Ombudsman
Fairness for all

Case note

Measures protecting public health and safety – request to New Zealand Police for video footage of tasered goat

Legislation	Official Information Act 1982, ss 9(2)(c), 16(1).
Agency	New Zealand Police
Requester	Chris Cooke, Television New Zealand
Ombudsman	Peter Boshier
Case number(s)	478773
Date	20 December 2018

Summary

New Zealand Police (Police) received a request from a journalist for video footage of an incident in December 2016 during which a goat was tasered.

Although releasing copies of still images and offering to make the material available for viewing by the requester, Police refused to provide a copy of the full video. Police explained that it was considered necessary to withhold the information to *"avoid prejudice to measures protecting the health or safety of members of the public"* pursuant to section 9(2)(c) of the Official Information Act 1982 (OIA), due to the distressing nature of the footage.

However, the Chief Ombudsman did not consider that release of the material would prejudice a *"measure"* within the meaning of section 9(2)(c). Having considered the provisional opinion of the Chief Ombudsman, Police revised the original decision and released the footage to the requester.

Background

1. On 24 May 2018, Mr Chris Cooke of Television New Zealand asked Police for a copy of the taser video footage.

2. On 25 May 2018, Police responded providing three still images from the footage and advising the Mr Cooke that, although a copy of the footage was refused, it would be available for him to view at the Police station.

3. Police explained that the decision to refuse to release the information in the form requested was in reliance on section 9(2)(c) of the OIA, on the basis that this was necessary to *"avoid prejudice to measures protecting the health or safety of members of the public."*

4. The requester complained to the Chief Ombudsman about this decision.

Investigation

Section 9(2)(c)

5. Subject to any overriding public interest considerations favouring disclosure (section 9(1) of the OIA refers), section 9(2)(c) applies if, and only if, the withholding of the information is necessary to *'avoid prejudice to measures protecting the health or safety of members of the public'.*

6. The Chief Ombudsman sought clarification from Police as to the precise '*measure*' protecting health or safety that would be prejudiced by disclosure of the footage.

7. In reply, Police expressed concern that the material contained confronting scenes of a distressed animal. Police believed that wide publication of the footage carried a real risk of psychological harm, particularly to younger or more sensitive viewers, and distress to a significant portion of the viewership.

8. While no formal classification decision had been made, Police also considered the material potentially suitable for age restriction under the *Films, Videos, and Publications Classification Act* 1993. Further, Police believed that airing the unedited footage might breach broadcasting standards.

9. The Chief Ombudsman did not accept that these arguments constituted a measure that could be protected under 9(2)(c).

10. In reaching this conclusion, the Chief Ombudsman had regard to the comments of the Committee on Official Information (commonly known as the Danks Committee) in respect of this particular withholding ground:[1]

> *The Government has statutory powers to take action to protect public health ... The premature disclosure of information about steps to be taken to contain an epidemic, for example, could in some circumstances undermine their effectiveness. ... In this area we would not see an absolute directive for*

[1] Committee on Official Information *Towards Open Government* (19 December 1980) at [42].

> *release or protection of information as being conducive to the public's best interests. A flexible approach would serve better.*

11. In its Supplementary Report on the issue the Committee further commented:[2]

> *The protection of the public health and safety will often call for disclosure, but some measures such as immediate measures to control an epidemic or disaster may be prejudiced by disclosure.*

12. Against this background, the Chief Ombudsman said it is apparent that the type of information section 9(2)(c) was designed to protect were far reaching and time-sensitive measures like disaster relief or disease control, and it was difficult to see how the concerns Police had identified in this instance could come within the ambit of this section.

13. Moreover, the Chief Ombudsman did not consider a link existed between the concerns expressed and release of the particular information at issue. He observed that Police had previously released footage of animals being tasered, which were subsequently published by the media, with no resulting prejudice to measures protecting public health and safety.

14. As such, the Chief Ombudsman communicated his provisional opinion to Police that neither section 9(2)(c) of the OIA nor an alternative provision justified withholding the information at issue.

Outcome

15. Having considered the Chief Ombudsman's provisional opinion, Police revised the original decision and the footage was released to the requestor on 26 July 2018.

16. The Chief Ombudsman subsequently confirmed his provisional opinion as final, bringing the investigation to a close. In light of the steps taken by Police, no recommendation was deemed necessary.

[2] Committee on Official Information *Towards Open Government: Supplementary Report* (20 July 2981) at [2.15].