

Request for draft advice on establishing a reserve

Legislation	Official Information Act 1982, s 9(2)(g)(i)
Agency	Minister for Primary Industries
Ombudsman	Professor Ron Paterson
Case number(s)	306385
Date	October 2013

Release of early and annotated advice would inhibit the free and frank exchange of opinions between officials drafting advice—general public interest in transparency had been met by disclosure of technical papers that formed the basis of the advice to the Minister, together with the final advice paper

In 2011, the Minister for Primary Industries established a mātaimai reserve at Anatori and Kaihoka. The advice on which that decision was based (called the ‘*Final Advice Paper*’ or FAP) was published. A requester sought information relating to the development of the FAP. The Ministry of Primary Industries released the technical documents considered in developing the FAP, but withheld ‘*internal correspondence and advice*’ under section 9(2)(g)(i). The requester complained to the Ombudsman.

The information at issue comprised approximately 80 annotations on draft copies of the FAP, made by Ministry staff, together with exchanges of emails between Ministry officials concerning the drafting of the FAP. The annotations were in the form of tracked changes within the word document used in drafting the FAP. Some of those annotations suggested improvements to the formatting of the document and noted typographical errors. However, numerous annotations and emails reflected the officials’ differences of opinion about whether the draft was, for example, appropriately or correctly expressed.

It was clear from the annotations made by Ministry staff on the draft FAP that they were expressing free and frank opinions to each other on that draft. They were still in the process of refining the document. The Ombudsman said:

It is in the public interest that such discussions and iterations take place. Such a process promotes better drafting of documents and, can reasonably be expected to lead to better decisions by the Ministry on matters of significant public interest.

The Ombudsman was satisfied that release of the information at issue would inhibit the free and frank expression of opinions by and between members of Ministry staff in the course of their duties, resulting in less robust internal debate between officials and ultimately in reduced quality of advice to the Minister. He concluded that section 9(2)(g)(i) applied.

The Ombudsman also accepted that it was in the public interest that persons whose ability to take fish, or aquatic life, or whose ownership interest in quota may be affected by the proposed mātaihai reserve, have an opportunity to comment on a proposed mātaihai reserve. In this case, interested parties including the requester had an opportunity to comment on the proposed mātaihai reserve.

It was also in the public interest for the Ministry's processes to be transparent. The Ombudsman stated: *'the Ministry's processes must not be hidden from public view and scrutiny any more than the public interest itself requires'*.

However, the Ombudsman considered that Ministry staff should be able to exchange views on draft documents such as the information at issue and to contribute in an uninhibited manner to the development of the final document for the Minister. In this instance, the general public interest in transparency had been met by disclosure of the technical papers that formed the basis of the advice to the Minister, together with a copy of the FAP. The annotations and exchanges at issue in this case were not of sufficient significance to tip the balance in favour of disclosure.

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