

## Request for names of staff involved in sending email to parents about Pink Shirt Day

<b>Legislation</b>	Official Information Act 1982, s 9(2)(a)
<b>Agency</b>	Board of Trustees
<b>Ombudsman</b>	Leo Donnelly
<b>Case number(s)</b>	438095
<b>Date</b>	15 August 2017

*Section 9(2)(a) OIA applied—correspondence with the requester and information supplied by the New Zealand Police suggested the requester would approach the staff outside of the official complaints process, and may have behaved in an abusive and threatening manner—no public interest override*

### Background

A parent asked a school board of trustees for the names of staff involved in sending an email about Pink Shirt Day.

Pink Shirt Day ‘*aims to reduce bullying in Aotearoa by celebrating diversity in all its forms and supporting workplaces, communities and schools to be safe, supportive, welcoming and inclusive of all people*’.

The board withheld the names under section 9(2)(a) of the OIA in order to protect the privacy of the staff. The parent complained to the Ombudsman, alleging that staff had misused the school email system for ‘*sexual politics*’.

### Privacy

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

The Ombudsman confirmed the established approach that the names of public sector employees should, in principle, be made available when requested. However, he said

withholding may be justified if the disclosure of names would detrimentally impact on a person's privacy interests (section 9(2)(a)), or lead to improper pressure or harassment that would prejudice the effective conduct of public affairs (section 9(2)(g)(ii)).

The Ombudsman reviewed correspondence between the requester and the board, and information provided by the New Zealand Police. It was apparent from the volume, content and tone of the requester's correspondence that this issue was of great concern to him. He had made a formal complaint to the board, and the board had spent considerable time and resources to address it. The requester was not satisfied with the outcome of that process.

Information provided by the Police suggested that the requester had publicly approached parties with whom he'd had a disagreement in the past, and behaved towards them in an aggressive and threatening manner.

On the basis of the evidence supplied by the board and the Police, the Ombudsman accepted that release of the names would enable the requester to pursue his complaints against the individual staff members, outside of the board's official complaints process. This would detrimentally impact on their privacy interests by requiring them to answer, on an individual basis and in their personal time, for official actions they undertook on behalf of the board and the school. Withholding was therefore necessary, under section 9(2)(a) of the OIA, to protect their privacy interests.

## Public interest

Sections 9(2)(a) of the OIA 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 Ombudsman observed that there is generally a strong public interest in the transparency of, and accountability for, decisions taken by public sector agencies.

However, he noted that Pink Shirt Day was not just the school's initiative, but an annual global event, with a number of New Zealand schools taking part. The New Zealand campaign was spearheaded by the Mental Health Foundation, which provided an online toolkit with posters, templates and factsheets, from which the staff drew when they generated the email.

In these circumstances, the Ombudsman was not persuaded that transparency and accountability required the disclosure of the names of the individual staff members who drafted and distributed the email. This essentially was an administrative task carried out on behalf of the school, and in line with similar actions taken by other schools in New Zealand and around the world.

The email was not the initiative of individual staff members. They did not act without authority or contrary to internal school practice or procedure. The Ombudsman therefore saw no basis for those staff members to be held individually responsible for the generation and communication of the email. It was the school and board who were accountable and

responsibility for the email rested with them. The requester had raised his concerns with the board through the established complaints process.

Consequently, the Ombudsman was not persuaded that the public interest considerations favouring disclosure outweighed the need to withhold the staff names. He concluded that section 9(2)(a) of the OIA provided good reason for withholding.

*This case note is published under the authority of the [Ombudsmen Rules 1989](#). It sets out an Ombudsman's view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.*