

Request for names of staff and contractors involved in producing crime and safety survey

Legislation	Official Information Act 1982, ss 9(2)(a), 9(2)(g)(ii)
Agency	Ministry of Justice
Ombudsman	Peter Boshier
Case number(s)	431166
Date	19 June 2018

Section 9(2)(g)(ii) OIA applied to staff names—on basis of past conduct Ombudsman satisfied that requester would engage in improper pressure or harassment that would impact on the Ministry’s ability to attract and retain staff and contractors—section 9(2)(a) OIA applied to staff and contractor names—release would expose individuals to risk of targeting by requester—no public interest override

Background

A requester self-identifying as a ‘men’s rights activist’ asked the Ministry of Justice for the names of all people and organisations involved in producing the New Zealand Crime and Safety Survey 2014 (NZCASS). The Ministry released a list of the organisations and job titles of staff, but withheld their names to protect their privacy. The requester complained to the Ombudsman.

After the complaint was notified, the Ministry agreed to release the names of the Deputy Chief Executive, and the expert contributors whose names were already publicly available. It continued to withhold the names of all other staff under sections 9(2)(a) and 9(2)(g)(ii) of the OIA. The Chief Ombudsman formed the opinion that withholding was necessary, and not outweighed by the public interest in release.

Improper pressure or harassment

Section 9(2)(g)(ii) of the OIA applies where withholding is *‘necessary to ... maintain the effective conduct of public affairs through ... the protection of [Ministers, members, officers or employees of agencies] from improper pressure or harassment’*. While this section could apply to the names of Ministry employees, contractors are not among the protected classes of person under section 9(2)(g)(ii).

The Chief Ombudsman noted that *‘improper pressure or harassment’* is something more than unwanted scrutiny or criticism. Individuals have the right to access information to enable their effective participation in the making and administration of laws and policies (subject to certain necessary limitations), and the right to express their opposition to particular activities or work conducted by the public sector. The question was whether the boundaries of legitimate protest or scrutiny were likely to be challenged or crossed.

The Ministry explained its reasons for believing that the requester was likely to subject the employees to improper pressure or harassment. It had previously decided not to publish the names of people involved in research studies as a result of the requester’s previous attempts to discredit and harass an employee. The requester wrote a letter to the Ministry, which he also published online, calling for the termination of that person’s employment. The requester named this person and made allegations about her impartiality and professional character.

The Ministry provided additional information to suggest that the requester had sought to professionally discredit other female Ministry employees he had encountered at the courts. It considered that he would use the information requested in this case to harass the members of staff concerned in similar ways. Having viewed the requester’s Facebook page and website, the Chief Ombudsman considered that the Ministry’s conclusion as to the likelihood of the risk was reasonable. Staff had raised concerns about the disclosure of their identities, and the Chief Ombudsman concluded those were valid in the circumstances.

The Chief Ombudsman found there was a real risk that the requester would engage in behaviour amounting to improper pressure or harassment if the names of Ministry employees involved in the NZCASS were released, and this would impact on the Ministry’s ability to attract and retain staff to work on such projects in the future. For that reason, withholding employee names was necessary under section 9(2)(g)(ii).

Privacy

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

In principle, where all the information would reveal is the fact that a person holds a particular position, the privacy interest is not particularly strong. However, where the information reveals, or may enable discovery of, additional information which would not otherwise be available, or would otherwise impact on the privacy of the individual, the privacy interest is likely to be higher.

In the Chief Ombudsman's opinion, this was one of the cases where there were special circumstances making withholding necessary to protect the privacy of Ministry staff and contractors. The Ministry had provided examples where the requester appeared to have targeted its staff or other public sector officials for online abuse or harassment.

Release went beyond a simple confirmation of employment in a particular role. It linked the individuals to a particular piece of work, and exposed them to risk of targeting in a similar manner experienced by other officials whose identities had been confirmed to the requester. For that reason, withholding was necessary to protect the privacy of Ministry staff and contractors.

Public interest

Sections 9(2)(a) and 9(2)(g)(ii) of the OIA 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 Chief Ombudsman acknowledged the public interest in accountability for the publication of surveys such as the NZCASS. However, this interest was not sufficient to outweigh the need to withhold the names. The Ministry had already published its methodology and other details relating to the production of the NZCASS on its website, and provided the requester with a list of organisations and job titles of the people involved in the project. The release of individuals' names would not advance the interest in accountability further. Instead, it would appear to have the effect of facilitating the targeting of primarily female staff and contractors on the internet. In the Chief Ombudsman's view, there was no public interest in that.

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