

Request for communications between Taranaki Harbours Board and Topside Construction Joint Venture

Legislation	Local Government Official Information and Meetings Act 1987, ss 7(2)(b)(ii), 7(2)(i), 8
Agency	Harbours Board
Ombudsman	John Robertson
Case number(s)	W1663
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Request for communications between Harbours Board and TCJV concerning difficulties in the sharing of costs of preparatory work on consents for a reclamation—Board ‘neither confirms nor denies the existence or non-existence’ of the information—reference to s 7(2)(b)—Ombudsman not satisfied that confirming the existence of information relevant to the request would be likely unreasonably to prejudice the commercial position of TCJV—Board continued to refuse the request under s 7(2)(i)—good reason to withhold only some of the information—Board agreed to release information and to reconsider the balance when the negotiations over the dispute had been completed

In 1988 the Taranaki Harbours Board received a proposal from a joint venture known as the Topside Construction Joint Venture (TCJV) that the Board undertake a reclamation on the eastern side of Port Taranaki. The Joint Venture had been formed to submit a New Zealand tender for the building of the topside modules for the Maui B platform, should it proceed. The Maui Partners had made it known that no New Zealand tenders would be accepted for construction of the platform unless the tenderer had the necessary land available on which to construct the modules.

The Board expressed interest in the project. An agreement was made as to the payment of the preliminary costs involved (obtaining of necessary consents including empowering legislation, hydraulic and wave studies, etc) and a regional development grant was obtained from the Department of Trade and Industry for this purpose.

A dispute then arose over the precise amount of the contribution which each party would be making. The dispute took some time to develop and eventually became a stalemate.

One of the local newspapers then made a request seeking access to all communications between the Board and TCJV concerning difficulties in the sharing of costs of preparatory work on consents for the eastern reclamation. The Board refused the request under section 8 of LGOIMA with reference to section 7(2)(b).

Under these provisions the Board was entitled neither to confirm nor to deny the existence or non-existence of the information requested if it was satisfied that the interest protected by section 7(2)(b) of the Act would be likely to be prejudiced by disclosure of the existence of the information. Section 7(2)(b)(ii) allows information to be withheld if its disclosure would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information (that is, TCJV).

In the course of the investigation the Ombudsman noted the request was for information about '*difficulties*' in negotiation. It was generally accepted that there would be no harm in disclosing that there had been negotiations between the Board and TCJV on the sharing of preliminary costs. Given the involvement of TCJV in an open day held to promote the reclamation to the public, the Ombudsman saw no reason at all for secrecy in that respect.

To refuse the request under section 7 without reference to section 8 would have done no more than show that there had been negotiations which had been subject to difficulties. This in itself would not have disclosed either the nature or the extent of the difficulties which had in fact arisen. In the Ombudsman's view it was the latter detail which was prejudicial, not the existence of the difficulties. On this basis it was not accepted that confirming the existence of information relevant to the request would be likely unreasonably to prejudice the commercial position of TCJV.

Accordingly, the Ombudsman suggested that the Board's refusal of the request under section 8 be substituted with a refusal under nominated paragraphs of section 7(2). This would be without prejudice to any later consideration of whether those provisions in themselves protected the information or any part of it.

The Board accepted this approach and confirmed to the requester that it had been involved in negotiations with TCJV concerning the sharing of preliminary costs for the reclamation. The Board said it would be prepared to release some information when an agreement had been concluded. In the meantime it would not make available any information concerning the negotiations themselves, relying on section 7(2)(i).

The requester then asked the Ombudsman to consider whether the withholding was justified under this section. The Ombudsman came to the view that good reason existed to withhold only some of the information. The Board agreed to release the remaining information and to reconsider the balance when the negotiations over the dispute had been completed.

This action enabled the Ombudsman to discontinue his investigation and review.

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