

Confidentiality

A guide to section 9(2)(ba) of the OIA and section 7(2)(c) of the LGOIMA

One reason for withholding official information is to protect ‘confidential information’, where release would be likely to:

- *prejudice the future supply of information that is in the public interest; or*
- *damage the public interest in some other way.*

This guide explains:

- *what ‘confidential information’ means in this context;*
- *how to decide whether release would be likely to prejudice the future supply of information that is in the public interest; and*
- *some of the other ways that release can be likely to damage the public interest.*

If you are interested in how this withholding ground can apply to:

- *draft investigation reports, see our guide to [The OIA and draft documents](#); or*
- *information related to public sector tenders, see our guide to [The OIA and the public tender process](#).*

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What the Act says

The starting point for considering any request for official information is the principle of availability. That is, information must be made available on request unless there is a good reason for withholding it.¹

The reasons for refusal fall into three broad categories: conclusive reasons,² good reasons,³ and administrative reasons.⁴

Among the good reasons, section 9(2)(ba) of the OIA:

- (2) *... 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.*

‘Good reasons’ are subject to a ‘public interest test’, meaning that if they apply, agencies must consider the countervailing public interest in release.⁵ If the public interest in release outweighs the need to withhold, the information must be released. See our [Public interest](#) guide for detailed information on how to do the public interest test.

Other relevant provisions

Section 9(2)(ba) can sometimes overlap with other withholding grounds. This is because information capable of impacting on other interests protected by the OIA may also be inherently confidential. Other relevant provisions can include those relating to [privacy](#), [commercial information](#), [negotiations](#) and [legal professional privilege](#).

¹ See s 5 OIA and LGOIMA.

² See ss 6 and 7 OIA and s 6 LGOIMA. ‘Conclusive’ reasons are not subject to a ‘public interest test’, meaning that if they apply, there is no need to consider any countervailing public interest in release.

³ See s 9 OIA and s 7 LGOIMA. ‘Good’ reasons are subject to a ‘public interest test’, meaning that if they apply, agencies must consider the countervailing public interest in release.

⁴ See s 18 OIA and s 17 LGOIMA.

⁵ See s 9(1) OIA and s 7(1) LGOIMA.

Note that there is a specific withholding ground relating to the constitutional convention protecting the confidentiality of advice tendered to government.⁶ Ombudsmen have not accepted that Ministers owe an ‘*obligation of confidence*’ to officials who have tendered advice—see [179181](#) (although section 9(2)(ba) could potentially apply, at least in part, if the advice at issue incorporates information supplied in confidence by a third party).

When section 9(2)(ba) applies

Section 9(2)(ba) has **two** distinct limbs.

It applies when the release of ‘[confidential information](#)’ ‘*would be likely*’ to:

- (i) [prejudice the future supply of information](#) in the public interest; or
- (ii) [damage the public interest](#) in some other way.

‘*Would be likely*’ means there must be a **serious or real and substantial risk** of such prejudice or damage arising.⁷

‘Confidential information’

Section 9(2)(ba) only applies to a particular type of information—described in this guide as ‘confidential information’.

‘Confidential information’ means:

- information [subject to an obligation of confidence](#); or
- information that has or could have been [obtained under statutory compulsion](#).

Information subject to an obligation of confidence

Information will be subject to an obligation of confidence if:

- it is [confidential in nature](#); and
- it was [communicated or generated in confidence](#).

An ‘*obligation of confidence*’ exists in the context of a relationship between two parties, and is generally **owed** by one party (usually the public sector agency that holds the information⁸), to another (usually a private individual or entity, or an employee of the agency).

⁶ See s 9(2)(f)(iv) OIA. There is no equivalent withholding ground in the LGOIMA. For more information about this withholding ground, see our guide [Confidential advice to government](#).

⁷ *Commissioner of Police v Ombudsman* [1988] 1 NZLR 385 at 391.

⁸ See [389625](#) and [302561 & 302600](#), concerning information held by an agency that was subject to an obligation of confidence between third parties.

Information generated by agencies

An obligation of confidence arises most commonly in respect of information supplied to an agency by another party. However, it doesn't have to be that way.

It is possible for information generated by agencies to be subject to an obligation of confidence. This usually happens where it reveals information obtained in confidence from another party ([416641](#), [350528](#)), or it is about another party, and has the potential to impact on their rights and liabilities (e.g. [376156](#)). The obligation of confidence is owed to the other party.

In a few cases, Ombudsmen have also accepted that an obligation of confidence can arise in respect of 'deliberative material'⁹ which is still under active consideration, but cannot properly be withheld under section 9(2)(f)(iv) of the OIA ([285265](#), [A9190](#), and [A9003](#)). This obligation was owed to the decision maker, not the advisor.

Information generated by contractors

Information that contractors supply to agencies about their own business may be subject to an obligation of confidence, but the situation may be different for any work product the agency has commissioned (except to the extent that it reveals genuinely sensitive information about the contractor's business—see [Wyatt Co \(NZ\) Ltd v Queenstown-Lakes District Council](#)).

Work product generated by contractors may be subject to an obligation of confidence where it reveals information obtained in confidence from another party, or it is about a another party, and has the potential to impact on their rights and liabilities (e.g. [376156](#)). However, the obligation of confidence is generally owed to the other party, not the contractor.

In one case, the Ombudsman accepted that there was an obligation of confidence in respect of 'deliberative material'¹⁰ that had been submitted by consultants, and was still under active consideration by the Commerce Commission ([167454](#)). This obligation was owed to the decision maker not the consultant.

Ombudsmen have been reluctant to accept that agencies are under any obligation to a contractor to keep their work confidential (e.g. [346787](#)). Having commissioned and paid for the work, agencies are generally free to do with it as they wish. Ombudsmen have also been sceptical that release would prejudice the future supply of information by contractors, given the commercial incentives to continue contracting with government (see [Incentives for continued supply](#) below).

⁹ Opinions, advice, and recommendations to inform a decision making process.

¹⁰ Opinions, advice, and recommendations to inform a decision making process.

Information of a confidential nature

Confidential information is usually **secret**, or known only to a **limited** group of people. The more people who know the information, the less likely it is to be confidential. However, disclosure to limited parties for a specific purpose will not necessarily waive confidentiality in respect of other third parties (see [W39272 & W39579](#)).

Information that is **common knowledge** or in the **public domain** may not have the necessary quality of confidence (see [446128](#), [416641](#), [178767](#) and [W41711](#)). As noted by Judge Megarry in *Coco v A N Clark (Engineers) Limited* [1968] FSR 415 ('Coco'), '*...there can be no breach of confidence in revealing something to others which is already common knowledge*'.

Information will be in the public domain if it is realistically accessible to the general public at the time of the request. This is a matter of degree and will depend on the specific circumstances of the case.

Where information on the same subject matter as the request already appears to be in the public domain, agencies should carefully consider whether the information at issue would reveal anything new. For example, the information at issue may be more detailed than the information already in the public domain, or corroborate a previously unreliable source or leak. If disclosure would reveal something new, then the material that would bring the new information to light may still retain its quality of confidence.

Confidentiality may be **lost over time**, if it is waived or the information enters the public domain.

Information communicated in confidence

Information is communicated or generated in confidence if there is a **shared understanding** between the parties that the information would be kept confidential. This shared understanding must exist at the time the information is given or generated; it cannot be 'constructed after the event' because an OIA request is received ([302561 & 302600](#)).

A shared understanding can be shown to exist if there is an **express** agreement (spoken or written) between the parties (see [A word on confidentiality clauses below](#)).

If there is no spoken or written agreement, a shared understanding may be **implied** if it is clear from the circumstances that both parties understood the information would be kept confidential.

In considering whether an implied obligation of confidence exists, agencies should consider the '*reasonable person*' test used by Judge Megarry in *Coco*:

...if the circumstances are such that any reasonable [person] standing in the shoes of the recipient of the information would have realised, that upon reasonable grounds the information was being given to [them] in confidence then this should suffice to impose upon [them] the equitable obligation of confidence.

Circumstances that might support an implied obligation of confidence include:

- The nature and content of the information—some information is inherently confidential e.g. trade secrets, health information and personal financial details.
- The relationship between the parties—some relationships are imbued with an inherent confidentiality e.g. doctors and patients ([330879](#) and [W38403, W39515 & W39584](#)); employers and employees ([321631](#), [316020](#), [286335](#), [180058](#) and [173291](#)); potential litigants and mediators ([287288](#), [174888](#)); journalists and sources (see [W3043](#), compared with [404843 & 407022](#)).
- The potential detriment to third parties if disclosed—e.g. threat to health or safety; financial loss; exposure to ridicule or public criticism.
- How the information is handled by the parties—e.g. separate storage from other non-confidential information, or procedures to limit access.

No blanket protection available

The OIA and the LGOIMA may protect information arising from the special relationships between certain parties. It is important to note however, that these relationships do not evoke a blanket protection for the information arising from them. It is important for these official information requests to be considered on their own merits. This premise can be seen with the Ombudsman's consideration of official information complaints involving journalist correspondence with their sources (see [499319](#) and [439322](#)).

Agencies should be able to provide evidence of an express confidentiality agreement, or explain how the circumstances in which the information came to be held support an implied obligation of confidence.

Note that one party cannot **unilaterally impose** an obligation of confidence on another (see case [346787](#)). A person cannot insist on confidentiality if it is not clear from the surrounding circumstances that the agency was prepared to accept the information on that basis (see note on unsolicited communications [below](#)).

Similarly, an obligation of confidence will not exist just because an agency has promised it. The other party must have required or, at the very least, implicitly relied on such a promise, to the extent that the information would not have been given or generated, or would have been given in a different format had no such undertaking been given.

*Jeffries v Attorney-General*¹¹—unsolicited communications

Mr Jeffries wrote a letter to the Minister of Finance about Mr and Mrs Powell. Mr and Mrs Powell requested a copy of the letter from the Overseas Investment Commission

¹¹ [2009] NZCA 38.

(OIC) under the OIA. After consulting Mr Jeffries, the OIC decided to release the letter.

Mr Jeffries sought judicial review of that decision—arguing, in part, that the OIC should have withheld the letter under section 9(2)(ba) of the OIA. The Court of Appeal disagreed, with Justice Chambers stating:

*I cannot accept Mr Jeffries’s argument. I appreciate that Mr Jeffries purported to make his letter to [the Minister] ‘private and confidential’ and also purported to bind ‘the recipients of this letter’ to not releasing the letter to ‘the Powells’ current solicitors, Kensington Swan’ without his consent. [The Minister], however, never indicated he was prepared to accept the letter on that basis. If Mr Jeffries had wanted to gain such protection, he should first have ascertained whether [the Minister] was prepared to accept the information he wished to convey on such a confidential basis. For obvious reasons, **citizens cannot write to Ministers of the Crown and hope to avoid the release of their letters to enquirers simply by marking the letters ‘private and confidential’**. The information contained in Mr Jeffries’s letter was not, therefore, ‘subject to an obligation of confidence’ on either [the Minister’s] part or on the part of the other recipients.*
(Emphasis added).

On appeal, the Supreme Court agreed that Mr Jeffries’s claim to confidentiality was ‘*untenable*’.¹²

This means that people corresponding with Ministers and government agencies should not assume their communications will be confidential. If there is a genuine need for confidentiality, it pays to discuss this with the agency first, to see whether it is prepared to accept the information on that basis.

Ombudsman cases relating to unsolicited communications include [431322](#), [404843 & 407022](#), [302561 & 302600](#) and [285985](#).

Making promises of confidentiality

Agencies should think carefully before promising to keep information confidential. Confidentiality cannot be assured in an OIA context, because any need to withhold could potentially be outweighed by [the public interest in release](#).

Before agreeing to receive information on a confidential basis, agencies should satisfy themselves that confidentiality is genuinely necessary, both because the [information is of a confidential nature](#), and because it is in the overall public interest for it to be treated that way.

Agencies should manage expectations by including a caveat that confidentiality will be maintained, except as the law requires.

A word on confidentiality clauses

Some written agreements include clauses to the effect that certain information will be

¹² See *Jeffries v Attorney-General* [2010] NZSC 59 at [3].

confidential to the parties. This provides an objective signpost of the parties' shared understanding that the information is intended to be subject to an obligation of confidence.

However, it is important to remember that other boxes need to be ticked before section 9(2)(ba) provides good reason for withholding:

- ☑ Release must 'be likely' to [prejudice the future supply of information](#) that is in the public interest, or [damage the public interest](#) in some other way.
- ☑ The need to withhold must not be outweighed by [the public interest in release](#).

An agency cannot be sued for breach of confidence for releasing information in good faith under the OIA. This is because of section 48 of the OIA, which provides:

48 Protection against certain actions

(1) *Where any official information is made available in good faith pursuant to this Act,—*

- (a) *no proceedings, civil or criminal, shall lie against the Crown or any other person in respect of the making available of that information, or for any consequences that follow from the making available of that information...*

***Wyatt Co (NZ) Ltd v Queenstown-Lakes District Council*¹³—confidentiality clauses**

Queenstown-Lakes District Council commissioned Wyatt (a consulting firm), to prepare two reports on job evaluation and planning. The contract between Wyatt and the Council contained a confidentiality clause. A local newspaper requested a copy of the reports. The Council refused that request on commercial grounds,¹⁴ and the newspaper complained to the Ombudsman.

The Ombudsman's investigation concluded that the reports should be released with redactions on commercial and confidentiality grounds,¹⁵ in order to protect detailed information about Wyatt's methodology, in which it had a proprietary interest. The Ombudsman recommended partial release.

Wyatt sought judicial review of the Ombudsman's decision, and the Council's decision not to veto the Ombudsman's recommendation. Wyatt claimed that it was outside the Ombudsman's authority to recommend release of the reports in breach of the obligation of confidence contained in its contract with the Council. The Court found that this argument amounted to a proposition that:

... it is outside the legal powers of the Chief Ombudsman to fulfil his statutory duties if individuals enter into a contract using language that renders the Act nugatory. The

¹³ [1991] 2 NZLR 180.

¹⁴ See s 7(2)(b)(ii) LGOIMA (equivalent of s 9(2)(b)(ii) OIA).

¹⁵ See s 7(2)(c) LGOIMA (equivalent of s 9(2)(ba) OIA).

*proposition has only to be stated in that way to demonstrate its falseness. There cannot be allowed to develop in this country a kind of commercial Alsatia beyond the reach of a statute. **Confidentiality is not an absolute concept admitting of no exceptions.** ... It is an **implied term** of any contract between individuals that **the promises of their contract will be subject to statutory obligations.** At all times the applicant would or should have been aware of the provisions of the Act and in particular s 7 [s 9 of the OIA], which effectively **excludes contracts on confidentiality preventing release of information.** (Emphasis added).*

Information obtained under statutory compulsion

Section 9(2)(ba) also applies to information that ‘*any person has been or could be compelled to provide under the authority of any enactment*’.

An ‘enactment’ is an Act of Parliament or legislative instrument made by Order in Council.¹⁶

The enactment must **require** the person to provide the information to the agency, or nominated person within the agency (often the Chief Executive or Secretary), or **authorise** the agency or nominated person to require that information.

The information does not actually have to have been compelled. It is enough that it could have been compelled. ‘*Compelled*’ means the person had (or would have had) no choice but to provide the information.

Agencies must be able to identify the specific enactment, and explain how the person was (or could have been) compelled under the authority of that enactment to provide the information.

Examples of cases where the information was or could have been compelled under an enactment include [403770](#) (Section 189 of the Fisheries Act 1996), [347590](#) (section 47G of the Fair Trading Act 1986), and [W41711](#) (section 67 of the Securities Act 1978, now repealed).

¹⁶ See the definition of ‘legislative instrument’ in [s 4](#) Legislation Act 2012. Before 5 August 2013, legislation of this type was known as ‘regulations’.

The first limb—prejudice to future supply

Having established that the information is ‘[confidential](#)’, agencies can consider whether the first or [second limb](#) of section 9(2)(ba) applies.

The first limb (section 9(2)(ba)(i)) applies when release 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.

‘*Similar*’ means having a significant or notable resemblance or likeness, in form, character or quantity.¹⁷ The connection between the past and future information should not be too tenuous.¹⁸

For this limb to apply, agencies must be able to answer the following two questions in the affirmative:

1. Would release be likely to prejudice the future supply of similar information, or information from the same source?
2. Is the future supply of the information in the public interest?

Would release be likely to prejudice the future supply of information?

Agencies must be satisfied that release would result in some diminution of the quantity or quality of information that would be provided in future.

A mere assertion to this effect is insufficient. There must be a **serious or real and substantial risk** of such prejudice arising¹⁹—not one that is purely speculative.

The following considerations may be relevant.

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| The nature and content of the information | <ul style="list-style-type: none"> • The likelihood of prejudice to the future supply of information depends, in part, on the nature and content of the information. • Disclosure of information that is genuinely sensitive (e.g. for personal or commercial reasons) may be more likely to prejudice future supply (347590, 336970 and W50854). • Disclosure of raw material that is attributed or potentially attributable to confidential sources may also be more likely to prejudice future supply (433532 and 423115). • Disclosure of final reports, or high-level, aggregate, or |
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¹⁷ Oxford English Dictionary, www.oed.com.

¹⁸ Eagles, I, Taggart, M, and Liddell, G. *Freedom of Information in New Zealand*. Oxford; Oxford University Press, 1992 at 445.

¹⁹ See [note 7](#) at 391.

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| | <p>statistical information that is not attributed or potentially attributable to confidential sources may be less likely to prejudice future supply (458292, 423115, 416641 and 346787).</p> <ul style="list-style-type: none"> • It has already been noted that publicly available information may not attract a duty of confidence (see Information of a confidential nature). Disclosure of such information may also be less likely to prejudice future supply (446128 and 416641). • Disclosure of information that is not at all sensitive, or is 'benign' or trivial, may be less likely to prejudice future supply (431322, 418189, 302561 & 302600 and 174721). (Trivial information may also not attract a duty of confidence.²⁰) |
| The third party's views | <ul style="list-style-type: none"> • Does the third party consent to release of the information? Would they continue to supply similar information in future if it was released? • If the third party consents, release is unlikely to prejudice the future supply of information (see 499319, 431322, 342959 & 341270). • Concerns about how disclosure might be perceived by other potential sources can usually be addressed by releasing an explanatory statement that the information was released with the third party's consent. • See Consulting third parties below for more information. |
| Potential detriment to the third party | <ul style="list-style-type: none"> • Would release have a detrimental impact on the third party (e.g. threat to health or safety, financial loss, or exposure to ridicule or public criticism)? If so, release may be more likely to prejudice future supply. |
| The impact on the relationship between the parties | <ul style="list-style-type: none"> • How would release impact on the relationship between the parties? To what extent does the continued free flow of information depend on a relationship of trust and confidence between the parties? |
| Requirements for continued supply | <ul style="list-style-type: none"> • Where there is a statutory requirement for the information to be supplied, or an ability to obtain that information under statutory compulsion, this may be less likely to prejudice future supply. |

²⁰ In the 'Spycatcher' case (*Attorney-General v Guardian Newspapers Ltd (No 2)* [1990] 1 AC 109), the UK House of Lords commented that 'the duty of confidence applies neither to useless information, nor to trivia'.

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| | <ul style="list-style-type: none"> • However, it is important to remember that just because information is required or can be compelled, this does not mean that its future supply is guaranteed and cannot be prejudiced by release of current information (403770 and 347590). • Agencies may be reliant on supplier goodwill to receive information that is complete and accurate, particularly where their ability to verify the information is limited. Release could prompt suppliers to conceal information or provide inaccurate information, or to supply only the bare minimum legally required. • Agencies may also have valid reasons to prefer voluntary compliance over legal compulsion. Resort to legal compulsion can take time and resources, making the ability to obtain information voluntarily in certain circumstances important to enable the effective discharge of an agency's functions. • Agencies should ask themselves: <ul style="list-style-type: none"> - To what extent can they verify the information supplied? - Could they tell if someone provided information that was inaccurate or incomplete? - How reliant are they on receiving more information than suppliers can be required or compelled to provide under statute? |
| Incentives for continued supply | <ul style="list-style-type: none"> • Is the information required in order to gain some benefit or advantage from the agency e.g. the awarding of grants, licences, or contracts for the supply of goods or services? If so, the incentive to continue providing the information might outweigh the inhibition that would otherwise be caused by release (see 446128, 442484, 416641 and 346787). |
| The passage of time | <ul style="list-style-type: none"> • How much time has elapsed since the information was received? Information may lose its relevance and sensitivity over time. Release of such information may be less likely to prejudice future supply. |

Is future supply of the information in the public interest?

An agency must also be able to establish that there is a 'public interest' in the future supply of the information.

The concept of the public interest is very broad. It is not defined in the legislation, but it is

broadly equivalent to the concept of the public good, or what is in the best interests of society.

As a general proposition, it is accepted that an agency's ability to discharge its functions effectively is in the public good. Therefore, the future supply of information will be in the public interest if it materially enhances the agency's ability *'to carry out its statutory function or some other lawful public purpose'*²¹ ([350528](#), [347590](#), [336970](#), [300012](#), [174056](#) and [W41711](#)).

Ombudsmen have also found that it is in the public interest for:

- law enforcement agencies to receive information necessary for the detection, investigation and prosecution of offences ([395835](#), [396111](#) & [397211](#), [336970](#) and [291898](#));
- regulators to receive information necessary for the effective monitoring and regulation of the relevant industry ([403770](#), [330879](#) and [W33681](#));
- agencies to receive information necessary to enable effective investigations and audits ([376156](#), [285985](#), [177346](#), [174281](#), [W55001](#), [W39272](#) & [W39579](#) and [W33853](#));
- agencies to receive information that enables them to inquire into allegations against staff ([321631](#), [316020](#) and [180058](#));
- agencies to receive information that allows them to make informed decisions on the awarding of public sector contracts ([416641](#) and [410754](#));
- agencies to be able to seek and receive information in response to staff surveys ([433532](#) and [423115](#)).

In assessing whether the future supply of information is in the public interest, it may be helpful to consider the following questions:

- What is the agency trying to do?
- Why does it need the information?
- How much and what calibre of information does the agency need to do its role successfully?
- Why is that in the public interest?

The second limb—other damage to the public interest

Having established that the information is '[confidential](#)', agencies can consider whether the [first](#) or second limb of section 9(2)(ba) applies.

The second limb (section 9(2)(ba)(ii)) applies when release would be likely to *'otherwise*

²¹ See [note 18](#) at 449.

damage the public interest’.

A mere assertion to this effect is not sufficient. There must be a **serious or real and substantial risk** of such damage arising²²—not one that is purely speculative.

Release must ‘*damage the public interest*’ in **some way other than through** prejudice to the future supply of information (which is addressed in the [first limb](#) of this withholding ground).

It should also ‘*damage the public interest*’ in a way that is not reflected in the other withholding grounds (otherwise it would be more appropriate to rely on those other withholding grounds).

That aside, the concept of the ‘*public interest*’ is very broad, and the ways in which it might potentially be damaged through release of official information are not closed. ‘*Public interest*’ is not defined in the legislation, but it is broadly equivalent to the concept of the public good, or what is in the best interests of society.

It is not possible to list exhaustively the ways in which the public interest may be damaged through release of confidential information. However, some of the ways it has been accepted as happening in the past are set out below.

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| Damage to the public interest in encouraging parties to settle their disputes without resorting to litigation, through releasing details of confidential settlement negotiations, mediation and arbitration, and ‘without prejudice’ concessions | General: 502663 , 480675 , 382295 , 297685 , 287288 , 174888 and W42207 & W42212 Employment-related: 286335 , 176475 and W35268 , but compare with 458292 |
| Damage to the public interest in fair and effective investigations and inquiries, through release of draft findings that may not reflect the final conclusions, and submissions by affected third parties | 173840 and 304081 See also The OIA and draft documents , page 15 |
| Damage to the public interest in maintaining good working relationships between agencies and their staff, through release of confidential employment matters | 180058 , 321631 and 173291 |
| Damage to the public interest in effective government decision making processes through premature disclosure of ‘deliberative material’ ²³ which is still under active consideration, but cannot properly be withheld under section 9(2)(f)(iv) of the OIA | 285265 , 167454 , A9190 and A9003 |
| Damage to the public interest in effective government procurement, by deterring potential suppliers from participating in public tender processes | 454285 , 176647 and 165605 |

²² See [note 7](#) at 391.

²³ Opinions, advice, and recommendations to inform a decision making process.

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| Damage to the public interest by undermining public trust in the Police, which is necessary to support the Police in carrying out their law enforcement role | 389625 , 342959 & 341270 and 291898 |
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Damage to the public interest does not include damage to the agency's reputation or negative publicity ([423115](#)).

Consulting third parties

It is a good idea to consult the other party to the confidential relationship, so that their views can be taken into account in reaching a decision, and to let them know before any information is actually released.

The third party's views are relevant to the agency's decision whether to withhold or release, but they are not determinative. The third party cannot veto disclosure. The agency must consider what the third party has to say and reach its own independent view on the applicability of one or both limbs of the confidentiality withholding ground, and the countervailing public interest in release.

Our [Consulting third parties](#) guide has more information about when and how to consult third parties, including template consultation letters. In addition to the general matters covered in that guide, it can be helpful to get the third party's views on:

- whether the information is (still) of a confidential nature;
- whether they understood that the information would be held in confidence;
- the extent to which they relied on this understanding when agreeing to supply the information or participate in the relevant process;
- how release would impact on their willingness to supply similar information, or participate in similar processes, in future; and
- whether release would have any other negative consequences.

Agencies should keep a record of their consultation with third parties, including who was consulted, whether they consented or objected to release, and any reasons provided. This information will be helpful if the Ombudsman ends up investigating the agency's decision. If the agency does not consult the third party concerned, the Ombudsman may decide to do so.

The public interest in release

As noted above, section 9(2)(ba) is subject to a '*public interest test*' meaning that, if it applies, agencies must consider the countervailing public interest in release. If the public interest in release outweighs the need to withhold, the information must be released.

Some public interest considerations that may be relevant in this context include:

- Accountability for how agencies make decisions and perform their functions, including decisions to award public sector contracts ([416641](#), [291898](#)).
- Promoting transparency and public understanding of the way external inputs have influenced government policy and decision making processes ([302561](#) & [302600](#) and [300012](#)).
- Transparency and accountability for how agencies have handled things when something goes wrong—for example, when allegations are made against staff ([321631](#), [316020](#), [286335](#), [180058](#) and [173291](#)).
- Accountability for expenditure of public money, including expenditure involved in settling legal disputes ([480675](#) and [382295](#)).
- Ensuring procedural fairness and natural justice in the investigation of complaints ([336970](#) and [W33853](#)).

More detailed guidance on these and other considerations, and factors that can affect the weight of the public interest in release, is available here: [Public interest—A guide to the public interest test in section 9\(1\) of the OIA and section 7\(1\) of the LGOIMA](#).

Other ways of getting the balance right

Before refusing a request, it is important to consider whether there are any other ways to strike the right balance between the need to withhold and the public interest in release. Some of the common ways are discussed below, with case examples.

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| <p>Key documents: While it may not always be possible, release of final reports, which effectively summarise the methodology and outcome of a particular process, can be an important way of protecting the confidential inputs, while meeting the public interest in release. If the full report cannot be released, releasing the executive summary might be an option.</p> | <p>376156, 416641</p> |
| <p>Release in part: Not all of the information at issue may be subject to an obligation of confidence, or likely to prejudice the supply of similar information in future, or damage the public interest in some other way. Sometimes the harm in release can be mitigated by redacting names and information that could be attributed to confidential sources.</p> | <p>433532, 423115, 416641, 342959 & 341270, 285985, W55001, W41711</p> |

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| Key documents: While it may not always be possible, release of final reports, which effectively summarise the methodology and outcome of a particular process, can be an important way of protecting the confidential inputs, while meeting the public interest in release. If the full report cannot be released, releasing the executive summary might be an option. | 376156 , 416641 |
| Summary information: Where partial release or release with redactions is not an option, release of summary information may be another way to strike the right balance. What should be included in a summary will depend on the information at issue and the circumstances of the particular case. However, summaries may usefully include a description of the issue, the process followed, the findings and recommendations, action taken, and total costs incurred. Summaries must provide a fair and accurate reflection of the information at issue. | 502663 , 480675 , 442484 , 416641 , 316020 , 291898 , 286335 , 180058 , 173291 |

A case study in striking the right balance

Case [416641](#) provides a good example of how to strike the right balance between the need to withhold and the public interest in release. In that case, the requester wanted information about Department of Corrections tender processes, which included a due diligence report, site visit reports and reference checks.

Due diligence report

The Chief Ombudsman found this report could be released with redactions to specific comments provided in confidence by overseas officials, and detailed operational information provided by the supplier. There was no need to withhold general and unattributed references to information that had been provided, or information that was already in the public domain. Releasing general information provided by the supplier would not prejudice the future supply of confidential information *‘given the commercial incentives for the companies to provide assurances to the Department’*. There was also a public interest in disclosure of the steps taken by the Department to satisfy itself regarding the supplier’s performance.

Site visit reports

The Chief Ombudsman found the executive summaries of the reports should have been released. It was necessary to withhold the parts of the reports that revealed information obtained in confidence during the site visits, but the executive summaries were *‘essentially internal Departmental communications’*, which did not reveal any *‘confidential operational details’*. There was also a strong public interest in release of the executive summaries to promote accountability for the Department’s decision to award the contract to the supplier.

Reference checks

The Chief Ombudsman accepted that section 9(2)(ba)(i) applied to evaluative material supplied during reference checks. If this material were released, it would be likely to

deter referees from providing full and complete information in the future, which would hinder the Department's ability to make informed decisions about the risks of entering into commercial arrangements.

However, there was also a strong public interest in the release of information to promote public confidence that appropriate reference checks had been undertaken. This public interest was heightened by concerns about the supplier's performance. The Chief Ombudsman concluded that summary information should have been released to show *'that references were obtained, the number of references, the position of the referees, and the general nature of the references'*.

Further information

[Appendix 1](#) has a list of relevant case notes and opinions.

There is also a [work sheet](#) to help you decide whether section 9(2)(ba) provides good reason to withhold official information.

Other related guides include:

- [The OIA for Ministers and agencies](#) and [The LGOIMA for local government agencies](#)
- [Public interest](#)
- [Consulting third parties](#)
- [The OIA and draft documents](#)
- [The OIA and the public tender process](#)

You can contact our staff with any queries about the confidentiality withholding ground on info@ombudsman.parliament.nz or freephone 0800 802 602. Do so as early as possible to ensure we can answer your queries without delaying your response to an OIA request.

Appendix 1. Relevant case notes and opinions

In addition to those listed below, there are case notes and opinions in relation to section 9(2)(ba) and:

- draft investigation reports: [Request for draft reports prepared by EY on Information Services](#), [Request for draft venue development strategy](#), [Request for draft investigation report into spending by Mayor Len Brown](#), [Request for draft audit report in relation to hospice](#), [Request for draft investigation report into GRSA outbreak at Wellington Hospital's neonatal unit](#); and
- tender-related information: [Request for business plan for Christchurch Convention and Exhibition Centre](#), [Request for due diligence report, site visit reports and reference checks](#), [Request for tender submissions to replace jetty at Philomel Landing](#), [Request for information about exploration permits awarded to Anadarko Petroleum](#), [Request for documentation about 'Ageing in Place' contract](#), [Request for tender proposals, evaluation and scoring material relating to appointment of default KiwiSaver providers](#).

For more information about section 9(2)(ba) in these particular contexts, see our guides [The OIA and draft documents](#) and [The OIA and the public tender process](#).

| Case | Year | Summary |
|--------|------|--|
| 502663 | 2020 | Request for record of 'without prejudice' meeting <i>Section 7(2)(c)(ii) LGOIMA applied—obligation of confidence in respect of 'without prejudice' communications exchanged in an attempt to settle a legal dispute—release would be likely to damage the public interest in encouraging parties to settle their disputes without resorting to litigation—public interest met by release of summary information</i> |
| 499319 | 2020 | Request for email between journalist and source <i>Section 9(2)(ba)(ii) OIA did not apply—no blanket confidentiality for all communications with journalists—release with source's consent would not damage the public interest by deterring future potential sources from cooperating with journalists—no good reason to withhold—information released</i> |
| 480675 | 2019 | Request for RMA side agreement between Council and iwi <i>Section 7(2)(c)(ii) LGOIMA applied—agreement contained express obligation of confidence—release would be likely to damage the public interest in encouraging parties to settle their disputes without resorting to litigation—public interest in accountability required release of summary, including maximum financial commitment</i> |

| Case | Year | Summary |
|--------|------|---|
| 458292 | 2018 | <p>Request for information about staff grievances and allegations of bullying</p> <p>Section 7(2)(c)(ii) LGOIMA did not apply—express obligation of confidence—however release would not be likely to damage the public interest in encouraging parties to settle their disputes without resorting to litigation—W35268 distinguished—that case concerned a request for information about an identifiable out of court settlement—disclosure of high-level statistical information covering a range of settlements would not be likely to cause the same damage—information released</p> |
| 431322 | 2018 | <p>Request for emails between MP and university researchers</p> <p>Section 9(2)(ba)(i) OIA did not apply—no obligation of confidence—unsolicited information supplied on a voluntary basis with no reference to confidentiality—release of ‘benign’ information with the supplier’s consent would not be likely to prejudice the future supply of similar information—recommendation to release</p> |
| 439322 | 2017 | <p>Request for a Regional Councillor’s email and telephone communications</p> <p>Section 7(2)(c)(ii) LGOIMA applied in part – confidentiality between Councillor and journalist established – protection of the confidentiality of journalists’ sources justified as release would be likely to damage the public interest – journalist communications stored in Councillor’s personal email account was official information and subject to the LGOIMA</p> |
| 423115 | 2017 | <p>Request for the results of staff survey conducted by local authority</p> <p>Section 7(2)(c)(i) LGOIMA applied in part—release of personalised comment that could be attributed to particular individuals would be likely to prejudice the future supply of similar information—release of aggregate information that could not be attributed to particular individuals would not be likely to prejudice the future supply of similar information—it is in the public interest for agencies to be able to seek and receive information in response to staff surveys—s 7(2)(c)(ii) LGOIMA did not apply—damage to the public interest does not include damage to the agency’s reputation or negative publicity</p> |
| 418189 | 2017 | <p>Request for approved codes of ethical conduct for animal testing</p> <p>Section 9(2)(ba)(i) OIA did not apply—25 of 26 code holders had voluntarily released their codes—no obligation of confidence—release of ‘benign’ information would not be likely to prejudice the future supply of similar information—information released</p> |

| Case | Year | Summary |
|-------------------------|------|--|
| 403770 | 2017 | Request for fisheries catch reports <i>Section 9(2)(ba)(i) OIA applied—information compelled under an enactment—difficulties in monitoring compliance meant there was a strong reliance on accurate self-reporting—release would be likely to prejudice the future supply of accurate information from the commercial fishing community—it is in the public interest for the Ministry to receive information that assists with the effective management of the fisheries resource—no public interest override—good reason to withhold</i> |
| 433532 | 2016 | Request for Customs' staff engagement survey <i>Section 9(2)(ba)(i) OIA applied—express obligation of confidence—release of personalised comment that could be attributed to particular individuals would be likely to prejudice the future supply of similar information—it is in the public interest for agencies to be able to seek and receive information in response to staff surveys—public interest met by release of the remaining information from survey—good reason to withhold personalised comments</i> |
| 404843 & 407022 | 2016 | Request for text message to Prime Minister from journalist concerning ponytail pulling incidents <i>Section 9(2)(ba)(i) OIA did not apply—no obligation of confidence—unsolicited information supplied on a voluntary basis with no reference to confidentiality—no blanket confidentiality for 'off the record' communications with journalists—information released</i> |
| 330879 | 2016 | Request for influenza vaccine adverse reaction reports <i>Section 9(2)(ba)(i) OIA applied—obligation of confidence in context of doctor/patient relationship—release would be likely to prejudice the future supply of information contained in adverse reaction reports—it is in the public interest for Medsafe, as regulator, to receive information enabling it to monitor the safety of medicines—no public interest override—good reason to withhold</i> |
| 395835, 396111 & 397211 | 2016 | Request for CAA investigation report on Minister's airport security breach <i>Section 9(2)(ba)(i) OIA applied—implied obligation of confidence—release would be likely to prejudice the future supply of information from suspects and witnesses—it is in the public interest for CAA to continue to receive information that enables it to investigate potential breaches of civil aviation law—public interest in transparency and accountability had been met by partial release of the report</i> |

| Case | Year | Summary |
|--------|------|--|
| 389625 | 2015 | <p>Request for ballistic evidence report provided by Victoria Forensic Science Centre (VFSC) for David Bain trial</p> <p>Section 9(2)(ba)(ii) OIA applied—information subject to an obligation of confidence between third parties (VFSC and David Bain’s defence team)—release would be likely to prejudice the public interest in maintaining confidence in the Police as an organisation to be trusted to keep such information confidential—no public interest override—good reason to withhold</p> |
| 382295 | 2015 | <p>Request for settlement amount following unsuccessful prosecution</p> <p>Section 7(2)(c)(ii) LGOIMA applied—settlement agreement contained express obligation of confidence—release would be likely to damage the public interest in encouraging parties to settle their disputes without resorting to litigation—public interest in accountability met by release of total financial cost from prosecution</p> |
| 376377 | 2015 | <p>Request for information about appointment of public service chief executive</p> <p>Section 9(2)(ba)(ii) OIA did not apply to names of external panellists—no obligation to keep names confidential—release would not be likely to damage the public interest by deterring future potential panellists from participating in appointment processes—information released</p> |
| 347590 | 2015 | <p>Request for independent test results of product</p> <p>Section 9(2)(ba)(i) OIA applied—implied obligation of confidence—information could have been compelled under an enactment—release would be likely to prejudice timely supply of information of the quality and standard necessary for the Commerce Commission to carry out its investigative functions—it is in the public interest for the Commission to be able to perform its statutory functions effectively and efficiently—no public interest override as the Commission had provided information about the reasons for its decision to take no further action—good reason to withhold</p> |
| 346787 | 2015 | <p>Request for MOTAT organisational review</p> <p>Section 9(2)(ba)(i) OIA did not apply—obligations of confidence must be mutually understood not unilaterally imposed—obligation of confidence owed to participants in review in respect of raw or source material they supplied—however, the final report did not reveal that raw or source material—therefore release would not be likely to prejudice the future supply of similar information—no obligation of confidence owed to the consultants who conducted the review—release would not be likely to prejudice future supply of information from paid consultants—information released</p> |

| Case | Year | Summary |
|-----------------|------|--|
| 336970 | 2014 | <p>Request for interviews with potential child abuse victims</p> <p>Section 9(2)(ba)(i) OIA applied—high level of confidentiality attaches to interviews with potential child abuse victims—release would deter potential child abuse victims from participating in interviews—it is in the public interest for child protection and law enforcement agencies to continue to receive this information—no public interest override—good reason to withhold</p> |
| 180058 | 2014 | <p>Request for information about employment investigation involving officer's behaviour at a Police event</p> <p>Sections 9(2)(a) and 9(2)(ba)(i) OIA applied to information about and supplied by witnesses—implied obligation of confidence—release would be likely to prejudice the future supply of information from witnesses to alleged staff misconduct—it is in the public interest for the Police to continue to receive information that enables them to inquire into alleged staff misconduct—ss 9(2)(a) and 9(2)(ba)(i) and (ii) applied to information about and supplied by the officer—implied obligation of confidence in the employment context—release would be likely to prejudice the future supply of information from staff who are subject to disciplinary processes, and otherwise damage the public interest in maintaining good working relationships between the Police and their staff—public interest in accountability required release of summary</p> |
| 342959 & 341270 | 2013 | <p>Request for Hon John Banks' statement to the Police</p> <p>Section 9(2)(ba)(ii) OIA applied—obligation of confidence attached to suspect's statement to Police in case where no charges laid—release for purposes unrelated to investigation and prosecution, without the suspect's consent, would be likely to damage the public interest by undermining public trust in the Police, which is necessary to support the Police in carrying out their role—public interest in transparency and accountability of local government candidate donations required partial release</p> |
| 302561 & 302600 | 2013 | <p>Requests for information regarding the production of The Hobbit</p> <p>Section 9(2)(ba)(i) did not apply to 'submissions on a matter of public interest designed to persuade Ministers to adopt a particular policy stance'—Jeffries v Attorney-General [2010] NZCA 38 cited—no reference to confidentiality—no attempt to ascertain whether the information would be accepted by Ministers on that basis—claim of confidentiality appeared to have been constructed after the event—submissions were not of a sensitive nature and did not have the necessary quality of confidence—recommendation to release</p> |

| Case | Year | Summary |
|--------|------|---|
| 321631 | 2012 | <p>Request for investigation report relating to a personal grievance</p> <p>Sections 9(2)(a) and 9(2)(ba)(i) and (ii) OIA applied—privacy and confidentiality in employment context—express obligation of confidence to parties and other contributors—release would be likely to prejudice the future supply of information needed to deal with personal grievances appropriately, and otherwise damage the public interest in maintaining good working relationships between the Department and its staff—public interest in transparency and accountability when allegations levelled against very senior staff—no public interest override as SSC investigation already published—good reason to withhold</p> |
| 316020 | 2012 | <p>Request for information about employment investigation involving misuse of letterhead by Police officer</p> <p>Sections 9(2)(a) and 9(2)(ba)(i) OIA applied—privacy and confidentiality in employment context—express or implied obligation of confidence—release would be likely to prejudice the future supply of information from witnesses to alleged staff misconduct—it is in the public interest for the Police to continue to receive information that enables them to inquire into alleged staff misconduct—public interest in accountability required release of summary</p> |
| 300012 | 2012 | <p>Request for online discussion group messages</p> <p>Section 9(2)(ba)(i) OIA applied—express obligation of confidence—release posed a real and substantial risk that the Ministry would be denied ongoing access to the New Zealand Tobacco Control Action Network—ongoing access was in the public interest because it helped the Ministry to develop tobacco-related policy and advice—strong public interest in knowing the provenance of public policy development—however, this was a general request for all messages not one for information obtained and utilised in the development of a particular policy—no public interest override in these circumstances—good reason to withhold</p> |
| 297685 | 2012 | <p>Request for ‘without prejudice’ communications</p> <p>Section 7(2)(c)(ii) LGOIMA applied—obligation of confidence in respect of ‘without prejudice’ communications exchanged in an attempt to settle a legal dispute—release would be likely to damage the public interest in encouraging parties to settle their disputes without resorting to litigation—public interest had been met by release of summary information</p> |
| 177346 | 2011 | <p>Request for staff interview records</p> <p>Section 9(2)(ba)(i) OIA applied to staff interview records—implied obligation of confidence—release would be likely to prejudice the future supply of information to auditors—it is in the public interest for staff members to cooperate with audits—no public interest override—good reason to withhold</p> |

| Case | Year | Summary |
|--------|------|--|
| 291898 | 2010 | <p>Request for information about Police investigation into complaint against Minister</p> <p><i>Section 9(2)(ba)(i) and (ii) applied to witness statements—implied obligation of confidence—release would be likely to prejudice the future supply of information from witnesses—it is in the public interest for Police to continue to receive information that enables them to investigate potential criminal offending—release would be likely to damage the public interest by undermining public trust in the Police, and their ability to enforce the law—public interest in accountability required release of summary information</i></p> |
| 287288 | 2010 | <p>Request for information about Half Moon Bay Marina arbitration</p> <p><i>Section 7(2)(c)(ii) LGOIMA applied—obligation of confidence under Arbitration Act 1996—release would be likely to damage the public interest in maintaining the integrity of the arbitral process, and reduce the effectiveness of arbitration as a means for resolving disputes—no public interest override—good reason to withhold</i></p> |
| 286335 | 2010 | <p>Request for information about senior employee's departure and personal expenses</p> <p><i>Section 9(2)(a) OIA applied—privacy and confidentiality in employment context—s 9(2)(ba)(ii) OIA applied—settlement agreement contained express obligation of confidence—release would be likely to damage the public interest by making it more difficult to settle complex employment disputes—public interest in accountability required release of summary</i></p> |
| 174281 | 2010 | <p>Request for all information about an audit</p> <p><i>Section 9(2)(ba)(i) OIA applied to staff interview records—implied obligation of confidence—release would be likely to prejudice the future supply of information to auditors—it is in the public interest for staff members to cooperate with audits—public interest generally met by disclosure of final audit reports—good reason to withhold staff interview records—availability of final audit report not determined as complaint withdrawn</i></p> |
| 285985 | 2010 | <p>Request for information about investigation of ECan's performance</p> <p><i>Section 9(2)(ba)(i) OIA did not apply to interview notes in their 'totality'—however, it applied to names and identifying details—express obligation of confidence—release would be likely to prejudice the future supply of similar information—it is in the public interest for the Minister to be able to obtain honest, free and frank reviews on the performance of local government—section 9(2)(ba)(i) did not apply to unsolicited written submission that had previously been circulated to regional mayors—Jeffries v Attorney-General [2010] NZCA 38 cited—information released with redactions to names and identifying details</i></p> |

| Case | Year | Summary |
|--------|------|--|
| 285265 | 2010 | Request for information relating to Whānau Ora <i>Section 9(2)(ba)(ii) OIA applied—obligation of confidence attached to draft Whānau Ora Taskforce report while under consideration—release would be likely to damage the public interest in the orderly and effective conduct of government decision making processes—no public interest override—good reason to withhold</i> |
| 178767 | 2009 | Request for Hazardous Activities and Industries List <i>Section 7(2)(c)(i) LGOIMA did not apply—information obtained from publicly available sources was not subject to an obligation of confidence—information released</i> |
| 176475 | 2008 | Request for information about severance payment <i>Section 9(2)(ba)(ii) OIA applied— settlement agreement contained express obligation of confidence—release would be likely to damage the public interest by making it more difficult to settle complex employment disputes—no public interest override—good reason to withhold</i> |
| 174888 | 2007 | Request for notes of mediation meeting <i>Section 9(2)(ba)(ii) OIA applied—confidentiality of communications in connection with a mediation—release would be likely to damage the public interest in encouraging parties to settle their disputes without resorting to litigation—no public interest override—good reason to withhold</i> |
| 174721 | 2007 | Request for railway operator's policies and procedures provided to Police <i>Section 9(2)(ba)(i) OIA did not apply—release of relatively straightforward practice and procedure documents would not be likely to prejudice the future supply of similar information—public interest in releasing information to victim that goes to causes of accident—information released</i> |
| 174056 | 2007 | Request for information about Children's Commissioner investigation <i>Section 9(2)(ba)(i) OIA applied to records of interviews—implied obligation of confidence—release would be likely to prejudice the future supply of information by interviewees—it is in the public interest for interviewees to be completely candid and cooperative, as this better enables the Children's Commissioner to discharge their statutory functions—no public interest override—good reason to withhold</i> |

| Case | Year | Summary |
|--------|------|---|
| 167454 | 2007 | Request for consultant's report on financial impact of electricity lines regulation <i>Section 9(2)(ba)(ii) OIA applied—obligation of confidence attached to consultant's advice to Commerce Commission while under consideration—release would be likely to damage the public interest in the orderly and effective conduct of the Commission's statutory decision making process—no public interest override—good reason to withhold</i> |
| W55001 | 2007 | Request for information about serious and sentinel event reports <i>Section 9(2)(ba)(i) OIA applied in part—information subject to an express obligation of confidence—release in full would be likely to prejudice the future supply of information from medical staff—it is in the public interest for the review process to function effectively—future supply can be protected by redaction of identifying details—information released in part</i> |
| 173291 | 2006 | Request for information about employment investigations involving social workers <i>Section 9(2)(ba)(ii) OIA applied—implied obligation of confidence in employment context—release would be likely to damage the public interest in maintaining good working relationships between the Department and its staff—public interest in accountability required release of expanded summary</i> |
| 165605 | 2004 | Request for bioequivalence studies and dissolution data <i>Section 9(2)(ba)(ii) OIA applied—information subject to an express obligation of confidence—release would be likely to damage the public interest by deterring international pharmaceutical companies from entering the New Zealand market and restricting the availability of effective and affordable drugs to consumers—no public interest override—good reason to withhold</i> |
| W50854 | 2004 | Request to Board of Trustees for 15 year old daughter's statements alleging sexual harassment by teacher aide <i>Section 9(2)(ba)(i) OIA applied—information subject to implied obligation of confidence—release would be likely to prejudice the future supply of information from students in a similar position—it was in the public interest that students not feel constrained from providing similar information to the school in the future—no public interest override—good reason to withhold</i> |
| A9190 | 2002 | Request for draft state highway route options <i>Section 9(2)(ba)(ii) OIA applied—obligation of confidence attached to draft state highway route options while under consideration—release would be likely to damage the public interest in the orderly and effective conduct of government decision making processes—no public interest override—good reason to withhold</i> |

| Case | Year | Summary |
|-------------------------|------|---|
| W41711 | 2001 | Request for Securities Commission investigation report <i>Section 9(2)(ba)(i) OIA applied in part—information could have been compelled under section 67 of the Securities Act 1978—release of information already in the public domain would not prejudice future supply—release of remaining information would be likely to prejudice the future supply of information from companies—future supply in the public interest because it would enable the Commission to effectively carry out its statutory investigative functions—no public interest override—report released in part</i> |
| A9003 | 2001 | Request for DHB draft annual plan <i>Section 9(2)(ba)(ii) OIA applied—obligation of confidence attached to draft DHB annual plan while under consideration—release would be likely to damage the public interest in the orderly and effective conduct of government decision making processes—no public interest override—good reason to withhold</i> |
| W39272 & W39579 | 1999 | Request for report of interviews <i>Section 9(2)(ba)(i) OIA applied—information subject to implied obligation of confidence—consent to disclosure of the information to a limited class of persons for a limited purpose could not be seen as total waiver of confidentiality—release would be likely to prejudice the future supply of information from interviewees—future supply in the public interest because it would enable the effective investigation of possible judicial misconduct—public interest met by disclosure of information in open court—good reason to withhold</i> |
| W42207 & W42212 | 1999 | Request for details of compensation for breach of privacy <i>Section 9(2)(ba)(ii) OIA applied—information subject to express obligation of confidence—release would be likely to damage the public interest in encouraging parties to settle their disputes without resorting to litigation—no public interest override—good reason to withhold</i> |
| W38403, W39515 & W39584 | 1998 | Request for full internal report of health care <i>Section 9(2)(ba)(i) OIA applied to information provided by patient—obligation of confidence in context of doctor/patient relationship—release would be likely to prejudice the future supply of information from the patient—future supply in the public interest to enable effective ongoing treatment—s 9(2)(ba)(i) OIA also applied to record of confidential interviews with staff—public interest met by release of summary information—no public interest override—good reason to withhold</i> |

| Case | Year | Summary |
|--------|------|--|
| W35268 | 1996 | Request for details of out-of-court settlement of a personal grievance <i>Section 9(2)(ba)(ii) OIA applied—information subject to express obligation of confidence—release would be likely to damage the public interest in encouraging parties to settle their disputes without resorting to litigation—no public interest override—good reason to withhold</i> |
| W33681 | 1996 | Request for list of all strategic goods exported from New Zealand <i>Section 9(2)(ba)(i) OIA applied—information subject to express obligation of confidence—release would be likely to prejudice the future supply of information from applicants—future supply in the public interest because it would enable effective discharge of regulatory functions—no public interest override—good reason to withhold</i> |
| W35177 | 1996 | Request for research data held by Crown Research Institute <i>Section 9(2)(ba)(i) OIA applied—information subject to express obligation of confidence—release would be likely to prejudice the future supply of information from research participants—future supply in the public interest because it would enable the conduct of research programmes—no public interest override—good reason to withhold</i> |
| W33853 | 1995 | Request for submissions made by ‘interested parties’ on Preliminary Accident Report <i>Section 9(2)(ba)(i) OIA applied—information subject to express obligation of confidence—release would be likely to prejudice the future supply of information from interested parties—future supply in the public interest because it would enable the effective investigation of accidents and incidents—no public interest override on natural justice grounds—good reason to withhold</i> |
| W3043 | 1993 | Request for name of person who made statement to reporter <i>Section 9(2)(ba)(ii) OIA applied—implied obligation of confidence in respect of journalistic sources—release would be likely to damage the public interest in provision of credible news and current affairs coverage—no public interest override—good reason to withhold</i> |