

## Request for information about decision to grant diversion

<b>Legislation</b>	Official Information Act 1982, s 9(2)(a)
<b>Agency</b>	New Zealand Police
<b>Ombudsman</b>	Peter Boshier
<b>Case number(s)</b>	430771
<b>Date</b>	29 March 2017

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*Section 9(2)(a) OIA applied—withholding necessary to protect highly private details of alleged offender’s personal life—public interest in accountability for the Police decision to grant diversion in contentious circumstances required disclosure of summary*

### Background

The New Zealand Police refused a request for information about the decision to grant diversion to a high profile individual under section 9(2)(a) of the Official Information Act (OIA), in order to protect that individual’s privacy, and 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. He also consulted the Privacy Commissioner and the individual concerned.

### Privacy

Section 9(2)(a) of the OIA applies where withholding is ‘*necessary to protect the privacy of natural persons*’.

The Police noted that the individual had not been convicted of an offence, and the allegations remained unproven. The effect of completing the diversion program is that a defendant is deemed to have been acquitted. There was a danger that, through release of this information, alleged offending would be taken as established fact.

The Chief Ombudsman accepted that section 9(2)(a) applied. The information at issue, which included correspondence from, and interview notes with, the individual, contained highly private details of their personal life. Withholding was necessary to protect their privacy.

## Public interest

Section 9(2)(a) 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 Chief Ombudsman identified a strong public interest in accountability for the Police decision to grant diversion in contentious circumstances. He noted that:

- the individual maintained a high public profile;
- the alleged offence was known to the public;
- the individual's previous offences were known to the public, which *'had the effect of casting doubt on the integrity of the diversion scheme, given the public perception that diversion is to be offered only to first-time offenders, and for lesser offences'*.

The Chief Ombudsman considered that the public was entitled to a fuller explanation from the Police as to why they decided to offer diversion to the individual. He clarified that *'the public interest [lay] in transparency of the Police decision, and not in the disclosure of ... private information'*.

The Chief Ombudsman concluded that a summary should be released detailing the process undertaken, why the individual was offered diversion despite previous offending, and why the Police considered the public interest would not be compromised by offering diversion. He asked the Police to consult the individual on any proposed summary.

## Outcome

After considering the proposed summary, and the individual's comments, the Chief Ombudsman confirmed his opinion that release of the proposed summary would address the public interest, and there was otherwise good reason to withhold the information at issue under section 9(2)(a). As the Police agreed to release the summary, there was no need to make a recommendation to that effect.

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