

Requests for vaccine pricing and contracted delivery schedules

Legislation	Official Information Act 1982, s 9(2)(ba)(ii)
Agency	Ministry of Health
Ombudsman	Peter Boshier
Case number(s)	549454, 544656, 548798
Date	October 2021

Request for information about vaccine pricing and delivery schedules – information subject to an obligation of confidence in terms of section 9(2)(ba)(ii) – the interest in withholding the information not outweighed by the public interest in release.

Background

In January 2021, a requester (case number 549454) sought the contracted prices that the New Zealand Government had agreed for the Pfizer/BioNTech, Janssen and Oxford/AstraZeneca, and Novavax vaccines.

In March 2021, a requester (case numbers 544656 and 548798) sought the agreed timeframes for the shipment of vaccine doses (the ‘*contracted delivery schedules*’) for all vaccines contracted for supply, including the contracted delivery schedule for the Pfizer vaccine purchase.¹

The Ministry of Health (the Ministry) refused the requests on the basis that releasing the information would be likely to ‘*unreasonably prejudice*’ the commercial position of the person who supplied the information, under section 9(2)(b)(ii) of the Official Information Act (OIA).

¹ The agreement with Pfizer was announced by the government on 8 March 2021: <https://www.beehive.govt.nz/release/govt-purchases-enough-pfizer-vaccines-whole-country>

The requesters complained to the Chief Ombudsman.

Investigations

As noted above, the Ministry refused the requests under section 9(2)(b)(ii) of the OIA. After viewing the information at issue and the nature of the concerns raised by the Ministry, the Ombudsman considered that section 9(2)(ba)(ii) was the most relevant reason for refusal.

Section 9(2)(ba)(ii) of the OIA applies where:

the withholding of the information is necessary to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information— would be likely otherwise to damage the public interest.

The section requires consideration of whether the information is subject to an obligation of confidence, either express or implied, and if so, whether making the information available would be likely otherwise to damage the public interest.

Information subject to an obligation of confidence

The Ombudsman was satisfied that the information requested, including both the pricing information and delivery schedules, were subject to an express obligation of confidence. The advance purchase agreements entered into by the New Zealand government each included broad confidentiality clauses, which protected information, shared between the parties to the agreement and the terms of the agreements themselves.

Release would likely otherwise damage the public interest

The Ombudsman evaluated the potential impact if the Ministry was to release the information, in light of its commitment to suppliers to maintain confidentiality.

The Ministry explained that Covid-19 vaccine suppliers are in direct competition with one another and confidentiality agreements are a necessary condition to entering into negotiations with those suppliers. Disclosure of the information would be likely to give rise to concern, amongst both these suppliers and pharmaceutical companies in general, that they could not rely on undertakings to maintain confidentiality. This would risk compromising the Government's ability to secure agreements to purchase Covid-19 vaccines or other influenza vaccines.

The Ombudsman took into account New Zealand's relative size when assessing the risk of disruption to the Covid-19 vaccine supply. He noted that New Zealand makes up a very small share of the global market for Covid-19 vaccines. The risk that disclosure of confidential information would likely result in suppliers being less inclined to prioritise existing commitments or enter into future agreements was heightened by New Zealand's relative bargaining position as a smaller country.

Overall, the Ombudsman was satisfied that release of the information would likely ‘*otherwise damage the public interest*’. There was a very real risk that making that information available would have an adverse impact on the security of New Zealand’s Covid-19 vaccine supply, both now and for the future. The potential consequences should New Zealand’s access to Covid-19 vaccines be compromised would be severe.

Public interest in release

Section 9(2)(ba)(ii) only provides ‘*good reason*’ for withholding a request for specified information if the need to withhold that information is not outweighed by other considerations which render it desirable, in the public interest, to make that information available.

The Ombudsman highlighted the public interest in promoting transparency in the conduct of public affairs generally, and particularly in matters concerning the expenditure of public money. There was a significant public interest in disclosure of information that promotes the accountability of Ministers and officials with respect to the spending of public money. Disclosure of such information incentivises proper and prudent decision-making and financial management, and promotes public trust and confidence in government.

The strength of these interests were elevated by the significant financial outlay involved in the delivery of New Zealand’s vaccine programme and by the wider public interest in transparency concerning the Government’s management of the Covid-19 response and the vaccine delivery.

However, the Ombudsman considered that the very real risk that release of the information would compromise the security of New Zealand’s Covid-19 vaccine supply was an exceptional and compelling interest which required careful protection. He considered that the interest in protecting the integrity of the vaccine delivery and future vaccine supply outweighed the public interest in making the information available.

The Ombudsman also noted the significant amount of information available on the Ministry’s website and the Covid-19 website, about the vaccines generally. There are regular updates from the Government and all information is readily accessible. He was satisfied that the information publicly available addresses the transparency and accountability interests.

Outcome

The Chief Ombudsman formed the final opinion that section 9(2)(ba)(ii) of the OIA applied in all of these cases.

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