

Request for business plan for Christchurch Convention and Exhibition Centre

Legislation	Official Information Act 1982, ss 9(2)(b)(ii), 9(2)(ba)(ii)
Agency	Ōtākaro Limited
Ombudsman	Leo Donnelly
Case number(s)	454285
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Competitors could copy or adopt third party’s methodology and strategy and devise plans based on its established operating systems which would unreasonably prejudice its commercial position—information subject to an explicit obligation of confidence and of a confidential nature—release would damage the public interest by making suppliers reluctant to participate in future procurement processes

A requester asked Ōtākaro Limited (a Crown company leading regeneration projects in Central Christchurch) for the basis or source for the estimated \$3-400m direct economic benefit of the Christchurch Convention and Exhibition Centre (CCEC).

Ōtākaro responded by releasing an extract from a business plan setting out the estimated direct and indirect economic benefits of the CCEC. The requester, concerned that the extract did not show how the estimate had been calculated, sought the full business plan. He complained to the Ombudsman when this follow-up request was refused.

The information at issue was a business plan produced by the company that had been designated as the preferred operator following the CCEC Operator Services Tender. The tender opportunity had been posted on the GETS website, which provided details about the application process and assessment criteria for tenders, but not copies of documents submitted by tenderers, such as the business plan. At the time of the request, Ōtākaro had announced that it had recommenced the process to select the preferred operator.

The Ombudsman described the business plan as commercially sensitive information about the author company’s prospective business operations. It included budgets and marketing

strategies, revenue targets, projected operating costs, proposed personnel structure, IT plans and supplier procurement. The Ombudsman found that sections 9(2)(b)(ii) and 9(2)(ba)(ii) of the OIA applied.

Section 9(2)(b)(ii)

Release would be likely unreasonably to prejudice the company's commercial position by disclosing the detailed methodology and strategy behind its tender, acquired through worldwide operation of convention centres and other hospitality venues, together with specific adaptations for the Christchurch market. This would give the company's competitors an advantage over it in similar tender processes, or in the operation of convention centres and other hospitality venues generally. Given that the company had worldwide operations, release of the business plan would likely prejudice its ability to bid for other projects internationally, as competitors could devise plans based on its established operating systems.

Section 9(2)(ba)(ii)

The Preferred Operator Agreement between Ōtākaro and the company provided that information would be kept confidential except where required by law. Given this assurance and the sensitive nature of the information at issue, the Ombudsman was satisfied that an '*obligation of confidence*' existed in respect of the business plan.

The Ombudsman identified '*a public interest in maintaining a good level of private sector participation in government tender processes, including in relation to the Christchurch anchor projects to be delivered by Ōtākaro*'. If commercially sensitive information, provided in the course of a confidential tender process was released, it was likely that suppliers would be reluctant to participate in government procurement processes in the future. This was particularly the case with large international companies for whom New Zealand is a small market, but where any proprietary information released could be used by competitors worldwide.

There was also a public interest in information of this nature remaining confidential where tender negotiations between a government agency and a private entity were not concluded, and a tender process needed to be re-commenced. This ensured alternative tenders would not be formulated with reference to previously agreed pricing arrangements, and an agency's bargaining power was not limited by terms agreed with previous tenderers.

Public interest in release

The request for the business plan was prompted by public statements by Ōtākaro as to the estimated economic benefits of the CCEC. The Ombudsman accepted that there was a public interest in release of adequate information to demonstrate that Ōtākaro's statement was credible and responsible. The excerpt from the business plan released by Ōtākaro did not show

how the estimated economic benefit was calculated. Had there been further information in the business plan to provide a basis for the estimates, the Ombudsman would have been minded to recommend its release. However, there was no additional information in the business plan to explain how the figures contained in the excerpt were calculated. Ōtākaro confirmed that it did not hold any other information to indicate how the economic benefit estimates were calculated. In these circumstances, the Ombudsman considered that the extract released by Ōtākaro largely addressed the public interest considerations arising from the media statement that prompted the request.

The remainder of the business plan essentially comprised the proprietary information of the company that produced it. There was a significant public interest in protecting the ability of Ōtākaro to maintain confidentiality of counterparties' commercially sensitive information throughout its procurement processes. As against that, there was also a public interest in promoting the accountability of Ōtākaro for the expenditure of public funds, and to demonstrate the tender process was fair and robust.

However, release of this particular business plan would not increase accountability of the tender process. It comprised one party's views as to the day-to-day running of the CCEC, as opposed to elucidating the underlying rationale for the CCEC business model, or the selection criteria applied by Ōtākaro to the third parties engaged to manage the various aspects of the CCEC business. Further, while the Ombudsman was required to have regard to the circumstances as they were at the time of the request, he noted that Ōtākaro had recently recommenced the preferred operator selection process. This particular business plan may therefore have been superseded by a new plan submitted as part of the further tender process, which would further reduce the public interest in its full release.

The Ombudsman concluded that the public interest in disclosure of the business plan did not outweigh the need to withhold it.

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