

Requests for EQC cost estimates

Legislation:	Official Information Act, s 9(2)(j) (negotiations)
Agency:	Earthquake Commission
Ombudsman:	Dame Beverley Wakem
Case reference(s):	313674, 316626, 318456
Date concluded:	February 2012

Background

1. A number of requesters sought the Scope of Works document held by EQC in respect of their properties that had been damaged in the Canterbury earthquakes. EQC released the Scope of Works, which details the repair strategy in respect of a property, but withheld the estimate of the costs involved in carrying out the repairs in reliance on sections 9(2)(b)(ii) and 9(2)(j) of the OIA. The requesters complained to the Chief Ombudsman.

Investigation

2. The Chief Ombudsman notified EQC of the complaints and requested a copy of the information at issue and an explanation of the reasons for withholding the cost estimates.
3. EQC explained that it was withholding the cost estimates in a particular category of cases only. That category was building claims between \$10,000 and \$100,000, which are being managed by Fletcher Construction, and where agreements have not yet been reached with contractors to carry out the repairs. In other cases, where cash settlements have been reached, and where red zone properties are to be cash settled as part of the Crown's purchase offer, it had agreed to provide this information.
4. EQC explained that although it used to provide cost estimates in all cases, it found itself disadvantaged in its negotiations with contractors, whose quotes then tended to be "at least" as much as EQC's estimates. EQC argued that the cost estimates needed to be kept confidential until a contract is agreed and awarded in order to ensure that all quotes are independently arrived at.

5. After considering EQC's comments, the Chief Ombudsman formed the provisional opinion that section 9(2)(j) of the OIA provided good reason to withhold the cost estimates.
6. Section 9(2)(j) provides good reason for withholding:
 - a. if, and only if, it is necessary to enable a Minister of the Crown or any department or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations); and
 - b. this interest is not outweighed by other considerations which render it desirable, in the public interest, to make that information available.
7. The Chief Ombudsman accepted that there were ongoing negotiations. These negotiations involved the awarding of contracts to outside contractors. Should the details of EQC's estimates be known, its negotiating position could be disadvantaged by contractors pitching their quotes close to the estimates, when in some instances their quotes may otherwise have been lower.
8. The Chief Ombudsman noted that EQC has a responsibility to negotiate a fair assessment of cost, and it would be more difficult to do this if contractors had access to EQC's estimates. The Chief Ombudsman therefore concluded that withholding the estimates was necessary to enable EQC to carry on negotiations with contractors, without prejudice or disadvantage.
9. The Chief Ombudsman considered whether the need to withhold the information was outweighed by any public interest considerations favouring release. She acknowledged the general public interest in promoting accountability and transparency of government agencies, as well a particular public interest in homeowners being in a position to challenge decisions which affect them. However, the Chief Ombudsman was not persuaded that these public interest considerations outweighed the interest in EQC being able to negotiate repair costs in a fiscally sound manner, especially when considering that public money is involved.
10. The Chief Ombudsman was concerned that there should be some way in which claimants can be assured that EQC's assessments and costings had integrity. She discussed this with EQC, and in cases where such information had not already been supplied, EQC agreed to provide the homeowners with additional details to enable them to determine the range of damage identified by EQC's assessment, as well as the intended method of repair.
11. The Chief Ombudsman did not consider that section 9(2)(b)(ii) of the OIA, which had also been relied upon by EQC in refusing the requests, had any proper application in this case.
12. The Chief Ombudsman gave the complainants an opportunity to comment on her provisional opinion.
13. One complainant queried the significance of the difference between claims over \$100,000 and claims under \$100,000. The Chief Ombudsman was able to explain that claims over \$100,000 are managed by insurance companies and not EQC, and therefore EQC would not be involved in negotiations in respect of that category of claims.

14. The Chief Ombudsman did not receive any further information from the complainants that caused her to alter her provisional opinion.

Outcome

15. The Chief Ombudsman formed the final opinion that section 9(2)(j) of the OIA provided good reason to withhold the cost estimates.