

# Request for approved codes of ethical conduct for animal testing

<b>Legislation</b>	Official Information Act 1982, ss 9(2)(a), 9(2)(ba)(i)
<b>Agency</b>	Ministry for Primary Industries
<b>Ombudsman</b>	Peter Boshier
<b>Case number(s)</b>	418189
<b>Date</b>	28 February 2017

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*Section 9(2)(ba)(i) OIA did not apply—25 of 26 code holders had voluntarily released their codes—no obligation of confidence—release of ‘benign’ information would not be likely to prejudice the future supply of similar information—information released*

## Background

Under the Animal Welfare Act 1999 (AWA), people conducting animal testing must hold an approved code of ethical conduct.<sup>1</sup> A researcher requested all approved codes of ethical conduct. There were 26 codes approved at the time. The Ministry for Primary Industries (MPI) released 21 of them, with names and signatures redacted on privacy grounds. Three codes were already publicly available on the internet. MPI withheld two codes under section 9(2)(ba)(i) of the Official Information Act (OIA), after the holders of the codes objected to release. The requester complained to the Ombudsman.

## Investigation

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

After undertaking further consultation with the code holders, MPI agreed to release one of the two codes, with names and signatures redacted. As the requester was happy to receive the code on that basis, that aspect of the complaint was resolved.

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<sup>1</sup> See s 82.

MPI continued to withhold the remaining code under section 9(2)(ba)(i) of the OIA. It argued that the code was provided to MPI for the purpose of approval under the AWA. Release for other purposes, against the code holder's wishes, would prejudice the future supply of similar animal welfare-related information.

## 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 Chief Ombudsman was not persuaded that a code of ethical conduct submitted under the AWA was subject to an obligation of confidence. Submission and approval of a code is a prerequisite to carrying out animal testing. Once submitted to MPI it becomes official information liable for release under the OIA. There was no express confidentiality agreement, and in circumstances where all the other code holders had either published them or agreed to their release on request, it was not reasonable to infer an obligation of confidence simply due to the nature of the information at issue.

The Chief Ombudsman was also not persuaded that release '*would be likely*' to prejudice the future supply of similar information. The phrase '*would be likely*' is more than an assertion that a harm or prejudice may occur. Rather, it denotes '*a serious or real and substantial risk ... a risk that might well eventuate*'.<sup>2</sup> Having regard to the nature of the information at issue, and the fact that all but one of the 26 current code holders had voluntarily released their code of conduct, the risk to future supply of similar information could not be said to be 'likely' in this sense.

The Chief Ombudsman noted that the code at issue was very similar to the others that had been released. Despite the potentially controversial nature of animal testing, all of the codes appeared '*benign*', and for the most part simply mirrored the requirements of section 88 of the AWA. The code listed the species of animal that may be used in testing, but contained very little other information about actual animal testing. It did not refer to testing procedures, actual tests to be carried out, or the location of testing facilities. The information was '*procedural in nature*', dealing with the operation of the code holder's ethics committee, its monitoring requirements, and internal complaints procedure. It was unlikely to be of any interest to protest groups, but may have been of interest to researchers like the requester, who was interested in animal testing from a policy perspective.

The Chief Ombudsman concluded that section 9(2)(ba)(i) of the OIA did not apply.

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<sup>2</sup> *Commissioner of Police v Ombudsman* [1988] 1 NZLR 385 at 391.

## Public interest

Because section 9(2)(ba)(i) did not apply, it was not strictly necessary to consider the countervailing public interest in release of the information. However, the Chief Ombudsman observed that there was a strong public interest in members of the public being able to view documents approved by MPI as the responsible regulator, and which demonstrate compliance with animal welfare legislation.

## Outcome

After considering the Chief Ombudsman's opinion, MPI agreed to release the code of ethical conduct, and the complaint was resolved.

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