

Request for information about assessment of community organisation as approved community service

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| Legislation | Official Information Act 1982, ss 9(2)(a), 9(2)(g)(i) |
| Agency | Ministry of Social Development |
| Ombudsman | Dame Beverley A Wakem |
| Case number(s) | 302966 |
| Date | 23 July 2012 |

Section 9(2)(a) OIA did not apply to correspondence from the chair of the community organisation—the fact that a person signed a letter does not necessarily make that letter personal information about them—signatory was acting in his professional capacity on behalf of the community organisation—the letter was about the organisation not the signatory—correspondence released—s 9(2)(g)(i) applied to comments on draft correspondence and draft assessment report—release would inhibit the free and frank expression of opinions—no public interest override—good reason to withhold

Background

A requester sought information about the Ministry of Social Development's assessment of a community organisation as an approved community service. The Ministry released most of the information, but withheld some under sections 9(2)(a) and 9(2)(g)(i) of the Official Information Act (OIA). 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. She also consulted the Privacy Commissioner before forming her opinion.

The information at issue included:

- correspondence with the Chair of the community organisation— withheld in order to protect the Chair’s privacy;
- emails in which staff discussed draft correspondence in reply to the community organisation, and the draft assessment report— withheld to maintain the effective conduct of public affairs through the free and frank expression of opinions.

Privacy

Section 9(2)(a) provides good reason for withholding (subject to a public interest test) where it is necessary to protect the privacy of natural persons.

The Chief Ombudsman stated that *‘the mere fact that [the Chair’s] name appears on a document does not automatically trigger the application of section 9(2)(a)’*. The correspondence was written to and from the Chair in his capacity as Chair. The substance of the correspondence was about the community organisation not the Chair. The only fact about the Chair that would be revealed by release of the correspondence was that he was the Chair, which was already known. As the Chair was acting in his professional capacity, and there was nothing in the correspondence about the Chair, it was not necessary to withhold the correspondence in order to protect his privacy.

The Chief Ombudsman concluded that section 9(2)(a) did not apply.

Free and frank opinions

Section 9(2)(g)(i) provides good reason for withholding (subject to a public interest test) where it is necessary in order to maintain the effective conduct of public affairs through the free and frank expression of opinions.

In respect of comments on the draft correspondence, the Ombudsman noted that it is a core function of officials to brief colleagues on correspondence from the public and to provide advice and opinions on how the agency should respond, and it is in the interests of the effective conduct of public affairs that officials do not feel inhibited in what they say and how they record what they say.

In respect of comments on draft reports, the Ombudsman noted that draft and preparatory material will often be protected by section 9(2)(g)(i) where the final version of a report has been released. Drafts are prepared for the purpose of discussion or comment. The circulation of such drafts and the exchange of comments is in the public interest, in that it assists in achieving a degree of accuracy and completeness that might not otherwise be possible. Public disclosure of such information would undermine the process that the circulation of draft reports is generally intended to achieve.

The Chief Ombudsman concluded that section 9(2)(g)(i) applied, and considered whether there was a countervailing public interest in release. She identified a public interest in disclosure of information to promote accountability for the Ministry’s decision to make the community

organisation an approved community service. However, she did not consider that the actual information at issue would further public understanding of that decision. She therefore concluded that section 9(2)(g)(i) of the OIA provided good reason to withhold the information.

Outcome

After considering the Chief Ombudsman's comments, the Ministry agreed to release the correspondence with the Chair of the community organisation. The Chief Ombudsman formed the opinion that section 9(2)(g)(i) of the OIA provided good reason to withhold the comments on draft correspondence and the draft assessment report.

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