

Request for reports relating to INCIS project

Legislation	Official Information Act 1982, s 9(2)(j)
Agency	New Zealand Police
Ombudsman	Anand Satyanand
Case number(s)	W42209
Date	September 1999

Request to Police for INCIS reports—reports withheld in their entirety—change in circumstances since request refused affecting outcome of review—good reason to withhold information would be established if request made at time of review—investigation discontinued on basis that whatever view might be formed as to correctness of decision to withhold, no recommendation for release would be made

A complaint was made about a decision of the New Zealand Police to withhold certain reports relating to the INCIS project. The complainant stated that the Police had released, albeit with deletions, some earlier reports of the same nature, but had withheld the requested reports in their entirety.

Each request for official information must be considered on its own merits. The decision maker must decide, having regard to the particular circumstances prevailing at the time, whether or not there is good reason in terms of the OIA to withhold the information at issue either in whole or in part. When reviewing a decision to refuse a request, an Ombudsman considers the information at issue and forms an independent view as to whether there was good reason to withhold the information at the time the decision was made.

However, the question of whether there is good reason to withhold information can change over time. In this case, by the time a view on the complaint came to be formed, the circumstances, which had prevailed at the time the decision to decline the request had been made, had changed significantly in that IBM had advised it would not continue development work on the INCIS project. As a consequence, the entire contract between IBM and the Crown was under dispute.

After considering the information at issue, and the explanations that had been provided, it was clear that negotiations between the Crown and IBM were at such a delicate stage that release

of the information would likely cause significant harm to the Crown's position. Had a request for the information been made at that stage, it would likely have been necessary to withhold the information in terms of section 9(2)(j) of the OIA to enable the negotiations between the Crown and IBM to be carried on without prejudice or disadvantage. Clearly, in such a situation, there would have been strong public interest considerations in terms of section 9(1) of the OIA to have been weighed against the established need to withhold the information. The public interest in promoting the accountability of officials for the management of a project in which a substantial investment of taxpayer funds had been made would have been strong, particularly given that development of the project had ceased.

After balancing the weight of this interest against the significant harm that would likely be caused to the Crown were the information to be released at that particular time, the view was formed that the need to withhold the information in terms of section 9(2)(j) would not be outweighed by the countervailing public interest considerations in release.

In these circumstances, the complainant was advised that if an investigation of his complaint continued, and if the view was reached that, at the time the decision had been made, there was no good reason to withhold the information, then consideration would have to be given to whether it would be appropriate to recommend that the information be released. The OIA only requires an Ombudsman to *'make such recommendation as he thinks fit'*. Given the current circumstances, it was considered that a recommendation to release the information would be inappropriate.

On that basis, whatever the view formed on the merits of the decision to withhold the information, the investigation would not result in release of any information. It was therefore decided to discontinue the investigation of the complaint as envisaged by section 17(1)(b) of the Ombudsmen Act 1975 on the grounds that further investigation was unnecessary.

Comment

Subsequently, the dispute between the Crown and IBM was resolved, and the complainant asked whether it would be appropriate to reopen the investigation in respect of his complaint. Given the passage of time since the original decision had been made, he was advised to make a fresh request to the Police for the information. The Police would then need to consider that request in the light of the changed circumstances. If the Police refused to release any or all of the requested information, then he could seek an investigation and review of that decision.

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