

## Inland Revenue refusal to provide tracing information for overseas borrowers justified

<b>Legislation</b>	Official Information Act 1982, s 18(c)(i), Tax Administration Act 1994, ss 6(1), 16B(1), 16C(2), 18(3)
<b>Agency</b>	Inland Revenue
<b>Ombudsman</b>	Peter Boshier
<b>Case number(s)</b>	551852
<b>Date</b>	February 2023

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*Complainant requested information from Inland Revenue about how it traces student loan overseas – Inland Revenue refused the request under s 18(c)(i) of the Official Information Act 1982 as release would be contrary to the provisions of s 18(3) of the Tax Administration Act 1994, which gives the Commissioner discretion to withhold revenue information – Chief Ombudsman considered the discretion appropriately exercised and refusal justified*

### Background

The complainant made a request for information in relation to how Inland Revenue (IR) traces student loan borrowers who are overseas.

IR provided the requester with a brief outline of several techniques which could be used to trace overseas student loan borrowers. It considered more specific information related to the internal policies and procedures used by IR should be withheld pursuant to section 18(c)(i) of the Official Information Act 1982 (OIA), on the basis that disclosure of the information would be contrary to section 18(3) of the Tax Administration Act 1994 (TAA). The requester complained to the Ombudsman about IR's decision.

### Investigation

Section 18(c)(i) of the OIA allows an agency to refuse a request if making the information available would be '*contrary to the provisions of a specified enactment*'.

The TAA makes certain information confidential and regulates its release. Section 18(3) of the TAA gives the Inland Revenue Commissioner discretion to decide whether 'revenue

information', as defined under section 16C(2) of the TAA, should be released or withheld.<sup>1</sup> Section 18(3) states:

*...the Commissioner is not required to disclose any item of revenue information if the release of the information would adversely affect the integrity of the tax system or would prejudice maintenance of the law.*

The Ombudsman accepted under section 16C(2) of the TAA that the requested information was 'revenue information' as it was held 'in connection with a revenue law' for a purpose in section 16B(1) of the TAA because the information is of an operational nature directly relating to IR's compliance methods and its ability to recover loans.

The Ombudsman also accepted that revealing information about IR's techniques for reaching customers overseas could be used to enable borrowers overseas to evade their lawful tax obligations. The Ombudsman therefore considered that the discretion under section 18(3) of the TAA was exercised appropriately as release of that information would '*adversely affect the integrity of the tax system or would prejudice the maintenance of the law*' by hindering IR's ability to carry out its compliance activities.

The Ombudsman also observed that section 6(1) of the TAA requires those tasked with tax collection and other functions under the Inland Revenue Acts to '*at all times use their best endeavours to protect the integrity of the tax system*'.<sup>2</sup> To act in a manner that it knows would likely enable some borrowers to evade their obligations would not be consistent with this obligation, and would also have a negative effect on the public perception of the integrity of the tax system.

## Outcome

The Ombudsman formed the opinion that IR was entitled to refuse the request under section 18(c)(i) of the OIA, as release of that information would be contrary to the specified enactment of section 18(3) of the TAA.

*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.*

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<sup>1</sup> [See section 16C\(2\) of the TAA](#)

<sup>2</sup> [See section 6\(1\) of the TAA](#)