

## Discontinuation of investigation into withholding of application to ERMA

<b>Legislation</b>	Official Information Act 1982, s 29; Ombudsmen Act 1975 s 17(1)(b) (now section 17(1)(f)(ii))
<b>Agency</b>	Environmental Risk Management Agency
<b>Ombudsman</b>	Sir Brian Elwood
<b>Case number(s)</b>	W43362
<b>Date</b>	June 2000

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### *Discontinuation of an investigation—application of s 17(1)(b) of the Ombudsmen Act 1975 to investigations under the Official Information Act*

An application to field test a genetically modified organism was being considered by the Environmental Risk Management Agency. As part of the application process, the Agency called for public submissions on the proposal pursuant to Part V of the Hazardous Substances and New Organisms Act 1996. The requester sought certain information concerning the application, including details of the genetic construct of the organism. This information had been withheld on the basis that it was commercially sensitive.

During the course of inquiries, the application was formally withdrawn from the Agency by the applicant. This was a significant change in circumstance which had the potential to affect the practical outcome of the investigation and review.

Inquiries had focussed on whether the requester had been provided with sufficient information to make a full and informed submission on the application to the Agency. With the application withdrawn, thereby halting the whole process, any public interest in recommending release of the information at issue seemed unlikely. Both the Agency and the requester were consulted as to the existence of further public interest factors which might have outweighed any interest in withholding the information regardless of the withdrawal of the application, but no persuasive arguments were received in this regard.

Section 17(1)(b) of the Ombudsmen Act 1975 provides the Ombudsman with the option of refusing to investigate a complaint further where it appears, during the course of inquiries, that further investigation is unnecessary in the circumstances of the particular case. Accordingly, in this particular case, any further inquiries were ‘unnecessary’ in terms of s 17(1)(b) and the investigation and review was discontinued.

## Comment

Section 17(1)(b) of the Ombudsmen Act is now section 17(1)(f)(ii).

*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.*