

Request for complete rate records

Legislation	Local Government Official Information and Meetings Act 1987, s 7(2)(a)
Agency	City Council
Ombudsman	Anand Satyanand
Case number(s)	A5621
Date	December 1997

Request for city council's complete rate records—request refused under s7(2)(a)—consideration of s 115(2) of Rating Powers Act and ss 7(1), 7(2), 60(3) of the Privacy Act—information released

A private individual asked a local authority for a complete copy of its rate records, as defined in section 113 of the Rating Powers Act 1988. The request was refused in reliance upon section 7(2)(a) of the LGOIMA, it being argued that while there was a right to inspect such information at local authority offices, disclosure of a complete copy would result in an infringement of privacy. In this respect the local authority referred to the potential for the information to be used for direct marketing purposes.

Section 15(1) of the LGOIMA provides that requested information may be made available in a number of ways, including by '*providing the person with a copy of the document*'. Section 15(2) imposes a duty to make information available in the way preferred by the requester unless to do so would:

- (a) *impair efficient administration; or*
- (b) *be contrary to any legal duty of any local authority in respect of the document; or*
- (c) *prejudice the interests protected by section 6 or section 7 and (in the case of the interests protected by section 7) there is no countervailing public interest.*

There was no suggestion that providing a copy of the rate records would '*impair efficient administration*' and there were no grounds for saying that disclosure would be '*contrary to any*

legal duty'. Indeed, section 115(2) of the Rating Powers Act clearly contemplates the provision of copies of rate records.

There was a suggestion that the provision of a copy would be contrary to a legal duty imposed by the Privacy Act. However, sections 7(1), 7(2) and 60(3) of that Act are relevant in this respect and, in particular, section 60(3) which provides that:

Where any information privacy principle or any public register principle is inconsistent with any provision of any enactment, then, for the purposes of this Part of this Act that enactment shall, to the extent of the inconsistency, prevail.

Accordingly, the only issue to be considered was whether making the information available in the form requested would prejudice any protected interest, and in particular section 7(2)(a) of the LGOIMA.

After consultation with the Privacy Commissioner, it was concluded that there was nothing in the requested information that could be considered as intrinsically sensitive and that the privacy attaching to the information was diminished by the fact that it was open for inspection by the public. Some concerns were raised about the purpose of the request because the Privacy Commissioner had received a steady stream of complaints from members of the public who objected to information being made available when it is used for direct marketing or other commercial purposes. However, the potential use to which official information might be put is commented on by Heron J in *Television New Zealand Ltd v Ombudsman* [1992] 1 NZLR 106 at page 118 as follows:

As pointed out, requests for information do not have to be accompanied by reasons why the information is required. That is fundamental to the spirit and purpose of this Act. If it was trammelled by requirements to justify a request for information, much of the spirit of the Act would be lost. Dominating the Official Information Act is its purposes and principles as set out in section 4 and section 5...

There is no question of establishing a need for information. Information by its very nature needs to be available if the purposes of the Act are to be achieved. That the onus is cast on the holder to show good reason why it should be withheld, runs contrary to any question as to its ultimate relevance or utility...

Accordingly, while the views on the potential use of the information were acknowledged, the position on the availability of rate records seemed clear. Section 115 of the Rating Powers Act requires that a local authority keep its rate records in its principal office and that such records shall be available for inspection. It further contemplates that copies of the rate records are available on payment of any applicable fee. In the absence of any restriction in the Rating Powers Act on the amount of information that may be copied, or the use to which these copies can be put, it could not be accepted that it was necessary to withhold the information in terms of the test set out in section 7(2)(a) of the LGOIMA.

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