

Request for name of person/s who made statement to reporter

Legislation	Official Information Act 1982, s 9(2)(ba)(ii)
Agency	Radio New Zealand
Ombudsman	Nadja Tollemache
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Request for name of person/s who made statement to reporter—refused under s 9(2)(ba)—‘newspaper rule’—name/s of informants went to very heart of the rule—no public interest considerations which outweighed need to withhold

This case concerned a decision by Radio New Zealand not to make available to a Board of Trustees the names of the person/s who made a statement to a reporter concerning the school resulting in a broadcast on the radio station.

Radio New Zealand had relied upon section 9(2)(ba) of the OIA to withhold the names, which states:

- (2) ... this section applies if, and only if, the withholding of the information is necessary to—
- (ba) protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information—
- (i) would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied; or
- (ii) would be likely otherwise to damage the public interest;

Radio New Zealand's concerns seemed to fit most closely to subsection (ii) of that section. In its initial response to the Ombudsman, Radio NZ had this to say:

No journalist would reveal sources of information which has [sic] been given to him or her in confidence, and all news organisations including Radio New Zealand, would fully support a refusal to disclose such identity, under all circumstances.

This reflects the 'newspaper rule'.

Given the comments made by Radio New Zealand and the judicial recognition of the 'newspaper rule', the Ombudsman had no option but to be satisfied that were the information to be made available it would be likely (meaning a real or substantial risk) to result in damage to the public interest, namely, the interest in the provision of credible news and current affairs coverage. The Ombudsman was also satisfied that the information being the name/s of informants went to the very heart of the rule and therefore it was necessary to withhold the information to prevent the prejudice to the public interest occurring.

In looking at whether there were any public interest considerations which outweighed the necessity to withhold the information, the Ombudsman recognised that any public interest would have to be strong. Section 10 of the Contempt of Court Act 1981 (UK) provides that:

No court may require a person to disclose ... the source of information contained in a publication for which he is responsible unless it is established to the satisfaction of the Court that disclosure is necessary in the interests of justice or national security or the prevention of disorder or crime.

The restrictive character of this section served to illustrate the importance of the public interest behind the newspaper rule.

The Ombudsman was not satisfied that there was a sufficient public interest which outweighed the need to withhold under section 9(2)(ba)(ii). She took into account the fact that:

- the Board's complaint to the Broadcasting Standards Authority relating to the radio item was upheld;
- the broadcast of the news item breached standard 1.1(i) of the Radio Code of Broadcasting Practice; and
- an official apology was broadcast on radio.

Postscript

In the above investigation the Ombudsman considered arguments for withholding, advanced in respect of both section 9(2)(ba)(i) and section 9(2)(ba)(ii). The Ombudsman's final opinion accepted that section 9(2)(ba)(ii) applied. However, since that investigation was completed the Ombudsmen have re-examined the general issue of disclosure of journalists' sources. On a general level, the Ombudsmen now consider that section 9(2)(ba)(i) is more likely to be the appropriate reason for refusal of a request for journalists' sources where withholding of such information is necessary.

This case note is published under the authority of the [Ombudsmen Rules 1989](#). It sets out an Ombudsman's view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.