

## Exercise of discretion to refuse request for personal information not unreasonable

<b>Legislation</b>	Ombudsmen Act 1975, Tax Administration Act 1994, Privacy Act 2020
<b>Agency</b>	Inland Revenue
<b>Ombudsman</b>	Peter Boshier
<b>Case number(s)</b>	538720
<b>Date</b>	21 July 2022

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*Complainant requested personal information from Inland Revenue – information at issue was provided confidentially to Inland Revenue by a third party – Inland Revenue refused the request under s18 of the Tax Administration Act 1994 as the information was ‘sensitive revenue information’ – Commissioner exercised their discretion not to release the information to the person the information was about – release would adversely affect the integrity of the tax system – under the Ombudsmen Act 1975 the Chief Ombudsman investigated the Commissioner’s exercise of discretion and found the decision was not unreasonable*

### Background

The complainant made a request for information about themselves that they believed had been provided to Inland Revenue (IR) by a third party. IR provided a summary of the information it had received but refused to provide a full copy of the information, or details of who provided it, under section 18 of the Tax Administration Act 1994 (TAA).

### Investigation

Requests for personal information about an individual are generally considered under the Privacy Act 2020, and complaints about responses to such requests are dealt with by the Privacy Commissioner. However, section 18 of the TAA overrides the Privacy Act. This meant that while the information requested was personal information about the requester, it was the TAA that governed the disclosure of this information, not the Privacy Act. The Privacy Commissioner agreed that the requested information was caught by section 18 of the TAA.

Under the Ombudsmen Act 1975 (OA), an Ombudsman can investigate complaints about an agency's decisions, acts or omissions. Revenue information is required to be kept confidential, although IR does have discretion to release information in certain circumstances.<sup>1</sup> In this case, the Ombudsman's role was to investigate whether IR acted unreasonably in exercising its discretion not to release the information at issue to the requester.

IR considered the information at issue to be '*sensitive revenue information*'. Information is considered '*sensitive revenue information*' if it can likely identify an individual, or would likely be regarded as private or confidential, or the release of that information could cause harm or prejudice to the person whom it is about.<sup>2</sup> IR stated it is legally obligated to maintain the confidentiality of all sensitive revenue information, and must not disclose it unless it is legally permitted to do so. The Ombudsman accepted that the information was '*sensitive revenue information*' and that IR was required to keep it confidential under section 18 of the TAA.

In certain circumstances<sup>3</sup>, disclosure of '*sensitive revenue information*' is permitted. The Ombudsman agreed that the only permitted disclosure section relevant to the request was section 18G of the TAA. This section states that confidentiality does not apply where '*sensitive revenue information*' is being disclosed to the person the information is about. The Commissioner can release such information but only if they are satisfied that the information is readily available within IR, and that release is reasonable and practicable.<sup>4</sup>

IR considered that the discretion not to release the information at issue to the requester was appropriately exercised, as the Commissioner was not satisfied it was reasonable, practicable, or appropriate, to give anonymous information to the person it concerned. IR maintained that such a disclosure would adversely affect the integrity of the tax system because of the way in which IR uses confidential and/or anonymous information that is provided to it.

The Ombudsman accepted that the Commissioner was legally required to protect the integrity of the tax system and that disclosure of confidential and/or anonymous information would damage the integrity of the tax system, and would prejudice IR's ability to maintain tax law. The Ombudsman observed that IR actively assured people of confidentiality and anonymity, through numerous references on its website, and anonymous reporting channels (telephone, online or by posting a letter).

The Ombudsman considered that these assurances provide informants with a level of confidence that the information they supply will be protected, and that if that confidence was lost, people might become more hesitant to provide information to IR in the future (anonymously or not) due to concern that it may later be disclosed.

The Ombudsman also accepted that from this case, there could be a possible reduction in the quality and quantity of information supplied to IR, which would adversely impact the '*public perception*' of the integrity of the tax system, and people who are not complying with their

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<sup>1</sup> See section 18 of the TAA.

<sup>2</sup> See section 16C(3) of the TAA.

<sup>3</sup> See sections 18C to 18J of the TAA.

<sup>4</sup> See clause 15 of Part B of Schedule 7 of the TAA.

*'responsibilities ... to comply with the law'* could go undetected. As a result, IR's ability to undertake its statutory functions when it comes to the collection of tax revenue would be hampered.

The Ombudsman noted that while IR did not disclose the exact information to the requester, it did provide a summary, which he observed was a suitable balance between giving the requester information about themselves, and protecting the integrity of the tax system.

## Outcome

The Ombudsman formed the opinion that in this case, IR did not act unreasonably in exercising its discretion under the TAA to refuse the request for information.

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