

## Request for information about employment investigation involving misuse of letterhead by Police officer

<b>Legislation</b>	Official Information Act 1982, ss 9(2)(a), 9(2)(ba)(i), 9(1)
<b>Agency</b>	New Zealand Police
<b>Ombudsman</b>	David McGee
<b>Case number(s)</b>	316020
<b>Date</b>	16 May 2012

*Sections 9(2)(a) and 9(2)(ba)(i) OIA applied—privacy and confidentiality in employment context—withholding necessary to protect the officer’s privacy—express or implied obligation of confidence—release would be likely to prejudice the future supply of information from witnesses to alleged staff misconduct—it is in the public interest for the Police to continue to receive information that enables them to inquire into alleged staff misconduct—public interest in accountability required release of summary*

### Background

A journalist sought information about the employment investigation of a Police officer, relating to allegations of misuse of Police letterhead to avoid a parking fine.

The Police acknowledged the allegations, and explained that they were under investigation by an independent investigator when the officer retired from the Police.

The Police refused to provide any further information under sections 9(2)(a) (privacy) and 9(2)(ba)(i) of the OIA (confidentiality).

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.

The Police referred to their 'good employer' obligations, and the need to protect the officer's privacy in that context. They also referred to the privacy interests of other staff who were interviewed, and noted these staff were given an assurance of confidentiality. Police were concerned that disclosure would discourage witnesses from fully participating in future employment investigations.

The Police acknowledged the public interest in accountability for investigations into their employees. However, they considered that the mechanism to address this public interest was the Independent Police Conduct Authority (IPCA). The IPCA was considering the alleged misuse of letterhead issue at the time.

## Privacy and confidentiality

Section 9(2)(a) applies when withholding is '*necessary to protect the privacy of natural persons*'.

Section 9(2)(ba)(i) 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 Ombudsman noted that the information at issue comprised personal information about the officer and others, and that the information supplied by witnesses was obtained subject to an obligation of confidence, either express or implied.

If the expectation under the Employment Relations Act 2000 of trust and confidence between employee and employer in respect of employment relationships is to be observed, employment investigations must be able to be carried out on a confidential basis, and employees are entitled to expect that their privacy will be respected to the greatest extent possible.

In this context, withholding was necessary to protect the officer's privacy, and to protect information subject to an obligation of confidence, where release would be likely to prejudice the future supply of information from witnesses to alleged staff misconduct. It is the public interest for the Police to continue to receive information that enables them to inquire into alleged staff misconduct.

The Ombudsman concluded that sections 9(2)(a) and 9(2)(ba)(i) of the OIA applied.

## Public interest

Sections 9(2)(a) and 9(2)(ba)(i) are 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 noted that information about the investigation was reported in the media. He also noted that the information related to a matter—the integrity of the infringement offence process—in which there was a legitimate public interest. The fact that a serving Police officer was involved heightened the public interest in how it was handled and resolved. While the Independent Police Conduct Authority (IPCA) had investigated, they did not intend to report publicly. In light of these circumstances, the Ombudsman considered it appropriate for Police to release a statement about the outcome of the investigation, in order to fill the vacuum left by the information that was already in the public arena.

The Ombudsman considered the Police argument that public accountability was met through referral to the IPCA rather than through release of official information to the media. The entitlement to official information is not set aside because of the existence of the IPCA. Having said that, the involvement of a body such as the IPCA is relevant when assessing whether there is a public interest in release that outweighs a withholding ground that would otherwise apply. If a body such as the IPCA makes a public report on a matter this may well satisfy any public interest in further release of information. However, in this case the IPCA did not intend to make a public report.

The Ombudsman prepared a draft summary which included the nature of the allegation relating to the misuse of Police letterhead to avoid a parking fine, the steps taken to investigate the allegation, and the outcome of the investigation.

## Outcome

The Ombudsman provided the Police and the officer with an opportunity to comment on his opinion and the proposed summary. He also consulted the Privacy Commissioner, who agreed with this outcome.

The Ombudsman formed the opinion that sections 9(2)(a) and 9(2)(ba)(i) of the OIA provided good reason to withhold the full investigation file, but the public interest required disclosure of summary information. The Police released the agreed summary.

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