

Information about generation of news articles could be withheld to protect media process

Legislation	Official Information Act 1982, ss 9(2)(ba)(i) & 9(2)(g)(i)
Agency	Radio New Zealand
Ombudsman	John Allen
Case number(s)	028552 & 033380
Date	June 2026

Decision by Radio New Zealand (RNZ) to decline requests for information about the generation of two news articles—the information was supplied to RNZ by third parties in confidence, and related to internal discussions by news staff of a free and frank nature—release would prejudice the willingness of third parties to provide information to news agencies, and would create a chilling effect where news staff would become hesitant to engage in free and frank discussions—the public interest in release was not sufficient to outweigh the need to withhold the information—Chief Ombudsman of the opinion RNZ could refuse the request under sections 9(2)(ba)(i) and 9(2)(g)(i) of the Official Information Act (OIA)

Background

In June 2025, Radio New Zealand (RNZ) published a news article.¹ Following publication, several people complained to the New Zealand Media Council (Media Council) about various aspects of the article. In September 2025, the Media Council partly upheld the complaints for a perceived lack of balance and fairness.² In October 2025, RNZ published a follow up article responding to the Media Council’s decision.³

Two people then requested information about the generation of the articles. RNZ provided some information, but withheld the majority under sections 9(2)(a), 9(2)(ba)(i) and 9(2)(g)(i) of the Official Information Act 1982 (OIA).

The requesters asked the Chief Ombudsman to investigate RNZ’s decisions.

¹ Please note the content is distressing. See here: <https://www.rnz.co.nz/news/national/563855/teenager-starves-to-death-alone-in-emergency-accommodation>.

² See here: <https://www.mediacouncil.org.nz/rulings/parker-et-al-against-radio-new-zealand/>.

³ See here: <https://www.rnz.co.nz/news/corrections/574650/rnz-responds-to-media-council-ruling-on-coverage-of-teen-s-death>.

Investigation

The information withheld fell into two broad categories:

1. 'Internal' information: RNZ's internal communications around the story.
2. 'External' information: RNZ's communications with third parties, including sources.

Internal information—section 9(2)(g)(i) of the OIA

The internal information was correspondence between RNZ staff, concerning editorial deliberations and decision-making about the content and wording of the news articles.

The Ombudsman formed the opinion section 9(2)(g)(i) of the OIA applied to this information. Subject to any stronger public interest in release, this section provides good reason to withhold information where that is necessary to:

- (g) *maintain the effective conduct of public affairs through—*
 - (i) *the free and frank expression of opinions by or between or to ... employees of any ... organisation in the course of their duty...*

The purpose of this section is to avoid prejudice to the free flow of information which is necessary to operate effectively. As set out in our guidance,⁴ the section recognises that *'the effective conduct of public affairs requires the candid and unreserved expression of opinions, and that public exposure of such information can sometimes have a chilling effect on people's willingness to express themselves openly, honestly and completely in future.'* It is not only the nature of the information which is relevant, but also the context in which it is generated. The information itself does not necessarily need to be *'free and frank'* in nature. Rather, the issue is whether its release is likely to inhibit the generation and exchange of free and frank opinions in future.

The Ombudsman considered that as a media organisation, RNZ is in a unique position compared to other publicly funded agencies, in that it has a specific statutory function to provide *'reliable, independent, and freely accessible news and information.'*⁵ This is also set out in RNZ's Charter.⁶ The release of information about RNZ's editorial deliberations and decision-making would have a clear chilling effect on the willingness of journalists, editors and senior managers to openly and robustly discuss and debate both the stories it may publish, as well as the specific content and wording of those stories. It is critical that news staff have the ability to make independent, timely, and robust editorial judgements about what to publish, in order to maintain the effective operation of the newsroom.

⁴ See here: <https://www.ombudsman.parliament.nz/resources/free-and-frank-opinions-guide-section-92gi-oia-and-section-72fi-lgoima>.

⁵ Section 8(4) of the [Radio New Zealand Act 1995](#).

⁶ See here: <https://www.rnz.co.nz/about/charter>.

In this case, the communications were generated in a very short timeframe and clearly *‘free and frank’* in nature. Given both the content of the information, and the context in which it was generated, the Ombudsman accepted it was necessary to withhold the communications to maintain the effective conduct of public affairs. He considered there is a clear need for RNZ staff to communicate in a timely, robust, and *‘free and frank’* way in order to ensure the newsroom operates as effectively as possible. If the information was released, staff would feel inhibited in their communications, which would undermine RNZ’s ability to effectively maintain and manage its function of providing timely and reliable news and information to the public.

External information—sections 9(2)(ba)(i) and 9(2)(g)(i) of the OIA

The external information was:

- communications between the reporter and the person who first brought the story to RNZ’s attention;
- communications between the reporter and the family of the person who was the subject of the news article, including sensitive medical information; and
- communications with the agencies RNZ asked to comment before publication.

The Ombudsman formed the opinion section 9(2)(ba)(i) of the OIA applied to the communications with the people involved, and section 9(2)(g)(i) of the OIA applied to the communications with agencies.

Communications with people involved

Subject to any stronger public interest in release, section 9(2)(ba)(i) provides good reason to withhold information where that is necessary to:

- (ba) protect information which is subject to an obligation of confidence ... where the making available of that 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*

In this case, the Ombudsman was satisfied the communications between the reporter and the people involved were subject to an obligation of confidence.

While each case must be considered on its merits, previous Ombudsmen have accepted there is a high degree of protection afforded to journalists’ sources. This is recognised in both legislation and common law. Section 68 of the Evidence Act 2006 explicitly recognises this expectation of confidentiality:

68 Protection of journalist sources

- (1) If a journalist has promised an informant not to disclose the informant’s identity, neither the journalist nor his or her employer is compellable in a*

civil or criminal proceeding to answer any question or produce any document that would disclose the identity of the informant or enable that identity to be discovered.

This was also considered by the High Court in *Hager v Attorney-General*,⁷ which said the confidentiality of journalist's sources is:

... justified by the need to promote the free flow of information, a vital component of any democracy.

and:

... pursuant to s 68, it is no longer for the media to establish the public interest in preserving the confidentiality of their sources. Rather, it is for the applicant for a media warrant to persuade the court that other relevant public interests in disclosure outweigh the presumptive public interest in the preservation of that confidentiality.

In this case, as well as the general confidentiality of journalist's sources, the Ombudsman considered it abundantly clear from the communications that the people involved believed their communications were confidential and wished those involved to remain anonymous.

The Ombudsman was also satisfied release of the information would prejudice the future supply of similar information, and it was in the public interest that such information continues to be supplied.

Previous Ombudsmen have recognised there is a real risk that the release of such information could prejudice the willingness of sources to provide information to news agencies in future. Sources expect and rely on confidentiality when engaging with journalists. The Ombudsman accepted that if the information was released in this case, it would fundamentally undermine this expectation of confidentiality. Future sources would become hesitant or unwilling to come forward about sensitive issues, due to a concern that the information they exchange with journalists might later be released.

The Ombudsman also accepted there is a strong public interest in maintaining the free flow of information to the media to enable it to carry out its function of providing timely and reliable news and information to the public. This has been recognised by both Parliament and the courts as a vital part of democracy in New Zealand. The continued supply of such confidential information from sources is critical to the media's ability to operate.

Communications with agencies asked to comment

The communications with agencies asked to comment were email chains between RNZ and the agencies involved in the subject matter of the articles. In these emails, RNZ provided some background context to the agencies and asked specific questions. The agencies' responses

⁷ *Hager v Attorney-General* [2016] 2 NZLR 523.

were published verbatim by RNZ in the news articles, but RNZ withheld its own communications to those agencies.

Similar to RNZ's internal communications, the Ombudsman considered the emails essentially formed part of RNZ's broader news generation and decision-making activities which he considered could be withheld under section 9(2)(g)(i) of the OIA. The emails contained a contextual summary of the background and posed a series of direct questions to each agency on relevant points. While much of the information contained in the emails was eventually published in the news articles, the communications themselves were written in a relatively free and frank manner and contained sensitive personal information which was not made public. For these reasons, the Ombudsman accepted it was necessary to withhold the communications with agencies to maintain the effective conduct of public affairs through the free and frank expression of opinions.

Public interest

Before sections 9(2)(ba)(i) or 9(2)(g)(i) provide '*good reason*' to refuse a request, it must be considered whether the need to withhold the information is outweighed by any stronger public interest in release. This is set out in section 9(1) of the OIA. Common public interest considerations in favour of release include promoting the accountability of public sector agencies, increasing the transparency of agency decision-making, and increasing public participation in decision-making.

In this case, the Ombudsman recognised there was a public interest in release to increase the transparency of RNZ's operations and promote RNZ's accountability for the stories it produces. There was also a public interest in release to ensure RNZ is fulfilling the principles under its Charter, one of which is to foster '*a sense of national identity by contributing to tolerance and understanding...*' The Ombudsman recognised the first news article had been the subject of a lot of general interest, particularly around its perceived '*balance*' and descriptive terms used.

The arguments for release in the public interest primarily related to concerns about the accuracy and balance of the article in issue, and understanding how RNZ considered such issues in the drafting of the article. However, the Ombudsman noted there was already a mechanism through which the public can raise concerns about the content of news articles—the Media Council. In this case, a number of people had already complained to the Media Council and it had investigated and partly upheld a complaint about the article. The outcome had been published on the Media Council's website and RNZ had also published a follow-up article reporting on the decision. The Ombudsman considered these factors were sufficient to meet the public interest in transparency and accountability. As such, he did not consider the public interest in release outweighed the need to withhold the information.

Outcome

For the reasons set out above, the Ombudsman formed the opinion that sections 9(2)(ba)(i) and 9(2)(g)(i) of the OIA provided good reason to withhold the information in question.

As these sections applied, it was not necessary for the Ombudsman to consider the application of section 9(2)(a)⁸ in this case.

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.

⁸ Subject to any stronger public interest in release, section 9(2)(a) applies when withholding is necessary to protect privacy.