

Request for faxes annotated with advice from General Counsel

Legislation	Official Information Act 1982, s 9(2)(h)
Agency	New Zealand Dairy Board
Ombudsman	Sir Brian Elwood
Case number(s)	W32722
Date	October 1994

Request for copies of faxes sent to New Zealand Dairy Board by the requester and any information generated by them—faxes annotated with advice from General Counsel—request declined under s 9(2)(h)—Board agrees to waive privilege and information released

A researcher for a television programme had sent five faxes to the Dairy Board seeking comments on information about the Board's activities. Not satisfied with the responses it received, it asked the Board to provide copies of the faxes together with 'any notes, scribbles or memoranda generated as a result ..., including any notations made by the General Counsel or his staff, and obviously any communications to that section re [the] requests'. The faxes had been annotated with the advice of the Board's General Counsel. The request was refused under section 9(2)(h) of the OIA on the basis that communications addressed to General Counsel were privileged.

Annotations by staff members on correspondence received by a Minister of the Crown, Department or organisation subject to the OIA are 'official information' by virtue of section 2(4) of the Act and can therefore properly be the subject of a request for access. After viewing the information at issue in this case and discussing the issues with the Dairy Board, the Board agreed to waive privilege in respect of that part of the information to which legal professional privilege might apply and released the annotated faxes to the requester.

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