

Exploratory use of AI to develop thinking could be withheld

Legislation	Official Information Act 1982, s 9(2)(g)(i)
Agency	Minister of Finance
Ombudsman	John Allen
Case number(s)	044446
Date	September 2026

Request for policy paper produced with help of Artificial Intelligence (AI)—paper generated in a short time as an exercise in exploring the use of AI and no decisions were made as a result—paper could be withheld to maintain the effective conduct of public affairs through the free and frank expression of opinions—interaction with AI tools to develop thinking is analogous to early ‘blues skies’ stages of developing policy advice—additional context was the early adoption of AI tools where their effectiveness and uses were still being explored—no public interest in release that would outweigh the need to withhold as the paper not used for anything beyond exploratory advice

Background

The Minister of Finance mentioned to media that she had asked Artificial Intelligence (AI) to help with a policy paper. A request was then made to the Minister for a copy of the paper.

The Minister refused the request for a copy of the paper produced by her Senior Ministerial Advisor—‘*Comparative paper – International comparisons and position advice*’ (the Paper). The request was refused under section 9(2)(g)(i) of the Official Information Act 1982 (OIA).

The requester made a complaint to Chief Ombudsman John Allen about this decision.

Investigation

The information at issue

The Paper was drafted with the assistance of Generative AI tool Microsoft Copilot. It contained advice generated after prompts to Microsoft Copilot from the Senior Ministerial Advisor. The Senior Ministerial Advisor was verbally commissioned by the Minister to carry out this task. The Minister's Office advised that no decisions were made as a result of information contained in the Paper.

Section 9(2)(g)(i)

Subject to any stronger public interest in release, information can be withheld under section 9(2)(g)(i) of the OIA where that is necessary to maintain the effective conduct of public affairs through the free and frank expression of opinions by, between or to Ministers and officials.

In the public policy making process, there can be a legitimate concern that release of information would prejudice the free and frank expression of opinions. Information generated in the early and formative stages of a process can be withheld where that is necessary to ensure the free and uninhibited exchange of ideas by or between Ministers and officials. Premature disclosure of informal and exploratory ('blue skies') thinking or discussions can inhibit the free and frank expression of opinions that is necessary for the development of robust policy advice.¹

Analysis

In this case, the Ombudsman reviewed the Paper and the related chat history with Microsoft Copilot. He agreed the Paper was free and frank opinion. It was generated in a short time frame and as an exercise in exploring the use of the AI tool. This was in the context of early adoption of AI tools, where their effectiveness and uses were still being explored.

The Microsoft Copilot chat log showed the free and frank thoughts of the Senior Ministerial Advisor as they used the tool to develop their thinking and the advice that might be provided. The end result was simply put into a 'paper' and maintained its free and frank nature.

The Ombudsman considered interaction with AI tools to develop thinking, such as through prompts and responses within the tool, are free and frank in nature and analogous to early stages in the development of advice. He also considered release of this type of exploratory thinking would have a real prejudice to the future use of such AI tools, particularly in the current context.

The effective conduct of public affairs is supported by Ministers and officials engaging with AI tools in a free and frank way to assist their work. At this early stage in the use of the technology, such engagement enables more effective identification of the ways these tools

¹ See our guide [The OIA and the public policy making process](#).

may assist. This is particularly the case where AI has been identified as a primary tool of innovation to drive efficiencies within the public sector.

In all the circumstances, the Ombudsman considered that section 9(2)(g)(i) applied to the Paper.

However, the Ombudsman also noted any final product that is generated following interaction with an AI tool and then used to assist work and decision making is less likely to be covered by section 9(2)(g)(i).

As the Ombudsman considered section 9(2)(g)(i) applied in this case, he also went on to consider whether the need to withhold the Paper was outweighed by any public interest in release.²

The key public interest considerations in favour of releasing public policy-related information are participation and accountability. The relevance and strength of these considerations will vary depending on the stage that the public policy making process is at. Accountability considerations are usually strongest after decisions have been made. Public participation considerations are usually strongest before decisions have been made, but equally, the likelihood of risk to the orderly and effective conduct of the decision-making process is higher at this time.³

In this case, as the Paper was not used for anything beyond exploratory advice, the Ombudsman did not identify any public interest in release that outweighed the need to withhold the information. While he considered there is a general public interest in the release of information about the Government's adoption and use of AI, in this case the public interest did not outweigh the need to withhold the specific information as the advice was not used for any decision-making.

There will generally be a public interest in the disclosure of information about the extent to which AI has been involved in the generation of advice and decision-making by Ministers and officials. This includes providing useful context about the use to which AI has been put when responding to requests for relevant information.

Outcome

The Ombudsman formed the opinion the Minister could withhold the Paper under section 9(2)(g)(i) of the OIA, to maintain the effective conduct of public affairs through the free and frank expression of opinions.

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.

² Section 9(1) of the OIA.

³ Above, n 1.