

## Request for advice relating to remuneration packages of executives involved in sale of SOEs

<b>Legislation</b>	Official Information Act 1982, s 9(2)(a)
<b>Agency</b>	The Treasury
<b>Ombudsman</b>	John Robertson
<b>Case number(s)</b>	W1925
<b>Date</b>	Published April 1993

---

*Request for advice on remuneration packages of executives involved in the sale of SOEs—privacy issues—s 9(2)(a)—remuneration package released subject to deletion of dollar figures.*

In August 1989 the Chief Ombudsman was asked to investigate and review the decision of the Treasury not to release ‘*advice given to Ministers by the Treasury relating to remuneration packages of executives involved in the sale of SOEs*’.

For the purposes of the investigation and review, the requester narrowed his request to information relating to the remuneration package of the Chief Executive of the Rural Bank. The Treasury had declined to provide this information pursuant to sections 9(2)(a), 9(2)(b), 9(2)(f)(iv), and 9(2)(g)(i) of the OIA.

The department held a memorandum addressed to the Minister of State Owned Enterprises to which was attached a proposed remuneration package. The Treasury’s advice was not adopted by Cabinet and the recommended package was not approved. The Chief Executive’s remuneration package was subsequently negotiated between the individual concerned and the State Services Commission.

While a number of provisions of the OIA had been cited in support of the decision to withhold the information, this investigation and review focused primarily on two issues, namely, privacy and commercial sensitivity.

The Treasury maintained that it was necessary to withhold the information in order to protect the Chief Executive's privacy. This was on the basis that the contents of the memorandum and attached remuneration package were about the individual concerned and discussed his situation. It was further argued that the remuneration package reflected the particular skills which the incumbent brought to the position and therefore related more to his personal privacy than to the rate for the job. In other words, the information disclosed more about the incumbent than the position.

The Chief Ombudsman was willing to accept that it was necessary to withhold the actual dollar figures of the proposed salary and redundancy part of the package. However, he did not consider the remaining information private in nature as it did not relate to the Chief Executive in his personal capacity nor did it contain detailed comments on the incumbent's ability to do the job or his previous performance. The Chief Ombudsman formed the view that the information was more about the position of Chief Executive in the sense that the duties the appointee to the position was required to perform were such that appropriate redundancy and bonus payments were necessary. To this extent, the information was of the type one would expect to find in any contract of employment for duties of this nature, that is, preparing an organisation for sale. The fact that the memorandum itself quoted as a reference point the market rate for such positions was another factor that added weight to the proposition that the information should not be regarded as 'private'.

In respect of the commercial sensitivity issue, the Treasury was primarily concerned with the potential effect of release of the information on its future ability to negotiate such contracts. It was argued that disclosure of the terms of the Chief Executive's contract, which were discussed in the memorandum, would tie the Treasury's hand in respect of future negotiations.

The Chief Ombudsman did not accept this argument because it was not the Treasury's role under the State Sector Act to negotiate such contracts. The negotiation of contracts with senior state servants under that Act is the responsibility of the State Services Commission. In the event, as already mentioned, the Treasury's recommendations were not accepted.

The Chief Ombudsman recommended that the memorandum and attached proposed remuneration package be released to the requester, subject to the deletion of actual dollar figures in order to protect the incumbent's privacy. The released information included elements of the package relating to the terms of loan finance and the bonus provision on the basis that these two aspects provided a formula for the assessment of these aspects of the remuneration rather than actual figures.

The Treasury accepted the recommendation and released the information.

*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.*