

Request for names of psychiatrists who undertake section 60 reviews under the Mental Health Act

Legislation	Official Information Act 1982, s 9(2)(g)(ii)
Agency	Ministry of Health
Ombudsman	Dame Beverley A Wakem
Case number(s)	175129
Date	19 March 2007

Section 9(2)(g)(ii) OIA applied—MOH provided evidence of past instances of harassment—Ombudsman consulted employees—reasonable likelihood that release would lead to improper pressure or harassment which would detrimentally impact on willingness and ability of psychiatrists to continue in role

Background

A patient rights advocate requested the names of psychiatrists appointed under section 60(b) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (the Mental Health Act) to approve the administration of Electroconvulsive Therapy (ECT). The Ministry of Health refused the request under section 9(2)(g)(ii) of the OIA and the requester complained to the Ombudsman.

The Ministry argued that release of the names would expose the psychiatrists to daily harassment, via email or telephone or otherwise, from people who vehemently and publicly opposed ECT use.

The Ministry provided the Ombudsman with examples of communications that it had received over an extensive period from individuals who opposed ECT use. It argued these communications were indicative of the harassment that would be brought to bear on the psychiatrists if their names were released. It also said that the psychiatrists, who worked in the community and often on their own, would be less well-placed to be able to deal with and/or respond to such harassment.

The Ministry explained that there was a shortage of psychiatrists in New Zealand and that the demands on those practising in this field were high. It considered that there was a *‘high risk that release of the requested information would expose these psychiatrists to harassment that may lead them to resign from the important public function they perform’*.

Consultation

The Ombudsman consulted the psychiatrists regarding their views on the request. The majority of psychiatrists canvassed were of the view that release of the list would increase the likelihood of harassment. They noted that this had already happened to psychiatrists who had spoken out in the media about the evidence in support of ECT. They also noted that there was a vocal minority who were opposed to all compulsory treatment. The majority of the psychiatrists said that disclosure in and of itself would not change their willingness to be on the list, but they could see no other motive for such a request other than to publicise, presumably primarily to anti-ECT activists, the names, and to contact the psychiatrists involved. The majority were concerned that this would make their working lives more difficult or distressing or indeed result in their withdrawing from the role.

Improper pressure or harassment

Section 9(2)(g)(ii) of the OIA applies if withholding is *‘necessary to ... maintain the effective conduct of public affairs through ... the protection of [Ministers, members, officers or employees of agencies] from improper pressure or harassment’*.

The Ombudsman agreed that there was a reasonable likelihood that disclosure of the names would result in the psychiatrists being contacted in order to protest or intimidate regarding their role under the Mental Health Act.

Furthermore, the psychiatrists themselves had advised that this would likely interfere with their ability to practice medicine and/or result in their withdrawal from the role. In the Ombudsman’s view, the effective conduct of public affairs would be prejudiced if this happened because it would undermine a patient protective provision of the Mental Health Act. In particular, small district health boards with few psychiatrists could be badly affected.

Public interest

Section 9(2)(g)(ii) is subject to a public interest test. This means the need to withhold must be balanced against the countervailing public interest in release. If the countervailing public interest weighs more heavily, the information must be released. If not, it can be withheld.

The Ombudsman could not identify a public interest in disclosure which outweighed the need to withhold in this case. She noted that any member of the public who had dealings while a patient with these appointees would have access to the details of the psychiatrist and any other health professionals who were treating them under the Code of Health and Disability

Services Consumers' Rights.

The Ombudsman concluded that section 9(2)(g)(ii) provided good reason to withhold the names.

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