

Request for information relating to the setting up of the Special Committee on Nuclear Propulsion

Legislation	Official Information Act 1982, ss 9(2)(f)(iv), 9(2)(g)(i)
Agency	Department of Prime Minister and Cabinet
Ombudsman	John Robertson
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Request for information relating to the setting up of the Special Committee on Nuclear Propulsion—given the sensitivity of the nuclear propulsion issue and the context in which the information had been generated, the withholding of the information was necessary under ss 9(2)(f)(iv) and 9(2)(g)(i)—at the time of the review the balance of public interest favoured withholding the information requested—the overall public interest was better served in allowing the Special Committee to complete its review in an orderly manner

The Chief Ombudsman received a request for an investigation and review of the decision of the Department of the Prime Minister and Cabinet (DPMC) to refuse to disclose the following information:

1. a ‘*preliminary scoping*’ for Ministers of issues which they had to address in setting up the Special Committee on Nuclear Propulsion—refused under section 9(2)(f)(iv) of the OIA;
2. copies of all papers (including letters) prepared by DPMC or any other Government Department for the Special Committee on Nuclear Propulsion, or any members of the Committee, to date—refused under section 9(2)(g)(i) of the OIA; and
3. a list of all books, articles and other materials provided by DPMC, or any other Government Department to any members of this Committee to date—refused under section 9(2)(g)(i).

In respect of item 3, there was the further issue that technically no such list existed. The Secretary to the Committee confirmed that the database of books, articles and materials was

constantly being added to as the individual Committee members pursued various matters related to the review. Contrary to the requester's understanding that only a small amount of material had been provided to the Committee, the Chief Ombudsman was told that a large amount of material amounting to over 1500 items had already been provided to the Committee's members. The Chief Ombudsman accepted that administratively it would be virtually impossible to provide an up-to-date list of all such material until the Committee had completed its report. However, to the extent that the request could be interpreted as including whatever information the DPMC could collate at this stage about the material provided to the Committee, the Chief Ombudsman considered, in combination with item 2, whether the request should have been refused under section 9(2)(g)(i).

Where information has been withheld under section 9(2)(f)(iv) and/or section 9(2)(g)(i), there are two steps in an Ombudsman's investigation and review of the refusal. The first, is to consider whether the requirements of section 9(2)(f)(iv) and/or section 9(2)(g)(i) have been met. If not, then, consistent with the principle of availability in section 5 of the OIA, the Ombudsman must recommend release of the information. If, on the other hand, the Ombudsman is satisfied that section 9(2)(f)(iv) or section 9(2)(g)(i) apply, then, given section 9(1) of the OIA, consideration must still be given to whether in the circumstances of the particular case there are any countervailing public interest considerations which outweigh the interest in withholding the information.

In this case the process of Government to which the information at issue related was the setting up of a Special Committee to, *'by assessing the available literature and knowledge and receiving public submissions, review the safety, environmental and other technical issues relating to nuclear powered ships which would arise if such vessels were to seek entry to certain New Zealand Ports'*. The Special Committee was established, given terms of reference (which were made public), empowered to conduct public hearings on submissions presented to it (where these would benefit from further analysis) and charged with presenting a report to the Prime Minister four months after beginning work.

After carefully considering the material made available to him by both DPMC and the requester, the Chief Ombudsman accepted that:

- the issue of nuclear propulsion is particularly sensitive;
- as reflected in the published terms of reference, the key issues which the Special Committee had been asked to consider were complex and required the Committee to carefully consider and balance, in a relatively tight time frame, both available literature and knowledge and public submissions on safety, environmental and technical matters; and
- disclosure of the information requested would undermine the ability of the Special Committee to carry out its designated task in an undisturbed and orderly fashion and thereby prejudice its ability to give the Prime Minister its best advice.

In these circumstances, although much of the information coming within the terms of the requests was of an administrative nature and, viewed on its own, relatively innocuous, the

Chief Ombudsman was satisfied that given the sensitivity of the nuclear propulsion issue and the context in which the information had been generated, the withholding of the information was necessary under both sections 9(2)(f)(iv) and 9(2)(g)(i).

While the Chief Ombudsman was satisfied that the requirements of sections 9(2)(f)(iv) and 9(2)(g)(i) were met in this case, he had no doubt that there was a strong public interest in disclosure of information about the nature of the review and the basis on which it was proceeding. To a certain extent this had already been met by disclosure of the Special Committee's terms of reference and other information about the membership of the Committee and the basis on which the members were appointed. Further information would also be released when the Special Committee's report was made publicly available. The issue for the purposes of the Chief Ombudsman's review was whether the information withheld from the requester raised other public interest considerations which outweighed the interest in withholding.

In this regard, the requester was concerned that the information requested might disclose that the review was not as independent as the terms of reference and the Government's public statements suggested. The Chief Ombudsman acknowledged that if information had been withheld which evidenced any riding instructions or administrative or other constraints inconsistent with the terms of reference or public announcements of the independence of the Special Committee's review process, then clearly there would be a particularly strong public interest in disclosure of such information. However, the Chief Ombudsman had not identified any such information and was satisfied that none had been withheld.

The Chief Ombudsman came to the view that at the time of his review the balance of public interest favoured withholding the information requested. He took the view that the overall public interest was better served in allowing the Special Committee to complete its review in an orderly manner. The Committee's report would be made public and at that stage its conclusions could be studied by the public. At that stage also, the need to withhold the information which was the subject of this review might well have passed and the question of disclosure could be revisited.

The Chief Ombudsman concluded that sections 9(2)(f)(iv) and 9(2)(g)(i) provided good reason to refuse the requests.

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