

Our ref 593939

3 February 2023

Dr Amy S Van Wey Lovatt

By email: fyi-request-20875-1c5684db@requests.fyi.org.nz

Dear Dr Van Wey Lovatt

Your request for clarification regarding managing unreasonable complainant conduct

I write to you on behalf of the Chief Ombudsman, Peter Boshier. I refer to your email sent via FYI.org in late 2022, in which you sought information pertaining to the Ombudsman's guide, 'Managing unreasonable complainant conduct – a manual for frontline staff, supervisors and senior managers'.

As you know, the Chief Ombudsman is not subject to the Official Information Act 1982. However, successive Ombudsmen have endeavoured to act in accordance with its principles to the greatest extent they are able, subject to the statutory secrecy obligations set out in the Ombudsman's empowering legislation.

Your first question sought:

- (1) *I request copies of decisions which led to the Ombudsman creating the guidelines "Managing unreasonable complainant conduct". If this decision is publicly available, a [reference] to the online decision and where to find it will suffice.*

The Ombudsman's 'Managing Unreasonable Complainant Conduct Manual' itself is available online.¹ Within the prelude to the guide, it contains an explanation by the then-Chief Ombudsman, Dame Beverley Wakem, of her reasons for publishing it. Dame Beverley said:

... As an Ombudsman who hears from thousands of people every year who believe they have been treated unfairly and unreasonably by a state sector agency, I have noticed that by the time a person feels 'wronged' enough to make a complaint, often they have developed a strong emotional link to the problem and to obtaining a resolution.

... on occasion I have seen a small number of complainants not engaging with agencies appropriately or reasonably and officials struggling to manage this conduct. Some complainants can become aggressive and abusive towards officials. They may threaten harm (to themselves or others). They may be dishonest, provide intentionally misleading information or deliberately withhold information that is relevant to their complaint. They may flood agencies with unnecessary phone calls, emails or large

¹ Office of the Ombudsman, *Managing unreasonable complainant conduct*, published 1 October 2012, available at: <https://www.ombudsman.parliament.nz/resources/managing-unreasonable-complainant-conduct>

amounts of irrelevant information. They may insist on remedies they are not entitled to or outcomes that are not possible or appropriate.

The Parliamentary Ombudsman's offices in Australasia acknowledged this was becoming a problem for state sector agencies and their officials to deal with. Therefore, we supported the New South Wales' Ombudsman's initiative to lead a two-stage joint project on managing unreasonable complainant conduct in 2006. This project sought to identify ways in which to minimise the effect of unreasonable complainant conduct on both public sector organisations and Ombudsman's offices, their staff, services, time and resources.

The outcome of this project is this practice manual. It is intended to help agencies employ a systematic and consistent approach to managing their interactions with complainants who exhibit unreasonable complainant conduct by offering a framework of strategies, and providing sound, sensible advice on how to better manage responses to these complainants. It is an invaluable tool for helping staff to resolve difficult situations in the most efficient and effective manner possible.

You also made the following, seemingly related queries:

- (2) *Does the Ombudsman's guidelines "Managing unreasonable complainant conduct" sanctioned, either explicitly or implicitly, unlawful interception of private communications as defined under Section 216A and 216B of the Crimes Act 1961?*

The Crimes Act describes the unlawful interception of personal communications as the interception of personal communications without the consent of the sender (e.g., patient) to the intended recipient (e.g., specified physician) when the individual who is intercepting the communications does not have statutory authority as set out in s 216B of the Crimes Act 1961. Statutory permission is restricted individuals and must be authorized under acts such as the Search and Surveillance Act, Corrections Act, and Intelligence and Security Act.

- (3) *If the Ombudsman' guidelines "Managing unreasonable complainant conduct" sanction, explicitly or implicitly, the unlawful interception of communications, I respectfully request that you provide the page number and section number.*

- (4) *Has the Ombudsman, either explicitly or implicitly, made a decision in which they sanctioned the unlawful interception of personal communications, as defined under the Crimes Act 1961?*

- (5) *In the event that the Ombudsman has sanctioned, either explicitly or implicitly, the interception of private communications without the consent of the individual, or the intended recipient (see sections 216A-B of the Crimes Act), I request a copy to the decision or reference to where the decision can be found publicly.*

It is not entirely clear whether you mean 'sanctioned' in the sense of an Ombudsman having warranted or authorised the relevant behaviours, or whether you are seeking information about

instances where an Ombudsman has investigated a matter and has subsequently 'imposed a sanction' (or similar) on agencies for having behaved unreasonably or unlawfully.

Given the wider context of these requests, however, including very similar requests you have made to the Police, the Privacy Commissioner, and Te Whatu Ora,² and requests you previously made on your earlier FYI account,³ it appears you mean the former. I therefore address your questions on that basis.

I confirm it is simply not the role of an Ombudsman to permit or to authorise any search or surveillance functions, lawful or otherwise, by or on behalf of executive government agencies. Information about an Ombudsman's roles, functions and powers can be found in the Chief Ombudsman's most recent annual report.⁴

To the extent that you may be interrogating, directly or indirectly, the contents of the Ombudsman's 'Managing Unreasonable Complainant Conduct' manual, you may review the manual for yourself at the above link. For obvious reasons, nothing in that manual is intended to endorse, recommend, or warrant behaviour that is otherwise unlawful. Indeed, a key and pervasive message throughout the manual is that agencies should do their best to be fair and reasonable even when presented with unreasonable behaviour, and that all complainants should be treated with fairness and respect.

Yours sincerely



Yu-Lina George
Acting Manager – Strategic Advice

² https://fyi.org.nz/user/as_van_vey_2

³ https://fyi.org.nz/user/amy_s_van_vey_lovatt

⁴ Office of the Ombudsman, Annual Report 2021/2022, 21 October 2022, available at:
<https://www.ombudsman.parliament.nz/resources/chief-ombudsmans-annual-report-20212022>