

Request regarding applications for consent to acquire specified property

Legislation	Official Information Act 1982, ss, 9(2)(b)(ii), 10
Agency	Overseas Investment Commission
Ombudsman	Sir Brian Elwood
Case number(s)	W49246
Date	December 2002

Request for information on existence of any applications for consent to acquire specified property—s 10 applied since release of such information likely to prejudice the commercial position of either the vendor or potential purchaser(s)

The Overseas Investment Commission (OIC) received a request for (amongst other things) information on whether it had received from overseas interests any applications for consent to acquire specified property in New Zealand.

The OIC refused to confirm or deny the existence of any applications on the basis that such disclosure would be likely to unreasonably prejudice the commercial position of any party who may have supplied such information. It relied on section 10 of the OIA for making this decision on the basis that section 9(2)(b) of the OIA either applied or would apply to the requested information if it existed.

When reviewing this decision, the Chief Ombudsman first considered whether section 9(2)(b) of the OIA would apply if any information did exist.

The OIC explained that information about either the existence or non-existence of an application under the Overseas Investment Act 1973 is commercially valuable and requires protection. Applications for consent under that Act are often received in advance of the market, or even the vendor, being aware of the applicant's interest in the asset. Knowledge by any of the parties about either the presence or absence of a potential purchaser of a particular asset is an important market indicator that can affect its sale price. Depending on the

circumstances, such knowledge would therefore be likely to prejudice the commercial position of either the vendor or potential purchaser.

The OIC further explained that it was necessary to respond to the original request by employing a *'neither confirm nor deny'* approach because if, in response to an initial enquiry, the true answer was that no application had been received, any subsequent refusal to confirm or deny the existence of an application when one had since been received would be a strong indicator that one did now exist.

The Chief Ombudsman was satisfied that confirming whether the OIC had received from overseas interests any applications for consent to acquire specified property in New Zealand would be likely to prejudice the commercial position of either the vendor or potential purchaser and that this was protected by section 9(2)(b)(ii) of the OIA.

Given that section 9(2)(b)(ii) applied in relation to section 10, there was no requirement to consider whether there was a countervailing public interest in disclosure that outweighed the reason for withholding.

The Chief Ombudsman therefore upheld the OIC's original decision that a *'neither confirm nor deny'* response made pursuant to section 10 had been properly used because the commercial interests protected by section 9(2)(b)(ii) would be likely to be prejudiced by disclosure of the existence or non-existence of such information.

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