

## Request for names and email addresses of people consulted on draft speech

<b>Legislation</b>	Official Information Act 1982, s 9(2)(g)(i)
<b>Agency</b>	Human Rights Commission
<b>Ombudsman</b>	Mel Smith
<b>Case number(s)</b>	W49874
<b>Date</b>	November 2003

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*Recipients and senders of emails consulted—disclosure would not inhibit senior public servants from expressing free and frank opinions in future—however others would be inhibited*

The Human Rights Commission received a request for information ‘*relating to the preparation of the speech delivered by the Race Relations Commissioner ... at the Dawn Ceremony on the United Nations Day of Cultural Heritage on 4 December 2002*’. Falling within the scope of the request were emails exchanged between the Race Relations Commissioner and various government officials commenting on the draft speech.

While the substantive content was released, the Commission decided to withhold all names and e-mail addresses pursuant to section 9(2)(g)(i) of the OIA on the basis that release of this information ‘*would be more likely than not to prejudice future free and frank expression of opinion*’ and the Commission therefore considered withholding ‘*necessary to ensure the ability of the Race Relations Commissioner to seek free and frank expressions of opinion from a variety of sources*’.

On review, the Ombudsman first considered the precise nature and content of the information at issue. The issue in this case was what effect release of the names and email addresses would be likely to have on the future generation of free and frank expression of opinions such as those contained in the emails.

The Ombudsman asked that the Commission consult the recipients and senders of the emails as to their views on the release of the information, in particular whether they would be

inhibited by such release in expressing free and frank opinions in similar circumstances in the future.

The responses were varied:

- several had no objection to the release of this information;
- others advised that they had responded in their personal capacity rather than their official capacity and objected to the information being released; and
- the remaining public service officials also objected to release of the information.

Most of those who objected to release of the information were public service officials. In these circumstances, the Ombudsman then considered the seniority of those officials.

With one or two exceptions, they all held senior managerial or policy advisor positions in government departments. As such, senior managers would be expected to continue to express their opinions freely and frankly in similar circumstances in the future by virtue of the senior positions they held. They would be expected to be more robust about their opinions than junior employees or third parties from outside the public service who volunteered their opinions and who would be likely to be more inhibited if their free and frank opinions were released.

In respect of the names and e-mail addresses of the people who had no objection to release of the information at issue, it could not be said that *'the withholding of the information is necessary'* to ensure future free and frank expression of opinions. The Commission therefore agreed to review its original decision and released this information.

It was also not considered *'necessary'* to withhold the names and official email addresses of those persons whom the Ombudsman was advised held senior managerial or policy advisor positions in order to *'maintain the effective conduct of public affairs'* for the reasons explained above. Section 9(2)(g)(i) therefore could not be relied upon for providing good reason to withhold the information in these particular circumstances. As a result, this information was also released to the complainant.

However, it was accepted that section 9(2)(g)(i) applied where the persons concerned were:

- not employed in the public service;
- did not hold senior managerial or policy advisor positions in the public service; or
- providing free and frank opinions as personal friends of the Race Relations Commissioner rather than in their official capacities as public servants (although they had used their official email addresses for this purpose).

After considering their relevant comments, the Ombudsman was satisfied that these persons would be likely to be inhibited in expressing such free and frank opinions in similar circumstances in the future if the information was released, and that there were no public interest considerations strong enough to outweigh the interests requiring protection under

section 9(2)(g)(i). The Commission's decision to withhold this information was therefore upheld.

*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.*