

Case 42 2 (Complaint ground: 42 1)
Contact C. L.
29 June 2017



Mr. [redacted]
By email: [redacted]@yahoo.co

Dear Mr. [redacted]

**Official Information Act investigation
Health and Disability Commissioner
Request for copy of letter dated 16 August 2010**

Thank you for your email and attachments of 13 June 2017, concerning your complaint about the decision of the Health and Disability Commissioner (HDC) to refuse your request for a letter dated 16 August 2010.

I have now had an opportunity to consider your comments on my provisional opinion. However, I have not been persuaded to change my view. Having considered all the issues raised, I have now formed the final opinion that HDC was entitled to refuse your request, on the basis that section 9(2)(a) of the Official Information Act 1982 (OIA) provides good reason to withhold the letter.

I note your comments that individuals referred to in the letter should be named so that they can be held accountable for any comments made in relation to HDC's complaint handling processes. As I understand it, your position is that any person acting in a professional capacity has no privacy interest to protect which would justify the application of section 9(2)(a) of the OIA.

In reaching a final opinion on your complaint I confirm I have reviewed the information at issue, together with HDC's response to your request and your comments in support of your complaint. I have also consulted with the Privacy Commissioner as I am required to do under section 29B of the OIA. I accept that the withholding of the letter is necessary to protect the privacy of natural persons and that section 9(2)(a) therefore applies. However, as previously advised, I am not able to refer to the contents of the letter in any detail when providing you with the reasons for my opinion as that would infringe the very privacy interest I consider requires protection.

You have also stated that the letter ought to be released as there is a public interest in ensuring the transparency and lawfulness of HDC's decision making processes. Section 9(1) of the OIA requires that the decision-maker, and the Ombudsman on review, consider whether the withholding of the information at issue is *'... outweighed by other considerations which render it desirable, in the public interest, to make that information available'*. I confirm I have considered whether there is a countervailing public interest in release of the letter at issue. However, in my view the excerpt and explanation given to you by HDC provided sufficient information to contextualise Dr [redacted]'s reference to the 16 August 2010 letter in his letter of response to your

complaint. While I am necessarily constrained in referring to the matters I have taken into account in determining the strength of the privacy interest at stake, I confirm it is my view that there is no overriding public interest in you being provided with the remainder of the letter.

I note your concerns about the lawfulness, or otherwise, of HDC's approach to complaints involving doctors appointed by Work and Income New Zealand. However, this issue is outside the scope of my investigation and review of HDC's response to your requests under the OIA. I also note your comments in relation to Dr David Bratt, Principal Health Advisor to the Ministry of Social Development, and what you believe to be inappropriate attempts to influence HDC policy. Again these issues are outside the scope of my investigation and review under the OIA.

Accordingly, I now confirm it is my final opinion that HDC was entitled to refuse your request for its letter dated 16 August 2010.

I have concluded my investigation and advised HDC accordingly.

Yours sincerely

A handwritten signature in black ink, appearing to read "L. Donnelly". The signature is fluid and cursive, with a large initial "L" and a trailing flourish.

Leo Donnelly
Ombudsman