

Request for electronic copies of Ministers' official diaries

Legislation	Official Information Act 1982, s 16(2)(a)
Agency	Ministers
Ombudsman	Sir Brian Elwood
Case number(s)	W47385, W47386, W47387, W47389, W47390, W47391 & W47544
Date	May 2003

Request for electronic copies of certain Ministers' official diaries covering a three-month period—electronic copies of the diaries held only in a particular software package not available to the requester—no obligation, under the OIA, for Ministers to provide electronic copy of the diaries in another software package—technical and administrative difficulties in providing electronic copies of the diaries—s 16(2)(a) of the OIA provides grounds to refuse to provide electronic copies of the diaries

A researcher investigating the OIA as it applies to Ministers wrote to a number of Ministers in 2001 requesting copies of their daily ministerial diaries for the three-month period following the general election in 1999. The requester advised that he wanted the information in both printed and electronic form (via e-mail). In response, most of the Ministers refused to provide the requester with electronic copies of their diaries.

Investigation

The Ombudsman wrote to the various Ministers advising of his intention to investigate and review their respective decisions. He referred the Ministers to section 16 of the OIA which provides that:

- (1) *Where the information requested by any person is comprised in a document, that information may be made available in 1 or more of the following ways:*

- (a) *by giving the person a reasonable opportunity to inspect the document; or*
 - (b) *by providing the person with a copy of the document; or*
 - ...
 - (d) *in the case of a document by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, by providing the person with a written transcript of the words recorded or contained in the document; or*
 - (e) *by giving an excerpt or summary of the contents; or*
 - (f) *by furnishing oral information about its contents.*
- (2) *Subject to section 17, the department or Minister of the Crown or organisation shall make the information available in the way preferred by the person requesting it unless to do so would—*
 - (a) *impair efficient administration; or*
 - ...
 - (c) *prejudice the interests protected by section 6 or section 7 or section 9 and (in the case of the interests protected by section 9) there is no countervailing public interest.*

Further, the Ombudsman reminded the Ministers that the word ‘document’ is defined in section 2 of the Act as:

document means a document in any form; and includes—

...

- (b) *any information recorded or stored by means of any tape-recorder, computer, or other device; and any material subsequently derived from information so recorded or stored:*

As these provisions essentially give a complainant basic control over the form in which information should be released (except where the qualifications set out in section 16(2) of the Act apply), the Ombudsman sought a report from the relevant Ministers explaining the concerns they had with releasing the information in the requested electronic format.

In response, many of the Ministers advised that their ministerial diaries were stored in a Lotus Organiser software package that had been created specifically for their ministerial offices. It was their understanding that the complainant did not have access to this particular software package. The Ombudsman was advised that the complainant had asked whether the information could be exported into another software format, such as Microsoft Word or Microsoft Excel, which could then be sent to him via e-mail. However, the Ministers explained

that extracting the information from their diaries and exporting it into another software package (such as Microsoft Word or Excel), required the creation of an entirely new document. In other words, although the diary entries themselves would be the same, the Microsoft Word or Excel diary would be a different document within the terms of the OIA because it is stored in a different software package supported by different computer coding.

The Ombudsman considered the Ministers' comments in light of section 16 of the Act. He noted that the information which the complainant had sought was comprised in a '*document*', namely '*information recorded or stored by means of any... computer*'. Section 16 clearly provided that the complainant was entitled to receive an electronic '*copy of the document*' he had requested unless one of the exceptions in section 16(2) of the Act could be made out. However, the Ombudsman noted that the document the complainant had requested was the Lotus Organiser diaries for the three month period in question.

Finally, the Ombudsman noted there were a number of technical, or administrative, difficulties involved in providing the complainant with electronic copies of the diaries. First, the complainant would only be able to read an electronic copy of the diary if he had the correct software. However, he did not have access to such software. Secondly, before any copies of the diaries could be released certain information needed to be deleted, the process of which would be more time-consuming in respect of the electronic copies than deleting the information from printed copies of the diaries.

Outcome

It was the Ombudsman's view that section 16(2)(a) of the Act did provide the Ministers with grounds to refuse to provide the complainant with electronic copies of their diaries. The document the complainant had requested was the Lotus Organiser diaries for the three-month period in question, not a Microsoft Word or Excel version thereof. The Ombudsman noted that, although it was open to the Ministers to create these new versions of their diaries if they wished to do so, the OIA did not oblige them to do so.

The complainant expressed concern at the resultant inaccessibility of the diaries in the format requested but accepted the Ombudsman's findings.

Comment

See related [case note](#) for discussion on whether certain deletions made in the diaries were necessary to protect the privacy of individuals mentioned in the diaries.

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.