

## Department of Internal Affairs administrative practice regarding prefix name in passports not unreasonable in the circumstances

<b>Legislation</b>	Ombudsmen Act 1975
<b>Agency</b>	Department of Internal Affairs
<b>Ombudsman</b>	John Robertson
<b>Case number(s)</b>	W25920
<b>Date</b>	1992

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### *Refusal to issue passports with names printed as requested-invasion of privacy-administrative convenience*

The complainant was of French descent, having a surname with a prefix which, in accordance with continental practice, does not take an initial capital letter. He and his wife had applied for passports in 1979 and, after complaining about the passports being issued with their surname shown in capital letters only, had received new passports with their name spelt with the prefix in small letters as requested. A similar approach to the department in 1989 had been unsuccessful: the Department insisted that their surname was to be spelt in capitals.

The Ombudsman considered that the complainant had raised an important point of principle, and one which had to be considered in depth, particularly in view of the imminent introduction of machine readable passports. A passport is a legal document and one which is commonly used for establishing identity; in the Ombudsman's view it was highly desirable that a name be recorded correctly and if not, that adequate justification be provided for the decision not to do so. A report was obtained from the Secretary for Internal Affairs and a number of enquiries made of High Commissions and Embassies in Wellington. The Ombudsman sought comments from the Ministry of External Relations and Trade, from an expert in the computing field and asked the Commonwealth Ombudsman of Australia whether similar concerns had been addressed by his office.

The Department argued that administrative convenience, New Zealand's international obligations, and security and protection for New Zealanders were overriding considerations

and justified the representation of a person's name in a form other than that desired by the person concerned. It pointed to the National Passport Index, established in 1979, which achieved a strict alphabetical listing in capitals, the desirability of New Zealand's conforming to the International Civil Aviation Organisation standard and the practical difficulties previously encountered in catering for a wide variety of surnames without the practice of recording them all in capital letters. The Department argued that the complainant and others who objected to its choice of style could have an endorsement entered in their passports to record the correct spelling of their name.

The Ombudsman considered whether the Department's decision to record the surname in capital letters violated the complainant's right to control the accuracy of information recorded about him and his identity, or violated his privacy in the sense that the exercise of excessive or unreasonable controls on any aspect of a person which is an integral part of that person, may be said to be an invasion of privacy. On balance, the Ombudsman was not persuaded that the Department had sought unreasonably to impose a different identity on the complainant, nor to require him to adopt its own representations of his name, thus invading his privacy.

The Ombudsman considered that New Zealand and international society accepted that there was a public interest in reducing international criminal and terrorist activity and in adopting such reasonable measures as may be desirable to achieve that end. The foreign missions contacted had with one exception, adopted the international standard. Moreover, the Ombudsman was advised by the Ministry of External Relations and Trade that the practice adopted by Australia, which had also been implemented in New Zealand, was in its view a relevant consideration. The Commonwealth Ombudsman of Australia advised that no similar complaints had been lodged with his office.

On the basis of all the information collated during the investigation the Ombudsman reached the view that although the question of principle raised by the complainant had perhaps not been sufficiently considered by the Department, the explanations provided by the Department in support of its chosen administrative practice were not unreasonable. He took into account as significant factors the fact that a passport is not valid unless signed by the holder in the way they choose and that the Department was prepared to enter an endorsement in the passport to confirm the correct representation of the name of the passport holder. He considered that the latter practice in particular was of the utmost importance in ensuring that the rights of the individual were safeguarded. Having reached this view, the Ombudsman considered that no further enquiry was warranted.

### **Comment**

The *Privacy Act 1993* came into force in July 1993, and established the Office of the Privacy Commissioner, which may investigate complaints about interference with privacy. In the event that the Ombudsman receives a complaint alleging this, it will ordinarily be referred to the Privacy Commissioner.

*This case note is published under the authority of the [Ombudsmen Rules 1989](#). It sets out an Ombudsman's view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.*

