

Request for information about employment investigation involving officer's behaviour at a Police event

Legislation	Official Information Act 1982, ss 9(2)(a), 9(2)(ba)(i) and (ii), 9(1)
Agency	New Zealand Police
Ombudsman	Professor Ron Paterson
Case number(s)	180058
Date	13 June 2014

Sections 9(2)(a) and 9(2)(ba)(i) OIA applied to information about and supplied by witnesses—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—ss 9(2)(a) and 9(2)(ba)(i) and (ii) applied to information about and supplied by the officer—implied obligation of confidence in the employment context—release would be likely to prejudice the future supply of information from staff who are subject to disciplinary processes, and otherwise damage the public interest in maintaining good working relationships between the Police and their staff—public interest in accountability required release of summary

Background

A journalist sought information about an employment investigation into a Police officer who was known to have been demoted following concerns about their behaviour at a Police event. Specifically, they sought:

- details of the incident that sparked the investigation;
- details of subsequent disciplinary proceedings;
- why criminal charges were not pursued;
- the length of time the officer was on paid leave, and their total pay during that time;

- whether their remuneration had been adjusted following the demotion.

The Police refused the request in order to protect the officer's privacy and 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 provided the full employment investigation file including job sheets, preliminary reports, witness interview notes, witness statements, witness photos, medical reports, the investigation report and findings, the officer's submissions, the findings of the disciplinary hearing, administrative documentation around the investigation and disciplinary processes, and internal correspondence.

The Police maintained that section 9(2)(a) of the Official Information Act (OIA) provided good reason to withhold the information, which it described as being of a very personal nature. The Police also said the information related to '*a confidential agreement and on-going employment relationship with the officer*', which the Ombudsman noted was relevant to the application of section 9(2)(ba) of the OIA.

Privacy and confidentiality

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

Section 9(2)(ba) applies when releasing information that is '*subject to an obligation of confidence*' would be likely to:

- (i) 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 (section 9(2)(ba)(i)); or
- (ii) otherwise damage the public interest (section 9(2)(ba)(ii)).

The Ombudsman considered that sections 9(2)(a) and 9(2)(ba)(i) applied to information about or supplied by witnesses. This information was contained in their statements, in Police reports, in medical and photographic evidence, and in both the investigation and disciplinary findings. The information was personal and subject to an 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.

The Ombudsman considered that sections 9(2)(a) and 9(2)(ba)(i) and (ii) of the OIA applied to information about or supplied by the officer. This information was generated in the context of their employment relationship with the Police, in order to judge and potentially correct their conduct as an employee. The employment relationship is one which carries with it a high

expectation of privacy, and information about complaints made against an employee will commonly raise significant issues around confidentiality and privacy. If some degree of confidentiality could not be preserved in this context, this would be likely to prejudice the future supply of information from staff who are subject to disciplinary processes, and otherwise damage the public interest in maintaining good working relationships between the Police and their staff.

Against this, the Ombudsman also noted that some information was already known to the requester or publicly ascertainable (for example, the fact that the officer had been demoted).

Public interest

Sections 9(2)(a) and 9(2)(ba) 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 considered that *‘there is a high level of public interest in how the Police deal with complaints against Police officers’*. The Commission of Inquiry into Police Conduct highlighted public unease around issues of confidence and accountability in this area. In addition, recent cases involving the Police (drunk driving) and the military indicated a growing public concern to expose and condemn inappropriate intoxication-related behaviour in authority figures funded by the public purse to enforce the law and provide safety and security.

The Ombudsman took into account the following factors in assessing the weight of the public interest in accountability:

- the behaviour at issue did not justify criminal charges being laid;
- the behaviour at issue occurred at a Police event and did not affect any member of the public; and
- the officer was not of the most senior rank and therefore did not have the attendant highest level of accountability.

The Ombudsman considered that the public interest required the release of summary information to establish that:

- the Police took all relevant steps to ensure that concerns about an officer’s conduct were thoroughly investigated; and
- appropriate disciplinary action was taken as a result of the investigation.

The Ombudsman prepared a draft summary which included the nature of the allegations, the steps taken to investigate them, the outcome of the investigation, the disciplinary action taken, the length of time the officer was suspended on full pay, and why criminal charges were not pursued.

Outcome

The Ombudsman provided the Police and the officer with an opportunity to comment on his opinion and the proposed summary.

The Ombudsman also consulted the Privacy Commissioner, who agreed the proposed summary addressed the public interest without *'unduly disturbing the officer's privacy interests'*.

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

The Police complied with the Ombudsman's recommendation to release the proposed summary.

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