

Request to the Treasury for information relating to work on social assistance policy

Legislation	Official Information Act 1982, s 9(2)(f)(iv)
Agency	The Treasury
Ombudsman	Sir Brian Elwood
Case number(s)	W45797
Date	October 2001

Request to the Treasury for information relating to work on social assistance policy—information withheld under s 9(2)(f)(iv)—information directly connected to advice to be ‘tendered’ to Ministers—release would disrupt the ability of the Minister to consider Ministry’s advice—public interest did not outweigh need to withhold

A political party researcher asked Treasury to release the work it had done in relation to the development of social assistance policy. Treasury released some general information, but withheld more detailed advice pursuant to section 9(2)(f)(iv) of the OIA. It was concerned that the ability of Ministers to make the required policy decisions would be hindered if those decisions had to be taken in the context of a public discussion.

The advice at issue had not itself been ‘tendered’ to Ministers or to Cabinet for consideration. Rather, it comprised Treasury’s response to draft policy formulated by the Ministry of Social Policy. Some of Treasury’s advice would be directly incorporated into a report which would be tendered to the Minister and the balance would assist the Ministry of Social Policy in formulating its own advice. Treasury argued that to release this information would disrupt the Minister’s ability to consider and make a decision on the advice that would be tendered by the Ministry of Social Policy.

Section 9(2)(f)(iv) provides that information may be withheld where such withholding is necessary to ‘maintain’ the specified constitutional conventions. The advice prepared by Treasury was directly connected to advice that the Ministry of Social Policy was about to tender to its Minister. Release of the information withheld would effectively disclose the

advice to be tendered to that Minister and would disrupt the ability of the Minister to consider the Ministry's advice. It was considered that section 9(2)(f)(iv) applied.

Consideration was then given to whether there were any public interest considerations in terms of section 9(1) of the OIA which outweighed the need to withhold the information at issue. A public interest was identified to the extent that release would promote the ability of the public to participate in the making of laws and policies. However, the Government had released a document which outlined its intended overall direction with regard to social assistance. By explaining in broad terms its intentions in this area, the Government had satisfied the public interest considerations favouring release. Accordingly, the public interest did not outweigh the need to withhold the information in this particular case.

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