

Jurisdiction—Medical Practitioners Disciplinary Committee

Legislation	Official Information Act 1982, s 2(2)
Agency	Medical Practitioners' Disciplinary Committee
Ombudsman	John Robertson
Case number(s)	W1735
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Information held by the Medical Practitioners' Disciplinary Committee not 'official information'

In this case the point at issue was whether information held by the Medical Practitioners' Disciplinary Committee was 'official information' by virtue of section 2(2) of the OIA.

In its final report to Parliament the Information Authority had expressed the view that the Committee was subject to the Act by virtue of section 2(2). In a background paper Authority members were advised that when deciding whether or not the Act should apply to various quangos, in addition to the legislation under which they are established, a range of issues should also be considered, such, as whether the quango:

- members are appointed by the Governor-General, Minister or department, or not;
- must take direction from the Minister or department in policy and in carrying out its functions;
- advises the Minister and recommends on matters within its jurisdiction;
- is carrying out public interest functions on behalf of Government;
- is funded from central government and/or there are constraints on its spending;
- must comply with the Fees and Travelling Allowances Act; or
- is serviced by a department or has its own staff.

The Minister of Health advised that: the Committee was serviced administratively by the NZMA and not by the Department of Health; only two of its six members were appointed by the Minister; the Minister did not receive reports from those members; and those persons neither assist nor advise the Minister, nor perform functions connected with the Minister or the Department of Health.

The Chief Ombudsman considered the competing arguments and having weighed the factors presented in support of each argument carefully, concluded that the Committee was not subject to the Act by virtue of section 2(2).

The Chief Ombudsman was of the view that the key words in section 2(2) are that a committee is established *'for the purpose of'* advising or assisting or performing functions connected with a department or a Minister. In considering the purpose of the MPDC, the Chief Ombudsman noted that the Medical Practitioners Act 1968 does not in itself establish the Committee; it declares instead that the Committee *'shall continue'* to exist. The Committee itself was established by the earlier Medical Practitioners Act 1950, and a perusal of that Act suggested that the *'purpose'* for establishing the Committee was primarily to investigate complaints relating to misconduct by medical practitioners in their professional capacity, and that this purpose was not changed by the 1968 Act. The Committee had some functions of assisting or advising the Minister, but these were peripheral to the Committee's central purpose. The question therefore was whether this purpose is a *'function connected with'* any department, Minister or organisation.

The Chief Ombudsman formed the view that the functions of the Committee were more connected with those of the Medical Council than any other body, and the Council is not subject to the Act. He doubted that the Committee came substantially within the Information Authority's criteria because: although two members are appointed by the Minister, the majority are not; the Committee does not take directions from anyone; its recommendations to the Minister are of a very limited nature, having regard to its overall functions; its public interest functions did not appear to be carried out *'on behalf of the Government'*; its funding is only partly from central government and there are no constraints on its spending; the Fees and Travelling Allowances Act does not apply; and it is not serviced by a department.

In the circumstances, the Chief Ombudsman came to the conclusion that the Committee was not established *'for the purpose'* of anything specified in section 2(2).

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