

Recordkeeping cases from Casebook 2020



Case
studies

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Record keeping, Case studies

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Department to provide more transparency in procurement process

Sean's company bid for work in a state department procurement process. When his bid was unsuccessful he requested feedback, and was dissatisfied with the response the department supplied as it lacked detail.

Sean complained to this Office that he wanted a comprehensive response to questions he asked the department about the procurement process. He was concerned about:

- the scoring component, where he received low scores in areas where they had fully complied with the criteria and were not asked any clarification questions by the evaluation team
- how their price compared with the other bidders as a percentage
- why the process was reopened for submissions after the closing date.

The result

The investigation noted that an independent probity report did cover some of the issues raised by Sean. At the Office's request, the department agreed to provide a more thorough response to address Sean's concerns.

Ombudsman insight

All agencies need to keep good records of their decision-making for tender processes so explanations can be provided.

Reconsidering jurisdiction to investigate complaint

Samantha lodged numerous complaints with council about noise from barking dogs at a boarding kennel.

Council advised Samantha the kennel had been lawfully established under previous planning laws and refused to investigate further as the likelihood of a successful prosecution was low. Samantha requested an internal review of this decision.

On review, council advised it had limited legislative ability to compel the kennel to comply with noise nuisance laws. It concluded there was too much risk in taking enforcement action and that factors such as cost, the gathering of evidence and the public interest were relevant considerations.

This Office investigated her complaint and reached three main conclusions:

- council could have authority under the Environmental Protection Act 1994 (EPA) to investigate the complaint
- council had failed to collect evidence about the noise to establish whether a breach of the EPA had occurred
- council had incorrectly applied its compliance and

enforcement policy.

The result

Council accepted it did have jurisdiction under the EPA and agreed with this Office's recommendation that it investigate Samantha's complaint.

Ombudsman insight

Regulators are often asked for reasons as to why they have not taken discretionary enforcement action in certain circumstances. This is when recordkeeping really matters – the decision not to act involves the exercise of significant discretion that needs to be documented and explained.

Recordkeeping improvements better document how the decision was made

Leanne provides professional services. A recipient of her services was dissatisfied, and complained to the relevant statutory authority. The authority found her guilty of misconduct in a professional respect and fined her. Leanne then complained to this Office.

The result

This Office focused on whether the authority's decision was reasonable. The investigator advised Leanne that in their view the authority had acted according to law, reasonably and fairly in this matter.

Leanne was unhappy with this Office's decision, and requested her case be reviewed. The review was assigned to an officer who was not involved in handling her original complaint.

The review found one issue required further investigation – whether the authority's failure to consider the additional records Leanne provided to it constituted a breach of natural justice. Other matters that she raised about the original decision remained unchanged.

The review investigator found the authority did consider the additional records provided by Leanne but decided to give no weight to them. The reason that no weight was given to the additional records was the authority's concern about the reliability of the information received and the need to uphold the integrity of the process. This was not evident from the authority's records of the decision. After discussion with this Office, the authority agreed to improve the way it documents decision-making processes, the consideration of evidence and reasons for weighting of information.

Ombudsman insight

Not all evidence is equally weighted. A well-explained decision should set out what weight was given to particular information and why.

New review after lack of recordkeeping for original decision

Brian was dissatisfied with the department's investigation of his allegations of fraudulent work activity by Larry. Brian provided

the department with a substantial amount of material that he said supported his allegations of fraud. The department's response was lacking in detail as to why they declined to investigate. Brian then complained to this Office.

The result

This Office was concerned that Brian's allegations may not have been thoroughly considered, given the lack of analysis and reasoning apparent in department records.

Therefore, it was suggested the department consider conducting a fresh review of the allegations made and material provided by Brian regarding Larry. Brian was satisfied with this result. The department also undertook to review the recordkeeping and decision-making processes of the relevant unit.

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