

Request for name of food outlet in outbreak of food poisoning

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| Legislation | Official Information Act 1982, s 9(2)(b)(ii) |
| Agency | Auckland District Health Board |
| Ombudsman | Sir Brian Elwood |
| Case number(s) | A8727 |
| Date | May 2001 |

Request for name of food outlet implicated in outbreak of food poisoning in circumstances where the class of outlet had received publicity—health authority satisfied with remedial measures taken—information withheld on grounds of commercial prejudice—identification and assessment of countervailing public interest considerations favouring disclosure

A district health board traced a food poisoning outbreak to a particular restaurant. After an investigation in which the restaurant co-operated fully, an employee was found to have an infection which was considered to be the most likely cause of the outbreak. The restaurant took appropriate measures, including standing the employee down until tested infection free and generally educating staff about good food handling practices. The Board considered that there was no continuing risk to public health.

In an article in a regular advisory publication, the Board outlined the circumstances and identified the class of restaurant concerned, without naming it. The article also referred to the Board's general concerns about food handling practices in restaurants of that class.

A trade association considered this unfair and likely to damage the business of all restaurants of that class by implicating them all in the outbreak. The Board refused a request for the name of the restaurant, citing section 9(2)(b)(ii) of the OIA. It considered that naming the particular restaurant would discourage the public from patronising it, unquestionably prejudicing its commercial position to a degree the Board regarded as unreasonable. In support of its decision, the Board stressed the co-operation of the outlet in its inquiry and the view that, as a result of the remedial measures taken, the premises concerned posed no ongoing risk to public health. The Board explained that, if circumstances arose requiring the naming of particular premises in the interests of public health, this would normally be done by the Director-General of Health in the exercise of powers in section 37 of the Food Act 1981 to publish information,

including naming information, under qualified privilege. The Board also noted that no outlet had ever been named in similar circumstances, contending that to name one, in the context of the general concern referred to in the article, would unfairly make that outlet a scapegoat.

The view was formed that naming the restaurant would almost inevitably lead to considerable and unreasonable prejudice to its commercial position and withholding the information was accordingly necessary. A strong, countervailing public interest was recognised in knowing of real, and current, risks to public health that might arise from patronising a particular food outlet with a serious or persistent record of bad food safety practices. However, in this case, measures had been taken to remedy the situation to the satisfaction of the public health authorities, so that, in their opinion, no risk to public health persisted. The public interest was seen in these circumstances as having been satisfied by the release of the information already available.

As the restaurant concerned would be the body which would suffer from being associated by name with the outbreak, and as the publicity specifying the class of restaurant concerned had been generated by means quite outside its control, the references in the article identifying the class of outlet concerned were not considered to affect the balance of public interest one way or the other.

The association accepted this reasoning, thereby resolving the matter without the need for further consideration.

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