

Request for draft ministerial inquiry report

Legislation	Official Information Act 1982, s 9(2)(g)(i)
Agency	Ministry of Justice
Ombudsman	Beverley Wakem
Case number(s)	301085
Date	February 2012

Release of early and annotated draft would inhibit ministerial appointees from expressing free and frank opinions in future and sharing drafts with the Ministry of Justice—public interest met by availability of final report—s 9(2)(g)(i) applies

In 2001, Sir Thomas Eichelbaum made his report on the ministerial inquiry into the reliability of the convictions against Peter Ellis for child abuse. In 2010, a requester sought a copy of Sir Thomas's draft report. The Ministry of Justice withheld the draft report under section 9(2)(g)(i), and the requester complained to the Ombudsman.

The Ministry explained that the draft report was an early version prepared prior to the receipt of reports from the international experts appointed to advise on whether there were any features of the investigations and/or interviews of the complainant children which may have affected the reliability of the children's evidence. The draft contained a number of notations and requests for further advice.

The Ministry was concerned that if the draft report was released, it would inhibit ministerial appointees from providing the Ministry with drafts in the future. This would limit the Ministry's involvement in the development of advice with consequent implications for the quality of the record and the advice ultimately produced.

The Chief Ombudsman agreed with the Ministry's characterisation of the report as an early version, containing a number of notations and requests for further advice. She said it was important that a Ministerial appointee appointed by a Minister of the Crown to inquire into specified matters, feels able to revise the content of a draft report, without concern that the

draft report could later be made publicly available. This was particularly so in this case, where the draft report at issue was prepared by Sir Thomas prior to his receipt of reports from two internationally recognised experts chosen to assist him in his inquiry, whose opinions he was required to ‘*seek and evaluate*’, in accordance with the terms of reference which the Minister had set for his inquiry.

The Chief Ombudsman concluded that release of the draft report would prejudice the interest which section 9(2)(g)(i) is meant to protect, which is that officials, and in this case, a Ministerial appointee, can express their opinions in a free and frank manner in order to maintain the effective conduct of public affairs, and not be inhibited in doing so in the knowledge that their draft advice and/or reports will become publicly available.

As regards the countervailing public interest in disclosure, the Chief Ombudsman commented that Sir Thomas was accountable for his final report as presented to the Minister of Justice who appointed him to conduct this inquiry. He was not publicly accountable for earlier drafts of his report. The final report had been publicly available for many years, and the Chief Ombudsman was not persuaded that the interest in withholding the draft report was outweighed by the public interest in disclosing that report.

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