

Request for information relating to candidacy for Director-General of World Trade Organisation

Legislation	Official Information Act 1982, s 6(a)
Agency	Ministry of Foreign Affairs and Trade
Ombudsman	Sir Brian Elwood
Case number(s)	W42548
Date	September 1999

Request for specific information relating to Rt Hon Mike Moore's candidacy for Director-General of the World Trade Organisation—request declined under s 6(a)—release would be likely to prejudice New Zealand's international relations

The Ministry of Foreign Affairs and Trade (MFAT) declined to make available cables and advice relating to the Rt Hon Mike Moore's candidacy for Director-General of the World Trade Organisation on the grounds that disclosure of the information would seriously damage New Zealand's international relations with the governments of other countries. The decision on the request had been made at a time when the appointment process had reached an apparent impasse and discussions were being held between representatives of various governments with a view to resolving the issue.

The principal reason for the decision to refuse to release the information at issue was that its release would be likely to prejudice New Zealand's international relations through release of both:

- information provided to New Zealand diplomats on the understanding that it would be held in confidence, and
- assessment of that material by MFAT officials.

In respect of the predicted harm from disclosure, MFAT commented that.

The information provided to New Zealand diplomats in the course of the Government's pursuit of Mr Moore's candidacy for the position of Director-General

of the World Trade Organisation was provided within the normal convention of diplomatic relations—namely that the information is often privileged, confidential or secret and that is shared on the understanding that it would not be released publicly nor indeed in most cases shared with other governments.

MFAT argued that, pursuant to the convention, the assessment of that information by New Zealand diplomats and the opinion and advice formulated on that advice by MFAT must similarly be held in confidence. MFAT considered that release of that information by New Zealand would prejudice other governments' future willingness to provide New Zealand with the essential and confidential information necessary for the effective conduct of New Zealand's international relations.

In light of MFAT's comments, section 6(a) was clearly relevant. If the requirements of that section are met in a particular case, then that is a conclusive reason for withholding official information under the Act.

Given the principle of availability in section 5 of the OIA, a review of a decision to withhold information in reliance upon section 6(a) focuses on establishing:

- the precise prejudice or '*harm*' which the holder of the information believes would be likely to result if the information was disclosed; and
- whether that '*harm*' is protected by one of the withholding provisions which provide '*good reason*' for refusal under the OIA.

In assessing whether the '*harm*' predicted would be likely to result should the information be disclosed, the following factors were relevant:

- '*who*' had prepared the information;
- '*what*' the information revealed;
- the '*context*' in which the information was generated; and
- '*timing*'—the stage of the process to which the information related had progressed when MFAT made its decision to refuse the request.

In respect of '*who*' had prepared the information, it was clear that, throughout the campaign, senior officials and Ministers had been involved in the development and consideration of the issues. As a consequence, great significance would be placed on the content of the information by other governments in the event that the information were released.

In respect of the content of the information and the context in which it had been generated, the cables from Wellington essentially comprised, in general terms:

- instructions and guidance to posts;
- instructions on activities to be undertaken by posts as part of Mr Moore's campaign;
- updates on developments in the selection process;
- requests for information on other governments' positions or activities; and

- reports on meeting with representatives of other governments.

In similar general terms, the cables from posts comprised:

- reports on WTO Council meetings;
- reports on discussions with officials or representatives of international organisations, including the WTO;
- reports on discussions with officials of other governments; and
- reports on analysis of positions being taken by other governments.

The cables were generated in the course of MFAT's pursuit of the Government's candidacy of Mr Moore for the position of Director-General of the WTO.

In respect of the '*timing*' issue, when MFAT had refused the request, the appointment process had reached an apparent impasse and discussions between representatives of various governments were particularly sensitive.

Having considered the information at issue and the concerns identified by MFAT, the view was formed that disclosure of the information would be likely to prejudice the international relations interest protected by section 6(a).

Comment

Although Mr Moore's appointment was announced in the course of the review, MFAT commented that the information at issue remained very sensitive and its release would be likely to prejudice New Zealand's international relations.

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