

Request for draft report to Ombudsman

Legislation	Official Information Act 1982, ss 2(1), 9(2)(g)(i)
Agency	Department of Labour
Ombudsman	Dame Beverley Wakem
Case number(s)	295743
Date	September 2012

Release of draft report to Ombudsman would inhibit the free and frank expression of opinions—s 9(2)(g)(i) applies

The Department of Labour refused a request for access to a draft report to the Ombudsman on a complaint made under the Ombudsmen Act (OA), and the requester complained to the Ombudsman.

The draft report was never sent, and so it was not captured by the exclusion to the definition of official information in relation to ‘correspondence or communications between’ agencies and the Ombudsman relating to an investigation.¹

However, the Ombudsman considered that there was good reason to withhold the draft report under section 9(2)(g)(i) of the OIA.

The draft report was prepared by an official for consideration by senior colleagues and contained free and frank expressions of opinion about how to respond to the complaint under the OA, and went into some detail regarding the issues raised in the investigation.

¹ See paragraph (i) (OIA) and (b)(iii) (LGOIMA) of the definition of ‘official information’ in section 2(1) of the OIA / LGOIMA.

The Ombudsman accepted in this case that disclosure would likely result in officials being reluctant to express their initial and untested opinions in detailed written form due to a fear that these may subsequently be made public.

Further, officials would likely be inhibited in providing comments on the work of staff and colleagues and would prefer to conduct their exchanges of such matters in a less efficient and transparent manner.

The Ombudsman formed the opinion that it was necessary to withhold the information at issue to ensure the quality of correspondence with an Ombudsman was not prejudiced by a future unwillingness on the part of its staff to provide free and frank opinions on how to respond to an Ombudsman's investigation.

Unless the information either suggested a course of action that was contrary to law or some other impropriety on the part of an agency in responding to an Ombudsman's requirement, there were sufficient safeguards available under the OA to promote the accountability of an agency and any public interest would be met through the process of an Ombudsman's independent investigation of the substantive complaint.

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.