

Request for recruitment video

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| Legislation | Official Information Act 1982, s 9(2)(a) |
| Agency | The Treasury |
| Ombudsman | John Robertson |
| Case number(s) | W3376 |
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Request for copy of video commissioned for overseas recruitment—privacy of individual officers appearing in it—s 9(2)(a)—privacy interest not strong—public interest outweighs any privacy interest—s 9(1)—how Treasury sees its role and how it presents that image to potential recruits both in New Zealand and overseas is a matter of strong public interest

The requester, a television news reporter, sought a copy of a recruitment video commissioned by the Treasury in 1990. The request was refused and a number of provisions of section 9(2) of the OIA, including section 9(2)(a), were advanced in support of that decision. Pursuant to section 16 of the OIA, the Treasury did offer to make available a full transcript of the video material in question, subject to certain deletions to protect the identities of individuals appearing in it. The requester asked me to investigate and review the decision.

In applying the general approach to section 9(2)(a) to the facts of this case, the Chief Ombudsman accepted that at least a majority of those who appeared in the video material genuinely believed that disclosure of the videotapes would infringe their privacy in a way that had not been agreed to. It was clear that the primary concern of the staff members who appeared in the videotapes was that disclosure would:

- identify them as Treasury staff and the broad areas in which they worked;
- disclose information about themselves and their personal opinions concerning, among other things, their expectations before joining the Treasury, their current impression of their work and working environment, and their future expectations; and

- in respect of several overseas recruits, how and where they lived and their personal opinions about life in New Zealand.

On a general level, the Chief Ombudsman accepted that a valid distinction could be drawn between opinions about the Treasury and their normal work duties expressed by individuals in their capacity as employees of the Treasury, and other opinions which were essentially their own personal opinions expressed as individuals rather than as Treasury employees. The Chief Ombudsman did not doubt that disclosure of such personal opinions without the consent of the individuals concerned would infringe privacy interests. To this extent he was satisfied that a certain amount of the information comprised in the videotapes met the requirements of section 9(2)(a). The Chief Ombudsman also accepted that, in practical terms, it was not possible to edit the videotapes to separate this information from other information which did not require protection under section 9(2)(a).

In terms of section 9(1), the Chief Ombudsman noted that Treasury is an important department of State and, as the video material reflected, it has a prime role in advising the Government of the day on the development of policies which impact on all New Zealanders in their everyday lives. The videotapes at issue were targeted at assisting the recruitment of individuals who would be expected (and who themselves would expect) to become directly involved in the formulation and giving of such policy advice. How the Treasury sees its role and how it presents that image to potential recruits both in New Zealand and overseas is a matter of strong public interest. Similarly, the Chief Ombudsman considered that there was a strong public interest in disclosure of information, specifically used for recruitment purposes, which showed how the Treasury had presented the diverse background of recruits, their expectations, and their opinions on how these expectations had been fulfilled. The attitudes, ambitions, and reflections of Treasury officials on their role, and the Treasury doctrine which emerged from the video material, were all matters of direct relevance to the public interest where an important instrumentality of Government is involved.

The Treasury acknowledged that there was a *'legitimate public interest in the Treasury's recruitment procedures and methods, and therefore in their video material'*. However, the Treasury believed this public interest would be met by its proposed disclosure of a transcript of the video material with deletion of information identifying Treasury staff and that *'releasing a full copy of the video would add little of substance to the public's knowledge of the Treasury's recruitment methods'*.

The Chief Ombudsman did not agree with that assessment. First, the videotape medium allows for a greater range of information to be transmitted to the viewer than can ever be conveyed to a reader through a written document. Quite simply a written transcript could not reproduce all the information that was imparted in the video material in question.

The Chief Ombudsman noted that the material had been professionally made and targeted to attract individuals who were, or who had the potential to quickly become, the calibre of economic and financial analysts which the Treasury required to perform its work adequately. The Treasury made the point that in this regard it recruits in a *'highly competitive segment of the job market'*. Therefore, how the video material had been put together to inform and attract such potential recruits was important. This information, however, could only be fully

appreciated by viewing the videotapes. Even if the Treasury proposed to disclose stage directions with its transcript, the full impact of the visual presentation could not be reproduced.

The Chief Ombudsman was also of the view that much of the '*unwritten*' information (which would not be conveyed in a transcript of the videotapes) was as important to the public's knowledge of the Treasury's recruitment methods as the information that would be provided in a written transcript. If this '*unwritten*' information were insignificant, it did not seem likely that the Treasury would have chosen, on cost effective grounds, the more expensive option of producing videotapes rather than preparing brochures or written material for recruitment purposes.

In conclusion, the Chief Ombudsman considered there was a strong public interest in disclosure of the full videotapes and he did not believe that making available a transcript in the manner proposed by the Treasury satisfactorily met this public interest.

Given the Chief Ombudsman's opinion that in this case there were considerations favouring both the withholding and disclosure of the videotapes, it was necessary for him to assess the strength of the competing interests and form an independent opinion on where the balance of public interest lay. The Chief Ombudsman formed the opinion that the public interest favouring disclosure of full copies of the videotapes outweighed the interest in withholding the information under section 9(2)(a). In reaching this view, the following factors were relevant:

- While the Treasury staff appearing in the videotapes might have understood that the intended audience would not be wider than '*the legitimate needs of Treasury recruitment*', the fact of the matter was that they (and in one case members of an employee's family) had voluntarily allowed information about themselves and their opinions to be recorded for showing to people they might never meet. Not all '*potential recruits*' who would see the videotapes would be subsequently employed by the Treasury. As far as those who appeared in the videotapes were concerned, a number of perfect strangers had seen the videotapes without any constraints on their subsequent communication of the content and their perception of the opinions/comments expressed. While it is true that the staff concerned might not have envisaged disclosure to the public at large, as long as the video material was in use, a widening pool of people in New Zealand and overseas would be privy to the information contained in the videotapes.
- By its very nature the video material was prepared for the sole purpose of being shown to others. In this respect, the Treasury confirmed that:
 - in addition to the two presentation copies, 10 copies of each videotape were made;
 - a further 5 copies were produced on the NTSC system for use in North America;
 - the videotapes had been screened on a limited number of occasions to Treasury staff and some of the non-Treasury staff who had participated in them;

- the graduate videotape had been shown once at each of the 7 New Zealand University campuses to audiences of between 30-80 persons composed of those who the Treasury had already accepted for preliminary interviews, others referred by the Careers Offices, and others attracted by notices in Careers Office publicity;
- one copy of the graduate video had been left with the Canterbury Careers Office on the basis that it could be shown to potential recruits (although it had not been screened);
- one NTSC video had been lent to a recruitment consultant who had conducted a campaign for the Treasury in North America in May 1991; and
- two of the overseas videotapes could no longer be accounted for.

The Chief Ombudsman was also advised that there had been at least one other occasion where the videotapes had been viewed outside of the recruitment context.

Having weighed the factors for and against disclosure in the balance, the Chief Ombudsman's view was that, in agreeing to participate in the making of the videotapes, the individuals concerned effectively surrendered control over who would view the information they revealed about themselves. The Chief Ombudsman did not consider that the information itself was of a particularly private nature. It certainly could not be described as the innermost thoughts of the individuals concerned that they would be unlikely to share beyond close confidants. While some of the information certainly comprised personal opinions and observations, the persons concerned had agreed to share them with complete strangers, albeit in a 'recruitment' setting.

On balance, while the Chief Ombudsman accepted that some of the information contained in the videotapes was private in nature, he did not consider the privacy interests to be particularly strong in the circumstances of this case. He accepted that the concerns expressed by Treasury staff were genuinely held and did not treat them lightly. However, in his view there was a strong public interest in disclosure of full copies of the videotapes which outweighed any infringement of privacy that might accompany such disclosure. Accordingly, section 9(2)(a) did not provide good reason for refusing the request and the Chief Ombudsman recommended that full copies of the videotapes be made available to the requester. The Treasury accepted this recommendation.

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