

Request for criteria used by Council to determine whether or not to waive parking tickets

Legislation	Local Government Official Information and Meetings Act 1987, s 7(2)(h)
Agency	Wellington City Council
Ombudsman	David McGee
Case number(s)	179439
Date	September 2010

Parking enforcement is a law enforcement activity not a commercial one—s 7(2)(h) does not apply

Wellington City Council refused a request for ‘a list of the criteria used by the Council and its contractors to decide whether or not to waive parking tickets’ in order to enable it to carry out commercial activities without prejudice or disadvantage (section 7(2)(h) LGOIMA), and the requester complained to the Ombudsman.

The Council argued that release would lead to loss of revenue from parking infringement fines due to members of the public having information which is very likely to be used to construct a defence on the infringement issued.

The Ombudsman did not accept that the Council operated a parking infringement policy as a commercial activity. The authority for such a policy derived from a penal provision in the Land Transport Act 1998 creating an offence. It may be that with the development of infringement notices and an administratively-based method of enforcing and levying fines, the original penal nature of the process had become obscured. But that, in essence, is what it was. It was not a commercial activity; it was a penal activity.

The fact that income generated by it may be applied to offset other Council costs (which the Transport Act itself required) was beside the point. If everyone complied with the parking bylaws there would be no income generated at all. If the Council was operating an infringement policy in order to generate a profit it would thus be placed at a disadvantage by citizens acting within the law. In the Ombudsman’s view, this could not be correct.

The Ombudsman accepted that a Council may carry on a car parking business as a commercial activity by operating facilities at which motorists may leave their vehicles for a fee. But this was not the case here. In this case, the Council was carrying out a law-enforcement role, not operating a business. Section 7(2)(h) of the LGOIMA could not apply.

The Ombudsman found there was good reason to withhold some of the information under section 6(a) of the LGOIMA (maintenance of the law), and the Council agreed to release the remainder.

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