

FREEDOM OF INFORMATION CASE NOTES

Onus on organisations to justify non-disclosure *Information Act* s45(1)(a)(ii), s55

The Commissioner's delegate found there was sufficient *prima facie* evidence to substantiate the complaint in a number of respects, largely because the onus rested on the Respondent to show that certain exemptions applied, and insufficient information had been provided to show those exemptions applied. For example, the Respondent argued that four pages were exempt under s 45(1)(a)(ii), but provided insufficient information to show the document related to a matter to be considered by an Executive body. The Respondent sought to argue that s 55 applied to exempt some information, but did not provide any evidence to show that the information in question had in fact been communicated in confidence. The delegate found that, while sometimes evidence of an exemption can be derived from the documents themselves, this is not always the case. The legislative scheme as a whole places the onus on an organisation to defend a decision not to disclose information, not on a Complainant to guess at the technical merits of the Respondent's position. The Complainant is not typically privy to all the Respondent's reasoning, and is not able to view the information to which the Respondent is applying the law.

The Complaint was referred to mediation but the mediation was unable to progress because there were related court proceedings on foot.