

Request for printed copies of Ministers' official diaries

Legislation	Official Information Act 1982, s 9(2)(a)
Agency	Ministers
Ombudsman	Sir Brian Elwood
Case number(s)	W47385, W47386, W47387, W47389, W47390, W47391, W47544
Date	May 2003

Request for printed copies of certain Ministers' official diaries covering a three month period—printed copies of the diaries released with certain names and contact details deleted—a Minister's diary per se is official information but not all the information in the diary will be official information as the diary may record information held by the Minister in a personal capacity rather than an official capacity—privacy considerations did not attach to the names of officials or representatives of public or private sector organisations meeting with Ministers – privacy did attach to the names and certain contact details of people meeting with Ministers on a personal basis—privacy interests of those people not outweighed by countervailing public interest considerations

A researcher investigating the OIA as it applies to Ministers wrote to a number of Ministers in 2001 requesting copies of their daily ministerial diaries for the three month period following the general election in 1999. In each case, the requester explained that he was not seeking any personal diaries. Rather, he wanted official diaries maintained by the respective Minister's staff that contained *'the daily programme of ministerial travel, meetings, engagements and visitors'*. The requester also confirmed that he wanted the information in both printed and electronic form (via email).

A number of the Ministers provided the requester with printed copies of their ministerial diaries subject to certain deletions, some made pursuant to section 9(2)(a) of the OIA.

The requester then wrote to the Chief Ombudsman asking that he investigate and review the decision to make these deletions.

The Chief Ombudsman explained to the Ministers that, for the purposes of his review, a Minister's diary per se did fall within the definition of official information. However, often not all information contained within the diary will be official information, in particular information recorded in the diary by the Minister in his or her personal capacity (as distinct from official capacity as a Minister). The Chief Ombudsman noted that the complainant had already clarified that he was not seeking information relating to engagements or appointments that the Ministers attended in their personal capacity or in their role as Members of Parliament. Therefore the requests for information contained in the Ministers' diaries should be considered to determine:

- what information was held by the Minister in his or her personal capacity, as distinct from his or her official capacity as a Minister; and
- whether, in respect of the official information, it was necessary to withhold the information under section 9(2) and whether any public interest considerations favouring release outweighed the need to withhold.

The Chief Ombudsman asked that the Ministers review their original decisions on this basis. If, as a result, they remained of the view that certain information should continue to be withheld, the Chief Ombudsman asked that the Ministers provide him with both a copy of that information and a report explaining their precise concerns with release.

The Ministers reviewed their original decisions in light of the Chief Ombudsman's comments. They confirmed that some information should continue to be deleted, namely certain names and contact details of people whom they had met with during the period in question. They explained that, when these people had met with them, they were not aware that their contact details and the purpose of the meeting might later be released in the public arena, and the Ministers were concerned that release of the information would be in breach of their privacy.

The Chief Ombudsman noted that the names included those of officials, Ministers acting in an official capacity, individuals working for private sector or non-governmental organisations, journalists and other people who had met with the Ministers on a personal basis. Further, the Chief Ombudsman noted that the contact details ranged from general departmental office telephone numbers or email addresses and direct-dial telephone numbers of government officials to private home phone numbers and email addresses.

The Chief Ombudsman consulted the Privacy Commissioner regarding the application of section 9(2)(a). The Privacy Commissioner's view was that it was not necessary to withhold the names of officials or Ministers acting in an official capacity, individuals working for private sector or non-governmental organisations or journalists who met with the various Ministers. However, the Privacy Commissioner did see a privacy interest attaching to the names of people who had met with the Ministers on a personal basis, such as people attending job interviews.

With regard to the contact details included in the diaries, the Privacy Commissioner explained that he could see no privacy interest attaching to general departmental office telephone numbers or email addresses because those details were generally publicly available from other sources. The Privacy Commissioner was also of the view that only a low-level privacy interest attached to the direct-dial telephone numbers of officials listed in the diaries because the sole

purpose of providing the telephone number was to facilitate contact with the official. In his view, the privacy interest did not require protection but he accepted that officials would prefer a limited range of individuals to have access to their direct-dial telephone number. However, with regard to the contact details of the other individuals listed in the diary, the Privacy Commissioner considered that a privacy interest did attach to such information because it was unlikely that those contact details would be available from other sources.

The Chief Ombudsman formed the following view:

- It was not necessary to withhold the names of the officials, Ministers and government employees who had arranged to meet with the various Ministers as all that this information revealed was that certain individuals had arranged to meet with the Ministers in their official capacity. In many cases, this information had already been disclosed by the release of information from the diaries identifying the position or title of the person who had met with the Minister. As a result, it would have been relatively straightforward to ascertain the identity of that person from other publicly available material.
- It was not necessary to withhold the names of the individuals who met with the Ministers in the context of their employment by private sector organisations. Where recorded, the identity of the organisations concerned had been released to the requester and it was reasonable to assume that relatively senior employees would represent the interests of those organisations at a meeting with a Minister. In many cases, such employees were already publicly associated with their employers. Even where this was not the case, it was not necessary to withhold information that revealed the fact of a person's employment with a particular organisation in order to protect that person's privacy.
- For similar reasons, it was also not necessary to withhold the names of journalists who had arranged to meet with the Ministers in their professional capacity as all that such information would reveal was that a journalist had arranged to meet with a particular Minister as part of his or her professional role as a journalist.
- Release of the names and contact details of individuals who had arranged to meet with a Minister on a personal basis, such as individuals attending job interviews, would be likely to prejudice the privacy of those individuals, particularly when it was unlikely that the individuals concerned would consent to information of this nature being disclosed. Accordingly, section 9(2)(a) applied to this particular information.
- It was not necessary to withhold the general telephone numbers or email addresses of departments or organisations that were publicly available elsewhere. Similarly, it was not necessary to withhold the contact telephone numbers of secretaries or personal assistants because it is generally one of the roles of secretaries and personal assistants to deal with enquiries from members of the public. As such, their contact telephone numbers are frequently made available.
- Section 9(2)(a) applied to the cellphone numbers or personal e-mail addresses listed in the diaries if those details were not generally available or published elsewhere.

- Section 9(2)(a) applied to the direct-dial telephone numbers of officials, representatives of private sector and non-government organisations, and other people listed in the diaries, if there was an alternative publicly-known telephone number for the relevant government department, agency or private sector organisation available and the direct-dial telephone number was not generally available elsewhere.

The Chief Ombudsman did not identify any public interest considerations favouring the release of the names or contact details of the people who had arranged to meet with the Ministers on a personal basis, or the release of personal email addresses, cell phone numbers or private direct-dial telephone numbers. As a result, the Chief Ombudsman accepted that section 9(2)(a) provided good reason to withhold this particular information.

The Ministers agreed to release the information from their diaries which was not protected by section 9(2)(a). This satisfied the complainant and the Chief Ombudsman concluded his investigation on this basis.

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