

## Request for documentation about 'Ageing in Place' contract

<b>Legislation</b>	Official Information Act 1982, s 9(2)(ba)(ii)
<b>Agency</b>	Hawkes Bay District Health Board
<b>Ombudsman</b>	David McGee
<b>Case number(s)</b>	176647
<b>Date</b>	September 2008

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*Release of detailed proposals and component prices would have an adverse effect on tenderers' responses to future tenders issued by the DHB, which would damage the public interest—s 9(2)(ba)(ii) OIA applies—release would have an inhibiting effect in future on the quality of the documentation associated with the DHB's contract negotiations and tender evaluation, which would be prejudicial to the future conduct of such tenders—s 9(2)(g)(i) applies*

An unsuccessful tenderer sought documentation about the 'Ageing in Place' contract awarded to Presbyterian Support Services by Hawkes Bay District Health Board (the DHB) in 2006. The DHB refused the request under sections 9(2)(b)(ii) and 9(2)(i) of the OIA, and the requester complained to the Ombudsman.

The Ombudsman was not persuaded that section 9(2)(b)(ii) applied because it had not been demonstrated that the tenderers had a 'commercial position'. The Ombudsman was also not persuaded that section 9(2)(i) applied because the DHB was not engaged in 'commercial activities'.

The Ombudsman told the DHB he could see no good reason to withhold the total tender price. The DHB agreed to release this information. The Ombudsman formed the opinion that there was good reason to withhold:

- the tender submissions, including the component prices from which the total was derived, under section 9(2)(ba)(ii); and

- the DHB's evaluation of tenders and brief for negotiating with the successful tenderer under section 9(2)(g)(i).

### **Tender submissions**

The Ombudsman was persuaded that the tenderers would regard the details of their proposals, including the component prices from which the total was derived, as sensitive information that they would not wish to fall into the hands of anyone who might in future be one of their rival tenderers, whether the requester or anyone else.

He concluded that disclosure of this information would breach an obligation of confidence to the tenderers and that this breach would be likely to have an adverse effect on tenderers' responses to future tenders issued by the DHB. In his view, this would be damaging to the public interest.

### **Evaluation of tenders and negotiation brief**

The Ombudsman noted that the contract negotiation brief documentation involved free and frank opinions expressed on the successful tender. The opinions were sensitive because they related to financial and related information about the contract. Disclosure of this information would breach obligations of confidentiality to the successful tenderer and provide information on the DHB's negotiation processes that could prejudice future such negotiations.

Other information involved the DHB's evaluation of tenders (not from the requester), the disclosure of which would breach obligations of confidence to the tenderers concerned.

The Ombudsman concluded that disclosure of this information would have an inhibiting effect in future on the quality of the documentation associated with the DHB's contract negotiations and tender evaluation, something that would be prejudicial to the future conduct of such tenders.

The Ombudsman was not persuaded that the public interest in disclosure of this information outweighed the need to withhold it.

*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.*