zealand Customs Service for the results of its most recent staff engagement survey. Customs released the survey with redactions under sections 9(2)(ba)(i) and 9(2)(g)(i) of the Official Information Act (OIA). 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.

Customs clarified that it was relying on section 9(2)(ba)(i) of the OIA to withhold the information, not section 9(2)(g)(i).

It advised that confidentiality is integral to the survey process and the survey is therefore independent and anonymous. It noted that:

...there was no obligation on staff members to complete the survey... in order to obtain the best results possible on which future business decisions can be taken, Customs needs the information, including the open ended questions to be as complete and as accurate as possible. Were staff to feel that the comments they had made or their identity would become known, many would be reluctant to participate in such surveys in the future.

It also said:

...it is in the public interest that government agencies be managed as effectively and efficiently as possible, which can be greatly assisted by high staff engagement. Surveys such as these provide valuable data that aids in the achievements of these goals, so it is important that they be conducted with high integrity. Releasing information that may lead to the identification of specific staff members would tend to undermine that integrity.

Confidentiality

Section 9(2)(ba)(i) of the OIA 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 withheld information comprised comments made by individual staff members in the context of responding to the ‘open ended questions’ that formed part of the survey, which, if released, could potentially lead to the identification of specific individuals.

Where a staff survey asks open-ended questions, and individual comments are provided in response, section 9(2)(ba)(i) will often protect that information. This is because the disclosure of personalised comment, where potentially attributable to known individuals, would likely inhibit individuals in responding freely to requests for such feedback in the future. It is generally in the public interest for public sector agencies to engage in a process of seeking and receiving feedback from staff members.

Staff responded to the survey with the understanding that their comments would be anonymous and confidential. In this case, an express obligation of confidence existed, as there was clear knowledge on the part of Customs that the information was imparted by staff in the understanding that it would be held in confidence. The nature of the comments provided by staff clearly evidenced this. The Ombudsman considered that the same level of candour would not have occurred if staff knew that those comments could be attributed to them or widely disclosed.

The Ombudsman accepted that disclosure of comments understood to have been provided in confidence would be likely to prejudice the future supply of similar information, or information from those individuals. Staff members would be unlikely to participate in future staff surveys, or provide feedback on the agency’s performance, if concerned that their comments could be publicly disclosed and possibly attributed to them.

The Ombudsman also accepted that it is in the public interest that such information collected through staff surveys should continue to be supplied. It is important that public sector agencies obtain accurate information to allow meaningful decisions to be made to improve services and operate effectively.

Public interest

Section 9(2)(ba)(i) 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 acknowledged the public interest in accountability for the effective operation of an agency. However, he considered that this public interest had been met by release of the remainder of the survey, and did not require release of the personalised comments.

Outcome

The Ombudsman formed the opinion that section 9(2)(ba)(i) of the OIA provided good reason to withhold the personalised comments from the staff engagement survey.

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