Office of the Ombudsmen
Te Tari -o- Ngā Kaitiaki Mana Tangata

PV/O

Our Ref: 179247 (W61490)

17 February 2010

Mr Thomas Beagle
PO Box 5641
Lambton Quay
Wellington 6145

Dear Mr Beagle

OFFICIAL INFORMATION ACT COMPLAINT
DEPARTMENT OF INTERNAL AFFAIRS
WEBSITE FILTERING LIST

Thank you for your letter of 2 December 2009, concerning your complaint about the decision of the Department of Internal Affairs to refuse your request for a website filtering list.

Your request of 13 April 2009 for the trial website filtering list

As you will be aware, my current investigation concerns the decision by the Department to refuse your request made on 13 April 2009 for the website filtering list used in a trial of an internet filtering scheme.

I have now had an opportunity to consider your comments on my provisional view. However, having considered all the issues raised, I have formed the opinion that it was open to the Department to refuse your request, on the basis that release of the list would be likely to prejudice the maintenance of the law.

You have commented that you do not consider release of the list would lead to a "*real and substantial*" risk of people accessing the relevant websites containing child sexual abuse material, as:

- almost all people would never deliberately choose to view such material;
- releasing the list would allow producers of filtering software to add the websites to their own lists; and

Level 14, Solnet House, 70 The Terrace, P.O. Box 10152, Wellington 6143, New Zealand
Telephone (04) 473 9533, Facsimile (04) 471 2254, Freephone 0800 802 602
Website: www.ombudsmen.parliament.nz

- people who wish to test the list to verify that the websites do indeed contain objectionable material could conduct a number of tests that did not involve actually accessing the sites.

I appreciate your points that very few people would deliberately choose to access the websites, and that there may be other means for members of the public to test the content of the websites without accessing them. However, the fact remains that there are some people who, for whatever reason, may choose to visit the websites if the list was available. If even one person were to use the list as a reference point to access the websites, that could be a breach of the law. As I have previously noted, I understand that it is a criminal offence to access websites that contain objectionable material, with knowledge or reason to believe the material is objectionable. In these circumstances, I consider that release of the list would cause a real risk of prejudice to the maintenance of the law.

It is therefore my opinion that it was open to the Department to refuse your request for the trial website filtering list, and I have now concluded my investigation of your complaint.

Your request on 22 May 2009 for the website filtering list without IP addresses, and relevant reports

You have also referred to a further request which you made to the Department on 22 May 2009 for a copy of the website filtering list without IP addresses, and a copy of any reports which saw websites added to the list.

The Department refused this request on 16 July 2009, as follows:

> "*The Department considers that the release of this information, in whatever format, would facilitate access to objectionable material and therefore is withholding this information in terms of section 6(c) of the Official Information Act (where the release of information is likely to prejudice the maintenance of the law)…*
>
> *The Department is moving to implement the fully operational system and will shortly commence rebuilding the list. As the filtering list is rebuilt, new officers' reports will be generated and, in preparation for this process, the reports related to the trial list have been deleted. The Department therefore cannot provide the requested information as it does not exist*".

You have asked that I include this response from the Department in my investigation of your complaint, before I reach a final opinion.

As noted above, my current investigation concerns the decision by the Department to refuse your request made on 13 April 2009 for the website filtering list used in the trial of an internet filtering scheme. I have viewed relevant material and sought and received comments from you and the Department, in terms of the specific information that was requested by you on 13 April 2009 and the reasons for its refusal. I have now formed a final opinion in that respect.

While I am willing to investigate the Department's decision on 16 July 2009 to refuse your further request for information, in order to do so I would need to seek the Department's comments on that separate decision and view any relevant information. The information you sought on 16 July 2009 was different, being the list without IP addresses and any relevant reports. Thus, I would not be able to proceed without seeking the Department's comments on that particular information.

I also note that the Department indicated in its decision of 16 July 2009 that the reports relating to the trial list no longer exist. Any investigation I might undertake of the Department's decision on 16 July 2009 would relate to the information which the Department in relation to your request held at that point of time. In terms of your request for the reports, my role would be to consider whether it was open to the Department to refuse your request on the basis that the reports did not exist. My investigation could not encompass any information created by the Department after its refusal of your request on 16 July 2009.

Accordingly, given that the Department has indicated it is moving to implement the fully operational system, which will involve rebuilding the list and creating new reports in that respect, you may find it useful to make a fresh request to the Department for information that it currently holds relating to the rebuilding of the list and any relevant reports. If your request for that information was refused, then you could make a complaint to me and I would investigate and review the Department's refusal. Nevertheless, if you do wish to proceed with a complaint about the Department's decision on 16 July 2009, please let me know and I will commence an investigation and review of that decision.

Yours sincerely

David McGee
Ombudsman