

Request for staff names in employment investigation report into Joanne Harrison

Legislation	Official Information Act 1982, s 9(2)(a)
Agency	Ministry of Transport
Ombudsman	Leo Donnelly
Case number(s)	454030
Date	7 March 2018

Section 9(2)(a) OIA applied—significant privacy interest given the nature and content of report and impact on individuals—no public interest override

Background

The Ministry of Transport commissioned Mr Peter Churchman QC to undertake an employment investigation into the conduct of Joanne Harrison, a former senior manager convicted of fraud. The Ministry refused a request for that report under sections 6(c) and 9(2)(h) of the OIA, and the requester complained to the Ombudsman.

During the Ombudsman's investigation, the Ministry decided to release a redacted version of the report. The requester remained dissatisfied with the Ministry's decision to redact staff names on privacy grounds, and the Ombudsman's investigation focused on whether there was good reason to do so.

Privacy

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

The Ombudsman noted the general approach that the names of officials should, in principle, be made available when requested in the context of their acting in their official capacities. All such information normally discloses is the fact of an individual's employment and what they are doing in that role.

However, this case was different. Release would not just reveal what officials said or did in the ordinary course of their employment. It would reveal the identities of Ministry staff caught up

in some way in the fraudulent activity of their former colleague. The following excerpts from the Ministry's Victim Impact Statement suggested this would have real consequences for those individuals:

Harrison has left behind a deep sense of betrayal amongst staff and management at the Ministry of Transport. Staff now recall lies and sophisticated explanations Harrison used to cover up her fraudulent actions. She has left some staff with feelings of shame and humiliation, and for others, self-doubt about their competencies and judgement...

Ministry staff, especially those who worked closely with Harrison, have faced questions from professional colleagues, both in and outside the Ministry, about what they knew of her fraudulent actions. Staff knew nothing of her fraud but still some have been left feeling 'guilty by association', creating a sense of isolation and misplaced shame.

The Ombudsman consulted the Privacy Commissioner, who considered that there was a high privacy interest in the names given the nature of the report, the high profile nature of the case, and the impact the matter had on some officials.

The Ombudsman found there was a significant privacy interest in the names, and withholding was necessary to protect the privacy of the individuals.

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 requester suggested it was not in the public interest to protect the identities of staff who assisted or benefitted from Ms Harrison's fraudulent behaviour. However, the Ombudsman noted that the report expressly made no findings in relation to these other individuals.

The Ombudsman acknowledged the general public interest in transparency and promoting accountability. However, this did not outweigh the need to protect the privacy of the individuals in this particular case. While the names might be interesting to the public, their release was not in the public interest. The public interest had been substantially met by release of the remainder of the report, and the large amount of other information released about these events.

The Ombudsman formed the opinion that the need to withhold on privacy grounds was not outweighed by the public interest in disclosure, and 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.