

24 July 2014

Alex Harris

Email: fyi-request-1825-fdbcb80e@requests.fyi.org.nz

Dear Mr Harris

Re Official Information Act Request

On July 18 2014 you wrote to me, stating:

According to a report on Kiwiblog (http://www.kiwiblog.co.nz/2014/07/auckland_dhb_thinks_they_are_above_the_law.html), the Auckland DHB recently responded to an OIA request by Andy Tookey of givelife.org.nz for "slides of the ICU death audit presented by Dr James Judson to the Advisory Committee of Organ Donation New Zealand (ODNZ) on 3 July 2013" by refusing to accept an Ombudsman's recommendation, then by deleting the requested information so it could not be provided.

You then made a request for the following information under the Official Information Act (OIA):

** all information relating to the OIA request referred to above. I am particularly interested in advice and communications on how the DHB should respond to the request, consultations with outside parties, and internal emails.*

** all official information relating to the handling of the subsequent Ombudsman's complaint (ref 371024). I am aware that communications with the Office of the Ombudsman are not "official information" in terms of the Act, but information generated within the DHB in response to such communication is covered. Again, I'm particularly interested in any advice and communications within the DHB on how to respond to the rulings, and any consultation with outside parties.*

You stated that you would prefer to receive an electronic response.

Before providing information relevant to your request, I first must note that Mr Tookey never asked for "slides of the ICU death audit". His request was for "A copy of the ICU Death Audit." Also, the Ombudsman never recommended that ADHB release any information to Mr Tookey. As the attached materials reveal, in 2009 she supported ADHB withholding ICU Death Audit information from Mr Tookey and in 2014 he decided not to investigate a new complaint further.

Finally, while a copy of a presentation was deleted, this probably occurred shortly after the presentation occurred in July 2013, that is both prior to Mr Tookey's request of November 2013 and well before the Ombudsman asked for a copy in May 2014.

Please find attached:

- A copy of an OIA request from Andy Tookey dated 25 November 2013 plus emails transferring the request first to Marlene Skelton, Corporate Business Manager, then to Bruce Northey, ADHB's General Counsel.
- ADHB's reply dated 6 December 2013 withholding the information requested
- A copy of the letter from the Ombudsman dated 26 February 2014 stating an intention to investigate a complaint by Mr Tookey regarding ADHB's decision to withhold information he had requested
- ADHB's reply to the Ombudsman dated 13 March 2014 plus a copy the Ombudsman's decision of 1 December 2009 referred to in that letter
- A copy of an email to the Ombudsman dated 23 May 2014, which was a response to a telephone call of that date and which includes in the 'trail' an emailed request from the Ombudsman for additional information dated 20 May 2014 and ADHB's reply of the same date. Please advise if you want the attachments mentioned in ADHB's 20 May 2014 email.
- The Ombudsman's advice of 11 July 2014 that he was no longer investigating this matter; in this he refers to a conversation with Bruce Northey of 10 July 2014.

In respect to information relating to the management of the OIA request of 25 November 2013, I can advise that a reply was provided consistent with that of 2009 to the same request by Mr Tookey based on advice by Legal Services; there was no consultation with outside parties. Any communications once the matter had been referred to Legal Services are withheld under s9(2)(h) – to maintain legal professional privilege.

In respect to information relating to ADHB's handling of the subsequent complaint to the Ombudsman, the Ombudsman's letter was referred on receipt by the Chief Executive to Legal Services, as is customary for all such letters. Accordingly, all internal communications arising thereafter are being withheld pursuant to s9(2)(h) – to maintain legal professional privilege. I can however advise that other than verbal discussions with the Ombudsman's Office, instigated by that Office, there was no consultation with outside parties.

You have a right by way of a complaint to the Ombudsman under s28(3) of the OIA to seek an investigation of ADHB's decision to withhold information related to your request.

Yours faithfully



Ailsa Claire, OBE
Chief Executive

Enc.

Our Ref: 371024
Contact: Michael McDonnell

11 July 2014

Ms Ailsa Claire
Chief Executive
Auckland District Health Board
Private Bag 92024
Auckland Mail Centre
Auckland 1142

By email: ailsac@adhb.govt.nz


Dear Ms Claire

Thank you for your letter of 13 March 2014, regarding my investigation of Mr Tookey's OIA complaint.

Subsequently, Bruce Northey advised us that the requested information (ie, the slides of the ICU Death Audit presented by Dr James Judson to the Advisory Committee of Organ Donation New Zealand on 3 July 2013) "no longer exists as it was deleted [by Dr Judson] after the relevant presentation".

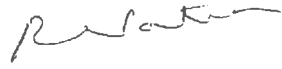
As explained to Mr Northey in a telephone discussion yesterday, I find these failures to keep a record rather surprising. The presentation was important enough to be recorded in the minutes, and the DHB is required to keep relevant documents, under the Public Records Act 2005.

I trust that this situation will not recur. I note that Mr Tookey is likely to make future requests and that (as explained in my letter of 26 February 2014) the information cannot be withheld on this basis that a summary of the audit will be made available "soon" in the ODNZ annual report, if that is to be published more than four months after the date of an OIA request for the original slides.

In the circumstances, I have discontinued my investigation.

Thank you for your assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read "Ron Paterson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Professor Ron Paterson
Ombudsman

Bruce Northey (ADHB)

From: Bruce Northey (ADHB)
Sent: Friday, 23 May 2014 17:10
To: 'Michael.McDonnell@ombudsman.parliament.nz'
Subject: RE: OIA complaint A Tookey/ADHB Our ref: 371024

Importance: High

I refer to our telephone call, in which you asked a number of questions in respect to data I sent earlier this week, specifically:

1. While there is a table on page 12 with one line which refers to the Death Audit, is the relevant data sought by Tookey not that set out on pages 14-20?

Response: We had assumed that the information of interest was on page 12; there is obviously other data in the report. Only Mr Tookey can advise if what is in the report is, in total, sufficient for his requirements.

2. The minutes state they are for the 11 December meeting, not the 3 July meeting.

Response: There has clearly been an error in the date recorded at the beginning of the minutes as they confirm minutes of a December 2012 meeting and suggest that the next date is to be in December. We are comfortable they are the relevant minutes; please note that this is not a meeting of a substantive statutory board or committee and those managing the process are not professional administrator; they are clinicians.

3. Why does the presentation to the 3 July meeting no longer exist? If it was comprised of PowerPoint slides it would have been a simple matter to have saved the presentation.

Response: The presentation no longer exists as it was deleted after the relevant presentation had been completed as it was solely to assist with discussion at that particular meeting. It was not part of any regular reporting on the Death Audit database. Also, no decisions flowed as a consequence so it is not required as evidence of proper decision-making or for other formal purposes. While we agree it would have been a simple matter to have saved it, it was in fact deleted as a digital files created for a one-off purpose.

Bruce Northey
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From: Bruce Northey (ADHB)
Sent: Tuesday, 20 May 2014 1:40 p.m.
To: 'Michael.McDonnell@ombudsman.parliament.nz'
Subject: OIA complaint A Tookey/ADHB Our ref: 371024

Please find attached:

- 1) ODNZ annual report 2013 with the information about the ICU death audit on page 12
- 2) Minutes of ODNZ advisory committee meeting 3 July 2013
- 3) Reply from Dr Judson to my enquiry about the presentation he gave to that meeting on 3 July 2013: "I did put together a presentation for the ODNZ Advisory Committee on 3-July 2013 but that presentation, and the data it contained as at that date, no longer exist."

Bruce Northey
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From: Michael McDonnell [<mailto:Michael.McDonnell@ombudsman.parliament.nz>]
Sent: Tuesday, 20 May 2014 11:19 a.m.
To: Bruce Northey (ADHB)
Subject: OIA complaint A Tookey/ADHB Our ref: 371024

Hi Bruce

The letter dated 13 March 2014 from the CE, Ailsa Claire, refers.

Could you please provide the following information/documents to assist with this investigation:

1. A copy of the Summary of the ICU Death Audit as published in the ODNZ Annual Report in March this year.
2. A copy of the minutes of the meeting of the Advisory Committee for Organ Donation NZ held on 3 July 2013.
3. Copies of the information as presented by Dr James Judson to this Advisory Committee meeting and as referred to in Ms Claire's letter..

Thanks

Michael McDonnell

Investigator

Office of the Ombudsman | Tari o te Kaitiaki Mana Tangata

DDI 04 462 7857 | Phone 04 473 9533 | Fax 04 471 2254

Email michael.mcdonnell@ombudsman.parliament.nz | www.ombudsman.parliament.nz

PO Box 10152, Level 14, SolNet House, 70 The Terrace, Wellington

Ombudsman

Fairness for all

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13 March 2014

Professor Ron Paterson
Ombudsman
P.O. Box 10 152
WELLINGTON 6143

Dear Ron

**Re: Official Information Act Complaint
A Tookey/Give Life NZ
ICU Death Audit**

I am responding to your letter of 26 February 2014; ADHB has complied with your request for a response by 21 March 2014.

I have assumed in this response that you have accessed and reviewed Auckland District Health Board's (Auckland DHB) letter of 17 June 2009 to the Ombudsman, your reference 9989 (A13759), and the Ombudsman's letter to Auckland DHB of 1 December 2009 advising that it was open to Auckland DHB to refuse a similar request by Mr Tookey under s9 (2) (ba) (i) of the Official Information Act (OIA). The information provided by Auckland DHB in 2009 remains relevant to this new request and refusal but is not copied or repeated verbatim here.

May I first provide context to the Intensive Care Unit ('ICU') Death Audit, because there may be a misunderstanding that this is a single event or 'audit'. For example Mr Tookey's comment "the information has now been collected from ICU's so there would be no stoppage of information being received. It is complete." The ICU Death Audit is a clinical audit, an ongoing clinical quality improvement process that seeks to improve patient care and outcomes through systematic review of care against explicit criteria and the implementation of change. As with all clinical audits, the key component of the ICU Death Audit is that performance is reviewed (or audited) to ensure that what should be done is being done, and if not it provides a framework to enable improvements to be made, in this case in ICUs in New Zealand in respect to organ donation.

The ICU Death Audit has been in effect for a decade, co-ordinated by Organ Donation New Zealand (ODNZ), and is a 'live' database that currently contains extensive information in respect to 7,000 deaths in ICU. Participation in the ICU Death Audit is voluntary, utilising a web based questionnaire. The process is:

- After a patient dies a senior ICU nurse, known as a Link Nurse, enters data on that patient via a secure, password protected website.
- This data is extracted and analysed by ODNZ staff.

- Further investigation is initiated into a small subset of patients whose data suggested that organ donation might have been possible but in whom it appears that this issue may not have been recognised or acted upon. The relevant ICU Link Doctor is sent a list of questions by ODNZ.
- The Link doctor then audits these cases and reports back to ODNZ on the outcome of their audit investigations.
- ODNZ amends incorrectly entered data and discusses possible changes in clinical practice with the Link Doctors as appropriate.

While the ICU Death Audit is primarily a tool for clinical improvement, a key function of ODNZ is to ensure the public understand the issues around organ donation. ODNZ therefore regularly publishes information inherent in the ICU Death Audit, for example the number and nature of potential donors, donation processes and reasons for donation and non-donation. All of this information is disclosed in the ODNZ annual report or is well documented elsewhere.

s18 (d) of the OIA

I will now address your provisional opinion that s18 (d) of the OIA does not apply to Mr Tookey's request for "a copy of the ICU Death Audit – as presented by Dr James Judson to the Advisory Committee for Organ Donation New Zealand on Wednesday 3 July 2013."

Auckland DHB agrees that eight months can not be "soon" as required by s18 (d). That response was a consequence of our concluding that Mr Tookey in fact wanted a summary of the information received from ICUs over a year, consistent with information he has received previously, not the ICU Death Audit database in full - as his complaint states, he is "not requesting any information on patients or information that may make them identifiable." That is, he is not requesting the 7000 entries that is the ICU Death Audit but, we assumed, information on the number of donors and similar in a period.

We therefore advised Mr Tookey that the customary practice of ODNZ was continuing and the statistical information for the calendar year 2013 would be available in the Annual Report in late March, incorrectly referring to s18 (d).

The presentation by Dr James Judson on 3 July 2013

Mr Tookey misunderstood the minutes of the meeting of 3 July 2013. While these minutes were disclosed in response to an OIA request, they are not prepared for publication but solely for internal circulation. They therefore are not be worded with legal precision; that is not required.

To understand the minute, it is necessary to understand that the information held within the ICU Death Audit database is constantly reviewed to assist ODNZ to detect trends or practices for clinical discussion nationally. The presentation by Dr James Judson was simply one example of this – a summary of certain information Dr Judson had compiled from recent data added to the database to lead a discussion with the Advisory Committee of ODNZ. It was not 'a copy of the ICU Death Audit' – that would be physically impossible. In fact the information presented was limited to a few slides in a PowerPoint presentation.

Thus the advice to Mr Tookey that he should expect a summary of the Audit, being a summary of information received in a calendar year, when the ODNZ Annual Report was issued in late March, as per historic practice. To provide similar information as at July would require compilation – it does not exist in that form - and would not be meaningful for comparative purposes as it would be for a unique period.

The information is required to assist Mr Tookey in representations to Parliament

ADHB acknowledges that Mr Tookey is an active lobbyist seeking a change in the law relating to organ donations. The relevant statute is the Human Tissue Act 2008. There is no Bill currently before Parliament to reform the Human Tissue Act nor has any political party made an announcement in that regard. Mr Tookey's representations to Parliament are not therefore subject to a timetable of a Select Committee or any other Parliamentary agenda other than the general election. ADHB would respectfully submit that Mr Tookey has not therefore be prejudiced by the delay in the release of the 2013 data.

1. Information withheld

As is indicated above, the information requested by Mr Tookey did not exist as he misunderstood the minutes of the 3 July meeting. Accordingly, no information is provided with this letter.

2. A copy of papers relating to the decision made on this request

While internal legal advice was sought and provided on the request and response, no papers exist.

3. A report setting out the grounds for refusal of the request

Section 9(2) (a)

The data in the ICU Death Audit database is automatically de-identified i.e. does not include name or NHI. In a strict sense it is anonymised. However it is detailed and sensitive information that would be readily identifiable to anyone who knew the patient or was willing to make enquiries such as reviewing death notices.

Identification of the patient or disclosure of further detail is even more likely once ODNZ has collected further information from the Link Doctor. For example, if it was revealed that an 18 year old male died on a certain date in a certain hospital in the ICU then that information alone would make the individual identifiable. For family and friends who might already know who the deceased person is, the audit information may disclose detail about the circumstances of death not otherwise known to them. Information includes whether or not family members supported brain death testing and organ donation. Both the deceased and family members have a privacy interest in this sensitive information and withholding is necessary to protect this interest.

Section 9(2) (ba) (i)

ODNZ is committed to maximising the availability of organs for donation through education nationally of ICU clinicians caring for potential donors. This requires an open and frank relationship between ODNZ and each individual ICU, as each ICU voluntarily provides detailed information about how that ICU managed a patient death, one of the most traumatic events within any clinical practice. This disclosure is built on an understanding of confidentiality. A commitment to maintain confidentiality, not only of identifiable patient information but also information on a provider level, has been propagated by ODNZ (see letter of 17 June 2009).

ODNZ submits that not only must individual patients not be identifiable, but also individual ICUs must not be identifiable. As ODNZ, on behalf of the New Zealand public, is trying to identify possible missed opportunities for organ donation in particular ICUs. Comparative data is used to that purpose but this is not a situation akin to publishing performance data on

DHBs meeting Ministerial targets. In fact, there is a genuine concern that publishing comparative data or data that allows comparisons will lose current co-operation by ICUs with ODNZ and thus the opportunity to influence the behaviours of staff when an opportunity for donation arises within their ICU.

Professor Paterson is uniquely qualified to understand the complexities of this situation. Here ICU clinicians and nurses are comfortable to talk openly about their clinical practice with their peers without any formality. In contrast, Professor Paterson is well aware that clinicians often ask that a clinical audit occurs within a protected quality assurance activity under the Health Practitioners Competency Assurance Act to gain the statutory protection from disclosure of information thereby available.

Public interest

Organ donation is clearly a matter of public interest. One donor can dramatically change the lives of up to five others. The sole objective of the ICU Death Audit is to ensure that organ donation is carefully considered and pursued wherever appropriate. Public access to or publication of information held within the ICU Death Audit is likely to result in more limited engagement from ICUs, undermining the dissemination and application of best practice in relation to this very challenging area of clinical practice. Accordingly, ADHB submits there is a public interest that supports rather than overrides the withholding grounds noted above.

4. *Details of third parties who might be adversely affected*

All ICUs in DHBs nationally; all families of patients who have died in ICUs – the ICU Death Audit holds details of over 7,000.

5. *Contact person*

Bruce Northey
General Counsel
Auckland DHB
+ 64 9 6309943 ext 26876
Mobile 021 938104
bnorthey@adhb.govt.nz

I trust the above explains the reasoning behind ADHB refusing Mr Tookey's request.

Yours sincerely

Ailsa Claire, OBE
Chief Executive

FV

Our Ref: 9989 (A13759)

1 December 2009

**COPY FOR YOUR
INFORMATION**

Mr Garry Smith
Chief Executive Officer
Auckland District Health Board
Private Bag 92 024
Auckland Mail Centre
Auckland 1142

Dear Mr Smith

OFFICIAL INFORMATION ACT 1982 COMPLAINT – ANDY TOOKEY

I refer to Assistant Ombudsman Richard Fisher's letter of 17 November 2009 on the above matter.

I am now able to advise you of my final opinion on the complaint.

Having considered all the issues raised, I have now formed the opinion that it was open to the Auckland District Health Board (ADHB) to refuse the request, on the basis that ADHB had good reason to withhold the information at issue under section 9(2)(ba)(i) of the Official Information Act 1982 ("OIA").

I have expressed my opinion to Mr Tookey as follows:

"Section 9(2)(ba)

Subject to section 9(1) of OIA, section 9(2)(ba) provides that good reason exists for withholding information if, and only if the withholding of the information is necessary to:

"Protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information –

- (i) would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied; or*

(ii) *would be likely otherwise to damage the public interest."*

I have reviewed the information provided to date and considered the environment in which the information was generated; the sensitivity of the information involved; and the impact disclosure would have on ODNZ performing its role in the future. As a result, I am currently of the view that there is an implied obligation of confidence between the ADHB and the Intensive Care Units ("ICUs") that participate in the audit.

In addition, I am satisfied from the information provided by the ADHB that disclosure of the information in this case would prejudice the supply of similar information in the future. In other words, if the ICUs were aware that the information they provided in confidence was released in this case, they would not agree to give the same level of information in the future. This would undoubtedly reduce the effectiveness of the annual Audit.

Public interest

Section 9(1) of OIA requires me to consider whether the interest in withholding the information is "*outweighed by other considerations which render it desirable, in the public interest, to make that information available*".

I have carefully considered the circumstances in this case. I note your comments regarding your opinion that it is in the public interest that full and accurate information is available for future planning, and to initiate discussions about possible reforms of the organ donor system in this country.

I acknowledge that there is a public interest in release of the information to ensure transparency in the organ donation process, and in the data used by the ADHB/ODNZ in this respect.

However, as noted above the ADHB has informed me that the ICUs are voluntarily supplying more detailed data for the audit than they are strictly required to do. It is clearly in the public interest for this detailed information to continue to be supplied, in order to assist decision making and improvements to the organ donation process by the ICUs and ODNZ. If the information is made public there is a real risk that this would prejudice the supply of information and impact on the value of the Audit process in the future.

In this particular situation, I am unable to identify any public interest in favour of disclosure of sufficient weight which would override the public interest in withholding the information you have requested.

As I am presently of the view that there was good reason for the information in question to be withheld under section 9(2)(ba)(i), it is not necessary for me to go on to consider the other grounds for withholding, such as privacy, at this point.

Information released to Select Committee

I note you have informed my staff that the ADHB has reported the total number of organ donors for the first five months of 2009 to the Health Select Committee. However, I understand that you are concerned that that ADHB has withheld the numbers of donors for each month as you requested.

I consider that the information provided by the ADHB to the Select Committee was different to your request, as it was for the total number of donors for the first five months of this year. The information was also provided to the Select Committee, which the ADHB is required to respond to for reasons other than the OIA. I do not see that the release of this information to the public changes my view that there is good reason for the information you have requested to be withheld."

I have now completed my investigation of this complaint. Thank you for the assistance you and your staff have provided.

Yours sincerely

Beverley A Wakem
Chief Ombudsman

Our Ref: 371024
Contact: Michael McDonnell

Ombudsman
Fairness for all

26 February 2014

Ms Ailsa Claire
Chief Executive
Auckland District Health Board
Private Bag 92024
Auckland Mail Centre
Auckland 1142

Email: ailsac@adhb.govt.nz


Dear Ms Claire

**Official Information Act complaint
A Tookey/Give Life NZ
ICU Death Audit**

A complaint has been received under the Official Information Act 1982 (OIA) from Andy Tookey on behalf of Give Life NZ, about the decision made on his request to Organ Donation New Zealand for a copy of the ICU Death Audit.

I will be investigating this complaint, and would appreciate your comments.

I have set out below:

- the relevant background details;
- the substance of the complaint;
- the information required for the purposes of this investigation; and
- the maximum time limit for your response.

Background

I understand that on 19 November 2013, Mr Tookey made a request to Organ Donation New Zealand for "a copy of the ICU Death Audit – as presented by Dr James Judson to the Advisory Committee for Organ Donation New Zealand on Wednesday 3 July 2013".

On 6 December 2013 you responded to this request as follows:

"Consistent with prior years a summary of the Audit will be available within the ODNZ Annual Report in late March. Accordingly your request is declined under s18(d) of the OIA –'the information requested is or will soon be publically available.'

To the extent that your request is for information additional to that published by ODNZ your request mirrors a request you made on 26 March 2009. That earlier request was declined by Auckland District Health Board (ADHB) citing ss9(2)(a) and (ba) of the OIA. When you sought a review of that decision by the Ombudsman, the Ombudsman determined that ss 9(2)(ba) was indeed a lawful reason for withholding this sensitive information and therefore did not consider the privacy or other grounds ADHB might have for withholding. ADHB also declines this request based on ss 9(2)(a) and (ba) of the OIA."

The complaint

Mr Tookey has made a complaint about the decision made on the request and has expressed his concerns about this decision as follows:

"Their first part of the refusal is based on the grounds that 'The information is or will soon be publically available.'

As the ICU Death Audit was presented on 3 July 2013 and will not be publicly available until the end of March 2014, I do not consider that 9 months is considered as 'soon'. Even as of today's date, I do not believe that a further three months is considered 'soon'.

I have legitimate reasons for wanting the information as soon as possible. The second part of the refusal specifies that I made a similar request in 2009 which was declined and upheld by the Ombudsman.

The reason I challenge that this time is because circumstances have changed since my first request in 2009.

The main reason why it was declined last time I believe (I do not have access to documentation from that period due to the earthquakes) was that ODNZ argued that the data was being supplied on a goodwill basis from ICU's and that may be undermined, and further that as the information was supplied voluntarily it was not discoverable under the OIA.

Privacy was also a reason cited.

- *I believe privacy is not an issue as I am not requesting any information on patients or information that may make them identifiable.*
- *The information has now been collected from ICU's so there would be no stoppage of information being received. It is complete.*
- *The report has now been tabled at an official taxpayer funded meeting and I believe is discoverable under the OIA.*

I believe their biggest concern was privacy, that's why I want to reiterate that I am not requesting any identifying patient data.

It is in the public interest to have this information released as it may assist me in my representations that I intend to make to Parliament in the New Year.

The number of organ donors for 2013 are released early in January. I believe that by holding off on data about those donations until late March allows too much time between the two events and will mean I can not make effective representations to Parliament until the middle of the year until this data is published."

Section 18(d) Official Information Act (OIA)

In your letter of 6 December 2013, you advised Mr Tookey that:

"Consistent with prior years a summary of the Audit will be available within the ODNZ Annual report in late March. Accordingly, your request is declined under s18(d) of the OIA –'the information requested is or will soon be publically available.'

Two matters arise here. First, my understanding is that on 19 November 2013, Mr Tookey requested "A copy of the *ICU Death Audit*" and not a summary of this Audit. The second matter is that section 18(d) would not appear to apply in this case in any event. Mr Tookey made his request on 19 November 2013 and has been told that a summary of this Audit "will be available within the ODNZ Annual Report in late March" which is more than four months after the Board received the request.

What is meant by "soon" in the context of section 18(d) of the OIA is a question of fact to be determined in the circumstances of the case. Section 18(d) is not a good reason for withholding information but is simply authority for refusing a request made under section 12 in particular circumstances, for example because release of information is imminent or the information at issue is being printed so that there would be difficulties in providing it immediately. In this case the length of time between receipt of the request and the availability of "a summary of the Audit" is more than four months and I am not satisfied that section 18(d) applies.

As this is my provisional opinion, I am happy to consider any comments you may wish to make on this matter when you respond to this letter.

Your response

As a first step in the investigation and review, please provide:

1. a copy of the information as requested by Mr Tookey;
2. a copy of any papers relating to the decision made on the request;

3. a report setting out the grounds which you rely on under sections 9(2)(a) and 9(2)(ba) of the OIA to refuse the request, and in particular provide details of the specific prejudice or harm which you consider is likely to occur if the information is disclosed¹;
4. details of any third party that might be adversely affected by disclosure of the information, including details of any consultation you have had with that third party in making your decision to refuse the request; and
5. the name of a contact person at the District Health Board who can liaise as necessary with the investigator assisting in this case – Michael McDonnell (DDI: (04) 462 7857, email: michael.mcdonnell@ombudsman.parliament.nz)
6. If during the course of the investigation, circumstances change such that you consider it is no longer necessary to refuse the request, please advise us of this as soon as possible.

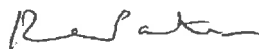
Time limit for your response

This request for your response is made pursuant to section 19(1) of the Ombudsmen Act and section 29A of the OIA.

As Mr Tookey has indicated that he is seeking the information to assist him with representations to Parliament in the near future, kindly forward your response by 21 March 2014. If you anticipate any difficulties in providing a response within this time frame please contact Mr McDonnell.

I look forward to hearing from you.

Yours sincerely



Professor Ron Paterson
Ombudsman

Encl: Acknowledgment form

¹ In preparing the report, your staff may wish to refer to the *Ombudsman Practice Guidelines* which contain advice on the way in which the OIA operates. The Guidelines can be found on our website (www.ombudsman.parliament.nz) under "resources and publications: guides".

6 December 2013

Mr Andy Tookey
Give Life
241 Lincoln Road
Addington
CHRISTCHURCH 8024

Dear Mr Tookey

Re Official Information Act Request

I refer to your email request under the Official Information Act (OIA) dated 19 November 2013 to Organ Donation New Zealand (ODNZ) for a copy of the ICU Death Audit (the Audit), as presented to the Advisory Committee for ODNZ on 3 July 2013.

Consistent with prior years a summary of the Audit will be available within the ODNZ Annual report in late March. Accordingly, your request is declined under s18(d) of the OIA – 'the information requested is or will soon be publicly available'.

To the extent that your request is for information additional to that published by ODNZ your request mirrors a request you made on 26 March 2009. That earlier request was declined by Auckland District Health Board (ADHB) citing ss9(2)(a) and (ba) of the OIA. When you sought a review of that decision by the Ombudsman, the Ombudsman determined that ss9(2)(ba) was indeed a lawful reason for withholding this sensitive information and therefore did not consider the privacy or other grounds ADHB might have for withholding. ADHB also declines this request based on ss9(2)(a) and (ba) of the OIA.

You have a right by way of a complaint to the Ombudsman under s28(3) of the OIA to seek an investigation and review of this decision.

Yours faithfully



Ailsa Claire, OBE
Chief Executive

Elaine Keenan (ADHB)

From: Elaine Keenan (ADHB)
Sent: Wednesday, 27 November 2013 3:44 p.m.
To: Bruce Northey (ADHB)
Cc: Marlene Skelton (ADHB)
Subject: OIA request from Andy Tookey
Importance: High
Attachments: SC454E0100313112715370.pdf

Hi Bruce

Attached please find an OIA request from Andy Tookey dated 19 November 2013.

I have also attached the following:

- Email trail from Janice Langlands
- ADHB response to Andy Tookey dated 7 April 2009 responding to his request of 26 March 2009
- Letter to Garry Smith from the Ombudsman dated 30 April 2009
- ADHB letter to the Richard Fisher, the Ombudsman dated 17 June 2009

Can you please give me advice on how to respond to Mr Tookey.

Regards

Elaine

Elaine Keenan
PA to Marlene Skelton
Corporate Business Manager
Bruce Northey, Anne MacGill &
Claire Campbell, Legal Services
Auckland District Health Board
Level 1, Building 37
Auckland City Hospital
Tel: (09) 367 0000 ext. 22346
Fax: (09) 375-3443
Email: elainek@adhb.govt.nz

From: ACHsmntPR02@adhb.govt.nz [mailto:ACHsmntPR02@adhb.govt.nz]
Sent: Wednesday, 27 November 2013 15:38
To: Elaine Keenan (ADHB)
Subject: Message from C454E01003

**Official Information Act Request
RESPONSE COVERSHEET**

Overview

Log number	
Request made by	Andy Tooke
Organisation	Organ Donations
Date received	19-11-13 19-11-13
Date due	17-12-13 17-12-13
Lead SMT member	Bruce Northey
Responder	

Communications
(Please tick where appropriate)

Request no further involvement	<input type="checkbox"/>
Request to be contacted by author during draft phase	<input checked="" type="checkbox"/>
Comms plan to be prepared	<input type="checkbox"/>

Lead SMT member
(Please tick where appropriate)

Request no further involvement	<input type="checkbox"/>
Request to see response before being sent to CEO	<input type="checkbox"/>

G. Log 6/12/13 OK

ONCE RESPONSE COMPLETED

Author
(Please tick where appropriate)

	Y	N
Has Board Administrator been consulted if information is to be withheld	<input type="checkbox"/>	<input type="checkbox"/>
Has Comms been consulted	<input type="checkbox"/>	<input type="checkbox"/>

Lead SMT member
(To sign if they have requested to see response and are happy with its contents)

I am happy for the information provided to be released under the Official Information Act	<input type="checkbox"/>
Date	

FOR CEO
(For comment, if changes requested)

(To sign, if happy with content)

I am happy for the information provided to be released under the Official Information Act	<input type="checkbox"/>
Date	

Elaine Keenan (ADHB)

From: Organ Donation New Zealand (ADHB)
Sent: Monday, 25 November 2013 11:23 a.m.
To: Marlene Skelton (ADHB)
Subject: FW: OIA Request
Attachments: Andy Tookey.pdf

Dear Marlene

My apologies for forwarding an email addressed to Ian Bell. We have received many OIA requests from Mr Tookey as has the MoH.

Please get back to me if you require any background information.

With kind regards
Janice Langlands
Team Leader
Organ Donation New Zealand

From: Organ Donation New Zealand (ADHB)
Sent: Monday, 25 November 2013 11:17
To: Ian Bell (ADHB)
Cc: Stephen Streat (ADHB)
Subject: FW: OIA Request

Dear Ian

We have received another OIA request from Andy Tookey. I have attached the letter we received from the Ombudsmen in response to the same request in 2009. Our views have not changed and we will not release this information to Andy Tookey.

Please get back to me if you require further information.

With kind regards
Janice

Ext: 26021

Janice Langlands
Donor Co-ordinator
Organ Donation New Zealand

From: Andy Tookey [mailto:andy.tookey@xtra.co.nz]
Sent: Tuesday, 19 November 2013 19:29
To: Organ Donation New Zealand (ADHB)
Subject: OIA Request

Dear ODNZ,

I would like to request under the *Official Information Act* the following information:

- A copy of the **ICU Death Audit** – as presented by Dr James Judson to the Advisory Committee for Organ Donation New Zealand on Wednesday 3 July 2013.

25/11/2013

Kind Regards

Andy Tookey

Email: andy.tookey@xtra.co.nz

241 Lincoln Road,
Addington
Christchurch. 8024