

## Requests for information about decisions of school board declined as the request was vexatious

<b>Legislation</b>	Official Information Act 1982
<b>Agency</b>	School Board
<b>Ombudsman</b>	Peter Boshier
<b>Case number(s)</b>	494108
<b>Date</b>	17 September 2019

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*School Board received three requests relating to long-running issues – Two requests were refused because the information could not be made available without substantial collation; the third request was refused because the Board believed when taking history, context and intention into account, the request was vexatious – Chief Ombudsman found that it was reasonable for the Board to rely on section 18(f) for two requests – Chief Ombudsman also found it was reasonable for the Board to rely on section 18(h) for the third request, considering the context of the requester’s actions and attitude towards the Board*

### Background

A requester made three information requests to a school Board over the course of several months. Each request asked the board to address the same 30 individual points, with the second and third requests including additional points for the board’s attention.

The requests were made in the context of a long-running issue between the requester and the board, which began after a family member was dismissed from their role at the school.

The board claimed the requester was using the Official Information Act 1982 (OIA) as a means of re-litigating the matter.

The board refused the first two requests under section 18(f) of the OIA on the basis the information could not be made available without substantial collation and research. The Board

also refused the third request under section 18(h) as it considered the request to be *'vexatious'*.

The requester complained to the Ombudsman following the third refusal by the Board under section 18(h) on the basis that they did not believe it met the threshold for it to be *'plain and obvious to a reasonable person'* that the request amounted to an *'abuse of the right to access official information'*.

While the complaint to the Ombudsman only concerned the refusal of the third request, the investigation considered all three requests, given the overlapping nature of the requests.

## Investigation

### Section 18(f) – substantial collation and research

Section 18(f) of the OIA provides that a request may be refused if the information requested cannot be made available without *'substantial collation or research'*.

In the context of this case, where the third request included over 30 individual points, section 18A(2) of the OIA applies. This entitles agencies to consider multiple requests together as a single request for the purposes of refusing a request under section 18(f), providing they are about the same or similar subject matters and are received simultaneously or in short succession. It is therefore clear that a large request (or, in the circumstances set out by section 18A(2), multiple requests) may be considered *'in the round'* for the purposes of calculating the administrative burden and determining whether it amounts to substantial collation and research.

The Board identified 329 documents and 830 emails (plus attachments) relevant to the third request, which it estimated would take one person a week to search through. Some information did not exist in written form and the Board advised that meeting the request would require interviewing the relevant staff/board members.

The Ombudsman considered that the Board appropriately consulted with the complainant about its position and its inability to provide the requested information due to the amount of work it would take.

The Ombudsman saw no reason to doubt the accuracy of the board's estimation of the amount of work required to respond to the request. Bearing in mind the limited resources a Board of Trustees has, the Ombudsman considered that it would have had significant and unreasonable impact on the Board's operation.

The Board explained that, prior to refusing the requests, it considered consulting on the scope of the requests (as required by section 18B), and also considered fixing a charge or extending the timeframe for responding to the requests (as required by section 18A). However, the Board ultimately decided that both options would not have helped it meet the requests.

The Ombudsman formed the opinion the Board was entitled to refuse the request under section 18(f) of the OIA, on the basis it would require substantial collation or research.

## Section 18(h) - frivolous or vexatious

Section 18(h) provides that a request may be refused if the request is frivolous or vexatious or the requested information is trivial. For section 18(h) to apply, it is the request itself which must be frivolous or vexatious, rather than the requester.

The threshold for demonstrating that a request is frivolous or vexatious is high. A vexatious request is more than merely annoying or inconvenient and must, in essence, amount to an abuse of the right to seek official information; an abuse which would be apparent to a reasonable person.

The Ombudsman considered there were several factors in this case that, when taken as a whole, showed that the third request was vexatious.

## History and context of the request

Successive Ombudsmen have accepted that agencies may take into account the history and context of a request when determining whether a request is vexatious.

There was a history of strained relationships between the requester and the Board. A family member of the requester had been an employee at the school, but was dismissed following an employment dispute. The termination led to a period of dispute between the requester and the board.

During this period of dispute, the High Court, Court of Appeal and the regulatory body governing the requester's profession had an opportunity to consider the requester's conduct towards the Board.

The High Court described the requester's conduct towards the Board as *'provocative and disorderly'*, with the Court of Appeal described their conduct as *'extraordinarily immature'* and *'plainly designed to cause a nuisance to the board.'* The professional regulatory body said the requester had engaged in a sustained campaign against the board, took *'issue with frivolous matters in a particularly strident and forceful manner'* and was *'unnecessarily intimidating, discourteous and inappropriate.'*

In complaining to the Ombudsman, the requester claimed they was not trying to *'re-litigate'* historic issues through their OIA requests. However, a number of points in their request related to information that was only relevant to their family member's dismissal and the matters that were considered by the High Court. This added to the impression the requests were part of a campaign against the Board, indicating the third request was an abuse of the right to request official information.

The Ombudsman considered that, while it was legitimate to pursue a grievance or dispute with an agency by requesting official information, the request had gone beyond what was reasonable and had become excessive and disproportionate.

## The intention behind the request

The requester told the Ombudsman, as well as the High Court and professional regulatory body, that their intention was to ‘go public’ with their concerns about the Board.

Neither the High Court nor the professional regulatory body considered this was legitimate or reasonable behaviour for someone in the requester’s position. The professional regulatory body had noted that the complainants concerns about the legality of the Board’s actions were ‘frivolous matters.’

The High Court<sup>1</sup> has previously recognised that requests “do not have to be accompanied by reasons why the information is required.” However, the Ombudsman considered the intention behind the request was relevant in determining whether the request was vexatious.

In the circumstances, the Ombudsman was satisfied the request was a continuation of the requester’s inappropriate and unwarranted campaign against the Board, indicating the request was an abuse of the right to seek official information.

## The administrative burden of the request

The requester was well aware of the Board’s concerns that meeting the first two requests would require substantial collation and research when they made the third request. Despite this, the requester failed to make the request easier to manage than the first two and included unhelpful and potentially inflammatory comments.

In addition, the requester did not complain to the Ombudsman about the first two decisions despite being well aware of their right to do so.

The Ombudsman considered these to be additional factors that supported his view that the third request was an abuse of the right to seek official information.

## Outcome

Having considered all the issues raised, the Ombudsman formed the opinion that the Board was entitled to refuse:

- all three requests under section 18(f) of the OIA; and
- the third request under section 18(h) of the OIA.

*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> *Television New Zealand Ltd v Ombudsman* [1992] 1 NZLR 106 at 118.