

Case 42-2 (Complaint ground: 42(1), 42(5))
Contact C L
9 June 2017



Mr
By email: _____@yahoo.co.

Dear Mr

**Official Information Act investigation
Health and Disability Commissioner
Request for copies of correspondence**

I refer to M F M letter to you of 8 March 2017 concerning your complaint about the decision of the Health and Disability Commissioner (HDC) on your request for official information, namely:

1. A letter dated 16 August 2010 that was referred to by Dr C in a letter to HDC dated 20 September 2012 (complaint ground 42(1)).
2. Correspondence between HDC and the Medical Council of New Zealand dated 29 January 2015 and 4 June 2015 (complaint ground 42(6)).

I have now received a response from HDC, providing a report on its concerns and all the information at issue. Having carefully considered this material, I have formed a provisional opinion in relation to HDC's decision on your request for its letter of 16 August 2010. My investigation in relation to HDC's decision on your request for the letters dated 29 January 2015 and 4 June 2015 is ongoing.

Details of my provisional opinion are set out below. In essence, it is my provisional opinion that HDC was entitled to rely on section 9(2)(a) of the Official Information Act 1982 (OIA) to refuse your request for its letter of 16 August 2010.

My role

As an Ombudsman, I am authorised to investigate and review, on complaint, any decision by which an agency subject to the Official Information Act 1982 (OIA) refuses to make official information available when requested.

My 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.

Background

I understand that on 19 October 2015 you wrote to HDC requesting information relating to a complaint you had made about Dr [REDACTED]. HDC responded by way of a letter dated 17 November 2015. Certain information was withheld including the letter dated 16 August 2010, which had been referred to by Dr [REDACTED] in his letter to HDC in response to your complaint dated 20 September 2012. While you were provided with a copy of Dr [REDACTED]'s letter of 20 September 2012, HDC's letter of 16 August 2010 was withheld in reliance on section 9(2)(a) of the OIA.

Analysis

As you are aware, your request for the 16 August 2010 letter was refused under section 9(2)(a) of the OIA. Section 9(2)(a) applies if the withholding of information is necessary to *'...protect the privacy of natural persons'*.

I confirm I have reviewed an unredacted copy of the 16 August 2010 letter. I have also consulted with the Privacy Commissioner as I am required to do under section 29A of the OIA. I accept that withholding of the letter is necessary to protect the privacy of natural persons and that section 9(2)(a) of the OIA therefore applies. I am not able to refer to the contents of the letter in any detail when providing you with reasons for my provisional opinion as that would infringe the very privacy interest I consider requires protection.

Pursuant to section 9(1) of the OIA I have considered whether there is a countervailing public interest in release of the letter. I accept there is a public interest in transparency of HDC's decision making in relation to your complaint about Dr [REDACTED]. In his letter of response to your complaint dated 20 September 2012, Dr [REDACTED] referred to the consideration of complaints against non-treating doctors by the Medical Appeals Board, as opposed to HDC, and stated *'I attach a letter dated 16 August 2010 from your department which outlines such a policy previously.'*

However, as you have been previously advised by HDC, its letter of 16 August 2010 did not set out a statement of HDC policy but rather contained a comment in relation to another matter that states *'[The] Medical Appeals Board (MAB) is best placed to consider these concerns.'*¹ I confirm that HDC's advice to you in this respect is correct. Whether, and for what reason, Dr [REDACTED] may have interpreted HDC's comment on a specific matter as a statement of HDC policy is not a matter on which I am able to comment.

In my view, the excerpt and explanation given to you by HDC provided sufficient information to contextualise Dr [REDACTED] reference to the 16 August 2010 letter in his letter of response to your complaint. There is no overriding public interest in you being provided with the remainder of the letter.

I have considered your suggestion that you be provided with a copy of the letter with all personal details redacted. However, having reviewed the letter I am of the view that the contents are such

¹ Excerpt released to you by HDC on 17 November 2015.

that it is necessary to withhold the entire letter, other than the excerpt already released to you by HDC, in order to protect the privacy of natural persons.

As noted above, I have reached a view that section 9(2)(a) applies to the letter. There is no countervailing public interest in release that outweighs the privacy interest supporting withholding under section 9(2)(a). Accordingly, I consider that HDC had good reason to withhold the letter.

My provisional opinion

In my provisional opinion, for the reasons set out above, HDC was entitled to refuse your request for its letter of 16 August 2010.

Your comments

I invite you to comment before I form my final opinion. If you do wish to comment, please respond by **Thursday 22 June 2017**.

Yours sincerely

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

Leo Donnelly
Ombudsman