

## Request for legal advice used in formulation of mining policy

<b>Legislation</b>	Official Information Act 1982, s 9(2)(h)
<b>Agency</b>	Department of Conservation
<b>Ombudsman</b>	Nadja Tollemache
<b>Case number(s)</b>	W1859
<b>Date</b>	Published April 1993

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*Request for legal advice—refused under s 9(2)(h)—necessary to maintain legal professional privilege—not outweighed by public interest favouring disclosure*

A request was made to the Department of Conservation for the legal advice concerning the implementation of Mr Justice Heron’s decision in the Spectrum case that was used by the department in the formulation of its mining policy. This was refused on the basis of section 9(2)(h).

The Ombudsman was satisfied that in this case all the legal advice obtained by the department attracted legal professional privilege. The information requested contained both internal legal advice and legal advice from outside the department. It is well established in New Zealand law that salaried legal advisers have the same privileges as legal advisers in private practice and their clients: see *Henderson Borough Council v Auckland Regional Authority* [1982] 2 NZLR 151.

The requester asserted that there was a public interest in knowing to what extent Mr Justice Heron’s 1988 decision had influenced the Minister of Conservation in her interpretation of the Mining Act. The Department advised the Ombudsman that the opinions were required not for that purpose, namely, the development of policy, but as a means to advise the Minister on how she should deal with the Spectrum case which at the time of the Ombudsman’s investigation and review was still under consideration by the Minister of Conservation. The Ombudsman was of the view that:

- the Minister was entitled to make her own decision on whether or not to appeal the decision and she had to take legal advice on such a matter in the normal expectation of confidence; and
- the principle expressed in section 4(a)(i) of the OIA had been satisfied by the public input already made into policy, and the resource management law reform would mean further input.

The Ombudsman advised the requester that he was in any case able to study Mr Justice Heron's judgment and assess the impact of the judgment on the current policy for prospecting and mining. Accordingly, the Ombudsman did not consider that the need to maintain legal professional privilege in respect of the opinions was outweighed by the public interest favouring their disclosure.

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