

## Charge imposed without forewarning after the provision of the information

<b>Legislation</b>	Official Information Act 1982, ss 15(1)(a), 15(1A)
<b>Agency</b>	Airways Corporation of New Zealand
<b>Ombudsman</b>	Sir Brian Elwood
<b>Case number(s)</b>	W45424
<b>Date</b>	May 2001

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*Charge for official information—information belatedly made available—requester subsequently charged for the information—no entitlement to charge*

A request was made for official information held by the Airways Corporation of New Zealand. The Corporation did not respond within the 20 working day time limit prescribed in section 15 of the OIA. Section 28(4) of the OIA deems such a delay to be a refusal of the request for the information. The requester complained.

Following notification of the complaint to the Corporation, the requested information was provided to the requester approximately two calendar months after the request had been made. At no time had the Corporation claimed that it was entitled to refuse any part of the request pursuant to any withholding grounds set out in the OIA.

Some weeks after providing the requested information the Corporation sought to impose a substantial charge for its provision. The Corporation relied on section 15(1A) of the OIA as the authority to lay the charge. At no stage had the Corporation advised either the requester or the Ombudsman investigating the complaint that any charge was in contemplation.

Section 15 sets out the period in which a holder of official information must reach a decision upon a request, and provide notice to the requester of that decision. Section 15(1)(a) provides that, if the request is to be granted, such decision shall include *'for what charge (if any)'*.

As the Corporation had not advised the requester of its intended charge within the period permitted by section 15, there was no longer an authority under the OIA for a charge to be

levied. Given the presumption of availability of official information set out in section 5 of the OIA, there was no other lawful basis on which the charge might be made.

The view was formed that in the circumstances of this particular case, the Corporation was not entitled to levy any charge for the provision of the information.

*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.*