

Request for reasons about unsuccessful reappointment

Legislation	Official Information Act 1982, s 23
Agency	Ministry of Health
Ombudsman	David McGee
Case number(s)	178097
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Extent of detail required in response to s 23 request depends on circumstances of particular case – a requester may still have questions after they receive statement of reasons but that does not mean statement is inadequate – s 23(2A) only protects evaluative material that has been ‘supplied’ by someone else

A requester sought the reasons why they were not reappointed as a specialist assessor under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003. This decision was made by the Director-General of Health on the recommendation of a review panel established by the Ministry of Health (the Ministry).

In response, the Ministry explained that the requester was found not suitable for reappointment based on an assessment of his exemplar reports. The reasons for this were that some reports demonstrated a poor understanding of the role; some risk assessments were inadequate for purpose; some psychometrics were inaccurate; and some language was confusing and deterministic.

The requester complained that the Ministry should have to specify which reports demonstrated a poor understanding of the role; which risk assessments were inadequate for purpose; which psychometrics were inaccurate; and which language was confusing and deterministic. The Ombudsman did not agree that the Ministry’s section 23 statement was inadequate for this reason.

The extent of detail required to be provided in response to a section 23 request will depend on the circumstances of the particular case. In general, a statutory requirement to state reasons

must explain why the decision was reached. Significant detail may be required where a decision or recommendation requires the application of law and / or policy to the particular facts of a case, and the consideration of submissions and evidence provided by concerned parties.

In this case, the decision regarding the requester's suitability for appointment was based solely on an assessment of his exemplar reports. Section 23 required the Ministry to explain the conclusion it reached on the requester's suitability based on its consideration of the reports. It was not obliged to justify, or further substantiate, that conclusion by reference to a detailed analysis of the reports.

A requester may still have questions about a decision after they receive the agency's statement of reasons, but that does not mean the statement of reasons is inadequate. An agency is unlikely to be able to anticipate precisely what information a requester will desire in order to explain its decision to that person's satisfaction. Nor does section 23 oblige it to do this. Further information can be sought, provided it is held, under Part 2 of the OIA or LGOIMA, or the Privacy Act.

The Ombudsman rejected the Ministry's argument that it was justified in not providing further detail of the panel's assessment because this constituted evaluative material.

Section 23(2A) of the OIA only protects evaluative material that has been 'supplied' to an agency subject to a promise of confidentiality. To 'supply' in its ordinary meaning means to 'make (something needed) available to someone' (Oxford Dictionary). In this context, it means one person (or entity) making information available to another person. It therefore assumes the provision of information by a party other than the agency itself. The rationale behind this is that other parties are under no obligation to supply evaluative material to an agency and, in many cases, they would refuse to do so unless they were promised confidentiality. So, for instance, section 23(2A) is often used to protect information supplied by external referees.

This case was different. The panel was established by the Ministry for the express purpose of assisting the Director-General to make his decision through the provision of information and advice. Members of the panel were remunerated for their time and effort. Information held by the panel was deemed to be held by the Ministry (section 2(2) of the OIA), and the panel itself was deemed to be part of the Ministry (section 2(3) of the OIA). In these circumstances, information about the panel's deliberations could not be regarded as having been 'supplied' to the Ministry for the purpose of section 23(2A) of the OIA.

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