

## Request for information relating to Ministry of Education 2012 Special Education School Transport Assessment (SESTA) tender

### Ombudsman's opinion

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<b>Requester</b>	Blue Star Taxis Invercargill Ltd
<b>Agency:</b>	Ministry of Education
<b>Ombudsman:</b>	Professor Ron Paterson
<b>Reference number:</b>	357489
<b>Date:</b>	May 2015

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## Summary

In 2012, the Ministry of Education published a Request For Proposals (RFP) for the transport of special needs children for educational purposes called the *'Special Education School Transport Assistance tender'* (SESTA tender). The Ministry awarded Go Bus Ltd (Go Bus) the contract for the Invercargill/Bluff cluster of routes. Blue Star Taxis Invercargill Ltd (Blue Star Taxis) requested copies of the information the Ministry held relating to that contract.

The information at issue contained extensive information relating to Go Bus staff employment conditions, drivers' qualifications and experience, policies and procedures relating to staff induction, training, assessment and monitoring, SESTA tender requirements, complaint handling and other matters. The Ministry released some of the requested information in response to Blue Star Taxis' request and my investigation. The Ministry withheld the balance of the information under section 9(2)(b)(ii) of the Official Information Act 1982 (OIA) on the basis that its release would be likely unreasonably to prejudice the commercial position of Go Bus.

I accepted the Ministry's submission that releasing the information at issue would be likely to lead to tenderers losing the competitive incentive to strive for best practice standards in the provision of a quality transport service, consistent with the SESTA tender's objective. In terms of section 9(1) of the OIA, there is a public interest in caregivers being able to see that successful SESTA tenderers have systems and practices to provide a quality transport service. Transparency is an important consideration. The Ministry undertook to publish information for caregivers about those matters to meet this interest.

Subject to publication of summary information about the systems and practices of successful SESTA tenderers, the Ministry was entitled to withhold the information at issue under section 9(2)(b)(ii).

## Background

### Introduction

1. In 2012, the Ministry released the SESTA tender RFP for the transport of special needs children to and from schools. The complainant, Blue Star Taxis, Go Bus, and many other operators submitted tenders.
2. The SESTA tender had two phases: a *"qualification phase"* and a *"pricing phase"*. To participate in the pricing phase, tenderers had to satisfy certain minimum standards relating to the age, maintenance, and standard of their vehicles, *"Vehicle Safety"*, *"Customer Service History"*, and *"Driver Development"*.<sup>1</sup> The Ministry established the Tender Evaluation Committee (TEC) to evaluate and make recommendations on tenders. As part of that process, TEC awarded qualification phase points to tenderers for those

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<sup>1</sup> See paras 26 and 27 of the RFP.

matters according to certain criteria.<sup>2</sup> The Ministry in practice adopted most of TEC's recommendations.

3. In the pricing phase, the Ministry usually awarded tenders to the lowest bidder. However, where bids were within 10 per cent of each other, the Ministry usually awarded the tender to the tenderer with the most qualification phase points.
4. The tenders of Go Bus and Blue Star Taxis for the Invercargill/Bluff "cluster" of transport routes were within 10 per cent of one another. Go Bus was awarded the tender for that cluster as it received more qualification phase points than Blue Star Taxis.
5. Attached to the RFP were template documents all tenderers had to complete. Part of the information provided by Go Bus in two of those templates, template 5 ("Driver Development Programme") and template 6 ("Driver Management Programme"), forms the information at issue. (Appendices 2 and 3 are blank copies of those templates.)

## Request

6. In a letter of 22 November 2012 to the Ministry, Blue Star Taxis (Mr K O Henderson) requested:

*"... all information relating to the Ministry's decision in awarding the contract to Go Bus for the Invercargill/Bluff Cluster, including information on the selection process and including the weighting of the criteria for both Blue Star Taxis (Invercargill) Ltd and Go Bus the successful bidder, resulting in the final decision of the Ministry to award the contract to Go Bus. This request for information is to be construed to ensure that you provide us with all relevant information to enable us to understand how the decision was made. ... Please also provide to us information referred to in the mandatory rules as reasons for rejection and relative advantages of proposals that were accepted."*

7. In an undated letter in reply to Blue Star Taxis' letter of 22 November 2012, the Ministry (Mr John Clark) provided a significant amount of the requested information, but withheld the balance of the information in reliance on section 9(2)(b)(ii) of the OIA:

*"Specific details on the Qualification Phase points awarded to Go Bus Transport Limited have been withheld under section 9(2)(b)(ii) of the [OIA] to protect information where making the information available would likely unreasonably prejudice the commercial position of Go Bus Transport Limited. There do not appear to be overriding public interest reasons that support the release of the information withheld. The Ministry does confirm that the points awarded to Go Bus Transport Limited are higher than those awarded to Blue Star Taxis (Invercargill)."*

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<sup>2</sup> "Tender Evaluation Committee Guidelines for the Special Education School Transport Assistance tender" (issued 7 February 2012 for contracts starting January 2013).

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## Correspondence between Buddle Findlay and Ministry

8. Blue Star Taxis instructed its solicitors, Buddle Findlay (Mr Joss Opie), about the Ministry's refusal to provide all the information requested.
9. In a letter of 21 December 2012 to the Ministry, Mr Opie clarified the extent of Blue Star Taxis' request and why it considered the Ministry had improperly withheld information:
  - “7. In your response to Mr Henderson's 22 November OIA request, you stated that Go Bus was awarded a greater number of qualification points than Blue Star. However, you declined to advise how many points Go Bus was awarded or provide details about the basis for awarding these points. You relied on section 9(2)(b)(ii) of the OIA (that providing the information requested would be likely to unreasonably prejudice Go Bus' commercial position).
  8. We cannot understand how providing this information would unreasonably prejudice Go Bus' commercial position (or prejudice it at all). The decision to withhold the information is also inconsistent with the Ministry's obligation under clause 47(b) of the Mandatory Rules for Procurement by Departments. Accordingly, we ask that you review your decision, and provide the following information:
    - (a) Please confirm whether Go Bus was awarded 20 points for the Driver Development score (we note that our client has received advice to this effect);
    - (b) Please provide all information relevant to the decision to award Go Bus 20 points for the Driver Development score, including but not limited to:
      - (i) A copy of Go Bus's qualification submission, including but not limited to copies of Go Bus's Templates 5 and 6;
      - (ii) Go Bus's qualification phase scoring matrix.
    - (c) We understand that at the time Go Bus submitted its qualification submission, Go Bus did not have any employed or contracted drivers in the Invercargill/Bluff cluster region. We also understand that Go Bus's Driver Development score was based on the drivers it had elsewhere (e.g. in Hamilton). Please confirm whether our understanding is correct.
    - (d) Please confirm if the only reason Go Bus was awarded the SESTA contract was that it scored a higher number of points in the qualification phase, and its price was within 10% of the lowest price. If there were other reasons for awarding it the contract, please advise what those were and the grounds upon which they were based.”
10. In a letter of 8 February 2013, the Ministry (Mr John Clark) provided further information, but, in reliance on section 9(2)(b)(ii), maintained its earlier refusal to release the balance

of the information requested, including copies of templates 5 and 6 completed by Go Bus and its qualification phase points.

11. In response to Mr Clark's letter of 8 February 2013, in a letter of 20 February 2013, Mr Opie sought further clarification from the Ministry of the reasons for its reliance on section 9(2)(b)(ii) to withhold the balance of the information requested and stated why Blue Star Taxis considered its reliance on that provision was unjustified:

*"15. ... information may only be withheld under section 9(2)(b)(ii) of the OIA where that is 'necessary' for its protection, because making it available 'would be likely unreasonably to prejudice the commercial position' of Go Bus. However, the 'disadvantage' that you refer to in your 8 February 2013 letter is at best potential, not actual. Given that you do not know at this stage whether the Ministry will retender routes at some stage in the future, or that Go Bus will tender for any such routes, there is an insufficient basis for a view that the release of the information requested 'would be likely' to prejudice Go Bus unreasonably.*

*16. Indeed, in your letter you do not put it that highly. Rather, you simply state that the release of 'any tenderers Qualification Phase documentation could disadvantage them should their information be copied in a future tender'. We also note that any concern about such copying cannot be relevant to the release of Go Bus' Driver Development Score.*

*17. Given that, in our view there is no proper basis under section 9(2)(b)(ii) of the OIA for withholding the information requested.*

*18. In addition, on 23 November 2012 this firm made a request under the OIA on behalf of Taxis Direct Limited for a copy of the Qualification Phase submission by Taxis Gold and Black. You responded to that request by an undated letter (copy attached), and your response included a copy of Taxis Gold and Black's Qualification Phase submission. Your refusal to provide a copy of Go Bus' Qualification Phase submission is inconsistent with your decision in respect of Taxis Gold and Black's information. It is also another cause of considerable concern for Blue Star. Why would the Ministry withhold Go Bus' Qualification Phase submission but not that of Taxis Gold and Black?*

*19. ... it may be that at least some of Blue Star's concerns about its Driver Development Score, and the SESTA 2012 RFP generally, would be allayed if it understood the reasons for the differences between its and Go Bus' score; and could be satisfied that it and Go Bus had been scored using the same criteria (a particular concern given that the same person would not have evaluated Go Bus' and Blue Star's Qualification Phase submissions).*

*20. Providing a copy of Go Bus' Qualification Phase submission (including templates 5 and 6), and its Qualification Scoring Phase Spreadsheet,*

would assist in this regard. It would also be consistent with the Ministry's obligation, under clause 47(b) of the Mandatory Rules for Procurement by Departments, to 'promptly provide pertinent information [to an unsuccessful tenderer] concerning [...] the relative advantages of the tender that was accepted'. To date, and despite Blue Star's requests and the Ministry's obligations under the Rules, the Ministry has provided no information about why Go Bus was awarded a higher score for Driver Development, even though that was the critical point of difference between the two companies.

21. Further, in your 8 February 2013 letter you state that there do not appear to be any 'overriding' public interest reasons for releasing the information requested. In that regard, we ask that you take into account the public interest in unsuccessful tenderers in a nationwide public tender being able to understand fully why they were unsuccessful (an interest reflected in clause 47(b) of the Mandatory Rules). Please also take into account the desirability of the Ministry demonstrating that its decision to select Go Bus was made in an 'open, fair, consistent and unbiased manner' (to use the words from page 7 of the RFP); a value which the release of the information requested may promote.
  22. In our view, these considerations outweigh any concern about Go Bus's commercial position (even if section 9(2)(b)(ii) were applicable in these circumstances, which we dispute for the reasons set out above)."
12. In a letter of 27 March 2013, Mr Clark provided further information in response to Mr Opie's letter of 20 February, but confirmed the Ministry's earlier refusal to release information contained in templates 5 and 6 completed by Go Bus and its qualification phase points. He advised the Ministry had released similar information contained in Taxis Gold and Black's tender to Taxis Direct, as the former tenderer had consented to its release.

## Complaint

13. On Blue Star Taxis' behalf, in a letter of 18 April 2013 to the Ombudsman, Mr Opie complained about the Ministry's withholding of the information then at issue, ie, templates 5 and 6 completed by Go Bus and the number of points Go Bus received in the qualification phase:

"9. As set out in paragraph 5 of Blue Star's 22 November 2012 letter, its request under the OIA was for 'all relevant information to enable us to understand how this decision was made'. The qualification phase spreadsheet for Go Bus clearly falls into this category. However, while the Ministry has released Blue Star's qualification phase spreadsheet (see the reference to it in the Ministry's 8 February 2013 letter), it has not released that of Go Bus.

10. *Blue Star disputes that section 9(2)(b)(ii) is applicable to any of the information requested.*
  11. *... the Ministry has already provided to us the qualification phase submission of another SESTA tenderer, Taxis Gold and Black. This was in response to an OIA request we made on behalf of another client. The release of this information indicates that material provided in qualification phase submissions is not generally considered as commercially sensitive. As the Ministry advised in its 27 March 2013 letter, Taxis Gold and Black was happy for this information to be released.*
  12. *Also, the Ministry has not stated that it considers that the release of Go Bus' qualification phase submission, spreadsheet or qualification phase score 'would be likely unreasonably to prejudice' Go Bus' commercial position. The most the Ministry has said is that 'the release of any tenderers Qualification Phase documentation could disadvantage them should their information be copied in a future tender ... something which was not a concern for Taxis Gold and Black; and then that Go Bus 'considered that their commercial position could be affected if the Ministry was to release its Qualification information' ... .*
  13. *Accordingly, the Ministry itself has made no finding that withholding this information is necessary because making it available would be likely unreasonably to prejudice Go Bus' commercial position. The most that has been said is that release of the information 'could' affect Go Bus commercially. The tests in section 9(2)(b)(ii) are not therefore met.*
  14. *We also note that the Ministry appears to have effectively delegated to Go Bus the decision-making about the commercial sensitivity of the requested information, rather than forming its own independent view on that issue ... . That cannot be the correct approach to decision-making under the OIA.*
  15. *In addition, while the Ministry refers ... to the possibility that qualification phase information could be copied by another tenderer in a future tender, the Ministry does not state that such copying has actually ever occurred. The risk of any tenderer copying the qualification phase information of another tenderer would also seem negligible, as much of the information requested in the qualification phase is specific to each tenderer ... .*
  16. *Indeed, a tenderer would run a significant risk if it copied information another tenderer had submitted in the past, and for example stated in its tender that it provided particular recruitment and induction training, if that was not in fact the case. Apart from the risk of being discovered and having its tender disqualified on this basis, any such act would implicate the tenderer in the making of a false statutory declaration ... . This makes it even more unlikely that a tenderer would engage in such conduct.*
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17. *Further, given that qualification phase submissions were due on 23 March 2012 ... the information provided in Go Bus' qualification phase submission will no longer be current. Any commercial sensitivity which could have attached to that information must by now have reduced considerably, if not completely.*
18. *Given the above considerations, in our opinion the Ministry could not have reasonably reached the view that the grounds set out in section 9(2)(b)(ii) of the OIA were met in this case.*
19. *Finally, even if there were grounds to withhold the qualification submission under section 9(2)(b)(ii) (denied), it is implausible to think that releasing Go Bus' qualification phase score or its qualification phase spreadsheet would be likely to unreasonably prejudice its commercial position."*

## Investigation

14. In June 2013, the Ombudsman notified the Ministry of his intention to investigate the complaint and requested copies of the information at issue.
15. In July 2013, the Ministry provided a report to the Ombudsman, with copies of the information at issue.
16. In essence, the Ministry submitted that:
  - a. it released information provided by Taxis Gold and Black to Taxis Direct Levin, as Taxis Gold and Black agreed to the release of that information – the Ministry provided information confirming that was the case;
  - b. it was entitled to rely on both section 9(2)(b)(ii) and 9(2)(j) to withhold the information at issue for the following reasons:
    - “• *The tender process is based on points awarded in the Qualification Phase. Higher points allow tenderers a 10% pricing advantage in the Operator Selection Phase. As Qualification points are unknown, tenderers are required to price the routes/clusters to ensure that the price tendered is the best possible price to provide the service. If a tenderers points are known by other tenderers prior to pricing, they could adjust their pricing accordingly to the detriment of the higher qualified tenderer.*
    - *A Qualification Submission is an extensive document, including copies of training agreements, business sustainability information, health and safety practices, vehicle maintenance regimes etc. In most cases the information is detailed and requires that the tenderer spend a considerable amount of time and resource on the documents. The Ministry acknowledges this time and resource by keeping the*

*documentation as confidential as possible to minimise the possibility of the documents being used to advantage competitors.”*

## Analysis and findings

### Section 9(2)(b)(ii) of the Official Information Act 1982

17. Section 9(2)(b)(ii) of the OIA provides good reason for withholding official information –
  - *“if, and only if, the withholding of the information is necessary to ... protect information where the making available of the information ... would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information”; and*
  - *this interest is not, in terms of section 9(1) of the OIA, “outweighed by other considerations which render it desirable, in the public interest, to make that information available”.*
18. Both of these elements must be satisfied before section 9(2)(b)(ii) provides a good reason for refusing a request.
19. As the Ministry provided insufficient information in support of its reliance on section 9(2)(j), the text of which is set out in Appendix 1, I make no further reference to that provision.
20. During my investigation, the Ministry released Go Bus’ qualification phase points and part of the information in template 5 completed by Go Bus, ie, the number of its drivers holding *“Limited Credit Programme”* (LCP) certificates issued on completion of New Zealand Qualification Authority unit standards for *“small passenger service (Special Needs)”* and current first aid certificates.
21. In summary, the information at issue in templates 5 and 6 consists of extensive information relating to Go Bus staff employment conditions, drivers’ qualifications and experience, policies and procedures relating to staff induction, training, assessment and monitoring, SESTA tender requirements, complaint handling and other matters.
22. Clarification was sought from the Ministry of its reasons for relying on section 9(2)(b)(ii) to withhold the balance of the information in templates 5 and 6.
23. In November 2014, the Ministry advised:

*“The first requirement of section 9(2)(b)(ii) discussed in the Ombudsman’s Official Information legislation guide is that the activity at issue is a commercial one ‘undertaken for the purpose of making a profit’. And the second requirement is that the person who supplied or who is the subject of the information has a ‘commercial position’.*

*The Ministry considers these requirements to be met because the request involves commercial companies providing school transport services for a contract price, Go Bus is a commercial provider of school transport, and tendering for such work is a commercial activity.*

*The next requirements set out in the Ombudsman's Official Information guide are to do with identifying the prejudice that would likely result to that commercial position if the requested information were to be made available. This is discussed below under the 'Consideration of the public interest' heading.*

...

*I can confirm that it is the Ministry that decides whether or not to release the information. In response to the Ministry's query about release Go Bus stated that it considered it important for commercial reasons that the information not be released. It did not want to be disadvantaged in any future Ministry tender because a competitor had its responses to Ministry requirements.*

*The fact that Taxis Gold and Black was not concerned about the release of its information was not a factor taken into account by the Ministry when it was considering the application of section 9(2)(b)(ii). In the Ministry's letter of 18 July 2013 to ... your Office, the Ministry explained that it was aware that Taxis Gold and Black wanted the information released ... Clearly, for Taxis Gold and Black, other issues were more important than commercial considerations at the time the information was released.*

*The situation for Go Bus was not the same. It did not have the same imperatives as Taxis Gold and Black in this regard. The Ministry accepted that Go Bus' concerns were valid and that the release of Go Bus' responses to a competing operator would be likely to prejudice its commercial position in any future Ministry tender.*

...

*Template documents are completed by the tenderers at the time of the submission of the Qualification part of a Ministry transport tender. The templates provided require that each tenderer answer the same questions, and then submit attached documents to support the answers provided.*

*Those attached documents are prepared by the tenderers and how this is done is up to each tenderer. ...*

...

*The process is a commercial one. The Ministry seeks tenders from operators setting out the requirements they must meet and the responses they must provide. The Ministry assesses the tenders based on whether the requirements are met and ranks them according to the responses they provide. One tenderer (Tenderer A) may get full marks for detailing a page of driver training objectives*

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*or time frames, while another (Tenderer B) may get less marks for one sentence of aspirations.*

*From time to time the Ministry holds further tenders, where for example, the existing operator goes out of business. The requirements and process for these future tenders are substantially the same. If Tenderer B in the above paragraph is able to copy Tenderer A's response in a later tender, then Tenderer A loses its competitive advantage. In a sense the tender is like a repeat of an exam where one candidate has another candidate's previous correct answers.*

*The school transport tender process was discussed in Bayline Group Limited v Secretary of Education HC WN CIV 2007-485-904 [29 August 2007] where France J stated at paragraph 30: 'The present case involves a decision containing no public consequences at all.' In a commercial tendering environment such as this, the Ministry considers there is no public interest in allowing a tenderer to gain a competitive edge by copying a competitor's previous responses."*

24. The *Bayline* case concerned whether the decision by the Secretary of Education to award a bus tender at issue in that case had a sufficiently public element to found a judicial review application of the Secretary's decision. It was in that context that France J made the quoted statement. I am not convinced that it aids my consideration of the public interest in the context of an Official Information Act complaint about a withholding of information held by a public sector agency that seeks commercial tenders.
  25. In essence, the Ministry maintains (as does Go Bus) that the information at issue is Go Bus' intellectual property, and that its release, in terms of section 9(2)(b)(ii), would unreasonably prejudice Go Bus' commercial position in future tenders or negotiations with the Ministry for the provision of transport for special needs children. The Ministry submits that there is a real risk that Go Bus' competitors would copy or adopt much of the information in templates 5 and 6 created by considerable expenditure of time and money for those purposes on the part of Go Bus, and that Go Bus would thereby lose its competitive advantage and be commercially prejudiced in future tenders and negotiations.
  26. Unquestionably, the information at issue relates to Go Bus' commercial position. Go Bus is in the business of providing transport services, including those services described in the SESTA tender. The question for determination is whether the withholding of the information is *necessary* to protect information, the release of which would be likely to unreasonably prejudice the commercial position of Go Bus.
  27. I put to one side the fact that the Ministry released information similar to the information at issue provided by Taxis Gold and Black, as that company agreed to that information being released.
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28. In *Commissioner of Police v Ombudsman* the Court of Appeal interpreted the phrase “*would be likely*” to mean a “*serious or real and substantial risk to a protected interest, a risk that might well eventuate*”.<sup>3</sup>
29. Go Bus provided the Ministry with a summary of the time and effort it devoted to preparing the information contained in templates 5 and 6 and the approximate expenditure it incurred. It stated:
- “Successful tendering is a vital component of our business and disclosure of the details of our tender submission to a competing operator would have significant commercial impact and provide competitive gain to the requesting party. A competing tenderer who is able to review and then emulate our tender submission would as a result of that disclosure enjoy a substantial competitive advantage over us and other operators in any future tender round.”*
30. I accept that Go Bus, as a result of the expenditure of a considerable amount of time and money, created and collated the information at issue. It is entitled to maintain the competitive advantage it achieved in that way. The fact that Go Bus was the successful tenderer for the Invercargill/Bluff cluster evidences that, in TEC’s assessment, Go Bus was likely to provide a safer and more consistent level of service than Blue Star Taxis in the respects referred to in those templates 5 and 6.
31. Following the approach of the Court of Appeal decision in *Commissioner of Police v Ombudsman*, I consider that, if released, there is a “*serious or real and substantial risk*” that Go Bus’ commercial position would be commercially prejudiced by other tenderers (in future tenders or negotiations with the Ministry) seeking to negate Go Bus’ competitive advantage by copying or adopting the information at issue.
32. Accordingly, I conclude that the Ministry was entitled to withhold the information at issue in reliance on section 9(2)(b)(ii), unless the section 9(1) public interest override applies.

## Section 9(1) Official Information Act 1982

33. The more difficult question is whether, in terms of section 9(1), the withholding of the information at issue is outweighed by other considerations rendering it desirable in the public interest to make that information available.
34. The RFP’s introduction states:

*“The Ministry of Education’s ... objective is to purchase quality transport service provision for those who are eligible for Special Education School Transport Assistance ... In 2007 the Ministry made significant changes to SESTA contracting requirements in order to have a greater focus on safety and the quality of the transport service being provided throughout the period of the contract. Those changes also provided more certainty for transport providers*

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<sup>3</sup> [1988] 1 NZLR 385, 391.

*with longer contract terms, price adjustments for student or distant changes, and annual adjustments for inflation. This RFP and associated Contract expands on the original Tender and Contract documentation by incorporating amendments and improvements based upon the previous Contract term.”*

35. I accept the validity of the Ministry’s concern that tenderers in future tenders or negotiations will simply copy or adopt much of the information at issue. The Ministry submits that the releasing of the information at issue would lead to tenderers losing the competitive incentive to strive for best practice standards in the provision of a quality transport service, contrary to the public interest. I agree with the Ministry’s submission, but that potential harm must be weighed against any potential benefits of disclosure.
36. There is a public interest in the Ministry releasing sufficient information to enable caregivers (and the broader public) to be able to see that successful tenderers have systems and practices in place to provide a “*quality transport service*”. Transparency is an important consideration.
37. The necessity for tenderers to satisfy the RFP’s minimum standards and TEC’s evaluation against published criteria<sup>4</sup> goes some way to satisfying caregivers’ concerns for a “*quality transport service*”. During my investigation, the Ministry undertook to place on its website a summary of the steps it has taken (and will take) to ensure provision of “a quality transport service”, and to provide future SESTA applicants with that information. (The summary appears as appendix 4.)
38. In my opinion, the provision of the information on the Ministry’s website and to future applicants satisfies the public interest I have identified in terms of section 9(1), and thus disclosure of the information at issue from the Go Bus tender is not required under the OIA.

## Ombudsman’s opinion

39. For the reasons set out above, I conclude that the Ministry was entitled to withhold the information at issue in reliance on section 9(2)(b)(ii).

Professor Ron Paterson  
Ombudsman

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<sup>4</sup> See note 2 above.

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## Appendix 1. Relevant statutory provisions

### Official Information Act 1982

#### 9. **Other reasons for withholding official information**

- (1) *Where this section applies, good reason for withholding official information exists, for the purpose of section 5, unless, in the circumstances of the particular case, the withholding of that information is outweighed by other considerations which render it desirable, in the public interest, to make that information available.*
- (2) *Subject to sections 6, 7, 10, and 18, this section applies if, and only if, the withholding of the information is necessary to—*
- ...
- (b) *protect information where the making available of the information—*
- ...
- (ii) *would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information;*  
*or*
- ...
- (j) *enable a Minister of the Crown or any department or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations);*

## Appendix 2

### Template 5: Driver Development Programme

<b>Company Information (Copy from Template 3)</b>	
Legal Entity Name (to appear on the Contract)	
Trading Name (if different)	
Registered Address: <ul style="list-style-type: none"> <li>• Address line 1</li> <li>• Address line 2</li> <li>• Address line 3</li> <li>• Address line 4</li> </ul>	
Contact person (this person must be authorised by the Tenderer to negotiate on its behalf)	
Phone Number of Contact Person	
Email Address of Contact Person	

<b>Driver Training</b>	
<ul style="list-style-type: none"> <li>○ What recruitment and induction training do you provide for drivers?</li> <li>○ What ongoing driver development do you provide, and how often?</li> <li>○ What capability do you have to support specific adhoc driver training needs?</li> </ul>	
<b>Driver Training Records</b>	
<ul style="list-style-type: none"> <li>○ What percentage of your drivers have completed the LCP or equivalent training? (Please attach copies of LCP Certificates)</li> <li>○ What percentage of your drivers have completed a First Aid Certificate? (Please attach copies of First Aid Certificates)</li> <li>○ What percentage of your drivers have Training Agreements in place for either LCP or First Aid Certificates? (Please attach confirmation of Training Agreements)</li> <li>○ What individual driver files do you keep that retain a record of, among other things, relevant qualifications, experience, training attended and dates, achievements within the Transqual ITO Limited Credit Programme or your in-house training programme?</li> </ul>	

<b>Examples and Attachments</b>	
○ A summary of driver experience, including experience and competency of all drivers	Attached: Yes/No. If no, please explain
○ Examples of: <ul style="list-style-type: none"><li>○ Recruitment and induction training offerings</li></ul>	Attached: Yes/No. If no, please explain
○ Ongoing driver development offerings	Attached: Yes/No. If no, please explain
○ Driver qualification, experience and training records	Attached: Yes/No. If no, please explain
○ Copies of accreditations for e.g. first aid, defensive driving	Attached: Yes/No. If no, please explain
○ Copies of Training Agreements.	Attached: Yes/No. If no, please explain

## Appendix 3

### Template 6: Driver Management Programme

<b>Company Information (Copy from Template 3)</b>	
Legal Entity Name (to appear on the Contract)	
Trading Name (if different)	
Registered Address: <ul style="list-style-type: none"> <li>• Address line 1</li> <li>• Address line 2</li> <li>• Address line 3</li> <li>• Address line 4</li> </ul>	
Contact person (this person must be authorised by the Tenderer to negotiate on its behalf)	
Phone Number of Contact Person	
Email Address of Contact Person	

<b>Driver Records and Management</b>	
<ul style="list-style-type: none"> <li>○ Do you keep individual driver files that retain a record of relevant qualifications, licensing, experience, training attended and dates and achievements?</li> <li>○ What process do you use to ensure all drivers / subcontractors hold relevant drivers licenses and endorsements at all times?</li> <li>○ What processes are in place to manage any offending of a traffic or other relevant nature by drivers / subcontractors?</li> <li>○ What processes are used to ensure drivers / subcontractors work within relevant work time requirements and that they are fulfilling logbook requirements?</li> <li>○ What processes are in place to provide alternative services when a driver / subcontractor is unavailable at short notice?</li> </ul>	

<b>Examples and Attachments</b>	
<ul style="list-style-type: none"> <li>• Provide an example of your records that demonstrates you have appropriate driver management processes in place.</li> </ul>	Attached: Yes/No. If no, please explain

## Appendix 4

### Additional information to be included on Ministry website and in SESTA caregivers' application form

#### **Addition to website information**

The Ministry's contracts with these operators following the 2012 SESTA tender process require operators to provide safe and reliable transport services.

The contracts state:

*"Safety is of paramount importance in the transportation of Special Education Students to and from school each day. The Contractor must ensure that safe and reliable services are provided. This means the Contractor must deliver a reliable service with Drivers and Vehicles that comply with all licensing requirements and are well maintained, to ensure Students arrive at school on time and ready to learn."*

*"Operators are also expected to be familiar with the Ministry's 'Safe Travel for Students with Special Education Needs' guidelines. These guidelines establish a process for 'care plans' for Students that require specialist equipment. The Contractor and Drivers are expected to know, understand and play an active role in providing safe transport for Students with special educational needs."*

Under the contracts operators are required to meet or exceed safety and quality standards at all times and the Ministry has the right to select Contractors at random for detailed contract monitoring and evaluation at any time.

#### **Additional paragraph in application form**

What is the Ministry of Education's responsibility?

Safety is of paramount importance in transporting special education students to and from school each day. The Ministry's contracts with transport operators require operators to provide safe and reliable transport services and to meet or exceed safety and quality standards at all times. The Ministry is responsible for monitoring the contracts to ensure that these contractual requirements are complied with.

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