

Request for contaminated land information

Legislation	Local Government Official Information and Meetings Act 1987, ss 7(2)(b)(ii), 7(2)(c)(i), 7(1)
Agency	Regional Council
Ombudsman	Sir Brian Elwood
Case number(s)	C6325
Date	April 2002

Request for contaminated land information—doctoral thesis—information withheld to avoid prejudice to future supply and prejudice to commercial interests of third parties

A graduate student asked a Regional Council for a copy of its electronic database of contaminated land use sites to support his doctoral studies related to testing stormwater for toxicity from contaminated sites. The Council held information on 48 managed/remediated sites and 2 contaminated sites, together with information on sites where it had not as yet been established whether contamination is present. The Council practice was to release information specific to a site, this being in relation to requests for Land Information Memoranda (LIMS) and Project Information Memoranda (PIMS). The Council refused the request pursuant to sections 7(2)(b)(ii) and 7(2)(c)(i) of LGOIMA. It saw no countervailing public interest in releasing the information pursuant to section 7(1).

Section 7(2)(b)(ii) provides for refusal of a request if withholding of the information is necessary to:

Protect information where the making available of the information—

... (ii) Would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information;...

Whilst section 7(2)(b)(ii) is often relied on to protect commercial interests of third parties, the Council was already releasing contaminated site information from its database on a site specific basis. The Council also acknowledged that affected property values were already reduced due to their being contaminated. As additional prejudice to the property values was not made out, good reason did not appear to exist under section 7(2)(b)(ii) for the information to be withheld.

Section 7(2)(c)(i) provides that, subject to any countervailing public interest considerations favouring disclosure, information may be withheld if it is necessary to:

(c) 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-

(i) Would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied.

The Council considered that an implied obligation of confidence was created by what it called its Contaminated Site Information Management Strategy. The strategy set out a series of processes and procedures which the Council had put in place for dealing with contaminated site information.

Examination of the Strategy document disclosed processes for the gathering of information, how information would be held, and how it was to be released. However, the document did not contain any undertakings to providers of information, either explicit or implied, to the effect that the information held by the Council would not be released. With the Council already releasing information, any confidentiality, if it existed at all, was applied selectively, and in effect had been waived. Good reason did not therefore appear to exist under section 7(2)(c)(i) for the information to be withheld.

Even if it could be argued that section 7(2)(c)(i) did apply, a significant public interest was identified in release of the information. This related to concerns about public health in respect of persons who live or work on the sites, visitors to the sites and persons who live or work in adjacent areas who could be at risk from exposure to such sites.

The Council agreed to release to the requester the information held about sites where it had been confirmed the land is contaminated, with a caveat as to its use for the requester's doctoral studies.

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