



## Request for names of submitters who opposed an application by the Ban1080 party to register its name and logo

<b>Legislation</b>	Official Information Act 1982, s 9(2)(a)
<b>Agency</b>	Electoral Commission
<b>Ombudsman</b>	Dame Beverley A Wakem
<b>Case number(s)</b>	387054
<b>Date</b>	29 May 2015

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*Section 9(2)(a) OIA applied—withholding necessary to protect the privacy of submitters who were individual members of the public—potential consequences of disclosure included harassment and threats to safety—in view of these consequences the public interest in disclosure did not outweigh the need to withhold—compare with case [320402](#)*

### Background

A journalist asked the Electoral Commission for copies of submissions received on the 'Ban1080' party's application to register its name and logo. The Commission released the submissions, but withheld the names and contact details of the submitters in order to protect their privacy. The journalist complained to the Ombudsman.

### Investigation

The Chief Ombudsman requested a copy of the information at issue and an explanation of the reasons for withholding.

### Privacy

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

The submitters in this case were individual members of the public who had not been forewarned that their names might be disclosed in connection with their submission.

The Chief Ombudsman consulted them to ascertain their concerns about disclosure of their identities in this context. The submitters all opposed release of their identities. They expressed strong concerns for their safety, and the safety of their families, and said they would not have made submissions if they had been aware their identities might be made public.

The Chief Ombudsman noted that the use of 1080 poison is a highly emotive and contentious topic. There had been a number of well-publicised occasions where some of those opposed to the use of 1080 had resorted to threats of violence and sabotage against those they perceived to be supporting its use. Two of the submitters had previously received threats or had negative interactions with anti-1080 campaigners. In this context, the individuals who made submissions on the Ban1080 party's application had *'legitimate and well-founded privacy concerns about the opinions expressed in their submissions being publicly attributed to them'*.

The Chief Ombudsman distinguished the [PHARMAC case](#) (320402) because the individuals there comprised a group of clinicians expressing their opinions in a professional capacity. As the Ombudsman noted in that case, they were *'in a different category from individual lay members of the public who might claim anonymity'*. The Chief Ombudsman agreed that individuals making submissions in a professional capacity could be expected to be aware that their submissions and identities might be disclosed. However, the individual members of the public in this case could not, in the absence of express advice, reasonably have expected this. She concluded there was a privacy interest in the identities of the submitters, and that it was necessary to withhold this information in order 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 agreed with the view expressed in the [PHARMAC case](#) that there is *'a general expectation of openness and transparency associated with this type of submission process'*. She acknowledged *'a public interest in knowing the source of submissions opposing the Ban1080 party's application and the reasons for that opposition'*.

However, given the potential consequences of release for the individuals in this context, the public interest in disclosure did not outweigh the need to withhold. It was sufficient in this instance for the Commission to have disclosed the content of the submissions.

## Outcome

The Ombudsman formed the opinion that section 9(2)(a) of the OIA provided good reason to withhold the names.

*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.*