

Our ref 540042 (Complaint ground: 540046, 540270)
Contact Paba Jayalath
8 December 2021

Dear [REDACTED]

**Investigation of official information complaint
Request to New Zealand Police for information relating to Independent Police
Conduct Authority Investigations**

I refer to the letter from Anna Down of 13 July 2021, concerning your complaint about the decision of New Zealand Police (Police) to refuse your request for information relating to the two Independent Police Conduct Authority (IPCA) investigations specified,¹ and its delay in making and communicating that decision.

Chief Ombudsman Peter Boshier has asked me to advance matters of this type on his behalf.

In essence, it appears that Police was entitled to refuse your request for information under section 9(2)(a) of the Official Information Act 1982 (OIA). However, it appears that a summary of the information may be required, in order to meet the public interest in accountability and transparency. Finally, it appears that further investigation of Police's delay in providing a response is unnecessary.

I have set out the relevant details below.

I am also seeking Police's comments. We will write to you again once a response has been received and considered.

Ombudsman's role

An Ombudsman has authority under the OIA to investigate and review, on complaint, any decision by which an agency subject to the OIA refuses to make official information available when requested.

An Ombudsman's role in undertaking an investigation is to evaluate the grounds for refusing requests for official information in terms of the tests set out in the OIA, and to form an opinion as to whether the request was properly refused.

¹ The IPCA summaries for these investigations were issued on [23 September 2020](#) and [30 September 2020](#).

Background

Your request for information was made on 2 October 2020. On 12 November 2020, Police advised you that the officers involved in the incidents investigated remain employed, and refused the remainder of the information requested under section 9(2)(a) of the OIA.

You have requested an investigation and review of this decision. In particular, you disagree with Police's assessment of the public interest in release, and have requested a more detailed summary of the investigations.

Comments by Police

Police considers withholding the information is necessary to protect the privacy of the officers whose actions were addressed by way of an employment process. Police noted the high privacy interest in individuals' employment information, expectations of confidentiality and fairness in the Employment Relations Act 2000, and that the Privacy Commissioner has previously concurred this type of information is inherently sensitive. While the officers are not named in the IPCA summaries, Police noted further that they would be identifiable to certain people who are aware of their involvement in the incidents (such as family members, friends, and colleagues).

Police has accepted there was a delay in making and communicating a decision on your request.

Analysis

Refusal of information

SECTION 9(2)(A)

Subject to section 9(1), section 9(2)(a) of the OIA provides that there is good reason to withhold information if it is necessary to protect the privacy of natural persons.

For section 9(2)(a) to apply, the information must be about an identifiable individual, and its release must reveal personal information about them, or otherwise intrude on their privacy. Whether it is '*necessary*' to withhold the information will then turn on the strength of the privacy interest in it.

Here, the requested information is clearly personal, and the individuals concerned can be identified by certain groups of people. Section 9(2)(a) therefore applies.

A number of factors are relevant to an assessment of the privacy interest.² Information about the employment relationship is generally sensitive, and it is important that employment processes like the ones in question remain confidential.³ Employees can therefore reasonably expect information relating to such processes to remain private between them and their employer. For these reasons, the Chief Ombudsman is likely to consider that there is a strong privacy interest in the information.

² As set out in this Office's [Guide to Privacy](#).

³ Among the reasons for this is [section 4](#) of the Employment Relations Act 2000, which requires employers and employees to deal with one another in good faith.

Please note that he is consulting with the Privacy Commissioner about the privacy interests raised in accordance with section 29B of the OIA, and will have the benefit of the Commissioner's view in forming a final opinion.

PUBLIC INTEREST

Section 9(2)(a) is subject to the countervailing public interest test in section 9(1) of the OIA. It is only where the public interest in disclosure outweighs the need to withhold the relevant information that it must be released.

The Chief Ombudsman is likely to agree that there is a strong public interest, in terms of accountability and transparency, in release of information that shows Police have enquired into such matters appropriately, and taken proportional action in response to any findings. While it is acknowledged that the officers' behaviour appears to be serious, I would note that the particular factors at issue in these investigations appear to be quite different from those relevant to case 180058.

In most cases, the IPCA summary published will both meet the public interest described above, and protect the relevant privacy interest(s). That does not appear to be the case here.

The Chief Ombudsman is therefore likely to form the opinion that Police ought to have released a summary of the information you requested.

Delay in responding

I understand that your request was received by Police on 2 October 2020. A decision on your request was made on 3 November 2020, but was only communicated to you on 12 November 2020.

The OIA requires that a decision be made and communicated on an official information request no later than 20 working days after the day on which the request was received (unless an extension of this time limit is made).

During the course of our preliminary inquiries, Police has accepted that there has been a failure to meet the timeliness requirements imposed by the OIA on this occasion. Police has advised the workgroup responsible for the response was spoken to, and was reminded of Police's obligation under the OIA.

Given that Police has conceded that there was a failure to meet the timeliness requirements imposed by the OIA and a decision on your request has now been made and communicated to you, a formal investigation is unnecessary.

As you know, the Chief Ombudsman regards timeliness and compliance with OIA as fundamental obligations. Our approach to delay complaints can be found on our website at:

<https://www.ombudsman.parliament.nz/resources/ombudsmans-approach-delay-complaints>.

Your comments

We invite you to comment before Mr Boshier forms a final opinion on these matters. If you do wish to comment, please respond **by 22 December 2021**.

Please note that Ombudsmen must conduct their investigations in private,⁴ and are required to maintain secrecy in respect of all matters that come to their knowledge. This is subject only to specific exceptions, one of which relates to explaining to parties the outcome of an investigation.

This information is provided to you in confidence, in order to seek your comment before the Ombudsman forms an opinion on your complaint. Confidentiality should be maintained until the outcome of the investigation is finalised. This does not prevent you from seeking legal advice or support when preparing your response.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tinus Schutte', written in a cursive style.

Tinus Schutte
Manager — Investigations and Resolution, Auckland

⁴ Section 18(2) Ombudsmen Act 1975. This also applies to OIA and LGOIMA investigations: see sections 29 and 28, respectively.