

Ombudsman

Fairness for all

Our Ref: 3
Contact:

22 May 2015

Mr

Auckland 1

Dear Mr

Official Information Act 1975 investigation
Ministry of Social Development
Request for information: Dr David Bratt's presentations

I refer to Manager Tinus Schutte's letter of 4 May 2015, concerning your complaint about the decision of the Ministry of Social Development to refuse part of your request for information about Dr Bratt's presentations.

I have now carefully considered the additional material provided by the Ministry, along with all of the information received to date. I have formed a provisional opinion on your complaint.

Summary

In essence, it is my provisional opinion that the Ministry was entitled to refuse part of your request under sections 18(f) and 18(g) of the Official Information Act 1982 (OIA), on the basis that some of the information is not held, and the remaining information would involve substantial collation and research.

I have set out the details of my provisional opinion below.

Background

I understand that on 16 January 2014 you wrote to the Ministry requesting information relating to Dr Bratt, including his presentation "Ready, Steady, Crook – Are we killing our patients with kindness?", and his research sources and contacts with other practitioners, and Lucy Ratcliffe's article. A fuller summary of your request is attached to this letter as an appendix.

The Ministry responded on 27 February 2014 providing some information, including:

- the source of the statistics in the presentation "Ready, Steady, Crook";
- a copy of the 'Work and Income Medical Certificate Survey – 2010' and the results;
- the source of the figures quoted by Lucy Ratcliffe; and
- general information regarding the contacts Dr Bratt had with Dr Mansel Aylward and Dr David Beaumont.

The Ministry refused the remaining information under section 18(f) of the OIA on the basis that the information requested is "very broad and substantial collation and research would be required to locate and prepare all of the information within the scope of the request". The Ministry considered whether extending the time to respond or imposing a charge would enable the Ministry to provide all of the information, but decided that the Ministry's ability to carry out its work would still be prejudiced.

Your complaint

You complained to this Office about the Ministry's decision on the request. In particular, you raised concerns about the refusal of much of the information sought under section 18(f), stating that the response you received was unsatisfactory because it did not completely answer your questions, including questions 1, 3, 4 and 10.

You also commented that it is reasonable to expect the Ministry, as an "organised government agency", to locate and release the specified information without too much time and effort being required, and it is in the public interest that the Ministry does so.

Comments by the Ministry

In its report to me, the Ministry advised that your request asked a number of broad questions concerning information that was not centrally held. The Ministry stated that attempting to collate the information from over 100 sources would be a time consuming exercise. However, the Ministry informed me that you have been provided with links and references to the research sources requested. The Ministry confirmed that the information sources are highly respected academics whose papers are publically available.

In order for the Ministry to centrally collate the papers and documents as well as the sources already provided into a single document, it would require a significant amount of time from Dr Bratt – approximately two weeks. The Ministry advised that diverting Dr Bratt away from his role as Principal Health Advisor for this length of

time would have a serious and prejudicial impact on the Ministry's ability to carry out its functions.

However, the Ministry agreed that additional information could be provided to you about questions 1, 3, 4 and 10, and it did so on 12 November 2014.

On 3 December 2014 you confirmed that you remained dissatisfied and considered that the Ministry had still not provided an appropriate reply. You detailed the particular information that you still wished to obtain. A copy of this was provided to the Ministry and it was asked to provide further comments.

In response, the Ministry has provided the following additional information:

- Question 2 - In relation to whether MSD agrees with Dr Bratt, the answer is yes, and the links, including the five references, were provided. While MSD did not specifically state that it agreed with Dr Bratt, it can be implied from providing the references.

The Ministry does not hold this information and has no further comment to make.

- Question 5 - Mr [redacted] has previously been provided with Dr Bratt's research sources. The Ministry holds no additional information about the Cardiff University study.
- Questions 6, 7, 8 and 9 - In relation to Question 6, Mr [redacted] also has copies of other Dr Bratt presentations, and they are publicly available. Mr [redacted] was also given the overarching links to papers and the substance of the statistics which informed Dr Bratt's papers. Most of the rest falls under section 18(f).

The information in relation to Questions 7 and 8 is not held.

In response to the request for other examples of the references requested in Questions 6 to 9, and whether Dr Bratt can estimate the percentage of research from the Centre, the Ministry stated that the information is not readily accessible.

- Question 10 - Dr Bratt only deleted emails which were personal in nature and did not relate to official engagements in his capacity as Principal Health Advisor.

In relation to question 10, the Ministry provided me with a copy of its guidance relating to the retention of records, including emails, which is issued to staff and is

available on the Ministry's intranet. I have asked the Ministry to send you a copy of this guidance also.

not
sent!

Analysis

Sections 18(f) and 18(g) of the OIA provide that information may be refused for the reasons:

- “(f) that the information requested cannot be made available without substantial collation or research;
- (g) that the information requested is not held by the department or Minister of the Crown or organisation and the person dealing with the request has no grounds for believing that the information is either –
- (i) held by another department or Minister of the Crown or organisation, or by a local authority; or
- (ii) connected more closely with the functions of another department of Minister of the Crown or organisation or of a local authority.”

Substantial collation and research

Section 18(f) allows a request to be refused if other mechanisms in the legislation do not provide a reasonable basis for managing the administrative burden of processing a large or broadly defined request. The following factors have been identified as relevant when assessing whether meeting a particular request would involve “substantial collation and research” in terms of section 18(f):

- the amount of work involved in determining what information falls within the scope of the request;
- the difficulty involved in locating, researching or collating the information;
- the amount of documentation to be looked at;
- the work time involved;
- the nature of the resources and the personnel available to process requests for information; and
- the effect on other operations of the diversion of resources to meet the request.

I am satisfied that the remaining information that is withheld by the Ministry in relation to your request is not centrally located. There seems little doubt that responding in full to your request would involve substantial collation and research, particularly by Dr Bratt. In addition, the estimated time of two weeks that Dr Bratt

would be diverted from his role to do this work would undoubtedly negatively affect the Ministry's day-to-day operations.

The Danks Committee (whose deliberations led to the establishment of the OIA), commented on this type of situation by saying:¹

"4.39 The granting of access to official information, even information which of its nature clearly need not be withheld, cannot be an absolute priority to which all other functions of administration must yield. Especially in times of financial and staff restraints on government activities, some limitation of the resources available for providing information to members of the public is inevitable."

I have considered whether imposing a charge or refining the request would be a viable option for dealing with the matter, but given the estimated work required by the Ministry and the lack of accessibility of the information, I do not believe that it would.

I note your comments that the Ministry should be able to locate and release the specified information without too much time and effort. If you wish to pursue the issue of the information not being centrally located, I suggest that you write to the Chief Executive, Mr Brendan Boyle, and raise your concerns about the information not being readily accessible with him.

Information not held

Official information is defined in LGOIMA as information "held" by an organisation that is subject to the Act. There is no obligation on an organisation to create new information in order to respond to a request. The fact that the agency concerned may have the capacity to create the information requested is not relevant.

In this case, I am satisfied that some of the information you requested is not held by the Ministry. The Ministry confirmed that it has provided you with the references and sources of this information where it is able to, and that the papers of the academics referred to are publically available.

My provisional opinion

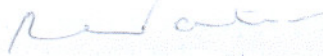
In my provisional opinion, for the reasons set out above, the Ministry was entitled to refuse part of your request for information relating to Dr Bratt's presentations under sections 18(f) and 18(g) of the OIA.

¹ *Towards Open Government*, Danks Report, Supplementary, 1980, p 31.

Your comments

I invite you to comment before I form my final opinion. If you do wish to comment, please respond by **22 June 2015**.

Yours sincerely



Professor Ron Paterson
Ombudsman

Enc Appendix: Summary of request dated 16 January 2014