

Inland Revenue Department's unreasonable use of discretion to withhold information under the Tax Administration Act

Legislation	Ombudsmen Act 1975, Tax Administration Act 1994, Official Information Act 1982.
Agency	Inland Revenue Department
Ombudsman	Anand Satyanand
Case number(s)	W40302
Date	1999

IRD refused to provide details of internal investigation of complaint under s 81(4) of the Tax Administration Act 1994—the information the complainant wanted concerned an investigation into his allegation of improper actions by IRD staff—Ombudsman found that the Commissioner's discretion to withhold the information was unreasonable because the complainant was entitled to information about an investigation concerning him—IRD agreed with the Ombudsman's decision and made most of the information available

This investigation concerned the refusal of the Child Support Service of the Inland Revenue Department to provide the complainant with information about the outcome of an internal investigation into a complaint he had made. The complainant, who was obliged to make Liable Parent Contributions, believed that a departmental employee had breached his privacy by disclosing confidential information about his financial position to his ex-partner. Such a breach would be contrary to the secrecy provisions of the *Tax Administration Act*. The employee concerned worked in the branch where the complainant's Child Support file was held and was a good friend of his ex-partner. His suspicions about the employee had been fuelled by the fact that his ex-partner had acquired information relating to his financial position which she could only have acquired as a result of specific information held by the Department having been made available to her.

Following completion of the internal investigation of his complaint, the complainant was simply advised that his complaint had been fully investigated and appropriate action taken. Dissatisfied with this response, the complainant requested access to all information held by the Child Support Service relating to his obligation to pay Liable Parent Contributions together with the

results of the internal investigation into his complaint about the conduct of a departmental employee. In reply the Department advised that, by virtue of section 7 of the *Privacy Act 1993* and section 52 of the *Official Information Act 1982*, his request had been considered in terms of section 81 of the *Tax Administration Act 1994*. Under section 81(4) the Commissioner had exercised his discretion and had decided to release copies of the correspondence between the complainant and the Department as well as the notes of the complainant's interview regarding his complaint. However, the balance of the information requested had been declined on the grounds that its disclosure was prohibited under section 81 of the *Tax Administration Act*. The complainant referred this decision to the Ombudsman for investigation and review.

The investigation was commenced pursuant to section 13 of the *Ombudsmen Act 1975* on the basis that the complainant alleged that the manner in which the Commissioner had exercised his discretion under section 81 of the *Tax Administration Act* was unreasonable in the particular circumstances of the case. As a first step, the Commissioner was asked to explain why it was considered that section 81 prohibited release of the information and to provide the information at issue together with any other relevant papers. The Department explained that it had withheld the information at issue for the following reasons:

- Some information was personal information about persons other than the requester.
- Some information comprised notes of interviews with staff members and others who had provided the information with an implied promise that the information would not be released.
- Some information comprised correspondence with third parties.
- Some information could disclose the identity of persons interviewed.
- Some information related to investigation strategies.

In light of the above reasons, it appeared that the Department may in fact have addressed the request in terms of the requirements of the *Official Information Act* rather than the *Tax Administration Act*. This raised the questions of whether section 81 of the *Tax Administration Act* applied to the information at issue and, even if it did, whether the information came within the exception provided for in section 81(1)(a)(i) of that Act which provides:

Every officer of the Department ... (a) Shall maintain and aid in maintaining the secrecy of all matters relating to ... (i) The Inland Revenue Acts ... which come to the officer's knowledge and shall not, either while the officer is, or after the officer ceases to be an officer of the Department, communicate any such matters to any person except for the purpose of carrying into effect the Acts referred to in subparagraph (i) and (ii)...

In looking at this question, consideration was given to observations by Cooke P in the case of *Knight v Commissioner of Inland Revenue* [1991] 2 NZLR 30 on the meaning of the phrase 'carrying into effect the Acts' and the Department's comments were sought on the application of that case to the complainant's situation. Having considered the Department's response, it appeared that *Knight* could be distinguished from the complainant's case. It also appeared, in the absence of any other relevant case law, that section 81 of the *Tax Administration Act* applied

to the information at issue and that the exception in section 81(1)(a)(i) did not. Accordingly, the investigation proceeded under the *Ombudsmen Act 1975*.

After considering the merits of the complaint, it was concluded that the complainant had a legitimate interest, as an affected party, in the findings of the investigation into his complaint. However, he had been given such limited information that he could not be satisfied that a proper investigation had been conducted into his concerns. In a case such as this it is important that sufficient information be released to assure a complainant that allegations about a breach of the secrecy provisions of the *Tax Administration Act* have been fully and appropriately investigated.

On this basis, the view was formed in terms of section 22 of the *Ombudsmen Act 1975* that the Commissioner had exercised his discretion under section 81(4) of the *Tax Administration Act* in an unreasonable manner. It was put to the Commissioner that, in a case such as this, most of the information in the report should be released to the requester. The legitimate privacy interests of some of the individuals involved in the investigation could be protected by withholding their identities. The need to protect other information, disclosure of which would be contrary to the requirements of the *Tax Administration Act*, or would be likely otherwise to prejudice the Department's ability to maintain the law, could be achieved by appropriate summaries of the relevant parts of the report. After considering this view, the Commissioner accepted that, in this case, the information at issue should be released to the complainant and did so.

Comment

Further consideration was given to the relationship between the *Official Information Act* and the *Tax Administration Act* in the Report of the Ombudsmen on Case W42839 (Parliamentary Paper No. A3(A99) which was tabled in the House of Representatives in December 1999 pursuant to section 29 of the *Ombudsmen Act 1975*. The views of the Ombudsmen on this relationship are outlined at paragraphs 64 et seq (p 29).

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.