

release of the information would inhibit free and frank expression of opinions in the future; and whether this inhibition will prejudice the effective conduct of public affairs.

If the information were made available, the relevant ERO staff would likely be discouraged from making free and frank opinions. The section recognises that the effective conduct of public affairs requires the candid and unreserved expression of opinions, and that public exposure of those opinions can sometimes have a chilling effect on people's willingness to express themselves openly, honestly and completely in future. I consider this applies in the case of Bethlehem College; there is wider media attention in relation to concerns with the operation of the school and the welfare of the students. ERO's evaluation of the College has considered several complaints in relation to the emotional and physical safety of students from the Ministry, the school and the media.

I have formed the view that the information withheld is subject to free and frank expression of opinions between staff.

Legal professional privilege

Some of the information withheld is also subject to legal professional privilege under section 9(2)(h) of the OIA.

Sections 9(2)(g)(i) and 9(2)(h) are subject to a public interest test. This means the need to withhold must be balanced against the countervailing public interest in release. If the countervailing public interest weighs more heavily, the information must be released. If not, it can be withheld.

There is a public interest in the disclosure of information related to the performance of schools subject to ERO review. There is also a public interest in ensuring that ERO's statutory review functions are carried out by staff in a free and frank manner.

This includes ERO staff receiving proper legal advice. It is well established that agencies have the same rights as private organisations to obtain legal advice. For the purposes of the application of legal professional privilege, it is immaterial whether the lawyer providing the advice is in independent practice or is employed in-house. The information at issue includes communication from ERO's solicitor for the purposes of getting confidential legal advice and assistance. Considering all the facts of this case, I am satisfied that it is necessary to withhold the information at issue in order to maintain legal professional privilege.

In response to point 3, the 2022 review of the school has not concluded and the reason for this will be covered in our response to all requesters as referred in point 1.

You have the right to seek an investigation and review by the Ombudsman of this decision.
Information about how to make a complaint is available at www.ombudsman.parliament.nz or
freephone 0800 802 602.

Ngā mihi

A handwritten signature in blue ink, appearing to be 'ML', is positioned below the 'Ngā mihi' text.

Melissa O'Carroll
Deputy Chief Executive Review and Improvement Services
Education Review Office | Te Tari Arotake Mātauranga