

Request for transcripts of Police communications in relation to emergency calls

Legislation	Official Information Act 1982, ss 9(2)(g)(i), 9(1)
Agency	New Zealand Police
Ombudsman	John Belgrave
Case number(s)	173243
Date	February 2007

No blanket protection for operational discussions between Police officers—need for withholding had to be assessed with regard to the content of the actual communications at issue—opinions expressed were ‘free and frank’ but were not ‘necessary’ for effective conduct of public affairs—details about the communications already publicly available—s 9(2)(g)(i) did not apply and even if it did it was outweighed by strong public interest in release

Prior to her disappearance in October 2004 from a West Auckland beach, Iraena Asher contacted the New Zealand Police using the 111 emergency telephone number. Police dispatched a taxi, but it went to the wrong address. Investigations commenced into the disappearance of Ms Asher, and the Police response to her emergency calls.

The investigation of the Police response to Ms Asher’s emergency calls found that Police had used ‘*inappropriate and unprofessional language*’ (report of the then Police Complaints Authority, 2006). However, the precise nature of that language was not disclosed, and Ms Asher’s parents requested (amongst other things), a transcript of the Police communications. They complained to the Chief Ombudsman when that request was refused under sections 6(c) and 9(2)(g)(i) of the OIA.

The Police argued that disclosing the transcripts would inhibit free and frank exchanges between members of the Police, and this would not only prejudice the effective conduct of public affairs, but also the maintenance of the law.

The Chief Ombudsman formed the provisional opinion that there was no good reason to withhold the transcripts. He refused to accept that the OIA could provide blanket protection

for operational discussions between Police officers, and insisted that the need for withholding had to be assessed with regard to the content of the actual communications at issue.

The communications at issue involved the exchange of facts, questions and opinions. The Chief Ombudsman could see no harm in disclosure of facts or questions. In regard to the opinions, the Police were understandably concerned about the content of those opinions, and the way in which they had been expressed. There was no doubt, the Chief Ombudsman said, that the opinions were *‘free and frank’* in nature. However, free and frank opinions are not protected as a matter of course by the Act; withholding the information must be necessary for the effective conduct of public affairs. The opinions expressed in this case were not *‘necessary’* for the effective conduct of public affairs because they were acknowledged by both the Police and the Police Complaints Authority to be *‘undignified’*, *‘unprofessional’*, *‘trivialising’*, *‘disrespectful’* and *‘inappropriate’*.

The Chief Ombudsman also considered that the prospect of harm from release was diminished by the public availability of information about the nature of the communications. Information about the Police investigation had already been released to the parents, and the Police Complaints Authority report, which included considerable detail about the communications, was publicly available.

Finally, the Chief Ombudsman found that even if section 9(2)(g)(i) applied, it was outweighed by the *‘strong public interest in the release of the transcripts concerning the Asher matter’*.

In response to the Chief Ombudsman’s provisional opinion, the Police accepted that partial disclosure of the transcripts was warranted, but argued that the *‘pejorative’* language in the transcripts should continue to be withheld. The Chief Ombudsman rejected this argument in his final opinion, stating:

... although the information is ‘free and frank’, I am not satisfied that the effective conduct of public affairs requires free and frank opinions to be expressed in the manner evident in this case. Clearly in the future, the way officers express themselves may be affected, but this will be a positive outcome because as the Police Complaints Authority emphasised there is a ‘need for members of the Police to consider their language and to remain professional, at all times’.

The Police accepted the Chief Ombudsman’s final opinion on the matter, and released the transcripts to Ms Asher’s parents.

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