

Request for draft report on NZX compliance with general obligations

Legislation	Official Information Act 1982, s 9(2)(g)(i)
Agency	Financial Markets Authority
Ombudsman	Dame Beverley Wakem
Case number(s)	372993
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Release would inhibit the free and frank expression of opinions by officials during the drafting process, and the exchange of opinions between the NZX and FMA—it is in the interests of the ‘effective conduct of public affairs’ for the review process to be robust and conducted in a manner that supported the FMA’s main objective of promoting and facilitating the development of fair, efficient and transparent markets—s 9(2)(g)(i) applied

The Chief Ombudsman investigated a complaint about the Financial Markets Authority’s (FMA’s) decision to withhold ‘draft copies of the FMA’s report into NZX’s general obligations—a report released publicly in June’.

The requested report was produced during the FMA’s annual review of whether the NZX (New Zealand Stock Exchange) was meeting its general obligations in respect of registered markets. This process was mandated by the now repealed Securities Markets Act 1988 (sections 36YB and 36YC). Under that process, the FMA was required to provide a draft report to the NZX and to consider its submissions before providing a final report to the Minister, which would thereafter be published. The FMA maintained that this process underscored the importance of ‘a robust exchange of opinions and fair consideration of the views developed’ prior to the publication of the FMA’s final report.

The Chief Ombudsman concluded that section 9(2)(g)(i) provided good reason to withhold the draft report. It was in the interests of the ‘effective conduct of public affairs’ for the process for reviewing the NZX’s compliance with the general obligations to be robust and conducted in a manner that supported the FMA’s main objective of promoting and facilitating the

development of fair, efficient and transparent markets. Both the NZX and FMA emphasised how important the free and frank exchange of information and views between the parties was to the quality of the review.

The Chief Ombudsman had no doubt that if the draft report was publicly disclosed, this would be foremost in the minds of FMA officials when they came to draft the next report, and would stifle the drafting process. Release would also inhibit the free and frank exchange of opinions between the NZX and FMA. Any inhibition on the part of the FMA or the NZX at this stage of the process would mean that the quality of the review would suffer.

After comparing the draft and final reports, the Chief Ombudsman concluded there was nothing in the draft that gave rise to a public interest sufficient to outweigh the need to withhold.

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