

Request for individual's immigration history

Legislation	Official Information Act 1982, ss 9(2)(a), 9(1)
Agency	Department of Labour
Ombudsman	Beverley Wakem
Case number(s)	302427
Date	May 2011

Privacy ground applied and not outweighed by public interest because discovery available

A requester sought information about an individual's immigration history in order to pursue a claim of defamation. The request was refused on privacy grounds and the requester complained to the Ombudsman.

The Chief Ombudsman accepted that the privacy withholding ground properly applied. She was not prepared to conclude that the public interest in disclosure outweighed the need to protect individual privacy because of the availability of discovery as an alternative means of obtaining information relevant to the defamation proceedings.

The Chief Ombudsman declined to pre-empt the Court's decision on whether the interests of justice required the information to be made available for the purposes of the proceedings. That would be a matter for the Court to determine where discovery was sought and refused.

While the availability of discovery is not a basis for refusing a request for official information, the fact remains that the tests for the withholding of information under the OIA are not the same as the tests that apply to the circumstances in which discovery may be refused. In some cases information that might be required to be made available under the OIA may not be available through discovery, and in other cases discovery may give access to information that there is good reason to withhold under the OIA.

The Ombudsman distinguished the landlord-tenant cases discussed in case note W42175, noting that the approach adopted in those cases stemmed from concerns about the

enforceability of judgment orders obtained by landlords from the Tenancy Tribunal. In contrast, this case did not involve an already established legal right.

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