

Request for cost of building naming rights

Legislation	Official Information Act 1982, s 9(2)(b)(ii)
Agency	Ministry of Justice
Ombudsman	Dame Beverley Wakem
Case number(s)	366653
Date	May 2014

Release of total cost would not unreasonably prejudice third party's commercial position—public interest in accountability for spending public money

The Ministry of Justice refused to release the amount paid for naming rights to the Justice Centre in reliance on section 9(2)(b)(ii) (unreasonable commercial prejudice). The requester complained to the Ombudsman.

The Ministry argued that release would damage the commercial position of the building owners in regard to other properties in their portfolios, as prospective or existing tenants could argue that they should receive a similar rate. It submitted that the price for the naming rights formed part of the lease agreement and should therefore be refused on the basis that it was revealing of the owners' pricing/marketing strategy.

The Chief Ombudsman accepted that the building owners had a commercial position. They were in the business of leasing commercial property and the associated naming rights. However, she did not think disclosure would be likely unreasonably to prejudice that position. She stated '*it is the degree to which the information reveals a pricing strategy which is key to whether s 9(2)(b)(ii) will apply*'.

Even if other building lessees used the information in the context of their own negotiations with the owners in an attempt to drive a price lower, it was a large leap to suggest that this knowledge would be likely unreasonably to prejudice the owners' commercial position. Price is just one of a number of variables which factor in a negotiation such as this. Other factors

include the nature and location of the building, the circumstances of the tenant and the market conditions.

The Chief Ombudsman noted that her predecessors had rarely been persuaded that disclosure of a total cost for a service/good provided to a public body would prejudice anyone's interests, and there was no suggestion that previous disclosures had deterred private sector entities from doing business with the public sector, or directly resulted in prejudice to the commercial position of the private sector entities.

The Chief Ombudsman also noted that there was a strong public interest in the availability of this information. The public interest related to the Ministry's accountability in respect of public expenditure, particularly in circumstances where the expenditure related to non-core business.

The Chief Ombudsman recommended that the information be disclosed.

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