

## Legal update - Privacy protection for health practitioners

Alastair Hercus, Hamish Kynaston, Peter Chemis, Alastair Sherriff, Catherine Miller, Natasha Wilson

1 July 2016

The Office of the Ombudsman has released an opinion upholding the Health and Disability Commissioner's (HDC's) decision to withhold information about a midwife's complaint history. As part of the opinion, the Ombudsman has developed general principles which may provide useful guidance to organisations (such as the HDC and District Health Boards) if faced with similar requests in future.

A journalist requested information from the HDC about a midwife's complaint history under the Official Information Act (OIA).

The HDC declined to provide the requested information on the basis that the need to protect the midwife's privacy outweighed the public interest in disclosure (section 9(2)(a) of the OIA).

The journalist subsequently complained to the Ombudsman. Although the Ombudsman upheld the HDC's decision to withhold the information, he noted the "*growing recognition of the need for more transparency in the health sector*". The Ombudsman also commented that the release of additional contextual information by an organisation may go some way to address and mitigate against the more typical concerns organisations and individuals have about disclosure of complaint information (for example, concerns that the complaint information can be taken out of context, that some providers attract more complaints due to the nature of their practice, and that some complaints have little substance).

In an appendix to the opinion, the Ombudsman set out a number of principles which may assist organisations in responding to requests for a health practitioner's complaints history. These include:

- The privacy interest of the complainant (if the complainant is not the requestor)
- The privacy interest of the health practitioner, including considering:
  - the extent to which information is already known to the requestor, or is in the public domain
  - age and relevance of complaint information
  - whether the complaint was substantiated
  - whether the investigation is ongoing
  - likelihood of harm arising from disclosure
  - the possibility of minimising harm by placing information in context
- The public interest in disclosure, including considering:
  - public safety
  - accountability of health practitioners
  - accountability of the complaint-handling agency
  - public choice in selecting health practitioners
  - nature of complaints
  - number of complaints
  - role and seniority of practitioner
  - action taken in respect of the complaint
  - the extent to which information is already known to the requestor, or is in the public domain
  - age and relevance of complaint information.

To read the Ombudsman's opinion, click [here](#).

## **Auckland**

**188 Quay Street  
Auckland 1010**

**PO Box 1433  
Auckland 1140  
New Zealand**

**P: +64 9 358 2555  
F: +64 9 358 2055**

## **Wellington**

**Aon Centre  
1 Willis Street  
Wellington 6011**

**PO Box 2694  
Wellington 6140  
New Zealand**

**P: +64 4 499 4242  
F: +64 4 499 4141**

## **Christchurch**

**83 Victoria Street  
Christchurch 8013**

**PO Box 322  
Christchurch 8140  
New Zealand**

**P: +64 3 379 1747  
F: +64 3 379 5659**