

Charge for supply of information about DOC Recommended Area for Protection

Legislation	Official Information Act 1982, s 15(1A)
Agency	Solid Energy
Ombudsman	Beverley Wakem
Case number(s)	172531
Date	January 2007

Agency sought to recover cost of supplying information on the basis that it was commercially valuable—experts’ reports, submissions regarding the boundaries of the proposed Recommended Area for Protection, and deeds of agreement—no justification for charging on such a basis.

The Royal Forest and Bird Protection Society asked Solid Energy for all substantive information between 1998 and 2005 regarding a Department of Conservation Recommended Area for Protection. Solid Energy advised a charge of \$9,930.31, and the Society complained to the Ombudsman.

Solid Energy sought to recover the actual cost of supplying the information, including costs charged by its consultants, on the basis that it was commercially valuable. The Ombudsman commented:

Information can be seen to be commercially valuable if it can be traded in some way, or if its release at less than production cost would confer a commercial advantage on a commercial competitor who would be saved the cost of producing, or otherwise acquiring, the information for itself. There has been no suggestion that either of those situations applies to the information in issue. Mere release of the information does not diminish its value to [Solid Energy] since it still has the information and can continue to derive whatever benefit it provided.

The Ombudsman reviewed the modest amount of material at issue (15 documents of substance and approximately 125 pages of other material). It included experts’ reports,

submissions regarding the boundaries of the proposed Recommended Area for Protection, and deeds of agreement between Solid Energy and the Department of Conservation relating to access to the relevant areas. He stated:

The legal documents may evidence rights that may, perhaps, be tradable, but release of that information does not affect such tradability, if any. There is a submission, dated 1998, which may have value as a precedent, but that value is not diminished by its release. The remaining information (other than the correspondence) contains the opinions of various experts on [Solid Energy's] proposed mining operations, and the land, and its fauna and flora, likely to be affected by them. As [Solid Energy] is the only entity permitted to carry on such operations at that location it is hard to see any realisable commercial value in that information.

The Ombudsman was not satisfied that any information of commercial value was to be released. Consequently, there was no justification for charging on such a basis. He formed the opinion that \$2000 reflected a reasonable charge in respect of the staff time involved.

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