

Request for audio and video tapes relating to allegations of child abuse

Legislation	Official Information Act 1982, ss 9(2)(a) and 27(1)(b); Ombudsmen Act 1975, s 17(1)(a)
Agency	Area Health Board
Ombudsman	John Robertson
Case number(s)	C073
Date	April 1993

Note: This investigation took place prior to the enactment of the Privacy Act 1993. At that time Part 4 of the OIA and LGOIMA governed people's right to access personal information about themselves. 'People' in this context included both individuals and corporate entities.

When the Privacy Act came into effect, individuals' rights to access personal information about themselves became governed by that Act. This left Part 4 as a special code within the OIA and LGOIMA governing access by corporate entities to personal information about themselves.

Audio and video tapes relating to allegations of child abuse—relevance of Family Court proceedings—mixed Part 2 and Part 4 information

The request in this case was made of an area health board by a man who had been accused of sexual abuse of his young daughter. He requested copies of audiotapes of two sessions his wife had had with a counsellor employed by the Board and a copy of a videotape made of a session his daughter had had with a therapist employed by the Board. The request was refused for the reasons set out in sections 9(2)(a) and 27(1)(b) of the OIA.

The requester had not been charged with any offence, but the information requested had been relevant to Family Court proceedings in which he was refused custody of or access to his daughter. At the time the Ombudsman formed an opinion on the information, no proceedings were under way or pending, but one of the reasons why the requester required access to the information was its relevance to a possible future application for custody and/or access.

The videotape

During the course of his investigation the Ombudsman found that the requester had applied, during the Family Court proceedings, for an order for disclosure of the videotape and that an order had been made, subject to certain conditions. The requester had been permitted to see the videotape in the company of a recognised expert in child abuse matters, but he had not been permitted to have a copy of the tape or to submit it to further expert scrutiny. Furthermore, the videotape was still held by the Family Court.

As the information was not held by the board, and as it appeared that the Court order was undischarged, the Ombudsman discontinued his investigation at this point. Informal enquiries of the Court Registrar had made it clear that the requester could apply for a further order for access to the information, and at that point the Court would either consider his application or return the videotape to the board.

The audiotapes

The audiotapes contained information about the requester, about his wife and children and about other family members.

The Ombudsman made it clear to the requester that he was only prepared to undertake an investigation and review because there were no relevant court proceedings either current or pending. The Family Court had discussed the question of pre-trial disclosure and had accepted that the principles laid down by the Court of Appeal in *Commissioner of Police v Ombudsman* [1988]¹ NZLR 378 extended beyond the scope of criminal investigations only and were applicable in Family Court proceedings.

As section 17(1)(a) of the Ombudsmen Act, which applied to this investigation by virtue of sections 29 and 35 of the OIA, gives an Ombudsman a discretion to refuse to investigate a complaint where there is an adequate alternative remedy, the Ombudsman would have discontinued his investigation had there been relevant Family Court proceedings either under way or pending.

So far as the information contained in the audiotapes concerned persons other than the requester, the Ombudsman had little difficulty in determining that section 9(2)(a) applied. The information was clearly private and in need of protection.

The Ombudsman identified two main areas of public interest that could be said to favour disclosure of the information. One was the interest in allowing potential litigants access to such information as is needed to allow them to conduct their cases properly, and the other was the interest in ensuring that questions of child abuse are handled professionally and competently by staff who are adequately trained. The requester had said that the audiotapes were evidence that this was not the case.

In respect of both areas, the Ombudsman concluded that the public interest either could be or had been satisfied by means other than the release of the information in question; in the first

place, by the procedures adopted by the Family Court, and in the second place, by an inquiry that the Board had undertaken into the handling of cases of suspected child abuse.

So far as the information was about the complainant, and hence subject to Part 4 of the Act, the Ombudsman had a more difficult task. Much of the factual content of the material was already known to the requester and, *prima facie*, would not need to be withheld. However, the factual material as presented on the tapes was inextricably bound up with the wife's expression of very private and personal feelings and opinions, and in the end the Ombudsman was obliged to conclude that a release of any part of the tape would be an unwarranted disclosure of her affairs.