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Editorial

Achieving the Purposes - the Official Information Environment.

The ongoing success of any freedom of information legislation is dependent on an understanding and acceptance of the ultimate goal of promoting more open and accountable government and protecting only that information which needs to be withheld in the interests of good government.

In our legislation this ultimate goal is expressly identified in ss.4 and 5 which set out the principle and purposes of the Act. The principle of availability in s.5 requires official information held by Ministers, departments, organisations and local authorities subject to the legislation to be made available unless there is good reason under the legislation to withhold it.

S4(a) recognises that good government and respect for the law are fundamentally dependent on adequate, progressive disclosure of information to the people of New Zealand both:

- “(i) *To enable their more effective participation in the making and administration of laws and policies; and*
- (ii) *To promote the accountability of Ministers of the Crown and officials”.*

For Ministers of the Crown (in their official capacity), Government departments and organisations, State-owned enterprises, hospitals, educational institutions and local authorities who are subject to official information legislation, every item of information they generate is potentially subject to a request for access. In these circumstances, it is reasonable to expect that in generating advice, particularly written reports, officials should have regard to the “operational climate” set by ss.4 and 5, namely that it is in the public interest for official information to be accessible on request unless there is good reason why it should be protected. In structuring written reports officials should, in many cases, be able to separate factual and opinion material that can usually be released without any harm to protected interests from free and frank opinion or advice which may require protection in the circumstances of a particular case. That would allow the process of identifying material, disclosure of which may cause harm, to be done more quickly and effectively. This would thereby facilitate early disclosure of material which does not require protection.

Such structuring would be likely to enhance the purposes of the Act in two ways:-

■ It would encourage “*progressive*” release of information in a timely manner which would promote orderly dissemination and understanding by the public more readily than mass release of large volumes of material which cannot easily be absorbed and understood. In this regard, it would enable holders of information to be more active in promoting early disclosure of information.

Delayed release of information in bulk, especially where some of the material clearly might have been made available earlier, has a risk of creating a perception of unwilling release. This not only runs counter to the rationale of the Act but potentially promotes a confrontational situation between requesters and holders which undermines the co-operation envisaged in ss.12 and 13 (requesters being specific in making requests and holders giving reasonable assistance)

■ It would be likely to facilitate the administrative process of reviewing information which may require protection by narrowing down the volume of information that requires such consideration. Where resources to consider access requests are strained, it seems sensible to avoid unnecessary administrative pressure by bearing in mind the principle of availability when information is generated and not just when a request is received.

The recent Law Commission review of New Zealand’s official information legislation shows that, fifteen years on, it is standing the test of time. However, pressures from volume and complexity of requests can quickly build and threaten the reasonable operation of the legislation. When such pressure arises, as is inevitable from time to time, only a cooperative and commonsense relationship between generators and holders of official information and those who seek access to it will safeguard effective achievement of the legislation’s purposes.



Sir Brian Elwood
Chief Ombudsman

Anand Satyanand
Ombudsman

Persistence pays off

The persistence of a National Superannuitant against the Income Support Service finally paid off. But it wasn't easy.

He had travelled to Australia, initially for a holiday, but then decided to migrate permanently. As a result of confusion over the eligibility requirements for beneficiaries travelling overseas, he incurred a debt with the ISS.

He applied to the Benefit Review Committee for a review of the debt. The Committee accepted that there was some genuine misunderstanding, and agreed to a partial write-off of the debt.

But while he was paying the agreed debt, he continued to receive notices from the ISS advising that the original debt still stood.

After an approach by the complainant to the Ombudsman, it was established that the notices of debt had been the result of computer-generated correspondence. The beneficiary was advised accordingly, but some months later told the Ombudsman that he was still being sent warning notices to recover the full amount of the debt.

It emerged that while the Benefit Review Committee had agreed to partially write-off the debt, it had not formally communicated that decision to the ISS so, as a consequence, the ISS was continuing to send notices of the full amount of the debt with demands for payment.

The ISS wrote to the beneficiary apologising for distress that may have been caused by the warning notices and for the failure to act promptly and write-off the debt earlier. It had paid the beneficiary to persist.



Direct Approach

An article in a newspaper does not in itself constitute a request for official information. The approach to the holder of information needs to be direct.

A local newspaper published a letter which contained criticism of the Children Young Persons and Their Families Service (CYPS). In an addendum to the letter, the newspaper's editor sought information and a response from CYPS.

He told CYPS – *“We're interested in how robust your 'independent review' of this case is – please take this as an OIA request for a full copy.”*

The newspaper asked the Ombudsman to investigate the failure of CYPS to respond to this request in the newspaper within 20 days of its publication, and again sought the information. The Ombudsman said publication in a newspaper did not properly constitute a request to a Department for specified information as required by s12 of the Official Information Act. It could not be assumed automatically that publication of a request by a newspaper would be read by Department officials and understood to be a request for specified information under the Act.

While the Act did not require requests to be written, he said it was consistent with the spirit and overall scheme of the Act that requests should be made directly to an appropriate Departmental representative - either verbally or in writing.

MAKE SURE OF WHAT YOU ARE BUYING

The old adage of being sure of what one is purchasing and for how much applies in the public as well as the private sector.

In a recent case, a prison inmate felt he had been misled by the Public Trust office over how much it would cost to service an enduring power of attorney he had entered. He thought he was paying just a flat fee, but the Public Trust charged him that fee and then billed him extra for specific work done.

The Public Trust agreed that the arrangements and agreement with the client might have been clearer, and should have been reviewed when it was realised that the client had not expected to be billed for the detail of the work contracted. Even though each buyer has a duty to themselves to be satisfied with what is being signed, the vendor also has a duty to ensure the charges for services are clearly indicated.

In this case, it was agreed that the original fee should stand, that the fee for opening and closing the agency should be refunded, and that the charge for services performed should be reduced by 50%.

CONSOLIDATED INDEX

A consolidated index of articles appearing in the 13 issues of the Ombudsmen "Quarterly Review" so far - running from March, 1995, to March, 1998.

The first number is the folio (year) with 1 being 1995, 2 being 1996, 3 being 1997 and 4 being 1998 - and the second number is the issue (which quarter).

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Always check the ticket

Buying tickets for the various games on offer at Lotto outlets is a regular part of life for many. This cautionary tale may encourage players to be more careful about their purchases.

The complainant was a Daily Keno player, who filled out her chosen numbers on the coupon, and marked the box which indicated she wished to purchase a \$2/board ticket. She presented the coupon to the operator and was issued with her Daily Keno ticket, together with tickets for some of the other games on offer. She then paid the total sum of money asked, and departed.

Subsequently, she was delighted to note that her Daily Keno ticket had won a prize. She presented the ticket at the outlet, but was less delighted to be offered \$300, not the \$600 she had expected. It seems that there had been some malfunction at the time of issue, and her Daily Keno ticket was marked “\$1/board”, not the “\$2/board” ticket she had wanted.

The complainant then approached the Lotteries Commission, seeking the additional \$300 she believed she had fairly won. The Commission declined the claim, noting that the Daily Keno rules clearly provided that the coupon does not constitute evidence of ticket purchase or of any selection. The ticket the complainant had accepted from the outlet was a \$1/board ticket, and the prize won by that ticket was \$300, not \$600.

She then asked for a review of the Commission’s response. The Chief Ombudsman found that that response was in accordance with the rules of the game as displayed. He also noted that the complainant had paid only for a \$1/board ticket, and because she had bought a number of tickets at the outlet, she had not detected that her Daily Keno ticket was only half the price of the \$2/board ticket she had intended to buy. As the Lotteries Commission had awarded the correct prize for the ticket as held and as paid for by the complainant, there was no basis to question its decision.

The moral is - always check your tickets to ensure they record your choices correctly. If you do not check, you must accept responsibility. The Commission will pay out only on the ticket you hold and paid for, not on the ticket you intended to buy.

DETAILS OF PRISON VISITS

A prisoner complained to the Ombudsman about the actions of prison officers in allegedly making available to the Police details of people who had visited him in prison. The actions of prison staff were investigated. The inquiry revealed that the information had in fact been gathered by a Police officer and that no improper action had been undertaken by any member of the Prison staff.

The question as to whether the Police were entitled to gather the kind of evidence obtained was an issue for the prisoner’s trial – rebuttal of alibi evidence – and stood to be referred to the prisoner’s lawyer.

The question of what evidence could be released was not, therefore, an issue in this particular case but was a general matter which the Ombudsmen have taken up with the prison management and Privacy Commissioner. The prison management has appointed a Crime Prevention Officer to include the monitoring of the release of information to the Police and other agencies, in terms of the Official Information Act and otherwise.

This step recognised that there should be a formal set of rules and protocols, for which the prisons would take responsibility.

