

Request for course notes and material

Legislation	Official Information Act 1982, ss 9(2)(k), 16(1)(a)
Agency	Polytechnic
Ombudsman	Sir Brian Elwood
Case number(s)	A4342
Date	June 1995

Request for course notes and material developed by a tertiary institution—requester not enrolled in course—request refused on grounds requester should not gain advantage over fee-paying students—section 9(2)(k) considered—section 16(1)(a) applied

A private individual had sought from a polytechnic the course notes and other material that were provided to students taking a particular course. This request had been refused on the grounds that the requester, who was not a student enrolled with the institution, should not be able to gain access to such information without enrolling for the course and paying the consequent fees.

Given the Polytechnic's concerns about disclosure, it was first necessary to consider the applicability of section 9(2)(k) of the OIA. The test imposed by this section is not an easy one to meet. The difficulty is that people seeking information do not have to specify or justify the purpose for which the information is sought. It is certainly not sufficient for the purposes of the section to argue that requested information is not relevant to the concerns of a requester, or simply that the information might be used to the advantage of the requester. Any gain or advantage accruing through disclosure must be *'improper'*.

Given that the course material at issue was not made publicly available outside the context of the relevant course, it was concluded that the provision to the requester of copies of such material would bestow upon him an improper gain. This is because he would be gaining tangible access to the skills and judgement of the academic staff who compiled the material, without complying with enrolment requirements and paying the appropriate fees.

Notwithstanding the above, it seemed that merely providing the requester with the opportunity to inspect the documents would not allow him to make an improper gain. While the provision of copies would have allowed the requester to refer to the material on an

ongoing basis and put it to whatever use he wanted, a single opportunity to inspect the material did not provide this advantage. The latter option would, however, allow the complainant to satisfy his curiosity about the course material.

The view was formed that to disclose copies of the course material would prejudice the interests protected by section 9(2)(k), whereas the provision of an opportunity to inspect the information would not. In terms of section 9(1) of the OIA, there were no apparent public interest considerations that outweighed the need to withhold copies of the documents from the requester.

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