

Request for offender's photo on police file

Legislation	Official Information Act 1982, s 9(2)(a)
Agency	New Zealand Police
Ombudsman	Anand Satyanand
Case number(s)	W49969
Date	December 2003

Rape victim sought photograph of attacker whose face she had never seen—Police refused the request to protect the privacy of the offender—s 9(2)(a) applied—public interest in assisting victims of crime to recover from trauma and move on with their lives—balance of competing privacy and public interest considerations needed to be made—appropriate to make photograph available for viewing subject to appropriate conditions

A woman was attacked and raped by a man whose face she never saw. The offender was convicted of the offence. The woman was advised that the offender would be imprisoned for up to 10 years and that she would be notified when he was due for release. However, 11 years later she discovered that the offender had been released five years previously. It was her belief that the offender lived in her community and this disturbed her greatly. To ease her anxiety, the woman requested a copy of the offender's photo from the Police file.

The Police responded to this request, stating that it did not hold any photos of the offender taken at the time of the offence. However, it confirmed that it did hold photos which were taken more recently. The Police advised that it had decided to withhold these photos in order to protect 'the privacy of a natural person' under section 9(2)(a) of the OIA.

The woman then approached the Ombudsman through Victim Support, asking him to investigate this decision. She explained that she was suffering health problems relating to the effects of stress and fear of another attack, and wanted the photo for her own safety and sanity so that she would know what he looked like. Victim Support submitted that the woman 'feels as though she, the victim of a vicious unprovoked attack, is serving a life sentence and

thinks it is quite ironic that [the offender], a convicted rapist potentially has his privacy protected'.

In response to the Ombudsman's investigation, the Police provided the Ombudsman with a copy of the photograph. The Police had taken the photo in the furtherance of their official functions. The Ombudsman was satisfied that section 9(2)(a) applied to the information.

The Ombudsman then considered whether there were any considerations that rendered it desirable in the public interest to make the photograph available. Victim Support argued that there was a public interest in assisting victims of crime to recover from their trauma and move on with their lives. The Ombudsman accepted this submission and noted that, given the circumstances of the crime committed against the woman, her anxiety and need to see the photograph were understandable.

A balance of the competing privacy and public interest considerations therefore needed to be made by the Ombudsman. The Ombudsman was aware of several similar cases where there have been privacy concerns about disclosing actual documents or photographs, but where Ombudsmen and the Privacy Commissioner have found that making the documents available for viewing (subject to appropriate conditions) was appropriate. The Ombudsman discussed this particular case with the Privacy Commissioner and she agreed that the suitability of this manner of disclosure should be explored.

The Ombudsman sought comments from the Police on whether it was willing to allow an informal viewing of the photo. The Police agreed to arrange this but raised concerns about the need for a supervised viewing and the likely need for more than one viewing. The Ombudsman agreed that care must be taken to ensure that the viewing was supervised so that there would be no opportunity for a copy of that photograph to be taken, particularly given the existence of new technology including cell phones that allow digital pictures to be recorded. He also agreed that the public interest in viewing the photo applied to the complainant only and did not extend to allow other members of the complainant's family to attend the viewing. Finally, the Ombudsman acknowledged that the complainant may feel the need to view the photo on more than one occasion. In the circumstances, the Police did not consider this to be unreasonable, nor did the Ombudsman.

The Ombudsman then approached the complainant about the option of viewing the photo. While not her first preference, she confirmed that making the photo available in this way rather than releasing a copy to her would be adequate to resolve her complaint.

The Ombudsman formed the view that the Police had good reason under section 9(2)(a) to refuse to provide the complainant with a physical copy of the photo of the offender held by the Police. However, he considered there was a public interest in assisting the complainant to recover from the trauma she was experiencing and move on with her life. In line with section 16(1) of the OIA, the Ombudsman considered that a reasonable balance between the competing considerations favouring withholding and disclosure could be achieved by providing the complainant with reasonable opportunities to view the photograph under supervision, on the condition that no copies were taken and no one other than the complainant viewed the photograph.

The Police accepted the Ombudsman's view and arranged for the complainant to view the photo subject to the agreed conditions. The complainant subsequently confirmed that disclosure in this manner satisfied her request.

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