

Charge for supply of vehicle registration information

Legislation	Official Information Act 1982, ss 15(1A), 18(d)
Agency	New Zealand Transport Agency
Ombudsman	David McGee
Case number(s)	177600
Date	August 2008

Request for information available for purchase could be refused on the basis that it was publicly available under s 18(d)

The New Zealand Transport Agency charged a requester for providing information about vehicle registrations. The information was available for purchase on the internet for a monthly fee of \$56.25. The requester complained to the Ombudsman.

The Ombudsman declined to investigate a complaint about the charge because the request could have been refused under section 18(d) of the OIA. That section enables a request to be refused if the information is publicly available. The Ombudsman said:

If [an agency] properly refuses a request under [section 18(d)], the charging provisions in the [OIA] do not apply. A situation where [an agency] can clearly rely on section 18(d) is where it publishes the information and advertises this as available for purchase at a set price by any person.

The Ombudsman noted the following excerpt from the Law Commission's 1997 review of the OIA:¹

In some cases the ability to recover costs will arise through the commercial production and sale of the information (or the prospect of it) completely outside the ambit of the Act. In that event the request may be refused: s 18(d).

¹ Law Commission. *Review of the Official Information Act 1982* (NZLC R40, 1997) at 56.

He also noted this excerpt from Freedom of Information in New Zealand:²

To what extent is material 'publicly available' if a Department or organisation charges for it? Clearly, books, maps, and other documents do not lose their availability simply because they are sold. Clearly too, the price at which they are sold may exceed the charges normally payable for retrieval and copying under Part II of the Act but by how much? An excessive price could make the material 'unavailable' for the purpose of section 18(d). Departments should not be able to resist claims for access to a single document by pointing to its publication in a tome costing hundreds of dollars...

The Ombudsman agreed with this approach. He commented that it might be unreasonable to rely on section 18(d) where a price is patently excessive, but in this case the price reflected the actual cost of producing the information.

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² Eagles, I, Taggart, M, and Liddell, G. *Freedom of Information in New Zealand*. Oxford; Oxford University Press, 1992 at 244.