

Example 1

Scenario:

We have received reports from an anonymous complainant that there is a commercial building in Wellington that may be highly dangerous and likely to collapse in even the slightest earthquake. Our Building Standards team is currently considering what to do next. The building in question is multi-story and tenanted with shops and residents.

Someone has asked us for all the information that we hold on that building. Do we give it to them?

Factors to Consider

- Releasing this information to the public could seriously prejudice the commercial position of the building owner
- We do not know yet whether this information is true, accurate or where it came from. Releasing it at this stage could cause concern where there is no reason for it
- There is a public interest in knowing which buildings are safe, and which are not
- There is also a public interest in not causing undue panic, when we do not yet know if there is a risk
- Does the prejudice to the commercial position outweigh the public interest in knowing which buildings are safe?
- Would the release of this information prejudice the supply of similar information in the future
- Is there any other information that would help us make our decision? Such as:
 - Has this been released in the media already
 - Has the property owner been consulted

Likely outcome

In this case we would be likely to withhold the information. Because:

- There is a real risk of commercial prejudice
- releasing the information may prevent the supply of similar information in the future
- we do not want to cause undue panic
- The commercial prejudice outweighs the public interest

Example 2

Scenario:

A contractor has been providing us with some technical Building Code related advice on a complaint made to the Licensed Building Practitioners Board about a builder who is accused of doing building work which is not up to the Standard of the Building Code. When providing the advice the contractor also mentions that they know the builder personally, and have said that they think the builder is “a fool” and “a complete idiot who doesn’t know a screw driver from a hammer”. The Ministry did not ask the contractor for this type of advice.

A member of the press has asked us for all the information relating to this complaint and the investigation. The contractor wants their comments withheld under this section. Do we withhold the comments under this section?

Factors to Consider

- What are the consequences of the release?
- How would disclosure of the information at issue inhibit the free and frank expression of opinions in the future?
- We do want people to be able to report unsatisfactory behaviour.
- Would people still give us their honest opinion if this were to be released?
- How would the inhibition of such free and frank expression of opinions prejudice the effective conduct of public affairs?
- Why is this predicted prejudice so likely to occur that it is necessary to withhold the information in the circumstances of the particular case?
- There is a public interest in having a transparent decision making and investigative process
- We can’t withhold information because it would embarrass someone

Likely outcome

We would be likely to release this information. Because:

- Free and frank advice is a high standard
- We do not really need/want this type of advice
- The public interest in having a transparent decision making process outweighs the embarrassment that it may cause the contractor

Lesson to Learn: Think before you email!!

Example 3

Scenario:

Someone working at a small business has told us that their employer has been bullying and harassing them and has come to us to seek advice. They have sent us an email outlining the various situations they have been in. As it is a small business the complainant hasn't decided yet whether they want to take any further action. Someone (not necessarily the same employee) from the same business also contacted the media regarding this particular employer, and a story was published about this employer's bullying and harassment in the workplace.

The employer has now contacted us and asked for any information that relates to their business or staff. Do we give them this information?

Factors to Consider

- Why is the information believed to be confidential?
- What are the circumstances which are claimed to create the obligation of confidence?
- Are these facts already known, i.e. by the public through the media?
- Can we withhold some of the information? or does it all need to be withheld?
- Could we just withhold the complainant's name? Or, since it is a small business, would they be easily identifiable by words that are used?
- There is a public interest in ensuring that members of the public can come to us and freely complain about breaches of the law without fear that their complaints will be disclosed.
- There is little public interest in an employer finding out what an employee has said about them. There is a common misconception that people have the right to know what is said about them.
- There may also be some crossover with the Privacy Act here (don't need to go into detail for the purpose of this training, but is good to make people aware)

Likely outcome

It would be advisable to consult with the person who supplied the information in the first instance. We would lean towards withholding all or some of this information. Because:

- There is a high public interest in people being able to report potential breaches of the legislation to us without fear that we will release this information.
- There is a commercial interest for the employer to find out what information we hold about their business, however, this does not outweigh the public interest in this regard.
- The best option is to see if we can release some of the information without identifying the informant.