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31 July 2020

Andrew Ecclestone
fyi-request-10553-96376640@requests.fyi.org.nz

Our ref: OIA 75977

Dear Mr Ecclestone

Ombudsman complaint: Official Information Act request

I am writing in response to your complaint to the Office of the Ombudsman regarding your request on 18 June 2019, under the Official Information Act 1982 (OIA), regarding the Ministry's targeted engagement with subject matter experts to help assess the merits of a formal review of the OIA in 2019. The Ministry responded to your request on 16 July 2019 and on 7 May 2020 the Ombudsman wrote to us outlining your complaint about the information provided. The Ministry responded to the Ombudsman on 4 June 2020.

In your complaint to the Ombudsman you questioned the Ministry's decision to withhold some names under section 9(2)(a) in document 300 and the placement of the watermark "Released under the Official Information Act 1982" diagonally across the document. Following discussions with the Ombudsman, we have reconsidered these issues and have reissued the response provided to you (see **Appendix A**). You will see that the names in document 300 are no longer withheld, and the watermark has been moved so it sits in the header of each page rather than diagonally across the text.

In your complaint, you also questioned why the page about this targeted engagement was not included on the previous or closed consultation section of the Ministry's website. This was because the targeted engagement was not a formal review of the OIA.

You also questioned whether the Ministry had further information about proactive release. In response, please also find attached six documents regarding the Ministry's policies regarding the proactive release of Cabinet material. The first four documents are guidance (see **Appendix B**), process maps (see **Appendix C**), coversheet template (see **Appendix D**) and Memorandum template (see **Appendix E**), published internally on the Ministry's intranet. They are released to you in full.

The fifth document, *Guidance on the proactive release of Cabinet papers* (see **Appendix F**), which draws on the above information, has been recently developed and has yet to be published internally. It is designed to provide highly detailed step-by-step guidance to advisers handling the proactive release of Cabinet material. We have provided the third and fourth chapters of this document, "What is the proactive release policy?" and "What is our proactive release process?". The remaining chapters are considered out of scope as they either provide general information about the machinery of government, or provide detailed information and images about the working of CabNet and the Ministry's website, including password naming conventions.

The sixth document, *Data and Information Policy* (see **Appendix G**), was recently adopted by the Ministry. While it does not mention proactive release of OIA responses specifically (as per part iv of your original request), it has been included for completeness as it includes a commitment to making data and information we hold easily accessible and available internally and externally. The Ministry holds no further policies or guidance about proactive release.

We will send the Office of the Ombudsman a copy of this response.

Yours sincerely

Caroline Greaney
General Manager, Civil and Constitutional, Policy

Encl: Appendix A – Reissued OIA response with amendments
Appendix B – Ministry of Justice intranet guidance Proactively release Cabinet papers
Appendix C – Process for the proactive release of Cabinet papers and related documents
Appendix D – Coversheet template
Appendix E – Memorandum template
Appendix F – Guidance on the proactive release of Cabinet papers
Appendix G – Data and Information Policy

cc: Office of the Ombudsman

Appendix A

Response ID ANON-E8XQ-FT4A-N

Submitted to **Have your say about access to official information**
Submitted on **2019-04-16 14:43:20**

Our questions

1 In your view, what are the key issues with the OIA?

1:
1. The amount of time required for a full investigation from the Ombudsman (should the matter come to that) is much too long.

2. Section 9(g)(i) of the Act provides administrations with too broad of an ability to refuse information on grounds of the information being a risk to the maintenance of public affairs.

The Ombudsman guidelines for the balancing test between public interest on what risk to "free and frank" discussion is not clear enough. The guidelines require a more rigorous test in order to fairly be applied to instances that threaten the conducting of public affair.

There have been many times that this excuses has been uses as a ground to refuse information. Much of these circumstances surrounding the information being in the case of email in which no official or suggested policy has been laid out.

If the significance of s(9)(g)(i) is to protect drafts of policy or direct advice given with the purpose of influencing policy, then this needs to be explained more thoroughly.

It is my opinion that bodies subject to the Act are using this provision as a "catch-all" for the purposes of protecting information embarrassing to the organisation.

3. Section 15A(3) allows for an extension of the time limit for responding to requests for information. The issue with this is that there are a growing number of instances that bodies subject to the Act are using this extension the day before the information is due.

This is in effect doubling the time allotted to produce the information.

This section must be amended in order to maintain conveniency and transparency.

2 Do you think these issues relate to the legislation or practice?

2:
See answers to question 1.

1. This issue relates to practice.

2. This issue relates to practice.

3. This issues relates to the legislation.

3 What reforms to the legislation do you think would make the biggest difference?

3:
A s15A deadline for extending the time for official information responses. Requiring an extension for a response to be made well before the allotted 20 day limit is up. I propose within 14 days.

Clarification within s9(g)(i) by which protection of "free and frank discussion" is specifically defined.

Optional questions

4 Name:

Name:
Patrick Corish

5 Organisation:

Oganisation:
New Zealand Taxpayers' Union

Response ID ANON-E8XQ-FT4B-P

Submitted to **Have your say about access to official information**
Submitted on **2019-04-08 16:20:38**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Agencies, such as NZTA, can simply decline and are more inclined to do so ("Refused under Sec 18(a), Sec 9(2)(i) of OIA") to stonewall.

2 Do you think these issues relate to the legislation or practice?

2:
Practice. Agencies such as NZTA work to a culture of secrecy. Transparency & rigour are not their ethos.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Greater expectations of transparency for all public servants plus greater onus to give reasons for declining information requests.

Optional questions

4 Name:

Name:
Bevan Woodward

5 Organisation:

Oganisation:
Movement

Response ID ANON-E8XQ-FT4C-Q

Submitted to **Have your say about access to official information**
Submitted on **2019-04-11 12:21:51**

Our questions

1 In your view, what are the key issues with the OIA?

1:
1. Redaction of information
2. Getting information on time. It is often overdue, if supplied at all, leading to engagement of the Ombudsmans Office.
3. Inadequate information.
4. Irrelevant information given - not related to the request.
5. Lack of transparency.
6. Agencies have a culture of avoidance to give out information.
7. Word doctoring of request for information allowing agencies to say they have answered the request, when they haven't. This makes it difficult to obtain the information sought.

2 Do you think these issues relate to the legislation or practice?

2:
1. Agencies tend to use legislation as a tool to avoid answering OIA request e.g charging for information that is easily obtainable.
2. Again, redaction of key information and use of terms, such as "not in the public interest", when the information sought relates to a private company or individuals.
3. Issues are related to both legislation and practice.
4. My experience has been with three different government agencies - West Coast Regional Council, EQC and Department of Internal Affairs. All have a culture to withhold information or make it difficult to obtain information.

3 What reforms to the legislation do you think would make the biggest difference?

3:
1. Without going through the complete legislation, it is difficult for me to comment. I would also most probably need a law degree to decipher it. The reality is that the OIA is not working for everyday kiwis and businesses.
2. In my experience it is the practice (culture) of the agencies that first needs to be changed. This is a huge undertaking.
3. New Zealanders have a right to public information.
4. The only other option for New Zealanders is to take government agencies to Court. This in reality, is not going to happen, as an individual or Company against the state is unaffordable.
5. My message is "Get the OIA working for the purpose it was put in place for.
You are welcome to contact me for more information - rockiesmining@hotmail.co.nz

Optional questions

4 Name:

Name:
Michael Rogers

5 Organisation:

Oganisation:
Rockies Mining Ltd

Response ID ANON-E8XQ-FT4E-S

Submitted to **Have your say about access to official information**
Submitted on **2019-04-13 20:31:25**

Our questions

1 In your view, what are the key issues with the OIA?

1:
1. The Act is too loosely worded, key terms are poorly or not defined and open to wide and varying interpretations, which in practical terms makes it difficult if not impossible to "satisfy" many of the requests. There is little clarification available up front on many contentious aspects of the legislation, and it is only when a complaint is made that the Ombudsman's office suddenly, with the benefit of hindsight, often has a very sharp and clear view of what something means and it how it should have been interpreted by the person dealing with the request. This condemns the officials dealing with OIA requests to the misery and stress of perpetual, soul-wearying failure.
2. One of the purposes of the Act is to protect official information but in practice is does little to achieve this purpose. When challenged by the requestor, most withholding grounds are thrown out by the Ombudsman's office. This is exacerbated by the fact that once information is released there is no protection from it being misreported, misinterpreted, selectively reported and generally used to misinform rather than inform.
3. The commercial sensitivity withholding grounds are insufficient to actually protect commercially sensitive information, particularly when the withholding of the information is challenged by the requestor and the Ombudsman's office who appear to have very little commercial experience or commercial knowledge have the power to determine what is or is not sensitive to a commercial third party caught up in the OIA by virtue of contracting with the government.
4. There is virtually no protection against conspiracy theorists, querulous complainants and otherwise vexatious requestors who do not utilise the Act in good faith and thus place an unreasonable burden on the organisations subject to the OIA.

2 Do you think these issues relate to the legislation or practice?

2:
Both - the poorly worded Act leads to many requests being unclear and difficult to respond to. In the absence of clear and consistent guidance on the interpretation and application of the law, it is difficult for agencies to apply it well in practice.

3 What reforms to the legislation do you think would make the biggest difference?

3:
1. A clear definition of what "information" is or stricter requirements for the requestors to define what information they are seeking to limit the "catch all" requests which are often next to imposs ble to process.
2. Introduction of an obligation for the requestors to act in good faith in both making the requests and in using the information obtained under the OIA, with consequences for non compliance with the obligation.
3. Stronger protection of commercially sensitive/third party information.

Optional questions

4 Name:

Name:
Anna Gruczynska

5 Organisation:

Oganisation:
n/a

Response ID ANON-E8XQ-FT4J-X

Submitted to **Have your say about access to official information**
Submitted on **2019-04-05 12:37:41**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Organisations get really nervous about releasing data. In one case I knew of from the inside, a number of organisations had been asked the same set of questions. They (already being used to collaborating on other matters) discussed it with each other and collectively decided releasing it was too great a risk to a vendor relationship given the NDA clause in their contracts with the vendor, so all refused the request citing commercial restrictions. This wasn't in the public interest - it wasn't even in their interest - but they were just too scared to stick their necks out.

In other cases organisation see it as a nuisance and a low priority for limited resources. Understandable given chronic underfunding but again not in the public's interest.

2 Do you think these issues relate to the legislation or practice?

2:
They're mostly caused by practice, but the only possible resolution may be legislation.

3 What reforms to the legislation do you think would make the biggest difference?

3:
More powers to the Ombudsman to require release of information in a timely manner. Some kind of indemnification of risks somehow?? Funding available to organisations to staff appropriate positions (take it from fines to organisations who don't comply...)

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FT4K-Y

Submitted to **Have your say about access to official information**
Submitted on **2019-04-12 09:34:15**

Our questions

1 In your view, what are the key issues with the OIA?

1:

2 Do you think these issues relate to the legislation or practice?

2:

3 What reforms to the legislation do you think would make the biggest difference?

3:

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FT4M-1

Submitted to **Have your say about access to official information**
Submitted on **2019-04-11 11:08:30**

Our questions

1 In your view, what are the key issues with the OIA?

1:
It has not been updated to reflect the digital age and the fact that requests can be made in all sorts of forms e.g social media. This is turn means agencies are having to navigate the risks that come with publishing sensitive material online. Agencies are having to work through the quite strict requirements to meet the risk of harm to an organise in order to provide information in a form different to that requested.

Another issue is that pieces that are proactively released are not protected from civil or criminal proceedings.

There is also an issue around the spirit of the Act. It should be made clearer exactly what the intended purpose is, so agencies can deal with requestors who make borderline requests easier.

2 Do you think these issues relate to the legislation or practice?

2:
Legislation.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Reforms that bring the Act in the digital age, and recognise that it is not always practicable for agencies to publish things online without jumping through a multitude of hoops.

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FT4N-2

Submitted to **Have your say about access to official information**
Submitted on **2019-04-17 07:18:20**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Too broad in scope, i.e. "give me everything". This is unworkable, largely irrelevant, and time consuming. OIA's need to be focussed and specific.

2 Do you think these issues relate to the legislation or practice?

2:
Legislation.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Making them more focussed and specific, and getting rid of the idea that "everything" about a topic can, or will be supplied.

Optional questions

4 Name:

Name:
Des Marshall

5 Organisation:

Oganisation:
WCC

Response ID ANON-E8XQ-FT4Q-5

Submitted to **Have your say about access to official information**
Submitted on **2019-04-06 23:44:38**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Public service being too reticent to release information for fear of political consequences/because of political interference;
More organisations should be covered.
Some updating of the law is needed.
Public interest should weigh more heavily.

2 Do you think these issues relate to the legislation or practice?

2:
Both, but practice most important. Changing the law may help change the practice.

3 What reforms to the legislation do you think would make the biggest difference?

3:
A criminal offence for those who deliberately withhold information they know there is no good reason to refuse to release, or who counsel for that.
The main point of such is not to punish such behaviour but to dissuade eg Political appointees from trying to pressure public servants and to empower Public Servants to push back at Political staff with the argument eg "I'd love to, but because the law requires release, refusing to release would be a crime."

Extend the public interest test to the "conclusive grounds". As with legal professional privilege, those are grounds that will hold strong sway, but the public interest in release of information should be able to be taken into account. Maybe there is some information in which the public interest in release is so great that the fact there may be some harm to New Zealand's international relations is worth that small harm, because of the good the release will do.

Extend OIA to some not now covered: especially the Law Officers (who will still be able to rely on legal professional privilege where appropriate), and regulatory bodies (eg, the Law Society, in the exercise of their regulatory functions)

Optional questions

4 Name:

Name:
Graeme Edgeler

5 Organisation:

Oganisation:
member of the public

Response ID ANON-E8XQ-FT4S-7

Submitted to **Have your say about access to official information**
Submitted on **2019-04-14 20:57:05**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Lack of adequate resourcing and legislative powers to be effective to enhance democratic principles by bringing the accountability of " sunlight" to public officials and creating a climate of open government .

2 Do you think these issues relate to the legislation or practice?

2:
Both. The legislation is inadequate to create any meaningful openness and transparency. Further, the resources available to do the job are inadequate hence long delays in dealing with complaints. The OIA statistics on complaints are an excel spreadsheet with no aggregated data which in itself is a problem but the impression is that few complaints get anywhere of significance. Having a complaint upheld is hardly something for a public official to be concerned about because there are no consequences. The practice with some departments and public bodies seems to be to use the withholding sections such as section 9 knowing that the process of appeal is difficult for the lay person and takes a long time and that at the end of it the worst sanction is having to disclose the information. The perception as a lay person is that the process is made as difficult as possible using withholding of information and delays to try to dispirit any citizen who wants to get at the truth of a matter.

3 What reforms to the legislation do you think would make the biggest difference?

3:
The other reasons for withholding information in section 9 relating to the privacy of natural persons and commercial prejudice seem to be routinely used to redact any information that could be " awkward" . Wholesale redactions are, in my experience, common place. The citizen seeking answers is then left with an appeal process that takes forever and is wholly inadequate to mount an effective challenge to officials decisions to withhold information.
Further, there is no effective sanction for Ministers and officials who do not comply with the Act . The review process is no sanction and the Ombudsmen similarly lack any effective power to reform behaviours that are contrary to the principle of availability and open government. Government Ministers including former PM Key have made a mockery of the Act. Government Ministers wish to avoid political embarrassment somehow needs to be dealt with because it is setting the tone for the response to genuine requests for Official Information from citizens who desire answers to issues and who want to see open government . Civil society and democracy deserve better than the current situation.

Optional questions

4 Name:

Name:
Marcus Wi kins

5 Organisation:

Oganisation:
Quis custodiet ipsos custodes

Response ID ANON-E8XQ-FT4T-8

Submitted to **Have your say about access to official information**
Submitted on **2019-04-15 11:08:31**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The fundamental issue is that managers who have something to hide explicitly use every loophole and trick available to delay or obfuscate rather than adhere to the intention of the Act. This also happens in the Local Government sector. Obvious tactics that I am aware have been used are:
1.Requiring questions to have the magic words "Official Information Request" before even responding.
2. Routinely delaying a reply as long as poss ble relating to allowed timelines.
3. Specifically delaying particular replies as long as poss ble to allowed timelines.
3. Providing insufficient answers and thus delaying further
4. Using excessive PR spin to what should be factual answers
5. Using third party contracts to avoid having the information in the first place (e.g. contract wording to provide a summary report of findings rather than detail)
6. Using third party contracts to provide outcomes rather than transparency
4. Senior manager intervention in reviewing and 'correcting' responses
5. The negative impact of organisational responding behaviours caused by the 'no surprises' rule
6. Answering an easy question in a request and failing to reply to substantive ones

2 Do you think these issues relate to the legislation or practice?

2:
Both. The legislation allows the practice. However, politics, team dynamics and worry about ones job all have a significant part to play. (Who remains trusted to work in their field and have a worthy career after blowing the whistle?)

3 What reforms to the legislation do you think would make the biggest difference?

3:
To my mind, extreme breaches should be a criminal matter because this relates, clearly, to abuse of power.
The Whistleblowers Act could be considered at the same time (for similar reasons)

Optional questions

4 Name:

Name:
Andrew Ollivier

5 Organisation:

Oganisation:
Private (but have worked in Government, Local Bodies and a Statutory Body)

Response ID ANON-E8XQ-FT4U-9

Submitted to **Have your say about access to official information**
Submitted on **2019-04-16 20:56:51**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Use, misuse, and abuse of the OIA legislation.

There is proper usage that is in keeping with spirit and intention of the OIA
There is a level of misuse whereby organisations and individuals use the OIA to obfuscate and deny legitimate requests.
Abuse of information that has been occurring for some time through use of internet, particularly so-called 'social media'.

2 Do you think these issues relate to the legislation or practice?

2:
Mostly they relate to the practice ... but ... that could indicate that the legislation is either too loose or is outdated in today's increasingly technology-savvy world ... or both

3 What reforms to the legislation do you think would make the biggest difference?

3:
Perhaps add or provide for a set of regulations that spell out in greater detail what is permissable and what is not.

Optional questions

4 Name:

Name:
Richard Overy

5 Organisation:

Oganisation:
Private individual

Response ID ANON-E8XQ-FT4W-B

Submitted to **Have your say about access to official information**
Submitted on **2019-04-14 21:00:54**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The production, management, storage and description of information within and between agencies to simplify its access by agency officials and members of the public.

The creation and storage of information (with particular reference to digital information and data) with a view to discovery and retrieval.

Guidance available to those who produce information and those who wish to access information - "due particularity" is not as helpful as it could be and file naming conventions/ folder locations are mired in the concept of the filing cabinet.

2 Do you think these issues relate to the legislation or practice?

2:
Practice. The legislation is simple - certainly to me as someone without legal training! The practice is not so simple - certainly to me as an information manager . The confusion between "technology" and "techniques" allows for many games of hide and seek.

I am able to provide many examples of techniques covering the creation, storage, discovery and retrieval of information that are, in my opinion, relevant to the analysis of current operation of the OIA and which might serve as models for future developments. . These examples span mathematical techniques from 300 years ago to the statistical techniques of 21st century machine learning, natural language processing and the gamut of artificial intelligence. What is the meaning of "due particularity" when these techniques are employed?

The addiction to "file naming" and "folder structures" serves to frustrate the dissemination of, and access to, official information. Describing the information and identifying the details of its meaning and relevance should assist in achieving the goals of the OIA.

This on-line questionnaire is unl kely to be the ideal format for an in-depth discussion or thesis on the details of 21st century information management techniques, but perhaps the identification of some generalities with illustrative examples will help.

Thinking based round physical objects and the filing cabinets of the 19th century is, in my opinion, irrelevant in the 21st century and beyond. Creating and storing information to simplify discovery and retrieval should no longer be based on the concept of "where do I file this?" but rather on the concept of "how do we find this?" In the digital world, "folders" have no physical manifestation. Electronic files do not exist as individual entities - each file is scattered over the storage media (the term is "random access"). Folders are concepts used to assist in understanding the context of the information represented within the files - they may be thought of as "folderish" or "containerish" objects (to employ jargon), but not as physical folders or containers. The manila folder is a physical object that exists in space and contains physical files - electronic folders and files are abstract concepts. Those requesting access to official information should not be burdened with the requirement to know file names or folder locations. Assistance should be offered to producers and seekers in describing the information.

In this advanced digital era, file naming conventions and folder structures are obstructions and anachronisms in the information management space.

Take file DSC_0097.JPG. It is real; it exists (on my smartphone). The information contained within it refer to the Green Vegetable Bug/Southern Green Stink Bug, Nezara viridula, photographed on 26/03/2019, at location LAT 40:37, LONG 75:18, altitude 45m above sea level, taken by me, and with no copyright restrictions but a Creative Commons licence of CC-BY.

Those pieces of information are metadata elements held within the file and available for display in, for example, Windows Explorer, or for discovery via the search capabilities of a wide variety of modern technologies. The techniques of describing the information held in the electronic file are hundreds of years old. Most of those elements are added automatically when the picture is taken - the subject matter expert adds the descriptions that cannot (as yet - but technologies are advancing) be added automatically, such as the scientific and trivial names of the insect. The enquirer may have very broad or very narrow requirements, but the metadata elements can serve to achieve both targets.

A picture may well be worth a thousand words, but the file name of a digital rendition of the picture, or its location is a file hierarchy, are highly unlikely to provide those words .

Text-based files are also capable of holding descriptive and administrative metadata that can simplify and speed discovery and retrieval - and hence reduce the costs of requests for official information. Again, the addiction to file naming conventions can inhibit the speedy and efficient access to official information. The title of a document and the filename of the document are different concepts with many system specifications restricting the ability of a filename to mirror the title.

Metadata-rich, semantically-enhanced documents can simplify the access to information. Paragraphs can have their semantic value enhanced by the use of descriptive styles - H1, H2, H3 and so on have little semantic value. A style such as "Opinion sought" can add huge semantic value to both the paragraph and the document. Indeed, this approach can allow the storage of, and access to, individual paragraphs that can enhance the reuse of information, as well as enabling the output and rendering of the information into a wide variety of formats (e.g. HTML/WWW, PDF, EPUB, Braille, Daisy).

The information is held in a neutral manner and rendered on request into the format suitable for the requester and the rendering system employed (visual, tactile, sound etc).

The technique of structured authoring is now easily achievable via a variety of techniques and software packages. The access to official information can be enhanced by the adoption of the structured authoring approach.

Should there be standardisation around the description of official information to simplify its discovery by tax payers and officials? That has been tried - about 20 years ago there were "government locator services" but, in my opinion, they were ahead of their time. The technologies available at the time , in general, did not support the searching of metadata elements and the understanding of the efforts required to manage the descriptions (metadata elements) was optimistic at best.

Technologies have evolved. The capabilities for searching metadata elements are widespread. The practices of establishing, populating and managing metadata fields, however, are still embryonic. The techniques of automatically classifying and describing documents/information via the rapidly-maturing capabilities of artificial intelligence depend entirely on subject matter experts capturing and defining the descriptions of their areas of expertise and on the variations of those descriptions.

None of that is new! But these are exiting times in which old techniques and new technologies are coming together like never before to drive the largest change in information management since Gutenburg's revolution in printing..

I do not believe that there are simple or inexpensive answers to the questions alluded to above. I suggest, however, that there is long-term benefit to be obtained by considering the implications and opportunities afforded by current developments in information management theory and practice.

3 What reforms to the legislation do you think would make the biggest difference?

3:
My understanding is that the legislation says that official information should be available to all. Perhaps the legislation should state that the information should be created and stored in ways that enhance its discovery, retrieval and availability by and to all.

Optional questions

4 Name:

Name:
Richard Bacon

5 Organisation:

Oganisation:
Retired

Response ID ANON-E8XQ-FT4X-C

Submitted to **Have your say about access to official information**
Submitted on **2019-04-12 11:22:23**

Our questions

1 In your view, what are the key issues with the OIA?

1:

2 Do you think these issues relate to the legislation or practice?

2:

3 What reforms to the legislation do you think would make the biggest difference?

3:

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FT41-5

Submitted to **Have your say about access to official information**
Submitted on **2019-04-05 11:40:52**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Does not reflect the significant changes in technology, particularly social media.
Does not adequately deal with vexatious requestors who put in multiple requests for no reason and abuse the OIA process
The lack of protection for information published through proactive release, as currently under an OIA release

Lack of protection for online harassment in the current Act

2 Do you think these issues relate to the legislation or practice?

2:
Legislation

3 What reforms to the legislation do you think would make the biggest difference?

3:
Updating it to be in line with current technology and issues.

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FT42-6

Submitted to **Have your say about access to official information**
Submitted on **2019-04-16 22:54:26**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Agencies refusing to provide or simply not responding to requests within the required 20 days knowing any complaint will take 6 months to several years to complete and, even if found to have decided incorrectly, knowing there is no penalty to an incorrect decision beyond being required to provide the requested information (and sometimes not even then).

Agencies lacking a basic understanding of the OIA or LGOIMA requirements and therefore making incorrect decisions causing further delay even to knowledgeable requesters.

The Ombudsman Complaints procedure being slow, non-transparent and often unfair. After submission of the complaint, the Ombudsman only works with the agency to come to an interim decision with the complainant only getting 3-4 weeks to comment. Also any additional evidence provided to by the agency in support of their decision is kept from the complaint submitter who must rely solely on the summary information provided in interim decision to provide feedback.

Unclear and inadequate rules around information held in IT systems and databases.

Unclear and inadequate rules around agency information held by contractors that provide services to the agency.

No incentives to agencies to proactively release information to the public. This should include:
* the automatic review of the "Public Excluded" meeting information every 3 years with those meetings where information no longer needs to be withheld being published.
* publishing information requests and responses so people don't have to repeatedly ask the agency the same question to get information on a key topic.

I would like to provide further feedback with evidence these issues on this so please contact me at xxxxxxxxxxxxxxxxxx@xxxxx.xxx

2 Do you think these issues relate to the legislation or practice?

2:
Both.
The legislation is not clear in several areas including information held in IT systems and information held by contractors providing services to agencies.

The legislation also does not properly support the use of published precedence cases to support decisions (which would speed up and provide clarity on the boundary of OIA/LGOIMA rules).

The legislation also does not properly provide any serious penalties for agencies who consistently fail to properly follow the OIA or LGOIMA information request process.

The legislation does not require the pro-active release of key information including:
* the automatic review of the "Public Excluded" meeting information every 3 years with those meetings agenda's, reports and minutes where information no longer needs to be withheld being published.
* publishing information requests and responses so people don't have to repeatedly ask the agency the same question to get information on a key topic.

The Ombudsman's complaints procedure does not have rules that provide transparency or ensure the complaint process supports the rules of Natural Justice and Due Process for both requesters and agencies.

The Ombudsman has inadequate resourcing that leads to major delays in processing complaints. The current delay is so long it has become method for some agencies to delay the release of information they should release but want to keep from the public.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Supporting the use of published OIA/LGOIMA precedence cases in the complaints decision making process.

Improvements in the legal part of the Ombudsman complaints process that:
* enables the Ombudsman to communicate with both the agency and the requester before issuing an interim decision. This would include sharing key evidence used in any decision between parties before the decision in support of Natural Justice and Due Process.
* better transparency and possibly other penalties that will incentivize agencies to ensure their staff properly support the OIA or LGOIMA. The public should know which agencies consistently fail to correctly apply the information request rules as well as those that meet good standards

Requirements to proactively publish key information such as:
* requests/responses to the agency
* "Public Excluded" meeting agendas, reports and minutes after a couple of years if the information no longer has to be withheld.

I would like to provide further feedback with evidence on poss ble legislative reforms so please contact me at wellingtoncommuter@gmail.com

Optional questions

4 Name:

Name:
Tony Randle

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FT43-7

Submitted to **Have your say about access to official information**
Submitted on **2019-04-16 10:07:25**

Our questions

1 In your view, what are the key issues with the OIA?

1:
It is very inconsistently applied, and subject to considerable political interference

2 Do you think these issues relate to the legislation or practice?

2:
Mainly practice

3 What reforms to the legislation do you think would make the biggest difference?

3:
Explicitly proh bit bad behaviour - e.g. Ministerial consultation/approval of agencies' OIA releases, redaction of 'out of scope' material, time extensions.

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FT44-8

Submitted to **Have your say about access to official information**
Submitted on **2019-04-05 16:30:56**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Agency response times, ensuring agencies comply with their obligations both in terms of disclosing all appropriate information, ability to enforce obligations

2 Do you think these issues relate to the legislation or practice?

2:
Some of the legislation is not clear in terms of when agencies can withhold information but practice is probably more of an issue

3 What reforms to the legislation do you think would make the biggest difference?

3:
Giving Ombudsman enforcement options such as significant fines for non-compliance
Clarity in the legislation would give agencies and requesters better certainty around what must be disclosed

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FT45-9

Submitted to **Have your say about access to official information**
Submitted on **2019-04-09 16:40:54**

Our questions

1 In your view, what are the key issues with the OIA?

1:
1. I don't think the OIA envisaged just how many OIA requests government agencies would receive. When I started at my job at a govt agency 10 years ago, we received perhaps three a year. Now, it is hundreds every year, and one request can consist of 10 or 20 questions. We do not have the resources to cope with this much work. Agencies have been told to restructure and reduce their staff, so we have less people to do much more work. Staff routinely work overtime (unpaid of course, and by staff I mean advisors on average salaries, not managers who earn a lot) in order to get through the work. No one wants to be seen as ineffective and ripe for redundancy!

2. There needs to be a provision in the OIA for considering an agency's resources. There is the charging provision, but many agencies are loath to use this, or don't understand how to do it.

2 Do you think these issues relate to the legislation or practice?

2:
Both (see my comments above).

3 What reforms to the legislation do you think would make the biggest difference?

3:
1. Agencies to be given the resources to cope with so many requests, instead of being told to reduce staff.

2. Add a provision in the OIA for considering an agency's resources.

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:
Inland Revenue

Response ID ANON-E8XQ-FT47-B

Submitted to **Have your say about access to official information**
Submitted on **2019-04-08 06:53:18**

Our questions

1 In your view, what are the key issues with the OIA?

1:
It's not an practical Act, because it allows frivolous requests that have nothing to do with legislation or practice.

2 Do you think these issues relate to the legislation or practice?

2:
the issues are phishing

3 What reforms to the legislation do you think would make the biggest difference?

3:
1. the 20 days to provide information should be extended to at least a calendar month (31 days) - more people are making requests.
2. phishing should be banned - ordinary requests for information get waylaid by phishing requests.
3. one request per month, not one request every time the requestor has another idea.

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FT48-C

Submitted to **Have your say about access to official information**
Submitted on **2019-04-10 21:32:08**

Our questions

1 In your view, what are the key issues with the OIA?

1:
you withhold information that should be publicly availble, the government works for the people. not some overseas greedy corrupt people that we didnt vote in

2 Do you think these issues relate to the legislation or practice?

2:
both, the laws change on the go to hide the corruption

3 What reforms to the legislation do you think would make the biggest difference?

3:
full disclosure or give back stewardship.

Optional questions

4 Name:

Name:
anna key

5 Organisation:

Oganisation:
scooby doo detectives

Response ID ANON-E8XQ-FTA2-K

Submitted to **Have your say about access to official information**
Submitted on **2019-04-17 06:30:10**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The OIA is not enforcive on Parliament, only on Government. The Office of the Speaker and the Office of the Clerk must now come under this Act because for democracy to be respected in New Zealand, people need to also trust in these particularly higher levels of Parliament too.
I will provide a very timely and important example of why it is important that this current exemption be rectified.
People I know are dying as they cant get enough funding through Pharmac. Thus it is imperative on all Representatives to use funds judiciously. The Speaker Trevor Mallard and Gerry Brownlee went on a trip to Japan. They appear to of spent well over $4000 each just on incidental expenses ie petty cash in just over 48 hours in Japan. The Speaker informed me he won't release to me these details as its not in the Public Interest, Mr Brownlee is refusing to provide any further information as well. The Office of the Clerk is refusing to release it without The Members permission and I have no recourse via the OIA.
Of course it is in the public interest to know that these two were being judicious with public funds while on this trip when there are not enough funds to fund everything the public seeks.
The Speakers and Mr Brownlees decision to not release this information appears to be a deliberate contemptuous act which obviously reduces respect in the New Zealand democratic process. This current exemption in the OIA gives these Members the ability to act with impunity which is why, i suspect that, their expense bill is so high.

The Office of the Speaker and the Office of the Clerk are amongst the highest offices in New Zealands' structure of governance, so this current legal situation that permits no scrutiny is a very perverse situation and must be rectified.

2 Do you think these issues relate to the legislation or practice?

2:
Legislation.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Office of the Speaker and Office of the Clerk must be included in The OIA.

Optional questions

4 Name:

Name:
Michael Beckett

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTA3-M

Submitted to **Have your say about access to official information**
Submitted on **2019-03-18 12:43:34**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The OIA is viewed as a problem by both ministers and agencies. The business of the public service is structured around "what happens if there's an OIA about this?" and plenty of business is conducted over the phone to avoid there being a record.

Ministers and therefore their agencies operate on the principle that the general public isn't really able to understand the "importance" of any particular topic and that they should just be left alone to make the decision(s) for the public.

2 Do you think these issues relate to the legislation or practice?

2:
Both. At the end of the day, no matter what rule is created, someone is going to try and circumvent it. Politicians are extremely risk-adverse and due to the control they influence over their agencies, agencies are risk-adverse as well. Practice dictates that the focus is on keeping ministers happy first and foremost; after that, the agency needs to protect itself from criticism, and then finally whatever consideration is left is given to the public.

The OIA legislation is based on the principle of availability. The practice is to only release what MUST be released. In the past 10 years, the practice has refined so that ministers and their agencies will say the right things and have policies that ostens bly reflect greater transparency, but it's merely a box-ticking exercise.

Plenty of times there are discussions that take place and then you'll be told to ring someone instead of sending an email, and more than once I've heard someone told to recall an email and that in the future "that kind of thing shouldn't be sent in an email."

3 What reforms to the legislation do you think would make the biggest difference?

3:
I'm honestly not sure what reforms could be made that would change the approach taken by the government and the public service. Certainly there could be greater clarification around certain things; the Law Commission's review of the OIA [The public’s right to know , NZLC R125, 2012] would be an excellent foundation to start from.

Response ID ANON-E8XQ-FTA6-Q

Submitted to **Have your say about access to official information**
Submitted on **2019-03-15 00:36:35**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The key issue for me was the ability of a government department to argue that it could withhold information in 'the national interest' which I as an individual was unable to be in a position of arguing because my only recourse was to go to the Ombudsman, but at no time was I able to challenge the facts directly. It was all done under secrecy and I had to wait almost three years to get a 'no' in the end. I was wanting information on discussions that had taken place between the PM's Dept. and the MFA about a matter of the gravest human conscience - a crime aganst humanity witnessed by ANAC troops and the media during WWI, and which has been recognised by 29 nations as a genocide but for political expediency - NZ politicians fearing that they would be personnaly banned from Gallipoli - our MFA thought it right to politicise a crime. I believe that I should have been able to challenge the notion that the deaths of millions is worth less than our long-distance relationship with Turkey. in front of a judge or an Ombudsman who gave me a chance to cross-examine the logic.

2 Do you think these issues relate to the legislation or practice?

2:
Yes I do because the process is not trasparent, and departments are not punished for deliberately delaying their responses, which in my case took years past the cut-off date. I felt as if my case was del berately delayed for years and passed form one minister to another so they could avoid the question. The OIA is supposed to bring accountability to public servants but my experience shows that there is precious little accountability and the power to abuse and lie to the public still remains with the government. Of course I do not want to see public servants run down by recidivist submitters so there shoudl be checks and balances to protect them as well so they can do their job, but in my case I felt ashamed of being an ordinary New Zealander trying to recognise what every decent kiwi would recognise but treated l ke garbage by more 'important' people.

3 What reforms to the legislation do you think would make the biggest difference?

3:
I would like you to review my case for a start as a case study. I am happy to engage with the MInistry of Justice if it means my case can be revisted. My email is xxxxxx@xxxx.xxx My private email is xxxxxxxxx@xxxxx.xxx I still want answers and do not accept that 'important' people in the MFA are the only ones who can judge whether NZ's reputation and international relations will be adversely or positively affected on balance. I happen to work for the UN and am the author of works related to human rights, especially crimes against humanity, and have travelled extensively to the Middle East, including Turkey. I would have liked the legislation to not allow the government department to be the sole judge of what is in the 'national interest' and for individuals to be able to challenge in an open and independent forum such subjective notions. The Ombudsman is overwhelmed and kind, but was not able to explain anything or allow me to challenge any fact at all. I would also like the legislation to punish government departments, including the Ombudsman, who at one time took more than 18 months to respond to my complaint, for failure to abide by the legislation.

Response ID ANON-E8XQ-FTA8-S

Submitted to **Have your say about access to official information**
Submitted on **2019-03-15 05:01:09**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Process is not standardised across agencies - members of the public only know about it if they have read the legislation. Within agencies (in my experience, working for local government) there is an ok practice towards responding to OIA's and ensuring these are met within timeframes however, most people dont know about the legislation. We would treat all enquirers with an 'OIA' protocol essentially to meet quality standards but im not sure this is the case for other agencies.

2 Do you think these issues relate to the legislation or practice?

2:
Practice. The legislation is clear enough - the public communication is not.

3 What reforms to the legislation do you think would make the biggest difference?

3:
I think accompanying guidance material for agencies and submitters would be helpful. Explaining what an OIA, and the standard practice for response from agencies (1 hour free to compile a response, quotation for remaining information). Even having a standardised form/ submission processes/ central portal for all OIA's nationally could be worthwhile...

Response ID ANON-E8XQ-FTAB-3

Submitted to **Have your say about access to official information**
Submitted on **2019-03-14 22:09:26**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Length of response time is too long, I've made several requests, and most of them have taken 20-40 days.

Information requested had been del berately witheld, or supplied in a general rather than specific format

2 Do you think these issues relate to the legislation or practice?

2:
Both

3 What reforms to the legislation do you think would make the biggest difference?

3:
Cut the length of response time to 10 days.

Information should be researched provided by independent reviewers, and any redacted or edited or unreleased material should be assessed and supervised by an independent authority. The respsonses I've had have clearly been edited by PR departments at local government authorities ie. Auckland Transport and important relevant material has been excluded

Response ID ANON-E8XQ-FTAC-4

Submitted to **Have your say about access to official information**
Submitted on **2019-03-15 06:42:45**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The concealing of information

2 Do you think these issues relate to the legislation or practice?

2:
Practice

3 What reforms to the legislation do you think would make the biggest difference?

3:
Penalisation of any official that withholds information

Response ID ANON-E8XQ-FTAF-7

Submitted to **Have your say about access to official information**
Submitted on **2019-03-18 11:02:32**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Through personal experience as a trustee on a school board and professional experience as a governance adviser to school boards, I believe there needs to be more support for small organisations, including school boards of trustees, in dealing with requests for OIA when those requests are for very large amounts of information or cover a huge range of topics. I absolutely support the OIA in terms of transparency but have seen it misused to "punish" or "attack" boards. Receiving nearly 150 requests (with some of the individual requests having up to 50 bullet points) in the space of a few weeks was overwhelming for our school board. While we worked through each request and provided the information asked for and withheld a small amount based on advice from the Ombudsman's Office and our lawyer, the requester laid a complaint and we then had to go through a long and stressful process to deal with this. While the complaint was not upheld and the Ombudsman confirmed we were entitled to withhold the information based on the the sections of the act we relied on, it was clear to us that the complaint was because the individual concerned did not agree with our decision and was misusing the OIA. We knew from other correspondence we were copied into by the requester to numerous government agencies that he believed there was a conspiracy to cover up that those agencies were also part of and his personal attacks on us as individuals created a full picture that showed he had a vendetta against our board. As a board that post all our minutes and documentation on our school website and consult and share regularly with our school community on a wide range of the decisions we need to make, it was an unnecessary distraction from the work of the board and created a huge amount of stress as it took many voluntary hours of board members' time to respond to the requests and to work with the Ombudsman's Office following the complaint. Had we been able to shut this requester down as vexatious much earlier, we could have minimised the stress and disruption caused. The new guide on vexxatious and frivolous requests that was released last year would have been incred bly helpful to us and I believe this goes some way to addressing some of the issues we faced.

2 Do you think these issues relate to the legislation or practice?

2:
A bit of both - the legislation allowed our requester to make his numerous scatter gun requests and not be considered vexatious because he was not repeatedly asking for the same information. It related to practice in that we received conflicting advice from the Office of the Ombudsman and it was not until the complaint was allocated to a senior official that we really felt we had support to work through the information and ensure we had complied with the OIA.

3 What reforms to the legislation do you think would make the biggest difference?

3:

Response ID ANON-E8XQ-FTAJ-B

Submitted to **Have your say about access to official information**
Submitted on **2019-03-14 19:00:41**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Minister's office review of OIA's - in my experience there's usual political pressure to withhold information. In my area (working in one of Andrew Little's portfolios) that seems particularly bad under this government.

2 Do you think these issues relate to the legislation or practice?

2:
Practice and culture

3 What reforms to the legislation do you think would make the biggest difference?

3:
Could be clear in the legislation when Minister's political/comms staff get to review OIA releases

Response ID ANON-E8XQ-FTAK-C

Submitted to **Have your say about access to official information**
Submitted on **2019-03-15 07:48:02**

Our questions

1 In your view, what are the key issues with the OIA?

1:
It is to open to agiencies not having to answer the questions being asked. I have asked straight forward questions and received answers that do not answer the questions rather talk around the questions or a complete refusal because the agiency said it was vexatious. In this case I was asking for a school policy that I could not gat despite the school using that policy against myself and daughter. I have been unable to get copies of Bosrd of Trustee minutes from the same school

2 Do you think these issues relate to the legislation or practice?

2:
Practise and agiencies interpretation of the act.

3 What reforms to the legislation do you think would make the biggest difference?

3:
There should be no redactions at all bar names that could identify individuals adversely or covered under the National Security areas.

Response ID ANON-E8XQ-FTAM-E

Submitted to **Have your say about access to official information**
Submitted on **2019-03-15 07:34:59**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Public information which must be legally available under democratic statutes is hidden from view when it should be released, un-edited. This suggests a level of corruption, undermines trust in the process and raises suspicion of politicians.
It is akin to the public redacting their taxes to pay for what suits them.

2 Do you think these issues relate to the legislation or practice?

2:
Practice AND legislation.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Two week maximum wait - not 20 days.
No information hidden from view.
This will keep our representatives honest.

Response ID ANON-E8XQ-FTAP-H

Submitted to **Have your say about access to official information**
Submitted on **2019-03-14 19:37:28**

Our questions

1 In your view, what are the key issues with the OIA?

1:
There are no issues with the OIA. The issues are around political advisers and their Ministers who screen everything and have created a culture of fear for officials who dare not comply strictly with the spirit of the OIA. There are entire industries within every branch of govt that use every trick in the book to avoid releasing anything that may create reputation issues for their department or embarrassment for Ministers. The forces arrayed against officials are very powerful and the spin starts at the top with CEs of all depts complicit in driving a culture of non compliance. If you blow the whistle you will be down the road. Broad interpretations by legal depts are made to withhold info that may be damaging. Comms teams are involved in spinning responses. It's endemic at all levels of govt. Responses are often delayed on direction of political advisers for reasons of political expediency. Until there is total separation between politicians and officials nothing will change.

2 Do you think these issues relate to the legislation or practice?

2:
The practice.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Some type of separation of the politicians and officials. Systems and processes that ensure strict adherence to the spirit of the OIA. The threat of complaint to Ombudsman is regarded as an acceptable risk in many cases. CEs need to be held directly accountable. It should be a criminal offence to breach the OIA. The incentives to comply are simply not there. It's all about minimising disclosure to protect Ministers.

Response ID ANON-E8XQ-FTAQ-J

Submitted to **Have your say about access to official information**
Submitted on **2019-03-14 21:18:56**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Delays in fulfilling the OIA requests. Specifically Oranga Tamariki who have a convoluted procedure in order to obtain information. They appear to have no facility to request for information in writing or email, but provide only a telephone number on their website (https://www.orangatamar ki.govt.nz/contact-us/contacts/)
Once the request is received there appear to be huge delays. One request I know of took 8 months to provide the information. Admittedly there were 4000 pages of documents and the delay involved editing of the file.

2 Do you think these issues relate to the legislation or practice?

2:
Practice. I have used the OIA several times over a period of 30 years and there appears to be a greater reluctance to fulfill requests in recent years in some of the requests.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Greater adherence to the Act and its provisions and penalties for government agencies who do not comply. Sometimes agencies want to charge for the collection of the information and making copies, so why not charge the agency for unwarranted delays and non-compliance to the Act.

Response ID ANON-E8XQ-FTAR-K

Submitted to **Have your say about access to official information**
Submitted on **2019-03-14 20:41:51**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The overuse of the OIA by some serial OIAers who on many occasions are wasting govt ministry and organisations time with multiple requests. I have had experience of this happening with school Boards of Trustees who do not have the resources of a large govt ministry to be able to deal with multiple requests.

I see it as time and resource wasting in some cases.

2 Do you think these issues relate to the legislation or practice?

2:
The legislation is not strong enough about the control of serial OIAers with multiple requests that do not add anything to the public interest but support a single person with an axe to grind. Perhaps there are also practice implications as for some organisations they have no expertise and so spend money on getting advice about release as well as how to stop serial requests. I think there is a general principle of openess that should apply but “fishing” is problematic.

3 What reforms to the legislation do you think would make the biggest difference?

3:
I an unsure in many ways but practical resource to redact and pull together information could help some Groups.

Response ID ANON-E8XQ-FTAT-N

Submitted to **Have your say about access to official information**
Submitted on **2019-03-16 15:34:17**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The key issues with the official information act (OIA) are that in practice agencies treat as the maximum permissible limit on information sharing, when it is clear to me that the legislation was intended as a minimum that should be exceeded. New Zealand government agencies have developed a culture of secrecy. Agencies have come to treat all of their data as a type of secret, typically with misinformed misapplications of the information security principle of least privilege or the NZISM information classifications. They keep their own records and documents secret from their own staff, and force parliament to file official Parliamentary Questions for the simplest information. In the New Zealand Government agencies where I have worked on information architecture and data architecture, the staff who answer OIA's have more access to information than anyone else. These staff are instructed by their agencies, frequently in emotionally heated disagreements, to find any reason to deny access to information and to limit the information released. In my experience, New Zealand government agencies view OIA requests as attacks on their information assets.

In my experience in making OIA requests, I believe that the government has illegally withheld information which I have requested. I have reason to believe that information that agencies have claimed did not exist in response my requests did actually exist.

All of this is symptomatic of two disorders troubling New Zealand Government. The first is authoritarianism from the leaders of agencies. In general, agency executives lack respect for their staff. This leads them both to misappropriate decision making authority that should have been delegated, and to mistrust their staff to the extent where frequently staff are denied access to information which is obviously pertinent to their duties.

The second trend is an extreme lack of attention to data integration during systems procurement. This procurement and IT architecture failing leaves agencies with dozens or hundreds of disconnected systems. Along with the many millions of files sitting on various drives, the agencies lack the ability to know what information they have on a topic. And rather than planning long term solutions, agencies act as if each new OIA request or parliamentary question is a crisis which could not have been anticipated, and which they address with heroic efforts of their most capable staff. In short, most of the agencies subject to the OIA have committed a form of IT malpractice which makes it extremely difficult and costly for them to comply with the existing legislation. These agencies then rationalise their own failure to plan as an excuse to fail to comply with the OIA.

2 Do you think these issues relate to the legislation or practice?

2:
Legislation is always practised. Obviously the failures we care about are in the practise of the legislation. That does not even imply that the legislation should not be improved. It does not make sense to blame the people enacting the legislation for the legislation's failure to provide clear direction, effective governance, and meaningful penalties for non-compliance. The legislation must be held accountable for the failure of its implementation.

3 What reforms to the legislation do you think would make the biggest difference?

3:
I think that it is instructive to consider that the current OIA legislation was written before either personal computers or the internet played any role in New Zealand life. The entire perspective taken by the OIA is antiquated. New Zealand government l kes to ta k about Open Government and Open Data, but has so far failed to enact a plan. I recommend a fundamental change in information management. I do so after years of careful del beration and as professional data architect who speaks at industry conferences. I recommend that the OIA be amended to require all government agencies to proactively publish all of the information that could be subject to OIA requests or parliamentary questions. Anyone, without any authentication, should have access to every approved government document, from policies to reports to meeting minutes. Again, everyone should have access to anonymised transaction data from every government information system. That such and such an agency adjudicated this many applications with the following decisions ought just to be published, along with the anonymised details of every other aspect of government operations. Moreover, the Privacy Act already requires that an agency divulge what information that they have on any individual when that individual requests it. The same open government API which provides the anonymised data on everyone should, when accessed by an authenticated person, provide that person's information.
We have seen our agencies fail for decades to lead themselves to integrate their data to allow themselves to efficiently comply with the existing OIA. We can not expect them to react to minor tweaks to the OIA with actions to correct a generation of mismanagement of their information assets.
Of course, there still needs to be a mechanism to file requests. Inevitably there will be difference of opinion about what information should be published, or is being published. The act also needs to include clear direction that agencies are to provide as much information that could be pertinent to requests the they receive as is practical, and to interpret requests generously. There needs to be all of government standards and training. There must be agencies empowered to audit the application of the OIA by other agencies. And finally, given that there is widespread belief that agencies are choosing not to comply with the existing act, the new act needs significant penalties to deter future violations of the act.

Response ID ANON-E8XQ-FTAU-P

Submitted to **Have your say about access to official information**
Submitted on **2019-03-18 16:55:19**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The OIA is being gamed increasingly by politicians and their servants in the public service. Organisations l ke NZ police do not even respond to OIA requests in the first instance.

Some organisations which have been privatized since 1975 still have a huge impact on people and should still be subject to the OIA. The "in house ombudsman" services are not independent.

The commercial in confidence exception is used so often as a reason not to share it should have a time limit on it of say 6 months after the 'secret event' happened.

Some organisations such as electricity trusts (in Gisborne / Wairoa for example the Eastland Community Trust) have a huge impact on their electricity customers. They ought to be listed in the schedules of organisations subject to Ombudsman jurisdiction.

2 Do you think these issues relate to the legislation or practice?

2:
Both .
"Legislation" should be tweaked to re-emphasise the fact that exceptions to disclosure of public information are not rules and the schedules (Regulations) should be expanded to include service monopolies like the telcos and electricity suppliers which have their genesis in public service. I understand the rules already apply to ACC so why not the telcos and electricity.
"Practice" means a clause in the Ombudsman's contract of employment emphasizing his/her independence and the expectation he/she will be fair and impartial . Perhaps with a right/duty to report to the Minister of Justice any perceived "undue pressure/obstruction from parliamentarians" which the Min of Justice must table in Parliament within one month of receipt

3 What reforms to the legislation do you think would make the biggest difference?

3:
A change in emphasis as outlined above would see a return to the original intent of the Act and put NZ back at the top of the list of the world's best performing freedom of information nations

Response ID ANON-E8XQ-FTAY-T

Submitted to **Have your say about access to official information**
Submitted on **2019-03-14 23:34:37**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Many OIA requests are time consuming and costly for government officials to respond to. It also takes time away from officials' normal tasks.

As these cost is not recorded, the requests are viewed by the public as being costless even though that is far from the case. While some OIA requests are made for legitimate public interest reasons, other requests are made because the requester hasn't bothered to do their own research, or are just hopelessly vague/broad.

2 Do you think these issues relate to the legislation or practice?

2:
Mostly practice

3 What reforms to the legislation do you think would make the biggest difference?

3:
Recording the costs of responding to OIAs and perhaps reporting those costs back to the requestor would be a start. That would allow the public to know exactly how much their requests costs, and they could then decide if that is an efficient use of taxpayer funds.

Response ID ANON-E8XQ-FTAZ-U

Submitted to **Have your say about access to official information**
Submitted on **2019-03-14 21:46:30**

Our questions

1 In your view, what are the key issues with the OIA?

1:
When I was at University, I was a temp for several government departments in various 'ministerials' teams. We were advised (in the 5 government departments I worked at even 10 years ago) to look for certain key words that would allow us to deny a request, regardless of context. As a temp in a team full of temps (in every occasion) we had no knowledge of the rules and redacted whatever we were told to with black vivids and white out.

In every occassion, there was no sign off or QA or expertise around the legal requirements.

Parliamentary Questions, usually managed by the same teams, received the complete opposite attention and all work would be dropped if they came in.

The priorities around OIA are completely political and driven by the desires of a Minister.

The function of government agencies is supposed to be independent of politics and the government of the time, and so while Ministers should be entitled to reports about OIAs, they should not be entitled to make decisions about whether information should be released or not.

2 Do you think these issues relate to the legislation or practice?

2:
Both. The legislation is too broad and open for interpretation. In my experience, commercial sensitivity was the most commonly used redaction justification because it was the easiest to argue in the broadest context.

The practice dictates an agency is beholden to its minister despite the need to remain independent of its minister. I had Steven Joyce yell at me over an incorrect full stop once. Our fear of the Minister completely overpowered any obligation to compliance with the Act.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Separating OIA requirements from Ministerial authority. As mentioned above, Ministers have the right to know what information is being requested and given, but should have no say in the approval of the release of that information. As long as Ministers have that right, the OIA will remain a political tool. Institute a separate and independent governing body to manage compliance.

Response ID ANON-E8XQ-FTB1-K

Submitted to **Have your say about access to official information**
Submitted on **2019-03-19 16:14:29**

Our questions

1 In your view, what are the key issues with the OIA?

1:
No consequences for agencies that don't comply with OIA.

Active disincentive in agencies to compliance with OIA through funding. No obligation to adequately fund OIA compliance measures.

Culture in agencies doesn't accord importance to OIA obligations. Compliance seen as an inconvenience to be addressed if they have time.

Agencies ignore the s 12 requirement to provide official information "as soon as reasonably practical" and treat any release before 20 working days from the request as optional.

2 Do you think these issues relate to the legislation or practice?

2:
Both. The legislation provides almost no consequence for non compliance. Agency culture views OIA compliance as a hindrance rather than a function of the agency.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Requirements on agencies to publicly report on their OIA compliance annually.

Financial penalty for non-compliance. Proceeds of penalty to be directed to enforcement of OIA so that the penalty proceed doesn't just get reallocated to the agency.

Ombudsman powers to compel release of information enforceable by Court order.

Response ID ANON-E8XQ-FTB3-N

Submitted to **Have your say about access to official information**
Submitted on **2019-03-23 12:10:21**

Our questions

1 In your view, what are the key issues with the OIA?

1:
My comments also relate to the Local Government Official Information and Meetings Act, the requirements of which as respect to the supply of information reflect the OIA. My experience with the application of both Acts is as follows.
1) The holders of information often play for time by spinning their answer out for the full statutory period. My requests have mostly been for a copy of reports held and named; requests which require no research whatsoever. So there is no reason why replies should not be forthcoming within just a few business days.
2) The holders have withheld information claiming commercial sensitivity for reports that are not commercially sensitive - they are POLITICALLY sensitive.
3) Complaints to the Ombudsman take many months to resolve. The Ombudsman's replies to me have often been just a repeat of the holder's claptrap, so necessitating my countering the nonsense given by the holder to the Ombudsman.
4) I have had a reply from a holder of Official Information that one of the reasons I cannot have a report is that the report is a 'draft'. This is not a valid excuse.
5) I have received a report, which was validated by the Ombudsman, which was redacted so much as to be virtually useless. A renegade District Councilor subsequently leaked to the media the content of one of the redacted clauses which was not commercially sensitive, but demonstrated the incompetence of District Council staff in the process of a commercial negotiation.
6) My request of the Ombudsman for clarification of a point of law in LGOIMA has gone unanswered. My question is this. The Act is clear as to which bodies are subject to OIA / LGOIMA and the Acts make it clear that information held by contractors to those bodies is 'official information'. However the Acts are silent as regards relevant information held by any contractors to those contractors.

2 Do you think these issues relate to the legislation or practice?

2:
Both

3 What reforms to the legislation do you think would make the biggest difference?

3:
1) Naming and shaming uncooperative bodies is not enough. There needs to be a more robust process.
2) Information that is withheld should be made available in full to the Ombudsman for the Ombudsman to make a decision on what should be withheld and what should not.
3) The subject matter of any information withheld or redacted should be revealed to the requester of the information.

Response ID ANON-E8XQ-FTB5-Q

Submitted to **Have your say about access to official information**
Submitted on **2019-03-21 21:12:39**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Access to public information is vital for democracy. It is fabulous but does not work nearly as eell as it could.
Govrerntment departments withholdong information as long as they can get away with.
There needs to be sanctions and thr ombudsman needs to.be better resourced to follow up complaints promptly.

2 Do you think these issues relate to the legislation or practice?

2:
Ma bly bad culture and lack of resources for ombudsman.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Sanctions for dept which breach OIA obligations

Response ID ANON-E8XQ-FTB7-S

Submitted to **Have your say about access to official information**
Submitted on **2019-03-20 16:15:45**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The amount of time requests can take for staff in public sector agencies and the lack of resources allocated to deal with requests for staff who are already overworked.
In straightforward cases, 20 working days is sufficient, while in larger cases, it is not enough time- acknowledge that extensions can be requested.

2 Do you think these issues relate to the legislation or practice?

2:
Practice.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Perhaps extending the timeframe- or creating a 2 tiered timeframe approach- one for straightforward requests- 20 working days and another for more complex requests- 6 weeks or 2 months.

Response ID ANON-E8XQ-FTB8-T

Submitted to **Have your say about access to official information**
Submitted on **2019-03-21 22:18:54**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Agencies delaying the provision of information and redacting information on baseless grounds. There are also a number of agencies which mislead the public in relation to requests having to be made in writing or in a particular manner.

2 Do you think these issues relate to the legislation or practice?

2:
Practice and legislation. Individuals should be made liable for redacting information on baseless grounds and misleading the public along the lines of the FTA. Without personal liability practice will never permanently change.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Personal liability. Why shouldn't a public servant not be liable for breaching the OIA and / or misleading the public when an employee of a private business may be held liable under the FTA. There seems to be a distinct bias in legislation against private businesses and their employees as opposed to public servants and public agencies/ bodies.

Response ID ANON-E8XQ-FTB9-U

Submitted to **Have your say about access to official information**
Submitted on **2019-03-23 11:29:14**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Racial bias in security intelligence gathering is an issue.
I feel it necessary to discuss the Christchurch attacks (because frankly, who can concentrate on anything else right now?).
In Jacinda Ardern's first press conference the day after the attacks, she stated that
"None of those apprehended had a criminal history either here, or in Australia. As I said last night, they were not on any watch lists either here, or in Australia."
She also mentions that the shooter had a gun licence (for which a police check is required). If he was watchlisted this would have been declined. (New Zealand Government 2019, March 16).
This man had a significant social media presence (Buchanan, 2019). Therefore, the lack of intelligence recordkeeping on this individual factored in the tragedy being carried out. Had he been watchlisted, it may have impeded him.
Several factors have been posited as to why the shooter was not monitored or flagged as a threat in NZ or Australia. They include:
- The sheer volume, anonymity and cryptic/meme/"ironic" nature of alt-right content and social media (Wendling 2019);
- Chronic underfunding of the GCSB (Fisher 2019);
- That concerns about Islamophobic violence and the need for action were repeatedly ignored by New Zealand intelligence services (Rahman 2019);
- That the "…bulk of intelligence-gathering and efforts at prevention when it comes to terrorism have been directed at the Islamic community of New Zealand". (Buchanan, 2019; see also Satherley 2019).
New Zealand is a minor player in the 'Five Eyes' intelligence alliance, three of whose members (USA, Australia and the UK; less so Canada) have demonstrated antipathy/apathy towards Muslim countries, immigrants and refugees. Their representatives often support or fail to denounce white supremacist viewpoints. These nations are less l kely to focus their monitoring efforts on white supremacists than jihadists (Locke 2019).
NZ intelligence services will need to examine and challenge this bias, and its sources. Unfortunately, any inquiry will only be accountable to the public in broad general terms, since the GCSB routinely applies blanket exclusions in response to Official Information Act or Privacy Act requests (Hager 2001, p.20).
So the question remains: In this context, how do we ensure that
a) Security services are monitoring the right people (appropriate records creation)
b) Where records exist, they are being followed up (appropriate records use)
c) Information is made available where poss ble to reassure or inform the public (appropriate records access)?
I personally feel that an audit by Archives New Zealand, working in conjunction with the Human Rights Commission, might be an appropriate part of any inquiry.
Buchanan, P. (2019, March 15). Mosque shootings: Offender 'a very clear white supremacist'. Radio New Zealand. Retrieved from https://www.radionz.co.nz/news/national/384814/mosque-shootings-offender-a-very-clear-white-supremacist?fbclid=IwAR2i15aqzEqbsyM6biwcBa5vPNwfUz7Vfi3QHjRkP9
Fisher, D. (2019, March 17). Spies warned of gaps in our security and came up with a plan to keep New Zealand safe - but it would take years and millions of dollars. New Zealand Herald. Retrieved from https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12213585.
Hager, N. (2001, October). Seeking the truth: The power and politics of using archives and records. Archifacts, 14-23. Retrieved from http://ndhadeliver.natlib.govt.nz/delivery/DeliveryManagerServlet?dps_pid=IE28386582.
Locke, K. (2019, March 18). How to combat Islamophobia, white supremacy. Evening Report. Retrieved from https://eveningreport.nz/2019/03/18/keith-locke-how-to-combat-islamophobia-white-supremacy/.
(New Zealand Government. (2019, March 16; 12:10pm). Jacinda Ardern on Christchurch mass shooting – 9am 16 March [Press release]. Retrieved from http://www.scoop.co.nz/stories/PA1903/S00117/jacinda-ardern-on-christchurch-mass-shooting-9am-16-march.htm.
Rahman, A. (2019, March 18). Islamic Women's Council : "We told them about the vitriol" [Podcast]. Radio New Zealand. Retrieved from https://www.radionz.co.nz/national/programmes/ninetonoon/audio/2018687050/islamic-women-s-council-we-told-them-about-the-vitriol.
Satherley, D. (2019, March 18). Christchurch terror attack: Intelligence agencies turned blind eye to far-right extremism in NZ – experts. Newshub. Retrieved from https://www.newshub.co.nz/home/new-zealand/2019/03/christchurch-terror-attack-intelligence-agencies-turned-blind-eye-to-far-right-extremism-in-nz-experts.html.

2 Do you think these issues relate to the legislation or practice?

2:
Mostly it is practice - how the legislation is applied. Many departments e.g. the GCSB, apply sections of the OIA and Privacy Act as blanket exclusions, neglecting to weigh the public interest in disclosing information, and misusing the legislation to draw out the release of information. Also, the Office of the Ombudsman and the Privacy Commissioner are underfunded and overstretched, and delays for appeals to the Human Rights Commission are unacceptable.
However, the legislation should be strengthened in the area of compliance, with stricter penalties to government departments (and their leaders personally) for breaches of both the OIA and the Privacy Act.
The structure and process for appeals to the Human Rights Commission is also causing unnecessary delays. Legislation is one of the instruments to fix this.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Legislation should be strengthened in the area of compliance, with stricter penalties to government departments (and their leaders personally) for breaches of both the OIA and the Privacy Act.
The structure and process for appeals to the Human Rights Commission is also causing unnecessary delays. Legislation is one of the instruments to fix this.

Response ID ANON-E8XQ-FTBB-4

Submitted to **Have your say about access to official information**
Submitted on **2019-03-21 10:40:11**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The cost of providing information is an effective barrier for many people. The timeliness and its provision is often an issue. Those covered by the OIA continue to be obstructive in many cases (especially when they know they are on the back foot over an issue) requiring applicants to take further steps, which again can discourage many people from continuing with their application.

2 Do you think these issues relate to the legislation or practice?

2:
Both. The legislation has to make it clearer that compliance is a requirement. Until that happens, there will continue to be a culture of obstruction when issues are raised, rather than providing the information and then dealing with the issues.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Reducing the costs for access – these should be much lower especially now that we live in an electronic age without needing people to stand over photocopiers.
Tightening the time for provision.
Supplying more information publicly so that people don't have to request it.

Response ID ANON-E8XQ-FTBC-5

Submitted to **Have your say about access to official information**
Submitted on **2019-03-22 06:16:15**

Our questions

1 In your view, what are the key issues with the OIA?

1:
1. The ombudsman has not caught up with plain English yet.
2. The Act and the LOGOIMA do not provide clarity on practice.
3. It does not provide enough clarity On what is commercially sensitive, particularly with reference to digital copyright.
4. You rely on people complaining to the ombudsman to actually clarify the meaning of the legislation.
5. People use it to get around paying for information they woul otherwise have to buy.
6. No teeth to the ombudsman - not a Regulator with sanctions available.
7. People make a hobby of requesting information and Time wasters are not weeded out effectively.
8. The legislation should be extended to any company that takes money from a government grant eg Radio New Zealand
9. Be clearer with examples about what is unreasonable in terms of substantial collation
10. Does it do enough to protect the privacy of natural persons
11. People like NZTU and media should pay for their requests

2 Do you think these issues relate to the legislation or practice?

2:
Both

3 What reforms to the legislation do you think would make the biggest difference?

3:
Keep it in line with the new privacy act
Provide practice guides
Allow department more than 20 days if a request contains 5 or more questions
Give the ombudsman the ability to fine non compliance

Response ID ANON-E8XQ-FTBE-7

Submitted to **Have your say about access to official information**
Submitted on **2019-03-22 10:59:14**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Balancing the needs for availability to information with the administrative burden placed on organisations to comply with requests.

2 Do you think these issues relate to the legislation or practice?

2:
Both.

3 What reforms to the legislation do you think would make the biggest difference?

3:
While section 18(f) allows for refusing if the information requested cannot be made available without substantial collation or research, this does not necessarily cover the situation where the information does not necessarily require substantial collation as much as there is a significant amount of information that requires review. I believe section 18(f) should extend to "substantial collation or research or review". While 18A allows for charging, this only extends to charging for supplying information, not charging for reviewing information. If the request relates to all emails relating to x amount, often it is not too difficult a matter to collate all those emails but it is a significant matter to review all of these emails individually and consider whether to release them or not. If in the end it is decided that there are commercial grounds for withholding all those emails, there is no ability to charge for the time taken to review them even though the Ombudsman's requirements are that each email be reviewed individually , separated assessed and the prejudice considered etc. This can take one person out of operation for weeks.

Response ID ANON-E8XQ-FTBF-8

Submitted to **Have your say about access to official information**
Submitted on **2019-03-23 12:08:38**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Here is a case study. At the Auckland Zoo, we recently had an OIA request from the NZ Herald for the zoo's records on two lions who were euthanased. Staff were happy to be interviewed, but the reporter preferred to request all written records, and then interview if necessary. He was warned that printed electronic records would be in a hard-to-read format.

Senior vet staff then spent many days going through the vet records and 'cleaning them up and padding them out'. This sounds a little sinister and possibly was a breach of recordkeeping best practice (although allowed under Section 17 of the OIA). However I was told that most of it was bulking out the records to explain decisions in more detail. Vet and keeper notes are often brief, full of jargon or acronyms and don't give context as they are mostly used internally).

The reporter was provided with many, many pages of printed electronic records.

In the end the story reported supported the zoo's version of events. Read it here:

https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12108077

2 Do you think these issues relate to the legislation or practice?

2:
In this case I think the Zoo acted in good faith to help the reporter understand its decisions. They acted promptly and provided full information.
However, I do think there is a loophole in Section 17 of the legislation that allows for retrospective amendment of records in response to OIA requests, before they are released. This has the potential to be abused to change the meaning of original records (especially electronic records), in order to conceal the true nature of the transactions they refer to.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Section 17 of the OIA should be amended so that any retrospective amendments to records released may not be done in a way which changes or alters the meaning of those records.

Response ID ANON-E8XQ-FTBG-9

Submitted to **Have your say about access to official information**
Submitted on **2019-03-21 20:50:35**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The barriers of access to information both hard and soft.
I recieved an email from Tasman district council today advising my LGOIMA will cost $35 per half hour. Given I know how much the people compiling the reports are paid and how inefficient they can be (I used to work there) this is clearly an artificial barrier to access to information , they will be making $30-$40 an hour on each request for information.
Soft barriers such as omitting information implied to be required but not specifically detailed such as memos, emails etc.
Documents being given ambiguous titles to prevent them getting media and public attention.

2 Do you think these issues relate to the legislation or practice?

2:
Both

3 What reforms to the legislation do you think would make the biggest difference?

3:
Limiting costs to the costs incurred and allow a cost free entitlement per year.
Require documents be named and metatagged to ease researchers and respirators finding them.
Communication to be required when a request or is likely to desire information but this was not explicit.

Response ID ANON-E8XQ-FTBH-A

Submitted to **Have your say about access to official information**
Submitted on **2019-03-21 21:49:01**

Our questions

1 In your view, what are the key issues with the OIA?

1:
From the perspective of a public servant responding to OOIA requests, there are insufficient reasons for refusing to provide information that should justifiably be kept from the public.

From a member of the publics perspective making OIA requests, the mechanism for making a government agency release information is time consuming and cumbersome. Government agencies can breach the Act with no consequences. The Ombudsman has little or no ability to force government agencies to comply with the Act.

2 Do you think these issues relate to the legislation or practice?

2:
Both.

Government agencies know there is little the Ombudsman can do to stop them being obstructive, obfuscating, or being vexatious in their refusals to provide information.

The legislation lacks penalties that would force a change in behaviour.

3 What reforms to the legislation do you think would make the biggest difference?

3:

Accountability for del berate breaches of the Act. For example financial penalties for people and organisation, similar to those applicable for breaches to the Health and Safety at Work Act.

Personal liability and penalties for managers who deliberately cover up information that would cause personal or organisational embarrassment.

Response ID ANON-E8XQ-FTBJ-C

Submitted to **Have your say about access to official information**
Submitted on **2019-03-19 16:17:21**

Our questions

1 In your view, what are the key issues with the OIA?

1:
1. There is insufficient public awareness of the Act and its sister Act (LGOIMA).
2. There is a general lack of knowledge of the power and effectiveness of s24 requests (including the statutory right to personal information), and how effective s23 requests can be.
3. At a LGOIMA there needs to be stronger systems built into handling requests - the general impression is that there is an improper utilisation of some exceptions for political expediency at local government levels. (reduced transparency in all contentious areas).
Not all OIA requests seem to be reported - in some instances requests are not responded to at all or if they are, the agency's do not fully disclose information in their possession

as there is not actually a provision in this survey to provide contact details: xxxxxxxx@xxxxxx.xx.xx

2 Do you think these issues relate to the legislation or practice?

2:
In most instances, the identified issues are practice. The Act(s) seem to be robust. Observed failures seem to be:
- Political influence
- incorrect person making the decision
- Taking into account irrelevant considerations
- Outright falsehoods and refusal to acknowledge the duty to consider release of the information
- Attempts to disguise the fullness of information available by only releasing 'piecemeal' excerpts or documents
- Wrongly applying legal privilege protection to documents that do not fall within the sphere of legal privilege.

3 What reforms to the legislation do you think would make the biggest difference?

3:
1. The Act should provide for a two stage decision making process where any intended refusal is first passed to a competent independent reviewer.
2. All agencies and Local government ought to be subject to a periodic audit of their systems and decision making process. This may involve the development within the agency of policy and procedures including stated competencies and skill levels of decision makers. The policy and procedures would be submitted to the ombudsman for approval and later audit possibly similar to AML/CFT obligations and include the requirement of an appointed information officer.

Response ID ANON-E8XQ-FTBK-D

Submitted to **Have your say about access to official information**
Submitted on **2019-03-22 08:39:24**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Lack of robustness by the Ombudsman in dealing with refusals by agencies (including local government) to provide information and the failure by the Ombudsman and agencies to take the principle of openness seriously.

Time taken by Ombudsman to deal with complaints.

The attitude of some agencies (which are funded by taxpayers and ratepayers) is astonishing.

2 Do you think these issues relate to the legislation or practice?

2:
Both.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Weakening the grounds on which agencies can refuse to provide information particularly around commercial activities, negotiations and obligations of confidence.

Response ID ANON-E8XQ-FTBM-F

Submitted to **Have your say about access to official information**
Submitted on **2019-03-22 08:00:13**

Our questions

1 In your view, what are the key issues with the OIA?

1:
I have doubts that information I asked for was supplied in total. I know there was more information but whether their filing systems (Council) was the problem or not is impossible to assess.

2 Do you think these issues relate to the legislation or practice?

2:
Practice

3 What reforms to the legislation do you think would make the biggest difference?

3:
I think legislation about what should be released should be strengthened. It seems that lately there is a lot of "protection" being given to privacy of individuals.

Response ID ANON-E8XQ-FTBP-J

Submitted to **Have your say about access to official information**
Submitted on **2019-03-20 08:52:29**

Our questions

1 In your view, what are the key issues with the OIA?

1:
- As a practitioner I find the Act very complicated.
- The way that agencies use the OIA now to withhold information instead of release it is unacceptable.
- I would like to see greater consideration of not only the public interest in releasing information, but the public good.

2 Do you think these issues relate to the legislation or practice?

2:
- Chiefly they relate to practice.

3 What reforms to the legislation do you think would make the biggest difference?

3:
- I'd like a clearer statement about whether public records held by Archives New Zealand are subject to the OIA and in what circumstances the OIA trumps the Public Records Act 2005, and the Privacy Act 1993.
- Withholding information because it is out of scope has become fashionable and I am not sure whether that is permitted or not under the Act. Is this what section 17 relates to? I would like to see this clarified.

Response ID ANON-E8XQ-FTBR-M

Submitted to **Have your say about access to official information**
Submitted on **2019-03-20 10:35:06**

Our questions

1 In your view, what are the key issues with the OIA?

1:
- no surprises and ministerial interference (ministerial staff rather than ministers), which affects decisions departments make and the timeliness of responses
- requesters, particularly media, using the Act as a fishing expedition , or using information inappropriately (ie using documents del berately out of context). So much time, energy and public money is wasted on dealing with this by practitioners.
- lack of respect in organisations for OIA staff and their knowledge of how to apply the Act
- lack of clarity around free and frank advice, and thresholds for this in relation to redactions.

2 Do you think these issues relate to the legislation or practice?

2:
Both - the Act is outdated in some respects and unclear in others.

Practice varies across the public sector, and is used well by some requesters and very cynically by others.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Bring it up to date to reflect the technological advances in society (ie the charging guidelines currently focus on "photocopying charges" as the act talks only about "labour and materials" - which is unhelpful and more and more unapplicable to the actual work involved in making information available; the fact that texts, instant messages, social media etc are covered by the Act; etc). The language in the Act also needs to be future proofed for further technological advances.

Give practitioners greater clarity on what constitutes free and frank advice, and better ways to manage/deal with/refuse requests that involve substantial collation and research (ie fishing expeditions).

Section 9(2)(ba) could also be strengthened - sometimes there are other reasons to protect an obligation of confidence that are valid, particularly for commercial crown entities, but do not fit well in either sublcause (i) or (ii).

Relatedly, Section 9(2)(f)(iv) is also problematic for commercial crown entities where boards rather than ministers make substantive decisions that are of public interest. Boards should have the ability to consider and make decisions without prejudice in the same way ministers do, as offered by this section, but currently do not as this applies only to Ministers.

Extension of time limits can also be very problematic for small commercial agencies subject to the Act, where perhaps only one or two subject matter experts exist (either OIA experts and/or experts on the request topic). If these people are sick or away, legislative compliance will usually be affected. There is no scope in section 15A to allow for this currently and it can make life very difficult for those agencies, result in complaints, etc. While consultations and large requests are valid reasons to extend, it is worth considering whether there are more grounds.

Response ID ANON-E8XQ-FTBS-N

Submitted to **Have your say about access to official information**
Submitted on **2019-03-22 14:43:13**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Lack of meaningful response.

My letter to MSD 15 Nov 2017 raised a number of child advocacy matters and one of these was the question of the 3rd Optional Protocol to UNCRC.

"CRC OP INDIVIDUAL COMMUNICATIONS
Item 10 of the HRC National Plan of Action in respect of this item shows a review date now of 31 December 2017 (updated from 31 December 2016).
Q8 What information, under OIA, can be given, to show progress on this matter, originally raised in 2015 via 2nd UPR?"

I did not accept the response and raised it with Ombudsman file No ID 470335.
There were delays by Ombudsman office and the latest email 13 Mar 2019 has not really shed any light on progress in this matter.

xxxxxxxxxxxx@xxxxx.xxx

2 Do you think these issues relate to the legislation or practice?

2:
Probably practice, but where information is withheld because it is at discussion stage some flexibility should be available to identify the relevant parameters.

I suspect the reality is the number of OIA and the resources to handle them.

3 What reforms to the legislation do you think would make the biggest difference?

3:

Response ID ANON-E8XQ-FTBU-Q

Submitted to **Have your say about access to official information**
Submitted on **2019-03-24 22:59:25**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Time delays
Failure to fully supply
Failure to be helpful as act requires
Excessive redaction.
Ombudsman pretty useless to obtain refused information.

2 Do you think these issues relate to the legislation or practice?

2:
Both, There appears to be a practice of prolonged delay and minimal comformability to requests.
The present legislation seems to almost sanction such obfuscation and delay or refusal so if true release is the goal the legislation needs to change to enact such delivery of information in a much more timely matter.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Initial response to simple requests ought to be 10 (or less days)
Financial penalties may need to be introduced to effect compliance both as to content and timely delivery.
Some agency with enforcement teeth needs to run the process and replace the ombudsman office in this area.

Response ID ANON-E8XQ-FTBV-R

Submitted to **Have your say about access to official information**
Submitted on **2019-03-22 09:16:09**

Our questions

1 In your view, what are the key issues with the OIA?

1:
1. Compliance by agencies.
2. The approach by the Ombudsman in not enforcing compliance. On three, out of three, occasions by the Police the OIA deadlines were not complied with, or in one case was completely forgotten about. The non-compliance wasn't just a few days, it tooks weeks of following up for anything to be done.
3. Often, the reason an agency has been asked for information is so that the person making the request can make an informed decision about something. That decision will usually have a deadline. Non-compliance with the OIA deprives that person with their right to make an informed decision. The non-compliant agency is happy to not meet their own deadlines, but will not extend the original deadline that caused you to need an OIA in the first place. To make it worse, non-compliance by the individual inevitably has a penalty, but non-compliance with the agency does not. It's ridiculous.

2 Do you think these issues relate to the legislation or practice?

2:
Legislation. Law drives change. There is no point in setting mandatory timeframes if they can be ignored, and non-compliance can remain unaddressed.

3 What reforms to the legislation do you think would make the biggest difference?

3:
First, how the ombudsman deals with OIAs needs itself to be subject to the OIA. They simply do nothing about repeat breaches by the same agency, and then hide behind the fact that their information is not public.

Second, there should be some ability to require the agency is audited.

Third, if an agency breaches an OIA deadline, and the person has stated that the OIA request relates to something to which a deadline is attached, that deadline should be extended as a matter of course.

Response ID ANON-E8XQ-FTBX-T

Submitted to **Have your say about access to official information**
Submitted on **2019-03-22 09:14:48**

Our questions

1 In your view, what are the key issues with the OIA?

1:
misuse, requesting and obtaining information for wrong or vexatious

consuming resources in complying with vexatious requests

2 Do you think these issues relate to the legislation or practice?

2:
practice. society has an idea that knowledge and information is power - without exercising wisdom and judgment. use of information in the wrong way. entitlement to information and then misuse of it.

media is responsible for a lot of inflammatory journalism/bad journalism.

3 What reforms to the legislation do you think would make the biggest difference?

3:
how can you make someone respons ble for incorrect or biased analysis of data?
or for incorrect/irrespons ble use of data?

Response ID ANON-E8XQ-FTBY-U

Submitted to **Have your say about access to official information**
Submitted on **2019-03-21 21:00:35**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Costs of compliance and uncertainty as to what must be released

2 Do you think these issues relate to the legislation or practice?

2:
Both

3 What reforms to the legislation do you think would make the biggest difference?

3:
An obligation to confer on the scope of the request by reference to the objects of the requester and an obligation to publish the request (when received) and the information released in response to it (immediately when released to the requester) on a publicly accessible website maintained for that purpose by the Ombudsman's office.

Response ID ANON-E8XQ-FTD1-N

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 16:05:46**

Our questions

1 In your view, what are the key issues with the OIA?

1:
A lack of understanding, at times, by officials of the OIA, particularly of what are reasonable grounds for withholding. Sometimes officials want to withhold information for non-legitimate reasons, such as information being embarrassing to the department.

Excessive amounts of time taken to respond and a lack of communication (although this has improved in recent years). One example, was a response being significantly overdue because the Ministry felt the need to provide pages and pages of "context" that seeked to downplay a decrease in support observable in the data request. The request was just for the data. The purpose of OIA is to provide information, not public relations.

2 Do you think these issues relate to the legislation or practice?

2:
Primarily practice.

3 What reforms to the legislation do you think would make the biggest difference?

3:
One possibility could be streamlined processes for data (non-identifiable) only requests, especially where that data is readily available to officials.

Another could be a clear statement that the department should be helpful with requests and generous in their interpretation of the request. To prevent, for example, situations where the department understands the intent of the request, but keeps information out-of-scope through bad-faith interpretations or bad-faith classifications of information.

Optional questions

4 Name:

Name:
Sam Murray

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTD6-T

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 20:05:16**

Our questions

1 In your view, what are the key issues with the OIA?

1:
I have requested information on a number of occasions using the OIA. The problems I mention below are a result of many disappointing experiences:

1 as a journalist when I request an interview , that request is treated as an OIA request, so the request for an interview is denied. That makes my investigations slow and arduous. A 15 minute interview would have saved us all a lot of time.
2. I have always had to wait the full 20 days for a response. This is a time limit, not a TARGET!
3. Advice given to the Ministry of Justice I requested has been unnecessarily withheld it seems to me.

2 Do you think these issues relate to the legislation or practice?

2:
Only the practice, but legislation or even regulations might well improve matters.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Releasing government advice will save everyone a lot of time and expense.
Ensuring private firms dealing with the government are subjected to the same transparency requirements as government departments would seem to me to be quite a simple measure. Private companies that prefer to be secretive should not be employed. If they need the work, then I am sure most will comply.

Optional questions

4 Name:

Name:
Jonathon Harper

5 Organisation:

Oganisation:
freelance journalist and member of the Society for Science Based Medicine

Response ID ANON-E8XQ-FTD8-V

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 20:47:17**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Govt depts look for ways to not release the information requested

Basically they look for ways to curtail the information or avoid releasing the information

Information or reports are quite often left in draft so as to avoid the implication of the report being final

2 Do you think these issues relate to the legislation or practice?

2:
I think a lot of it relates to practice
The tenant to release the information unless there is good reason is not being observed
Agencies have become adept at looking for reasons to limit or withhold information
The exception of course is is if the information is personal or ority commercially sensitive

I think there is the overriding principle of protecting the minister and that takes priority

3 What reforms to the legislation do you think would make the biggest difference?

3:
Strengthen the principles about release of information

Provide safeguards for officials to release information

Avoid - minimise theneed for public servants to discuss the release of information with ministers or to advise ministers that the information will be released
Avoid the situation where unofficial - unrecorded discussion takes place where a public serving msg be told to avoid releasing the information

Avoid - miminise the situation where one agencies indicated they will coordinate the release thereby deciding what information is released and the time it takes to release information

Optional questions

4 Name:

Name:
Paul Bryant

5 Organisation:

Oganisation:
Retired

Response ID ANON-E8XQ-FTDB-6

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 16:54:56**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The relationship between the Public Records Act and the OIA needs to be strengthened.

2 Do you think these issues relate to the legislation or practice?

2:
The OIA is a weak legal instrument without good information management. Archives and other supervisory bodies aren't doing enough or are not required to work together to deal with information management and records management issues affecting OIA compliance and culture. Agencies also aren't adequately incentivised by the law to make this work better.

3 What reforms to the legislation do you think would make the biggest difference?

3:
The Government should thoroughly review the OIA and strengthen the relationship with the Public Records Act. Good information management needs to be an integral part of a transparent and accountable government.

Optional questions

4 Name:

Name:
Joanna Adkins

5 Organisation:

Oganisation:
New Zealand Crown Entity

Response ID ANON-E8XQ-FTDC-7

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 22:03:28**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Government employees aim to minimise the amount of work they need to do, and the amount of information they need to provide. They employ 'genie logic' in interpreting OIAs in both the laziest and least transparent manner possible. The primary reason for this (at least where I work) is that the team fulfilling OIAs is grossly overworked - often having to work long hours unpaid so as to fulfil the timeframes. I do not blame them as I would also try to minimise the amount of work I needed to do under those circumstances, but it is a significant issue.

There should be standard a minimum number of staff members for a given OIA volume, and/or regular, independent oversight and quality controls of the work conducted - not just when someone complains to the ombudsmen - as most members of the public don't realise how the system really works, and don't have the background to challenge decisions. An OIA from Joe Bloggs is treated much differently to one from a well-known barrister or journalist.

Both Ministers and private companies are regularly warned in advance that information is about to be released so that they have time to prepare for and preempt any fallout. There is obviously incentive here to delay the release of an OIA to ensure that certain actions have been taken beforehand. The entire 'no surprises' mentality is extremely dodgy as public servants are used to protect political careers or company profits, rather than the public interest.

2 Do you think these issues relate to the legislation or practice?

2:
Mostly practice, however improvements could certainly be made to the legislation. For instance, the actual reason for an extension is never specified, so members of the public are unable to be sure whether that reason is valid or legitimate. Officials only cite one of two sections of the Act allowing them to extend the timeframe, which are broad and often meaningless.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Standardised training for every person in government who has any involvement in fulfilling OIAs. Regular oversight and quality controls of OIAs fulfilled to ensure quality across requests and agencies - not just those who have the capacity to complain. Better public awareness, such as advertising the fact that any piece of information held by the government can be requested by members of the public - including by those working in public service themselves. A provision for anonymous, protected feedback so that government employees can report instances where OIAs have not been fulfilled in the manner intended by legislation, the basis for extensions being misreported, 'substantial collation' being inflated, etc.

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTDG-B

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 17:31:15**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Information can be withheld for "national security reasons". The agency that has received the OIA request doesn't have to give any reason other than that. There needs to be more information provided such as why it would damage our national security or what parts of the OIA request are at risk of compromising our national security.

2 Do you think these issues relate to the legislation or practice?

2:
Both but mainly practice. The practice will be improved by legislation.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Forcing all information to be shared. The government shouldn't hide information from the people who fund it.

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTDH-C

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 20:35:59**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Many organisations don't comply with the spirit of OIA and deliberately delay requests, excessive redaction and out right refusal to respond to requests.

2 Do you think these issues relate to the legislation or practice?

2:
Mainly practice though maybe there needs to be some sort of enforcement/punishment if organisations regularly fail to comply.

3 What reforms to the legislation do you think would make the biggest difference?

3:

Optional questions

4 Name:

Name:
Jeremy Barker

5 Organisation:

Oganisation:
Can't say. My government organisation is one that doesn't l ke responding to OIA's and don't like us completing surveys such as this.

Response ID ANON-E8XQ-FTDJ-E

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 16:06:53**

Our questions

1 In your view, what are the key issues with the OIA?

1:
In general, no major issues. As someone who manages responses - some requests are getting large and complicated. And people are asking for more and more information that doesnt necessarily meet being vexatious.
There should be more encouragement to be more open initially rather than "publish" responses.
Comparisons between organisations are not always a reflection on how well each organisation is responding.

2 Do you think these issues relate to the legislation or practice?

2:
Both

3 What reforms to the legislation do you think would make the biggest difference?

3:
More ability to decline around vexatious and substantial collation.

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTDP-M

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 16:43:54**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The key issue is the lack of accountability the OIA legislation has.

2 Do you think these issues relate to the legislation or practice?

2:
I would say the legislation does not have a through procedure of what consequence the individual who is in charge of the OIA in a government organization.

3 What reforms to the legislation do you think would make the biggest difference?

3:
The law specifically states that a government organization who receives OIA should respond within 20 working days. As well as this due date, the OIA also requires that requests must be completed "as soon as reasonably practicable". From my experience and other OIA request I had seen majority of the organization respond in the last day of the deadline or do not respond at all which is required by law. The reforms I would think that would make the OIA more effective is for instead if I want to request a OIA from a government organization. I should receive a unique code from the organization. The unique code would allow me to track and trace my OIA request on what stage it is on and also how long it will take me to receive my respond. As I know the OIA legislation is 40 years old, and today most people use technology so the mechanism of tracking the OIA request would help the individual to know what stage it is and how long will it take to receive the information. This is the same procedure that happens within the courier mail organizations.

Another reform I would like to see is that there should be penalties under the act. For example if a organization is found to breach the act by the ombudsman the individual who manages the OIA request should be held accountable. If a individual in-charge of the OIA contravenes the provisions of the Act, criminal penalties should apply. In the Fair Trading Act the Commerce Commission has the powers to prosecute traders or a company. The ombudsman that is in-charge of the OIA must have greater powers under the act of prosecuting the individual who manages the OIA for failing to comply with OIA standards. The ombudsman should have the option of issuing an infringement notice on individuals who have been found breaching the OIA legislation.

Optional questions

4 Name:

Name:
Shahil

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTDQ-N

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 16:34:26**

Our questions

1 In your view, what are the key issues with the OIA?

1:
MediaWorks' view is that a formal review of the OIA and how agencies use it, is appropriate.

The experience of our journalists indicates that many agencies have not been acting consistently with the principle of availability set out in section 5 of the Act. Requests for official information are commonly met with what appears to be gamesmanship - agencies taking all of the 20 working day period for routine or simple requests; last-minute, long and questionable extensions; last-minute transfers to another agency, questionable redactions or refusals to disclose information.

This is an issue with the structure of the OIA, which gives all the power to the agency which receives a request for official information. It is the agency which determines whether or not there is a reason to refuse to disclose information under sections 6 or 9 of the Act. It is the agency which balances the grounds in section 9 against its perception of the public interest. Although the agency holds the information and understands its context, without adequate oversight or incentives, agencies may not - and in the experience on MediaWorks journalists, do not - exercise their powers appropriately. This is especially the case when the information or the scrutiny triggered by the reporter's investigation might be awkward or politically unpalatable.

In many cases the individual who made the request does not have sufficient information to challenge an agency's assessments - especially without knowing what the official information is in the first place. All a requester can do is refer the matter to the Ombudsman. However this often does not occur. In our case, this will usually be because the requested information is no longer newsworthy. In other cases, the grounds for refusal or the Ombudsman's processes might not be understood, or frustration with the process could have set in.

2 Do you think these issues relate to the legislation or practice?

2:
The legislation enables agencies to adopt this practice. The OIA's framework of incentives and sanctions needs to be re-evaluated.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Stronger sanctions for agencies which fail to comply with their obligations under the OIA, including fines.

Better oversight of requests made, so that responses can be tracked - one option might be a central portal for all complaints, or increased investigative powers (and better resourcing) for the Ombudsman.

Optional questions

4 Name:

Name:
Tom Turton

5 Organisation:

Oganisation:
MediaWorks

Response ID ANON-E8XQ-FTDR-P

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 16:26:21**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The intent of the OIA is good, but it is not being delivered in practice. Consultation on the Open Government Partnership National Action Plan 2018-2020 raised concerns about compliance with current legislation, as well as with the legislation itself. Numerous media stories have identified examples of delays and withholding information improperly. Transparency advocate Mark Hanna has collected statistics showing frequent use of extensions and significant delays. These stories are so common among OIA requesters that there is a common hashtag on Twitter to informally share these anecdotes (#fixtheOIA).

2 Do you think these issues relate to the legislation or practice?

2:
Improving compliance cannot address gaps and loopholes in existing legislation. While other countries surge ahead, strengthening rights and access to government information, New Zealand has allowed our system to atrophy. Significant amendments are needed to strengthen our official information regime, in order to provide the public, NGOs, and journalists with better access.

Creating an enforcement regime within the Act will support the culture changes required in practice. Areas of the Act that are consistently misused need to be tightened - such as issues of timeliness and grounds for withholding.

3 What reforms to the legislation do you think would make the biggest difference?

3:
There are many reports with broader ideas for improving our official information regime, including: “Bridges Both Ways” from the Institute for Governance and Policy Studies, “A Better Official Information Act” from the New Zealand Council for Civil L berties, “Not a Game of Hide and Seek” from the Ombudsman, “The Public’s Right to Know” from the Law Commission, and the consultation report for the Open Government Partnership National Action Plan.
Based on these detailed reports, we call for reforms to the Act, including issues such as:
Greater proactive release;
Expanding the coverage of the Official Information regime;
Performance measurement and accountability;
Independence of public service to respond to requests;
Access bility and open data standards;
Charging regulations;
Investigatory and enforcement powers (including criminal penalties for those who knowingly direct the improper withholding of information);
Narrowing withholding grounds (including adding a public interest test to the conclusive reasons for withholding, limiting the legal privilege withholding grounds, and tightening the about-to-be-published withholding grounds, among others).

Optional questions

4 Name:

Name:
Dr Jenny Condie

5 Organisation:

Oganisation:
Civic (www.civicnz.org)

Response ID ANON-E8XQ-FTDW-U

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 16:57:26**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The withholding of ALL requested information from an organisation or selectively disclosing some information to satisfy the OIA request.

2 Do you think these issues relate to the legislation or practice?

2:
Both. The practice of withholding information perpetuates the issues with the legislation and the legislation cannot ensure that the fulfillment of each request is being honesty satisfied.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Independent scrutiny of the release of information.

Optional questions

4 Name:

Name:
Steve York

5 Organisation:

Oganisation:
NDHB

Response ID ANON-E8XQ-FTDY-W

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 16:59:50**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Government departments treat OIA request as a necessary evil and not with due respect. E. g. My OIA requests almost always arrive on the 20th working day.

2 Do you think these issues relate to the legislation or practice?

2:
Both.

3 What reforms to the legislation do you think would make the biggest difference?

3:
For refusals or partial refusals the agency should have to give a detailed explanation for the refusal. E.g. I recently had an OIA declined on the grounds itnwas vexatious, but no explanation was given as to why the agency treated my complaint as vexatious.

Optional questions

4 Name:

Name:
Glenn Marshall

5 Organisation:

Oganisation:
Private citizen

Response ID ANON-E8XQ-FTE2-Q

Submitted to **Have your say about access to official information**
Submitted on **2019-04-04 15:23:56**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Opposition members making ridiculous requests and tying up departmental resources.
The Ombudsman views are not always pragmatic. Especially when it comes to releasing names.

2 Do you think these issues relate to the legislation or practice?

2:
Both legislation and practice

3 What reforms to the legislation do you think would make the biggest difference?

3:
Clearer withholding grounds, a better mechanism to refuse vexatious requests.

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTE7-V

Submitted to **Have your say about access to official information**
Submitted on **2019-03-26 20:15:57**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Businesses and organizations will hold back information, stall, say it costs too much, the request is not specific enough or just plain make stuff up. I know this because 1. I have requested information via the OIA, 2. have had to process OIA requests from a Govt agency I worked for, and 3. experienced first hand the practices of higher management within Govt to circumvent and not provide the requested information

2 Do you think these issues relate to the legislation or practice?

2:
Both

3 What reforms to the legislation do you think would make the biggest difference?

3:
I think that the act needs to be clear that information cannot be withheld, that information must be provided free of charge (I have often been told that the information could only be released if I was willing to pay), and an obudsman appointed with legal powers to handle disputes and have clear authority to direct that the withheld information be provided post haste with the ability to fine withholders accordingly on a daily basis for each day that they do not comply

Response ID ANON-E8XQ-FTE9-X

Submitted to **Have your say about access to official information**
Submitted on **2019-04-02 17:32:09**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Practice
There is a pervasive mindset which is bent towards finding reasons *not* to release information. This is partly founded in agency staff not knowing the law, withholding based on perceived political pressure and withholding based on actual political pressure, but the spirit of the law isn't embraced.

Apart from this, I find there has increasing and unjustified use of free & frank and too ready a resource to section 6 refusals.

2 Do you think these issues relate to the legislation or practice?

2:
Largely, I find the issues are with practice. It has been decades, if ever, since the spirit of the law was embraced.

It seems almost too great a risk to allow Parliament the opportunity to change the legislation for the minor tinkering which might see some improvement.

3 What reforms to the legislation do you think would make the biggest difference?

3:
If anything, genuine review options for section 6 refusals, and an Information Commissioner to take the place of the Ombudsman.

Optional questions

4 Name:

Name:
David Fisher

5 Organisation:

Oganisation:
NZ Herald

Response ID ANON-E8XQ-FTEA-6

Submitted to **Have your say about access to official information**
Submitted on **2019-04-03 13:51:45**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Vilification of those who request information.
Lack of consequence for government departments delaying or with-holding information
No public reporting of OIA performance by government departments
Public servants including senior executives are not trained on OIA or democratic instruments.

2 Do you think these issues relate to the legislation or practice?

2:
Both.

Please note that the Office of the Ombudsman is under-resourced. These people provide an excellent service and the lack of resource undermines effective democratic accountability mechanisms.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Requiring OIA performance to be public reported in annual reports
Having a central OIA request portal (l ke FYI but government operated), that independently monitors delays and user satisfaction. Such results are published, and poor performance affects public sector CEO career progression and/or employment conditions.

Optional questions

4 Name:

Name:
Steve Glassey

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTEB-7

Submitted to **Have your say about access to official information**
Submitted on **2019-03-27 18:46:30**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The "good reasons" for withholding information need revisiting to make them more practicable as they are not well-worded to cover the range of matters that need addressing so that agencies can do their job without trying to fit a round peg into a square hole.

Need to be able to declare a requester to be a vexatious person on a specified matter (e.g. 1080 protest) if that person has made a series of unreasonable requests in a short time frame (e.g. 6 months).

2 Do you think these issues relate to the legislation or practice?

2:
They relate to the legislation.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Addressing the shortfalls in section 9(2) and section 18 over the range of good reasons for withholding information.

Response ID ANON-E8XQ-FTEC-8

Submitted to **Have your say about access to official information**
Submitted on **2019-04-01 08:59:19**

Our questions

1 In your view, what are the key issues with the OIA?

1:

2 Do you think these issues relate to the legislation or practice?

2:

3 What reforms to the legislation do you think would make the biggest difference?

3:

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTEE-A

Submitted to **Have your say about access to official information**
Submitted on **2019-04-02 06:52:02**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Departments and the ombudsman are not resourced for the high volume of requests and complaints.
Officials don't understand that the default position is to release information unless there's a good reason not to.
Managers don't report their stats on timeliness accurately.

2 Do you think these issues relate to the legislation or practice?

2:
Practice.

3 What reforms to the legislation do you think would make the biggest difference?

3:

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:
Ministry of education

Response ID ANON-E8XQ-FTEG-C

Submitted to **Have your say about access to official information**
Submitted on **2019-03-28 17:21:19**

Our questions

1 In your view, what are the key issues with the OIA?

1:
People don't take it seriously enough and approach it as an excuse to not disclose things, rather than the other way around.

2 Do you think these issues relate to the legislation or practice?

2:
Both, the legislation tries to make things clear, but the policy of open government and transaparency needs to be valued more. Government departments need to adopt a disclose is the norm attitude rather than the other way around where they are constantly looking for reasons not to disclose and justify withholding instead.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Fewer exceptions - and less grey areas where you can make something up as a reason to keep something private. Confidentiality is a prime area.

Response ID ANON-E8XQ-FTEQ-P

Submitted to **Have your say about access to official information**
Submitted on **2019-03-26 15:50:01**

Our questions

1 In your view, what are the key issues with the OIA?

1:
As a writer of OIAs, it can be hard to adequately assess how much work is going to be involved in compiling the data in the first 20 days. Sometimes I will extend something, only to learn I have not accurately estimated how much time this step will take (some OIAs are like iceburgs....there's a lot going on under the surface), but am unable to extend further because the initial 20 working days have passed. It would be good if there was the ability to re-extend after the initial 20 working days have passed -some kind of special exemption.

2 Do you think these issues relate to the legislation or practice?

2:
Wording of leg.

3 What reforms to the legislation do you think would make the biggest difference?

3:

Response ID ANON-E8XQ-FTEV-U

Submitted to **Have your say about access to official information**
Submitted on **2019-04-01 13:42:19**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Our freedom of information legislation needs to be reclaimed for the benefit of the people of New Zealand rather than continuing to service the interests of a few. As it currently stands it is open to misuse by both domestic and foreign parties to hinder the good government of New Zealand.
Compliance with OIA obligations are diverting operational resources in every agency and mostly these resources are not being spent for the benefit of the general public of New Zealand. They are not being spent increasing New Zealander's effective participation in the making and administration of laws and policies. Public money is being utilised to further the private interests of a few. This is not promoting the good government of New Zealand. The amount of resources each agency is spending has substantially increased in the last few years and continues to increase. It has far out stripped the resources required envisioned by the Dank's committee (the Dank's committee envisioned at most that agencies would only need 1 part-time person to meet requests under the OIA). The OIA was written in the pre-email era when it would have been too costly and time consuming for one requester to easily make requests to all 160+ central government or all 2,500 schools.
The highest users of the OIA fall into categories that do not serve the public interest: (1) opposition political researcher – whose high volumes of requests which are wide ranging and tie up considerable resources - interfere with the timely operation of agencies – which is unnecessary given the availability of the mechanism of parliamentary questions, (2) media – whose needs are not meet by the framework of the OIA – whose requests are often unwieldy and unfocused - but they are very resistant to be narrowed down – as they are often fishing for a headline rather than genuine investigative reporting, (3) the commercial requester who may be looking to undercut a competitor or find niches to provide products or services to agencies, (4) the disgruntled individual who is looking to punish an agency by having them spend large amounts on responding to requests.
Considerable resources are being tied up in Ombudsman's investigations that have no discernible benefit to the public of New Zealand. Take for instance the debate over the disclosure of official's names. How does the release of the name of an official, with no policy decision-making role further the aims of the OIA? Yet hundreds of thousands of dollars of public money have been spent on this issue. The Ombudsman has correctly approached the issue in terms of the current legislation, it is the legislation which has allowed individuals disgruntled with not having the main claims upheld on investigation, to push for the release of information of no interest to them or the public, and in the process caused the expenditure of large amounts of public money.

2 Do you think these issues relate to the legislation or practice?

2:
The issues mostly relate to the practice of a small number of requesters (organisations and individuals) who are using the OIA in a way that does not best serve the public interest. However, the only way to address these issues is to change the legislation. While tinkering at the edges of the OIA may relieve some of the issues that have developed, stepping outside the OIA box and promulgating legislation is the most effective way to meet the aims of transparency and enabling effective participation in the digital age.

3 What reforms to the legislation do you think would make the biggest difference?

3:
A new legislative framework, similar to the framework for the Records Management Act would allow an effective way to meet the transparency and accountability aims of freedom of information legislation while balancing the public interest in government being effective and concentrating resources on delivering the operational aims of each agency. Each government agency would have a published schedule of documents that are pro-actively released in specified timeframes. These documents would be in line with the aims of the OIA to increase the more effective participation in the making of laws and policies and to promote the accountability of Minister's and officials. This schedule would include annual reports, statements of intent, other corporate documents, current policies, briefing papers, and operational data.
A schedule could be annually submitted and reviewed by the Ombudsman/Information Commissioner, who would be able to make recommendations for further information to be included on an agencies schedule. Where concerns were raised regarding in an agencies operation the main mechanism would be investigation by the Ombudsman of the issues, either by own motion or individual compliant, as is available to the Ombudsman under the Ombudsman Act (although a rewrite of this Act to make it more accessible should coincide with any new freedom of information legislation).
If tinkering with the legislation remains the preferred option the minimum the following a particular areas where alteration to the present legislation should be considered:
- replace the refusal ground on the basis of 'substantial collation and research' (s18(f)) with a meaningful restrictive criteria – perhaps 'easily retrievable' as in the PA or 5 hour restriction for research and collation.
- Criteria for charge in the Act – not open to review by Ombudsman except on basis that it would not take as long as the agency claimed.
- Rewrite of the due particularity criteria (s.12), request to be clear and for identifiable information.
- Each Minister and agency to have designated easy to find internet and postal address for receiving OIA's. Request to be made to official channel. Agencies are being tripped up by use of changing social media platform – even snapchat requests – agencies and Ministers should not be obligated to undertake dragnet operations for requests or to undertake forensic analysis of each piece of correspondence received. Having a clear channel for requests will be helpful to the requester utilising the OIA for purposes consistent with the aims of the Act.
- Remove obligation to transfer, ament s.14 and s18(g), rather than obligation to transfer, promptly advise requester if information not held and to advise requester if it is known that another government agency holds the information. There are requesters using agencies to do considerable research to find who holds information or making a request to one agency and having them coordinate responses for the requester.
- Clear that the legislation is not to be utilised for surveys.
- Remove the criteria of citizenship or residency for making a request – this is unworkable in a digital age. If the concern is that foreign parties whose interests are not those of New Zealanders will tie up resources and potentially hinder the good governance of New Zealand – this can only sens bly be prevented by reframing the Act, otherwise it is easier enough to hide identity or request through lawyers. Resources will only be tied up by agencies in what is an impossible task in the

digital age.

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTEX-W

Submitted to **Have your say about access to official information**
Submitted on **2019-04-01 12:03:43**

Our questions

1 In your view, what are the key issues with the OIA?

1:
1. Providing information in relation to neighbourly feuds - the issue being uncertainty about the safety of individuals involved.

2. Text messages, deleted social media comments and phone calls that have not been documented - no clear understanding of how to store and retrieve this kind of information.

3. Public interest - media/organisations who ask for information requiring substantial research and collation quote public interest when we seek to charge. These organisations can be a bit rude/threatening in their interactions with staff. More information on what to do as a small council in light of this

2 Do you think these issues relate to the legislation or practice?

2:
1. practice

2. practice

3. practice

It would be nice to have some more Ombudsmen resources regarding these topics.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Something to discourage organisations from asking for publicly available information, or making overly complicated, and/or large requests in volume or number.

I do not believe in limiting what individuals/organisations can ask for. We have come across difficulties while notifying requesters of our limitations, so there could be some benefit in educating requesters on ways they can get the information they need, without causing undue stress

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTH2-T

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 07:06:58**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The attitude of some in the public sector and the governments they serve is not in keeping with the intent of the act - that information should be available to all unless there is good reason for it not to be

2 Do you think these issues relate to the legislation or practice?

2:
Practice

3 What reforms to the legislation do you think would make the biggest difference?

3:
I'm not sure that changing the legislation would have any affect without changing attitudes and strengthening enforcement of the Act

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:
Public servant of 20 years, in many different organisations

Response ID ANON-E8XQ-FTH3-U

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 06:58:44**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The government departments don't respect the fact that they are there to serve the public, therefore any OIA requests they see as a nuisance, get defensive and drag their heels at every opportunity.
The OIA should be able to impose fines if the request isn't provided in a timely manner or if the department redacts the document so heavily which makes it unreadable and puts things out of context.

2 Do you think these issues relate to the legislation or practice?

2:
Practice but better legislation would force the departments to be open with the people they are serving.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Strict rules about time lines, ensuring that the department complies with the request without redacting the document.

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTH4-V

Submitted to **Have your say about access to official information**
Submitted on **2019-04-17 09:01:43**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Requires a strengthened relationship between the PRA and the OIA.

2 Do you think these issues relate to the legislation or practice?

2:
Practice

3 What reforms to the legislation do you think would make the biggest difference?

3:
The OIA can't function properly without good information management, and at the moment the supervisory bodies aren't empowered or required to work together to tackle IM issues affecting OIA compliance and culture. Agencies also aren't adequately incentivised by the law to make this work better.

Optional questions

4 Name:

Name:
Glenda Morrissey

5 Organisation:

Oganisation:
Wa kato District Health Board

Response ID ANON-E8XQ-FTH5-W

Submitted to **Have your say about access to official information**
Submitted on **2019-04-17 12:51:06**

Our questions

1 In your view, what are the key issues with the OIA?

1:
-Unreasonable delays by Government Ministries and Agencies in responding to legitimate requests.
-Use of technical loopholes to completely deny any response, as an act of spite, to show 'power over' the requester

2 Do you think these issues relate to the legislation or practice?

2:
A bit of both - persons in positions of responsibility who are making replies have become accustomed to being frugal with facts; and the legislation is sufficiently elastic so as to allow them to do so.

This is an habitual behaviour that has built up over some years, if not decades, within Ministries and agencies, and is not compatible with open and transparent governance of those entities.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Some level of compulsion placed on public servants to actually answer the damned questions.

Yes, I'm tired of seeing responses discussed in media that were essentially:
"Nyah, nyah! You didn't write a good question, so we're going to side-step you!"

Imho, these sorts of responses bring the public service into disrepute and breach the Public Service Code of Conduct.

Optional questions

4 Name:

Name:
Kerry Tankard

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTH6-X

Submitted to **Have your say about access to official information**
Submitted on **2019-04-17 13:22:15**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Public awareness of what information they should be able to access or control and to what extent

2 Do you think these issues relate to the legislation or practice?

2:
Practice, but practice can be improved through legislation

3 What reforms to the legislation do you think would make the biggest difference?

3:
Requiring companies to have more obvious routes for discovering information held and controlling it (l ke the gdpr did for cookies)

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTH7-Y

Submitted to **Have your say about access to official information**
Submitted on **2019-04-17 09:04:17**

Our questions

1 In your view, what are the key issues with the OIA?

1:
It's very hard to get all the information we need in a short period of time if our information is everywhere. SharePoint has been nightmare for us since moving from a proper eDRMS system. The public has a right to ask a question of the agency, however we find we a requesting an extension 30% of the time just because we can't get the right information or use a proper process to get it. Over and above the eDRMS problem, we need a solution where the process can be automated from logging, assigning, drafting and reviewing and releasing. Real time reporting is essential to ensure everyone in the agency knows what needs to be done.

2 Do you think these issues relate to the legislation or practice?

2:
No, the issues are not a legislative problem, they are a governance problem.

3 What reforms to the legislation do you think would make the biggest difference?

3:
There are multiple clauses for redaction many of which are never used during the redaction process. Understand the common reasons why redaction occurs and simplify the legislation to align.

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTH9-1

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 07:00:58**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The number of holes in the legislation, and the ability to interpret it to the point of withholding information that an organisation knows it should be releasing, but doesnt, covering it up by declaring information by means such as "free and frank opinions", or leaving items that shine a bad light on an organisation in permanent "draft" form.

2 Do you think these issues relate to the legislation or practice?

2:
The practice, mostly. There is far too many holes for those responding to OIAs to be able to effectively release only 10 percent of what may be held relating to the OIA.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Remove draft forms of documents from exemption, or remove the ability for organisation to leave items l ke that so the public never sees it.

Emails are often redacted all the way to the point of being useless. I believe employees would be more careful about what personal information they send, if they are aware it could be fully released.

Optional questions

4 Name:

Name:
Jason Senior

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTHA-9

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 07:03:35**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Hi

I work for a government organisation delivering infrastructure to New Zealand. As a topic expert, I write OIA replies. I reply openly and honestly to any OIA or any other question someone asks me.

I think the issue with OIAs is resourcing. When I'm replying to an OIA it takes my time away from delivering other important things to New Zealand. New Zealand is small and on the edge of the world, finding resources who have the right skills to answer OIAs is very limited. I think the current OIA process is fit for purpose for New Zealand as we need to balance openness with getting other things done for New Zealand.

One thing I would change about the OIA process is that names of public servants are removed from documents (at the moment public servant's names are left on documents). When government documents are released, it's not the public servant releasing this information - it is government. Therefore, information should be nameless -as no one person delivers for government (we are a team).

Can you please consider how the public service should respond to trolls and what defines a troll?

FYI - when a government minister criticises the public service, it means that the minister doesn't understand why a decision was made and it reflects poorly on the minister.

2 Do you think these issues relate to the legislation or practice?

2:
Practice

3 What reforms to the legislation do you think would make the biggest difference?

3:
No reform are needed - just some tidying around the edges.

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTHD-C

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 06:31:32**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Delay in responding.
Redactions that are in consisent or unnecessary.
A complete lack of knowledge of the act by managers covered by the act

2 Do you think these issues relate to the legislation or practice?

2:
Some practices have developed over time and responders appear to "play follow the leader". When one agency starts responding in a certain way this trickles through.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Making the head of all agencies personally liable for failing.
A small fine of say $50 that the head is personally liable will focus their attention

Optional questions

4 Name:

Name:
Stuart Browning

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTHF-E

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 07:34:50**

Our questions

1 In your view, what are the key issues with the OIA?

1:
An issue I have come up against is the inability to use OIA (or LOGIMA) to access information that was previously held by a government department (Marine) and has since passed into ‘private ownership’ .
The information sought from these ‘un-digitised’ files, that by now would have been accessioned into National Archives, is held by a private company that uses ‘commercial’ reasons to prevent access by researchers.

2 Do you think these issues relate to the legislation or practice?

2:
Legislation.

3 What reforms to the legislation do you think would make the biggest difference?

3:
All public records should be accessible via the OIA regardless of current ‘ownership ‘

Optional questions

4 Name:

Name:
Richard Stratford

5 Organisation:

Oganisation:
n/a

Response ID ANON-E8XQ-FTHJ-J

Submitted to **Have your say about access to official information**
Submitted on **2019-04-17 07:41:27**

Our questions

1 In your view, what are the key issues with the OIA?

1:
fishing expeditions that ask for very broad ranges of information
poor information management leasing to difficulty in finding information
over-zealous redaction of information without good reason
a culture within much of the public service that seeks to avoid releasing information
lack of good public information about where government information assets (which agency) are held)

2 Do you think these issues relate to the legislation or practice?

2:
More the practice

3 What reforms to the legislation do you think would make the biggest difference?

3:
the directory of public information sits with the Ministry of Justice to maintain, a better home would be Archives New Zealand. A properly functioning and accurate directory needs to be better publicised so that public can find and use it

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTHK-K

Submitted to **Have your say about access to official information**
Submitted on **2019-04-17 20:59:19**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Heavy delays to requested information being provided
Overly technical interpretations of questions to prevent answers from being given.
Heavy redactions
Lack of key staff in government departments to process OIAs

2 Do you think these issues relate to the legislation or practice?

2:
Practice mainly, but could potentially be addressed with legislation

3 What reforms to the legislation do you think would make the biggest difference?

3:

Optional questions

4 Name:

Name:
Alex

5 Organisation:

Oganisation:
The Spinoff

Response ID ANON-E8XQ-FTHN-P

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 07:19:40**

Our questions

1 In your view, what are the key issues with the OIA?

1:
1. Different government organisations taking different approaches to how they handle it.
2. Almost always taking 20 working days (or more) to release relatively straightforward information.
3. Having to request information that should already be public eg. regular reports, financial information, statistics etc.

2 Do you think these issues relate to the legislation or practice?

2:
Mainly to the practice, but it is possible that tighter regulation with more teeth would force organisations to practice better.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Real repercussions for organisations that flout OIA rules or bend them (eg by taking 20 working days to release straightforward information).
Create an onus to proactively release certain information in bu k on a regular basis.

Optional questions

4 Name:

Name:
Jamie Small

5 Organisation:

Oganisation:
Self-employed

Response ID ANON-E8XQ-FTHP-R

Submitted to **Have your say about access to official information**
Submitted on **2019-04-17 08:14:59**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Misuse by government departments , i.e.:
- the attitude that the 20 day limit means you don't have to look for something immediately, but preferably much closer to the limit
- delaying responses until 20 day limit to announce "problems" with retrieval that don't exist
- the attitude that OIA requests are not part of every day work
the attitude that the Public should not know what they are doing

2 Do you think these issues relate to the legislation or practice?

2:
Both, but practice predominantly.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Researchers should have recourse to Court-sanctioned "Retrieve Now " orders where Judges can demand retrieval.
Public Records Act 2004 needs teeth to have ensure:
- records aren't 'lost' or 'accidentally' destroyed
- Archives NZ actually, and visibly (in media) investigates "lost" records OIA cases in Government agencies

Optional questions

4 Name:

Name:
Graeme Thompson

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTHQ-S

Submitted to **Have your say about access to official information**
Submitted on **2019-04-17 09:00:48**

Our questions

1 In your view, what are the key issues with the OIA?

1:
1. Ability of agencies to effectively respond to OIAs in providing all relevant information, when internal information management resourcing and quality is low.
2. Gaming of requests and request responses (I'm realistic about this though; it's the nature of the game).
3. Lack of alignment of the requirements and penalties in the Public Records Act with those of the OIA. To be clear - these Acts are two sides of the same coin. Without effective awareness, reporting and compliance with the PRA, responses under the OIA cannot be guaranteed to be comprehensive and fully compliant with both the letter and the spirit of the Acts.

2 Do you think these issues relate to the legislation or practice?

2:
Both. The Official Information and Public Records Acts are drifting apart from each other, the PRA in particular is a toothless tiger as the recent Curran incident shows. In order for an effective and engaged citizenry to be able to participate in New Zealand's social democracy both Acts need to be strong, clear, enforceable, supported by good governance and resourcing. Government agencies in particular need to lift their information management game so that they can properly respond to OIA requests.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Rewrite both Acts to make their interdependence explicitly clear. Perhaps an 'Information Management and Access Act'?

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTHT-V

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 05:46:01**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Both the Act and the Information Services systems available to Government and Agencies are not significantly responsive to the expectations of our digital age.

Whilst all non-sensitive information should be publicly available, there is insufficient acknowledgement of the complexity (and cost) sometimes associated with complying with OIA requests.

I strongly refute any suggestion that Agencies approach OIA requests with a “game playing” mindset - it is important that request responses answer the enquiry put forward. There are equally significant issues with almost “vexatious” requests for huge amounts of trivial information.

2 Do you think these issues relate to the legislation or practice?

2:
I suspect most issues concern the practice of OIA processes.

However, better use of Open Information and data to make items of public interest automatically available digitally should potentially be addressed by Amendments, as necessary.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Open Information and Data Standards

Scalability of OIA requests to reflect their complexity (and cost)

Appropriate mechanisms to recover some costs where appropriate. Being able to determine what could be readily available if “best practice” were followed (i.e. Through Open Data/Information standards) would allow for the clear identification of parts of requests that could be considered as additional to a mandatory level of service.

Optional questions

4 Name:

Name:
Andy Bartlett

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTHU-W

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 07:41:22**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Having used the OIA process , and the Office of the Ombudsman, to try and get further information from Government and local body agencies I feel I have a very good knowledge of how redaction and the present OIA legislative process is used by these agencies to make sure the information requested is answered with confused, convoluted and deceitful answers. Because of these practices there are never enough real facts provided for me to get to actually make my own decision on the matter I am inquiring about. I am left with a very strong thought ... this is a cover up!

2 Do you think these issues relate to the legislation or practice?

2:
Both.

The 1982 Official Information Act is a dead duck. It is used by politicians and bureaucrats as a toy to have fun with those who dare question their behaviour. Every Commissioner, including the Parliamentary Commissioner for the Environment, is paid by the Government, therefore they are Government controlled. This was made very clear during the 12th July 2013 TV One News.

The then Prime Minister, John Key, was being interviewed by Jessica Mutch in relation to the concerns held by the Human Rights Commissioners reservations about the proposed GCSB Bill. The PM replied by saying the Commissioner had to remember his Office was funded by the Government. Is that not a very veiled threat? How can any New Zealander accept that any Government department will give truthful answers to an OIA Request when a Government Commissioner is threatened like that?

3 What reforms to the legislation do you think would make the biggest difference?

3:
Get rid of redaction and make the respondents to OIA requests work within the current legislative process. It is so easy for these respondents to use the present legislation as a way out of providing the truth. We are supposedly living in a democracy. Every New Zealander should have the right to receive a factual and truthful answer when making an Official OIA Request.

Optional questions

4 Name:

Name:
Ron Eddy

5 Organisation:

Oganisation:
Private individual. I am a fourth generation New Zealander.

Response ID ANON-E8XQ-FTHV-X

Submitted to **Have your say about access to official information**
Submitted on **2019-04-17 22:23:06**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Fishing expeditions are now a norm. Current ombudsman has much more wider view than previous ombudsman, So inconsistency is not helpful

2 Do you think these issues relate to the legislation or practice?

2:
Practice

3 What reforms to the legislation do you think would make the biggest difference?

3:
Give information holders more grounds to withhold drafts. Media take information only in draft form, cause a huge media issue then ministers have to follow the pressures view

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTHW-Y

Submitted to **Have your say about access to official information**
Submitted on **2019-04-17 10:37:23**

Our questions

1 In your view, what are the key issues with the OIA?

1:
I have already posted on this.

An additional comment for OIA requests to manage them online.

Also, to link records together, for example Landonline to the archival records that are held relating to land. This would include digitised copies of the Deeds Registers, and improved digital copies of Certificates of Title.

Legislation is only one aspect, there needs to be an all of government strategy for access to information. From guides, who has what, how you can access it, etc. to actually being able to request, or view, information held in government agencies.

Of course with the appropriate authentication, authorisation, etc. At least somewhere were you can put in a request for something, and someone will respond with advice about the next steps.

In terms of the record keeping within agencies to make improvements in how information is managed, so fulfilling an OIA request is easier.

Many government agencies have Sharepoint, which is probably not implemented effectively. They also struggle with compliance - staff creating records.

I suggest you will get compliance by implementing Sharepoint in such a way that
staff are recordkeeping automatically.

For example, I working on a project, so in Sharepoint a workspace is set up for Project X. You work from this so all the applications like Outlook, Powerpoint, Excel, etc. are launched from the workspace, emails in and out are captured automatically. Inwards ones come into the workspace and are sent from the workspace - they are using Outlook as a tool. The Workspace has metadata allowing findability, sentencing and archiving.

If there is legislation, their are also the tools to allow for the implementation of it and for better management of data.

2 Do you think these issues relate to the legislation or practice?

2:
Both

3 What reforms to the legislation do you think would make the biggest difference?

3:
Already answered.

Optional questions

4 Name:

Name:
Vivienne Cuff

5 Organisation:

Oganisation:
Archives New Zealand

Response ID ANON-E8XQ-FTHZ-2

Submitted to **Have your say about access to official information**
Submitted on **2019-04-17 09:45:10**

Our questions

1 In your view, what are the key issues with the OIA?

1:
There needs be clarity around the relationship with the Public Records Act, OIA, Court Rules, Inquiries Act and the Privacy Act and all the other legislation that deals with the access to and management of information. Also, specific acts like Adoption, and various Tr bunals. Cabinet Manual, and security classifications too.

What is needed is a overarching legislation that deals with access to government information over its life cycle, irrespective of what, where it is and the format of it. The impact of the delivery channel needs exploration too.

2 Do you think these issues relate to the legislation or practice?

2:
Both...

This is particularly pertinent given the Historic Claims and Royal Commissions that are currently underway.

What access protocols are for Royal Commissions whilst they are working. The protocols are clearer once the Commission is finished, and their archives are transferred to Archives New Zealand. However, it isn't clear what powers Royal Commissions have to access restricted archives held at Archives NZ.

For claimants, better rules around vetting of confidential information and its redaction.

The OIA is fine as a response mechanism, but we should also be more proactive in releasing information, more than just the open data programme.

3 What reforms to the legislation do you think would make the biggest difference?

3:
An Act and Regulations that are easy to understand, implement, etc.

Use diagrams or workflows, decision trees, or something to make decision making easier.

Deals with information lifecycle.

The instruments that can be used, need exploration. For example with the Privacy Act there are information sharing agreements.

Optional questions

4 Name:

Name:
Vivienne Cuff

5 Organisation:

Oganisation:
Archives New Zealand

Response ID ANON-E8XQ-FTK1-V

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 07:25:42**

Our questions

1 In your view, what are the key issues with the OIA?

1:
How long it takes to receive information when the subject's timing is crucial to court or public interest

2 Do you think these issues relate to the legislation or practice?

2:
Practice, but legislation could reduce delay tactics

3 What reforms to the legislation do you think would make the biggest difference?

3:
Make the time frame impossible to delay. But enough time that is practical if the information is older and requires searching through hard copies that haven't been digitised.
This could be noted at time of OIA request - if digital and or recent, it should be 48 to 72 hours, but significantly longer for archived or hard copy data due to practicalities, of course.

Optional questions

4 Name:

Name:
Jonathan Woodford-Robinson

5 Organisation:

Oganisation:
None

Response ID ANON-E8XQ-FTK2-W

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 09:13:50**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Inconsistent implementation of statutory requirements between various agencies, a lack of legal consequences for partisan thwarting of the process by elected officials, insufficient resources devoted to fulfilling OIA responsibilities, and misuse of the OIA process to deluge agencies with repetitive, onerous requests, either in ill-targeted trawling expeditions or bulk 'denial of service'-style requests designed to clog the system.

2 Do you think these issues relate to the legislation or practice?

2:
Chiefly practice. The legislation is largely fit for purpose, aside from adaptations required for new technology. It's the inconsistent and unreliable implementation that's the problem.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Penalties for poor compliance.

Optional questions

4 Name:

Name:
Ethan Tucker

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTK4-Y

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 07:44:52**

Our questions

1 In your view, what are the key issues with the OIA?

1:
I have lodged 4 OIA requests in my life, all asking for copies of supporting documents that were stated to be attached to national policy drafts seeking feedback. 1 related to MPI expenditure that my local govt budget co-funded, so I was prevented from knowing where my money went. 2 others were refused citing commercially sensitive (incorrectly as they contained no cost elements whatsoever and related only to policy development). The real reason in both cases was a desire of MPI to protect its secretive policy development process ie demonstrating that public consultation is a sham. So the OIA has been totally ineffective in providing transparency in both areas of policy and practice.

2 Do you think these issues relate to the legislation or practice?

2:
Both, see above.

3 What reforms to the legislation do you think would make the biggest difference?

3:
The OIA needs to more clearly state that govt depts cannot hide behind spurious explanations of commercial sensitivity etc, and unnecessary delaying tactics eg "need to consult executive staff". This can be achieved by making govt managers responsible for provision of information in the same way that they are responsible under the Health & Safety Act ie be held personally responsible for every decision they make to withhold information. Also we need a more comprehensive description of what cannot be withheld eg supporting documents attached to policy documents for public consultation.

Optional questions

4 Name:

Name:
Jack Craw

5 Organisation:

Oganisation:
Private citizen

Response ID ANON-E8XQ-FTK6-1

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 08:23:11**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Lack of oversight / transparency, del berately slow responses, the fact the same organisations which we're requesting information from are providing the information, and government's lack of inventive to make it better.

2 Do you think these issues relate to the legislation or practice?

2:
Both.

3 What reforms to the legislation do you think would make the biggest difference?

3:
There should be an OIA department with access to all departments with huge authority to demand information in a timely fashion. If it is to be withheld, a case needs to be made to that department and they decide whether the case holds water. If they decide to release it, an appeal should go from the dept wanting to withhold the information to the ombudsman – IE a presumption of release.

Optional questions

4 Name:

Name:
Duncan Greive

5 Organisation:

Oganisation:
The Spinoff

Response ID ANON-E8XQ-FTK7-2

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 07:56:24**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Too many delays allowed without consequence, and too many redactions and exceptions allowed.

2 Do you think these issues relate to the legislation or practice?

2:
Both, l kely.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Propose something.

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTK8-3

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 08:29:24**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Redactions - should be only extreme cases
Conversations - meeting minutes etc often only record information that is intended to go on record. Need to get some way of accurately capturing un-minuted decisions and conversations.

2 Do you think these issues relate to the legislation or practice?

2:
Practice. I don't know enough about the legislation to comment.

3 What reforms to the legislation do you think would make the biggest difference?

3:

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTK9-4

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 09:00:49**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Needs updating to reflect the reality of the digital era. Large amounts of information are generated which makes requests unwieldy for agencies to locate information and scope.

The requirement to divulge information in the form of staff recollections needs beefing up, to avoid the belief and practice information is not discoverable.

Extensions should be allowed to be made during the extended timeframe after 20 days.

Agencies approaches are too bureaucratic, risk averse and too many signoffs.

2 Do you think these issues relate to the legislation or practice?

2:
Both

3 What reforms to the legislation do you think would make the biggest difference?

3:
Reinforce all information is in scope in all formats and staff recollections

Enable more flex ble extensions to reflect large volumes of information produced in the digital era

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTKA-C

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 09:05:06**

Our questions

1 In your view, what are the key issues with the OIA?

1:
1. The use of 9 2 f iv to withhold things under "active consideration"
2. The 20 working day limit, including extensions is too long. It allows ministries to delay working on the requests immediately.
3. It's too easy for scatter gun requests which require a Department to coordinate a response over multiple branches.

2 Do you think these issues relate to the legislation or practice?

2:
A bit of both.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Reduce the number of grounds for withholding or extending OIA requests
Make withholding only applicable to commercial in confidence or Restricted and above security classifications

Optional questions

4 Name:

Name:
Michael

5 Organisation:

Oganisation:
Internal Affairs

Response ID ANON-E8XQ-FTKB-D

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 07:57:36**

Our questions

1 In your view, what are the key issues with the OIA?

1:
lack of compliance with requests. often requests are ingnored or only partially completed. There is no real way to force the compliance with the request

2 Do you think these issues relate to the legislation or practice?

2:
In my experiance it is both, The worst offeders are organizations that do not report directly to the goverment. For example the American Foul Brood Pest Managamet Plan.
Because they do not have a minister in charge complainants stop with the peopel running the organisations who are blocking the requests

3 What reforms to the legislation do you think would make the biggest difference?

3:
easier, quicker and better way to force compliance

Optional questions

4 Name:

Name:
stephen black

5 Organisation:

Oganisation:
beesrus ltd

Response ID ANON-E8XQ-FTKD-F

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 08:51:19**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The insertion of a PR necessity. All this framing and spin is unnecessary.

I wasn't sure what a number meant on a release. I called the area that put the figure together and got told they couldn't tell me and should direct my question to the Comms team. Follow my drift?

2 Do you think these issues relate to the legislation or practice?

2:
Practice.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Some kind of line that proscribes a request from being touched by PR/media/comms staff.

Optional questions

4 Name:

Name:
M ke Barton

5 Organisation:

Oganisation:
Western Sahara Campaign-NZ

Response ID ANON-E8XQ-FTKE-G

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 08:41:50**

Our questions

1 In your view, what are the key issues with the OIA?

1:
An essential bulwark of democracy. But officials have long treated OIA requests with contempt, following the letter of the law with reluctance and using great ingenuity to thwart its spirit.

2 Do you think these issues relate to the legislation or practice?

2:
Principally to practice. Civil servants often regard their duties to the public as a nuisance, and think that transparency is an impertinence rather than a right. This needs to be addressed. Sanctions against officials who obfuscate and drag the chain would help.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Stiffening the wording around the exceptions. National security is obvious, but commercial sensitivity is interpreted too broadly, and personal information likewise. The timeframe (4 weeks) is being used as a minimum time to respond, not a maximum.

Optional questions

4 Name:

Name:
Anne French

5 Organisation:

Oganisation:
Anne French Consulting Ltd

Response ID ANON-E8XQ-FTKF-H

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 09:02:37**

Our questions

1 In your view, what are the key issues with the OIA?

1:
That agencies use the 20 period to delay providing information they have.

2 Do you think these issues relate to the legislation or practice?

2:
Both

3 What reforms to the legislation do you think would make the biggest difference?

3:
Make it clear that the 20 day period should not be used to allow agencies to delay providing information earlier.

Optional questions

4 Name:

Name:
Grant Hewison

5 Organisation:

Oganisation:
N/A

Response ID ANON-E8XQ-FTKG-J

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 08:09:46**

Our questions

1 In your view, what are the key issues with the OIA?

1:
It has no teeth.
There are effectively no repercussions if an agency fails to meet their obligations.
In particular, responses can be incomplete, inaccurate or deflective.

Complaint investigation process.
The process for the Ombudsman is too slow. I lodged a complaint regarding an inadequate response in June 2018 and have not had any resolution as at April 2019. Our campaign now has about 8 weeks left to run and it appears highly unlikely that the information requested will be available before the campaign deadline.

Scope.
LGOIMA does not apply to subsidiaries/joint ventures (other than the provisions for information held by contractors). The two West Auckland licensing trusts operate a joint venture which is outside the scope of LGOIMA and (under current financial reporting rules) their financial information is reported as a single line in their P&L / BS. This arrangement is effectively a loophole for the licensing trusts to avoid the public scrutiny intended by LGOIMA.

2 Do you think these issues relate to the legislation or practice?

2:
Both. Primarily practice but there are also gaps in the legislation.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Enforcement provisions.
More rigorous reporting of compliance would help if there is sufficient media interest but would be less effective in smaller / less newsworthy cases (licensing trusts, DHB's etc).
Compulsory appointment of an 'OI officer' could be more effective. Make that 'OI officer' and chief executive personally responsible (fines / imprisonment) for meeting their obligations under the Act.

Scope.
Increase scope to include JV's / subsidiaries (to remove a loophole for dodging LGOIMA/OIA)

Optional questions

4 Name:

Name:
Nick Smale

5 Organisation:

Oganisation:
West Auckland Licensing Trusts Action Group

Response ID ANON-E8XQ-FTKH-K

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 08:27:58**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Lack of consistent training for public servants. Over time as an information professional I have seen OIA training modules in many agencies. They often are skewed towards training people on reasons to withhold or not release information. It would improve this situation greatly if there were, for example, one central government training module that covered the core principles of the OIA (accountability) and reasons/obligations to release information. This could perhaps be hosted from either the SSC or the Ombudsman's website and built into induction and refresh training fro all public servants.

2 Do you think these issues relate to the legislation or practice?

2:

3 What reforms to the legislation do you think would make the biggest difference?

3:

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTKJ-N

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 07:25:57**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The issue is that government officials treat requests for information as a threat or a concern and the OIA allows them to find ways to slow down or halt the release of data. There should be a positive obligation on all public officials to release all data to the public without being requested to do so unless it falls into a legitimately protected category.

Rather than seeing transparent government as a good thing that government should proactively do at all times, the OIA allows the government to slowly and reactively release data as members of the public request it. It should not be on members of the public and media to work out what government departments are doing and request information blindly until they find it. The only way agencies can be accountable is if the public is proactively made aware of what is happening.

2 Do you think these issues relate to the legislation or practice?

2:
Both. I think the way the OIA is framed creates an obligation on the public/media/opposition parties etc to discover what the government is doing when that obligation should rest with the government.

I also think that many government departments have an internal culture of attempting to control the damage they expect to occur when some information is released. It is not proper for the public service to be looking out for its own interests. It needs to be engaged in proactive transparency

3 What reforms to the legislation do you think would make the biggest difference?

3:
unsure

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTKK-P

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 08:46:48**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The requester does not need to have a reason for requesting information.

The OIA can be abused by vexatious requesters.

Schools should not be grouped in with other government agencies. They function in an entirely different environment.

The threshold for refusing information is too high.

2 Do you think these issues relate to the legislation or practice?

2:
Legislation. Although because the OIA favours the requester, it also comes down to practice.

The OIA strongly favours the requester. It assumes the agency is not being transparent and is hiding information. Sometimes the requester is vexatious and abuses the OIA. In our experience, the OIA is being used as a vehicle to get our school to justify decisions that a parent doesn't like. Responding to numerous, varied and ongoing requests create an administrative burden.

In our experience, the information requested is being used to try and discredit the Principal or Board. This is detrimental to our whole school community and can become very divisive.

3 What reforms to the legislation do you think would make the biggest difference?

3:
The requester should have to justify a request - provide a purpose for requesting the information. The reason should be valid, to receive the information.

School should not be subject to the OIA.

Optional questions

4 Name:

Name:
Board Chair

5 Organisation:

Oganisation:
School

Response ID ANON-E8XQ-FTKM-R

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 08:45:20**

Our questions

1 In your view, what are the key issues with the OIA?

1:
You cannot find out how many adults get meds for their ADHD at Cdhb psychiatrists.
Failure to treat adult ADHD drives costs in every government department.
The list of harms is impressive says the 28 country 63 researcher European Consensus on adult ADHD published online open access Feb 2019.
We think thus protects the psychiatrists only status of ADHD stimulant meds kept that way by Medicines Control, ■ monopoly set up when National amended Misyse of Drugs Act to cut out GPs from medicating for adult ADHD just before PM Helen Clark hit elected. She would never have agreed with taking ADHD and Autism which are lifelong out of community care. They should be in Neurology based on the brain science.
We found a M■ori manager was sent "we cannot release these figures" and list thd meds (they know these few meds) by Cdhb. They want to give a figure include the private good psychiatrists as THEY DO NOT TREAT WE SUSPECT ANY ADULTS WHO HAVE ADHD and all the kids are stopping meds in their teens or switching to drugs like Marijuana.

2 Do you think these issues relate to the legislation or practice?

2:
Medicines Control sits on the sideline untouched who created this monopoly working under Jenny Shipley on stimulant meds by facilitating cutting GPs out in 1999. Now NZNO have asked to prescribe. This is the only way to get care to M■ori, in the community and not just through psychiatrists.
Medicines Control should have to justify grading them Class B which loads Wh■nau up with costs and admin in the face of the harm from adult ADHD listed in 2019 European Consensus on adult ADHD, 28 countries. Faceless.
Robin Wynne-Williams addinfo.org
RN, QSM, has asked Minister of Health for GP prescribing to be restored. We say nurses as per NZNO request through Pharmac MHsubC to stop the racism we face in Mental Health w our kids and no adults treated virtually despite the research on the huge harms.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Nurses, Neurologists and GPs added as allowed to initiate treatment with stimulant ADHD meds by an amendment to the Misuse of Drugs Act.
This would revolutionise our prisons, see Ginsberg, Sweden. .
Right now even neurologists are cut out. GPs used to be allowed to apply for the Chem no. Until 1999.

Yet the Addictive potential of longacting stimulants is UNPROVEN. Psychiatrists exaggerate this.
However extreme Harm eg homelessness, violence, underemployment, from not treating is proven.

Colonial system is controlling all M■ori health agencies by making them toothless by this Act. Talk therapy alone is toothless for a common physical brain disability/different ability, think Einstein autism... And his personal life, and Winston Churchill St's ADHD. . Both had privilege so showed the flip side of Neuro diversity with a support system in place.

Untreated ADHD with autistic features interacts with lack of privilege to give many negative statistics and violence and an unseen intolerable burden on the caregivers in the wh■au. The person presents quite well. Might even head a government department, high flyer.

Nurses as they can be M■ori (M■i GPs very often have a P■keh■arent so still in colonial thinking) and they are close to families and Wh■nau, know the whakapapa which is tapu. This is genetic (78% proven heritability) and need not be a Mental Health diagnosis. It can be privately treated so people keep employed. Psychiatry has a foreign American age based individualistic structure. No cultural safety.

This legislation forces M■ori to go without treatment, hence our prison stats. Keeps all M■ori health under the thumb of Mental health actually as ADHD stops you looking after your health and your teeth, and your kids etc. .

Optional questions

4 Name:

Name:
Lucy King

5 Organisation:

Oganisation:
On ADHD NZ Facebook, others suffer same too from this legislation.

Response ID ANON-E8XQ-FTKP-U

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 07:31:56**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Many of the issues relate to ethos and incentives. For example, there is no effective means to enforce the "as soon as reasonably practicable" provision, and no incentive for agencies to comply either (the ability to extend requests without limit is a statutory weakness that only tends to reinforce the problem). There is no clear expectation from the PM and SSC Commissioner that agencies will comply with the spirit and principles of the law, and - absent that - no penalties, falling personally on individuals involved - for agencies to act in a positive manner anyway.

Lack of adequate resourcing of the Ombudsman compounds all the issues, since agencies know they can drag things out often past the time when the request is still timely for the requester,

2 Do you think these issues relate to the legislation or practice?

2:
It is about the interaction between the two, although arguably the legislation is largely fit for purpose if the ethos, Ombudsman resourcing, and perhaps stiffer penalty provisions for agency CEOs were there.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Could create a statutory presumption in favour of the release of any document more than 6 months old, with very very tightly drawn exclusions (around national security, commercial confidence, and (very tightly drawn) legal privilege, personal information - but not, say, "free and frank").

No request shoiuld be able to be extended more than 20 working days without the explicit prior approval of some independent body (perhaps the Ombudsman, altho that might leave conflict of interest issues).

Bringing Parliament and officers of Parliament within the scope of the Act (or of parallel legislation).

Optional questions

4 Name:

Name:
Michael Reddell

5 Organisation:

Oganisation:
Independent

Response ID ANON-E8XQ-FTKR-W

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 07:42:01**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Dated. Leaves public servants and ministers with too much discretion. No effective sanctions for simply disobeying. Not written in digital age and cloud storage.

2 Do you think these issues relate to the legislation or practice?

2:
60:40 legislation to practicesa

3 What reforms to the legislation do you think would make the biggest difference?

3:
Effective sanctions
Reduced withholding grounds

Optional questions

4 Name:

Name:
Allan Sargison

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTKS-X

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 08:42:50**

Our questions

1 In your view, what are the key issues with the OIA?

1:
1.Lack of enforced compliance.
2. The ability for redaction to occur without established legislative standards. Individuals within departments are able to apply subjective judgement to information release which distorts the process and its consistency.
3. Lack of auditability. Only vague justifications for redaction are required.
4. Parliamentary gaming - fishing expeditions / abuse of process is to easy, thus rendering the process unmanageable.

2 Do you think these issues relate to the legislation or practice?

2:
Both. Penalties and incentives are not correctly set or enforced within legislation to deliver appropriate results.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Enforcement and established standards of what may be redacted (i.e. specific contravention if the Privacy Act, state secrets that would endanger NZs security).

Commercial confidence should not apply.

Optional questions

4 Name:

Name:
Gregor White

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTKU-Z

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 09:09:43**

Our questions

1 In your view, what are the key issues with the OIA?

1:
No teeth. Non-compliance, bending the rules, acting in a way not in line with the spirit, all go unpunished.

2 Do you think these issues relate to the legislation or practice?

2:
The legislation (and lack of penalties) enable the practice.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Financial penalties to the individuals responsible for failing to comply. (Note: individuals, not just the department.)

Make it mandatory to proactively publish information. Give complete file maps of file systems, so people have rough ideas of what to request. At the moment only people deeply familiar with the public service knows what to request.

Put OIAs entirely in the hands of ombudsman—govt departments can't be trusted.

Optional questions

4 Name:

Name:
Harry

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTKV-1

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 08:37:48**

Our questions

1 In your view, what are the key issues with the OIA?

1:
People repeatedly asking for extra time or hiding behind 'commercially sensitive', when in fact redacting a bit would get around that.

2 Do you think these issues relate to the legislation or practice?

2:
Not sure. Some depts are good so I guess practise.

3 What reforms to the legislation do you think would make the biggest difference?

3:
I think giving 20 working days means depts feel they are entitled to take that long. Perhaps that could be firmer. Also the rules around extending perhaps could be toughened up.

Optional questions

4 Name:

Name:
Laura Mills

5 Organisation:

Oganisation:
Greymouth Star

Response ID ANON-E8XQ-FTKW-2

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 07:58:39**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The ability of departments and agencies to misuse or "stretch" the criteria for with-holding information and the abject failure of the government to resource the ombudsman's office such that they can actually properly investigate. Currently complaints to the office are hardly ever investigated, attempts made to talk people out of investigation or the investigation so prolonged that the outcome is meaningless.

Some ministries e.g. DoC have become very prone to failing to fully meet the requirement of the OIA with timelines missed and information withheld for dubious reasons.

2 Do you think these issues relate to the legislation or practice?

2:
Both. The ability to miss-use the criteria for avoiding supply of data is significant. For example I currently have an overdue request with DoC for supply of submissions to the WARO review. That request deadline was late March 2019. The department has refused to supply the information based on it being made public in "the near future". Some of the requested information has been with the department since July 2018. What constitutes the near future ?

The issues are a combination of legislation and increasing departmental practice at obstructing.

3 What reforms to the legislation do you think would make the biggest difference?

3:
The criteria for refusal need to be tightened up. Define near future as a distinct time period. Better define the legal privilege excuse for with-holding as I commonly see that abused with excuses like commercially sensitive used when the department in question is a monopoly provider and there is no commercial issue.

Perhaps the biggest single thing though would be to properly resource the ombudsmans office so they can investigate matters in a timely manner.

Optional questions

4 Name:

Name:
Gordon GEORGE

5 Organisation:

Oganisation:
New Zealand Deerstalkers Assn Hutt Valley Branch

Response ID ANON-E8XQ-FTKX-3

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 08:37:40**

Our questions

1 In your view, what are the key issues with the OIA?

1:
- That it's reach is insufficient (many quasi-government organisations are excluded)
- That the maximum response times are treated as minimum times by many departments (e.g. they deliberately respond on the 20th day to slow release and limit the effectiveness of follow up requests).
- That information is routinely released in formats that don't allow further analysis or transformation (i.e. "flattened" image PDFs that do not allow data to be easily extracted for anaylsis), information should always be released in useful formats.

2 Do you think these issues relate to the legislation or practice?

2:
A combination of both, but practice follows legislation, for example, requiring data and information to be released in the most useful/usable format should be in the act to direct practice.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Reforms that reduce the allowed response time and require good faith release (so the release should address the spirit the request is made in, not just it's technical definition). Requiring release to be in useful and useable formats. Greater sanctions on departments who flout the legislation.

Optional questions

4 Name:

Name:
Robert Whitaker

5 Organisation:

Oganisation:
Renters United

Response ID ANON-E8XQ-FTKY-4

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 07:59:41**

Our questions

1 In your view, what are the key issues with the OIA?

1:
I am a public servant working in Wellington central government agencies. I firmly believe in the principles of the OIA, but irrespective of my beliefs the law should be observed in any case. I have witnessed many instances of the OIA request process being abused by mostly the senior levels of management - trying to protect their organisation from scrutiny or embarrassment. At the analyst and team level responses are cleared for release, but when it goes for final approval it gets over-ruled and withheld on often spurious grounds. I have also experienced legal advisors pressuring staff to change their position to support such decisions from management

2 Do you think these issues relate to the legislation or practice?

2:
The practice

3 What reforms to the legislation do you think would make the biggest difference?

3:
There should be a step in the process where all the relevant the documents proposed for release at the analyst/team level are submitted to a third party government body (eg SSC) so it is not just the agency involved that is involved in the decision on what to withhold. It may be that this is simply a lodging process into a cross-agency document management system, with no specific review by the third party, but they are available for comparison with what the agency actually released in case of referral to the ombudsman

Optional questions

4 Name:

Name:
It would be career limiting to identify myself

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTKZ-5

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 08:02:59**

Our questions

1 In your view, what are the key issues with the OIA?

1:
There isn't enough clarity for responding organisations of what constitutes (paraphrased) 'excessive effort to collate' and how this relates to data requests.

Allow more flexibility with timeframes. There is provision to extend (as early as poss ble is preferable) however the short time frame means it is an urgent priority for organisations. I have had teams of data analysts whose role was to provide visibility and analysis of trends and provide insight and recommendations to the business. However approximately 40% of the analysts time was diverted to work on providing OIA (and Parliamentary Question) responses. At times of interest the whole team would be doing this work under time pressure.

The OIA doesn't really cover data requests. A large number of questions might be answerable by combining and making calculations using data from administrative systems, however there can be a large effort to perform this work and there is a risk that the response is incorrect especially if the question has never been asked before.

Charging is able to be provisioned however it is difficult for organisations to perform this.

2 Do you think these issues relate to the legislation or practice?

2:
There is a mixture of things here, but the legislation provides the framework for the policy's in organisations. If the legislation was more clear there would be less ambiguity and organisations policy's might be more closely aligned.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Add clarity to the use of data in terms of what type of work can be reasonably expected to respond to a request.

Perhaps the OIA request could be more open in terms of the request being an outcome rather than a specific set of things. ie "Please give me information that helps me understand how vehicle fines have changed over the last five years in Hamilton, rather than I want all vehicle fines listed for Hamilton by month for five years"
There is an element of trust required in this approach (that the organisation will answer the question). I think the conversation is the important part to understand what is required, but to do this properly requires investment.
Could government agencies also be funded to respond to OIA and Parliamentary Questions? I think organisations need to be able to highlight the hidden cost of responding to queries which might help surface the size of this process.

For organisations to be truly transparent, organisations need to be able to give the context and full answer. That may require extra effort on top of what is being performed now but I believe it will give better transparency and help to satisfy the questions the public have.

Optional questions

4 Name:

Name:
Kelvin

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTQ2-3

Submitted to **Have your say about access to official information**
Submitted on **2019-03-14 07:46:13**

Our questions

1 In your view, what are the key issues with the OIA?

1:
That requests are not being adhered to, or they are being met with del berate obfuscation or delays to suit political purposes.

2 Do you think these issues relate to the legislation or practice?

2:
Both. The legislation does not have enough teeth and there are holes that are del beratly exploited. In practice, the various ministries and departments are not treating the legislation as binding, rather they treat it more as a guideline.

3 What reforms to the legislation do you think would make the biggest difference?

3:
It needs teeth, with penalties for infractions against it. At present there are no real repercussions for failing to provide what is requested, or timelines being over run. The penalties would need to be levied against the processor of the information, not the minister or manager respons ble. Either the ombudsmen office needs to process all OIA requests as part of a new set of duties, or an independent transparency body needs to be funded and created to handle all requests. This body would have to be legally empowered to compel information from all goverment entities. Also all discussions/correspondence/minutes of requests internal and external, need to be filed with the request, to highlight any obfuscation or deliberate meddling. This would also serve to protect the processor and ensure transparency. It needs clear guidelines around exemptions. These being national security, current name suppression orders, criminal justice reasons etc. and no doubt many more. As above, all correspondence regarding the request and poss ble redactions, would have to be filed with the request documentation and provided with the completed request.

Response ID ANON-E8XQ-FTQ3-4

Submitted to **Have your say about access to official information**
Submitted on **2019-03-13 19:47:33**

Our questions

1 In your view, what are the key issues with the OIA?

1:
A lack of clarity around some of the measures applied in the OIA mean that agencies are unable to effectively employ them. This leads to what appear to be wasted resources on frivolous requests, in practice causing a 'denial of service' effect on the agencies resources to respond to substantive requests with public interest value. This appears to lead to apathy in agencies, where they see the OIA engagement as waste of time and seek to maximise the time used to apply to requests.

2 Do you think these issues relate to the legislation or practice?

2:
The practice applied against existing legislation, including the focus of the Ombudsman's oversight activities. The OIA places a burden on agencies with no clear guidance as to the reasonable level of resources which should be committed to addressing OIA requests.

3 What reforms to the legislation do you think would make the biggest difference?

3:
- Strengthen the wording around frivolous requests to discourage these, and encourage requests with a high public interest. Part of this could include a stand down for a reasonable period (say 3 months) for repeated frivolous requests by an individual.

- Update the legislation to reflect modern technology, including requirements for agencies to respond to social media which are descr bed as representing the agency, but not personal accounts of employees or officers. Encourage online disclosure, whether the response is provided to the original requester is provided in this form or otherwise.

- Address issues with regards to establishing eligibility, and the use of pseudonyms, by requiring submitters to use their name as per the electoral roll or companies register.

These aspects may involve guidance on legislation rather than legislation itself:
- The establishment of a govt.nz hosted OIA online tool (not associated with one media company) for submission of and / or responses to OIA requests, which include formatting/fields for both submissions and responses to standardise requests and make responding more effective and with wider public availability. Ensure this is able to be indexed by search engines.

- Provide guidance for the reasonable amount of resources agencies are expected to commit to resourcing OIA requests in a way which is comparable across agencies (such as number of personnel, annual budgets, or other more suitable comparisons.

- Encourage proactive disclosure in a way which is able to be indexed by search engines and gives requesters a high chance of finding releases similar to the information they would request otherwise, for example using titles which reflect those which would be used in OIA requests.

Response ID ANON-E8XQ-FTQ4-5

Submitted to **Have your say about access to official information**
Submitted on **2019-03-08 15:41:42**

Our questions

1 In your view, what are the key issues with the OIA?

1:
That certain organisations fail to follow it and only provide some of the relevant material. This is particularly true of the Treasury HR team- material that was relevant to questions I have raised was not released to me but has subsequently been released to other requesters. They are also particularly prone to unwarranted extensions. On one occasion may request was extended by 30 days and the whole response was less than 2 pages long. There should be serious oversight of requests for extensions.

2 Do you think these issues relate to the legislation or practice?

2:
The practice

3 What reforms to the legislation do you think would make the biggest difference?

3:
Requiring agencies wanting extensions to get the approval of the ombudsman for this. Personal penalties for individuals who fail to release information

Response ID ANON-E8XQ-FTQ6-7

Submitted to **Have your say about access to official information**
Submitted on **2019-03-11 16:52:54**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Law Commission Report was very good analysis. Implementation seems to be the main issue but note whatever is done with OIA needs also to be matched by parallel changes to local Government Official information and Meetings Act

2 Do you think these issues relate to the legislation or practice?

2:
Practice mainly but do pick up on changes suggested by Law Commission. Need also to at operability of Part 7 of LGOIMA and reasons for public excluded meetings

3 What reforms to the legislation do you think would make the biggest difference?

3:

Response ID ANON-E8XQ-FTQ8-9

Submitted to **Have your say about access to official information**
Submitted on **2019-03-11 21:25:31**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Timely responses, appropriate resourcing for response teams, consistent expectation on fees for information, lack of faith in Ombudsman's enforcement/timely responses.

2 Do you think these issues relate to the legislation or practice?

2:
both

3 What reforms to the legislation do you think would make the biggest difference?

3:
Quicker deadline for turnaround (we live in a digital age now..)

Response ID ANON-E8XQ-FTQ9-A

Submitted to **Have your say about access to official information**
Submitted on **2019-03-13 14:23:19**

Our questions

1 In your view, what are the key issues with the OIA?

1:
It is too narrowly interpreted

2 Do you think these issues relate to the legislation or practice?

2:
Primarily practice

3 What reforms to the legislation do you think would make the biggest difference?

3:
It needs a full review.

Response ID ANON-E8XQ-FTQD-N

Submitted to **Have your say about access to official information**
Submitted on **2019-03-13 09:32:41**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Entities have figured out how to dodge and avoid lawful requests all too easily.

Claiming excessive costs, abusing the allowed response time via various methods, supplying data in unusable forms (eg printed and scanned PDF's rather than say a spreadsheet), excessive redaction. Too many requests delayed or denied because of Ministerial interference, particularly under the previous National administration.

2 Do you think these issues relate to the legislation or practice?

2:
Mostly to the practice, with enforcement being problematic - the ombudsmans office is clearly hopelessly under resourced. But of course the legislation should be looked at.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Move to a default position of open government principles.

Response ID ANON-E8XQ-FTQG-R

Submitted to **Have your say about access to official information**
Submitted on **2019-03-08 23:10:57**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Its scope no longer reflects the full range of arrangements where public accountabilities should apply i.e. should extend to private entities exercising public functions.

No effective mechanisms to ensure time limits are respected.

2 Do you think these issues relate to the legislation or practice?

2:
Scope issues are legislative.

Enforcing compliance with time limits might be addressed in practice but it seems unl kely anything will change without new statutory provisions,

3 What reforms to the legislation do you think would make the biggest difference?

3:
Extending it to cover private bodies that perform public functions.

Response ID ANON-E8XQ-FTQK-V

Submitted to **Have your say about access to official information**
Submitted on **2019-03-12 15:24:55**

Our questions

1 In your view, what are the key issues with the OIA?

1:
- Agencies tend to ask for an extension by default – it's seen as a free hit. They push everything back as far as possible, which means by the time you get a response, the issue you're trying to cover has lost its currency.
- Ombudsman investigations, quite simply, take far too long. Months and months. They either need more staff, or time limits for responses need to be drastically shortened. I'd l ke to see Ombudsman complaints resolved within a week, tops.
- Many agencies require follow-up reminder emails to the media contact.
- Agencies insist on responding in PDF format, even when directly asked to use another file type, such as an Excel spreadsheet for tabulated data. It's obstructive and wastes time.
- Media contacts on some government agency websites are hidden or difficult to find. Some only have contact forms, as opposed to an actual name and email address. I don't find that very transparent.
- Very few agencies are open to feedback after their respond with and OIA – it's case closed unless you file a complaint. They need to be able to take some feedback and perhaps give the response another look.
- Agencies often resort to using the OIA as a wall. They tell you "you'll need to request that under the OIA', despite the information clearly being available that day. They do this intentionally because they know unless you get the information today it loses its newsworthiness.

2 Do you think these issues relate to the legislation or practice?

2:
Both. I think time limits for responses need to be dramatically tightened, and Ombudsman responses need a much quicker turnaround.

3 What reforms to the legislation do you think would make the biggest difference?

3:
As at question 2.

Response ID ANON-E8XQ-FTQM-X

Submitted to **Have your say about access to official information**
Submitted on **2019-03-12 14:56:58**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Effective resourcing for handling OIA requests within agencies is a significant issue. In my experience, agencies agree with the spirit of the Act and believe in transparency, but struggle at times to deal with requests, particularly when handling several requests at once. This puts significant strain on agencies and hinders their ability to advance government programmes.

Opposition parties (of all colours) know how much work requests take, and quite poss bly intentionally use the OIA in such a way as to clog up the wheels of government and the public service.

As noted recently, agencies may also be using the OIA process to slow down media requests. Conversely, some media OIA requests could often be handled better by a simple phone call or statement from an agency, followed by an OIA withdrawal.

2 Do you think these issues relate to the legislation or practice?

2:
Probably a mix of both. Resourcing is clearly a practice issue, but the potential mis-use of the Act by Opposition parties could be handled by clearer legislation around vexatious or time-wasting requests.

Handling of media requests is possibly a mix of both but is really driven by the need for an expectation of acting in better faith on both parties.

3 What reforms to the legislation do you think would make the biggest difference?

3:
There should be more clarity about what constitutes vexatious requests or requests that appear to be aimed at time-wasting or clogging the system.

Response ID ANON-E8XQ-FTQQ-2

Submitted to **Have your say about access to official information**
Submitted on **2019-03-08 16:12:34**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Misalignment of incentives - there is little incentive to comply with the Act in difficult or contentious cases. It causes tension with Ministers, other agencies or within the agency, and there are few serious penalties for non-compliance.
Underresourcing - the Ombudsman isn't equipped to deal with the volume of issues. By the Departments are forced to release information the delay means that agencies have effectively succeeded in supressing it

2 Do you think these issues relate to the legislation or practice?

2:
Practice. But there seems to be a view that this means that reform isn't required. Serious changes are needed, and it may be that legislative reform is the best way to drive change in practice.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Measures to increase the incentive for agencies to comply with the Act in difficult or contentious cases, such as penalties for non-compliance

Response ID ANON-E8XQ-FTQS-4

Submitted to **Have your say about access to official information**
Submitted on **2019-03-13 08:33:08**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Late responses.
It has been demonstrated more than once that a response was held back for political gain. Jon Key even admitted this.
I recommend enforcement of the rule about releasing as soon as possible.

Redaction and not releasing documents by pushing the definition of the law.
I recommend better guidance to all departments about what should be redacted.

Departments such as police refusing to work with FYI.org.nz
I recommend removing the need to prove identity or citizenship.

No standard way to make contact.
I recommend an email address of xxx@xxxxxxxxxx.xxxx.xx

2 Do you think these issues relate to the legislation or practice?

2:
Most of the issues is that departments are not complying with the law, or pushing the limits of the law.
Sometimes that are acting in the letter of the law, but not acting in the sprit of the law.

I recommend enforced financial penalties against the CE of any department that is clearly in breach.

NOTE: I am talk about penalties against the CE as a person, not the department, it should impact the CE and not the department baseline.

3 What reforms to the legislation do you think would make the biggest difference?

3:
The only change I would like to see is the penalties for non-compliance.

This would need to be in law, and actively enforced. Something around $500 per day of non-compliance, if the penalties are too high then it will be unlikely to be inforced.
For example: “The response was only a few weeks late, a penalty of $50,000 is not proportionate” and so no penalty is ever issued.

Response ID ANON-E8XQ-FTQT-5

Submitted to **Have your say about access to official information**
Submitted on **2019-03-13 09:11:47**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Insufficient rersources for the Ombudsman's Office to promptly investigate abuses. By the time a ruling has been made, officials, the media and the public have moved on.

Minsterial interference has grown exponentially over the last decade and there is no effective policing of this by SSC.

There needs to be immediate and serious consequences for breaches of the Act, especially bad faith abuses practiced by Ministers' offices (abusing the 20 days and then announcing extensions, trying to deter requesters with the spectre of unfounded costs of collation), intimidation of public servants by political staff in Ministerial offices.

Basically, the Act is perceived as toothless and it is routinely ignored, abused and regarded as an inconvenience at best.

2 Do you think these issues relate to the legislation or practice?

2:
Both. Implement sanctions that will activelky deter abuse and resource the Ombudsmans Office so that infractions are swiftly investigated and punished.

3 What reforms to the legislation do you think would make the biggest difference?

3:

Response ID ANON-E8XQ-FTQU-6

Submitted to **Have your say about access to official information**
Submitted on **2019-03-13 20:44:54**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Previously submitted

2 Do you think these issues relate to the legislation or practice?

2:
Both, but particularly clear guidance in support of, rather than abandoning measures in the OIA.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Change the emphasis on providing existing information from "are not under an obligation " to create new documents in support of OIA requests to "should not create new documents" this is in part to reflect that users should be provided existing official information, rather than a false record of official information only for the purposes of responding to the request. Additionally, agencies should not be under an obligation to repackage information to meet the design a requester wants it to be in for their further use or to provide material benefit to their wider research, or to place the information in a context other than that which it occured in for an official purpose.

Response ID ANON-E8XQ-FTQX-9

Submitted to **Have your say about access to official information**
Submitted on **2019-03-12 22:21:02**

Our questions

1 In your view, what are the key issues with the OIA?

1:
I have used the OIA since 1984. I find that it has got progressively harder to get information, exactly the opposite of course of what the act's purposes says.

There needs to be a tightening of the legislation. Also there need to be trained and dedicated OIA officers -- and especially not OIAs ever in the hands of PR people.

2 Do you think these issues relate to the legislation or practice?

2:
both

3 What reforms to the legislation do you think would make the biggest difference?

3:
A public interest test for all information.

Response ID ANON-E8XQ-FTV2-8

Submitted to **Have your say about access to official information**
Submitted on **2019-03-14 16:13:43**

Our questions

1 In your view, what are the key issues with the OIA?

1:
While I understand the need for information to be available to the public, this comes as a cost to the departments. Departments are not resourced to respond to these requests.

2 Do you think these issues relate to the legislation or practice?

2:
Practice.

When an OIA comes in public servants are expected to down tools and respond to the request. Some of these requests are complex and require significant work. If you haven't done an OIA for a while then it will take you more time to process it. All of this comes at a cost to the existing workload of staff.
Surely there is value in having a dedicated team that has respons bility for all of its OIA requests.

3 What reforms to the legislation do you think would make the biggest difference?

3:

Response ID ANON-E8XQ-FTV4-A

Submitted to **Have your say about access to official information**
Submitted on **2019-03-14 09:51:16**

Our questions

1 In your view, what are the key issues with the OIA?

1:

2 Do you think these issues relate to the legislation or practice?

2:

3 What reforms to the legislation do you think would make the biggest difference?

3:
Remove possibility to charge for info. No agency really does this. And the charging guidelines are wildly out of date. If a request is too substantive it should be clarified down.

Response ID ANON-E8XQ-FTV6-C

Submitted to **Have your say about access to official information**
Submitted on **2019-03-14 09:56:53**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Excessive use of reasons such as s 9(2)(k) and its counterpart, s 7(2)(j) of the LGOIMA, without stated justifications: see the papers published at www.massey.ac.nz/?c251e3848s

2 Do you think these issues relate to the legislation or practice?

2:
Both: the legislation enables organisations to withhold information by giving a reason without having to justify why that reason applies.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Require organisations to publish official information proactively, and to justify any reason for not publishing that information.

Response ID ANON-E8XQ-FTV7-D

Submitted to **Have your say about access to official information**
Submitted on **2019-03-14 09:13:34**

Our questions

1 In your view, what are the key issues with the OIA?

1:
In my view it is occasionally being abused to swamp government departments with many unfocused fishing attempts for information - particularly by activists. The information provided is then manipulated and cherry-picked to produce unsophisticated propaganda. There are a number of trivial and vexatious requests.

2 Do you think these issues relate to the legislation or practice?

2:
I think it is a intentional misuse of the information - not sure if that is a legislative or practical issue.

3 What reforms to the legislation do you think would make the biggest difference?

3:
I think the legislation itself is fine.

Response ID ANON-E8XQ-FTV8-E

Submitted to **Have your say about access to official information**
Submitted on **2019-03-14 10:18:54**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Organisations drag their heels delivering information. I work in the public sector on a team who deal with OIA requests so I know it can be hard and resource intensive to deliver, but other organisations just take the piss. They know there will be no real consequences if they drag on for months or offer partial answers. I think there's not enough expert staff at these organisations to handle the requests appropriately, rather than it being malicious. But there's no incentive to be better equipped, and costs involved so they don't do it.
On the other side we find that the large majority of our OIA requests come from the same handful of people asking constant questions, it can be quite disruptive. Information management in the organisations tends to be poorly complied with so often a document exists but is effectively lost or impossible to find. I think the general public don't understand why you cant just 'search for every email' with a wave of a magic wand. If 200 staff have the emails in their outlook instead of in the EDRMS, if they have documents saved in their desktop etc.. how can anyone find them?

2 Do you think these issues relate to the legislation or practice?

2:
Practice mostly, but the legislation needs to specify that resources need to be provided to handle OIA requests and there needs to be bigger consequences for not complying. Provide more training. Need to get out of the mindset of 'how can we avoid answering this request' to 'we need to be accountable to the public'

3 What reforms to the legislation do you think would make the biggest difference?

3:
more consequences for non compliance. Make it more clear than an organisation needs an OIA team, or staff who are in charge of overseeing the requests and ensuring they are answered in accordance with law. Make it more clear than information should be as open as possible, unless there's a definitive reason for it not to be. Make it clear how the public records act, the OIA, LGOIMA and the Privacy Act interact.

Good luck!

Response ID ANON-E8XQ-FTVC-S

Submitted to **Have your say about access to official information**
Submitted on **2019-03-14 10:54:05**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Ultimately, there are many ways that officials can withhold information, resulting in significant delays and defeating the purpose of the Act. Withholding information should be more exceptional than routine.
Furthermore, appeal to the Ombudsman is a incredibly slow process. I have been waiting almost a year to have a decision reviewed by the office, this makes appeal almost impossible if you routinely use the OIA for information.

2 Do you think these issues relate to the legislation or practice?

2:
Both, practice is likely to be the most significant however. More training for civil servants handling OIA requests would be beneficial.
Furthermore a policy of open government, with information being more publicly available, would reduce the need for OIA requests and the issues associated with compliance. Departments should be encouraged to make public as much data as possible.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Putting a deadline on the Ombudsman's office for review would be beneficial in that it would strength the power of appeals.
Putting into legislation that the burden of proving the necessity of withholding information would be on the government would likely improve decision making.

Response ID ANON-E8XQ-FTVE-U

Submitted to **Have your say about access to official information**
Submitted on **2019-03-14 12:00:14**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Too many hoops to jump through and red tape - feels like its something the govt do not want us doing.

2 Do you think these issues relate to the legislation or practice?

2:
Yes

3 What reforms to the legislation do you think would make the biggest difference?

3:
Unsure

Response ID ANON-E8XQ-FTVF-V

Submitted to **Have your say about access to official information**
Submitted on **2019-03-14 14:59:12**

Our questions

1 In your view, what are the key issues with the OIA?

1:
When I applied through the OIA for the document EQC had on my earthquake damaged property, I received the papers with most of the important information, blacked-out.

I think the OIA is a very important part of NZ's democracy and one of only a few ways, citizens can see ,what organisations like ACC or EQC have on file for their case and check whether the information, gathered is correct and fair.

I was also told, that I could only receive a certain amount of pages (I think it was 80 pages) free of charge through the OIA, anything exceeding this number I'd have to pay for.
The problem was, among the pages I did receive, there were many identical pages, carbon-copies of pages , double ups ... it almost appeared that these pages were included to make up the "limit number" .

2 Do you think these issues relate to the legislation or practice?

2:
I think the huge amount of "black-out" related to the atmosphere/practice of EQC.

The legislation is well intended and should work, as long as departments in question are prepared to cooperate.

3 What reforms to the legislation do you think would make the biggest difference?

3:
I don't think any reforms to the legislation will make a big difference. What might need to change is the attitude of organisations like EQC, ACC ....
At the moment, one of their main interests is to cover their back, to obstruct, black-out and limit the information they have to share with the applicant under the OIA.

Price sensitivity, Privacy issues and commercial reasons are used as smoke screen, to hide information these organisations are not prepared to share.

Response ID ANON-E8XQ-FTVG-W

Submitted to **Have your say about access to official information**
Submitted on **2019-03-14 09:40:04**

Our questions

1 In your view, what are the key issues with the OIA?

1:
There are many loopholes in the OIA system, which means that government agencies only have to respond to your request within 20 working days. They also do not have to provide all the information requested, which should ideally already be publicly available.

The reporting systems in particular around the DHBs are very confusing and different for each DHB. When you receive data, it does not make sense en masse because each piece of information is reported in a different way, and using different measures.

I have also had experience being asked to pay large sums of money for extra time spent on an OIA. This is, in my view, unfair, as this information should already be publicly available, and it is part of being a democracy that it is. Being asked to pay money for key information about our government systems is not equitable or possible for all people in our society.

2 Do you think these issues relate to the legislation or practice?

2:
Both.

There are issues with the legislation, in that it gives government agencies a long time to answer, and means they do not have to provide all information. This also makes it hard for reporters to authoritatively speak on the issues in our government, because these longer lead times means the time for the 'newsworthiness' of a story has passed.

In practice, communication can be great or poor with government agencies. With some, you can sit down for a call and discuss requirements. Others will simply return your OIA within the expected timeframe and miss out the majority of the questions.

3 What reforms to the legislation do you think would make the biggest difference?

3:
1. Making the reporting systems consistent across all government agencies in related areas, so that when information is received, it makes sense and identifies problems and solutions
2. Funding a certain amount of time required for government agency OIAs received, so that they can release this information without impacting on their service delivery, but also are equitable in that all people can afford to request official information (make the process more democratic)
3. Stipulating that a government agency must answer all questions in a specified timeframe that is reasonable, consistent for all and non-negotiable. If this is not possible, communication must be made by the government agency to the requestor.

Response ID ANON-E8XQ-FTVH-X

Submitted to **Have your say about access to official information**
Submitted on **2019-03-14 10:12:47**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Its difficult to get the exact information you require.
First example.I have a specific incident re ACC. I requested a transcript of an after hours doctors call I made. I made 3 request and no information was supplied. Finally months later I got a copy of the recording after requesting information from ACC. The information had been supplied to a third party - not to me.
Of concern was the delay and the content of the script was not true to my recall. Vital information re cold in the lower limbs of my husband was left out (he spent 4 months in hospital with septicemia). A recording of my discussion with the after hours nurse is absent. It included information about my husband being unable to walk unassisted.A peer review by a nurse on this information concluded that an ambulance should have been called . The ambulance was not called . A further vital 3 days passed with daily doctors visits. On Thursday the after house information was forwarded to the doctors in Kerikeri -too late my husband had already called the ambulance on Wednesday. He was lucky to survive with a CRP of 512.
The issues; delay in supply of information, willful misinterpretation of my request, supplying information to a third party, 3 request and no information is a refusal, editing out information.
There is a further issue of concern the doctor who employed the after hours nurse was also commenting TIP on our ACC claim.
A second example is regarding our home that leaked and was structurally unsound. During construction amendment to B.C. and variations were signed off with out our knowledge. Council with held information about structural weakness and conspired with the builders to redesign the bracing to compensate for it with out informing us. Vital structural beams were removed ,the slab installation changed and FAN with instructions for a geotech not given to the engineer all with out our knowledge. There was no way we could know what was happening. We did ask a lot of questions many of them getting misleading or deceitful answers - from council. there questions were offical information request. Council willfully withheld an engineers report during a determination.
The issues (particularly with the council): withholding information , deceiving clients, signing off documents without clients permission (marked must be signed by owner), withholding a building consent to fix -5 years, failing to name a liable party on a N.T.F. using council offices and legal powers to mislead and intimidate clients.
Third example. Insurance companies have with held information. One refused to acknowledge we had a policy 5 times. Another, used a consultant to inspect damage and failed to properly inspect and report the damage. The drainage laying concerned was in the wrong place, caused a washout and contributed to basement flooding.
The issues: denying clients their entitlements by deceit, fraudulent insurance report or misinformation denying 3 party rights, attributing or attempting to deflect blame on to a consultant inspector.
Fourth example. Engineers supplying misleading report with excessive charging $7000 for 2 geotech holes. Unitemised bill challenged and reduced by $1000. Test done in the wrong place, refusal to test a nominated area and at a depth that would invalidate results. Results listed 2 aspects one of which failed. Reports recommendation was a drainage plan and a copy of our consultants plan to install floor drains. B.C. Feb drains installed B.C. cancelled April. Stop work. Of concern was that the consultants plan was later denied by the engineer to be part of the report as if it was just an attachment. However, it was listed as an addendum and passed for B.C.
The issues: no itemisation in engineering bill, not informing the client re area tested and no copy of the report sent to the client although the consultant had one and putting misleading information in a report later used in court. Post script a subsequent engineering report required extensive underpinning of the area we nominated ie 2 meter concrete piers.
Example 5; mould in classroom that has breached the walls. Teacher ill used 8 weeks sick leave until the problem was uncovered. Students subjected to health hazard.
B.O.T refused to test and relied on worksafe to clear room for use.
The issue; unreliable testing used so misleading information given. Note there is no measure for upper permissible levels of mould so therefore, no safe level

2 Do you think these issues relate to the legislation or practice?

2:
I think these issues relate mostly to practice. It's hard for the general public to challenge this behaviour. We certainly didn't have money to employ a lawyer re ACC We lost over $30,000 in wages, expenses and lost sick pay. As well we were very vunerable in the context of a life threatening emergency. My husband was in a comma and so couldn't recall anything.
ACC were brutal. I challenged their refusal to accept the claim.
The issues: little or no access to justice to challenge practice, vunerable clients and lack of support ie no medical specialist available to write a report for us.
Our building troubles highlight how the O.I.A is a farce. Vital information was with held and experts reports were misleading ,biased or absent. We have no means by which to bring them to account - we don't know what we don't know. So my question to you is at what stage does with holding information constitute perjury if it is part of a legal process?

3 What reforms to the legislation do you think would make the biggest difference?

3:
OIA is ineffective on its own. Only honest people will reveal information.
See my examples I think our system is indelibly corrupt. Every instance of deceit or lack of transparency needs to be challenged.
My opinion is that the biggest difference could be made by
1. Adopting Transparency Internationals definition of corruption.
2. Involving the police in civil cases. Business and contracts should not be exempt from
the law.
3. Do not rely on citizens to challenge wrong doing through the courts. Allow us a voice in district courts. Start paying royalties for use of precedents we set.

4. Experts reports need to be honest and they need to be bought to account if they are not. Complaint systems are biased eg IPENZ is a farce.
5. Limiting mediation settlement amounts. If its in excess of $50,000 then it should be subject to the court system.
6. S.F.O. needs to be involved in the Leaky Building issue or any other nation wide injustice.

Response ID ANON-E8XQ-FTVJ-Z

Submitted to **Have your say about access to official information**
Submitted on **2019-03-14 08:17:19**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Review should cover Local Government Official Information Act as well.
Ombudsman does not deal with complaints in a timely manner - mine took 2 years.
Ombudsman treats complainants in a very condescending way.
Ombudsman did not address the requirement of Local Government to give the back ground into a refusal. It is a requirement of the act that background must be given if requested. Background was not given and Ombudsman ignored my request for this.
20 day time limit is treated by some as a target, not a maximum, in an attempt to discourage further probing.

2 Do you think these issues relate to the legislation or practice?

2:
Legislation should be changed so that if Ombudsman can not investigate in a timely period, the information will just be released.
Delay in release of information should be justified by the organisation if more than 10 days
Information refusal must come within 5 days - beyond that information must be released within 20 days.
Ombudsman could have a truncated investigation process for information requests that are clearly of minor or uncontroversial nature. e.g. a short face to face meeting with requester, department representative and ombudsman might resolve many cases.
These changes need to be legislated because of the very poor attitude in some organisations (e.g. Upper Hutt City Council.)

3 What reforms to the legislation do you think would make the biggest difference?

3:
Requiring refusal to release information to be within 5 days.
Ombudsman having option of a less formal resolution process, if the complainant agrees.
Time limit on Ombudsman investigation - 2 years is justice denied.

Response ID ANON-E8XQ-FTVK-1

Submitted to **Have your say about access to official information**
Submitted on **2019-03-14 11:40:52**

Our questions

1 In your view, what are the key issues with the OIA?

1:
1. Parliamentary services should not be exempt from OIA's, secondly Members of Parliament should be obligated to answer requests on work / manner related to their capacity as an MP.

2. Original receiver of request should be a party that is obligated to see resolution, frequently respondents forward the issue onto another party stating they are responsible. This 'may be' the case, yet predominately if an OIA is raised with a specific section of government there is l kely a reason for that, meaning judgement on intention is misinterpreted by the respondent.

3. Time should not 'reset' if moved to another entity. Becomes a game of swings and roundabouts.

4. Requirement for senior rather than junior, admin or PA's responding.

5. Re-establishment of Information Authority that was repealed. Onus should be on the government to fulfill the request in a timely manner and the appropriate information with a degree of authority and importance, such as independent auditors. If intention to obstruct enforcement should be strengthen rather than relying on the end point citizen to escalate to Ombudsmen, I.E. an authority with purpose to find and 'answer'.

2 Do you think these issues relate to the legislation or practice?

2:
Both.

As a previous Local Government employee it was working practice to pass off the issue, give as little information as poss ble (knowing you had more), purposely misinterpret the question or reject outright for questionable 'commercial sensitivity's'

3 What reforms to the legislation do you think would make the biggest difference?

3:
Ownership as a first respondent to reach a result with declarations to state 'best efforts' to solve.

Removal of parliamentary services exemptions.

Response ID ANON-E8XQ-FTVN-4

Submitted to **Have your say about access to official information**
Submitted on **2019-03-14 16:21:05**

Our questions

1 In your view, what are the key issues with the OIA?

1:
1) There are too many reasons/justifications for withholding information. Eg) "protecting constitutional conventions for the time being" and "confidentiality of advice tendered to ministers and officials" are irrelevant when considering matters of public interest.
2) These reasons give public bodies and officials too much scope to refuse information. If they want to keep information secret, there are a hundred ways to do it.
3) The enforcement of the OIA is weak. Officials will refuse information knowing it will be weeks, months or years before the Ombudsman compels them to release it, at which point it has usually served its political purpose.
4) Enforcement of the OIA is not timely. Officials can be months behind deadline to release information and continue to delay without consequence. The Ombusdman's office has no timely mechanism to compel the information to be released.
5) Enforcement of the OIA is not well resourced. It takes months, sometimes years, before the Ombudsman assigns an investigator to a complaint. This is an unhelpful delay to having information released.
6) The OIA is not respected. Responding to OIA requests is a dud job in government departments in particular, usually given to junior employees and sometimes meted out as punishment. These departments do not see releasing information as a job they are required to do, let along a priority in a democratic system.
7) Complaints are not dealt with transparently. or equitably The complainant is not entitled to know what justification the official/body/department has given for withholding information, but the complainant's reasons are known to them. It gives that body the upper hand in justifying refusing or redacting information.
8) Extensions to the 20 working day limit are routinely made without any justification.

2 Do you think these issues relate to the legislation or practice?

2:
Both, as explained.

3 What reforms to the legislation do you think would make the biggest difference?

3:
1) Review section 9 to remove/amend reasons for withholding information that do not serve the public interest and/or are easy for organisations to use as a blanket justification for refusing/redacting information.
2) Create/enforce penalties for delaying the release of information without cause.

Response ID ANON-E8XQ-FTVP-6

Submitted to **Have your say about access to official information**
Submitted on **2019-03-14 08:20:42**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The level of direct political interference in decision making about what to release.
The impact of fear of getting offside with the minister- this leads managers to be restrictive and avoid free and frank advice.
The inability of department/ ministry legal teams to 'put their foot down', whilst all OIA sign out forms include a section for sign off, these teams can only advise not direct. Ultimately it is senior managers who will require additional redactions on grounds that cant be justified.
The observation that the public service sees OIA work as low value is true. Rather, it is critical to open and transparent government and a cornerstone of democracy.

2 Do you think these issues relate to the legislation or practice?

2:
The legislation is probably ok, wiser minds than mine may be able to offer more insightful commentary.
The practices need more oversight or perhaps a whole of government unit that processes all OIAs to take the interference out of the current way the work is done.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Perhaps Define in more clear terms what the grounds for withholding are.

Response ID ANON-E8XQ-FTVQ-7

Submitted to **Have your say about access to official information**
Submitted on **2019-03-14 09:43:27**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Both sides -- the person seeking information and the officials tasked with providing (or not providing) it -- view the OIA process as adversarial.

1) Some officials withhold information that the public has a right to know. Other officials genuinely want to help the public find the information they want and understand the context.

2) Some citizens use the OIA process as a form of harassment or protest. Other citizens have legitimate concerns that they want to get more information/understanding about.

Neither side knows whether they've got a bad apple or a good one on the other side of the request, so they generally must assume the worst and proceed accordingly.

2 Do you think these issues relate to the legislation or practice?

2:
Probably the practice. I'm not sure it's possible to legislate against people being weasels.

3 What reforms to the legislation do you think would make the biggest difference?

3:
The law already says that information needs to be disclosed unless there's a legitimate reason not to. The Records Act already says that agencies are supposed to record and store information that's material to decision-making, etc. Unless there are loopholes to close, it seems like it is more an issue of enforcement.

I would ask what can be done to protect agencies from citizens using the OIA as a form of protest, or for so-called "fishing expeditions", but possibly those are actually legitimate uses? If a citizen has the right to know, they have the right to know, even if it is a nuisance. Poss bly the "fix" for that it to make the process of providing information less onerous (and further encourage "open by default").

Response ID ANON-E8XQ-FTVR-8

Submitted to **Have your say about access to official information**
Submitted on **2019-03-14 08:53:21**

Our questions

1 In your view, what are the key issues with the OIA?

1:
From my perspective, having only used it with Dept of Corrections is that they often refuse to give information, and when they do it is often del berately false.

They do not seem to respect the spirit of what its about, especially as I am a union delegate requesting such.

Having dealt with this for over 20years, I usually have a good idea of what the information will be when I request it, but in most cases I am given false figures. An example is when I requested information regarding assaults in our prison (after having kept records myself) - I was given figures that were deliberately wrong. When I highlighted this I was then threatened with a Misconduct if I continued to monitor assaults in the prison. Normal practice in Corrections which is rather corrupt to the top.

2 Do you think these issues relate to the legislation or practice?

2:
practice - it is another form of corruption and shows those people in charge sometimes cannot be trusted to uphold the integrity of the process.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Simply that the request must be given due consideration, especially if it can be linked to referring to peoples well-being (eg H&S info)

Response ID ANON-E8XQ-FTVS-9

Submitted to **Have your say about access to official information**
Submitted on **2019-03-14 12:19:38**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Kia ora

Thank you for the opportunity to respond to this survey.

My issues with the OIA as it currently stand covers everyone involved in the process: requestors, agencies subject to the Act, the OIA itself and the Ombudsman. I have outlined these further below.

OIA itself
- Ability of the OIA respond to issues we face in the modern world. The OIA wasn't drafted with emails in mind. It needs to be updated to reflect this. Collating "all information" very difficult in light of this.
- Free and frank and "active consideration" - remove these sections and replace them.
- In regards to free and frank, it could be more focused on a status thing. More junior officials are protected with what they say, but 'free and frank' should not apply to senior officials or Ministerial office staffers. It is important that junior officials learn and develop - mistakes will happen. However, senior officials know what they are doing and "free and frank" should be part and parcel with their job. They should be able to stand by this information if they make that advice. It should be encouraged and supported, and making it available shouldn't get in the way of this.
- In regards to "active consideration" a serious look needs to be undertaken at this. Agencies use it too often to protect the policy development process and information will not be released until Ministers' make an announcement. So when do people get to hold the process to account - after? Ministers and Govt Departments should encourage this engagement throughout. Too easy to abuse.
- Act should include a requirement on agencies to provide information which relates to the request or would be of interest to the requestor - way, way, way too easy to "out-of-scope" information. As it stands it is "recommended". No it should be required!
- Outlaw (through the OIA) "no surprises" on departmental OIAs. Maybe allow a paragraph briefing on the information being released two days prior, but the OIA and the response itself should not go to the Minister's Offices. They should also not be allowed to know who the requestor is.
- Include Parliament into the scope of OIA.
- OIA clock does not start again as a result of a transfer.
- Require any information withheld to be listed in the response - name / title and date of document.

Ombudsman
- Stronger oversight - more teeth for Ombudsman. Too easy to for Ministers / Govt. Departments to work within the bounds of the Ombudsman investigation process to their advantage i.e. just refuse now because it will take the Ombudsman a year or so to get around to investigating and by that stage we will release because everyone's moved on
- Publish information about agencies who revise decisions during an investigation - too easy to do to not get a ruling against if done this way but has intended consequences i.e. withhold, if investigated just revise decision and no repercussions. Worth a go.
- More naming and shaming of abuse of the Act - this will change practice.
- Hold CEs / Ministers to account - they are responsible and set the tone. They directly should have to apologise when a decision goes against them. Powerful message. And cannot be delegated - has to have their signature.
- Ombudsman should publish a Minister/Govt department report card yearly on how they went, with some commentary. Encourage better practice.
- Crack down on the abuse of legal professional privilege. Just because a lawyer write it, doesn't mean it is covered!

Requestors
- At the same time, there does need to be an emphasis on requestors and their obligations on making requests. We need to ensure it cannot be abused by frequent requestors slowing it with their regular, ongoing requests with very little public interest (especially by opposition research units). This gets in the way of responding to legit requests.
- Consideration about additional guidance for agencies about "lumping together requests" when a number received. Not a huge issue for me though, because huge risk of unintended consequences here. More of just annoyance with the practice of some requestors ruining it for others.

Agencies / Ministers
- Should be required to publish all OIA responses unless personal information released. Not "suggested to release" but a requirement.
- Should be one central point for all central government releases to be published which is easily searchable
- Ministers and their offices HAVE to do better. Too easy to transfer to Minister's Office who just abuses the Act because very little in the way of punishment. Links to the Ombudsman recommendations above.
- Remove the 20 day deadline, and say information has to be released ASAP. If it is going to be over 20 days, they have to write an explanation (via CE or Minister) as to why in this case it is occurring with a better explanation than currently exists. Not just "due to substantial collation" etc. Every letter reviewed by Ombudsman who can order immediate (within three days) release. Take it away from being a target...needs to be worked through further, but it has to change. Let's be honest it is a target and that is how everyone uses it (even the Ombudsman - do they investigate why something was released on day 20 as opposed to day 12?)
- No decision letters! Awful practice. Information has to be actually released as soon as poss ble. Not intention to release. Relates to s15 of the OIA.
- Remove "no surprises" as outlined above.

2 Do you think these issues relate to the legislation or practice?

2:

Both. Outlined in more detail in response to Q1.

3 What reforms to the legislation do you think would make the biggest difference?

3:

Listed in response to Q1

Response ID ANON-E8XQ-FTVT-A

Submitted to **Have your say about access to official information**
Submitted on **2019-03-14 12:59:13**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The principle is fine, but its implementation has resulted in changing behaviours in detrimental ways.
1. Inside many Government agencies it results in paralysis and lack of decision-making because people don't want their name to be published.
2. The opportunity to ask questions is now used as a weapon to flood agencies with vexatious and outrageous requests. The responses are often taken out of context and used as anti-government propaganda. Not to mention the enormous amount of time and money that is now spent on answering requests.

2 Do you think these issues relate to the legislation or practice?

2:
A bit of both. The Legislation simply refers to public records and the Public Records Act doesn't state what a Public Record is. The practice is inconsistent within agencies and OIA's are often handed out to staff without much guidance.

From the public's point of view, there's nothing stopping them sending vague requests which often results in agencies having to provide enormous amounts of information.

3 What reforms to the legislation do you think would make the biggest difference?

3:
A definition of what a public record is.
Perhaps a set of standard documents that all agencies should release proactively to reduce the volume of OIA requests.
Better controls for vexatious requests and people who flood agencies with questions.
Better controls over the privacy of government employees regarding the release of names.

Response ID ANON-E8XQ-FTVX-E

Submitted to **Have your say about access to official information**
Submitted on **2019-03-14 11:44:42**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Agencies ask if they want to release information then find a way to make their response fit in the OIA.

Agencies allow Ministers to influence their responses when the request is none of the Ministers business.

The Act isn't seen as an important tool for transparency, it's seen as an annoyance that wastes time.

2 Do you think these issues relate to the legislation or practice?

2:
Both but mainly practice.

Legislatively no one cares about doing the wrong thing. There is no accountability, the Ombudsman has no power so no one really cares,

Practice because people are more worried about their reputation and the reputation of their agency than they are about providing people with the information they are entitled to. There is no risk/benefit assessment done, it's just risk, and if there is any (even tiny) risk identified then people will do what they can to withhold that information.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Make public service managers accountable for their decisions around requests. If people think they might personally get into trouble for not releasing information then they wont so brazenly ignore the law.

Make it illegal for a Ministers office to be involved or even informed of a request if that request specifically asks for them not to be informed.

Create a public registrar of all requests and the outcome of the requests including the name of the agency and the name of the managers who signed out the document.

Response ID ANON-E8XQ-FTVY-F

Submitted to **Have your say about access to official information**
Submitted on **2019-03-14 09:36:14**

Our questions

1 In your view, what are the key issues with the OIA?

1:
From my experience, the act is simply not working. I made a request for information from a government department which required pulling data from a database. The government department made outrageous claims for the time the dataset would take to extract and thus refused the request unless I paid a substantial sum of money. I have done database programming so am aware of the capabilities and constraints involved. I responded with several questions to the relevant department regarding their time claims, and the answers to my questions were del berately opaque.

At this point, I passed my concerns onto the ombudsman, including providing the specifics of why the responses given for my queries were inadequate. I provided some key questions that needed to be asked of the government department which were fair and reasonable questions to ask. The Ombudsman then met with officials from the department, seemingly did not ask any of the key questions, and took the claims of the department at face value with no attempt, it seems, to ascertain whether they were true. They provided no indication that they had asked my key questions and thus the substance of my complaint was never addressed. This was a failure on the part of the ombudsman.

In addition, the fact that there was a meeting with the officials concerned me. There was no request for a meeting with me. Thus the case was treated in a way that was unbalanced. It seems that, at the very least, I should have been invited to the meeting to ensure that there was a balance. Further, there were no minutes or details of the meeting provided to me to exactly tell me what took place in the meeting, what questions were asked, what responses were given to what questions (see above). The very agency that is supposed to be about ensuring transparency is opaque.

More than this, in holding a private meeting with only one party in a complaint is simply unjust and unbalanced. To this point, I would l ke to highlight The State Services Commission (2010 revision) of ‘Understanding the code of conduct – guidance for State servants’:

A. ‘We must observe the principles of natural justice, which requires us to disclose information about the way we make decisions and allow a fair opportunity for people who are affected by them to make representations’ (p.6)

Was there a fair opportunity when the meeting was one-sided. It should be remembered that I was a private citizen with a complaint to about a large state organisation with the resources and funding of the state. In this context, the private meeting with the state organisation is particularly egregious, but in all cases would not meet any principle of natural justice.

Further, at the time of the request for information, I had been in a long protracted battle with the government agency in question. I have little doubt that the government agency would have tried to paint me as vexatious. I was not there to defend myself or to put my side of events.

The Ombudsman is supposed to act on behalf of the public, to ensure access to information. However, in my case, it seems that a member of the public was not given the same status as government officials. Whether I was right or wrong in my case (I was right, but we will put that to one side), such an unbalanced and opaque approach to handling my complaint is a problem. I wa ked away from the experience with a sense that my case was not taken seriously, and that a group of civil servants had gathered together in private to quash my complaints. This is just not acceptable.

As a final point, why did I not pursue a formal complaint about the ombudsman? I had dedicated a significant amount of time pursuing concerns about the state agency about which I was complaining, then spent more time pursuing the OIA complaint, and then I was supposed to complain about the ombudsman? There is a limit to the time and resource that any individual can devote to fighting powerful bureaucracies. The battle I was in was time away from my work (I am a university lecturer) and I was hitting a limit on how much time I could dedicate to the issues I was concerned about. It should not be the case that a person needs to battle the very agencies that are supposed to help them.

2 Do you think these issues relate to the legislation or practice?

2:
I am not sure that this is a problem of legislation, but rather a question of practice and more than that, culture. My experience of battling a government department over the concern that led to the OIA complaint revealed a bureaucratic mindset of (for want of a better expression), circling the wagons rather than questioning their own practices (and thus potentially improving them). I suspect that the problem I encountered with the ombudsman was that the ombudsman was too close to those that they were supposed to police. Although a nominally independent judge is overseeing the department, the civil servants that deal with the day-to-day running it seems, are overly sympathetic to those who they police. Why else would there be a system where only the government side of a complaint are granted a meeting, and that the details of the meeting are not transparent? The fix for this problem is difficult; how do you change a culture?

3 What reforms to the legislation do you think would make the biggest difference?

3:
See above.

Response ID ANON-E8XQ-FTVZ-G

Submitted to **Have your say about access to official information**
Submitted on **2019-03-14 09:13:40**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Obfuscation by Ministers' offices. When an OIA is departmental, on what basis should Ministers or their offices have a say in what should be withheld?

2 Do you think these issues relate to the legislation or practice?

2:
Practice. Managers and higher are terr ble at wanting to cover themselves and employ spurious reasoning for instructing staff to withhold under certain sections. Active consideration and free and frank are often used when they really shouldn't.

Ministers' offices use the free and frank one too often. That is their to protect the author, not the Minister. I have had an OIA request where I was the author and a Minister refused to let it out on those grounds. I was happy for it to be released and stand by my advice.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Shorter timeframes. Clarity around process.

However, as a civil servant, I know how time consuming and mundane they are, particularly when you have a big or urgent work programme (and we're often understaffed).

I propose that if the OIA is for commercial purposes (i.e. the requestor is not an individual, or opposition member, but is acting for a commercial entity), then their should be a lodgement fee. But for this fee you will get a response sooner. If you're any old individual who is seeking information, it's less time critical and you have a right to information, so don't charge them.

You could use the revenue to fund OIA teams that can be pooled across departments.

Response ID ANON-E8XQ-FTW1-8

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 09:19:53**

Our questions

1 In your view, what are the key issues with the OIA?

1:
there needs to be honesty and trust with organisations. this should be transparent. the OIA should provide for information that confirms honesty of the organisation in question.

2 Do you think these issues relate to the legislation or practice?

2:
yes, to a degree is provided in legislation, but in practice there are 'issues'.

organisations play games , and are not truthful.

3 What reforms to the legislation do you think would make the biggest difference?

3:
greater powers for the ombudsman to intervene and seek information, as well the ombudsman should have some discretion to 'expose' those organisations that have something to hide.

there should be penalties imposed on the organisation for failure to provide information.

Optional questions

4 Name:

Name:
roger bray

5 Organisation:

Oganisation:
individual

Response ID ANON-E8XQ-FTW2-9

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 11:55:54**

Our questions

1 In your view, what are the key issues with the OIA?

1:
It is too easy for public officials to avoid compliance with the general intent of the OIA, which was to free up access to quality information on matters of public interest or concern.

2 Do you think these issues relate to the legislation or practice?

2:
Primarily the practice, which seems to then set its own momentum and precedence.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Legislation to appoint a well-resourced independent auditor who is respons ble for ongoing monitoring of the success rates of applications for disclosure of information to OIA, the timeliness of decisions issued by OIA, the quality of the information thus disclosed and it's relevance to the original applications, and the rigour of the reasons put forward by OIA for all refusals. Robust analysis is needed of the process to identify patterns of misuse of decision-making power by departments or individuals, and to call such entities to account.

Optional questions

4 Name:

Name:
Gill Minogue

5 Organisation:

Oganisation:
Transition Town Kaitaia

Response ID ANON-E8XQ-FTW3-A

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 11:28:00**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Restrictions on releasing information

2 Do you think these issues relate to the legislation or practice?

2:
Yes

3 What reforms to the legislation do you think would make the biggest difference?

3:
More information being released

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTW4-B

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 09:37:41**

Our questions

1 In your view, what are the key issues with the OIA?

1:
It needs to better ensure an open government 'of the people, for the people, by the people', at local, regional and national levels. At present, it is too easily manipulated by those charged with delivery of OIA requests; with key text of requested information redacted and also typically very slow in delivery of requested information, usually on the last day and then either not addressing the questions asked or, as above, redacting the relevant text. These issues vary across all levels of government and departments / ministries - some are better than others. The Act needs to provide clarity that those in public office and service - members of the government and its bureaucracy - will be held accountable for their actions, which will made public in a timely manner. This also relates to the whistle-blower aspects, and to surveillance.

2 Do you think these issues relate to the legislation or practice?

2:
Both

3 What reforms to the legislation do you think would make the biggest difference?

3:
Addressing time frames and redaction of OIA requests.

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTW5-C

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 10:32:43**

Our questions

1 In your view, what are the key issues with the OIA?

1:
As a University, we find ourselves caught between being a business and a crown entity. It can be difficult to relate the OIA, which is more tailored to the public side of things, when we do have extra commercial interests. There are current commercial withholding grounds, however it can be difficult to apply that to a University as we don't exist "for profit" yet are undertaking commercial activities and have a commercial position in a competitive domestic and international market. We've seen this issue arise in relation to requests for our research data and teaching materials. As a research and learning institute, this information is our bread and butter. We cannot afford to publicise this information, but the Act doesn't clearly protect us from this.

2 Do you think these issues relate to the legislation or practice?

2:
Our main issues relate to the current legislation, and how it's designed to work more for the larger government agencies, rather than the smaller pockets like Universities.

3 What reforms to the legislation do you think would make the biggest difference?

3:
We need more considerations given to the different types of agencies subject to the OIA. Whether this is practice guides dedicated to giving advice to University's, or changes made in the legislation to protect research data and teaching materials. Universities are only getting more and more requests. In 2017 we received around 70 requests, last year we received 178. From our data so far this year, this will likely remain the situation for a while. We need to ensure we're able to protect what we need to protect, while still being in line with the OIA.

Optional questions

4 Name:

Name:
Georgia Tawharu

5 Organisation:

Oganisation:
Victoria University of Wellington

Response ID ANON-E8XQ-FTW7-E

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 11:55:16**

Our questions

1 In your view, what are the key issues with the OIA?

1:
That the organisations covered by the Act hide behind it's provisions unnecesarrily. Most of my OIA requests have been made to the NZ Police and many have been refused under Section 6C (that disclosure would prejudice the maintenance of the law) or Sections 18E, F and G (that the information doesn't exist, can't be collated, etc). In cases of the former this has been used to refuse requests about events that have occurred over a year earlier and so releasing the information seems highly unlikely to prejudice maintenance of the law a year later. In cases of use of the latter I have had requests to access information I know is held by the NZ Police but the request has been refused on the basis that it does not exist or is too difficult to collate. The ability to dispute this does not exist in the Act.

2 Do you think these issues relate to the legislation or practice?

2:
The issues relate to practice under the Act not the provisions of the Act itself.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Making it much harder for organisations to use the provisions of the Act to refuse requests and when this occurs to have a mediator deal with the two parties as appeals to the Ombudsman (in my experience) makes little difference as the organisation just uses the same reason for not releasing the information after an appeal as they used when responding to the initial request.

Optional questions

4 Name:

Name:
Grant Carroll

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTW8-F

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 10:48:11**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The biggest issue in my opinion is the rapid drop in quality of new's reporting. With most, if not all, reporters only interested in shocking the audience, theor key motivation is not reporting truth but creating the biggest scandal possible. This obviously destroys trust and leads to not wanting to give any information to any news media that isn't carefully controlled. Before we can trust the media with information we will need legal standards of neutrality and quality and fact checking in all reporting

2 Do you think these issues relate to the legislation or practice?

2:
Both. Laws are needed around the standards of reporting that impose penalties for misleading reporting just as we have penalties for misleading advertising.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Craft a 'Quality of Reporting ' Act that sets high standards for media reporting, that defines clearly what media are including online bloggers and posters and then imposes penalties for creating misleading or false news stories.

Optional questions

4 Name:

Name:
Julian Adamson

5 Organisation:

Oganisation:
Not representing any organisation

Response ID ANON-E8XQ-FTW9-G

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 11:11:38**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Agencies assume that the 20 day limit is the target, rather than the absolute last day possible. One way to fix this might be to make public the distribution of OIA response times per department so that they can be ranked on responsiveness.

In addition, the default seems to be to determine what information they can withhold, rather than determining what information should be released. Agencies should be proactive in trying to release as much information as possible, but some seem to instead err on the side of trying to hold back as much information as they can get away with.

Lastly, the Ombudsman needs more funding perhaps as currently it can take a long time for review, meaning that obstruction by agencies sometimes pays off.

2 Do you think these issues relate to the legislation or practice?

2:
The practice, but perhaps the legislation could be clarified so that this practice isn't the default? i.e. clear statements of expectation would be useful?

3 What reforms to the legislation do you think would make the biggest difference?

3:
The timeliness issue I think would make the biggest difference.

Optional questions

4 Name:

Name:
Jonathan Marshall

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTWA-R

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 11:28:42**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The key overall issue is the lack of accountability and consequent repercussions for those departments and bodies that fail to comply with their OIA obligations or deliberately frustrate the process.

In particular, I want to highlight the large number of OIA requests which are initially declined and then a complaint is made to the ombudsman and then miraculously the decision is changed, without any official pronouncement from the ombudsman. This is highly problematic for the following reasons
1. Some bodies are clearly now operating on a "deny and wait for the complaint" basis for anything that they think is remotely sensitive, rather than follow a principles based approach on whether or not to accept a request.
2. It is clear that many bodies do not understand their legal obligations or the principles they need to apply when considering a request.
3. We have effectively created a two-step request process for certain types of requests.
4. There will be plenty of people who are not familiar with the complaints process or who did not have the time/inclination to complain who did not get the information wanted and so were denied the data.
5. The statistics on servicing are now unreliable due to the prevalence of this practice

The second key issue is that we are obviously still a long way from a culture of openness and transparency where much of the information requested through OIA would be made available proactively without the need for OIA.

The third key issue is the lack of transparency around OIA requests. There is no requirement for every body that comes under the OIA to publish a list of requests received and their response to those. Equally there is not central dataset of OIA requests received or their responses. Like many others I have to use the independent site fyi.org.nz in order to fill this gap.

2 Do you think these issues relate to the legislation or practice?

2:
The legislation. The bodies are not breaking the law, they are working within it but exploiting "loopholes" to frustrate the spirit of the law. This is equally true of the ombudsman, which is doing too much "quietly in the background", the complete antithesis of transparency

3 What reforms to the legislation do you think would make the biggest difference?

3:
1. All bodies receiving OIA requests should be required to publish them in full in an access ble and persistent format (following government standards for open data). No anonymity on the part of the requestor should be allowed.

2. Any response to an OIA request that changes once a complaint to the ombudsman has been made *must* be recorded by the ombudsman and "complaint upheld". i.e. we must completely eliminate the "we've had a quiet word and they've changed their mind".

3. Each body should be required to provide to some central authority, detailed statistics of the number of requests it has received, what action it has taken on each one and the timeframes of those actions. The ombudsman should also provide detailed statistics of their work to the same central authority. All these stats should be published openly

4. Penalties should be implemented for bodies where the number of upheld complaints exceeds a threshold (very low).

Optional questions

4 Name:

Name:
Jay Daley

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTWB-S

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 10:17:26**

Our questions

1 In your view, what are the key issues with the OIA?

1:
1. Agencies have no incentive to reissue information promptly.
2. The Ombudsman is overloaded and may not be able to respond to complaints promptly. [1]
3. The Ombudsman can only respond to specific cases. And while can comment about boarder issues is limited in their ability to take action. See [1].
4. There should be time limits on the restrictions under section 9.
5. Agency's should explain why information is restricted under section 9 and not use a broad blanket approach. For example https://twitter.com/openpolicynz/status/1060771081827446785
6. Replies to responses should be treated the same as initial requests. I've had several replies ignored.
7. Consideration for section 4(a)(i) about _effective_ participation needs to be central.
8. Information should not be refused on the basis it will be released publicly soon. If it's releasable, then it should be provided.

"to enable their more effective participation in the making and administration of laws and policies; and"

[1]
For example, I have a complaint that was made to the Ombudsmen in June. I had a reply in August, but the follow-up was delayed. This week (April) I have received reply saying it has been reassigned.

This compares to another complaint in November and that was upheld a couple weeks ago in March.

[2]
Agency's should explain why information is restricted and not use a broad blanket approach.
https://twitter.com/openpolicynz/status/1060771081827446785

2 Do you think these issues relate to the legislation or practice?

2:
Both.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Give the Ombudsmen the power to levy fines and penalties.
Information should be release proactively after a certain period.
A system of publicly accessible digital archives at the National Library should be built.

Optional questions

4 Name:

Name:
Nicholas Lee

5 Organisation:

Oganisation:
Private Individual

Response ID ANON-E8XQ-FTWC-T

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 10:49:09**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Too many delays, and excuses not to release information.

2 Do you think these issues relate to the legislation or practice?

2:
A bit of both. People are finding loopholes to avoid releasing information.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Unfortunately I don't know enough detail on the legislation, but make it harder to make excuses where poss ble.

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTWE-V

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 11:04:07**

Our questions

1 In your view, what are the key issues with the OIA?

1:
It is impractical to administer, because there is so much information now created electronically, and the focus is more on legal compliance than on understanding what information is requested, and why, and therefore what information would most help with this purpose.

2 Do you think these issues relate to the legislation or practice?

2:
A bit of both. without improved legislation, improvement of practice will push towards strict legal compliance rather than the spirit and intention of releasing information.

3 What reforms to the legislation do you think would make the biggest difference?

3:
I think making more information available by default (all briefings, aides memoire, etc) after a standard period (unless there is good reason to withhold some or all of it).

Departments should have to state anything that they consider inside or outside of scope as part of the response.

Any request that requires a search of more than a 100 records should require a fee to be paid by default (with discretion to waive the fee if the department feels it is in the public interest).

Officials personal details should be withheld by default below Manager level (unless acting as a Manager).

12(1) is completely impractical in an age where websites l ke FYI exist.

Optional questions

4 Name:

Name:
Joe Harbridge

5 Organisation:

Oganisation:
Making submission in a personal capacity

Response ID ANON-E8XQ-FTWF-W

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 11:14:02**

Our questions

1 In your view, what are the key issues with the OIA?

1:
It's too easy to get out of supplying information, such as 'commercial sensitivity'. The ability to charge for access needs to be removed and there should be some form of punishment for not keeping records or keeping them in inaccessible forms.

Also some agencies and departments insist on certain forms of communication, or the provision of ID, which should not be required.

2 Do you think these issues relate to the legislation or practice?

2:
Legislation is not strict enough and there is a lack of funding for enforcement. It could also help to provision a specific OIA budget so that cannot be an excuse for delays.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Improvements to the enforcement regime, eg funding, and reduction in reasons to not respond.

Optional questions

4 Name:

Name:
Phillip Hutchings

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTWG-X

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 10:31:59**

Our questions

1 In your view, what are the key issues with the OIA?

1:
I believe the OIA allows opposition MPs, press and researchers to tie up publicly funded government agencies with requests that require a great deal of time and public money to be responded to. I'd l ke each requester to have aggregated time as with UK Freedom of Information Act, so that after 18 hours of collation, they need to pay. There should also be a standard charge across government agencies per hour that is set to assist with this. I'd very much like for the OIA to work with the Public Records Act to ensure that there's mandatory publication of information as with the UK Archives Act, including routine destruction, to ensure that OIA requests are genuine and for information that isn't publicly available. I also believe that the 20 day rule is misunderstood, so many members of the public and other requesters thinks that is how long it takes to receive the information.

2 Do you think these issues relate to the legislation or practice?

2:
Legislation in part - but government agencies seem to find it difficult to refuse on the grounds of substantial collation. There is much emphasis on reputational risk as well. Senior leaders in government agencies often don't encourage their teams to regard OIA requests as a priority, which leads to ministerial and governance teams wasting a great deal of public money chasing the requests to ensure timeliness standards are met. There is a general lack of clarity around OIA holiday and 20 working days. There should be a standard training programme for all government agencies run by Ombudsman's Office in tandem with Privacy Commissioner.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Clarification around charging - set amount per hour like the UK after total of 18 hours. Aggregate total time for repeat requesters, especially press and opposition MPs, to ensure the requests are sensible and reasonable. Government agencies should refuse requests that take substantial collation - not fulfil them. Clarify the wording around 20 working days. Ensure proactive release and legislative standards in what information government agencies should publish - if it's publicly available, people won't ask for it. I think the Ombudsman's office should contact agencies with preliminary enquiries for all complaints - it can take 20 hours to respond to an average complaint. The Ombudsman and Privacy Commissioner working together instead of in a silo.

Optional questions

4 Name:

Name:
Jan Morison

5 Organisation:

Oganisation:
MBIE

Response ID ANON-E8XQ-FTWH-Y

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 10:44:20**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Lack of response from government departments
Poor record keeping
Ignorance of the law by officials
Ministerial evasion
Slow response time on complaints

2 Do you think these issues relate to the legislation or practice?

2:
Practice, but without teeth that provide consequences in the law, poor practice will continue

3 What reforms to the legislation do you think would make the biggest difference?

3:
Penalties for departments and Chief Executives

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTWJ-1

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 09:22:48**

Our questions

1 In your view, what are the key issues with the OIA?

1:
There is no checks and balances regarding the questions people ask. For example in the Healthcare system it appears that OIA's are used to gain access to information for peoples thesis or study research. The formality of reply required necessitates a huge amount of time and resource to answer these questions, which can be a frivolous waste of healthcare resource. When there was a issue being pushed hard by a small group of NZ people over the past year, a huge number of OIA's were asked by one or two people to all DHBs over and over again. Instead of the Ministry of Health answering one question on behalf of all DHBs, there needed to be 20 separate answers using huge amount of resource.
Regarding the use of information for academia, these people then request follow up information a year later. Again is this what the OIA process is for? Also it seems a waste of precious healthcare resource and I understand one DHB at least has an OIA coordinator full time..... Surely there is a better way to supply this information. The time factor is also an issue and we find other important DHB may have to be deferred because of the time response requirement needed for someone's thesis request.....

2 Do you think these issues relate to the legislation or practice?

2:
No comment.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Compliance costs and time reqjuirments need to be reviewed. In a current environment of DHB deficits, this does not seem to be a priority area to use reactive resource. If there was someone who could oversee the standard of the questions, that would be a good start

Optional questions

4 Name:

Name:
Donna

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTWK-2

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 10:55:47**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The OIA needs to cover more of what is kept secret. Commercial sensitivity and personally sensitive are used too often. If a company wants to do business with the crown it should be prepared for the public to know the details.

A system to track each incidence of the public being denied information requests and by who is needed. Those who frequently deny access would be audited. Also those who typically take the full 20 day period.

Failure to provide info in the 20 day period automatically audited. Without this the delays will continue.

Inappropriate with holding of information must have consequences. Those who offend to receive public notice of the infringement, fines and poss ble jail time.

Open up data bases to public access. A local body, agency, ministry, etc to be required to post all documents on the web. Those documents with held are subject to audit by a well funded OIA body to audit non compliance on an ongoing basis. The spectre of discovery and prosecution can motivate more disclosure.

Said OIA body to provide review service to all levels of government. Those entities which simply 'outsource' their responsibility to disclose by referring the bulk/all of their documents to said service to be billed for the work done on their behalf.

Yes, more money will be required. Democracy is expensive. Non compliance with democracy is far more expensive.

2 Do you think these issues relate to the legislation or practice?

2:
Both. The legislation is toothless and the practice reflects the inherent desire by too many to simply remain out of the public eye. The thinking being that behavior which people don't know about or can't prove won't be a problem.

3 What reforms to the legislation do you think would make the biggest difference?

3:
See my answer to 1. Above
• Funding for an oversight body
• Empowering that body to audit, educate both the public and government, prosecute offenses.
• Providing penalties in line with the degree of offending from warnings to prison time and all requiring that the public be informed of these actions.
• Require public release of all documents as the default setting.
• Require clear and compelling reasons for non disclosure and audit all incidents of non disclosure
• Remove commercial sensitivity as an excuse. If one does business with the government it is by definition public and the public has the right to know. Providing full disclosure will increase the public's knowledge base in many areas. In neo liberal economic terms this is enabling the 'free market' to work as all participants have equal knowledge of how the market works, pricing, terms, and other details.
• The only personal details to be withheld are those covered under the Privacy Act.
• Make government data bases available online as default setting.

Optional questions

4 Name:

Name:
Dirk De Lu

5 Organisation:

Oganisation:
Self

Response ID ANON-E8XQ-FTWM-4

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 12:52:57**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The time taken in which to reply.

The politicisation of the process, through which:

* answers do not get as technically exact replies through the practice of increased appointment of media advisers who may well filter responses for potential political purposes instead of adequate appointment of qualified staff to provide departmental/agency evidence-based responses;
* answers get unnecessarily slowed replies;
* Irrelevant responses deriving from avoidance of the question;
* Non-media departmental/agency press adviser phone numbers (e.g. sub-department section numbers, email contact data) no longer on websites;
* Sometimes only a contact form available;
* No copy of request made per contact form available on completion of form;
* Degree of redaction (ample published journalistic evidence. e.g. Stuff "redaction" suite of articles):
* Ultimate Irrelevance of response in relation to time need of question;
* Hence failure of process intended to:
- assist public understanding of government policy and practice;
- enable timely and relevant participation in policy input;
- allow scrutiny of functions, effectiveness and efficiency of policy, practice and management of partial or fully tax-payer funded operations;
* This is particularly egregious with regard to matters claimed to be 'commercial in confidence';
* Treatment of legislated time for response as more of minimum rather than a maximum period of time in which to reply;
* Excessive redactions to avoid embarrassment; evidence when these would be questioned if referred to the Ombudsman

2 Do you think these issues relate to the legislation or practice?

2:
Both.
But primarily through practice.

3 What reforms to the legislation do you think would make the biggest difference?

3:
1) . The inappropriate use of:
9(2) (g) maintain the effective conduct of public affairs through—
(i) the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any department or organisation in the course of their duty; or
(ii) the protection of such Ministers, members of organisations, officers, and employees from improper pressure or harassment

2). 9(2) (g) seems to have "from improper pressure or harassment' being interpreted as "potentially embarrassing queries or revelation"

3). The misuse of:
6 (b) to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by—
(i) the Government of any other country or any agency of such a Government; or
(ii) any international organisation

(e.g. re (i) Information is withheld on these grounds when it is evident those mentioned in (i) are aware of the information/positions held/taken by the parties mentioned, and may even be widely known/published; and

re (ii) anodyne information is not readily available to the NZ public despite open access principles agreed by the government under Open Government principles and/or IGOs)

4). No mention in the Act of policy pertaining to the existence of and policy for content of the Directory of Official Information,

What would improve this is:
* Restoration in the Official information directory of indications of data regularly recorded by an agency or department, and
* A clear indication, both in the Directory and on all government websites of where data no longer currently available on their sites is held (either in the department/agency) or in Archives New Zealand, etc.

(It was shocking to see the almost gleeful statement prefacing the 2015 release:
"The following organisations were in the previous edition but are not included in this directory. These organisations are no longer subject to the Official Information Act, have been integrated under a broader organisational structure or are listed under a different name. This list is based on information supplied by external agencies."

No note or requirement for merged or subsumed entity information to be provided by the absorbing entity.

(This has enabled the Department of Internal Affairs to avoid revealing just how, where and by how much the National L brary has had its funding and services reduced and impaired , since incorporation , instead of achieving the efficiencies claimed at time of merger- no breakout has been officially provided since.
This statement is made in the light of an independent investigation by a third party, as well as]the results briefly published by the DIA on the National L brary website.
And results of national L brary surveys appear to be quickly buried - indeed even not appropriately formatted for provision when briefly put up on the NL website (e.g. re NL/Archives New Zealand/DIA merger).

The changed size and coverage of the DIrectory between first and latest manifestation is revelatory.

Reversion of policy regarding inclusion in the Directory, or alternatively
requirement of each agency/department to list data units recorded - somewhere on its website, even if collated or individually identifiable units of data are not provided - in accordance with the Privacy and OIA acts, could go some way to alleviate OIA demands.

5). Rewording of:

"(5) Nothing in subsection (4) prevents the chief executive of a department or any officer or employee of a department from consulting a Minister of the Crown or any other person in relation to the decision that the chief executive or officer or employee proposes to make on any request made to the department in accordance with section 12 of this Act or transferred to the department in accordance with section 14 of this Act or section 12 of the Local Government Official Information and Meetings Act 1987"

so as to make it clear that this should only be undertaken as a matter of doubt, not one of clearance for party political purposes.

6) Ensure departments make reports by staff to senior management; responsible MInister (so he can directly see demands on staff on a relatively real-time basis), and Ombudsman, of numbers of information requests about operations or policy of the agency/dept the number responded to within the 20 working day limit; transferred, extended, responded to late or not responded to at all.

This data provided within a week of end of month; and this published on the Ombudsman's site by name of agency/department.

7) A form of incentive to respond promptly, e.g.:
Departments made to pay fines out of their on budgets to the Ombudsman's office every time they exceed the 20 day response by say a month without what the Ombudsman's office considers justifiable reason, and fined further by the Ombudsman's office if their responses are referred there after a year.

8) The degree of manipulation of responses has revealed that some queries have even been accorded the political importance of a 'response management plan' or referred to a Minister for guidance on reply. This fact and 'response management plan' by whom should also be made available under the Act.

At a non-legislative level:
- Ensure recorded, proper training of staff at all levels on responses to OIA requests;
- Ensure departments have sufficient funding to be able to respond to OIA requests;
- Return of rights to departments to have questions answered directly by the most expert;
- Availability of phone numbers and email addresses for all departments/agencies on their website - not just a "media" person. (The latter often do not even know who

staff are, let alone the expert in their agency/department best placed to answer).

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTWN-5

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 11:56:38**

Our questions

1 In your view, what are the key issues with the OIA?

1:
yes i have had trouble with this the police tried to stop me getting information about my self

2 Do you think these issues relate to the legislation or practice?

2:
both

3 What reforms to the legislation do you think would make the biggest difference?

3:
it needs to be what the act saies

Optional questions

4 Name:

Name:
john combs

5 Organisation:

Oganisation:
retired

Response ID ANON-E8XQ-FTWP-7

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 09:23:53**

Our questions

1 In your view, what are the key issues with the OIA?

1:
It is used as a tool to avoid giving legal responses by government departments, and it seems to be used to protect ministers and leaders as opposed to giving clarity to the voter.

2 Do you think these issues relate to the legislation or practice?

2:
Practice.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Clearer guidelines in the legislation as to what is acceptable rather than everything having to be adjudicated by the ombudsman.

A method to make prior decisions by the ombudsman automatically apply to all subsequent applications so things don't get re-litigated every time.

Optional questions

4 Name:

Name:
Christopher Gourlay

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTWQ-8

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 09:46:53**

Our questions

1 In your view, what are the key issues with the OIA?

1:
1 A mindset in many departments to keep the release of information a minimum, where the requests have the potential to unearth information that would be detrimental to the policy direction that department is pursuing.

2 A lack of overt sanction/accountability for public servants who 'play' the legislation to their advantage, in what can seem to be a deliberate attempt to frustrate the inquiry and/or increase the challenges a requestee faces in filtering the information supplied.

3 The lack of guidance around the types of information that can be requested, how that request should be structured, such that officials who work with the Act all the time are less likely to frustrate or delay requests

2 Do you think these issues relate to the legislation or practice?

2:
Both

In my experience, some public servants are excellent when it comes to making efforts to be open and honest with disclosure. This despite the examples set by organisational leaders. In other instances, the reverse is true.

A clear code of conduct built into the legislation with transparent and open consequence, would establish an external framework of reference against which specific complaints could be laid and investigated. This would reduce the temptation on the part of the public servant to play games with the members of the public requesting information.

More resources for investigation into the frustration of OIA requests, would speed up the turn around of information. Some information has the potential to shed light on errors, omissions, bias and poor behaviour that is being used to drive policy that has profound implications for New Zealand. Investigating this should not take nearly a year.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Code of Conduct for public servants including MPs and Ministers - this should include use of private email and communication channels and the keeping of records of meetings on public business.

Clear consequence for a failure to operate within the Code of Conduct

Better guidance on the categories of information that can be requested and a clear expectation of what types of information should be forthcoming should a request for same be made

Optional questions

4 Name:

Name:
Miles Stratford

5 Organisation:

Oganisation:
MethSolutions Ltd

Response ID ANON-E8XQ-FTWR-9

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 09:34:53**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Promptness and openness

2 Do you think these issues relate to the legislation or practice?

2:
Responses need to be prompt and full and open with absolute minimal reductions.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Enforcement of the above.

Optional questions

4 Name:

Name:
Roger Fowler

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTWS-A

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 11:06:27**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The OIA doesn't work in practice. This is primarily because there are no consequences for agencies who do not comply with it. I frequently encounter agencies and departments who give themselves multiple deadline extensions, admit they have no legal recourse for this, and then continue to illegally withhold information because they know the Ombudsman is not empowered to do anything about it.

The letters the Ombudsman sends to acknowledge these situations are toothless and compel disclosure in almost no cases. Sometimes I do not bother complaining to the Ombudsman as it takes time to do and the outcome is the same whether I do or don't.

The 20-day deadline is also considered the earliest poss ble response time by agencies, not the latest -- I have never had an OIA returned to me in fewer than 20 days.

Furthermore, I have noticed an increase in agencies hair-splitting in choosing withhold documentation because on an alternative interpretation of what your request might or might not mean. Some agencies do request clarity by phone, but I find often those calls are used to verbally redirect a request away from the initial target by suggesting it be refined in a particular way that will exclude the results the journalist clearly wants.

2 Do you think these issues relate to the legislation or practice?

2:
Both. Agencies are not keeping to the spirit of the law (or, at times, the letter), but the fact there are not enforceable consequences in the legislation for non-compliance is a major problem.

3 What reforms to the legislation do you think would make the biggest difference?

3:
All of the common and widespread tactics I've outlined make it increasingly difficult to hold the government sector to account, as my job demands. I would say the most pressing of these concerns is the lack of penalty or consequences for failing to respond (or only partially responding, or for del berately misinterpreting) OIA requests, and that a regime with some teeth is required in order to ensure accountability and transparency for the public. At the moment there is no incentive for agencies to comply with the OIA.

Optional questions

4 Name:

Name:
Charlotte Graham-McLay

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTWT-B

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 11:08:13**

Our questions

1 In your view, what are the key issues with the OIA?

1:
1. Timeliness
- OIA responses are often left until the last day and on that day the last 15 minutes!
2. Transparency
- Redacted information are subjective based on who manages OIA's within Ministries. The only was around access what may be critical information is to resend another OIA Request with a "sharpened point" on the information sought with 20 more days for a response. The last alternative is to go through the Ombudsman. The time frame there is an unknown period of time.
3. Lack of resources
- This will be at both Ministry level and the Ombudsman to manage OIA requests/responses
4. The intent of the legislation should be paramount and that transparency is what is sought through OIA's. Ministries cannot hide behind their own subjective decisions on whether to provide information or redact it. Ultimately all ministries should be open book unless there are safety concerns for individuals.

2 Do you think these issues relate to the legislation or practice?

2:
Both

3 What reforms to the legislation do you think would make the biggest difference?

3:
Shorten the timeframe for Ministries and provide a time frame for the Ombudsman.

Also to ensure that those Ministerial staff managing OIA requests/responses are better resourced (staff numbers, training,).

The Ombudsman has more staff to manage OIA issues.

Optional questions

4 Name:

Name:
Eru Loach

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTWU-C

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 11:38:35**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Government agencies have a default obstructive position under current settings, rather than the default being transparency. This will only continue if the Ombudsman is underfunded and has weak enforcement powers.
Further than this though, a cultural change is needed across government towards openness and transparency.

2 Do you think these issues relate to the legislation or practice?

2:
Both. The legislation doesn't give enough powers to the ombudsman, and this in turn leads to poor practice without fear of reprisal.

3 What reforms to the legislation do you think would make the biggest difference?

3:
More resources and harsh enforcement powers for the ombudsman. Penalties for breaching time limits. Less scope for witholding information. More provision for proactive release. More stringent requirements for retaining digital information.

Optional questions

4 Name:

Name:
Hayden Eastmond-Mein

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTWV-D

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 13:24:44**

Our questions

1 In your view, what are the key issues with the OIA?

1:
What appears to be the prevailing philosophy that all information should be provided on request automatically without consideration of the possible outcomes of that information being provided. This is particularly unfortunate in cases where:
1. the identity of people referenced in the information can be easily deduced because of the small number of people involved in the issue (e.g. a small workplace with only three or 4 employees): or
2. where the information is part of the evidence being considered in a safety investigation by bodies such as the police, the Transport Accident Investigation Commission, the Civil Aviation Authority, etc, where release is usually requested by the media to promote sales of their product and the release generates prurient speculation which hampers the conduct of the investigation

2 Do you think these issues relate to the legislation or practice?

2:
Both.

1. There needs to be clear guidelines in legislation addressing the balance between the right to information, the conduct of an investigation without unhelpful public and media speculation, and the protection of individuals' rights to privacy. Media desire to "sell" their news service should not be a valid consideration in the assessment of whether information should be released.
2. If the guidelines exist then the Act will be applied in a manner which addresses the need but considers the benefits and timings of a release of information.

3 What reforms to the legislation do you think would make the biggest difference?

3:
The protection of information related to a safety investigation prior to the completion and release of the report of the investigating body.

Optional questions

4 Name:

Name:
Adam Nicholson, Legal Officer

5 Organisation:

Oganisation:
NZ Air Line Pilots' Association

Response ID ANON-E8XQ-FTWW-E

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 10:19:42**

Our questions

1 In your view, what are the key issues with the OIA?

1:
1/ Delays, paltering, 'clamming up' and overuse of redactions.

2/ I haven't yet found the way to discuss fully how to keep the work required for the OIA down while not negotiating away the very mechanisms I need to find out what the institution is sometimes trying not to reveal. I suspect an intermediary is what is required - someone who knows what information is available, and how best to word requests to capture it without having to ask something that turns the response into a big undertaking.

2 Do you think these issues relate to the legislation or practice?

2:
For my first point in reply to question 1, I don't know. The Ombudsman needs to be able to more quickly do some wrist-slapping about small issues. It seems too much cost on the country to go to the Ombudsman for little things like paltering. Yet it is how the institutions are managing to not answer what they don't want to answer.

Is it a legislation or a practice change required to increase the Ombudsman's powers to be able to both work on little niggles, and to have requesters feel l ke they are welcome to do so?

For my second point, I imagine that's a practice change, unless some legislation is needed to establish a role of an intermediary.

3 What reforms to the legislation do you think would make the biggest difference?

3:
I don't know.

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTWX-F

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 10:56:35**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Government's unwillingness to cooperate means some information gets prioritised and immediately sent to agencies, and other information gets put on the 'waiting list' and delayed indefinitely.

2 Do you think these issues relate to the legislation or practice?

2:
These issues relate to the practice, because there is no requirement in the legislation that requests be immediately answered, and no accountability if they are not answered. Since the legislation does not demand or enforce prompt delivery of information, government supplies that information at its convenience.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Legislation needs to provide a timeframe for the return of OIA requests, and introduce enforceable penalties for not supplying the information. Otherwise, the act is toothless.

Optional questions

4 Name:

Name:
Joseph McClure

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTWY-G

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 10:24:24**

Our questions

1 In your view, what are the key issues with the OIA?

1:
To give me the information I want.
Not what I am being led to believe is the truth.

2 Do you think these issues relate to the legislation or practice?

2:
The Legislation has no teeth and not able to make Departments or the people answering my OIR do anything.
They play on it..

The Ombudsman ought to have powers to enforce decisions.

3 What reforms to the legislation do you think would make the biggest difference?

3:
1. I AM VERY ANNOYED BY THE AMOUNT OF REDACTION. This is over the top redaction. Like page after page. CYFS is really good at doing this sort of thing. CYFS can redact whole pages.
2. Fine the Department that does redacting as a matter of course.
3. Fine Departments, like the Police, who keep saying that the request has to be in writing. Many dyslexics, of who I have a number because of my work, cannot write, spell or read. The Police are aggressive. Hang up in your ear!
4. Make Departments honest and get the information out in a timely manner. If they need more time, tell me early. They often go over the 20 days and NEVER apologise.

Optional questions

4 Name:

Name:
Ian Brown

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTWZ-H

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 13:50:35**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Capacity to complete OIA work
Due to the demand driven nature of the Act, as a practitioner there are times when there is no further capacity to process OIAs in the timeframe required due to the number of OIAs already in hand.

Requests for all documents
It is becoming increasingly more common to receive requests for ALL documents in relation to a particular topic. This creates an administrative burden, although not always one which would stand the test of refusal under substantial collation and research.

Refinement of requests
This is a good provision in the Act but is problematic (as has already been acknowledged in Ombudsman guidance) when requestors do not get back to either confirm a refinement or that they are sticking with the original request.

2 Do you think these issues relate to the legislation or practice?

2:
Capacity
This is a legislative issue, there is currently no ground to extend due to OIA workload and capacity to complete when volumes are higher than usual

Requests for all documents
This is a practice issue, journalists and political party staff should be aware of the costs of asking such wide encompassing requests and be able to be more targeted in the wording of the request. Attempts to refine these requests sometimes seems to be taken as an indication that the Department is trying to hide something and the refinement is therefore refused. Requestors don't seem to be aware that information about a particular topic can be held in a variety of areas by many different people, and requests for ALL documents entails contacting all of these people, gathering the information that they hold and then consulting them on the release of the material.

Refinement of requests
This is probably a practice issue. More often than not requestors do respond but if they don't it leaves the agency in a bit of a state of limbo, effectively having to progress a large request which at any day may be revised and the work no longer required (or different work required).

3 What reforms to the legislation do you think would make the biggest difference?

3:
The Act works pretty well now. An additional extension ground to account for capacity issues would be good.

Optional questions

4 Name:

Name:
Katrina Taylor

5 Organisation:

Oganisation:
Department of Internal Affairs

Response ID ANON-E8XQ-FTZ1-B

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 11:57:41**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The OIA is intended as a strong tool for the public to hold the government to account and ensure the transparency which is one of the keys to democracy. If the information which important decisions are based on is not freely available, then it becomes impossible to know whether those decisions are truly for the benefit of the public (and by extension, our climate and environment), whether all alternatives were fairly considered Currently, the OIA is far too easy to sidestep and to delay, and it has become common practice.

2 Do you think these issues relate to the legislation or practice?

2:
Both. The shoddy practices are related to both a lax enforcement as well as the fact that they are allowed by the legislation.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Remove the common methods used to confound OIA requests - data and information should be released in sensible formats unless otherwise specified in the request, and within the time frame. Create real consequences for those shirking the request. Release any information related to public announcements or decisions automatically, rather than waiting for an OIA request.

Optional questions

4 Name:

Name:
James Kane

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTZ3-D

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 15:15:39**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The key issue is that it is overly politicized. As a government employee with previous experience with OIA processes, I was horrified by the level of both overt and unconscious influence that politics have on the process. In the ministry where I worked previously, OIA requests were routinely sent to the Minister for review prior to release. These would sometimes come back with suggestions to withhold certain aspects. While officially only suggestions, there was never doubt that they would be followed. Even without ministerial influence, senior leadership within ministries have incentive to avoid creating political controversy in their portfolio, so were motivated to find excuses to withhold information that could be politically damaging or controversial. Certainly material would be released if no excuse could be found for withholding, but effort was made to find reason.

2 Do you think these issues relate to the legislation or practice?

2:
These are primarily issues of practice. Some decisions about where to draw the line for release or withholding will necessarily be subjective and the legislation must be flex ble to handle a variety of contexts and situations. However, the decision should never be allowed to sit with or be influenced by people with political motivations. This clearly includes ministers, but also includes executives in the ministries who have incentive to avoid political controversy in their domain and to keep positive relationships with their ministers. The people who compile OIA requests and those who make the decision as to what should be released should be entirely independent and not answerable to ministers or executives.

3 What reforms to the legislation do you think would make the biggest difference?

3:
It would be ideal if final decisions on what should or should not be released were made by an independent office rather than people within the relevant ministry.

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTZ4-E

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 12:17:44**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The length of time taken to fulfill a request.

2 Do you think these issues relate to the legislation or practice?

2:
Practice but it could be encouraged by stronger legislative guidelines.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Requiring agencies to respond to requests much more quickly (say 10 days unless and exemption - which should be granted infrequently). Moreover, an agency should request permission from the Ombudsman should they require an extension rather than simply granting one autonomously. The act can also differentiate between acknowledging the request (which should be done within 3 working days); making a decision to grant or deny, and then a new date added for fulfilling the request (say 15 days). Moreover, reporting on number of requests and whether they were granted or not would encourage agencies to provide more public information.

Optional questions

4 Name:

Name:
Neal Barber

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTZ5-F

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 12:49:07**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The fact that government data has to be requested and can't be accessed in a timely manner. In my view government data that doesn't have privacy, security or confidentiality issues should be made available by default, while specific correspondence etc could be requested.

2 Do you think these issues relate to the legislation or practice?

2:
Yes. I think that a lot of government departments act on a "produce it if its asked for" basis, while they could be operating with a "lets make this available unless theres a good reason not to" mindset.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Determining clear parameters about types of information that should not be publicly disclosed (or only disclosed if specifically requested) and requiring government departments to make all other info public by default

Optional questions

4 Name:

Name:
Craig Major

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTZ7-H

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 12:40:16**

Our questions

1 In your view, what are the key issues with the OIA?

1:
That the protection in section 48 of the Act does not extend to the proactive release of information/documentation previously released Official Information Act

For the Act to make it a requirement that the identity of the actual requestor be disclosed in the request e.g. if the request is made by a law firm then who are they making it on behalf of.

2 Do you think these issues relate to the legislation or practice?

2:
Both of the above are legislative.

3 What reforms to the legislation do you think would make the biggest difference?

3:
The first issue would encourage great proactive release of information/documentation that is of public interest as evidenced by the OIA request.

The second issue would assist the agency in identifying the likely reason for the request thus then being in a position to possibly provide a more meaningful and helpful response to the requestor.

Optional questions

4 Name:

Name:
Pete Hill

5 Organisation:

Oganisation:
Land Information New Zealand

Response ID ANON-E8XQ-FTZ8-J

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 14:02:19**

Our questions

1 In your view, what are the key issues with the OIA?

1:
1) Slow responses that almost always use the full 20 working days even for simple requests.
2) Lack of proactive release of information resulting in an over-reliance on the OIA to get information that should be publicly available and non-OIA requests routinely ignored.
3) Over zealous redaction of information resulting in some released information being useless.
4) Too much political interference from ministers either directly or indirectly (not necessarily their fault/intent).
5) Scope of OIA not including all parts of the government (including Parliamentary Service and the Office of the Clerk, Ombudsmen, the Auditor General, the Independent Police Conduct Authority, the Inspector-General of Intelligence and Security and others).
6) Lack of standardised or complete OIA reporting (especially with Police and Defence Force no longer included).
7) Format of the information released is not always practical for it's intended use (e.g scanned PDFs are not be an acceptable format)

2 Do you think these issues relate to the legislation or practice?

2:
Legislation needs updating to bring it into the 21st century with greater expectations on use of technology and information.

Because the legislation is so outdated it's too easy for agencies to hide behind the text as an excuse for poor practice. Some agencies are more proactive but many are extremely difficult to get information from.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Appointment of a Information Commissioner to ensure it's implemented properly with powers to enforce where required (as recommended by the Law Commission's 2012 OIA review). Alternatively significantly increase the powers and resources for the Ombudsman.

Formalising the expectations for agencies in regards to format, timing and ministerial involvement.

Optional questions

4 Name:

Name:
Damian Light

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTZ9-K

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 15:06:56**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Inconsistency between government departments, state schools, and crown entities.

2 Do you think these issues relate to the legislation or practice?

2:
Not sure

3 What reforms to the legislation do you think would make the biggest difference?

3:
Making guidelines for OIA clearer and easier to understand, so they can be consistently applied from the largest government ministries to smallest state schools.

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTZA-U

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 15:20:03**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Open access to public information, in a timely access ble way.

For NORML NZ it is often about referencing information that is not easily found elsewhere, or that officials have massaged to give favourable impressions. For example figures for cannabis arrests may have discrepancies and the OIA is the only practical way for us to obtain the source material.

It is really important that we can obtain briefing materials or other information that forms the basis for public policy.

2 Do you think these issues relate to the legislation or practice?

2:
The legislation is old. However the practice could be improved.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Require a quicker response.
Publish all responses in a searchable database online.
Require that all requests are first searched in the database.
Require that all requests are unique.

Optional questions

4 Name:

Name:
Chris Fowlie

5 Organisation:

Oganisation:
NORML New Zealand Inc

Response ID ANON-E8XQ-FTZB-V

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 12:36:17**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The OIA is an infamously poorly understood and implemented statute. I learned this at university, and my experience working in the public sector since then has only confirmed it.

A particular issue I have is that at least some organisations have a practice of automatically suppressing all low value data (in accordance with this page: http://archive.stats.govt.nz/about_us/legisln-policies-protocols/confidentiality-of-info-supplied-to-snz/safeguarding-confidentiality.aspx). This practice is applied without consideration being given to whether there is any real l kelihood of any individuals being identified from the data, which is often inconsequentially low.

2 Do you think these issues relate to the legislation or practice?

2:
I believe the primary issue is with practice. However, the two are, of course, interlinked. The statute could always be revised to make it clearer how it ought to work in practice.

3 What reforms to the legislation do you think would make the biggest difference?

3:

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTZC-W

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 13:15:55**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Lack of transparency

2 Do you think these issues relate to the legislation or practice?

2:
Not really sure, perhaps both.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Improving transparency and stopping requests from being delayed to the point where they aren't relevant.

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTZD-X

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 14:56:41**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Awareness and understanding - the public's awareness and understanding of the Act seems generally lacking, except for limited pockets of expertise. More work should be done to promote the Act itself and and promote how agencies process and respond to requests. Agencies should also do more work on outlining what information they hold and providing links to information they have already made publicly available.

Training - within agencies there is a lack of understanding of the Act, and in many cases a culture that does not foster the effective release of information in a timely manner. The culture in agencies is still at avoiding risk and embarrassment or at times the perception of this. This is a faulty starting point given the principle of availability and there needs to be far more effort put into training within agencies.

Resourcing - agencies need to be able to better or more easily add resource to respond to requests. This is connected to both above points - raising awareness and increasing training also require resources - giving all agencies a set budget (based on the requests the are receiving) to be spent only on improving the agencies practices could be a way to effect change, especially if mechanisms are also added to withhold additional funding if agencies do not effectively comply with the legislation - as can be evidenced by Ombudsman rulings against agencies.

2 Do you think these issues relate to the legislation or practice?

2:
Both.
They relate to the legislation, because the Act itself is meant to be a cover all and leaves a lot up to interpretation, making it easier for agencies to refuse/withhold information, which is doubly troublesome given this is the starting point culture wise for most agencies.
The practice is also faulty, given the culture in agencies.
Agencies are also not assisted by requestors making requests for everything under the sun, such as "all correspondence" type requests. This puts massive pressure on agencies and there is often very little public interest or value in the information in scope.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Introduce mechanisms that make agencies and Minister more accountable, potentially making Ministers not only responsible for responses they sign but also all responses from their agencies and tie this responsibility to an independent authority that can enforce compliance and change - either the Ombudsman or an Information Authority.
Should an Ombudsman disagree with an agencies decision, the Ombudsman should be able to release the information itself

Optional questions

4 Name:

Name:
Hamish Solomon Brodie

5 Organisation:

Oganisation:
The views I have expressed are mine as a private citizen, but I can confirm I work in the Public Service

Response ID ANON-E8XQ-FTZE-Y

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 14:03:45**

Our questions

1 In your view, what are the key issues with the OIA?

1:
It's inability to force ministry's to release the information requested. There are too many loopholes that can be used, and the requests get delayed, or denied for reasons that are unconstructive to a democracy

2 Do you think these issues relate to the legislation or practice?

2:
Both. Stronger legislation will help prevent bad practice

3 What reforms to the legislation do you think would make the biggest difference?

3:
Give the request more teeth. Greater penalties for wrongful denials, or delays

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTZF-Z

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 15:20:54**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Govt bodys simply ignoring the rules on timing and disclosure and taking ridiculously long amount of time to do anything with no fear of reprisals

2 Do you think these issues relate to the legislation or practice?

2:
Practice. My experience has been fence sitting and delay until the timely relevance of me getting this information was over. Department of conservation is my only oia agency request. From Memory it was 6 mth months to get a simple answer out of them which was about 5 months too late to be any use to me. My questoon was do any organisations pay more thann $10 a day to guide department of conservation concession permits.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Requirements for all departments to log requests and outcomes of quests with ombudsman or similar impartial agency so that there is a sense that they can be watched and not just flagrantly ignore their responsibilities under the act

Optional questions

4 Name:

Name:
Malcolm oneill

5 Organisation:

Oganisation:
H king new zealand

Response ID ANON-E8XQ-FTZH-2

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 12:58:22**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Open and fair government processes and decision-making

2 Do you think these issues relate to the legislation or practice?

2:
Both - good leg and good practice

3 What reforms to the legislation do you think would make the biggest difference?

3:
None: it works

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTZJ-4

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 11:59:27**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The length of time it takes for information to get released, means the public has lost a lot of trust in what is shared with the public. Information can take months to be released with loopholes in the legislation abused frequently and with impunity. It seems there is no penalty for unreasonably dragging a documents release or redacting the majority of a document. That this has happened over successive governments is unacceptable.

2 Do you think these issues relate to the legislation or practice?

2:
The issues stem from both legislation and practice. The legislation offers many opportunities, loopholes or just plain excuses for public servants to hold up information well past the expected 20 day processing period, not to mention well past the crucial news cycle. The issues with practice seems that for multiple governments a culture of obstruction and petty political gaming of the system has taken hold. No one enjoys being held to account of course but politicians and public servants see little benefit in releasing information in a timely fashion.

3 What reforms to the legislation do you think would make the biggest difference?

3:
The three biggest changes I would recommend would be: cleaning up the loopholes, having a legal/politically damaging penalty for circumventing the law and enshrining a review of the legislation around every 10 years. The legislation needs to be straightened out with much clearer definitions of what and when information can be held back or released. The lines are too blurred for any unfair delays to be held to account. Some kind of fine, alongside a public reprimand or apology would also increase the political cost for unreasonable hiding or delaying information from the public. Finally taking the legislation away from the wolves guarding the hen house by giving the Ombudsman a presence in drafting the legislation would ensure that any updates would be less political in nature alongside semi-regular reviews of the legislation to ensure that it up to date in a fast moving world. If this review process could be managed by an government organisation similar to the electoral commission that would be even better.

Optional questions

4 Name:

Name:
Antony Pullon

5 Organisation:

Oganisation:
Member of the Public

Response ID ANON-E8XQ-FTZK-5

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 13:25:38**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Which information is available to whom.

2 Do you think these issues relate to the legislation or practice?

2:
Both.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Transparency across the board

Optional questions

4 Name:

Name:
Michael

5 Organisation:

Oganisation:
Aged Care

Response ID ANON-E8XQ-FTZN-8

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 15:59:10**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Tardy responses, often deliberately so, by Government Departments and their Ministers.

2 Do you think these issues relate to the legislation or practice?

2:
The practice, but also lack of real sanctions for poor management of OIA's

3 What reforms to the legislation do you think would make the biggest difference?

3:
More sanctions for poor responses by Departments

Change the treatment of Cabinet and Ministers papers - these should be released as they are being considered by Ministers i.e. immediately sent up for consideration. Redactions of financials may need to occur.

Optional questions

4 Name:

Name:
Ron Burbery

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTZP-A

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 12:11:02**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The key issue is public sector organisation's unwillingness to be transparent about their activities and hence not accountable.

For example last year I requested information from the Ministry of Education about my son's file. I requested the entire file as well as all notes, letter and file notes.

I also requested a copy of his Moderation Form from 2010 that Roseneath School had sent to the Ministry.

I submitted the request in person at the Ministry's office on 3 July 2018. I did not receive an acknowledgement and after 20 working days no response was received.

The Ministry then sent this apology:

Kia ora Treacy
I wish to apologise for the fact that you did not receive an acknowledgement from the team here regarding your recent request for information. I am also sorry that you have not been contacted until now regarding the need for an extension to the usual time period required. I understand this is due to the volume of material which needed to be put together for review.

This work will be completed within the next week and the documents will be available to you on 13 August 2018.
With thanks and kind regards
Susan Schneideman
Susan Schneideman | Manager Learning Support - Canterbury

On 13 August I had to call the Ministry at 2pm as nothing had been received. The documents were eventually delivered at 4:45pm by courier.

However ORS documentation was not received.
Prompting the following email:
Hello Susan

Thank you for all your help releasing the documents associated with Jacob and his OIA request.

Having looked through the documents, there are no documents relating to the first sentence of the request that asked for;

"copies of all material relating to the decisions made in relation to myself for all my ORS applications and my ORS Reviewable High".

Specifically there are no documents from the verifiers about how they made their decision. On the Ministry's website it states that:

Three verifiers independently consider each application.
Each verifier records their independent decision. The 3 verifiers then discuss the application and make a unanimous decision.
The verifiers record the consensus decision on a national database and advise the educator and the parents of the outcome of their application in writing.

The request, in asking for copies of all materials, expected to have copies of the each verifiers' decision as well as the records from the national database. We have the letter from the Manager Elig bility and Assurance, but no documentation behind that letter.

Please provide it as part of Jacob's original request. I would appreciate receiving these documents by the end of this week, as Jacob first requested this information from the Ministry on 3 July 2018.

Thank you.
Yours sincerely

Treacy Mander

I had to wait a further 20 days for this information. The Manager Assurance and Eligibility called my home and seemed very annoyed that I was requesting this information.

Relating to the information around my son's first ORS application in 2008, I received the following email,

Dear Ms Mander,
My sincere apologies for the delaying in providing you with the information you requested regarding Jacob’s ORS applications.

Attached, please find:
1. A summary of the ORS administration process
2. A summary of the verifiers' decisions relating to Jacob's applications
I believe Carolyn Grace, Manager Assurance and Eligibility, talked you through these document when you spoke on the phone some time ago, but please do not hesitate to contact her on 04 439 5034 if you have any difficulty interpreting the information provided.
We do not retain individual verifiers' notes. Our practice in this regard is based on General Disposal Authority 7, developed by Archives New Zealand per the Public Records Act 2005, which authorises Public Offices to dispose of "Facilitative Transitory and Short term records".

You have also requested an appeal under Section 10 of the Education Act 1989 of the verifiers' decision not to re-verify Jacob as Very High Needs. This is currently being processed.
Regards
David Wales | National Director Learning Support
DDI +6444637669

The verifier's notes are paramount when trying to ascertain how they reached their original decision about his ORS funding as High Needs. This decision of High Needs will affect Jacob's funding until he is 65 years old and transfers to National Superannuation and cannot be changed. So another technique to not answer OIA requests is to destroy the documentation.
The Ministry's document retention is based on General Disposal Authority 7, developed by Archives New Zealand per the Public Records Act 2005, which authorises Public Offices to dispose of "Facilitative Transitory and Short term records.

The General Disposal Authority 7 (GDA 7) covers generic classes of records of any format that have only short-term transitory value in their immediate and minor facilitation of preparing a more complete public record. Therefore they are not required for evidential or legal purposes. These records are created through routine administrative and business processes common to most public offices in the course of performing primary core business functions, duties and responsibilities.
This is unacceptable, of course they could be required for evidential or legal purposes. Especially as the decision affects the person for decades of their life.

Also the Moderation Form was never been received, or any explanation as to why. I have recently requested this again. My new policy is to only ask one question per OIA request.

The Ministry of Education also thinks that constant apologies are an acceptable alternative to answering the OIA.

2 Do you think these issues relate to the legislation or practice?

2:
I think that these issues relate practice, specifically an ingrained attitude held by the public sector that they know best and are not to be questioned about their decisions. They destroy documentation, they call your home to harass you in person, I was not expecting to be called by the Manager Assurance and Eligibility and was quite shaken afterwards.

In my experience the more important the decision, they less transparent they are.

The public sector agencies rely on the person making the request to get sick of it and go away. Or the information you receive is so abstract, for example giving numbers on graphs instead of written material, as they have destroyed the original documentation.

3 What reforms to the legislation do you think would make the biggest difference?

3:
1. Acknowledge all OIA requests with 24 hours of the request being made.
2. There should be no extensions on the 20 working days.
3. The Ombudsman and relevant Minister should be informed of all OIA requests that exceed the 20 day limit.
4. There should be penalties for exceeding the 20 day limit. A financial payment to the person requesting. In my case we only had a small window of time before my son left school and once out of school appealing all decisions becomes imposs ble.
5. Documentation should not be destroyed that relates for a person's funding from the age of 8 to 65. It can be destroyed once he turns 65.

Optional questions

4 Name:

Name:
Treacy Mander

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTZQ-B

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 12:24:50**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Cost of compliance for Government Sector
Lack of free and frank exchange of views within government for fear of having to release information to OIA.

2 Do you think these issues relate to the legislation or practice?

2:
Legislation is too demanding.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Relax OIA requirements

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTZS-D

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 14:20:48**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Public servant managers use the full 20 days for info that they can easily release sooner. Know this from many years working in the public service. Most of the info should be readily available without being an OIA request.

2 Do you think these issues relate to the legislation or practice?

2:
Legislation should tighten up about the 20 days and public service practice should be improved so there is greater availability of govt info and quicker response to OIAs. Less OIAs if more govt info freely available.

3 What reforms to the legislation do you think would make the biggest difference?

3:
20 days is identified as maximum deadline for response.

Optional questions

4 Name:

Name:

5 Organisation:

Oganisation:

Response ID ANON-E8XQ-FTZT-E

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 14:28:34**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The OIA was born in a completely different age and is no longer fit for purpose.
It was world leading at the time it was enacted but has steadily been overtaken by better practices being implemented in other jurisdictions and a lack of appetite for reform by New Zealand officials.
The OIA needs to be seen as one sub-system within an overall system of transparency and accountability, as well as providing citizens and the private sector access to potentially valuable data that government administrators collect.
It needs to be seen as working in conjunction with other fundamental pieces of legislation, particularly the State Sector Act and Public Records Act.
1982 was not just a completely different time in terms of technology and how media and modern communications operate but it also preceded the public sector reforms that came later in the 1980s and 1990s.
The central problem is that we have essentially an adversarial governmental system in which you are asking a group of people to be put in charge of handing over the evidence that they possess (ie official information) by which their own performance will be judged.
That creates a fundamental incentive incompatibility issue which lies at the heart of the many criticisms and controversies over how the Act is being administered.
As part of a research project, I recently interviewed a former Member of Parliament whose political career spanned the late 80s/early 90s. In their view, things started to decline during the Bolger Ministry. This was because Opposition MPs, having just been in government, 'knew where all the bodies were buried', were very experienced in the administration of the OIA and therefore were able to use it to devastating effect. The effect was compounded by government officials who arguably were not well trained in dealing with sensitive OIA requests and who did not make full use of the withholding provisions intended by Parliament.
As a result, there were some releases that were quite embarrassing to the Bolger Ministry in its early days and they responded by 'tightening up' on the handling of future OIA requests - and so were born the kinds of trends that journalists, academics and political commentators complain about today.
My own experience with the OIA began as an academic researcher working on a submission to a 1994 review of a piece of legislation. After my academic career, I spent about 12 years as a policy adviser across four different state agencies. I am now an independent researcher and policy adviser. I have made, as well as processed, numerous OIA requests. I undertook formal OIA training during both the Clark and Key Mimistries.
I have witnessed at first hand (or had recounted to me by other first-hand witnesses who are experienced government officials) the OIA often being administered in good fashion by officials determined to conduct themselves lawfully.
Unfortunately, I am also aware of numerous attempts by some officials to undermine the intent of Parliament regarding the OIA - and behave in a way quite contrary to the State Sector Code of Conduct.
Often the way these officials undermined the OIA was to deliberately avoid creating, or in some cases destroying written records. Avoidance included issuing explicit instructions to junior officials not to create certain records or to criticize and reprimand them when they had done so.
These issues were compounded by the migration, in the early 2000s from paper-based record keeping systems to electronic document management systems. This has further been aggravated by constant restructuring and the migration from one electronic system to another. Just to illustrate the difficulties - even as policy advisers working inside the agency holding the information, often it became very difficult to locate records that were more than 2 or 3 years old. Even contemporary records could be very difficult to locate as essentially every employee was delegated the task of doing their own archival filing and many records were either not filed or given unhelpful classifications making them difficult to locate.
"Fixing the OIA" will not be an easy or quick fix as it is not really about whether the Act needs this or that amendment - it is really about how government officials create and store information that it is often not in their best personal interests to create in the first place let alone make accessible to the public or sometimes even their fellow officials.
Therefore this review needs to look at supporting systems and institutions around the conduct and performance of officials. At the moment compliance is virtually a voluntary affair and it does not appear that everyone is volunteering their compliance.

2 Do you think these issues relate to the legislation or practice?

2:
It is essentially about practice - but laws are made to influence human behaviour. Therefore, a legislative amendment whether of the OIA or other legislation relating to public sector conduct and performance is likely to be part of the toolkit needed to address this policy problem.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Legislative change is usually a necessary but insufficient remedy for solving a policy problem.
This is particularly the case when it seeks to address a practice that was initiated by influential and powerful people in the executive branch of government and which has had around three decades to embed itself.
At the heart of any reform package must be legislative instruments that address such matters as the conduct, performance, transparency, accountability and integrity of government officials.
The State Services Commissioner has only recently begun to request reporting by chief executives on OIA administration. Even if it took the SSC several decades to recognise and respond to a well known issue, this was at least a good first step towards addressing it.
But this initiative itself lacks transparency as every agency develops their own system for essentially ‘marking their own homework.’
This reporting needs to evolve into a statutory system of regular and timely reporting that is overseen by independent officers of Parliament and perhaps even the judicial branch itself. The scope of reporting needs to be wholistic, looking at how state agencies are meeting their obligations under the Public Records Act as well as the OIA.
Then there is the ‘elephant in the room’ – how are the numerous instances of del berate non-compliance with the OIA etc to be dealt with?
Each such instance of del berate non-compliance is unlawful and a breach of the State Sector Code of Conduct – yet how may government officials have been

investigated for such misconduct? In my twelve years of experience inside government none were – indeed it was those who sought to uphold the law that were often punished.
The obvious solution is to create or strengthen sanctions in the OIA and related legislation, but these will have to be very carefully designed to avoid unintended consequences.

Optional questions

4 Name:

Name:
Jem Traylen

5 Organisation:

Oganisation:
PolicyWorks NZ

Response ID ANON-E8XQ-FTZU-F

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 15:36:12**

Our questions

1 In your view, what are the key issues with the OIA?

1:
I regularly request through MPI, confirmed Minutes of the Meeting held by the National Animal Welfare Committee.

Considering they are confirmed I find the length of time to receive them unacceptable. Often an extension is asked for. Increasingly, the minutes have information redacted.

2 Do you think these issues relate to the legislation or practice?

2:
Yes.

3 What reforms to the legislation do you think would make the biggest difference?

3:
More transparency. Reading previous minutes NAWAC seemed concerned that people were asking for copies of the minutes. In recent years they have provided a summary on the website in what I feel was an attempt to dissuade these requests.

Optional questions

4 Name:

Name:
Jill Latham

5 Organisation:

Oganisation:
Anti Rodeo Action NZ

Response ID ANON-E8XQ-FTZV-G

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 13:48:36**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Failure of department/agencies to fulfil their obligation to treat the disclosure as the starting point of the legislation.
Department's running their reply response to the last day - pedantic use of time frames as it advantages the provider of information.
Tricky and technical answers.

2 Do you think these issues relate to the legislation or practice?

2:
I am sure standard operational practice is used a lot to defeat both the intent of the legislation and its provisions.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Unfortunately, I do not know sufficient about the Act to comment, but I do think there could be more accountability on the part of the department and agency. Why should people have to go to the Ombudsman to 9 times out of 10 achieve full, or at least partial disclosure? It wastes our time and the time of the Office of the Ombudsman.

It could be set that Departments have to report to the Ombudsman quarterly how many OIA's were received, and then a break down from there - what provisions was documentation refused under etc -If repeat offenders do not lift their game then a FTE should come out of their budget and be allocated to the Ombudsman's Office so they can do more proactive policing.

Optional questions

4 Name:

Name:
Jane Carrigan

5 Organisation:

Oganisation:
Disability Advocate

Response ID ANON-E8XQ-FTZW-H

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 12:41:09**

Our questions

1 In your view, what are the key issues with the OIA?

1:
The Stats NZ view is that that there are three broad issues with the OIA:

i. Currently, proactively released information has none of the protections afforded to information that has been released following a request under the OIA. Information is hidden until asked for, rather than being open by default with protections. Agencies are prohibited in the way they can release information, and it becomes difficult to 'head off' burdensome requests for information without being able to proactively release information with protections.

ii. 'Fishing' OIAs suck up an unreasonable amount of agency time. In the digital age, collating information can be easy, but processing and assessing that information is a massive task. The OIA does not factor in the time it can take to carry out this assessment. 1982 was very different in how information was created and stored. In 1982 only key decisions were kept; in 2019 everything is kept, stored and searchable. Requests can very quickly become burdensome and unreasonable from an organisational perspective when scope is not very defined. For example, one recent request we received, with a clear and refined scope, was easily collated in a few hours. However, the result of the collation was over 50,000 emails, which were then filtered down to 400 pages of correspondence. These 400 pages in turn needed to be reviewed by the relevant people in the organisation (including those with subject matter expertise and OIA expertise) before we could be confident that they could be released. Furthermore, refining requests is often seen as a bad thing and is generally a combative process.

iii. There is no protection given to 'blue sky thinking', i.e. early thinking that may change considerably. Having to release this before it is formed encourages officials to not have those conversations, and if they do, not record it appropriately. More generally, agencies can be hesitant at times to record things that may be contentious.

2 Do you think these issues relate to the legislation or practice?

2:
In our view, these issues relate to both legislation and practice.

Continued improvements in practice of both agencies and requesters in some cases would make significant impact on overall experience of the OIA. Developing proactive release policies across government would ensure more information is readily available, allowing requesters to submit more refined, informed requests. Helping agencies and requesters understand how and when to best go about refining requests would both reduce burden on agencies and ensure requesters get the information they are looking for. There would also be considerable value in developing guidance around what can be considered free and frank, and whether or not it includes 'blue sky thinking'. In general, the Ombudsman's advice is accessible, but not definitive. While this may reflect the nuance of interpreting the Act, it limits the value of the Ombudsman's advice for practical use.

Conversely, expanding the protections of the OIA to include information that has been proactively released would support ambitions of open government, but would require legislative change. Similarly, the legislation does not recognise the significant amount of official information that is now created and stored, nor the significant amount of information that flows out of government in a less formal way. There would be considerable value in updating or modernising the legislation to reflect these matters.

3 What reforms to the legislation do you think would make the biggest difference?

3:
Reforming the protections for released information to include proactively released information would make a significant difference for Stats NZ, closely followed by ensuring the legislation acknowledges that the differences in the volume of information created, stored and managed by agencies since 1982.

In some cases (such as commercial sensitivity grounds) refining or modernising the wording would make a significant difference to the way legislation is interpreted by both agencies and requesters.

Optional questions

4 Name:

Name:
Jarrod Williams

5 Organisation:

Oganisation:
Stats NZ

Response ID ANON-E8XQ-FTZX-J

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 13:38:47**

Our questions

1 In your view, what are the key issues with the OIA?

1:
They are not filtered and taking away time from important work.

2 Do you think these issues relate to the legislation or practice?

2:
Practise.

3 What reforms to the legislation do you think would make the biggest difference?

3:
The level of importance of the question.

Optional questions

4 Name:

Name:
Judit Farquhar-Nadasi

5 Organisation:

Oganisation:
Department of Conversation

Response ID ANON-E8XQ-FTZY-K

Submitted to **Have your say about access to official information**
Submitted on **2019-04-18 12:41:10**

Our questions

1 In your view, what are the key issues with the OIA?

1:
Too much information getting redacted making the process useless

2 Do you think these issues relate to the legislation or practice?

2:
Both

3 What reforms to the legislation do you think would make the biggest difference?

3:
-An outside body to process requests when a department is found to be not capable.
-Require more justification when redacting information.

Optional questions

4 Name:

Name:
Hamish Buckley

5 Organisation:

Oganisation:

Bottcher, Jenna

From: Bottcher, Jenna
Sent: Thursday, 18 April 2019 9:17 AM
To: OIAfeedback@justice.govt.nz
Cc: Matheson, Georgina; Paltridge, Antony
Subject: Some thoughts for the review for the OIA

Hi team

Thought I would send through a couple of practical things we've come across with navigating some OIA requests:

- The interaction with Royal Commissions and Inquiries – while these may result in a suppression order, and there are grounds to withhold information once that has happened, there are no clear grounds for withholding information while the inquiry is being scoped or carried out. So technically unless you are covered by other grounds, you should be releasing information that may later be supressed. It would be good to have a specific ground for refusing these requests and perhaps revisiting the requests after the conclusion of the inquiry.
- Similarly, it gets messy where there are internal reviews underway, particularly where it's regarding an employment matter.
- I think the free and frank reason is open to being exploited, as it is very broad. I'm not sure how you would define it further though.
- I agree with the proactive release feedback that I think you'll already have received around not having legal indemnity. Particularly if the release is published after it's been released to the original requestor. Much greyer area if information is released before it's been requested, but where it's likely to be requested.

Other problems we've had, but that probably don't require a legislative solution – just noting these in case you do touch on any of this:

- A particular issue that's been discussed many times is the handing of draft documents. Especially in relation to free and frank. (I'm not sure how prescriptive you want the Act to be though, so some of this may be more matters that require explicit guidance or procedures from the Ombudsman.)
- Similarly, handling of employee details or the names or external people / members of the public differs greatly across agencies. For names, phone numbers, email addresses etc.
- Transfers not being accepted by other agencies – where we don't have the information we then have to decline the request, even where we know the info exists elsewhere.
- Requests for all emails – not only are these requests often substantial, but there are issues with staff who have left and accessibility of archived emails and deleted accounts (with then incur a cost to access). This is just a general technology / public records issue, and managing requests with some pragmatism.
- The interaction with PQs – where we would refuse a request of a certain size in a very short tight frame, but that you can't do that with written PQs. So more an issue with the Standing Orders rather than the OIA.
- The interaction with the Privacy Act – again where the OIA has more pragmatic grounds for refusing requests due to substantial collation, but under the Privacy Act if someone requests all emails about them / that mention them, we don't have those same grounds.

More than happy to discuss.

Cheers
Jenna

MINISTRY OF JUSTICE
Tāhū o te Ture

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Please note I do not work Fridays.

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31 March 2019

Submission on the Review of the Official Information Act 1982 (OIA)

I am a major user of the Act for research and advocacy purposes. The two areas in which I principally make applications relate to domestic policy and legislative reforms and New Zealand's approach to international economic agreements and negotiations. My approach is always informed by my statutory responsibility under the Education Act 1989 to exercise academic freedom responsibly and to fulfil the University's function of critic and conscience of society. In recent years my requests have related, in part, to research funded through major Marsden Fund grants.

The Act is long overdue for an overhaul. My experiences in the 1990s were sometimes frustrating, but there was an apparent commitment from most government agencies to comply with the Act. Almost without exception, my experience since the 2000s reveals a consistent, and often I believe deliberate, non-compliance with the purpose and spirit of the Act. These practices include:

- constant and repeated unilateral extensions of the date for compliance, often rendering the information of little use or limiting its potential for impact (for example in relation to public debate on negotiations or national impact assessments of concluded agreements, legislative proceedings, or Waitangi Tribunal proceedings);
- notification of unilateral extensions of time at the end of the statutory response period, meaning there is no realistic change of an effective review by the Ombudsman;
- transfer to other agencies, or even between a minister and their department, which starts the clock again;
- refusal to release information under both section 6 and section 9 of the Act on grounds that are never specified and hence extremely difficult to challenge;
- refusal to release information that was already in the public domain through media reports, such as the date and location for a round of negotiations, with such information sometimes only released during, or even after, completion of the round (potentially preventing my ability to travel to the venue if I did not have alternative sources of information);
- refusal to release names of New Zealand negotiators at negotiating rounds for 'privacy and security' reasons, even though similar information had previously been provided (designed to prevent me or others who regularly met with negotiators during rounds from contacting them);
- refusal of a Minister to even review documents that were subject to an OIA request (which was successfully reviewed by the High Court in *Kelsey v Minister of Trade* [2015] NZHC 2497);
- refusal to release categories of information and documents that were released by previous governments earlier in the life of the Act;
- release of a category of documents previously withheld under sections 6 and 9, because another government has released such documents (see the attached memorandum to Chief Ombudsman Beverley Wakem);

- trade ministers signing secrecy agreements with other states not to release documentation subsequent to the conclusion of negotiations, making it impossible for them to comply with obligations under the Act;
- oral briefings to ministers of which no notes are kept, including briefings by private consultants;
- final reports on work provided by private consultants and funded by the public purse that are delivered orally, again with no written record (examples are detailed in Appendix 1 of *The FIRE Economy. New Zealand's Reckoning,* Bridget Williams Books, 2015);
- narrow interpretations of the request without consulting me to establish the intended, and obvious, meaning and scope;
- extensive redactions that render information disjointed and largely meaningless;
- redaction of sources of communications, rendering the information incomplete and decontextualized, on the grounds of privacy, when release of similar documents by the Privacy Commissioner did not have that material redacted;
- inconsistent release of similar categories of documents across departments;
- lengthy review processes by the Chief Ombudsman's office that are not subject to any time limitations;
- official delays in responding to those reviews, which again are not subject to any time limitations;
- poor pro-active communications from the Ombudsman's office, resulting in repeated inquiries about the status of reviews – two current reviews relate to requests from late 2017 and have now been with the Ombudsman's office for almost a year (I am aware the Chief Ombudsman has been attempting to improve response rates, but to date I have not seen any change);
- inability under the Act to bring judicial review of non-compliance with obligations under the Act until the Ombudsman's review is completed; and
- approval by a previous Chief Ombudsman of a Minister's refusal to release information, which was overturned by the High Court.

I note that the New Zealand government has a particularly restrictive approach to interpretation of requests relating to international economic agreements. A review of the European Commission's practices by the European Ombudsman generated a fundamental shift in position, with the release of a much broader range of documentation (which applies to the current negotiations for a New Zealand EU free trade agreement). It would relieve the Ministry of Foreign Affairs and Trade and the Minister of much of the resource burden of OIA requests if New Zealand were to take a similar pro-active approach to release of these documents.

I have attached a memorandum discussing the EU approach, which I provided to the Chief Ombudsman in 2015 as part of the complaint which eventually went to the High Court on judicial review. Unfortunately, the Minister's action in this case was so blatantly in breach of the Act the Collins J did not provide a more detailed interpretation of the relevant provisions.

Further, in 2010, as part of a Marsden funded research, the Treasury refused to allow me to review documents relating to policy and legislative reviews in situ, as provided for under the Act. In 2011 the Treasury then sought to charge me approximately $11,000 for provision of that information, without having provided a prior quote. We finally settled for payment of $8500. These bona fide costs would have been significantly reduced had I been allowed to view the documents in situ. This

cost would have been prohibitive for most academic researchers. Again, I understand there are costs to government agencies who may not be properly resourced for this work in their appropriations, and that they may employ contract staff to process material. However, that is part of the cost of a democracy.

I have attached a memorandum to the former Chief Ombudsman in 2014, when she indicated an intention to review the Act, in which I expressed similar concerns.

Yours sincerely

FACULTY OF LAW
Professor Jane Kelsey

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19 September 2014

Dame Beverley Wakem
Chief Ombudsman
Office of the Ombudsman
Wellington

(04) 471 2254

Dear Beverley Wakem,

Review of the Official Information Act

I was very pleased to hear that you are planning to review aspects of the Official Information Act. As a long-term significant user of the Act I have become increasingly frustrated by practices that seem designed to minimise disclosure and maximise the length of time for processing requests. This appears to be for both political and fiscal reasons.

While I recognise that the amount of requests received by government agencies has increased and imposes a significant drain on their budgets, the Act is an important constitutional safeguard and one of the few ways that certain activities that take place within the government can be monitored.

I have been hoping to send a detailed memorandum to you regarding a number of issues that have arisen over the past three or four years, and still intend to do so when I have the time to compile the relevant documents. But I understand that you are finalising the terms of reference for your review so I wanted to highlight the following practices for you to consider:

1. Speeches by ministers where there is no written transcript posted on their website, not written notes are kept my the minister's office, and no transcript of the delivery has been recorded.

2. Non-government consultants are contracted to provide advice to ministers, but it is not provided in writing, and no notes are kept of the oral briefings given to the minister.

3. Basic information is withheld on spurious grounds – such as not disclosing which New Zealand officials are overseas on government business negotiating on an agreement where and on what dates on the grounds of security and privacy. That was

subsequently changed to not disclosing information regarding ongoing negotiations that was provided in confidence by another government – even when other countries have posted such information publicly.

4. Requests that are sent to the most appropriate minister or official and are forwarded to another agency after one or several weeks, and the date of the request starts again from the date of the transfer.

5. Not allowing review of documents in situ. This became a major problem when researching for a Marsden Fund project. Treasury declined to allow me to review documents in situ, as provided by the Act and as I have done on previous occasions with various agencies. They insisted on treating the request under the OIA. The first batch of documents was provided free, but the remained was charged for. There was never any formal quote or indication of the likely total cost. We finally settled for a sum over $10,000. Much of the information proved irrelevant to the research, which would have been discovered easily had I been able to review the documents in situ.

   I do hope to provide several specific documents – one being a complaint relating to the Trans-Pacific Partnership Agreement – but I wanted to alert you to these more general issues.

   Best wishes,

Professor Jane Kelsey

18 April 2019

Ministry of Justice
OIAfeedback@justice.govt.nz

Tēnā koe

We would like to make a submission on how the Official Information Act 1982 is working in practice. We consider that the Official Information Act 1982 should be reviewed and should be extended to include information that is not parliamentary proceedings from offices that service Parliament, i.e. Parliamentary Service, the Office of the Clerk, and Officers of Parliament.

The principles of the Official Information Act 1982 are to allow people to request official information to hold the Executive accountable to Parliament and to enable their more effective participation in the making and administration of laws and policies. The Official Information Act 1982 does not apply to the public service organisations that support Parliament, such as Officers of Parliament, Parliamentary Service, and the Office of the Clerk. To us, this raises issues about openness and transparency.

Parliament does have a protocol for the release of information from the parliamentary information, communication, and security systems. The protocol was developed as response to the Law Commission's recommendation that the Official Information Act be applied to parliamentary agencies. The application of the protocol is limited to members of Parliament, parliamentary parties, members of the Parliamentary Press Gallery, proceedings in Parliament, and parliamentary administration. The protocol outlines that the parliamentary agencies must develop guidelines with requests for information about parliamentary administration.

We understand that the officers that service Parliament have adopted guidelines under the Protocol for the release of information from the parliamentary information, communication, and security systems. However, those Guidelines are not available on the Parliament website and the majority of staff are unaware of their existence. The Guidelines also raise the issue that the control of information still remains solely with the Clerk, the General Manager of Parliamentary Service, or the Officer of Parliament on whether to release information. There is no accountability for delay or not releasing information, and no one to escalate a complaint to other than the Speaker of the House. We recommend that complaints should be made to the Ombudsman, as the Speaker is effectively the responsible Minister for those agencies, and maintains a very close relationship with the CEs of those agencies.

We understand that one of the reasons that these organisations are not subject to the Official Information Act is because of parliamentary privilege over its proceedings. We consider there are adequate protections in the Official Information Act that would ensure that parliamentary privilege is protected. Section 18(c)(ii) of the Act provides an exemption to the release of information if releasing the document would amount to a contempt of the House. Section 10 of the Parliamentary Privilege Act 2014 provides a good test for proceedings of Parliament. This could be extended to include parliamentary purposes (which is defined in Parliamentary Service Act 2000) to ensure that MPs are able to fulfil their role as members without being subject to the Official Information Act.

Another reason we are recommending reviewing the Official Information Act to enhance accountability in the wider public sector. These departments are non-public service departments or Officers of Parliament. However we note that, although these organisations are not core public service, they still receive public money for its corporate services and employ a number of staff. These organisations should be held accountable for its expenditure of that money and for its corporate processes and decisions. We consider that the principles of the Official Information Act should be extended to refer more generally to holding the state sector accountable.

To compare, courts and public inquiries are not subject to Official Information Act. However, the corporate documents relating to courts and public inquiries, such as salaries of employees and policy decisions, can be requested under the Official Information Act through seeking information from the Ministry of Justice and the Department of Internal Affairs.

We note that the Law Commission's report on the Official Information Act discusses a closer link between the Official Information Act and the Public Records Act 2005. Officers of Parliament, Parliamentary Service, and the Office of the Clerk are all subject to the Public Records Act. There is carve out for parliamentary documents, but the general understanding is corporate documents from those agencies must be deposited with the Chief Archivist. There seems no logical reason why the corporate documents of the Officers of Parliament, Parliamentary Service, and the Office of the Clerk are considered public records but are not able to be accessed by the public.

Nga mihi.

Bottcher, Jenna

From: s9(2)(a)
Sent: Thursday, 18 April 2019 8:36 AM
To: OIAfeedback@justice.govt.nz
Subject: OIA feedback

Dear Sir / Madam

I have made possibly over 500 OIA and LGOIMA requests to do with the Canterbury Earthquakes.

The current OI Act requires teeth.

MBIE are professionals at deception and refusing to answer OIA's. Their 'we have searched and could not find the information' repeatedly, suggests they merely stand on their balcony looking out over the Wellington waterfront and then state they could not find the information.

Similarly, when staff at EQC state privately that they decide what journalists get in their OIA in order to remove the damaging material - this is wrong.

One should not have to be a legal expert in wording an OIA in order to get a proper response. Departments regularly determine the exact legal meaning, rather than the applicants intent. And then restrict information based on their legal opinion of what they think the request means. This is poor.

Example: MBIE using false personas for tracking earthquake claimants and their experts on internet pages. They refuse the data citing that providing the information could hinder litigation. This is absurd and results in a complaint to the Ombudsman. So, they have found to be wanting, so refuse to honestly answer the information, requiring substantial additional work by the applicant to try and get the information.

Overall, some departments seem to provide the information readily and honestly. But, it seems the departments and Ministers that have the most to hide, and the most to lose, make the OIA process the hardest.

The OI Act needs more teeth. Citizens should have a right to know what lies the Government are perpetrating - e.g. MBIE with the Canterbury earthquake guidance.

I simply do not have time to present anything more detailed than this.

regards

adrian cowie

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Whether there should be a review of the Official Information Act 1982

Ministry of Justice consultation, 8 March – 18 April 2019

Submission in response

Andrew Ecclestone

18 April 2019

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About the submitter

1. I have worked on freedom of information legislation, policy and practice since 1993. I am a former Senior Investigator Official Information Practice Investigations in the Office of the Ombudsman, where I worked for 12 years, including on the 2014-15 investigation leading to the Chief Ombudsman's report, *Not a game of hide and seek*. I have also worked for the State Services Commission on implementation of the first Open Government Partnership action plan. From 2001-3, I was a Policy Manager for the UK Department for Constitutional Affairs, working on implementation of the Freedom of Information Act 2000. I worked for the UK Campaign for Freedom of Information from 1993-2001, and have consulted for the World Bank, UNDP, USAID, the Council of Europe and the Open Society Justice Initiative in various countries. I was a speaker at the 3rd, 7th and 11th International Conferences of Information Commissioners, in addition to organising the 5th Conference held in Wellington. I have a Masters in Public Policy from Victoria University of Wellington.

Introduction

2. I welcome the Government's decision to hold a public consultation on whether it should undertake a review of the Official Information Act 1982 (the OIA). Information previously disclosed in response an OIA request indicated that it was minded only to seek views from a limited range of people.[1] This would have been a mistake, as the OIA confers rights on, and therefore belongs to, everyone living in New Zealand. As the late Robin Cooke said of the OIA in *Commissioner of Police v Ombudsman*,

> *The permeating importance of the Act is such that it is entitled to be ranked as a constitutional measure.*[2]

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[1] *Possible legislative reform to the Official Information Act 1982*, Report SSC 2018/519, 17 May 2018, and *Meeting with Ministers Hipkins and Curran – possible reform of the Official Information Act 1982*, briefing for Minister of Justice Andrew Little, 8pm 22 May 2018. Accessed from: https://www.documentcloud.org/documents/5130522-AndrewLittle-OIAReform-16Nov2018.html

[2] *Commissioner of Police v Ombudsman* [1988] 1NZLR 385 at page 391, Cooke P

3. The idea that suggestions for reform of one of the laws that makes up New Zealand's constitution would only be invited from a group of people handpicked by officials and Ministers was quite bizarre. Doing so would have been contrary to one of the purposes of the OIA, which is to enable the people of New Zealand to participate effectively in the making and administration of laws and policies.[3] It would also have been contrary to the commitments given by the Government when New Zealand joined the Open Government Partnership (OGP) in 2014. A condition of joining the OGP was that the Government endorsed the *Open Government Declaration*. The *Declaration* expands on the values encapsulated in section 4 of the OIA and includes the following:[4]

> *We value public participation of all people, equally and without discrimination, in decision making and policy formulation. Public engagement, including the full participation of women, increases the effectiveness of governments, which benefit from people's knowledge, ideas and ability to provide oversight. We commit to making policy formulation and decision making more transparent, creating and using channels to solicit public feedback, and deepening public participation in developing, monitoring and evaluating government activities. We commit to protecting the ability of not-for-profit and civil society organizations to operate in ways consistent with our commitment to freedom of expression, association, and opinion. We commit to creating mechanisms to enable greater collaboration between governments and civil society organizations and businesses.*

4. Since the consultation launched by the Ministry of Justice on 8 March 2019 is being held in the context of a commitment made by the Government in its 2018-20 Open Government Partnership National Action Plan (NAP), it was

[3] Official Information Act 1982, section 4(a)(i).

[4] *Open Government Declaration*, Open Government Partnership, September 2011. https://www.opengovpartnership.org/open-government-declaration

clearly appropriate for the Government to run a public consultation prior to Ministers being provided with advice on how they might proceed.[5]

5. Closer to home, the Policy Methods Toolbox developed by the Policy Project (hosted in the Department of Prime Minister and Cabinet) also makes clear why it was appropriate for the present consultation to be open to the public, as well as why the Government and the public would benefit from a public review of the OIA:

    - *Public participation can improve policy quality. Policy and services are increasingly being designed and delivered through greater collaboration with users or the broader public. This helps to better understand problems and risks, and to craft solutions that are more likely to meet user needs.*
    - *Participation can improve legitimacy and impact. Decisions that arise from open and collaborative processes with strong user input can be more credible.*
    - *Participation is important when hard choices have to be made, when disruption may result, or when we want to govern what people and organisations can do.*[6]

6. This submission argues that the case for a review of the OIA is unanswerable, as the law clearly needs improvement that goes beyond what may be included in a Statutes Amendment Bill. Further, if the Government were to draft and introduce an OIA Amendment Bill without first consulting the public on what changes should be made to their rights to information, it would clearly be acting contrary to the spirit of the OIA and the country's membership of the OGP, as well as flouting guidance from DPMC. The ability to make submissions to a select committee on a Bill is a flawed process, that would in no way make up for the loss of an opportunity to provide input earlier in the policy development process. This submission also argues that there are

[5] Disappointingly, the homepage of the Ministry's website has no direct link to its 'consultation hub', and therefore misses the opportunity of advertising all its consultations (including this one) to visitors to its website.

[6] *Public participation,* Policy Methods Toolbox, The Policy Project. Department for Prime Minister and Cabinet. 16 August 2017. Accessed from https://dpmc.govt.nz/our-programmes/policy-project/policy-methods-toolbox/public-participation#why

practice improvements that can and should be made, but is clear that without statutory improvement of the OIA, experience shows us that the political and administrative willpower to improve the operation of the Act is likely to wither over time as changes in government occur and officials move to different positions or retire.

The merits of a review of the OIA

7. The commitment in the NAP merely states that the Ministry will:

> *Test the merits of undertaking a review of the Official Information Act 1982 and provide and publish advice to Government.*[7]

8. The NAP then outlines the approach to the commitment that the government – in the form of the two lead agencies, the Ministry of Justice and State Services Commission – will take:

> ***Approach:***
> *There have been continued calls to take another look at the legislation. The conversation and workshops with civil society to develop this Plan also generated ideas and suggestions to improve official information legislation and practice. This input will be built on to inform advice to Government on whether a formal review of official information legislation would be worthwhile, or whether the focus should instead remain on achieving practice improvements.*

9. Similarly, the introductory 'Overview' to the present consultation on the Ministry's website states that:

> *Your feedback will help inform a decision by Government on whether to review it, or whether to keep the focus on practice improvements.*
> *…*

[7] *National Action Plan 2018-2020,* New Zealand Government, December 2018. Commitment 7, page 30. Plan: https://www.ogp.org.nz/assets/Publications/91b28db98b/OGP-National-Action-Plan-2018-2020.pdf Accessed from: https://www.ogp.org.nz/new-zealands-plan/third-national-action-plan-2018-2020/

> *In recent years, the focus has been on improving agency performance on implementing the spirit and intent of the OIA*.[8]

10. Therefore, while the criteria against which the merits of a review will be tested have not been published, the implication is that submitters need to persuade officials and Ministers that there are things that need fixing, or opportunities for improvement, that cannot be achieved through policy and practice improvements alone. While the recent work by agencies on practice improvements is welcome, this is somewhat surprising, for a number of reasons. The most facile and easily pointed out reason for why there should be a review and statutory improvement is that more than three years after *Not a game of hide and seek* was published, the Ministry of Justice itself has not implemented recommendation 6 from the Chief Ombudsman. This stated:

> *All agencies should ensure their websites have a page, **no more than one click away from the home page**, which provides the public with key information on how to make a request for official information, what the agency's internal policies and guides on processing OIA requests are, who to contact for assistance, and the information the agency supplies to the Ministry of Justice for inclusion in the Directory of Official Information. (emphasis added)*[9]

11. The Ministry, charged with the administration of the OIA overall, does not have a link directly from its homepage to the page which explains how to make OIA requests. Instead, the reader has to find a link entitled 'About the Ministry' in small type at the bottom of the homepage, and then from that page click on the link for the OIA information. If the public cannot rely upon the lead agency for OIA policy and practice to implement basic practice recommendations from

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[8] *Have your say about access to official information*, Ministry of Justice, 8 March 2019. Accessed from: https://consultations.justice.govt.nz/policy/access-to-official-information/

[9] *Not a game of hide and seek: Report on an investigation into the practices adopted by central government agencies for the purpose of compliance with the Official Information Act 1982*. Office of the Ombudsmen, December 2015. Accessed from: http://www.ombudsman.parliament.nz/newsroom/item/chief-ombudsman-releases-report-into-government-oia-practices

the Chief Ombudsman, it seems self-evident that they should not trust government and Ministers to adopt and implement more challenging practices to improve the operation of the OIA.[10]

12. Notably, the Ministry is not alone in failing to implement this recommendation from the Chief Ombudsman. The OGP's Independent Reporting Mechanism (IRM) reviewer for the 2016-18 NAP states in her *End of Term Report* that most government websites do not do this. Her audit of agency websites found that only Oranga Tamariki, the Ministry of Defence and the State Services Commission did so.[11] Milestone 1 of Commitment 2 in the 2016-18 NAP, which was to

> *Ensure information about the OIA (how to make requests, etc) and responses to requests are easy to access on agency websites. This could include development of single OIA web pages for agencies.*[12]

13. This shift from the Chief Ombudsman's recommendation, to a subtly weakened commitment in the NAP, provides further reason to be sceptical of the idea that the public can trust the government to implement necessary practice recommendations without statutory underpinning of them.

14. This weakening of the improvement recommended by the Chief Ombudsman is in spite of the fact that the State Services Commissioner's introduction to the NAP included the following:

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[10] The Ministry of Justice does not even list the Official Information Act amongst its policy responsibilities on the pages for Human Rights Law (https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/human-rights/domestic-human-rights-laws/) or Constitutional Law (https://www.justice.govt.nz/about/learn-about-the-justice-system/how-the-justice-system-works/the-basis-for-all-law/) and has not done so for years.

[11] *Independent Reporting Mechanism: New Zealand End of Term Report 2016-18*, Open Government Partnership, 2019. Page 16. Accessed from https://www.opengovpartnership.org/sites/default/files/New-Zealand_End-Term_Report_2016-2018.pdf

[12] *Open Government Partnership New Zealand National Action Plan 2016-18*, New Zealand Government, October 2016, page 11. Accessed from: https://www.ogp.org.nz/assets/Publications/953677eaeb/New-Zealand-Action-Plan-2016-2018-updated.pdf

> *The State Services Commission is committed to leading the work programme to improve agency practice around the OIA. A cross-agency team is being established to take this work forward without delay, working in partnership with the Office of the Ombudsman.*[13]

15. While this is a trivially easy recommendation for agencies to have implemented – and to fix if they are reminded by the present Ombudsman to do so – it belies a more serious point about why there should now be a review of the OIA. After *Not a game of hide and seek* was published in December 2015, neither Ministers nor agencies ever saw fit to produce a full response to the Chief Ombudsman's recommendations. Any reliance the public might have placed on Parliament to scrutinise the Executive, and follow up its single hearing on the report by asking the State Services Commissioner or Secretary for Justice to give evidence on how they would respond to the recommendations, would also have been sadly misplaced. Besides the Commissioner's introduction to the 2016-18 NAP cited above, the only statement issued by a government agency or Minister in response to the Chief Ombudsman's report was a media statement issued on 20 October 2016 at the time the NAP was published.[14]

16. This alone creates serious doubt as to why the public should trust government agencies and Ministers to commit sufficient willpower and resources to address deficiencies in the operation of the OIA that have been apparent to many for a number of years, were crystallised in the Chief Ombudsman's report of December 2015, and which have since been supplemented by further agency-specific reports published by the Ombudsman following investigations conducted by his Official Information Practice Investigations (OIPI) team.[15]

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[13] *Ibid*, page 4.

[14] *Joint work to improve OIA responsiveness*, Media Statement, State Services Commission, 20 October 2016. Accessed from http://www.ssc.govt.nz/media-statement-joint-work-improve-oia-responsiveness

[15] *Official Information Practice Investigations*, Office of the Ombudsman, 2018. Accessed from: http://www.ombudsman.parliament.nz/resources-and-publications/latest-reports/official-information-practice-investigations-oipi

17. It is notable that in its 1980 report, the Committee on Official Information (hereafter known by its more commonly known name, the Danks Committee) rejected non-statutory commitments to improved practices in this field:

> *From our study of the "code of practice" approach, we have concluded that in New Zealand circumstances injunctions to officials would not work without a firm commitment by government to back them. And we doubt whether any commitment which did not have the force of law would either be acceptable to the community as an earnest of government intentions, or give officials a sufficient base to take substantial steps towards further opening up official information in their day-to-day operations.*[16]

18. However, following this introductory illustration of why there is merit in conducting a review, as opposed to continuing with the current hodge-podge of partially implemented practice improvements, let us return to how officials may advise Ministers on whether to conduct a review of the OIA.

19. The approach set out in the NAP commitment and introduction to the present consultation suggests that a review of the OIA will take place if the following conditions are met:

    i. Opportunities for improving openness via the OIA, or fixing deficiencies in the law, are identified that cannot be addressed through policy or practice improvements alone; **and**

    ii. The Government actually wants to seek input on these issues prior to introducing legislation to amend the OIA.

20. There is no guarantee in the text of the Government's commitment in the NAP that such a review would actually seek to hear from the general public on these issues, rather than simply rely on advice from officials and possibly a few hand-

[16] *Towards Open Government*, *General Report,* Committee on Official Information, December 1980, paragraph 61. Accessed from http://www.ombudsman.parliament.nz/resources-and-publications/general-information/danks-committee-reports

picked 'stakeholders'. If the Government did not invite the public to make submissions on improvement of the OIA though, it would – as pointed out in paragraphs 2-5 above – be proceeding in a manner which is clearly contrary to the spirit and purpose of the OIA itself, to the OGP's values of openness and public participation, and to the government's own guidance on development of high quality policy. It seems to me that many people would clearly see OIA reform as an instance where the function of reform must be closely aligned with form in which it is carried out.

21. There are two alternatives to a public review of the OIA.

22. First, the Government may decide that only reforms to operational practices are necessary. But, as noted above, there has been no coherent government response to *Not a game of hide and seek* after three years, and the actions taken have therefore been haphazard and lacking in consistency of implementation. This means that – aside from inferences that might be drawn from the lack of action on some issues - the public has no clear idea of what practice reforms the present Government agrees with the Ombudsman on, where it disagrees and will do something different (and what the desired outcome is), or disagrees and will do nothing. The public also has no idea whether the Government has in mind other practice reforms not identified by the Law Commission in 2012, the Ombudsman in the 2015 report, or in the subsequent OIPI reports. The absence of a coherent and clearly articulated statement of the current Government's position means that if it were to decide only to proceed with practice improvements, the Government, agencies, the Ombudsman and the public would all benefit from a clear statement of:

    - the outcomes the Government is seeking;
    - what actions it will take to try and achieve those outcomes and why it believes the selected actions are the correct ones;
    - what inputs are needed (both from the Government and from other actors); and

- the measures against which the public will be able to transparently evaluate the success or otherwise of the proposed course of action.

23. Second, the Government may agree that some things in the OIA need legislative amendments to fix, or that there are areas where a 37-year-old law could be improved, and proceed to introduce an OIA Amendment Bill without first seeking the public's views. It seems from the information disclosed in response to an OIA request (see note 1 above), that a very limited range of issues are being considered, such as (qualified) protection against legal action for Ministers and agencies that choose to release information proactively. This may be driven by Ministers only making modest requests for advice from their officials – perhaps because they are unaware of the progress made in other jurisdictions – or it may be driven by institutional reluctance by officials to embark on more substantive reform.[17] If the latter, then the public are likely to question whether it is appropriate for officials to try and shape the agenda on this topic given their inherent conflict of interest.

24. There has been no indication yet that the present Government Ministers for Justice and State Services have revisited decisions made by the previous National Government in response to the Law Commission's 2012 recommendations, in spite of the current Government's stated commitment to greater openness. This means we also do not know if they intend to implement any of these recommendations either.[18] It is quite possible that after nine years in opposition, Ministers have been too busy with other matters to spend time on this issue. If Ministers do decide to introduce a Bill to amend the OIA without a prior public review, not only would it be contrary to the spirit of the

[17] For example, in the advice disclosed to an OIA requester (see note 1 above), officials provided an Aide Memoire to the Minister of Justice on 13 February 2018. Paragraph 13 of this Aide Memoire advised Ministers that neither the US, Canada nor Australia applied their freedom of information law to Congress or Parliament, but failed to point to more recent examples such as the UK, where the FOI Act does apply to Parliament.

[18] The Law Commission's report, *The Public's Right to Know*, R125 published on 25 July 2012, and the then Government's response, published on 4 February 2013, can be accessed from the Law Commission's website: https://www.lawcom.govt.nz/our-projects/official-information-act-1982-and-local-government-official-information-act-1987

OIA and OGP, but there is a serious likelihood of missing the opportunity to get reform of the law in this area right. Ministers and officials would not hear about innovations in freedom of information (FOI) practice and law in other jurisdictions, and they would be much less likely to put forward proposals which aligned desired outcomes for OIA reform with improvements in the Public Records Act (PRA), the Local Government Official Information and Meetings Act (LGOIMA), and the Ombudsmen Act (OA). The Government would be legislating to amend people's constitutional rights, without first explaining the values that drive the proposed reform or what they are intended to achieve. This seems deeply counterintuitive, and unlikely to succeed in high quality law reform.

25. To conclude then, the merits of the Government conducting a public review of the OIA are clear:

- Actions to deliver OIA practice improvements have been haphazard in choice and in quality of implementation so far, so we should not rely on more of the same to achieve the changes needed;
- Practice improvements cannot overcome the obstacles to achieving desired outcomes that are present in the current law;
- Ministers and officials who have been occupied with other matters of law reform since the 2017 general election are likely to be unaware of the progress made in other jurisdictions, and inviting public submissions as part of a review will enable this to occur;
- High quality law reform to deliver substantive improvements to the openness of New Zealand's governance and institutions is likely to benefit from a clear statement of the Government's values and objectives in this field. Inviting comments and suggestions on how to achieve them will enrich the information officials can draw upon when providing analysis and advice to Ministers on how to proceed;
- A public review will enable a more holistic consideration of how related legislation such as the Public Records Act, LGOIMA and Ombudsmen Act also need amendment to ensure they complement each other in contributing to openness and high-quality management of information held by government;

- Proceeding directly to the introduction of an OIA Amendment Bill will not only result in missed opportunities but also increase political and media friction, and diminish public trust in Ministers and officials; and

- A public review of the OIA is necessary if the Government is committed to the spirit and purposes not only of the OIA but also New Zealand's membership of the Open Government Partnership, and the government's own guidance on policy making.

What are the key issues with the OIA?

Introduction

26. This section of my submission considers both legislation and practice. This is to address both the first and second questions asked in the Ministry's online consultation form.

27. Inevitably issues of legislation and practice are intertwined, as legislation creates the framework of requirements, incentives, and disincentives that drive both good and poor practices in the operation of the law. However, this submission will not delve too deeply into the detail of these points, since it is not a response to a review of the OIA, but to the question of whether there should be a review. To that end, a subset of the key issues has been selected to demonstrate how practice improvements can either not be delivered without legislative reform, or would be supported by it.

The legislative framework

28. At the time that the OIA was drafted and enacted, there were very few other FOI laws elsewhere in the world to draw upon for drafting inspiration. Only four FOI laws had been implemented at the time the Danks Committee was undertaking its work, and of those, the USA was the only English-speaking nation amongst them.

29. It was therefore not surprising that little research into the operation of these laws existed at the time that the Danks Committee undertook its work and drafted the Bill that became the OIA. It is to the credit of the Committee that in spite of this lacuna, they put forward proposals that showed considerable foresight as to what was needed to sustain an FOI law in the long run, if it was to go beyond a basic mechanical framework for requests and dispute resolution, and help deliver an outcome of greater openness and public participation in policy debates. One clear example of this was the Committee's proposal for an Information Authority, an independent body with functions that would include:

- A regulatory function to receive submissions, conduct hearings, establish guidelines for administrative action, and to define and review categories of information for routine availability;
- A monitoring function to keep the OIA under review, along with other legislation and practice in the information field, and to recommend changes to the Government and report to Parliament – with such recommendations being made public, along with the Government's response to them;
- Report publicly on progress in opening up government, as *'Public confidence demands that the bureaucracy should not be seen to be the final judge of its own virtue in this matter.'*[19]

30. The Committee clearly saw the Information Authority's role as separate from that which would be performed by the State Services Commission.[20] The Commission was to have an 'information unit' of three to four officials, and *'would essentially:*

- *work with departments and agencies to develop systems and standards which can help them carry out their responsibilities under the new legislation;*
- *advise on mechanisms, develop training programmes, and co-ordinate the preparation of first-line information aids such as directories of Government organisations and their functions and powers;*
- *advise the Information Authority of progress made and problems encountered in these areas.'*[21]

31. Sadly, during the passage of the Official Information Bill, a 'sunset clause' was added to the provisions creating the Information Authority, meaning that a key part of the freedom of information ecosystem ceased to exist on 30 June 1988.[22]

[19] *Towards Open Government, General Report,* op cit, paragraph 114.

[20] *Ibid*, paragraphs 94 and 115.

[21] *Ibid*, paragraph 94

[22] See section 53 of the Official Information Act 1982.

32. The demise of the Information Authority, and absence of a unit within government that has statutory responsibility to do what the Danks Committee envisaged the SSC would do, has – in combination with the reforms introduced by the State Sector Act 1988 – in my opinion led to an atrophy of the freedom of information system in New Zealand. The problems caused by the demise of the Information Authority were also recognised by the Law Commission in Chapter 13 of its 2012 report, *The Public's Right to Know*.[23] This cannot be remedied by policy directive alone, as both the Danks Committee and Law Commission recognised, and is not an appropriate role for the regulator of the FOI system. The creation of a new institution within the FOI system is not something that should be left to an OIA Amendment Bill that is introduced without a prior public review.

33. A second area where the need for a public review of the OIA is clear is on the topic of redrafting the law for two major structural reasons:

- combining the OIA with the relevant aspects of its local government counterpart, the LGOIMA; and
- to make the OIA free-standing, removing the linkages and dependency on the Ombudsmen Act.

34. While the Law Commission concluded that the arguments were finely balanced on combining the OIA with the LGOIMA, (see paragraph 16.36 of *The Public's Right to Know*), the Ombudsmen were not so hesitant. In their submission to the Law Commission, the Ombudsmen said:

> *We advocate for there to be one Act covering both central and local government. In our view, New Zealand's freedom of information regime would be more effective if it was unitary and of universal application. Having two pieces of legislation containing essentially the same provisions but with different statutory references complicates the*

[23] See note 18 above, especially paragraphs 13.1-13.2

> *task of educating agencies and the general public about the operation of the legislation.*[24]

35. The Ombudsmen also anticipated the Law Commission's hesitation about combining the two pieces of legislation, stating:

> *We think any differences between the central and local government regimes are not insurmountable, and that they could be overcome with careful drafting*.[25]

36. There are now 127 countries with freedom of information laws, the vast majority of which have a single piece of legislation covering both central and local government. The Law Commission's hesitation about LGOIMA also governing the public's rights to attend local authority meetings could be dealt with by either having a free-standing law on open meetings, which should apply to a broader range of organisations than LGOIMA does at present, or by dealing with this issue in a separate part of the combined law.

37. In relation to the second main structural reason for redrafting the OIA, the Law Commission proposed replicating the relevant provisions of the Ombudsmen Act in the OIA, to facilitate ease of understanding of the regulator's powers and complaints processes.[26] The Ombudsmen agreed with this, stating in their submission:

> *We agree with the Law Commission that the legislation should be self-contained, incorporating relevant provisions from the Ombudsmen Act*

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[24] *Submissions of the Ombudsmen – the Public's Right to Know*, Office of the Ombudsmen, 17 December 2010. Accessed from http://www.ombudsman.parliament.nz/system/paperclip/document_files/document_files/346/original/review_of_the_oia.pdf?1346369926

[25] *Ibid*

[26] *The Public's Right to Know, Issues Paper 18,* Law Commission, 29 September 2010. Paragraphs 11.18-11.19. Accessed from https://www.lawcom.govt.nz/our-projects/official-information-act-1982-and-local-government-official-information-act-1987

(OA) explicitly rather than by reference, and that it should be redrafted and re-enacted.[27]

38. Making the OIA free-standing, and removing the current inter-dependencies with the Ombudsmen Act also provides the opportunity to revisit whether the Ombudsmen should remain the regulator of New Zealand's FOI regime. Although the Law Commission concluded that they should, there are matters of principle to suggest that they should not. Primarily this revolves around the Ombudsmen's reluctance to be given the power to make the final decision on whether official information should be released, and to be able to order departments and other public authorities to do so. As the Law Commission explains in paragraphs 11.54-11.56 of the *Issues Paper* the Ombudsmen resisted this both in 1981 and again in 1987, on the basis that exercise of such a power would be fundamentally contrary to the nature of an Ombudsman's office, which is to persuade a department to make amends when an Ombudsman forms an opinion that it has acted unreasonably in relation to a matter of administration.[28] On both occasions the Government and Parliament decided to retain the right of the Executive to veto an Ombudsman's recommendation that information be disclosed. In 1987, the then Labour Minister of Justice, Geoffrey Palmer, wanted to remove the veto altogether. It was only because the Chief Ombudsman indicated that if this was done he no longer wanted the official information complaints function (meaning the Government would have to create a new regulator, in the form of an Information Commissioner) that the Government resiled, and the Minister instead drafted a provision that created a serious disincentive to the use of the Executive's veto power. Sir Geoffrey has since indicated that he thinks the responsibility for supervising compliance with the OIA should be removed from the Ombudsmen, and given to a new body, partly because he still believes the

[27] See note 24 above.

[28] "*The abolition of the ministerial power of directive would result in the Ombudsman's decision becoming a binding directive and thus a decision. Such a change would herald a major departure from the traditional characteristics of the Ombudsmen"* Report of the Ombudsmen for the year ended 31 March 1985, [1984 -85] 1 AJHR A3 8

veto should be removed from the OIA altogether, but also because he believes a number of other advantages would flow from this.[29] Sir Geoffrey concluded this part of his 2012 paper in the following manner:

> *Fourth, the importance of transparency in the government decision-making process is an important and growing trend internationally. More robust measures towards this end are warranted in New Zealand in my view. The New Zealand legislation has been a success, but as the Law Commission review demonstrates there are problems that need to be addressed. I would like to see the information issue elevated and enjoy the focus of a new agency that can develop new approaches. My conclusion is that the time has come in New Zealand to push the boat out a little further on official information.*

39. Sir Geoffrey also baldly stated of the OIA that:

> *Redrafting the whole Act is essential if real progress is to be made in improving access to official information.*[30]

40. Removal of the veto is key issue in New Zealand's FOI regime meeting what are increasingly recognised as international standards for access to official information. One of the fundamental principles of FOI laws is that the final decision as to whether a department or Minister must disclose the information at issue must lie with an arbitrator that is independent of the Executive. The 1987 amendments to the OIA recognise this in a very convoluted manner, by providing that the use of the veto can be challenged in the Courts by the requester, at the government's expense. But the existence of the veto is, as

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[29] *Constitutional Reflections On Fifty Years Of The Ombudsmen In New Zealand*, Sir Geoffrey Palmer QC. Paper as originally delivered to the World Conference of the International Ombudsman Institute in Wellington, November 2012 accessed from http://www.theioi.org/downloads/9v7uf/Wellington%20Conference_63.%20Plenary%20VI_Geoffrey%20Palmer%20Paper.pdf . An updated version of the paper, commenting on the then National Government's response to the Law Commission's 2012 Report on the OIA can be found at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2404104

[30] See the updated version of the paper cited in note 29 above, also found in VUWLRPPC 5/2014 or as 4 VUWLRP 30/2014, page 797

Sir Geoffrey has indicated, wrong in principle. In practical terms, since no regulator wants to see their judgment on interpretation of the law rejected by the Government of the day – it implies a lack of confidence in the regulator's capabilities and decision making – the existence of the veto is also likely to have a chilling effect on either the Ombudsman or any other regulator given the OIA complaints function. This was acknowledged in the Law Commission's *Issues Paper*, which stated:

> *Its very presence may sometimes lead to more moderate positions being taken.*[31]

41. Even if a decision is made to ignore one of New Zealand's more eminent legal experts and retain the Ombudsman as the FOI regulator, making the OIA jurisdiction free-standing of the Ombudsmen Act would still have advantages. One of the more significant of these would be the replication of the Ombudsmen's power to initiate an investigation without first receiving a complaint, found in section 13(3) of the Ombudsmen Act. The Ombudsmen have used this power on several occasions in recent years to review the OIA practices of central and local government bodies, and in 2017 created a new team to carry out a rolling programme of investigations of public authorities' FOI capabilities and practices.[32] However, there are problems for the Ombudsmen's functions in the official information field in relying upon his Ombudsmen Act jurisdiction. First, because Ministers are outside the scope of the OA since the function of an Ombudsman under that Act is to investigate 'matters of administration'. Second, because the effect of section 13(7)(d) of the Ombudsmen Act is to remove the Ombudsmen's ability to investigate matters of administration by the Police. This means that the Ombudsman has no authority for his new team to look at the FOI practices of key institutions, including that which receives more OIA requests than any other in the country,

[31] *The Public's Right to Know, Issues Paper 18,* paragraph 11.58. See note 26 above.

[32] The Official Information Practice Investigations team, details of which can be found here: http://www.ombudsman.parliament.nz/resources-and-publications/latest-reports/official-information-practice-investigations-oipi

and those who are at the apex of our system of government. Replicating in an updated OIA the power to conduct self-initiated (or 'own motion') investigations is key to the regulator's ability to provide Parliament and the public with assurance that all agencies subject to the law are following good practices and have the necessary capacity and capability to comply and give effect to people's rights to information.

42. The final issue to be mentioned at this stage of considering whether the framework of the FOI legislation merits a public review of the law is the almost non-existent connection between the OIA and the Public Records Act 2005.

43. The Law Commission's 2012 report made one minor recommendation in this area, that the Ombudsman be empowered to notify the Chief Archivist if he or she receives a complaint that a department, Minister or other organisation has refused a request under sections 18(e), 18(f) or 18(g) of the OIA.[33] These are the provisions concerning the non-existence or inability to find the information requested, the inability to provide the information without 'substantial collation or research', or that the information is not held. The Official Information Amendment Act 2015 inserted section 28(6) of the OIA to give effect to the Commission's recommendation. How often this provision has been used since it was enacted four years ago is unknown, a by-product of there being no statutory regime for collection and publication of statistics about the operation of the OIA.

44. The Law Commission's report was however, remarkable for the lack of its curiosity about how other jurisdictions overseas had considered the relationship between public records legislation and FOI. It also appears to have accepted at face value the requirements of section 21(1) of the PRA as meaning that records be maintained for 25 years.[34] In reality, the General

[33] Recommendation R133. See page 361 of *The Public's Right to Know*, *op cit,* note 17 above.

[34] See paragraphs 15.23 of the *Issues Paper*, and 15.7 of *The Public's Right to Know*.

Disposal Authorities issued by the Chief Archivist permit departments to dispose of a significant portion of the records they hold after only 7 years.[35]

45. Compliance with the PRA is audited by the Chief Archivist, although there have been concerns expressed by the information management profession as to the utility and validity of the reports resulting from these audits. These concerns have led to a commitment in the 2018-20 Open Government Partnership National Action Plan on developing and implementing a framework on public reporting on *'how well government is managing information'*.[36]

46. The 2015 report from the Chief Ombudsman contains five recommendations specifically under the heading of information management policies and systems, one which says the Ministry should work with SSC and Archives New Zealand to develop a model information search policy for agencies to apply when responding to requests, and there are several other recommendations which have clear information management dimensions.[37] In the absence of any government response to these recommendations by the Chief Ombudsman, it is fair for the public to assume that no work has been taken forward on these in the three years since they were made. This reinforces the earlier points about the need for statutory underpinning of key practice requirements.

47. In other jurisdictions, such as the United Kingdom, there is a tighter relationship between FOI and public records legislation. Section 46 of the UK Freedom of Information Act 2000 requires the creation of a Code of Practice on good records management practice, while section 47 places a duty on the Information Commissioner to promote observance of that Code of Practice. It also empowers the Commissioner to assess whether a public authority is following good practice, and requires the Commissioner to consult with the

[35] See General Disposal Authority 6 https://records.archives.govt.nz/resources-and-guides/general-disposal-authority-6/ and General Disposal Authority 7 https://records.archives.govt.nz/resources-and-guides/general-disposal-authority-7/

[36] Commitment 10, page 36. See note 6 above, and http://archives.govt.nz/advice/our-projects-and-work/open-government-partnership-third-national-action-plan

[37] See recommendations 17-21, and 31. Also, 12, 13, 22 and 37-43.

Keeper of Public Records about authorities' observance of the Code of Practice.[38]

48. Section 10 of Norway's 2006 revision of its FOI law requires agencies to create a journal pursuant to the requirements of the Archives Act and associated regulations, and empowers the government to make regulations about making the journal available on the internet.[39] This has led to the creation of an online system for querying the government's electronic document management systems, known as *e-Innsyn*.[40] The system provides metadata about more than 39 million government records, with some agencies now also using the system to make the full document available as well. As a corollary to this point about improving tools for requesters and agencies to identify the information sought, the 2006 revision to the law also reduced the permitted timeframe for agencies to respond to requests to 5 working days.[41]

49. In conclusion then, there is ample reason from the perspective of the legislative framework on access to official information alone, for the present Government to conduct a public review of the OIA, with a view to acting on the Law Commission's 2012 recommendation that the OIA and LGOIMA be re-drafted and re-enacted.[42] The Law Commission itself started from the position that the Ministry of Justice and State Services Commission now appear to hold, that only minor modification of the law is required, and that most things can be left to improvements in practices. However, the Commission changed its mind as it gathered more information, stating:

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[38] Freedom of Information Act 2000, United Kingdom. Section 46 http://www.legislation.gov.uk/ukpga/2000/36/section/46 and Section 47 http://www.legislation.gov.uk/ukpga/2000/36/section/47

[39] An English translation of the law is accessible here: https://lovdata.no/dokument/NLE/lov/2006-05-19-16

[40] Accessible here: https://www.einnsyn.no/sok

[41] See note 39 above, section 32.

[42] Recommendation R136. See page 372 of *The Public's Right to Know*, *op cit,* note 18 above.

> *When we embarked on this review we were of the preliminary view that the legislation required only minor modification and that much could be achieved simply by additional guidance in relation to the withholding grounds. As we investigated further, however, it became clear that while additional guidance is needed, and has a very valuable part to play, legislative change is also required to obviate problems in the working of the legislation and to obtain the necessary balance between openness and the interests which need to be protected in a modern age. More and more it became clear that the official information legislation is one important part of the wider environment of information management and citizen involvement. Integration with the various laws, practices and government policies already operating in that environment is increasingly important.*[43]

Scope

50. While minor amendments to the scope of the OIA (and LGOIMA) may be made via a Statutes Amendment Bill – deleting defunct agencies and dealing with mergers and name changes – substantive changes require a substantive Bill. In addition to adding Officers of Parliament and those parts of Parliament recommended for inclusion by the Law Commission, there is also scope to improve OIA practices by clarifying the application of the law to organisations supplying services to the public under contract. Agencies, suppliers, the regulator and the public would benefit from drafting that replaces the present section 2(5), and places clear obligations on agencies to notify suppliers of the application of the OIA to them, and maintain a register of the suppliers currently affected (in such a manner as it can easily be incorporated into an updated and online database to replace the *Directory of Official Information*). Agencies would also benefit from an *Information Authority* that takes on the task of drawing up model clauses about the application of the OIA for inclusion in the contracts for the supply of these services to the public, and which is the forum for receiving comments on their effectiveness and reviewing them in light

[43] Paragraph 1.35. See page 25 of *The Public's Right to Know*, *op cit,* note 18 above.

of this. One complementary, or alternative, way of proceeding on this topic would be to amend the law to include a presumptive application of the OIA to organisations exercising public functions or receiving public funds. A public review of the OIA is obvious vehicle for canvassing views on this.

51. Besides the Ombudsmen and the Auditor-General, two other key oversight institutions designed to provide the public with assurance that state powers are being exercised lawfully are not included in the scope of the OIA. These are the Inspector General of Intelligence and Security (IGIS), and the Independent Police Conduct Authority (IPCA). As the law already applies to many other oversight and regulatory institutions, such as the Privacy Commissioner, Commerce Commission, Financial Markets Authority – as well as to the institutions that the IGIS and IPCA oversee – it is past time that these institutions were added to the scope of the country's FOI law.

52. The partially privatised State-Owned Enterprises (Meridian Energy etc) were removed from the scope of the OIA by the previous National Government, in spite of the fact that the state retained a 51% stake in them. This removal needs to be reversed, and Air New Zealand added to the schedule of organisations subject to the OIA.

53. The discussions and policy development on this point would clearly benefit from a public review of the OIA, to ensure that all relevant actors are heard from, and their claims scrutinised and contested by others.

Appeals

54. As noted earlier in this submission, Sir Geoffrey Palmer believes the time has come for New Zealand to create a new regulator for its FOI regime. I agree with him, based on my 12 years' experience as an investigator of OIA complaints within the Ombudsman's office.

55. Crudely speaking, and in relation to Ombudsmen in the abstract rather than the New Zealand Ombudsman in particular, an Ombudsman's office has been created by many countries to resolve disputes arising from a complaint that a

matter of public administration has gone awry. It may be about an action that has been taken, or not taken, or a decision that the complainant believes was taken based on flawed information or understanding. Ombudsmen aim to resolve these disputes by examining the issues in the context of the relevant legislation or guidance and then seeking to persuade one or both of the parties of the opinion that they themselves have formed on the merits of the matter. It is considered relatively unusual for an Ombudsman to have to go beyond expressing an opinion on the matter, and having to make a recommendation to the institution responding to the complaint (or own-motion investigation). Because Ombudsman investigate matters of administration, not policy, Ministers are often outside their jurisdiction.

56. An institution created to perform such a function – which is incredibly valuable – axiomatically has a culture oriented to mediation rather than binding decision-making. In the context of investigating maladministration, this is a good approach. However, freedom of information is a completely different animal from maladministration. This is because control over the possession and flow of information is intrinsically and inevitably political, in a way that is different from the issues that might arise from a department accepting an Ombudsman's view that something needs to be done or said to make good a previous failing. The regulator of a freedom of information law is at the crux of deciding complaints that affect raw political power, since the law itself is fundamentally about transferring the power of control over information from organs of the state to the public (whether they be individual people, civil society organisations, private companies or the media). When raw political power is at stake, those holding the information are less likely to be persuadable of another view, because they often have a strong self-interest in not being persuaded. This means that an institution which has to both persuade government agencies to see another person's point of view in maladministration cases, and has to decide on the disclosure of information which could cost a Minister their job, has an extremely difficult job of managing the difference of approaches and institutional cultures that the legislation inherently creates. There is a risk in managing this difference: the

Ombudsmen's need to maintain good working relationships with agencies in order to be able to persuade them to follow their opinions and recommendations may make them hesitate to be strict in how they interpret the law in relation to politically or administratively difficult and contentious FOI complaints. In addition to this, an Ombudsman may decide to resolve the tension created by these two regimes by approaching the FOI jurisdiction in an 'Ombudsman-like' manner – seeking to persuade agencies and complainants, rather than gathering evidence and making a decision based on application of the provisions of the law. On balance, this sort of approach is likely over time to favour agencies' arguments about the difficulties disclosure would cause, or the workload issues involved, rather than uphold complainants' legal rights.

57. Returning from the abstract to the specific, we can see from the New Zealand Ombudsmen's previous resistance to the removal of the veto and providing them with the function of making decisions and orders that they have been fully cognisant of this tension between the two statutory roles. In the past, Governments and Law Commissions have decided that, on balance, the greater benefit lies with keeping FOI regulation with an institution that has good knowledge of government administrative processes, rather than creating a new institution. However, faced with evidence of innovations in other jurisdictions, and concerns from submitters about the Ombudsmen's lack of publication of OIA 'jurisprudence', the Law Commission resorted to the argument that moving to a new regulator would mean the loss of the knowledge accumulated by the Ombudsman's staff.[44] This is clearly a weak defence of the status quo, as the Investigators and their knowledge could easily move to work for a new Information Commissioner's office. Sir Geoffrey Palmer has also dismissed this line of reasoning by the Commission.[45]

58. One of the apparent attractions of having the Ombudsman as the FOI regulator is that, barring judicial review on limited grounds, her or his opinions on

[44] *The Public's Right to Know*, *op cit*, note 18 above, paragraph 13.37

[45] See the updated version of the paper cited in note 29 above, also found in VUWLRPPC 5/2014 or as 4 VUWLRP 30/2014, pages 798-9.

complaints cannot be appealed to the Courts. This reduces the cost of the appeals mechanism, and is also likely to mean that the duration of an appeal being considered and finalised is shorter than if it were possible to appeal the Ombudsman's opinions on the merits of the decision (assuming the Ombudsman's office is resourced sufficiently to employ enough investigators for the workload experienced). On balance however, this structure might be perceived to be unbalanced, and favour agencies who would not lack the resources to mount a judicial review, versus a complainant who would be taking on relatively serious financial risk. To my knowledge, no OIA complainant has ever brought such a judicial review, only agencies. But the probability over 36 years of a complainant never having a solid case to challenge – on the merits, rather than on the more limited grounds of judicial review – an Ombudsman's interpretation of how OIA provisions should be applied is vanishingly small. Indeed, Professor Jane Kelsey's legal challenge to the Ministry of Foreign Affairs and Trade's decision on her request for information about the Trans-Pacific Partnership Agreement (which, by virtue of section 34 of the OIA could only proceed following the Chief Ombudsman's investigation of her OIA complaint had concluded) did result in a judgment that included some criticism of how the then Chief Ombudsman had proceeded.[46]

59. I suggest that it would benefit government agencies, others subject to the OIA, requesters, and the regulator of New Zealand's FOI system, for the regulator's decisions to be susceptible to appeal on the merits. While this may result in a more drawn out appeals process to begin with, as superior courts provide determinative interpretations of the law, the areas of ambiguity that might present reasons for seeking clarification will be reduced, and the number of appeals to the courts will diminish over time. Prior to reaching the Courts, I believe it would benefit the regulator and others for appeals against the regulator to be heard by a specialist tribunal. The tribunal should be able to consider the issues and determine the case *de novo*, as well as being able to

[46] Kelsey v Minister of Trade [2015] NZHC 2497, at 139. Accessed from http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZHC/2015/2497.html

make binding orders. Only appeals to the courts on a point of law should be permitted beyond this stage.

60. A new specialist Information Tribunal to hear appeals against the FOI regulator could also succeed the Human Rights Review Tribunal as the locus for determining matters under the Privacy Act, and also hear appeals against the Chief Archivist's decisions on compliance with the Public Records Act.

61. Clearly considering the arguments for and against such a substantive change to the FOI regime requires a public review.

Section 6 – Adding a public interest test

62. The core principles of any freedom of information regime can be boiled down to the following: all information held by public authorities should be accessible to the public without them having to show a legal interest in receiving it, unless it is not in the public interest for this to occur, and the final determination of where the balance of competing public interests lies should be in the hands of an institution wholly independent from the executive branch of government.

63. The OIA largely respects the gist of these principles, with three key exceptions.

64. The first, (considered above) is that the regulator does not make decisions or issues orders that must be complied with (or appealed to the Courts). Added to the matters considered above however, is the fact that under section 31 of the OIA the Prime Minister and the Attorney General can serve certificates on the Ombudsman blocking her or him from even recommending that the information requested should be made available. In this manner, the Government can forestall the use of the veto power under section 32, thereby denying a requester the right to challenge the Government's decision not to disclose the information following an Ombudsman's recommendation. This is clearly contrary to the core principles of an FOI regime, and has contributed to New Zealand's OIA ranking only 51st in the Global Right to Information Rating.[47]

[47] *The RTI Rating*, Centre for Law and Democracy and Access Info. Scoring criteria listed here: https://www.rti-rating.org/country-data/scoring/ . New Zealand's assessment against these

65. The second, (considered later, below) is that it places limits on who is eligible to make requests for information.

66. The third divergence from internationally recognised principles for FOI laws is that section 6 of the OIA does not require agencies, or the regulator on appeal, to balance the harm that may result from the disclosure of the information against the public interest factors in favour of release. Effectively, Parliament pre-determined where the balance of public interest would lie in relation to information affecting the matters defined in section 6, and prevented Ministers, departments, and the Ombudsman from making a different decision based on the circumstances prevailing at the time of the request.

67. Since the OIA was enacted in 1982, the world has moved on. The United Kingdom's Freedom of Information Act, for example, requires departments to consider whether the public interest in disclosure outweighs the harm that may result to the country's international relations.[48] The Information Commissioner, tribunal and courts can reach a different decision. In contrast, the OIA under section 6(a) does not require agencies to consider the public interest, nor permit the Ombudsman to form an opinion or recommend that the public interest favours release. The most that the Ombudsman can do is decide that this section does not apply to the information at issue because its release would not 'be likely' to prejudice the international relations of the New Zealand Government.

68. Amending section 6 of the OIA to require agencies to consider the public interest in disclosure and empower the regulator to reach an alternative view would be a major step towards greater openness. Again, however, the redrafting of this section is something that should be considered as part of a public review of the OIA.

---

criteria is accessible here: https://www.rti-rating.org/country-data/ . Note that New Zealand's law is ranked eight places lower than the United Kingdom, in spite of that country having retained its Official Secrets Act, and not including its intelligence agencies within the scope of its FOI Act.

[48] Section 27 and section 2.

Proactive disclosure

69. Proactive disclosure is clearly a matter already under consideration by the Government, and I welcome the practice and policy improvements made over the years, not least the recent decision to routinely proactively publish Cabinet papers. Compliance with these ad hoc steps however, are not susceptible to review by the regulator. It is clearly time that New Zealand caught up with other modern FOI regimes and amended its law to include provisions on proactive disclosure and the ability to challenge non-compliance with the requirements of the law to the regulator. I consider that the UK model of 'publication schemes' setting out classes of information that will be made available is a useful one to adopt, as it was at the Federal level of Australia when that country re-wrote its FOI laws nearly a decade ago.

Other matters

70. At present, sections 18(c)(i) and 52(3)(b)(ii) provide that provisions in other statutes that bar disclosure of information take precedence over the right to information contained in the OIA. This should be reversed, with a 'notwithstanding' provision in the OIA, since the country's FOI regime (and Privacy Act) should be the framework that determines access to official information. If this were not agreed, at the very least, the law should codify the Cabinet Manual guidance that no new statutory bars on disclosure of information should be introduced into a Bill prior to consultation with the Ombudsman, and I believe should also require public consultation. Further, the OIA could be amended to contain an enabling power so that secrecy provisions elsewhere on the statute book can be repealed or amended by secondary legislation. A model for such a provision can be found in section 75 of the UK Freedom of Information Act.

71. Section 12(1) of the OIA sets out who is eligible to make requests under Part 2 of the law. Similar limitations on who can make requests under Part 3 of the OIA can be found in sections 21, 22, 23. It is not clear why such limitations on eligibility exist in the OIA, since they were not included in the original draft of

the Official Information Bill contained in the Danks Committee's *Supplementary Report*.[49]

72. It is clear from reviewing some departments' responses to OIA requests made via the FYI.org.nz online platform that needless challenges to the eligibility of requesters are made, presumably with the intent of either delaying the processing of a request or seeking to discourage the person from exercising their rights. This practice undermines other improvements made of OIA practices, and damages public trust in the agencies that act in this way.

73. Many FOI laws around the world – notably the federal US FOI law and the UK FOI law – do not place any restriction on who can make requests under these statutes. The Law Commission in 2012 recommended that the limits on eligibility be removed from the OIA, not least to bring it into line with the absence of any limits to exercising rights to information under LGOIMA. It is long past time that the Government gave effect to recommendation R134, with or without a pubic review of the OIA.

74. Finally, at present, research and analysis of the operation of the OIA and LGOIMA are hampered by the absence of rigorous statistics on the application of most of the two laws' provisions. While the regime introduced by the State Services Commission enables people to learn how many requests were made, and how many were responded to within the time limit, they do not tell us how many requests were refused, or on what grounds. Statistics that do not help Parliament, government or the public understand how agencies are using the provisions of the Act provide almost no usable intelligence whatsoever. As I noted in a blogpost last year, the present emphasis in the statistics and reporting regime on responding to requests within the permitted time limits merely incentivises agencies to use the extension provisions, or to quickly make a poor quality decision on a request. This has resulted in a 150%

[49] *Towards Open Government: Supplementary Report*, Committee on Official Information, Wellington, July 1981. See clauses 10, 19 and 20 of the draft Bill from page 59 onwards. Accessed from http://www.ombudsman.parliament.nz/resources-and-publications/general-information/danks-committee-reports

increase in complaints to the Ombudsman about the use of the extension provisions, a 125% increase in the number of complaints about agencies not making a decision on a request as soon as reasonably practicable, and a 120% increase in complaints about delays in supplying the information at issue after a decision on the request has been communicated.[50]

75. While the SSC's guidance on data agencies would benefit from collecting and publishing (not least for their own performance monitoring purposes) is better than the meagre data it actually collects and publishes,[51] it is time an enabling provision for collection and publication of statistics on the operation of the OIA was inserted in the Act, requiring the relevant Minister to consult the Chief Statistician, the regulator and the public before finalising the relevant regulations and guidance.

What reforms to the legislation do you think would make the biggest difference?

76. Adding a public interest test to the section 6 withholding grounds.

77. Removal of the Cabinet veto and section 31.

78. Making the OIA free-standing, and not dependent on the Ombudsmen Act powers and jurisdiction.

79. Transfer responsibility for investigation of complaints to a new Information Commissioner, with appeals on the merits to a new specialist Information Tribunal.

80. Introducing an enforceable regime for proactive publication.

[50] *Openness and Official Information Act Timeliness*, Proactively Open, Andrew Ecclestone, 4 September 2018. Accessible from: https://proactivelyopen.org/2018/09/04/openness-and-official-information-act-timeliness/

[51] *Selection and Reporting of Official Information Act Statistics,* State Services Commission. Accessed from http://www.ssc.govt.nz/sites/all/files/Selection-Reporting-of-OIA-Statistics-v2.pdf

81. Creating linkages to the Public Records Act to drive improvements in agencies' information management.

SUBMISSION ON THE REVIEW OF THE OFFICIAL INFORMATION ACT 1982 (OIA) FOR THE MINISTRY OF JUSTICE

1. The Act is often used for legal research and advocacy purposes.

2. The Act is overdue for a review. It is causing more harm for people who need to access information, in particular, peoples' safety under State care.

3. A point to understand is that the withholding of information makes its harder to invest in effective engagement, especially regarding those who are marginalised. Evidence of this is that during the Trans-Pacific Partnership Agreement Waitangi Tribunal Inquiry officials would not even disclose to the Tribunal and an expert independent whether there was a Treaty of Waitangi exception clause in the negotiating text. These refusals resulted in Official Information Act requests. The issue here is that requests may be refused under section 6(b) for information provided confidentially by another country or 6(e) where disclosure would be premature and damage the economy. If they are supplied, they are almost always delayed after the government body unilaterally extends its time and the documents are heavily redacted in the name of confidentiality or free and frank advice.

4. The Law Commission deemed non-compliance with time limits as the second largest category of complaints after refusal. This is indicative of the change that needs to be achieved for time limits. The time limit itself is statutorily deemed "as soon as reasonably practicable" which is not conducive to getting the adequate information in a manner that it should be given.

5. The Ombudman's office is understaffed and it is prevalent in the manner in which requests are handled. Ensuring that there is enough staff would aid in prompt responses to requests.

6. A key issue that needs to be addressed is the timeframe in which information is given. This was provided in the 1997 Law Commission Report on the OIA.[1] Section 15 and 15A regulate the time within which agencies are to answer requests for official information. Section 29A governs the later stage of agencies' responses to requirements for information by an Ombudsman considering a complaint.

[1] https://www.lawcom.govt nz/sites/default/files/projectAvailableFormats/NZLC%20R40.pdf.

7. Green Party policy indicates the Ombudsman should have the resources needed to respond to all OIA complaints in a reasonable timeframe, and greater powers to censure agencies for non-compliance or lack of co-operation.[2]

8. These issues are both in relation to the legislation and practise of the OIA and Ombudsman. Resourcing within the Ombudsman has been identified through the Law Commission Report yet nothing efficient has been actioned.

9. Children in State care are being kept in compromising settings because of the lack of efficiency by the Act and the Ombudsman's office which causes more distress to those who are seeking aid.

10. An effective reform to the practise would be ensuring there are people who can kōrero in te reo and understand tikanga to help Māori through the OIA process. It would be increasingly beneficial to ensure that the OIA and Ombudsman worked under and with Te Tiriti o Waitangi. There has yet to be evidence that the Ombudsman's office has considered their constitutional obligations to Te Tiriti in reaching decisions, including when they weigh up the public interest in release of documents.

11. In reality the government can and does treat the Act with contempt when it suits them, to the detriment of effective Māori participation in governance and disrespecting the Tiriti relationship and should not be allowed to continue.

[2] https://www.greens.org.nz/sites/default/files/2019%20Open%20Government%20and%20Democracy%20policy.pdf.

Bottcher, Jenna

From: Bevan Woodward s9(2)(a)
Sent: Thursday, 4 April 2019 3:54 PM
To: OIAfeedback@justice.govt.nz
Subject: Submission on the OIA Overview
Attachments: Attachment 1 NZT-3649 ACKNOWLEDGEMENT.pdf; Attachment 2 Signed response to Bevan Woodward.pdf; Attachment 3 Bevan Woodward - response 21 December 2018.pdf

Dear Sir/Madam,

My experience of the OIA is in dealing with NZTA on various projects in different roles including: SkyPath, SeaPath, Road Safety, Active Transport, Investment Decision Making Tools, Trail development and Speed Management.

Since December 2018 NZTA has been using the OIA to undermine my work. All requests for information, no matter how minor or in what role, have been treated as an OIA. Please see **Attachment 1** as an example of this. The delay and inefficiency has affected my ability to work for the Walking Access Commission.

Apart from Attachment 1, every other request for information has typically been declined with the advice: "Refused under Sec 18(a), Sec 9(2)(i) of OIA" per the example in **Attachment 2**. In the example provided by **Attachment 3**, I have recently learnt that NZTA has provided the access to MegaMaps to the AA, despite the Attachment 3 letter advising me otherwise.

Furthermore my requests to NZTA to see if there is a way that we can agree to work together have simply been ignored. Please see the email chain **below**. I only found out about NZTA's process for "managing contact" with me when the 14 Dec 2018 email from NZTA's Leisa Coley was accidentally emailed to my colleague in early February 2019. I have requested a copy of NZTA's "Unreasonable Customer Complaints Policy" but been declined because it is "under" review.

I have never been warned or asked by NZTA to change the way I interact with them, yet per their 14 Dec 2018 email below they are currently considering enforcing "possible and appropriate sanctions".

Frankly I am hugely disappointed in NZTA's actions. I do not believe this is be in the spirit of our public service and I have had no rights to natural justice (or the opportunity to respond to the misleading claim **below** that I have created a "myriad of correspondence and OIAs").

I commend you for undertaking this overview. I would appreciate your advice on how to resolve this situation and welcome any questions or requests for elaboration.

Best regards...

Bevan Woodward | Project Director | SkyPath Trust | Mob s9(2)(a)

SKYPATH

-------- Forwarded Message --------
On 18/02/2019 4:07 PM, Bevan Woodward wrote:

> Hi Leisa, you didn't return my call.

Is NZTA willing to discuss another way of working together that is more constructive for all?

My objective is to see NZTA successfully achieving on its GPS objectives.

Best regards...

Bevan Woodward | Project Director | SkyPath Trust | Mob s9(2)(a)

SKYPATH

On 5/02/2019 3:39 PM, Bevan Woodward wrote:

> Hi Leisa,
>
> I'm keen to see if there is another way of working together that is more constructive for all.
>
> My objective is to see NZTA successfully achieving on its GPS objectives.
>
> I will call you next week to discuss this.
>
> Best regards...
>
> --
> Bevan Woodward | Project Director | Mobile: s9(2)(a)

SKYPATH

From: Leisa Coley
Sent: Friday, 14 December 2018 10:49 AM
To: Steve Mutton <Steve.Mutton@nzta.govt.nz>; Lisa Rossiter <Lisa.Rossiter@nzta.govt.nz>; Kevin Reid <Kevin.Reid@nzta.govt.nz>
Cc: Richard May <Richard.May@nzta.govt.nz>; Jemma Dacy <Jemma.Dacy@nzta.govt.nz>; Jon Kingsbury <Jon.Kingsbury@nzta.govt.nz>
Subject: Bevan Woodward - process for managing contact

Good morning

I have now had the opportunity to discuss with Richard May how we manage as an Agency the myriad of correspondence and OIAs that we receive from the above requestor.

As discussed with you previously – Ministerial Services will take a co-ordination and facilitation role with these contacts – working closely with your SMEs in the business. This means that your staff should be advised to send any correspondence or request for information to Official Correspondence and we will work with you to determine the most appropriate action. This way we will have a better view of the volume of this but also the nature of the requests. Jemma Dacy a senior on my team will manage this work moving forward.

In doing this we will be able to have a better picture of whether in the New Year we get together to discuss any possible and appropriate sanctions under the Unreasonable Customer Complaints Policy (currently being reviewed by my team). Could you please advise your teams of this approach.

Happy to discuss further.

Ngā mihi,

Leisa

Leisa Coley

Manager Ministerial Services

DDI 04 897 4667

Cell: s9(2)(a)

Ministerial Services

Governance, Stakeholders & Communications

National Office/ Victoria Arcade, 50 Victoria Street,
Private Bag 6995, Wellington 6141, New Zealand

_____ _____
___

Find the latest transport news, information, and advice on our website:
www.nzta.govt.nz

From: Official Correspondence <Official.Correspondence@nzta.govt.nz>
Sent: Thursday, 14 February 2019 3:53 PM
To: Bevan Woodward
Subject: NZT-3649 ACKNOWLEDGEMENT

Dear Bevan

This email acknowledges receipt of your below correspondence.

Your correspondence has been forwarded to the appropriate section of the Transport Agency, and a response will be provided to you as soon as possible.

If you would like to contact us about this, please respond to us by email at official.correspondence@nzta.govt.nz.

Regards

Ministerial Services
Governance, Stakeholders and Communications
50 Victoria Street, Private Bag 6995, Wellington 6141, New Zealand

NZ TRANSPORT AGENCY WAKA KOTAHI

From: Bevan Woodward s9(2)(a)
Date: 14 February 2019 at 2:40:12 PM NZDT
To: Paul Glucina <Paul.Glucina@nzta.govt.nz>
Subject: Fw: WAC Case 5133: Heritage to A&P -Proposed Walkway

Good a8ernoon Paul,

Can you advise whether AT or NZTA is leading the safe pedestrian crossing project at Hill St?

Regards...

Bevan Woodward

Pūhoi to Pākiri Trails Coordinator

New Zealand Walking Access Commission | Ara Hīkoi Aotearoa
Ph: s9(2)(a)
www.walkingaccess.govt.nz
1528689967868_image003

From: Bevan Woodward
Sent: Thursday, 13 December 2018 7:04 AM
To: Paul Glucina

Cc: Beth.Houlbrooke@aucklandcouncil.govt.nz; Melanie Alexander (AT)
Subject: FW: WAC Case 5133: Heritage to A&P -Proposed Walkway

Good morning Paul,

Thank you for the opportunity to provide feedback on the Hill St opI ons currently out for consultaI on.

In terms of "fixing" Hill Street, the most criI cal aspect from Walking Access Commission's perspecI ve is to enable safe pedestrian crossing of Sandspit Road to advance Council's Puhoi to Pakiri Greenways Plan and provide linkage to Rodney Local Board's new bridge to enable walking & cycling from the Showgrounds into Warkworth (see **attached**).

I was advised at the consultaI on meeI ng that no change is proposed to the roading configuraI on at Hill St unI l a8er the new motorway and Matakana Link Road are completed. For this reason we support expediI ng AT's low-cost project to provide a safe pedestrian crossing, as presented on their website:

28 March 2019

Bevan Woodward
Project Director
SkyPath Trust
s9(2)(a)

REF: OIA-4774

Dear Bevan

Request made under the Official Information Act 1982

Thank you for your email of 28 February 2019 requesting the following information under the Official Information Act 1982 (the Act):

> Could you please supply a copy of the NZTA Board resolution and supporting paper(s) approving that the Detailed Business Case be undertaken for the walking and cycling path over the Auckland Harbour Bridge

I am refusing your request under section 18(a) of the Act as, by virtue of section 9(2)(i), there is good reason for withholding the information to enable a Minister of the Crown or any department or organisation holding the information to carry out, without prejudice or disadvantage, commercial activities.

With respect to the information that has been withheld, I do not consider there are any other factors which would render it desirable, in the public interest, to make the information available.

Under section 28 of the Act, you have the right to ask the Ombudsman to review my decision to refuse this request. The contact details for the Ombudsman can be located at www.ombudsman.parliament.nz.

Yours sincerely

Richard May
Senior Manager, Government and Governance

21 December 2018

Bevan Woodward
Transport Planner
Movement – Safe Journeys for Active Kiwis
s9(2)(a)

Ref: OIA-4500

Dear Bevan

Thank you for your email of 28 November 2018 regarding access to the Safer Journeys Risk Assessment Tool and external representation for active transport users on the Traffic Control Devices (TCD) Steering Group.

The Safer Journeys Risk Assessment Tool, or MegaMaps, is only provided to road controlling authorities (RCAs) and Police. This tool's purpose is to assist their understanding of risk and help them manage their network responsibilities. The information within the tool is the tables in the Speed Management Guide applied consistently across all roads in New Zealand. RCAs have had training on using the tool and know that the map outputs require sense testing and explaining as these maps can be easily misinterpreted and misrepresented. For this reason, and by agreement with the RCA sector, the maps are not made available to the public. Therefore, the information you have requested is withheld under section 9(2)(c) of the Act to avoid prejudice to measures protecting the health or safety of members of the public.

If you have a particular area of interest, you could contact the RCA for that area (or the NZ Transport Agency if you are interested in the state highway network) to discuss the specific information in the maps. We provide the same advice to organisations such as the Automobile Association and Road Transport Forum that also do not have direct access to the tool.

With respect to the information that has been withheld, I do not consider there are any other factors which would render it desirable, in the public interest, to make the information available.

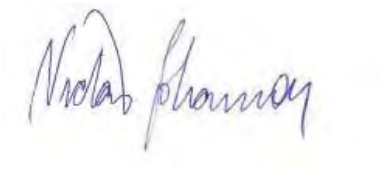
Under section 28 of the Act, you have the right to complain to the Ombudsman about the information that was withheld under this request. More information about the Ombudsman is available online at www.ombudsman.parliament.nz.

I note your comments about an external representative for active transport users on the TCD Steering Group. The representatives on the TCD Steering Group provide sector and industry representation across all modes. The TCD Steering Group is supported by the Active Modes Infrastructure Group jointly facilitated by the RCA Forum and the Transport Agency, which provides a specific focus for walking and cycling. Both groups consist of sector and industry representing the needs of all external users and user groups. Both groups provide advice to the Transport Agency and guidance to the

sector, but neither group have the responsibility for regulatory decision making under the Land Transport Rule: Traffic Control Devices (2004) which is delegated to the Transport Agency.

If you would like to discuss this reply with the Transport Agency, please contact Glenn Bunting, Manager Network Safety, by email at glenn.bunting@nzta.govt.nz or by phone on 04 894 5025.

Yours sincerely



Niclas Johansson
Senior Manager, Internal Practice, Safety & Environment

Bottcher, Jenna

From: Bevan Woodward s9(2)(a)
Sent: Monday, 8 April 2019 3:03 PM
To: OIAfeedback@justice.govt.nz
Subject: Re: Submission on the OIA Overview / NZTA's policy of stonewalling
Attachments: Attachment 1 NZT-3649 ACKNOWLEDGEMENT.pdf; Attachment 2 Signed response to Bevan Woodward.pdf; Attachment 3 Bevan Woodward - response 21 December 2018.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Sir/Madam,

Further to my email sent on 4 April.... in relation to Attachment 3 in which access to 'MegaMaps' which was declined to me, I have now learnt that information has been made available to the AA.

NZTA did not contact me to advise the information I sought could now be available, I have only learnt if this second hand via the email **below**.

I believe NZTA has a deliberate policy of stonewalling all of my requests for information.

Could you please acknowledge receipt of this email and my 4 April email as a combined submission to the OIA review?

Many thanks...

Bevan Woodward | Transport Planner | Mobile: s9(2)(a)

MOVEMENT
SAFE JOURNEYS for EVERYBODY

-------- Forwarded Message --------
Subject: Submission on the OIA Overview
Date: Thu, 4 Apr 2019 15:53:55 +1300
From: Bevan Woodward s9(2)(a)
Reply-To s9(2)(a)
Organization: SkyPath Trust
To: OIAfeedback@justice.govt.nz

Dear Sir/Madam,

My experience of the OIA is in dealing with NZTA on various projects in different roles including: SkyPath, SeaPath, Road Safety, Active Transport, Investment Decision Making Tools, Trail development and Speed Management.

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I commend you for undertaking this overview. I would appreciate your advice on how to resolve this situation and welcome any questions or requests for elaboration.

Best regards...

Bevan Woodward | Project Director | SkyPath Trust | Mob s9(2)(a)

SKYPATH

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>
> Is NZTA willing to discuss another way of working together that is more constructive for all?
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> Bevan Woodward | Project Director | SkyPath Trust | Mob s9(2)(a)
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I will call you next week to discuss this.

Best regards...

--
Bevan Woodward | Project Director | Mobile: s9(2)(a)

From: Leisa Coley
Sent: Friday, 14 December 2018 10:49 AM
To: Steve Mutton <Steve.Mutton@nzta.govt.nz>; Lisa Rossiter <Lisa.Rossiter@nzta.govt.nz>; Kevin Reid <Kevin.Reid@nzta.govt.nz>
Cc: Richard May <Richard.May@nzta.govt.nz>; Jemma Dacy <Jemma.Dacy@nzta.govt.nz>; Jon Kingsbury <Jon.Kingsbury@nzta.govt.nz>
Subject: Bevan Woodward - process for managing contact

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In doing this we will be able to have a better picture of whether in the New Year we get together to discuss any possible and appropriate sanctions under the Unreasonable Customer Complaints Policy (currently being reviewed by my team). Could you please advise your teams of this approach.

Happy to discuss further.

Ngā mihi,

Leisa

Leisa Coley

Manager Ministerial Services

DDI 04 897 4667

Cell: s9(2)(a)

Ministerial Services

Governance, Stakeholders & Communications

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this email and may not use any information contained in it. Legal privilege is not waived because you have read this email.

Bottcher, Jenna

From: Brittany Keogh s9(2)(a)
Sent: Thursday, 18 April 2019 11:22 AM
To: OIAfeedback@justice.govt.nz
Subject: OIA feedback
Attachments: OIA 18199 supplementary response 15 April 2019.pdf

Kia ora,

I am writing to you to make a submission in regards to the Official Information Act.

As a journalist I use the Act often in the interest of reporting. Throughout the three years I have been working in the industry I have often been disappointed by the responses I receive from government agencies.

Nearly every single response I receive lands in my inbox nearing 5pm on the 20th working day after I file the request - or requires an extension.

I am concerned about this as I believe government agencies are exploiting the 20 working day clause and are not making an effort that they are required to do by law to provide the information as soon as possible, but no later than 20 days.

I have even received acknowledgement response saying "We will get back to you in 20 days", which I think demonstrates this view point. I would like to see the act refined to make it clearer that 20 days is the maximum limit and that response MUST be provided as soon as reasonably possible. (I would appreciate if the attached PDF remained in the strictest confidence and was not disclosed to any other agency as I am using it as part of a long running investigation.)

Please find attached an example of a recent supplementary OIA response that I have received after I complained to the Ombudsman about a DHB's response to an OIA. What it shows is that staff at the DHB deliberately with held information to even its own communications and legal team because a report "was incomplete". The staff made a judgement call that this meant the report should not be disclosed, which as per the DHB's response and the Ombudsman investigation, is unlawful.

I could go on and on and on about all the other issues I've experienced with the OIA working in practice, but I believe this sums up the most pressing issues.

I hope the Government does review the legislation as I think the 40 year old law is not working in the way it was designed to.

Yours faithfully,

Brittany

Brittany Keogh
Reporter - Auckland millennial issues

s9(2)(a)
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PO Box 6341, Wellesley St, 1141 Auckland, New Zealand

Waitemata District Health Board
Best Care for Everyone

Planning, Funding and Outcomes
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Takapuna, Auckland 0622
Private Bag 93-503, Takapuna
North Shore City , 0740
Telephone: 09 486 8900
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www.waitematadhb.govt.nz

15 April 2019

Ms Britany Keogh
Journalist
Stuff
s9(2)(a)

Dear Ms Keogh

Official Information Act Request – Fertility Services

The Ombudsman's office advised us on 20 March 2019 that you had complained about our response to your request under the Official Information Act for information about the residency status of couples who have been declined fertility treatment over the last 10 years. The Ombudsman noted that you believed that as information about eligibility is required to assess each referral, the information should be recorded by us and, therefore, held by us.

We responded to the Ombudsman's office on 29 March 2019 and provided the information below.

DHBs' retention of information about residency status of applicants
Waitemata DHB does not have a centralised IT system in which information about the residency of individuals seeking fertility services is recorded.

There are two primary steps in the delivery of publicly funded fertility services. The first step is the referral from a GP to a central Northern Region Fertility Service (NRFS). In making the referral, the GP will be aware of residency being a requirement for eligibility for publicly funded services. The NRFS assesses the referral for eligibility for publicly funded fertility services against all criteria other than residency. If the couple is eligible, then the referral is sent for a first specialist appointment (FSA) to one of the three providers of publicly funded fertility services in the Auckland region: Fertility Associates, Repromed and Fertility Plus.

Prior to providing a publicly funded FSA, these services are then required to assess for residency eligibility. They all, however, have different processes for doing this and do not always record the residency status of their patients or whether this is the reason for declining a referral. Additionally, each provider has a different record system and if residency and entitlement to services is recorded, it is not in a uniform place but in a random place in the body of the individual's clinical records.

Once residency status has been established, then at the publicly funded FSA, the patient is assessed through the use of the CPAC tool as outlined in our prior response and it is not unusual for eligibility status to change over time. Examples of these factors include smoking status and BMI which are not static.

Your request as currently framed will be very difficult to meet without substantial collation and research. To establish the residency of all individuals declined services on grounds of residency, we would have to recover and review the patient record for every individual who has been declined fertility services over the last 10 years. We estimate there would be in the order of 3000 patient

records which are held across the three providers. It will be very difficult for us to provide the information you have requested without substantial collation or research. Collating the information will be an enormous and very time-consuming task, particularly as the reason for declining a referral is not recorded in a uniform place in the clinical records. Many of the records will have been archived and would need to be retrieved.

We estimate that it would take approximately 500 hours to review these records to establish whether individuals have been declined access to fertility services on grounds of their residency status over the 10-year period you have requested. Even if this work were to be undertaken, it would not provide a complete record as residency status is not always recorded.

The records which would need to be reviewed relate to the sensitive personal health matter of fertility and it would not be appropriate for anyone other than a Waitemata DHB employee to review them. Collating the records would, therefore, take staff away from their frontline jobs at Waitemata DHB. This would have a detrimental impact on the services Waitemata DHB provides to its population.

Unless your request is amended, we may have to refuse it under s18(f) of the Official Information Act 1980 which applies where information cannot be made available without substantial collation or research.

Even if you are willing to amend your request, the DHB would still need to consider how this impacts on frontline service-delivery, given that the records are highly sensitive and it would not be appropriate for us to use temporary contractors to collate the information.

Please let us know by 1 May 2019 whether you are prepared to amend your request and, if so, how. You may, for instance, wish to consider reducing the period covered by your request or whether you are willing to pay a fee for the collation of the information. Our standard fee for collation is $38/half hour with the first hour free and $0.20/page with the first 20 pages free.

Waitemata DHB's willingness to come to a new decision

Waitemata DHB is willing to come to a new decision in so far as it does hold incomplete information about the residency status of patients referred for FSA and subsequently declined treatment over the three-month period between mid-May and mid-August 2018. An extract of this data is appended. This information indicates that during that period, four individuals (1%) were declined treatment because they were ineligible on the basis of their residency.

The information was collected because anecdotal information suggested that couples referred to NRFS were frequently on limited visas and not eligible for publicly funded fertility treatment. As residency status was not considered to be readily auditable for the reasons outlined above, the three providers were asked to collect data prospectively on the residency status of couples referred for fertility treatment to test whether the anecdotal information was correct. The data was collected by receptionists at the three fertility service providers for three months and then collated. A copy of a report derived from the data is **enclosed**.

The data is not complete or accurate and its collection did not follow formal processes. We know that the data is incomplete because there is no data on the residency status of 8% of the women and 23% of the men who were referred during the three-month period. It cannot, therefore, be treated as an accurate representation of the numbers or percentages of women who are actually declined fertility treatment on the basis of residence and must be treated with a healthy measure of scepticism.

The data collected showed that:

- only 1% of the women whose information was collected during the three-month collection period were declined treatment on the basis of their residency status
- between 35% and 50% of women referred for fertility treatment have a NZ passport
- 52% of women have various types of residency visa
- 8% of women have a work visa
- about 2% are Australian.

Waitemata DHB held this report at the time it received and answered your request and it should have released it at that time. Unfortunately, staff made a decision that because the information in the report was incomplete and inaccurate and had the potential to create a misleading picture, it should not be disclosed. The existence of the report was not disclosed to the Communications, Legal and Executive teams who oversee the processes for responding to Official Information Act requests. Had the existence of this report been disclosed, it is certain that it would have been disclosed to you along with contextual information regarding its completeness and accuracy as it was clearly relevant and there were no grounds on which it could be withheld.

Staff have been reminded that all information relevant to a request, regardless of whether it is in draft form, complete or reliable, must be disclosed to the Communications, Legal and Executive teams in the course of preparing a response so that the information can be released where required by the Official Information Act. They are aware that if information has the potential to create a misleading picture because it is incomplete or inaccurate, the response should set out our concerns about the reliability of the information. Additional training on the Official Information Act 1982 will be provided. We are very disappointed that this has occurred and extend our apologies to you.

Conclusion

In conclusion, I would like to emphasise the following points:

- The Northern Region district health boards do not have an information system which collects data on the residency status of couples seeking fertility treatment. Residency status is considered by referring general practitioners and by the three fertility services providers in the region but is not recorded in a uniform place in records
- Extraction of residency data for the 10-year period requested would require the individual patient records of 3000 individuals to be retrieved. We would need to ask you to consider restricting the scope of your request to make our task more manageable or decide whether to charge a fee for collation of the information or whether, in fact, we should refuse the request under s18(f) of the Official Information Act
- Waitemata DHB held a report on the residency status of couples referred for fertility treatment between mid-May and Mid-August 2018. Unfortunately, this information was not provided with our response as it should have been because staff saw it as inaccurate and incomplete. We very much regret that this occurred and include the report with this letter.
- We apologise that the report was not provided in our response to your request.

Thank you for considering the above points and we await your feedback by 1 May in order to progress a further response under the Official Information Act.

Yours faithfully

Dr Debbie Holdsworth
Director Funding
Waitemata District Health Board

Appendix – Residency status of couples referred to NRFS for FSA

Background: Anecdotal discussion suggested that it was common that couples referred to NRFS for fertility care were frequently on limited visas. In the context of limited resource, it was decided that it would be useful to know if this was true, and whether the criteria for eligibility were being met in all cases.

Methods: All clinics were asked to provide data on couples referred to them from NRFS for FSA from mid-May to mid-August 2018. These are shown as at 13/11/2018 in table 1.

(FAA also provided data for women seen for FSA from mid-May to mid-August 2018. These are shown in table 2 and are considered because they are almost complete.)

Table 1: Residency status of patients and their partners referred to NRFS for FSA May-August 2018

Clinic	Fertility Plus n=203		Fertility Associates n=67		Repromed n=76		Total n=346	
Principal and partner status	**n**	**%**	**n**	**%**	**n**	**%**	**n**	**%**
Woman's residency status								
NZ passport	17	8	20	30	21	28	58	17
Eligible, no further detail	54	27	0	0	0	0	54	16
No longer needs FSA	0	0	4	6	10	13	14	4
Residency visa	92	45	28	42	35	46	155	45
Work visa	23	11	2	3	3	4	28	8
Australian	1	0	0	0	4	5	5	1
Declined	4	2	0	0	0	0	4	1
Unknown status	**12**	**6**	**13**	**19**	**3**	**4**	**28**	**8**
Partner's residency status								
NZ passport	1	0	28	42	27	36	56	16
Eligible	49	24	0	0	0	0	49	14
No longer needs FSA	0	0	4	6	10	13	14	4
Residency visa	77	38	19	28	31	41	127	37
Australian	0	0	0	0	1	1	1	0
Work visa	15	7	2	3	3	4	20	6
Unknown status	**61**	**30**	**14**	**21**	**4**	**5**	**79**	**23**

Because there are still considerable missing data (8% of women and 23% of partners), the %s were also calculated using "known" status as the denominator (see below).

Woman's residency status	n	% of known	n	% of known	n	% of known	n	% of known
NZ passport	17	9	20	37	21	29	58	18
Eligible, no further detail	54	28	0	0	0	0	54	17
No longer needs FSA	0	0	4	7	10	14	14	4
Residency visa	92	48	28	52	35	48	155	49
Work visa	23	12	2	4	3	4	28	9

Australian	1	1	0	0	4	5	5	2
Declined	4	2	0	0	0	0	4	1
Unknown status	12		13		3		28	
Partner's residency status								
NZ passport	1	0	28	53	27	38	56	21
Eligible	49	20	0	0	0	0	49	18
No longer needs FSA	0	0	4	8	10	14	14	5
Residency visa	77	32	19	36	31	43	127	48
Australian	0	0	0	0	1	1	1	0
Work visa	15	6	2	4	3	4	20	7
Unknown status	**61**		**14**		**4**		**79**	

Table 2: FAA: provided 3 months of data from FSAs mid May 2018-mid August 2018

	N=45	
	n	%
Eligible – NZ resident – checked	21	47
Eligible NZ resident – self-declared	1	2
Eligible NZ indefinite resident	19	42
Work visa - <2 years	1	2
Australian passport	1	2
No residency data given	2	4

There are different processes for checking eligibility at the clinics which makes it difficult to compare the data. At Repromed and Fertility Associates it is clear which couples had a NZ passport and which were on a type of visa, and whether that was a residency or work visa. At Fertility Plus, "Eligible" may mean resident or NZ passport, although from the data collected it appears that residency visas are separate and that NZ Passport and eligible are the same.

Findings: Somewhere between 35 and 50% (112/300 with data who still need an FSA and are currently eligible) of women have a New Zealand passport; 52% (155/300) are women on a residency visa (various types); 8% on a work visa; and a few are Australian.

The data from FAA are consistent with table 1 data from all clinics.

Bottcher, Jenna

From: bruce kerr s9(2)(a)
Sent: Wednesday, 20 March 2019 7:14 AM
To: OIAfeedback@justice.govt.nz
Subject: access to official information

Hello

I recently saw the notification about an upcoming review of the Official information Act and the request for feedback.

For about three years I worked through an official information act issue with the office of the ombudsman, and it was a terrible experience.

In summary, I had no issue what so ever which the official Information act, but did with the office of ombudsman. The act was clear as was how the act should have worked. The office of the ombudsman was so bad that I notified them that I was proceeding with a formal complaint about them. I have the information available but need to find the time to pull it all together. The complaint (when i get to it) will be to the executive committee and to the media, and covers release of private information, conspiracy, and blatant disregard of the official information act (I am not talking about my view of the act, i am talking about the office of the ombudsman ignoring their own public documents) The office of the ombudsman is fully aware of this and what I am doing.

I understand that you may wish to write me off as being disgruntled, but I would hope that your review goes beyond such dismissive judgements. I am also involved with other parties official information matters, and they have experienced similar issues with the office of the ombudsman.

If you are undertaking a serious review, even though the mandate of the office of the ombudsman is not within the official information act, I would ask that a significant portion of the review looks at the problems with office of the ombudsman, and the serious issues there. Whatever benefits made to the official information act can be easily undone by problems with the management of the act.

Regards

Bruce

17 April 2019

Ministry of Justice
OIAfeedback@justice.govt.nz

Christchurch City Council submission on the consultation about access to official information

Introduction

1. Thank you for the opportunity to comment on the Ministry of Justice's review into the Official Information Act 1982 (OIA). The Christchurch City Council (the Council) is subject to the Local Government Official Information and Meetings Act 1987 (LGOIMA) which, in terms of official information, is largely consistent with the OIA. Given this similarity, the Council would like to raise the following points to consider which are applicable to both Acts.
2. To note these matters have been raised as discussion points. If officials would like to discuss these further, we are happy to engage and provide additional context.

Official Information during a State of Emergency (Legislation)

3. One area the Council has faced on a number of occasions in recent years is the inflexibility of statutory timeframes when requests for official information are made during states of emergency. This occurred on a number of occasions with the Canterbury earthquakes, the 2014 floods and the Port Hills fires. Additionally, the tragic events of 15 March 2019 saw the activation of the National Crisis Management Centre.
4. Naturally these events are of considerable public interest and often the subject of official information requests. The difficulty the Council faces is ensuring statutory timeframes are observed during times of considerable upheaval and staff activity. The staff often involved in the Council responses to these events are key to providing information or need to be consulted on information requests. Logic would dictate these key staff should fulfil public roles where they are most needed during times of crisis; not answering information requests.
5. During the period after 15 March 2019, the Ombudsman issued a statement recognising that official information timeframes would be impacted. This position was welcomed, however, the Council would prefer to make a decision allowed by the Act, which currently does not permit additional time outside of a formal extension.
6. We ask that consideration be given to recognising states of emergency or similar upheaval in the Acts, especially concerning timeframes. This will provide greater assurance to the Council and, if necessary, additional time for responses to be made.

Requests considered in relation to offensiveness (Legislation)

7. One area the Council would invite consideration of is whether a request for information can be refused/considered on the basis it is offensive. Following the events of 15 March 2019, the Council received some requests which staff considered insensitive to the Muslim Community. This included requests for information on the mosque properties and information related to the shootings. While some of this information is standard in a business as usual environment, the exceptional circumstances which surround this matter mean any related information releases

need to be scrutinised with great care and potential release of information considered how it might affect parts of the community.

8. While these requests were dealt with through the normal official information processes, it did raise the question whether there could be a possible extension to, or better definition of, either:
    - section 18(h) OIA/17(h) LGOIMA)where a request can be refused as "vexatious" – add a ground relating to offensiveness; or
    - section 9(2)(c) OIA/ 7(2)(d) LGOIMA – make it clearer that 'health or safety' of members of the public includes where there could be offence caused to members of the public.
9. It is unlikely this ground would be applicable on a regular basis, however, we would like consideration of this matter.

Updated (Practice)

10. The Council, like a number of other public agencies, uses the Ministry of Justice's charging guidelines as a basis of their respective polices for charging for information. As you are aware these guidelines were published in 2002, and in the intervening 17 years, the way in which agencies store information and communicate has changed in several areas. We understand that any agency has an independent ability to set its own charging polices, however, the Ministry's guideline has become an industry-standard approach and carries significant influence in setting appropriate levels across the public sector.
11. We would ask that these guidelines be updated to accommodate changes to recognise costs for such matters as storing large-scale electronic records and the ability to provide website and social media records. Additionally, the increased use of film footage for various purposes, has resulted in requests for considerable amount of footage to be supplied and assessed at considerable expense to the Council. It would be appreciated if this could also be accommodated in the future guidelines.
12. Secondly, we are conscious of what constitutes reasonable charge under the legislation and the tension between providing information and mitigating costs to the Council. We ask that further guidance be produced to allow agencies to make better decisions regarding charging. Often the Council is faced with requests where actual costs diverge markedly from what might be considered a reasonable charge. We are mindful that the need to recover costs should not be the norm and only used on specific occasions. However, we ask that agencies are provided with appropriate grounds to use where cost is the main issue.

Authority for agencies to make decisions on their own material - not just be consulted (Legislation/Practice)

13. One area of concern we consider worthy of further consideration is strengthening the provisions in both Acts to give agencies a greater decision-making ability where their information has been requested from another public agency.
14. Under both Acts an agency can make a decision and release information from another public agency it holds without consulting with that agency or, if consulted, without taking into account their recommendations. In general, the Council works highly co-operatively with other agencies to consult on material we hold of theirs and take any recommendations seriously. The same is generally reciprocated. However, on occasion, an external agency has released potentially sensitive Council information without the Council's knowledge or consent. This raises risk, especially regarding commercial material the Council may have shared in confidence.
15. While the Acts allow agencies to transfer partial requests, this is often impractical for information where there are considerable exchanges between key agencies. As a result, an agency often finds itself making a decision on another agency's information.

16. The Council would welcome a discussion which looks at creating a mandatory requirement for an agency to consult another on substantial information decisions and a greater emphasis placed on considering the recommendations of the agency which has been consulted.

Thank you for considering the Council's views. Please contact me for any clarification on points within this submission.

Yours faithfully

Sean Rainey
Senior Information Adviser and Privacy Officer
Office of the Chief Executive
s9(2)(a)

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6 May 2019

Chris Hubscher
Policy Manager, Electoral and Constitutional
Ministry of Justice

By email only: oiafeedback@justice.govt.nz

Dear Mr Hubscher

Feedback on the Official Information Act 1982

1. Thank you for your email of 8 March 2019, seeking feedback on the need for a review of the Official Information Act 1982 (OIA), with reference to the following questions:

   1.1 In your view, what are the key issues with the OIA?

   1.2 Do you think these issues relate to the legislation or practice?

   1.3 What reforms to the legislation do you think would make the biggest difference?

2. We have outlined the areas of the OIA below which we believe may benefit from review. These are:

   2.1 paragraphs [4] to [8]: section 18(d) and Part 4 requests;

   2.2 paragraphs [9] to [15]: information contained in Court records;

   2.3 paragraphs [16] and [17]: section 18(f);

   2.4 paragraphs [19] to [21]: section 48 and proactive release;

   2.5 paragraphs [22] to [24]: section 48 and ineligible requesters; and

   2.6 paragraphs [25] to [27]: agencies performing an enforcement and/or quasi-judicial function.

3. For each, we have indicated whether we consider the issue relates to legislation or practice and have suggested reform where appropriate.

Section 18(da) - information that could be sought under the Criminal Disclosure Act

Part 4 requests - legislation

4. As it stands, section 18(da) of the OIA does not apply to requests made under Part 4 of the Act, by a body corporate for information about itself.

5. The Commerce Commission (Commission) is one of few agencies subject to the OIA who bring criminal proceedings against body corporates for breaches of the legislation we enforce.[1]

6. In this situation, information sought by a defendant under the OIA would often be more appropriately dealt with under the Criminal Disclosure Act 2008. Currently, it is not possible to decline a request for this reason.

7. We note that section 27(1)(a) of the OIA allows an agency to consider the interests protected by sections 6(a) to (d), section 7 and section 9(2)(b) of the Act in deciding a Part 4 request.

8. We suggest that section 27(1)(a) of the OIA could be extended to cover the interest protected by section 18(da) of the Act, to allow for situations such as ours and bring the position in line with requests under Part 2 of the OIA and section 29(i)(ia) of the Privacy Act 1993 (PA).

Court records - practice

9. There can be difficulty in practice where a person requests information contained in Court records.

10. There is a procedure for requesting this information from the Courts (contained in the Senior Courts (Access to Court Documents) Rules and District Court (Access to Court Documents), and applications are decided by a Judge or Registrar, which can be more appropriate in some circumstances.

11. However, where Court documents are held by an organisation this information can be requested directly under the OIA which may usurp the Court's jurisdiction over its own processes. In our view, whether or not Court documents should be released is in some circumstances best decided by the Court.

12. We note that section 18(c)(ii) of the OIA allows an agency to withhold information if to release it would be a contempt of Court. However, whether or not releasing court documents is a contempt of Court depends on the circumstances of the case.

13. The United Kingdom Freedom of Information Act 2000 (FOIA), allows two avenues for this situation:

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[1] Commerce Act 1986, Fair Trading Act 1986 and Credit Contracts and Consumer Finance Act 2003.

13.1 section 32 of the FOIA, exemption for information contained in Court records; and

13.2 section 21 of the FOIA, exemption for information which is accessible by other means.

14. If a similar approach were adopted in New Zealand, as with other the administrative grounds for refusal, reliance could be discretionary rather than mandatory. This would allow agencies to deal with straightforward or uncontroversial requests, and refer to the Court where necessary on matters of complexity or significance.

15. As with any ground of refusal, a requester can exercise their right to complain to the Ombudsman if they feel an agency has applied the criteria incorrectly or unfairly.

Section 18(f) - substantial collation and research - practice

16. There can be difficulty in practice quantifying substantial collation and research. The Office of the Ombudsman has published useful guidance in this area, particularly on what is or is not 'collation' or 'research', however notes "*there is no bright line number of hours above which the amount of collation or research will always be 'substantial'.*"[2]

17. We note that section 12 of the FOIA allows for refusal where an agency estimates the cost of complying with the request would exceed a prescribed appropriate limit. The limit may be different for different cases. An agency is permitted to treat two or more requests by one person, or different persons who appear to be acting in concert or pursuance of a campaign, as one request for the purpose of estimating the cost of complying.

Section 48 - legislation

18. Currently, the protection provided by section 48 of the OIA (from civil or criminal proceedings arising from the release of information in good faith) applies only to release made to a requester under the Act. It does not cover proactive release/publication or release to a requester who is not eligible under section 12(1) of the Act.

Proactive release

19. The Commission publishes selected Part 2 responses on an Official Information Act register on its website,[3] following the Office of the Ombudsman's guidance,[4] in the interests of transparency and accountability; to enable people to effectively scrutinise and participate in the decisions we make and functions we carry out.

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2 Office of the Ombudsman, Guidance: Substantial collation or research, page 7.
3 https://comcom.govt.nz/about-us/requesting-official-information/oia-register
4 Office of the Ombudsman, Guidance: The OIA for Ministers and agencies, page 35.

20. We are required to report to the State Services Commission (SSC) 6-monthly on the number of OIA responses we have published.[5] For the period from June to December 2018, we were one of only 42 (from 110) agencies who published this information.

21. We would like to see the same protection under section 48 of the Act afforded to OIA responses which are proactively released/published, as it is when provided to the requester. We believe this would support the purpose of the OIA, to increase progressively the availability of official information to the people of New Zealand.

Ineligible requesters

22. The Commission also receives, from time to time, requests from persons or entities which do not meet the eligibility criteria in section 12(1) of the OIA. We are required to (and do) treat these requests in an administratively reasonable manner.[6] The requester, although not eligible under the OIA, is able to complain about our handling of the request or response to the Ombudsman under the Ombudsmen Act 1975.

23. We believe these requests will only become more common, as advances in technology bring the world closer together. For the Commission, this is particularly prevalent with the rise of the digital economy and online marketplaces.

24. We would like to see the same protection under section 48 of the Act afforded to responses made to 'ineligible' requesters, as it is when provided to requesters who are eligible under section 12(1) of the Act.

Agencies performing an enforcement and/or quasi-judicial function - practice

25. We would like to see consideration given to whether the OIA could provide specific provision for agencies who perform an enforcement and/or quasi-judicial function, and information provided to or created by the agency in this context (as distinct to an agency's policy activities, for instance).

26. One issue we have encountered in practice is whether section 9(2)(ba)(i) (prejudice to the supply of information) can apply in situations where the Commission has or could compel the provision of the same or similar information.

27. We note section 30 of the FOIA provides exemption for information which has at any time been held by an agency for the purpose of an investigation, civil proceedings brought by or on behalf of an agency arising out of such investigations, criminal proceedings which an agency has the power to conduct or relates to information from a confidential source. Further, section 31 of the FOIA provides exemption for information which would or would be likely to prejudice the administration of justice.

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5 http://www.ssc.govt.nz/official-information-statistics

6 Office of the Ombudsman, The OIA for Ministers and agencies, page 12.

Further Information

28. Please do not hesitate to contact jessica.clarke@comcom.govt.nz if you have any queries regarding this letter.

Yours sincerely

Jessica Clarke
Legal Counsel

TE OHU KAIMOANA

FISHERIES INSHORE NEW ZEALAND

deepwater group

Paua Industry Council

New Zealand Rock Lobster Industry Council

COMMERCIAL FISHERIES FORUM

SUBMISSION ON ACCESS TO OFFICIAL INFORMATION

Commercial Fisheries Forum

Submission on Access to Official Information

18 April 2019

Introduction

1. Thank you for the opportunity to participate in the Ministry of Justice's consultation on whether or not to review the Official Information Act 1982 (OIA). This submission is made on behalf of the Commercial Fisheries Forum (CFF), which acts as a co-ordinating body for New Zealand's fishing industry, including quota owners and fishers represented by the Deepwater Group, Fisheries Inshore New Zealand, the NZ Rock Lobster Industry Council and the Pāua Industry Council.
2. The fishing industry has dual interests in the OIA – we are both a user of official information and a contributor of fisheries data that may be released to third parties under the OIA.

Using the OIA

3. The CFF supports the presumption in the OIA that public information shall be made available unless there is good reason for withholding it. Fishing industry organisations and seafood companies regularly use the OIA to obtain information for a range of purposes, primarily related to ensuring that our members are properly informed and can participate effectively in government policy processes which affect the industry's quota rights and the activity of fishing.
4. Our experiences as users of the OIA are mixed. Industry organisations are typically able to obtain the information requested, but requests can take an excessively long time to process and charges can be unreasonably high. For example, in 2017 the Department of Conservation sought to charge industry organisation PauaMAC5 $66,044.50 for a set of copies of public submissions on the South-East Marine Protected Area planning process. Following a complaint to the Ombudsman, the submissions were eventually made available to PauaMAC5 and all other interested parties without charge.
5. In general, we consider that any concerns the fishing industry has as a <u>user</u> of the OIA can best be addressed by improving agency practice rather than by amending the legislation.

Release of fisheries data provided by fishing industry members

Increasingly large volumes of commercially-sensitive fisheries data are held by FNZ

6. The Fisheries Act 1996 requires the fishing industry to provide a wide variety of information to Fisheries New Zealand (FNZ) for fisheries administration, management and enforcement purposes. Recent regulatory changes to implement electronic reporting and geospatial position reporting (ER/GPR) require the industry to provide FNZ with catch data more frequently and at a much finer spatial scale than was previously the case.[1]

[1] Fisheries (Reporting) Regulations 2017, Fisheries (Geospatial Position Reporting) Regulations 2017, Fisheries (Electronic Monitoring on Vessels) Regulations 2017.

7. The fishing industry supports the high level outcomes that FNZ seeks to achieve from gaining further information about commercial fishing, including obtaining robust information to inform decision making and maintaining and enhancing public confidence in the integrity of New Zealand's fisheries regime. However, as a result of these changes, FNZ now holds information that records fishing catch and activity on a near real-time basis, creating a far greater risk of commercial harm if this information is released inappropriately. The industry-provided data is now considerably richer in terms of the types of data provided, and much greater in volume than was previously the case. Each of these attributes increases the risk that sensitive information may be released inconsistently, in error, or in ways that result in commercial harm to individuals or companies – including among competing domestic fishers and in the international market place.
8. The Government has also proposed placing electronic monitoring equipment (video cameras) on fishing vessels, which would result in the supply of large amounts of digital image data to FNZ. If this proposal goes ahead, it will give rise to an additional concern – i.e., the risk of information being released that is private or personal in nature.
9. These recent and proposed changes have highlighted short-comings in the way in which New Zealand's legislative regime and FNZ's current practice deal with the management and release of fisheries data. The CFF is extremely concerned that fisheries information provided to FNZ by fishing industry members will be released under the OIA in a manner that:
    - Enables one party to gain commercial advantage over another; or
    - Undermines the value of a fisher's intellectual property.

Current protections for commercially-sensitive fisheries data are inadequate

10. The release of ER/GPR information is governed by the OIA and, at an operational level by FNZ's *Guidelines for the Release of Information from Fisheries Databases* ("the FNZ Guidelines"). The FNZ Guidelines provide that information requests are assessed individually against OIA requirements and that fisheries catch, effort and landing information may be released if it is aggregated in space and time and anonymised (the Guidelines do not currently deal with video monitoring data).
11. In the industry's experience, the OIA and the FNZ Guidelines provide no certainty that fisheries information will be withheld, even if it is commercially sensitive. For fishing industry members, the risk of commercial harm is a product of a complex mix of factors, including the release of the actual ER/GPR data, the public availability of other types of fisheries data (e.g., the public ACE register which records ownership and trading of Annual Catch Entitlement), and the personal knowledge of people who may gain access to ER/GPR data. Two examples are provided below, illustrating that the risks of releasing ER/GPR data cannot be considered in isolation, but must instead be assessed in combination with other sources of fisheries information and knowledge that are in the public domain. These risk factors are not straightforward to assess, but once commercially-sensitive information has been released, fishers or seafood companies who suffer commercial harm have no way of seeking recompense from the agency that released the data.

Example: commercially damaging release of fisheries data

Several years ago, in order to facilitate planning and applications for aquaculture, MPI produced maps showing the general location of finfish fishing. The maps, which included information on areas where less than three vessels were operating (i.e., information which should have been withheld under FNZ Guidelines), enabled anyone with a basic knowledge of the local fishing industry to quickly identify the vessels that were fishing in certain locations. In one particular area, it was apparent that locations shown on the maps could only have been fished by the sole full-time local setnet operator (fisher A). A potential competitor (fisher B) consulted the ACE register and, as a result, was able to determine what species fisher A caught at the locations, how much he was landing, and when he was landing it. This information provided fisher B with certainty about his likely fishing success if he were to adopt fisher A's fishing strategy. Armed with the information, fisher B was able to enter the ACE market and offer a higher price for ACE in the relevant stock. Fisher A was outbid, did not manage to obtain sufficient ACE to maintain an economically viable setnet vessel, and was obliged to leave the fishery. The release of fishing location details allowed fisher B to gain commercial advantage over fisher A by accessing and using fisher A's intellectual property.

Example: manipulation of export market price

Catch data may be used by wholesale customers (domestic or export) and/or competitors to predict volumes of fish coming to market and manipulate market conditions to New Zealand's disadvantage. To an extent this already occurs, but with more timely catch information available under ER, overseas buyers will have almost real-time visibility on product supply, providing them with a clear market advantage in the sale price.

12. These examples illustrate how commercial risk cannot effectively be managed by considering information release on a reactive, case-by-case basis under the OIA. Furthermore, piecemeal information release is unlikely to serve the Government's focus on "increasing trust and transparency" in fisheries management. We are concerned that the OIA will become an uncertain battleground between competing views as to how the public interest in fisheries data can be satisfied, and the level of risk that is acceptable for seafood industry operators to bear. The potential need to withhold large amounts of fisheries information under the OIA for reasons of commercial sensitivity (and, in future, protection of the privacy of individuals) is not an effective long-term solution to the management and release of fisheries data.

13. Instead, the CFF considers that it is time to evaluate whether the OIA should apply *at all* to certain types of fisheries data, or whether the public interest would be better served by excluding certain types of fisheries data from the OIA and instead establishing a fit-for-purpose fisheries information regime.

Excluding ER/GPR data from the OIA

14. The CFF considers that there is an urgent need for government (specifically, FNZ/MPI) to develop a fit-for-purpose fisheries information regime to enhance public confidence in fisheries operations, management and enforcement. The regime should include:
    - Proactive reporting by FNZ/MPI – i.e., public provision of summarised fisheries information within a framework that specifies what data will be released, and in what form (potentially along the lines of the Environmental Reporting Act 2015);
    - Reactive data release for reasons relevant to the purposes of the Fisheries Act or other legislation (e.g., for research purposes); and
    - Exclusion from the OIA of ER/GPR data.

15. There is a strong case for amending the Fisheries Act to exclude ER/GPR information (and, potentially, all commercial catch and effort information) from the application of the OIA, as follows:
    a) The availability of ER/GPR data does not, in itself, contribute to the purposes of the OIA. In particular, while the existence of the ER/GPR regime might contribute to the purpose of the OIA – i.e., enabling people to participate effectively in the making and administration of laws and policies and promoting the accountability of Ministers and officials – the data itself does not. It is entirely possible for the public to scrutinise the actions of government without having access to detailed ER/GPR data;
    b) Public confidence in the integrity of fisheries management information and decision making can be assured by the robustness of the ER/GPR regulatory framework (i.e., the scheme itself enhances the likelihood of information integrity) and its effective enforcement, rather than through the release of individual information;
    c) The OIA explicitly contemplates that other statutes may create exceptions or exclusions to its operation[2] and there are numerous relevant statutory precedents.[3] The majority of precedents are analogous to ER/GPR data in that they deal with situations where private commercial enterprises are compelled to provide commercially sensitive information to government agencies. The statutes with exemptions or exclusions from the OIA adopt a spectrum of approaches, ranging from complete exclusion – for example "*Nothing in the Official Information Act 1982 applies to data in the NAIT information system*"[4] – to more nuanced exclusions such as that of the Biosecurity Act 1993.[5]
    d) A fit-for-purpose fisheries information regime would be more efficient and effective, given that FNZ is likely to receive frequent requests for access to fisheries information. Decisions to release or withhold information will be subject to differing views and opinions, many of which may well be strongly held. Unless robust procedures are implemented to effectively manage information release with a high degree of certainty for those supplying the

[2] OIA s18(c)(i) provides for information requests to be refused if …*the making available of the information requested would… be contrary to the provisions of a specified enactment.*
[3] Including, *inter alia*: Animal Products Act 1999 s161; Biosecurity Act 1993 s142C; Commodity Levies Act 1990 s17; Companies Act 1993 s367; Environmental Reporting Act 2015 s17; Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 s158; Meat Board Act 2004 s45; and National Animal Identification and Tracing Act 2012.
[4] National Animal Identification and Tracing Act 2012 section 51(1).
[5] Biosecurity Act 1993 – section 142C here

information (while also addressing public interest issues), information access issues will remain difficult and costly for FNZ to resolve in the absence of a fit-for-purpose regime.

Recommendations

16. In response to the Ministry's "three questions", the CFF makes the following recommendations:

Q1) *In your view, what are the key issues with the OIA?*
The OIA does not provide a sufficiently certain framework for managing risks associated with the release of fisheries information of a commercially sensitive nature (and, in future, of a private or personal nature).

Q2) *Do you think these issues relate to legislation or practice?*
Aspects of current FNZ practice can and should be improved by amending the FNZ Guidelines (see additional recommendations below), but the issue would be more effectively and comprehensively addressed by excluding defined categories of fisheries data from the application of the OIA.

Q3) *What reforms to the legislation do you think would make the greatest difference?*
The CFF recommends that any legislative review of the OIA should also consider the relationship between the OIA and information release and protection provisions in other legislation. It would be useful, for example, to consider whether current statutory exclusions and exemptions from the OIA are consistent and appropriate with respect to considerations such as public interest and commercial risk.

Specifically, we recommend that the Fisheries Act should be amended to:

a) exclude the operation of the OIA in relation to ER/GPR data (and potentially, to all fisheries catch and effort data), using Biosecurity Act section 142C as a model; and
b) Provide for the establishment of an alternative, fit-for-purpose information release regime to enhance public confidence in fisheries operations, management and enforcement.

17. While legislative reform is being considered, FNZ should be encouraged to amend their Guidelines for release of fisheries catch and effort information (including ER/GPR data) as follows (noting that the CFF has already provided these recommendations, together with more detailed rationale, to MPI/FNZ):

- FNZ should be required to consult with parties (or bodies representative of those parties) where information about that party or supplied by that party is the subject of an OIA request;
- The default settings for aggregation of released data should be amended so that data is aggregated to 3 month periods and Quota Management Area scale. Separate release procedures should be developed for the release of less aggregated data for (a) scientific use and (b) use in regulatory processes where the purpose of the proposed use of data is consistent with the purpose of the Fisheries Act or other relevant legislation;
- When discretion is exercised as to whether information should be withheld or released, the full set of relevant provisions in the OIA should be considered, including the purpose of the OIA and all relevant reasons for withholding information under the OIA;

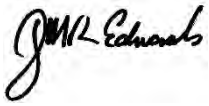
- A more comprehensive and nuanced consideration of 'public interest' with respect to fisheries information should be included; and
- Greater transparency should be provided (either in the Guidelines or elsewhere) about: the confidentiality requirements when fisheries information is shared with other agencies; which FNZ/MPI staff members may be granted access to sensitive information, for what purposes, and under what confidentiality requirements; and steps that will be taken if confidentiality arrangements are breached by FNZ/MPI staff, other agencies or external parties.

18. CFF representatives are available to discuss any aspects of this submission. For further information, please contact:

Mark Edwards
CEO
NZ Rock Lobster Industry Council
s9(2)(a)

Yours sincerely

Dion Tuuta
Te Ohu Kaimoana



Mark Edwards
NZ Rock Lobster Industry Council

George Clement
Deepwater Group

Storm Stanley
Paua Industry Council

Jeremy Helson
Fisheries Inshore New Zealand

Bottcher, Jenna

From: Curtis Nixon s9(2)(a)
Sent: Thursday, 28 March 2019 3:09 PM
To: OIAfeedback@justice.govt.nz
Subject: OIA feedback

Hello

My experiences with Official Information Act requests are specific to the Ministry of Social Development.

On several occasions I have made requests for information about specific programmes run by MSD due to their responsibilities under the Social Security Act.

MSD has refused my requests on the grounds that they do not analyse the data they collect in such a way to be able to answer my requests because they are not required to do additional analysis to answer an OIA request; they are only obliged to release such information that already exists after the analysis of the raw data that they choose to do for their existing requirements. That is, they are not required to create information that does not previously exist so as to answer an OIA request.

I have several criticisms of this approach.

One is that I have no way of knowing whether this is a true state of the existing requirements for MSD to do analyses of the data, that is to create analysis or information about the programmes they administer. There is a huge space left for the fudging responses and other malpractice. However, this criticism may be unwarranted and unfair of MSD staff, and no such malpractice may exist. My point is that the space is wide open for this to happen and no one on the outside has any way of knowing what the true picture is.

Second is that since all government departments and ministries are tasked with managing the budgets and implementing legislation that Parliament entrusts them with, it is a valid criticism that if they are not creating certain information by way of analyses of the various data about the programmes, budget areas and other activities enabled by the legislation governing them, then they are not fulfilling the terms of the trust placed in them to manage their budgets and implement their particular empowering Acts. If they cannot supply members of the public with these analyses then they will not be able to supply their Ministers with it, or Parliament, or the Auditor General or any other duly empowered oversight agency legitimately tasked with an oversight function.

Both of these criticisms could be addressed by a change to the OIA legislation to add a reasonableness clause that requires agencies to create such information as could be reasonably expected of them to hold for the usual administration of their budgets and legislation. So, for example, I asked MSD to provide me with the numbers of beneficiaries who receive support from them under a particular section of the Social Security Act. It is reasonable to expect MSD to make and hold analyses of the numbers of beneficiaries receiving support under each section of the Act. If I were the Minister I would expect MSD to do this as a minimum so as to be able to properly brief me about their expenditure and activity under each section.

Curtis Nixon

Curtis Nixon

s9(2)(a)

New Zealand

s9(2)(a)

1. In your view, what are the key issues with the OIA?

Action on delay is well overdue.

Perhaps the key issue at present relates to delayed responses to OIA requests, either within the 20-working day limit or beyond. Mark Hanna has done some recent work on this and many will be aware of his graphing of response times at:
https://cipscis.github.io/charter/app/oia.html

To summarise these findings in his own words: *"there is a huge spike in responses received on the final allowable day, and it is not uncommon for responses to be received late*."(Hanna, n.d).

In a similar vein the Chief Ombudsman has described the practice of 'gaming' the OIA through delay as being *"..clearly not acceptable in an open and participatory democracy"(*Boshier, 2018, p. 3).

From my own experience over the last 27 years of using the Act these delays can be both frustrating and demotivating. Many working in the media, government or elsewhere have also described this corrosive delaying effect. See, for example (Beagle & New Zealand Council for Civil Liberties, 2018; McCulloch, 2015; Morrison, 1999; New Zealand Labour Party, 1997; Information Authority, 1988; Office of the Ombudsmen, 1987).

Also worth noting: for much of the calendar year any submitted OIA request will take more than four working weeks to receive a 20 working-day maximum response, due to the distribution of various public holidays, anniversary days, and the December to January summer shutdown. Many requesters will have to wait into a fifth week to receive their information.

Implement 'release to one release to all'.

The other issue I would like to see progressed further is the proactive release of responses to requests on agency web sites, if not onto a central searchable repository. There is some work being done on this by a range of agencies but I'm still seeing the words 'selected' or 'selection' used on some of these response pages. Why not just release all responses and take the guess work out of discovering exactly what information has been released? In this way openness would be seen to be done in a much more public manner and not just as an 'agency to individual' transaction.

A 'release to one release to all' approach should now be appropriate, albeit with a few days delay for those wishing to publish out of their OIA request work.

2. Do you think these issues relate to the legislation or practice?

Both.

In regard to implementing a 'release to one release to all' regime there would appear to be little to prevent most agencies progressing some good work already underway. The likes of the Treasury and

many other agencies are already creating appropriate metadata which can be made public facing via their web pages.

As for overall best practice, the role modelling behaviour of senior public servants could be key in making openness a key performance indicator. As a local public policy expert recently remarked in relation to the Act "*Ultimately, however, much depends on the ethical norms that guide our political leaders and those who serve them" (*Boston, 2018).

3. What reforms to the legislation do you think would make the biggest difference?

In relation to delay and the 20 working-day time limit the Law Commission's 1997 recommendation to reduce this to 15 working days should be looked at again with a view to improving the request making experience (Law Commission, 1997, p. 65)

In regard to 'release to one release to all' the State Services Commission's guidance document (2017) can provide a useful starting point for legislative amendment should any reform proceed.

Reform should reflect the Act's original purpose

The OIA has the following purpose statement, listed before any others:

"to increase progressively the availability of official information to the people of New Zealand" (Official Information Act 1982, s4).

Please keep this progressive intent in mind when considering any reform.

Dave Clemens

Librarian

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Bottcher, Jenna

From: Davina Powell s9(2)(a)
Sent: Thursday, 14 March 2019 9:35 AM
To: OIAfeedback@justice.govt.nz
Subject: suggestions for amendments to OIA act
Attachments: 2nd OIA request June 2018.docx; ECAn response to OIA request July.pdf; ECAN response to OIA request March.pdf; first oia request March 2018.docx

I am at this time, one of many fighting the proposal to have a 170 hectare sized quarry in my community.
The RMA is biased in favour of the applicant, and this has been the subject of another application I have made regarding amendments proposed to this act.

Due to the fact this application has been publicly notified, I have had time to make requests through the OIA in order to evidence my concerns raised in my submission. This has given me first hand experience of the process, and more importantly - how it is misused by organisations who do not want you have to have access to information that could be damaging.

I therefore ask these be considered when amending the act.

1) Cost.
The fees are astronomically high, and will deter many from either making a request, or following through with a request should they be charged. I have attached the reply I had from ECAN in relation to a request regarding complaints made regarding quarrying activities.
I believe Australia has a fairer system and does not attempt to deter people from making requests. I cannot find where I had noted this, but from memory I believe they have the following criteria. First 5 hours free of charge, and no charge made to pensioners applying for information. Thereafter the fee I believe is $6 per 15 minutes.
A huge difference to our first hour free, then subsequent charges.

2) My perception, is a propensity for organisations to do all they can to be obstructive. I have had experiences whereby they have stated the information will take a while to collate, and have extended the deadline. Only then to not provide any information once this new deadline has passed, with various reasons offered.
It is an unethical practice. If there are genuine reasons for not fulfilling the task this should be explained within the first 10 days, with suggestions as to what the applicant can do to ensure it is fulfilled.

3) I am not convinced the ombudsman takes the complaints seriously. I have not gone that route because of experiences friends and others in the same position have had when they have reported issues to the ombudsman. They have not been followed up in a timely fashion, and they have always found on the side of the organisation. I suspect with that many complaints it would be impossible to investigate them all thoroughly.

4) There needs to be heavy sanctions for any department or organisation that is obviously abusing the system, or being clearly obstructive. In other words, there has to be a deterrent which may cause a few to reconsider their approach when receiving these requests.

Attached are two examples.
Both relate to ECAN. My first request was for complaints regarding the quarry in question over a 10 year period. You will see I would be expected to pay UPWARDS of $2,356 for a task that would take in excess of 32 hours. (Do organisations really not keep this type of information in an easily accessible form on a database?)

I then amended the request to just a 2 year period.
Again it was not fulfilled, with the reply stating it would take several weeks to compile the information. Several weeks for a 2 year period

compared to 32 hours + for a 10 year period. In addition I had NOT asked for just issues relating to dust.

I am pleased this issue is being addressed. I hope the changes are genuine and far reaching. And not just lip service to appease. As with the RMA and resource consents for quarrying - this is not a level playing field.

I am writing to request under the OIA that you supply me with information relating to complaints or concerns made to ECAN, between January 2008 and February 27th 2018, regarding quarrying activity and related activities by Fulton Hogan in the Canterbury region. I ask that this information be supplied to me within 20 working days.

The specifics I require are:

1) Date of each and every contact and complaint made to ECAN in that time period in whatever form (written, telephone, email or other method of where this contact is recorded) relating to quarrying activity conducted by Fulton Hogan. Any further reference to quarrying activity is to be assumed to include any related activity that may be undertaken outside the boundary of the quarry itself.

By way of example, this would include issues relating from trucks being driven on roads by Fulton Hogan employees in the execution of their duty. (E.g - removal of produce from the quarry, returning of the vehicle to the quarry). This should be seen as an example, and in no way is exhaustive of what can and should be included.

2) The specifics of each and every contact and / or complaint, giving full disclosure of the issue and reason for making the complaint / contact. If the complaint / contact cited specific conditions being breached, that information is to be included in the reply.

3) Full process disclosure of each and every contact / complaint made. This is to include details of who was allocated to that complaint / contact, and dates it was investigated. (If applicable - if not investigated to include details of how it was dealt with and reasoning behind that decision). Full disclosure and detailed description of any investigation or action relating to that complaint / contact. This is to include details of a) date/time of any visit to the site in question b) name of personnel making that visit. (If such a visit is made).

4) Full disclosure on all complaints that were investigated. This is to include any correspondence with any employee or representative of Fulton Hogan in any recorded form regarding the issue / complaint. Full details of any consent condition that was breached in accordance with the consent document, or is in breach of any aspect of the Resource Management Act.

5) Full disclosure of any sanction applied to Fulton Hogan for any issue of non-compliance, or resulting from any complaint that was regarding an issue other than that of non-compliance of consent condition. This is to include orders to cease and desist and what activity that relates to. It is to also include any financial penalty applied to Fulton Hogan, and must be fully detailed.

I would like the information to be provided in a simple, logical and accessible format, but in summary the information required would follow each complaint through as follows:

**Date of initial contact

** Full disclosure of complaint or issue raised (including supplementary evidence in the form of photograph or video recording)

** Date investigated and who by

** How the investigation was conducted including details of any visit to the site in question.

**Outcome of investigation

**Justification of decision made, by way of closure of the incident / investigation (particularly in case of no further action)

**Details of sanctions applied to Fulton Hogan, along with specifics of what conditions or RMA section has been breached.

I am happy for the information to be emailed to me in PDF format.

Environment Canterbury Regional Council
Kaunihera Taiao ki Waitaha

Customer Services
P. 03 353 9007 or 0800 324 636
200 Tuam Street
PO Box 345
Christchurch 8140
E. ecinfo@ecan.govt.nz
www.ecan.govt.nz

16 March 2018

Davina Powell
s9(2)(a)

By email: s9(2)(a)

Dear Davina

Local Government Official Information and Meetings Act 1987: Request for information

I refer to your email dated 01/03/18 requesting information relating to complaints or concerns made to Environment Canterbury, between January 2008 and February 27 2018, regarding quarrying activity and related activities by Fulton Hogan in the Canterbury region. Your request has been referred to me to reply.

I am writing to notify you that Environment Canterbury has decided to charge for this requested information under section 13(1A) of the Local Government Official Information and Meetings Act 1987.

The charge will be upwards of $2356 including GST. This charge has been calculated based on the minimum of 32 hours it is estimated to take for staff to collate the requested information. The first hour will be free and the other 31 hours will be charged at $38 per half hour. This charge is based on Ministry of Justice guidelines.

You have the right to seek a review by an Ombudsman of the estimated charge.

In order to reduce or potentially avoid this charge, you are welcome to narrow your request by contacting Anna Paris in the first instance at anna.paris@ecan.govt.nz or 03 3653828.

Yours sincerely

Nadeine Dommisse
Chief Operating Officer

I am writing to request under the OIA that you supply me with information relating to complaints or concerns made to ECAN, between June 2012 and June 2014, regarding quarrying activity and related activities by Fulton Hogan in the Canterbury region. I ask that this information be supplied to me within 20 working days.

The specifics I require are:

1) Date of each and every contact and complaint made to ECAN in that time period in whatever form (written, telephone, email or other method of where this contact is recorded) relating to quarrying activity conducted by Fulton Hogan. Any further reference to quarrying activity is to be assumed to include any related activity that may be undertaken outside the boundary of the quarry itself.

By way of example, this would include issues relating from trucks being driven on roads by Fulton Hogan employees in the execution of their duty. (E.g - removal of produce from the quarry, returning of the vehicle to the quarry). This should be seen as an example, and in no way is exhaustive of what can and should be included.

2) The specifics of each and every contact and / or complaint, giving full disclosure of the issue and reason for making the complaint / contact. If the complaint / contact cited specific conditions being breached, that information is to be included in the reply.

3) Full process disclosure of the actual investigation. This is to include details of who was allocated to that complaint / contact, and date it was investigated. (If applicable - if not investigated to include details of how it was dealt with and reasoning behind that decision). Details of who was contacted within Fulton Hogan when the complaint was bought to their attention, and when. It is also required to note if a site visit was made, or not made for each reported incident/complaint.

4) Full disclosure of how each complaint was closed off and recorded. If no action is taken, please include what decision is made, and reason behind the decision. If the complaint is closed with action taken against Fulton Hogan or results in any sanction being applied, details to be provided accordingly. This is to include orders to cease and desist and what activity that relates to. It is to also include any financial penalty applied to Fulton Hogan, and must be fully detailed.

I would like the information to be provided in a simple, logical and accessible format, but in summary the information required would follow each complaint through as follows:

**Date of initial contact

** Full disclosure of complaint or issue raised (If photographic evidence was supplied, please include accordingly).

** Date investigated and who by.

** How the investigation was conducted including details of any visit to the site in question. To also include the names of personnel at the quarry site contacted in relation to the complaint.

**Outcome of investigation.

**Justification of decision made, by way of closure of the incident / investigation (particularly in case of no further action)

**Details of sanctions applied to Fulton Hogan, along with specifics of what conditions or RMA section has been breached.

I am happy for the information to be emailed to me in PDF format.

I understand CCC and SDC are not charging for OIA requests relating to anything that is required in anticipation of an application for a quarry in Templeton, and also understand ECAN will be offering the same goodwill gesture. I therefore expect there will be no charge for this information.

Environment Canterbury
Regional Council
Kaunihera Taiao ki Waitaha

Customer Services
P. 03 353 9007 or 0800 324 636
200 Tuam Street
PO Box 345
Christchurch 8140
E. ecinfo@ecan.govt.nz
www.ecan.govt.nz

13 July 2018

Davina Penny
s9(2)(a)

By email: s9(2)(a)

Dear Davina

Local Government Official Information and Meetings Act 1987 ("LGOIMA"): Request for Information

I refer to your email dated 14/06/18 requesting information relating to complaints or concerns made to Environment Canterbury, between June 2012 and June 2014, regarding quarrying activity and related activities by Fulton Hogan in the Canterbury region. Your request has been referred to me to reply.

Environment Canterbury is in the process of assembling information on all complaints that we have received relating to quarry dust in Canterbury and we will be posting that information on our website in the next few weeks. That information will cover all quarries and will be for the period from 2014 to the present.

We appreciate that you have asked for information from before that date and for extensive details about each complaint. We consider that providing you with the information you have requested would require substantial collation and research, totalling weeks of staff time.

We have considered whether fixing a charge or extending the time limit for responding would enable the request to be granted. We have also considered whether consulting with you would help you to make the request in a form that would remove the reason for the refusal. We do not believe that taking those steps would achieve this and have therefore decided to withhold the information you have requested under section 17(f) of the Local Government Official Information and Meetings Act 1987.

However, as noted above, we are hopeful that providing the post-2014 complaint data on our website will be useful. We will write to you again as soon as that information is available and would be happy to discuss whether you require further information after you have had the opportunity to review that data.

You will be aware that if you are not satisfied with this response you are able to refer this matter to the Office of the Ombudsman under s27 (3) of the Local Government Official Information and Meetings Act 1987.

Please be advised that we now put LGOIMA responses that are in the public interest onto our website. No personal details of the requester are given, but we do summarise the essence of the request alongside the response.

Should you require any further information or clarification, please do not hesitate to contact Anna Paris in the first instance anna.paris@ecan.govt.nz or 033653828.

Yours sincerely,

Nadeine Dommisse
Chief Operating Officer

We are particularly interested in your views on the following questions.

1. In your view, what are the key issues with the OIA?
2. Do you think these issues relate to the legislation or practice?
3. What reforms to the legislation do you think would make the biggest difference?

Volume of information

Question 1

From a practitioner perspective, volumes of material potentially in scope makes assessment increasingly time consuming. We are now in an environment where hundreds of documents are being generated and saved into our document management systems each day. File management protocols (folders, naming conventions, who has a "need to know" etc) are not agile enough to keep up with the speed at which things change, and fluidity of staff movement makes maintaining any "set" protocol even more challenging.

Question 2

Practice – but I don't see a workable solution, and if I did, things are still changing so rapidly that it would probably become out dated/outmoded before it was bedded in. Refinement can only go so far in directing or limiting the search for information, and so, unless the topic of the request is a discrete one (e.g. a specific incident or limited time frame rather than a search on topics that potentially (and in practice) span years) often cannot yield what the requestor is seeking (neither we, nor they know what might exist). Because we are so easily interconnected now via email in particular, being able to build the "location" of material in scope into the reasons for extension would help.

Question 3

Acceptance at a legislative level, that the world is very different now as compared to 1982:

1. Information is no longer stored in easy to identify paper files on a topic.
2. Email systems have exponentially increased the volume of traffic (and thus documentation) in practically every aspect – but this is also giving way to increased oral or inaccessible communication (skype, texts etc) such that records are often incomplete, yet the expectation of requestors is that it is ALL available.
3. Filing systems are behemoth to the point that access across everything within one organisation generates massive results from searches – and often not word searchable (old style and protected pdfs for example).
4. Subject matter experts move to different jobs more quickly, so institutional knowledge on the subject of a request doesn't get a chance to be built or, if it does exist, is lost.

Large numbers of requests as a workaround to substantial collation

Question 1

If a requestor comes through asking for 3 months of data, we could turn around and seek a refinement due to the potential for substantial collation being required.

But if they send the same request through as a series of requests over 3 months, suddenly that same workload is now expected, and means a small group of requestors can make up the majority of the OIA workload. These requestors do not get charged and cause a massive drain on agencies resources.

Question 2

Legislation

Question 3

Either make substantial collation a withholding ground that can apply across multiple requests when it is clear that the same requestor is breaking down what would otherwise be refused in a single request, or add limits to the amount of Requests a person can make without been charged.

Transfer timeframes

Question 1

I don't understand why the transfer window works the way it does. If I only determine that something should be transferred after doing x, y, z, why am I late on day 11 but if I extend deadlines after that I'm fine?

Question 2

Legislative issue

Question 3

Remove the transfer window requirement, or allow for transfers after 10 days with clarification to the requestor on why this occurred after that timeframe.

Transfer gorounds

Question 1

Some OIA requests are more complex than others and can involve may cover many parts of complicated and large agencies and take significant time. More direct recognition should be given for the time required for the review of such OIAs in the possible grounds that can be used for extensions.

Question 2

Legislative issue

Question 3

Allow for more fulsome and direct grounds for extension.

Withholding grounds:

Question 1

Withholding grounds are unclear in their application and the ombudsman description of how they should be applied is often starkly different from what can be inferred in the Act.

Question 2

Legislative.

Question 3

Update the withholding grounds to reflect the information they are actually used to withhold.

Public Interest

Question 1

Determining what is in the public interest is a vague construct. And the ombudsman guidance on 'weighing the public interest' is literally a diagram of weights, showing that if one thing 'outweighs' another thing then that's how you determine what's in the public interest. My issue with this is this is that weights are distinct and measurable. Rationale for withholding information and a general sense of 'public interest' is not.

Question 2

Legislative and practice.

Question 3

Have the act give clearer guidance on what the public interest is, and how to quantify it.

Publication

Question 1

Publication is a way to provide information but there are more risks to agencies publishing as they do not have the same protections accorded to information released under the OIA

Question 2

Legislative.

Question 3

Protections could be extended to information that is published instead of released under an OIA.

Fishing expeditions

Question 1

There are many requestors (often reporters and Opposition) that systematically request substantial amounts of information. This includes requestors that ask for lists of documents then copies of those documents weekly. Sometimes requestors can have many requests simultaneously.

Question 2

Practice and legislative

Question 3

The Act could build limits into the volume of information being requested (at least for some requestors). Or introduce more simplified charging options (a small charge for requests could encourage some to be more strategic in their requests?).

Other channels could be explored for providing information to the opposition?

Extraordinary circumstances

Question 1

Provision should be given for extending due dates in light of extraordinary circumstances. For example, in light of the 15 March mosques attacks significant parts of government would have had to turn to responses to this event, meaning OIA work was less of a priority. This meant work that was already underway went late because there was no way to extend this in light of these circumstances and shifting priorities.

Question 2

Legislative

Question 3

Additional grounds for extensions.

Requests to large parts of government leading to administrative burden

Question 1

Some requestors will send requests asking an agency for information held by "all Ministers" or "all Agencies" or other significant groups. Under the Act that can mean a seemingly small request can become onerous to discharge as it mean transferring the requests to many bodies. DPMC in particular can be viewed an 'administrative centre of government'.

Question 2

Legislative

Question 3

This issue could be addressed by allowing an agency to refer some requestors (possible Journalists and Opposition) to those bodies it believes they should request information from instead of requiring them to transfer the request themselves.

3. ALL ABOUT POLITICS: THE OFFICIAL INFORMATION ACT AS A BARRIER TO OPENNESS

Politicians may have a low opinion of the news media, but the greater regard they have for their own status and collective wellbeing means they cannot ignore mainstream media or more recent digital additions. The default position is that these are potential problems that need to be controlled.

Let me be clear before I explain in this chapter how this position manifests itself: this is not an attitude confined to the present National-led government but one that was equally present in the Labour-led government of Helen Clark, particularly in its third term. At the core is a 'no surprises' policy.[i] The current Cabinet Manual was revised during Clark's third term and states: 'In their relationship with Ministers, officials should be guided by a "no surprises" principle. They should inform Ministers promptly of matters of significance within their portfolio responsibilities, particularly where these matters may be controversial or may become the subject of public debate.' The 'no surprises' policy continues to permeate the public service and, hence, relationships with news media.

It would be a step too far, however, to see it as a manifestation of a broken relationship of the type that led Tony Blair, on the eve of his departure from Downing Street, to describe the media as 'a feral beast, tearing people to pieces'. Our media are benign compared to the British rat pack.

Rather, it is due to the fact that politicians in power perceive the media and the flow of information to the media through a particular lens. Their glasses are not rose-tinted but suffused with alert red, through which everything is filtered for perceived risk. Yet politics is a risky game so what more should we expect? After all, the hold on power is under continual pressure from those who would wrest it away. It is only human nature that politicians should wish to minimise the likelihood of that happening.

Were this solely a matter of exercising control over their own utterances, it may not matter all that much. However, the control exerted by politicians in government extends much further. It has permeated every level of the public service and even the quasi-independent Crown entities. So tight has the control of information to media become that little of substance emerges from government departments or state agencies without it first passing through a minister's office.

Our demonstrably imperfect Bill of Rights Act places the right to acquire information at the beginning of the clause guaranteeing New Zealanders the right to free expression. That right is implicit in the legislation granting access to information held by those who govern us – the OIA (covering central government and its agencies) and the Local Government Official Information and Meetings Act (covering local authorities). However, this legislation is just as flawed as the Bill of Rights Act. This book is not a critique of the Ombudsman's review Not a Game of Hide and Seek, although there is much to be criticised in it. The report took much of what officials said at face value and did not have the power to interrogate ministers or the personnel in their offices. And it is those offices that give rise to delay, deletion and denial. What follows draws on what officials and others have told me on condition that their identities will not be revealed.

Government departments are required to maintain a register of requests made under the OIA. This may be good administrative practice, consistent with the Ombudsman's belief that policy and practice manuals are desirable. A summary of entries is regularly – usually weekly – passed to the relevant minister's office. The Ombudsman sees little wrong with the practice and believes it is consistent with the 'no surprises' requirements of the Cabinet Manual. However, her endorsement of ministerial referral carries a caveat: there should be no improper pressure or political manipulation of either the substantive decision or the timing of the delivery of the response.

In fact, in the minister's office each request is subjected to a risk assessment. This assessment is not to determine whether release could endanger public safety, national security or the like – those checks are done by ministries and departments and, where necessary, are included in accompanying advice to the minister's office. No, these assessments are of political risk: Would release of the requested information reflect badly on the government, cause the minister embarrassment, or provide unhelpful ammunition to the Opposition? If any of the boxes have a cross in them, there are numerous ways in which the information can be withheld.

The basic premise of the OIA is spelled out in Section 5:

The question whether any official information is to be made available, where that question arises under this act, shall be determined, except where this act otherwise requires, in accordance with the purposes of this act and the principle that the information shall be made available *unless there are good reasons for withholding it.*

The italics are mine, and highlight where politicians put their emphasis.

Section 6 of the Act lists thirteen conclusive reasons for withholding information, the section after that a further nine (relating to territories with which New Zealand has a special relationship) and two sections on there are twenty-three 'other reasons' for refusing a request. Under Section 18 there are a further eleven reasons for refusing a request. In total, the Act provides politicians and bureaucrats with fifty-six grounds for ignoring the principle that official information should be available to the public.

Some reasons, of course, are legitimate. There are well-founded grounds for withholding information that is prejudicial to the security of New Zealand or the maintenance of law. However, the fifty-six reasons to refuse requests provide ministers and their departments with ample scope to avoid the politically embarrassing. Common grounds for refusal are 'privacy', 'commercial sensitivity' and 'advice to ministers' (which is privileged but much hangs on the definition of 'advice').

The Office of the Ombudsman handles complaints over unsatisfied OIA requests. There has been an average of 1,200 complaints a year since 2010 (although 2012/13 had an unprecedented 2,374 because 1,012 complaints were from a single complainant who took issue with school trustees). Roughly a third of the complaints are against government departments and fewer than a fifth are from media. There are myriad reasons – legitimate and otherwise – why refusals have been made. However, over the past five years between thirty and forty-five each year have been deemed by the Ombudsman as unjustified refusals.

But this shows only the iceberg above the surface. Beneath these official complaints – and, in particular, in dealings with the media – there is a skilfully manipulated system of obstruction, obfuscation and obscurity. And at the centre of the process is the referral to ministers' offices under the 'no surprises' policy.

Ministries are seen as having one 'client' and that is not the public but the minister. Therefore all but the most routine OIA requests must be referred to the minister's office. If the ministry intends to release information but the minister's office says 'we don't think that would be a good idea', the information almost invariably is not disclosed. However, the decision to withhold will not have the fingerprints of the minister's office on it. Ministries have been told to consider the instructions as 'an opinion' – in reality it is an opinion with a capital O – and are careful to characterise the decisions as their own. The ministries will then defend 'their' decisions if dissatisfied requesters complain to the Ombudsman. This must grate with civil servants who have a more liberal attitude toward the release of official information or a viewpoint that is more in the spirit of the OIA. It is, however, a necessary illusion because Section 15(4) requires decisions to be made within the department (unless the request is formally transferred to another department or to a minister) and the practice of accepting 'an opinion' (a directive in reality) almost certainly breaches the Act.

The State Services Commission requires state servants to act in politically neutral ways but the prevailing trend appears to be that they are politically engaged. They may not act in partisan ways but they do know how to avoid political landmines. The more astute have finely tuned antennae that would impress Yes Minister's Sir Humphrey Appleby. This may not translate as a decision to refuse an OIA request on political grounds but it may well mean a more rapid journey to the minister's office for 'an opinion' or the excision of material that might be viewed as 'inappropriate'.

The nature of our civil service has changed. Where we once had permanent staff and a system where tenure contributed to a sense of independence from the political machine, we now have senior positions that are on renewable short-term contracts. And in ministers' offices we also have contract employees who are political appointees. I have been told of occasions when these special advisors have been involved in the OIA 'opinion' process, a situation that has been viewed with alarm by career state servants who see it as unacceptable political interference. Given that the process is designed to minimise political risk, the involvement should not come as a surprise. It is a role viewed with disquiet by the Ombudsman.

Occasionally a public servant will buck the system. In September 2014 the former chief legal counsel in the Customs Department revealed that he had resigned from his position after allegedly being told to bury information that could embarrass the government. Curtis Gregorash claimed he had been told by senior executives to refuse OIA and Privacy Act requests and believed the direction had come from former Customs Minister Maurice Williamson. The claim was rejected by Williamson and senior Customs executives, although one conceded that under the 'no surprises' policy 'we have to keep ministers well informed of issues that may be raised with the minister and that's [why it is] extremely important we consult with the minister'.[ii]

Curtis Gregorash's allegations were revealed by a New Zealand Herald investigative reporter, David Fisher. A month later Fisher addressed a group of public officials on his own experiences with the OIA. He spoke of 'no surprises' and ministerial veto before telling the audience of officials that media no longer trusted them.[iii]

'By commission or omission,' Fisher said, 'we think many of those who handle our OIA requests don't have the public interest at heart. We don't trust the responses we get. Of course, we may be completely wrong. We may have made a terrible mistake. But how would we know otherwise? You don't talk to us anymore. You're too scared to. Caught between the Beehive and the media, you don't know which to face.'

He also chronicled the processes of delay and obfuscation that are a characteristic of OIA requests by media. Under the Act requests should be answered within twenty working days and it is routine for the full twenty days to be taken. I had always put this down to bloody-mindedness, but a public servant has explained to me that the processes now built into handling OIA requests including the obligatory notification to ministers' offices – mean that it commonly takes that long simply to deal with the matter. However, there are numerous examples of much longer delays sometimes running to over a year, during which journalists may be referred here and there and prolonged searches undertaken for material that has been 'lost'. Former TV3 current affairs producer Eugene Bingham, now an investigative journalist with Fairfax Media, waited more than two years for the release of a police job sheet relating to the case of Teina Pora, whose murder conviction was quashed by the Privy Council in March 2015. A source told me, however, that civil servants stop short of destroying material, which is absolutely forbidden, and the source knew of no instance where it had occurred.

It is quite clear, nonetheless, that delay serves a political purpose. Fisher noted in his address that two months before the 2014 election there had been a drought in meeting OIA requests, only to have an avalanche of material released after voters had safely been to the ballot box. This is in spite of the fact that the State Service Commission Guidance for the Election Period: State Servants, Political Parties and Elections states that OIA requests must continue to be handled in a timely and appropriate manner, regardless of an imminent election. It also requires state servants to act in a politically neutral manner, irrespective of the potential political consequences of the decision.

Obfuscation can be a delaying tactic but it can also be used to completely stonewall attempts to extract information. There was an interview on Radio New Zealand's Checkpoint programme on 20 August 2015 that I have used in university tutorials as a model of that particular art.[iv] Following an introduction that stated a number of the country's worst school buildings were in worse condition than previously thought, the interviewer – the redoubtable Mary Wilson – put a simple question to the Ministry of Education's head of infrastructure services, Kim Shannon: 'How many?' Over the next three minutes Ms Shannon avoided answering the question in spite of Wilson coming at it from different directions. The closest we got to an answer was 'Look, we're in a really good position in that we now know the condition of each school in New Zealand', and in the end an exasperated Mary Wilson gave up. The Minister of Finance, Bill English, had made a statement on the subject earlier in the day that similarly avoided such details and the ministry's official was clearly not prepared to move beyond what the minister had said.

The Green Party has since challenged the Minister of Education, Hekia Parata, to say whether or not she has instructed officials to refuse to issue information on the matter. Its education spokesperson, Catherine Delahunty, said it appeared the Ministry of Education is being used to protect the minister from accountability and asked whether it had been told to refuse to properly answer OIA requests. The information was finally released to Radio New Zealand

under an OIA request, three months after Checkpoint had asked Ms Shannon for the information.

Obfuscation and delay are proven tactics but the Reserve Bank has added a further hurdle. Perhaps appropriately, it is an economic one. The bank decided in October 2015 to charge for material in response to OIA requests. The policy was not announced but came to light the following January when a Fairfax business reporter received an invoice for $651. An editorial in the Dominion Post on 18 January 2016 described the fees as 'a tax on democracy' and noted that fees of that size would act as a deterrent to not only individuals but to media organisations. The editorial expressed a concern that other state agencies would follow suit. The bank's deputy director, Geoff Bascand, was unmoved by the criticism and said in an article the following day that the fees were 'a common, fair and reasonable response to a marked growth of OIA requests'. He noted that the number of requests had increased by 300 per cent over the past five years. Left unanswered was the question: why?

Fairfax's $651 bill may have been a wake-up call for media but 'ordinary citizens' can face significant financial hurdles in extracting official information. In May 2016 an environmental group faced a bill of $1,600 for information on plans to increase helicopter landings in Fiordland National Park.[v]

Even that sum pales to insignificance alongside the charges demanded of Auckland University law professor and trade activist, Jane Kelsey, in her quest for information relating to trade and the New Zealand economy. An appendix on methodology in her book The Fire Economy details numerous battles with the OIA that mirror many of the obstacles discussed here. The section on costs includes negotiations with Treasury over access to information on public finance, fiscal responsibility and regulatory responsibility laws. She was initially quoted a cost of $14,500, which was negotiated down to $8,500. The high cost was due, in part, to the fact that Treasury refused to allow her to view documents in Wellington but insisted on retrieving and copying each document, which was then sent to her.[vi]

I have chronicled these failings of the OIA for two reasons. First, to illustrate that legislation that might support free expression is only as effective as politicians allow it to be. My second reason, however, is a more chilling prospect.

There is no doubt in my mind that the civil service's attitude to official information has become politicised, particularly over the past decade. Those ten years, in spite of the global financial crisis, have seen a relatively calm New Zealand political environment by international standards.

If politicians in that environment have been able to condition public servants to the point where they do not act on requests for information without ministerial approval, how much more cowed could the civil service become if the stakes were raised? A more tenuous hold on power, a more hostile electorate, a more 'accident-prone' Cabinet – all are possibilities that would lead to even tighter controls on the flow of information.

How might that tighter control be achieved? Agencies could be removed from OIA oversight. Already initiatives such as charter schools have been moved outside its purview and the Ombudsman has warned the government about 'highly dangerous' moves to draft laws that avoid the OIA.[vii] New 'reasons' for withholding information could be added to the Act by a simple majority in Parliament. These would be above-the-waterline moves. Below the

surface, informal actions to withhold official information would be subject only to the limits of political ingenuity.

The Office of the Ombudsman has formidable powers but is not so formidable that it can force the government's hand. Dame Beverley Wakem's report will cause few headaches for the government and she has already acknowledged, on the television programme The Nation, that Prime Minister John Key's attitude to the Act is 'cavalier' and 'shows a disregard for the law'.[viii]

What the Prime Minister displays is an attitude that permeates the corridors of political power: information and the media are potential problems that need to be controlled. The only difference between the two is that government does not own the media, but it does claim ownership of official information that rightly should be seen as the property of the public.

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[i] The 1996 Cabinet Manual, which coincided with the introduction of MMP, stated that ministers should not have operational responsibility for the performance of a department. It added: 'They must have, however, some form of "early warning system" so that they are alerted to potentially controversial matters very quickly.' The 'no surprises' policy is, to my mind, more comprehensive in its implied level of disclosure.

[ii] David Fisher, 'Ex-Govt Lawyer's "Bury Bad News" Claim', New Zealand Herald, 19 September 2014, www.nzherald.co nz/politics/news/article.cfm?c_ id=280&objectid=11327317 (accessed 22 July 2016)

[iii] David Fisher, 'David Fisher: OIA a Bizarre Arms Race', speech reproduced in New Zealand Herald, 23 October 2014, www.nzherald.co.nz/ opinion/news/article.cfm?c_ id=466&objectid=11347187 (accessed 22 July 2016).

[iv] Mary Wilson, 'Country's School Buildings in Worse Shape than Thought', Checkpoint, Radio New Zealand, 20 August 2015, www.radionz.co nz/national/ programmes/checkpoint/ audio/201767339/country'sschool-buildings-in-worseshape-than-thought (accessed 22 July 2016).

[v] Kate Gudsell, 'Club Questions OIA Charge for Chopper Info', Radio New Zealand News, 12 May 2016, www.radionz. co.nz/news/regional/303712/ club-questions-oia-charge-forchopper-info (accessed 22 July 2016).

[vi] Jane Kelsey, The Fire Economy, Bridget Williams Books, Wellington, 2015, pp.270–76, http://dx.doi. org/10.7810/9781927247839.

[vii] 'Top-Level Alarm Over Secrecy Trend', New Zealand Herald, 28 September 2012, www nzherald.co nz/ nz/news/article.cfm?c_ id=1&objectid=10836994 (accessed 22 July 2016).

[viii] 'Interview: Chief Ombudsman Dame Beverley Wakem', The Nation, 17 October 2015, www. newshub.co nz/tvshows/ thenation/interview-chiefombudsman-dame-beverleywakeham-2015101710#axzz 4AOK5cVCN (accessed 22 July 2016).

ENVIRONMENT AND CONSERVATION ORGANISATIONS OF NZ INC.

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25 April 2019

Official Information Act: Review of the Act or of Pracice?

Submissions by the Environment and Conservation Organisations of NZ Inc to the State Services Commission

Guide to this Submission

Introduction

This submission is in response to the State Services Commission's request for feed back on whether the Official Information Act should be changed or whether practice changes will be sufficient to make it work better.

We welcome this opportunity to submit.

In this submission, we introduce ECO and our interest in the issues, and then move on to the issues of scope and substance.

The Environment and Conservation Organisations of NZ (ECO) is the national alliance of 49 groups with a concern for the environment and conservation though not all are actually environmental organisations, the National Council of Women is an example of this.

We were established in 1971-72. Some of our member bodies are themselves federations or multiple groups. Many are area-based, some are focused on specific species or activities or impacts

ECO has followed issues of conservation and environmental management and practice, law and policy since its formation in 1971-2. We have member groups from all around New Zealand. We support Te Tiriti o Waitangi, and ensuring that the "voice" of the environment is heard.

We have a long standing interest in and engagement with the systems, institutions, incentives and drivers of activities and impacts on the environment and with appropriate public policy responses as well as international agreements and community and individual responsibilities.

We above all want public and private actions and public policy responses and law that is democratic, effective, timely, as efficient as is consistent with democratic processes, inclusive and fair.

As a national organisation of organisations, we also see it as part of our remit to help to foster good governance and government, and to maintain a good environment for civil society. This includes a healthy democracy and an open society in which civil society thrives and in which governments are informed by the citizens and accountable to them.

ECO was one of the prime movers of the Coalition for Open Government which campaigned for an end to pervasive government secrecy and for the establishment and implementation of the Official Information Act that replaced the Official Secrets Act.

We have taken a keen interest in open government since and have had input into the Open Government Action Plans (except the last one) and have critiqued these. In 2016 we surveyed members of civil society about what they wanted to open government Action plans to include. We attach a table from that study with some of the qualitative responses that we got.

If you wish to discuss any element of this submission, please email eco@eco.org.nz AND Cath.Wallace10@gmail.com with a contact number and we will call you back.

ECO Submissions re the OIA Practice and Law

In short, ECO's view is that we need both changes to the OIA and changes to practice.

ECO regards the Official Information Act as one New Zealand's very important laws, and we consider there are many aspects of it that should not be modified. An example is the presumption of openness, and stance that only specified grounds provide sufficient grounds for withholding information, with other provisions subject to override with a public interest in disclosure test.

There are some things that do need to change, and we have been gratified that there has been more attention paid by the SSC and a greater vigilance by the current Ombudsman's Office to issues of open government than in some Commissioner's and some Ombudsman's "reigns".

We do not think that there is a need for any wholesale re-writing of the Act, but we also do not think it will be sufficient to simply change practice and not the law, particularly in the case of penalties on agencies who do not choose to comply.

In our view there may be a need to rearrange some of the institutions and the allocation of who does what, so we have added this to our responses about what is needed.

In the points made below, we order our suggestions into the following categories – we've added a third to the two SSC suggested.

Changes to Practice:
Changes to institutions and decision making
Changes to Law:

Problems and suggested changes needed include:

1 Problem of officials who think you must cite the Act for it to apply
We encounter many occasions when those in official positions seem woefully unaware that requests for information do not have to cite the Act, they do not know that the Act applies automatically. There needs to more training of officials on the OIA.

1.1 Changes to Practice:
1.1.a Train officials that the obligations exist irrespective of citing the Act;

1.1.b Remind Ministers' offices and government agencies that this is so and hence that there should not be two "streams" of responses to information requests, those simply asked for and those OIA requests.

1.2 Changes to institutions and decision making:
1.2.a Set up a Commissioner whose job is to advocate for open information and open government. This is NOT a job that should be left to the SSC, since the SSC may end up with a conflict of interest as an advocate for the state sector.

A Commissioner for open information and open government who is independent and is not part of the civil service and who champions open information and to proper operation of the Act would have the role of championing the public interest. This role would be distinct from that of the Ombudsman's office since the Commissioner would have the roles of investigating, auditing and reporting on public agency performance and advocating policy and law to protect the public interest in open government.

12.b The SSC should work to train the public service and other agencies covered by the Act about the intent, meaning, and implementation of the Act and the presumptions of openness. The advice the SSC gives and any policing of public agencies should be aimed to increase openness and compliance with the Act.

1.2.c The SSC should set up specific training of those in government but it has the potential for a built-in bias as the champion and manager of the public service.

1.2.d The SSC should continue to monitor and report on departmental and agency performance.

1.2.e Retain the Ombudsman's office's role, but the Commissioner can chivy the Ombudsman when this is needed. The present Ombudsman is great, but the previous one seemed much more inclined to not speak out or up. Her office took longer than two years to rule on an application for information made by Cath Wallace to a government department.

Funding of the Office to ensure reviews of requests can be undertaken speedily is a must.

1.3 Changes to Law:
1.3.1 The creation of the role of the Commissioner and an outline of functions.

1.3.2 A time limit on the Ombudsman's Office to make rulings.

1.3.3 Otherwise none needed for this.

2 Problem: Departments and agencies not complying with the Act's provisions either at all, or on time limits: E.g , treating the maximum time-limits as a minimum, playing games with time frames and giving themselves extensions without the consent of the applicant.

2.1 Changes to Practice:
2.1.a Penalties are needed to discipline the agencies to encourage compliance and discourage non-compliance.

2.1.b Quite commonly agencies just don't bother to take up information requests at all. They know that the time cost for applicants in writing to appeal is likely to put off most of those who might do so. For example a request for information by ECO to a Crown Research Institute was ignored.

2.1.c Strategic behaviour by agencies to stave off requests until the information loses its timeliness is common.

2.1.d Other activities such as extending the time limit on dubious grounds and obfuscation also need to be penalized.

Naming and shaming as the SSC is beginning to do are possibly helpful, but ultimately legislative penalties are required. Docking CEO pay or bonuses might be part of this. Ensuring that any request not processed in the time frame is free, as is done with proposals for Building Act consents, as another option.

2.2 Changes to institutions and decision making:
The Official information Act/Open Government Commissioner could have a role in doing audits of departments and agencies – without notice and then publishing reports on their performance.

2.3 Changes to Law:

Penalties for non-compliance, including fines for departments and agencies and docking of performance bonuses (if these endure) of the CEOs might help to make officials take the requirements in the Act seriously and to comply.

Still not very proactive about making documents available to allow informed input into policy and law development.

3 The scope of the coverage of the OIA

Problems of coverage include:

3. a) **The issue of the application of the Act to agencies undertaking work for and with the Crown on Crown projects, outside the existing coverage of "a department or Minister of the Crown or organisation"**. With Public-Private Partnerships, Crown companies (E.G. Predator Free 2050), and varioius other hybrid entities, or research undertaken in place of Government funded fisheries research. It seems to us that there are entities engaged on government business that are not covered by the Act.

Clearly if there is an NGO or company that is not a public organisation but undertaking work for the government, some means of making the government related activities discoverable is important, without "invading" the rest of the organsiation's activity.

We do not have the solution to this problem, but we consider it does need to be addressed. If it has already been addressed, then this would be useful to know and to debate.

3.b Coverage of Minister's and their offices. ECO considers that there are classes of information that Ministers should disclose, including who is lobbying them about what and what their instructions to officials are. Without the latter, there can be no accountability and it is very difficult to discern what elements of decisions are based on officials' advice and what are the decisions.

3.1 Changes to Practice:

3.2 Changes to institutions and decision making

3.3 Changes to Law:

3.3.1 Expand the legal scope of the OIA to cover the government-related activities of government companies and other entities and of the government related projects or activities of non-government partners and contractors.

3.3.2 Expand the coverage of the OIA to include who Ministers meet and any papers that are provided AND to include disclosure of Ministerial decisions and officials' advice.

4 Problem: Stretching the grounds for withholding, Solutions: tightening the grounds for withholding

Some agencies have taken to interpreting the grounds for non-disclosure far more liberally than we think is reasonable or than was originally intended.

There are a range of examples of this. One of these is the use by the Ministry of Foreign Affairs and Trade (MFAT) to deny New Zealand non-government organisations access to information about representations to MFAT from the New Zealand fishing industry on matters of policy, matters of international negotiations, and intentions by NZ and our fishing companies to fish in various waters outside New Zealand jurisdication.

MFAT refused to release correspondence to it from members of the NZ Fishing industry on the grounds of the OIA s6 "Conclusive reasons for withholding official information:

> Good reason for withholding official information exists, for the purpose of section 5, if the making available of that information would be likely—
> **(a)**
> to prejudice the security or defence of New Zealand *or the international relations of the Government of New Zealand;* or ..
> In our view that was improper use of s6a, given that this was essentially an internal issue in dispute in New Zealand, and that such release would not affect our international relations of the Government, but rather would enable New Zealand ENGOs to understand the pressures being put on officials about the positions that MFAT was taking.

A further ground that has been used to deny information about fishing company and industry demands of officials (and we presume also ministers) is Section 9 2 **(ba)**

> protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information—
> **(i)** would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied; or

Environmental organisations do not pose any competitive threat to fishing companies, and it is entirely unclear to us why the information from the fishing companies to MFAT should not see the light of day.

These grounds have also been used to refuse background information being used for workshops reviewing action on fisheries captures of marine mammals.

4.1 Changes to Practice: Provide tighter rules for consideration of the use of these grounds for non-disclosure and ensure that there really is a genuine threat to the national interest or to the supply of further information.

4.2 Changes to institutions and decision making

4.3 Changes to Law:
4.3.1Tighten up the grounds for non-disclosure decisions and provide more rigorous guidance.

4.3.2 Provide requirements that there is disclosure of major drafts of international agreements while negotiations are underway at major punctuation points, and prior to signing and to ratification, and remove the protection from disclosure of trade agreements.

5 The presumption of openness when asking for input, v the confidentiality of content.

Recently some agencies state the presumption of openness when asking for input. Others seem to invite people to indicate confidentiality of content.

5.1 Changes to Practice:
Reinforce the principle of openness, and disclosure, and while it is fine to remind people that truly confidential information may be protected, they should not be actually invited to declare their material to be confidential. The Act already has protections for the privacy of natural persons. The Privacy Act provides additional protections.

5.2 Changes to institutions and decision making : none

5.3 Changes to Law: none

6 The Problem of control and influence by Ministers and those in Ministerial Offices of decision making by departments and organisations

As the SSC is well aware, some members of the civil service has a bad habit to tailoring the release of official information to the interests of the Minister and/or the prevailing government.

At times this tendency is reinforced by Ministers and their advisors seeking to influence and even to direct officials as to what official information to release or not, how and when.

Such behaviour is corrosive of the independence of advice to ministers and can condition officials into thinking that their role is to reduce political risk for Ministers and governments.

6.1 Changes to Practice:

6.1.a The Cabinet Office Manual should reinforce that Ministers and their offices should have no role in any decisions about the release or otherwise of official information.

6.1.b The SSC and others should strictly instruct that the "no surprises" policy must not extend beyond informing ministers and their offices of information release – and possibly not even that.

6.2 Changes to institutions and decision making

6.3 Changes to Law:

The OIA should be amended so that it is an offence for any official or agency to seek, receive or consider advice from a Minister or Minister's office as to whether, when, to whom or how to release official information. Such an offence should carry penalties sufficient to make this practice stop.

Conversely, it should also be an offence for Ministers, their officials or agents to provide direction or suggestions to government agencies, departments, officials or organisations. as to whether, when, to whom or how to release official information.

A complaints process with public reporting and penalties is needed to make this effective, with time frames to prevent endless obfuscation and delays is needed. While the Ombusman's office could do the investigation, a penalties system would need to be implemented via some mechanism in the Act to allow the Ombudsman or the Commissioner to have a compliance and enforcement arm.

7 Helping people to overcome the difficulties people face in knowing what has been released where.

People find it difficult to know what official information has been released where.

A suggestion made to us when we surveyed members of civil society that we think would be extremely valuable is the creation of a public and searchable website that contains summary information about what official information has been released – proactively or in response to requests - and where it can be found.

This would require agencies etc to record the release of information, its type, subject and sufficient info for people to know what it is that has been released, and to provide information on how to access it. This would need to be in a

central and searchable registry so that people can subscribe to it for alerts, as well as directly to access it.

A template could be used with sufficient details of what is the information for those interested to be able to bring it up easily, the form of the information, the dates of creation and release, agency and a direct link to the information.

The exact details would need some thought, but this central portal would be relatively simple for agencies to post to using a template, and it should be designed to be available for interested people and organisations to subscribe to by subject or other variables.

Parliament is already doing this with alerts by subject and type of information. The Open government portal would need to be rather more comprehensive, and no doubt the categories and functionality would be developed with use. This facility would need to be maintained by an agency – DIA? SSC? – and would markedly reduce the transactions costs of information disclosure for those supplying it as well as those who seek it. The democratic goals of the Act would be better served too.

7.1 Changes to Practice:
Provide a central portal for all official information release recording.

7.2 Changes to institutions and decision making
Provide a central portal for all official information release recording.

7.3 Changes to Law:
Amend the Act to ensure that such a portal for public access to official information is maintained and that there are regular reviews and reports on functionality.

8 Charging for responses.

Some agencies use charging for information as a means of shaking off inquiries.
Despite the efforts of the SSC, some agencies continue to try to put people off asking for official information by charging for the work of getting it organized and supplying it.

Two cases
We recently were informed of a case under the Local government Official Information and Meetings Act (LOGOIMA) where a small ENGO that is embroiled in a dispute with the Far North District Council over private business use of a local reserve, has been asked to pay $750 for the Council to provide it with a copy of a Council consent to the business to use the public reserve area for their business.

We haven't heard of anything as egregious as that, in relation to the OIA itself, but we do understand that there are such malpractices.

In another case about 2-3 years ago, ECO sought GIS information from local authorities that we could link to an online system for mapping sensitive environments with overlays from a wide range of government and local databases in real time. We hoped that people could look at an online map that itself was linked to a range of organisations with databases showing real time zoning and area designations. These included DoC and its land and water designations – e.g. Ecological Areas, various kinds of reserves and conservation status designation; NZ Petroleum and Mineral's maps with minerals permit applications and their status; other concessions and permits on public land; private or Maori land ownership, and so on. We wanted people also to be able to see the local authority designations and zoning and eventually to have mapping layers of kinds of ownership, information on land use, ecological status and so on.

Many of the regional governments and some of the territorial authorities were happy to cooperate, but we found some who would not – and some officials we spoke to had no idea of the existence or provisions of LGOIMA.

In one local authority we spoke to, the local government official who controlled access to their GIS information had come from the private sector and simply invented his own terms for sharing information. These included that we would have to pay, that we would have to agree that any information product we developed would be owned by the local authority and that we would only be allowed to use their information for our own internal purposes and would not be allowed to share it. The team member we spoke to simply said that we were "telling him about an Act he hadn't read" when we pointed out that these rules were contrary to LGOIMA.

8.1 Practice changes:

8.1.a Both the SSC and Local governments and LGNZ could play a role in educating officials about the OIA and LGOIMA, and checking on and cracking down on, dodgy practices. The Open government and Information Commissioner could have an auditing and compliance role in this.

The SSC is somewhat compromised in that it advocates for and has oversight over the civil service. The SSC guidance over the OIA reflects this with advice on what can be denied, but less advice on public interest reasons to disclose information.

8.1.b The SSC should coordinate central and local government agencies to make proactive direct provision of information that is designed and implemented to make it easy for people to use.

The government should set up and maintain GIS information services. In our mapping for sensitive environments project, we calculated that we could do the job for about $200k or less with a shoe-string operation using a particular contractor already well informed and skilled in such systems. ECO tried to do

this but ran out of money to pay the very skilled contractor who was willing to do this for a very discounted rate.

GIS information tools that are linked to existing databases should be provided and set up in such a way that you do not have to have GIS software to view and use it.

Such information would benefit many people in the country: SSC and the Natural Resource Ministers and Local Government should coordinate to provide this service. It should not be left to an ENGO to provide it. We did demonstrate the feasibility of the tool using the Coromandel as a pilot case. This work was done with one intern, our willing specialist would-be contractor and 3 other people who were not specialists.

GIS information is too specialised to expect most people in the community to be able to use, so the proactive provision of this tool should be done by government and local government.

9 Other Practice changes to improve open government and to make the OIA work better for the public

9.1 Provide official phone numbers and names or positions of whom to talk to so that those wanting to follow up on an issue or inquire about an issue and to try to clarify matters that those putting surveys, requests for submissions, or other matters, can speak to the officials involved.

ECO has had many difficulties in tracking down those who are involved in the teams working on specific issues in order to seek information or information in formats that those involved in supplying it on websites have not thought to provide. We consider that there should be a requirement that a phone number (other than the main number for an organization) that takes inquirers to the team involved in the work is always provided.

We have many, many times been told by agency receptions that they have not been given a phone number, they often do not know which team or people are involved in the work, and they and we are left floundering around trying to find out.

We have had this experience even with SSC about 3-4 years ago when the SSC reception had no idea what the Open Government Partnership was, who in SSC might be involved, or whom we should talk to about it.

We have had similar unhappy conversations with reception in DoC who wanted to help but had been given no information as to who was working on the topic we wanted to discuss – and this happens also at Ministry for the Environment, Fisheries NZ and other agencies, even when the inquiry relates to a topic open for formal submission. Whether the new apparent policy of not supplying phone numbers is official policy of the departments or of SSC, we do not know, but it is

hugely inconvenient and unhelpful for those of us trying to interact with the officials and agencies.

9.2 Issue papers and other matters to be submitted on in Word not .pdf, so that those responding can easily propose text edits.

ECO has been told by one or two officials that the SSC has directed that official information loaded onto websites must be put into .pdf format

We understand that it is important to have authoritative versions of some official information, but this practice drives those of us who seek to engage and reference specific text and/or to submit suggestions for different wording, get very frustrated with .pdf documents put up for submission.

We urge that both .pdf and .docx or rtf versions be included and that the .docx or rtf version be clearly marked and available for download for all consultations. Recently we went in search of a .docx file that we could use for a submission. We asked the team for a copy and they insisted it was there. Eventually, after wasting a lot of time, we found the link to it buried at the bottom of a long file with many sections. This should have been listed on the front page for download as a separate file as well as the .pdf file as the reference version.

9.3 Making web-based surveys and submission and reporting templates easier to use for those who need to collaborate within an organization.
Many of the web based consultations give a series of pages or slots for information but not a copy of the whole set of questions.

Many of us have difficulties with:

9.3.a Embedded formatting in forms for response that make us waste vast amounts of time as they fail to allow easy submission of information and we become both infuriated and demoralized.

9.3.b Forms that do not automatically save so if we become distracted and leave the site, we lose the whole submission or report. We had this galling experience recently with a submission form put up by DoC. We lost the submission entirely and missed the deadline – though DoC was good enough to allow us time to re-write it. We are mostly volunteers and do not have spare time for re-doing submissions.

9.3.c Any submission or report format that does not allow us to download the entire set of questions so that we can discuss the questions internally, draft collaboratively and discuss the responses we want to make with a variety of dispersed people and organisations within ECO – or outside ECO for that matter.

We suggest that these problems are likely to beset many others, especially but not only organisations who need to collaborate.

Solutions we urge be adopted include:

9.3.a Avoid or provide an alternative basic WORD, Xcel, or rtf or equivalent file for people to fill in that is not set up as a template.

9.3 b Any web based form be set up automatically to save responses for recovery and for saving and distributing to organization or other collaborators.

9. 3.c Officials always provide on the website (or email) the full set of questions or requests for comment as a separate .doc file as well as scattered through the consultation document;

9.3d A summary of submissions should be released promptly after its completion – we can see no reason to wait 6 months or more until the policy is decided on for its release.

9.4 The problem of agencies not providing sufficient explanation in consultations

ECO recommends that the SSC and DIA require agencies to provide information during consultations and participatory processes so that those consulted can receive clear explanations of why proposals are as they are.

We suffered through a now notorious (within NGO circles) case of a "consultation" by the Ministry for the Environment (MfE) on a very poor paper on Marine Protected Areas (MPA). The paper put forward a number of counter-intuitive proposals seemingly uninformed by international IUCN MPA categories and criteria , with no reference to the previous policies, and with no rationales for what struck us and many others as strange allocations of responsibilities. There were no explanations for the lack of policy history, international obligations or the international classifications.

When we and others attended a "consultation meeting" called by MfE, successive requests for the rationales for the proposals were met with "If that's what you think, write it in your submission". Virtually no other response was forthcoming. To this day, we do not know why the proposals were so peculiar nor why no explanations were given. A summary of submissions has not been released.

We heard that officials were put in an awkward position by Ministers who removed the responsibility for drafting the paper from DoC and gave it to a potentially more compliant MfE and other agencies. The lack of engagement or explanation deprived everyone of an understanding of any rationale for the proposals that there might have been. This also meant that there was no opportunity to understand who was accountable for the very poor standard of the paper: officials or Ministers?

9.5 A referee to whom the public can turn to about better quality information and processes.

In either practice or law or both, some form of process or referee for people who consider that an official paper, analysis, proposal, documents or engagement process are of inadequate quality. MfE paper discussed in 9.4 above.

Another case we encountered was a decade or more ago when the then Ministry of Fisheries (MFish) produced a paper on proposals to devolve aspects of the running of the Quota Management System (QMS) to the fishing industry. That paper provided a table, and some commentary that listed the advantages of the preferred option and the disadvantages of the not-preferred option. The "comparison" omitted the disadvantages of the preferred option and the advantages of the option the Ministry did not like. Astonishingly, when we pointed out the lack of analytical rigour, our concerns were dismissed.

9.5.1 Changes to Practice: More quality control and a direct mechanism for the public to challenge the quality of process and information – the Commissioner could be the referee in such situations.

9.5.2 Changes to institutions and decision making – The Comissioner and / or the SSC should have a role in ensuring quality of analysis and providing an avenue for those dissatisfied with what they get.

9.5.3 Changes to Law: There could be a general requirement for quality – perhaps it is already in the State Sector Act? – and a easy-to-find and use mechanism for challenging poor quality.

10 Provisions for due process

At times both officials, their agencies and Ministers set up processes that make the process of public participation perfunctory or in other respects inadequate.

ECO considers that the Act should require minimum standards and that these should also bind Parliament. Parliamentary sovereignty is generally a good thing, but there are times when more checks and balances are required.

We know that there are Standing Orders, but we think the ease of lifting these is too great.

We would like to see law passed that requires minimum time periods for various different processes relating to various activities.

In some cases there may be a need to also provide maximum time periods too.

In the case of changes of law – e.g the recent Arms Act changes, except in very limited circumstances there should be statutory minimum time periods for submissions after the introduction of a bill – such as at the very least 14 days.

Rules should also be in place to ensure that hearing not be during the submissions process, and that any use of the minimum standards have to be the subject to an explanation and an analysis of alternatives to achieve the goals. Suspension of Standing Orders needs to be on limited grounds – that would exclude the recent Arms Act process. Since the regulations had already been changed to outlaw the offending firearms, there was no need for the absurdly constricted time line.

11 Other points:

11.1 What information should be collected and by whom?

ECO was astonished and dismayed by the use by several government agencies of private investigators to spy on peaceful civil society groups engaged in civil society processes and dissent. We want here to record the strong exception take to these practices by Peter Hughes, State Services Commissioner. We would like to see these objections translated into law via changes to the OIA and / or the State Services Act.

11.2 Police National Intelligence Alerts

We have been staggered by the huge scope of intelligence gathering and recording by the Police, as researched and reported by the Otago District Times (ODT) and reported on by other media including the NZ Herald story at https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12222308

ECO has not had an opportunity to discuss our position with our Member bodies, but those of us who are writing this submission consider that we could be sliding into a surveillance society, instead of maintaining a free and open society. We recommend that the database be reviewed by independent parties and that there be policy consideration given to whether quite so much information on natural persons should be stored and maintained.

11.3 Disclosure of Algorithms

ECO considers that government algorithms used for screening and for guiding decisions should be publicly released so that citizens and specialists alike can know and critique these.

Finally, ECO is grateful for the opportunity to engage on this matter. We provide contact details in our covering email, and we append some of the results from the 2016 survey we did leading up to the Open Government Action Plan consultations in 2016. We also have a quantative report on responses.

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23 August 2016

Open Government Survey – Draft Qualitative and Quantitative Results and Preliminary Discussion

By Richard Miller, Jan Rivers, Cath Wallace and others

Part A - INTRODUCTION

The Environment and Conservation Organisations of NZ (ECO) is the national alliance of organisations with a concern for the environment and conservation.

As a national organisation of organisations, ECO has been involved in issues of law and government practice, administration and public participation since its formation in 1972.

ECO has a long standing interest in open government and due process and was deeply involved in the thinking, debates and processes that led up to the passage of the Official Information Act. Since then, we have continued to work for open government, we have done our share of educating officials on the fact that the OIA applies and does not have to be cited with information requests, and we continue to engage in discussions about the proper – and improper – roles and actions of government.

We value a free and open society with scrupulous integrity of process, behaviour and protection of privacy and the right to dissent, due process and respect for particpative democracy.

The work of ECO is done in several different organisational elements. We have working groups, one of which is the Open government, Democracy and an Open and Free Participatory Democracy Working Group. The survey reported on here was undertaken by this working group with the help of volunteer researchers. The results are not ECO's policy.

ECO decided to undertake this survey because at the time we began the project there seemed to be little official effort underway to consult with the interested community let alone the public about the focus and content of the National Action Plan 2016-17.

The Survey was not designed to be and is not a random sample survey, rather, it was aimed to draw out suggestions and preferences from those who chose to answer the survey. We used the "rolling snowball" survey distribution method to disseminate the survey.

We began this study without reference to government as an ECO project, but we shorted the time for responses and analysis when the State Services Commission (SSC) announced their very short policy process. We decided to shorten our project timeline to allow the preliminary results of this survey to be fed into the official process as a means of allowing our respondents' voices to be heard in the offical process. Our survey is not done for or on behest of the government, and we received no funding for the work that went into this survey.

We have made every effort to report these responses accurately but this report is not complete and readers should note that we will publish a final report later in the year, probably October 2016.

ECO is making its own submissions to the State Services Commission about the Open Government Partnership and what we want in the second National Action Plan on the basis of our approved policies and with the approval of our Executive Committee.

The results reported here are those of our survey responents and do not necessarily reflect ECO's views, indeed, some we do not support.

The quantative analysis and much of the design of the survey was done by Richie Miller and Jan Rivers. Yvonne Curtis and Jan Rivers did much of the work extracting the qualitative material from the survey the responses.

Jan Rivers and Cath Wallace initiated the project and did some of the project management though Richie Miller and Michael Pringle did much of that project management work.

Cath Wallace provided input into the survey design and methods, and some editing and interpretation in the reporting.

All of the work was done on a voluntary basis as part of ECO's contribution to the public good, except for the valuable paid work of ECO's Executive Officer, Michael Pringle, which ECO funded. We thank all those who helped us with this project : as advisors and pilot respondents. They gave us a great deal of help in refining the survey. Thanks too to those who helped by circulating the survey including Hui E!, unions, academics, other civil society organisations and individuals. The respondents gave up valuable time and shared their ideas and preferences. We thank them.

The survey was undertaken using the free online Survey Monkey web tool and paid for analytics from Survey Monkey. All raw quantitative and qualitative (comments) data were downloaded from this site upon ending the survey.

No funding was received for this project from any source except for ECO's funds. If you value this report you are invited to make a contribution to ECO at www.eco.org.nz

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Reporting the Results:

The results of the Survey are reported in two Results sections in this preliminary report, Part B and Part C .

Part B of the Preliminary Results Report covers some of the Qualitative elemets of the survey responses. These comprise just some of the comments from respondents where they offered these and/or made suggestions as to what they would like to see in the National Action Plan. ECO is still working through this part of the survey abalysis.

Part C in this results section of this report provides data and simple quantitative analysis of responses to yes/no or ranking questions is presented in the survey.

Part B PRELIMINARY REPORT ON QUALITATIVE RESULTS

ECO's Open Government Action Plan Survey – A Selection of Respondent Comments, Suggestions and Action Proposals
1 That government should investigate with a tripartite body of civil society including unions in the media industry (including publicly owned media and community sector media) and media industry the failure of the market model in news which will seek to implement the recommendations of the Civics and Media project and implement it's findings http://igps.victoria.ac.nz/publications/files/0beed3e7118.pdf
2 OIA - code of practice, release of responses publication, office with expertise, guidance and training
3 That government action which binds society beyond an electoral cycle (such as trade agreements, divestments of goods and services of public ownership and actions which increase carbon emissions are undertaken only after an examination of the scientific evidence of benefits to NZ society as a whole rather the benefits the business sector or a section of it.

4 Continue with the work towards developing a NZ constitution
5 An action that aligns with the Hui-e! regulatory eg framework to create social enterprises
6 Civics education
7 Media funding address market failure, working party to consider the adoption of recommendations of civics and media project
8 Strengthen the role of environmental reporting in line with the 2012 report of the Parliamentary Commissioner for the Environment . http://www.pce.parliament.nz/publications/how-clean-is-new-zealand-measuring-and-reporting-on-the-health-of-our-environment
9 The New Zealand Government should establish a public register of company and trust beneficial ownership information. The registry should contain information about who ultimately owns and controls companies, trusts, and other legal entities.
10 The New Zealand Government should establish a working party to review the schedules to the Official Information Act 1982 and Local Government Official Information and Meetings Act 1987 and other relevant legislation to ensure that all agencies which should be within the scope of the legislation are included.
11 The New Zealand Government should legislate to require government agencies to take all reasonably practicable steps to proactively make official information publicly available, subject to the withholding grounds of the Official Information and Local Government Official Information and Meetings Acts.
12 The New Zealand Government should proactively publish all Cabinet papers, agendas, and minutes, subject only to redactions consistent with those permitted by the Official Information Act 1982.
13 The New Zealand Government should review the Protected Disclosures Act 2000 with the aim of expanding and strengthening

whistleblower protections and allowing disclosures to be made directly to MPs or media.
14 Better consultation standards for legislation including limits on the use of urgency,
15 Referendums
16 urgent legislation [Less use of Urgency in passing legislation?]
17 MP transparency
18 privatised companies as open as public information revealed about contracts public records act cost benefit/evidence on the use of privatised models and contracting contracting openness
19 [Openness in] Signing conventions and supporting sus dev goal sustainable development goals
20 Independence in social stats measurement
21 Better poverty indicators and social data
22 We would like to see the government being informed by Public Health research and policies for a better stronger more equitable society. Evaluation of strategies and policies can then be evaluated and used to effectively address the most pressing issues for our community. And do it in a co-ordinated and comprehensive way.
23 continue with current plan
24 remove whips, represent electorate

25 support for net neutrality
26 vidence and transparency to the public around: A. Where and how decision-making is made. B. Legislation in place for government to be forced to understand it's decision-making should *always* be able to be questioned by the public and accounted for by the provision of data and information, regardless of how embarrassing it may be for *any* government.
27 1) A commitment to prioritize accessibility of information for all in the Integrated Work Programme. 2) A commitment to add proactive disclosure of information as a priority area in the Integrated Work Programme.
28 Those with no access to tech
29 (1) civic innovation and entrepreneurship; (2) real-time government; (3) transforming consultation and engagement.
30 More limits on the ability of police and GCHB to spy on New Zealanders
Q2 – OG Principles
31 Creation of Community Associations comprising a range of interested local professional, business, trades, sports, ethnic, age, and social services people, listened to in a formal process by local boards and council, and be recognised by either nominal payment, awards and/or other benefits for their time invested.
32 Independent, non-commercial media established by statute but funded outside of political decision-making.
33 Technology enabled consultation and decision making tools like Loomio should be used and additional resources available to take consultation to people not able or willing to participate in technological space but who want to be heard.

34 Full disclosure of government negotiations e.g. trade deals
35 Maori be an integral part of decision making as of cultural right in NZ.
36 Information should be anonymised and/or aggregated and made available as open data in a free useable manner. Researchers and NGOs and others should be able to check what is happening and compare groups of data - eg compare treatment of people in different areas.
Q4 - Consultation Methods
37 Invite submissions from interested parties, including the public, community organisations and political organisations, identify key themes and incorporate them into the Action Plan.
38 Consultation more widely advertised.
39 If we [government] want an open conversation to underpin the move to open government then we should engage in the public in a way that does not influence the conversation they are having e.g. we should be quiet observers in the forums where the public is engaging in conversation around these issues, listening and recording.
40 A 'help line' available for those having difficulty in how to go about submitting; making it easy!!!!
41 A series of meetings facilitated by community organisations themselves (supported financially by the Government).
42 Flexibility to receive feedback in any form available to a participant & to respect the weighting of that participation equally
43 Open discussion and consensus building tools like Loomio coupled with facilitators and good open processes.

44 Organise all-day (or even 2-day) meetings of say up to 20 people in a quiet place with a couple of good facilitators, to spend time and consider these issues carefully.
Q5 – Participation and other requirements
45 There should be an independent Ombudsman.
46 It should be flexible. One size doesn't fit all [consultation methods and ways for government to receive feedback due to variable technology access)
47 6 month consultation period
48 Requirements: Duty of Disclosure. By both the Government entity involved and by participants in the consultation process. Any partisan interests need to be declared. Any personal links need to be declared. Stakeholder acknowledgement. A tone of respect, mutual enquiry and responsibility towards both the decision-makers and the submitters. An undertaking to take the result of the consultation seriously. Otherwise its a waste of time for everyone involved. An Appeal Process. This is essential for those who feel passionately about their input and views but nevertheless the majority or the decision-makers didn't agree. It is essential in a Democracy that there is an outlet for the minority to disagree. Later events may or may not prove them right. It needs to be publicly acknowledged. I must repeat - that without binding rules and a written Constitution, all the above is mere fluff which fills out the appearance of Democracy in NZ today.
Q9 – Table of suggestions - N/A

Q10 - Intelligence agencies
49 Ombudsmen appointed to ensure all decisions made are in the public interest, and that person has oversight and authority on any surveillance of individuals.
50 Aim to meet highest OECD standards
Q11 - How government uses personal info – N/A
Further suggestions received separate from the survey:
• Implement the full recommendations of the Shewen foreign trusts report including a public register of companies (otherwise it is inequitable re local trusts, other international transparency work is precluded, it appears to be protecting special interests – implemented fully it would allow coherence with other jurisdictions eg UK) •
• Implementing a public OIA register and publication of OIA responses by agencies. I understand a few agencies do this already Treasury and NZTA. If this is too ambitious for the plan then Investigate the costs, benefits, methodology of doing this with a view to implementing this process in all agencies in the next action plan.
• Notification of all consultation in a way that businesses, civil society and others can track. There is an all of government website www.govt.nz but no mandate that agencies use it. Other options would be possible e.g. a consultation RSS feed / agency or through social media eg a twitter tag or using the consultation pages of www.govt.nz Could also consider a uniform method for notification of all government publications.
• A project to achieve encoding of text based public governance documents e.g. annual plans, SPE, BIM, annual reports using a text

encoding method so that they can be treated like data and interrogated by open data processes.. (Legislation is already drafted in this way so there is government expertise for this).
• Buying Keith Ng's budget data so that the government takes on responsibility for making government budget data transparent. If budget data for service agencies provided year on year comparisons including allowances for past year population growth and inflation it would be possible to see where increases and cuts are being applied.. (The issues here is that for example for this year anything less than a 6%-7% increase is effectively a cut to public services).
• Establishing a fund that recipients of public funding for service delivery are able to call on when OIA questions are asked of them. (these are not catered for in the funding process). This would mean that private recipients of public funding can respond on the same basis as the public sector. (Some spending is explicitly outside the requirement such as Charter Schools which is problematic)
• Investigate commercial funding mechanisms (a levy on ISPs and others) to pay for news broadcasting as identified by the civics and media project.
• A public tri-partite panel funded to ensure the operation of algorithms that deliver services and goods in government and beyond are open to enquiry eg flag referendum was first use in central government of STV voting , encoding of payments by payroll companies for example has cost workers more than $1bn over more than a decade, delivery of medicines and identification of people 'at risk', delivery of news eg through social media could easily be manipulated/

Part C PRELIMINARY REPORT ON QUANTITATIVE RESULTS

In this section, we explain our terminology and how we are reporting the results of the survey, then we track through the results for each question and make some quick preliminary comments that may help with interpretation of the results. All data recorded in the tables and the graphs/charts are preliminary and should not be cited for any further works or publications without consultation with ECO first. Contact ECO at eco@eco.org.nz or 04 385 7545.

Our reporting:

- Black table data is raw data from Survey Monkey.
- Blue table data has been calculated using the raw survey data.
- Where percentages (%) have been calculated: these are the percentage of the total number of *respondents* for that particular question. They are not the percentage of the total number of *participants* as participants can choose to skip questions. See note below on *respondent* vs *participant* terminology. Percentages reported have been rounded down or up according to whether the number to the right of the decimal point is less than or greater than .05, in the usual way.

Important terminology we have used:

-*Participant* = One of the (318 plus two test survey dummy inputs) people who participated in the (but may not have answered every question). The two dummy tests surveys were erroneously left in during calculation of percentages which, although having minor effect on the result, should still be taken into account.
- *Respondent* = A participant that has responded to a particular question.
- *Ranking* = The position on a hierarchical scale given to a list of options by a respondent. In this survey the lowest number on the scale has been attributed the most importance (e.g. on a scale of 1 to 4; where 1 is most important and 4 is least important).
- *Ranking Average* = This is the average ranking for each answer choice so to determine which answer choice was most preferred overall. The answer choice with the **highest** *ranking average* is the most preferred choice. *Ranking average* is not the same as *ranking.* The *Ranking average* is a ranking weighted average adopted from SurveyMonkey.

The ranking average is calculated as follows, where[1]:
w = weight of answer choice
x = response count for answer choice

$$\frac{x_1w_1 + x_2w_2 + x_3w_3 \ldots x_nw_n}{\text{Total Response Count}}$$

It was possible for a respondent to partially complete a ranking question by SurveyMonkey design (e.g. rank three of five items 1 to 3, but leave the remaining two not ranked). Where no ranking was selected by the respondent the weighting was given a value of '0' (i.e. assumed not important and discarded).

Our Preliminary Analytical Results and Discussion:

SECTION ONE: What does 'open government' mean to you?

Q1: The Open Government Partnership has set out what it thinks are the core principles of 'open government' as: transparency, citizen participation, accountability of government to the public, and technology and innovation. Please rank these principles in order of importance to you, (1 being most important):

Results

- The 'principle' ranked most frequently by respondents as '1' (i.e. most important) was accountability (145 respondents).
- Transparency had the highest ranking average (i.e. most preferred).
- The 'principle' ranked frequently by respondents as '4' (i.e. the least important) was technology and innovation (238 respondents). Technology and innovation also had the lowest ranking average (i.e. least preferred).
- 286 respondents completed the question. A further 16 respondents partially completed the question, ranking some but not all of the OGP principles. Only 5 respondents skipped the question completely.
- The response count was not equal for each OGP principle. No count was given where no answer option (i.e. ranking number) was picked by a respondent.

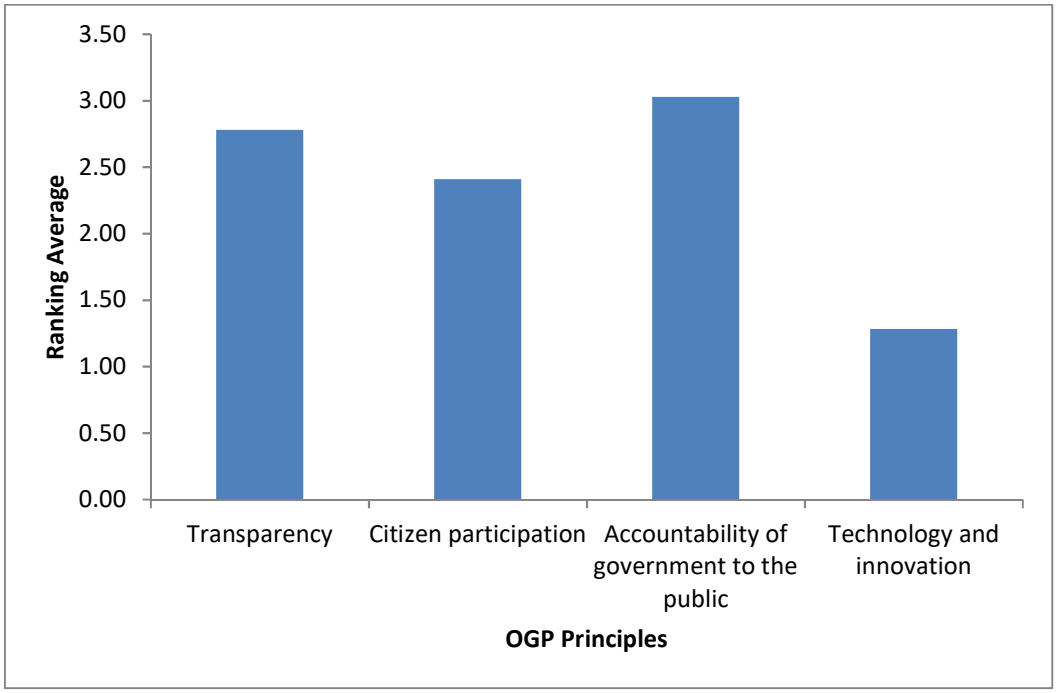
Discussion Points

- Accountability underlines one of the fundamental elements of a functioning democracy – to be subject to the public's assessment of performance of government.
- Transparency and public participation also rank highly.
- Technology & innovation – what role / importance does this have in open government? Respondents offered other 'principles' that they see as important to open government. - see Q2
- People were engaged with this question with a high response rate.

Table 1: Q1 analytical data

OGP Principles	Rankings Options					
	1	2	3	4	Ranking Average (highest = most preferred)	Response (Count)
Transparency	99	114	65	8	2.78	286
Citizen participation	52	76	150	23	2.41	301
Accountability of government to the public	145	93	41	13	3.03	292
Technology and innovation	11	16	37	238	1.28	302
					No. of respondents who answered	315
					No. of respondents who skipped the question	5

Graph 1: Q1 analytical data



Q2. What other principles do you think define 'open government' (if any)?

Results

- 53% of participants responded to this question.

Discussion

- Potentially a difficult question to answer in a short participation time? – it requires deep thinking. Some responses encompassed what a person deems important to them but not necessarily principles.
- Some respondents may not have a framework of understanding in which to interpret the meaning of 'open government principles'. Why? Perhaps they may interact with Open government in ways that they may not, until now, have had to express in written language.

Table 2: Q2 analytical data

	Response (Count)	Response (%)
No. of respondents who answered	170	53
No. of respondents who skipped the question	150	47

Q3. How important is it to seek cross political-party consensus on the principles of open government?

Results

- 92% of respondents = essential or important.
- 3% of respondents = not important or irrelevant /unnecessary.
- Only three participants skipped the question.

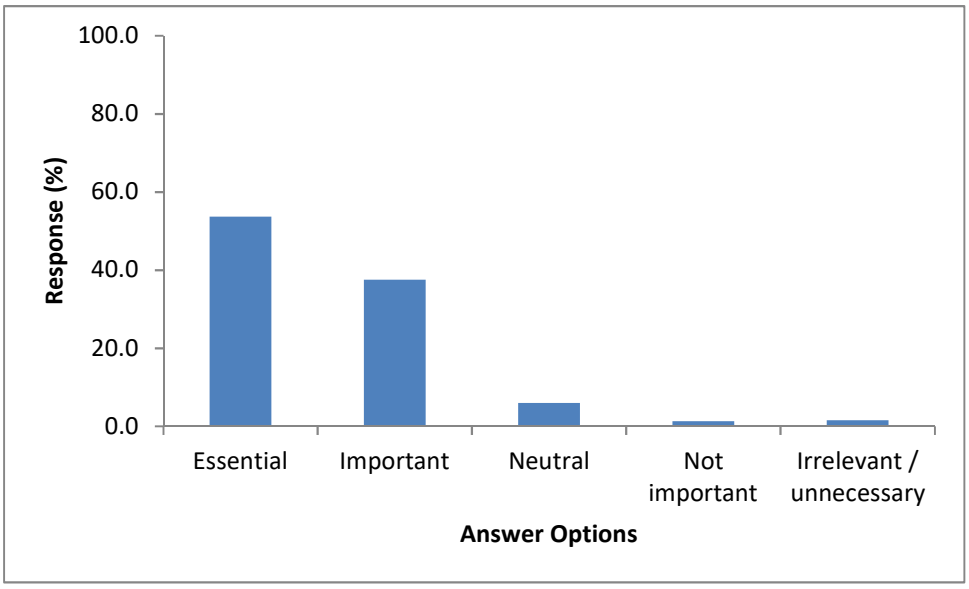
Discussion

- The importance of open government crosses the party political spectrum.

Table 3: Q3 analytical data

	Answer Options					
	Essential	Important	Neutral	Not important	Irrelevant / unnecessary	Total Response (Count)
Response (Count)	170	119	19	4	5	317
Response (%)	53.6	37.5	6.0	1.3	1.6	
No. of respondents who answered						317
No. of respondents who skipped the question						3

Graph 2: Q3 analytical data



Q4. Prior to the publication of the first Open Government Action Plan 2014-16 there was consultation between the New Zealand government and civil society over the content of the plan. This consultation comprised a small number of meetings with invited representatives from civil society organisations and an online discussion lasting one month. How would you like the New Zealand government to enable you to participate in co-creation of the next Open Government Action Plan 2016--18?

Results

- The consultation method with the highest ranking average (i.e. most preferred) was '*Online discussion forum*'.
- The consultation method that was ranked '1' (i.e. highest importance) the most number of times (39) was '*A series of meetings held with the public around the country*' .
- The consultation method with lowest ranking average (i.e. least preferred) and that was ranked '1' the fewest times (22) was '*A series of meetings held with leaders of community-led organisations'*.
- The average ranking range for the given suggestions was 2.43 to 2.81 and the range of respondents ranking '1' for each consultation method was 22 to 39.
- 24 respondants ranked their own consultation methods (i.e. '*Other, please comment in the box below'*) '1', which was greater than the number selected for '*A series of meetings held*

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with leaders of community-led organisations' . However, not all people gave a ranking for the '*Other*' method and therefore led to a low average ranking.

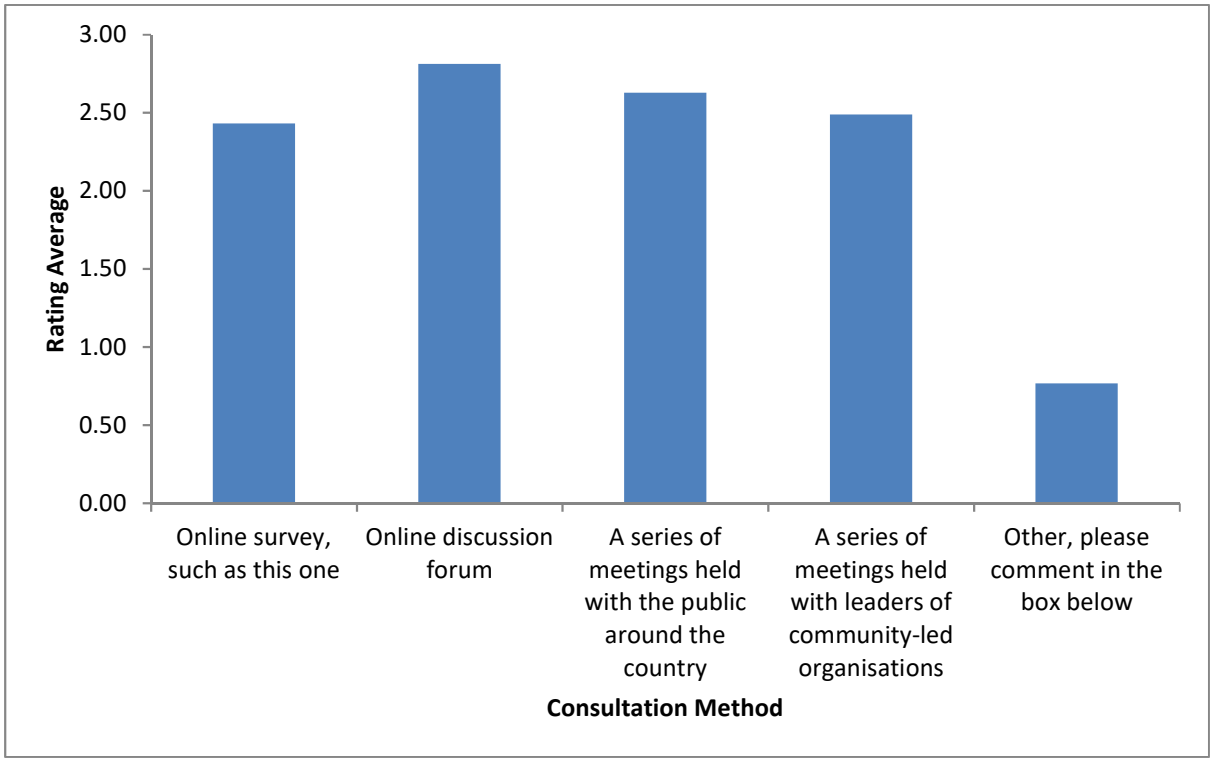
Discussion

- There is no single outstanding preferred method. This could either suggest that this is because the respondents thought all these methods should be used; or that none of these methods used were sufficient on their own.
- The survey was an on-line survey, so the preference of respondents for online consultation is from a group that is already happy to operate on line and thus is selectively those who are happy to work on line. It is not necessarily thus a good guide to wider community preferences as to mode of engagement.

Table 4: Q4 analytical data

	Ranking Options						
Consultation Method	**1**	**2**	**3**	**4**	**5**	**Ranking Average (highest = most preferred)**	**Response (Count)**
Online survey, such as this one	32	39	62	85	91	2.43	309
Online discussion forum	31	59	95	86	35	2.81	306
A series of meetings held with the public around the country	39	40	77	85	69	2.63	310
A series of meetings held with leaders of community-led organisations	22	54	63	100	66	2.49	305
Other, please comment in the box below	24	5	10	14	43	0.77	96
						No. of respondents who answered	**314**
						No. of respondents who skipped the question	**6**

Graph 3: Q4 analytical data



Q5. Do you think that there should be a minimum standard consultation period, and consultation requirements within these periods, set for civil society engagement and comment on new laws (bills), regulations and policies?

Results

- 79% of respondents agree to Q5.
- 3% of respondents do not agree to Q5.
- 18% of respondents are either neutral or unsure.

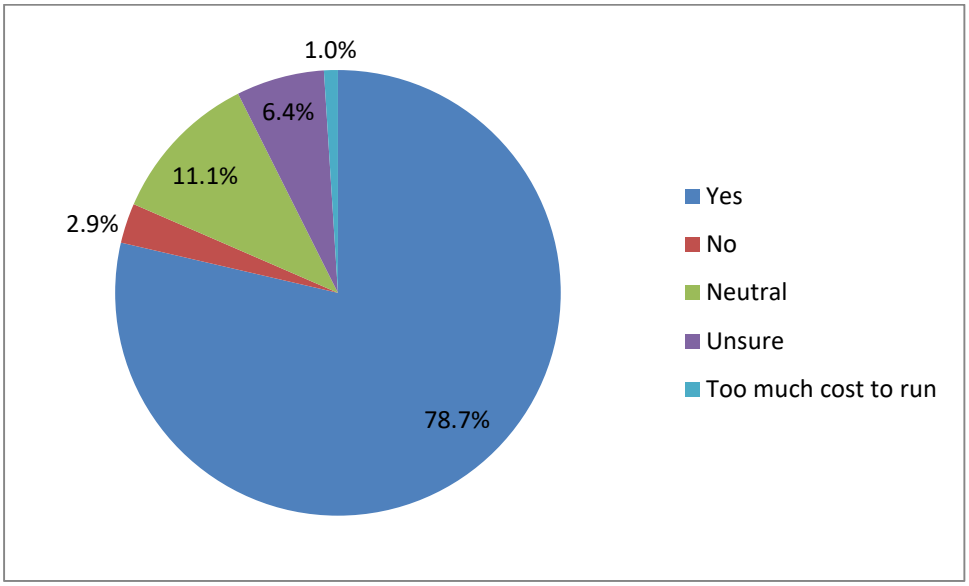
Discussion

- This suggests consultation is an important issue and the trade off with a potential higher financial cost to implement these consultations is considered by respondents to be worth it.
- There is a significant 'floating repondent' either neutral or unsure. Is this due to a lack of education/understanding on the topic?

Table 5: Q5 analytical data

Answer Options	Response (%)	Response (Count)
Yes	78.7	247
No	2.9	9
Neutral	11.1	35
Unsure	6.4	20
Too much cost to run	1.0	3
No. of respondents who commented to the following additional question: " If 'Yes', then what consultation period & requirements would you like to see introduced?"		185
No. of respondents who answered		314
No. of respondents who skipped the question		6

Graph 4: Q5 analytical data



SECTION TWO: The next action plan – 2016-18

Q6. The commitments in the current New Zealand Open Government Action Plan 2014--16 were assessed by the Open Government Partnership's Independent Reporting Mechanism as having an overall 'minor impact'. How important is it that the New Zealand government commits to ambitious actions to meet the Open Government Partnership aims?

Results

- 94% of respondents (265 respondents) = essential or important.
- None of the respondents = Completely unnecessary.

Discussion

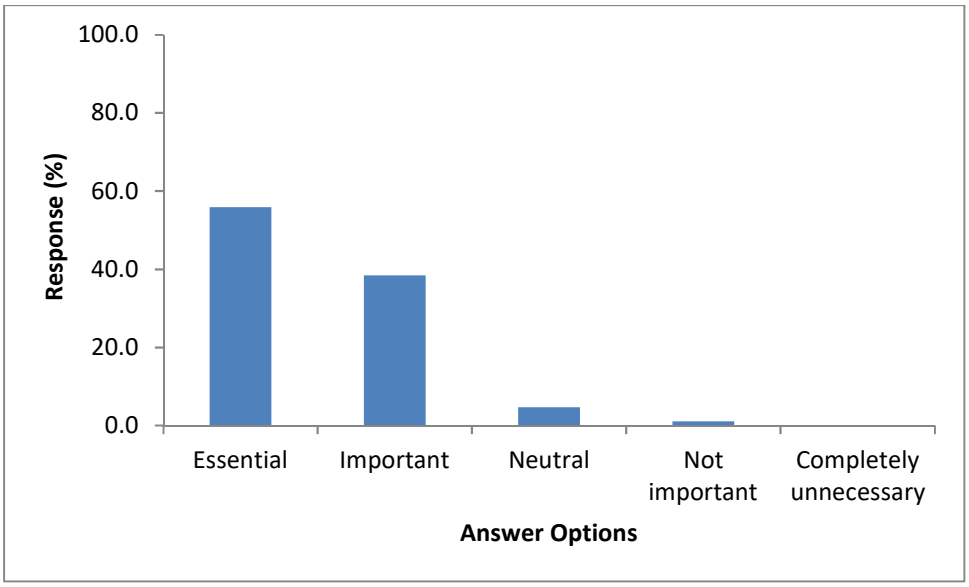
- A majority want government to be more committed to open governement actions.

Table 6: Q6 analytical data

	Answer Options						
	Essential	Important	Neutral	Not important	Completely unnecessary	Rating Average	Total Response (Count)
Response (Count)	157	108	13	3	0	1.51	281
Response (%)	55.9	38.4	4.6	1.1	0.0	-	-
					No. of respondents who commented:		91
					No. of respondents who answered		281

No. of respondents who skipped the question	39

Graph 5: Q6 analytical data



Q7. What government actions would you like to see in the 2016-2018 Open Government Action Plan?

Results

- 48% of participants responded to the question.

Discussion

- This may have been a difficult question to answer in a short participation time? – it requires deep thinking.
- Some respondents may not have a framework of understanding in which to interpret the meaning of 'open government action'. Why? Perhaps they may interact with Open government in ways that they may not, until now, have had to express in written language? On the other hand, they answered a Questionnaire about this matter.

Table 7: Q7 analytical data

	Response (Count)	Response (%)
No. of respondents who answered	154	48.1
No. of respondents who skipped the question	166	51.9

Q8. The Open Government Partnership's Guidance on action plans states: 'We strongly recommend that each action plan contain between 5 and 15 ambitious commitments'. The New Zealand Open Government Action Plan 2014--16 contained only four. Do you think the New Zealand government should significantly increase the number of actions it commits to in the next Open Government Action Plan, 2016-18?

Results

- 66% said 'Yes'.
- 11% said 'No'.
- 22.5% of respondents = either 'neutral' or 'don't know'.

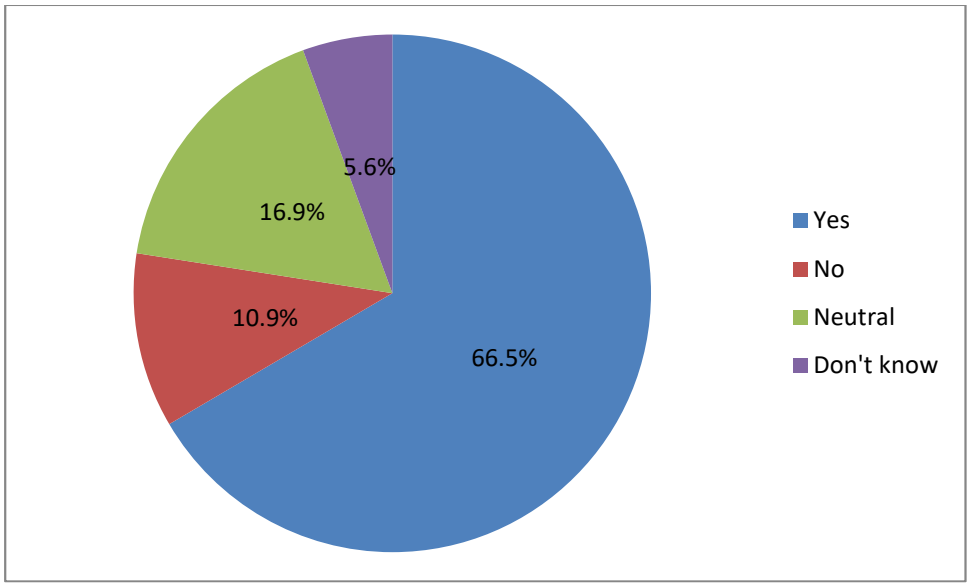
Discussion

- A clear majority of respondents want the government to do more actions.

Table 8: Q8 analytical data

Answer Options	Response (%)	Response (Count)
Yes	66.5	189
No	10.9	31
Neutral	16.9	48
Don't know	5.6	16
No. of respondents who answered		284
No. of respondents who skipped the question		36

Graph 6: Q8 analytical data



SECTION THREE: Our relationship with government

Q9.a) through d) The level of disclosure of information to the public while the government is negotiating international agreements (such as trade and investment agreements) has been controversial.Choose what level you agree or disagree with in the following suggestions. As well

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(or instead), please share your own ideas in the comment box below.The government should be required to...

Results

a)

- 76% = strongly agree or agree (approx. 47% = strongly agree).
- 8% = strongly disagree or disagree.

b)

- 79% = strongly agree or agree (approx. 55% = strongly agree).
- 7% = strongly disagree or disagree..

C)

- 90% = strongly agree or agree (approx. 71% = strongly agree).
- 4% = strongly disagree or disagree.

d)

- 91% = strongly agree or agree (approx. 72% = strongly agree).
- 3% = strongly disagree or disagree.

Discussion

- Wide agreement to all four suggestions, especially c & d.
- C & d represent two of the biggest issue facing society at the moment with large public attention i.e. c) the handing over of sovereign control to corporate power in the form of large trade agreements (e.g. TPPA); d) impact of climate change and social justice.
- Less strongly agreed on a) – why?.

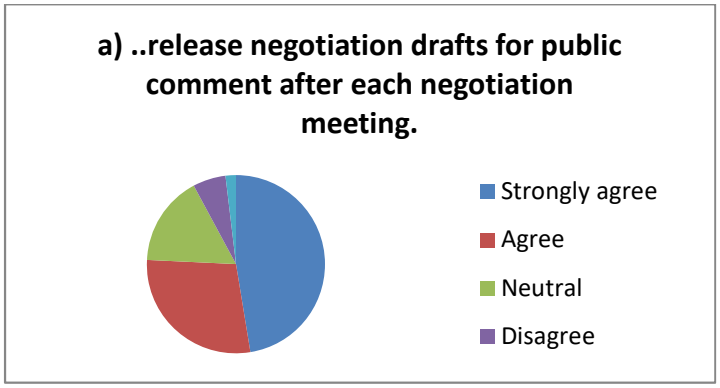
Continued.

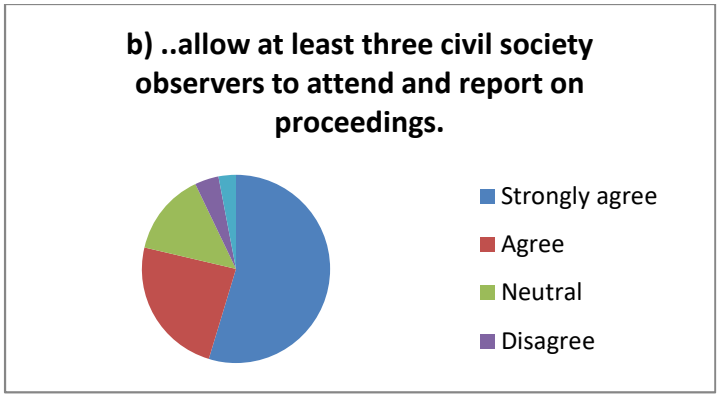
Table 9: Q9 analytical data

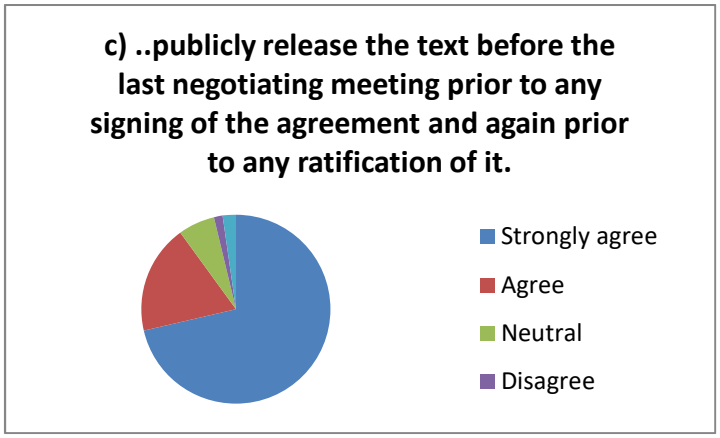
Answer Options	Strongly agree		Agree		Neutral		Disagree		Strongly disagree		Total Response (Count)
	Response (Count)	Response (%)	Response (Count)	Response (%)	Response (Count)	Response (%)	Response (Count)	Response (%)	Response (Count)	Response (%)	
a) ..release negotiation drafts for public comment after each negotiation meeting.	127	47.4	76	28.4	44	16.4	16	6.0	5	1.9	268
b) ..allow at least three civil society observers to attend and report on proceedings.	146	54.7	64	24.0	38	14.2	11	4.1	8	3.0	267
c) ..publicly release the text before the last negotiating meeting prior to any signing of the agreement and again prior to any ratification of it.	192	71.4	50	18.6	17	6.3	4	1.5	6	2.2	269
d) ..be open to including progress reports on the Paris Climate Change agreement and UN Sustainable Development	193	71.5	53	19.6	17	6.3	3	1.1	4	1.5	270

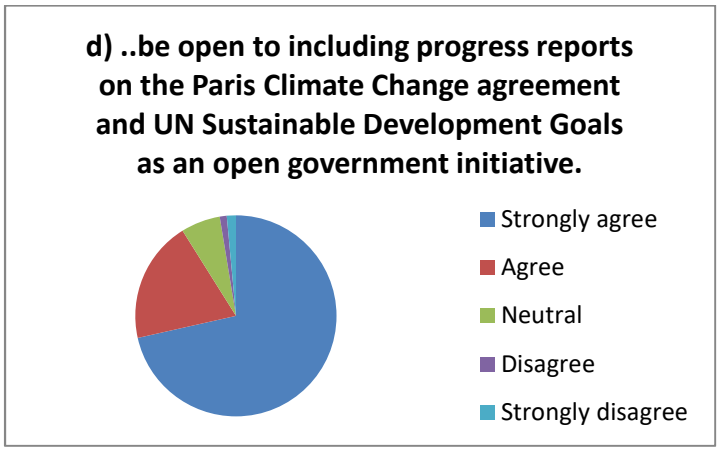
Goals as an open government initiative.											
										No. of respondents who commented	**45**
										No. of respondents who answered	**270**
										No. of respondents who skipped the question	**50**

Graph 7a through d: Q9a through d analytical data –response (%)









Q10. How important is it to provide public consultation on the oversight of government intelligence agencies?

Results

- 84% = Essential or Important.

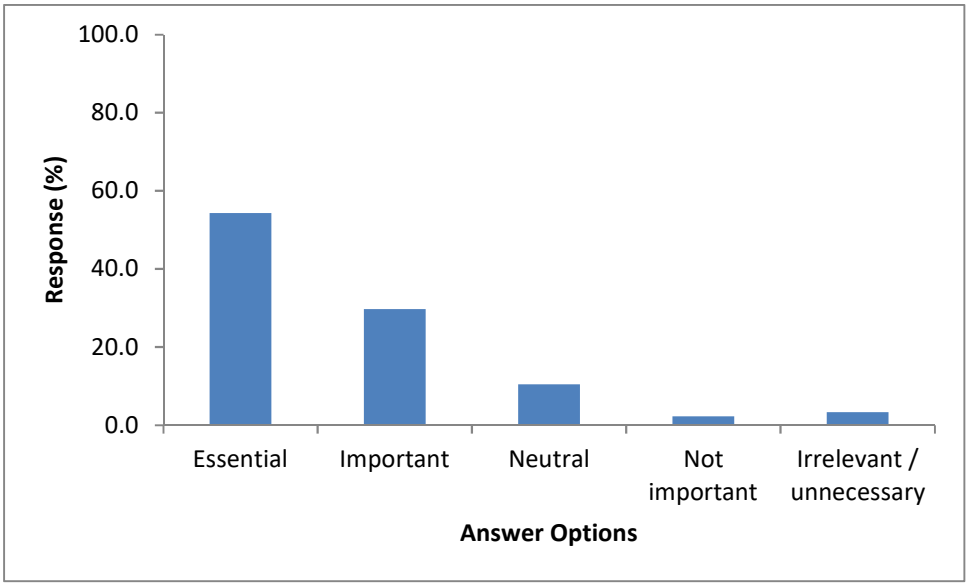
Discussion

- A clear majority of respondants think public consultation on the oversight of government intelligence agencies is important.

Table 10: Q10 analytical data

	Answer Options					
	Essential	Important	Neutral	Not important	Irrelevant / unnecessary	Total Response (Count)
Response (Count)	146	80	28	6	9	269
Response (%)	54.3	29.7	10.4	2.2	3.3	
No. of respondents who commented						51
No. of respondents who answered						269
No. of respondents who skipped the question						51

Graph 8: Q10 analytical data



Q11. How important is it to you that you know how any personal information the government has about you is used?

Results

- 88% of respondents = essential or important

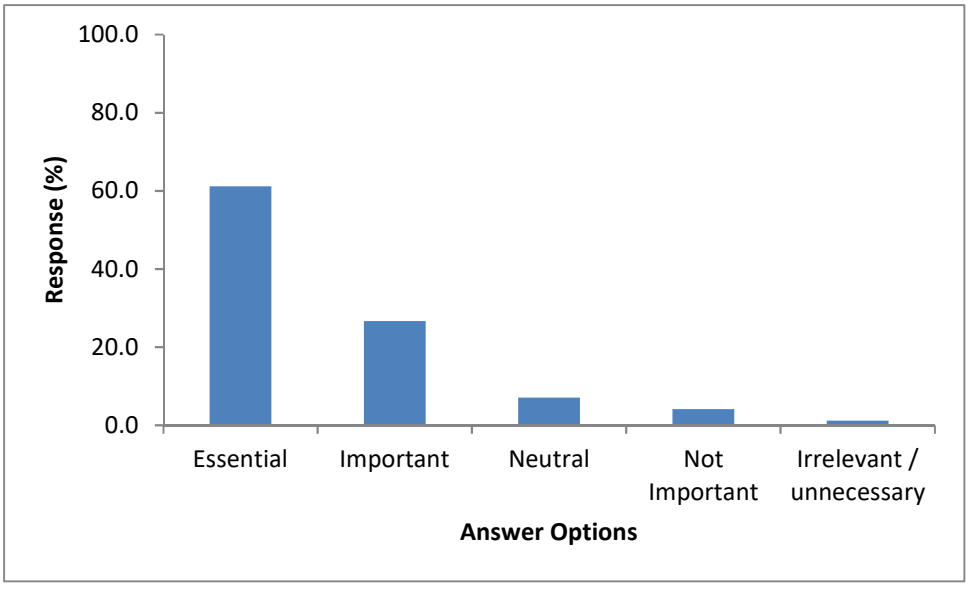
Discussion

- A clear majority of respondants think that knowledge of how any personal information the government has about you is used is important.

Table 11: Q11 analytical data

	Answer Options					
	Essential	Important	Neutral	Not Important	Irrelevant / unnecessary	Total Response (Count)
Response (Count)	165	72	19	11	3	270
Response (%)	61.1	26.7	7.0	4.1	1.1	
No. of respondents who commented						36
No. of respondents who answered						270
No. of respondents who skipped the question						50

Graph 9: Q11 analytical data



Q12. How important is that the public is able to...

Results

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a) ..find all invitations to government policy consultation in one central website?

- 86% = Essential or important

b) ..make requests for government action in one central website?

- 81% = Essential or important

Discussion

- A clear majority of respondants think a) & b) are almost equally important.

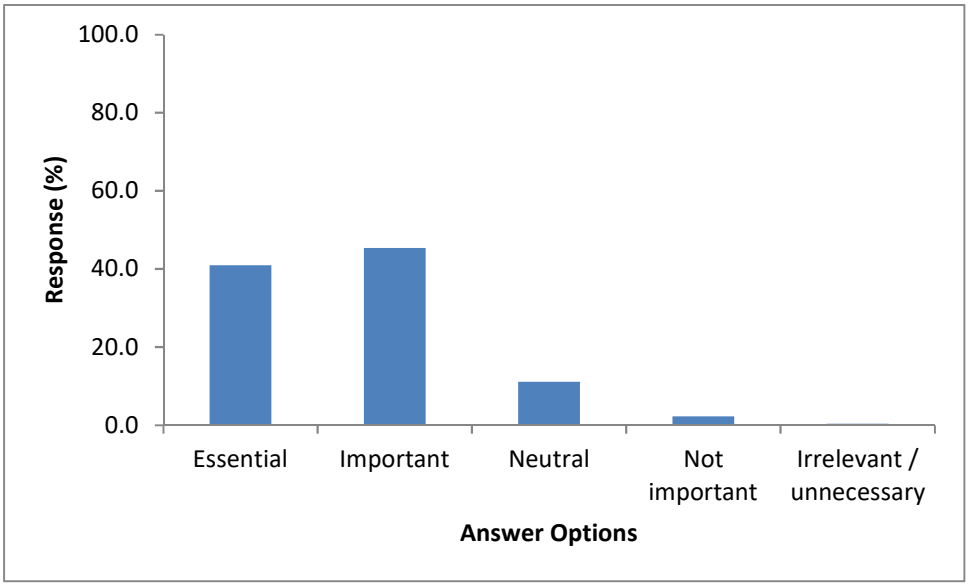
Table 12: Q12 a) analytical data

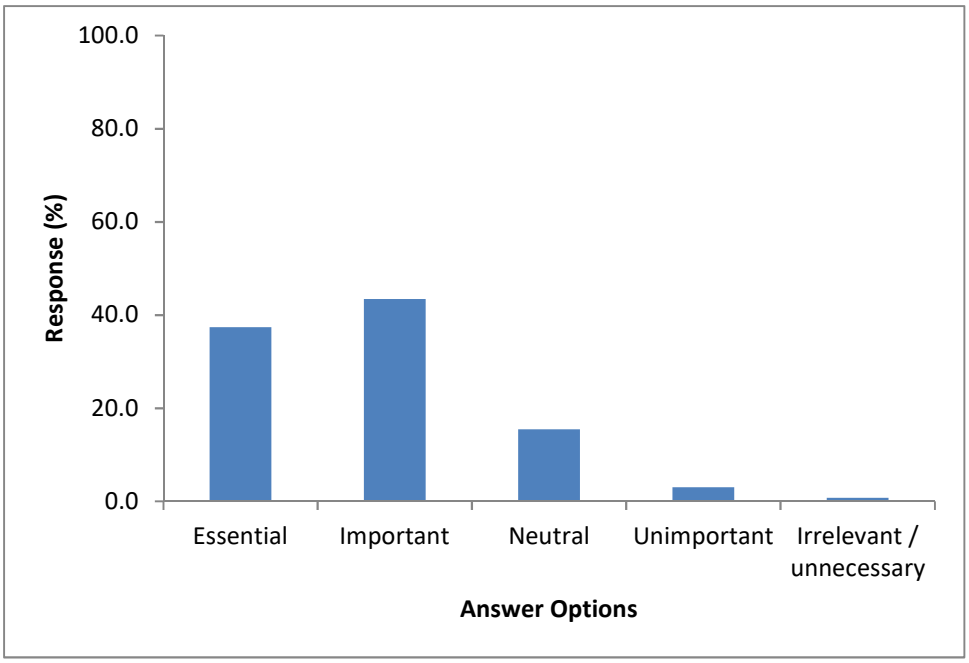
	Answer Options					
	Essential	Important	Neutral	Not important	Irrelevant / unnecessary	Total Response (Count)
Response (Count)	111	123	30	6	1	271
Response (%)	41.0	45.4	11.1	2.2	0.4	
No. of respondents who commented						45
No. of respondents who answered						271
No. of respondents who skipped the question						49

Table 13: Q12 b) analytical data

	Answer Options					
	Essential	Important	Neutral	Unimportant	Irrelevant / unnecessary	Total Response (Count)
Response (Count)	99	115	41	8	2	265
Response (%)	37.4	43.4	15.5	3.0	0.8	
No. of respondents who commented						29
No. of respondents who answered						265
No. of respondents who skipped the question						55

Graph 10a & b : Q12 a) & b) analytical data





Q13. Did you know that any written request to government for information is automatically covered by the Official Information Act, and that you do not have to cite the Act or use any special form or format?

Results

- 45% of respodents said 'Yes'.
- 31% of respodents said 'No'.
- 19% of respodents said 'Vaguely'.

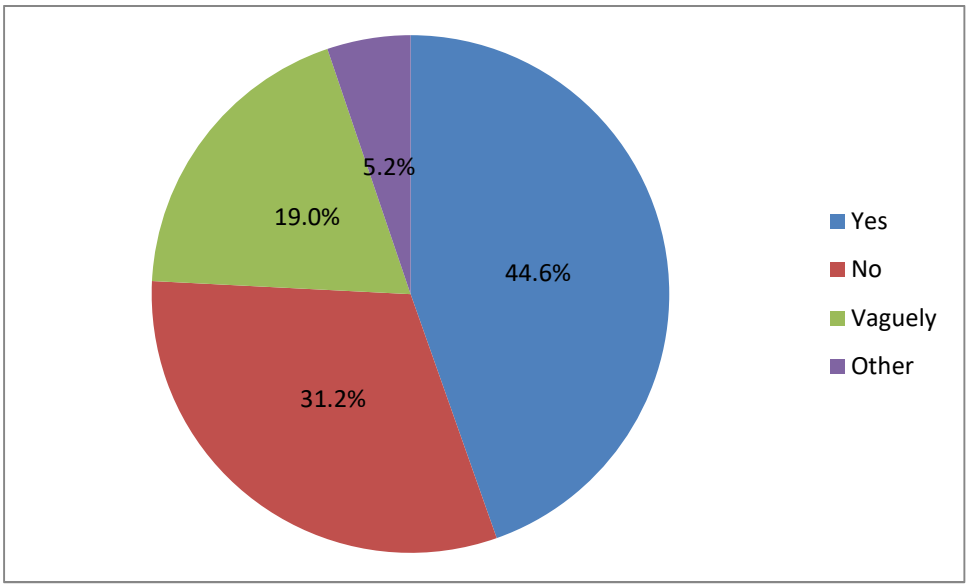
Discussion

- Poor respondent knowledge of fundamental usability of OIA.
- Why? Lack of info / accessibility of info about how to use OIA?

Table 13: Q13 analytical data

Answer Options	Response (%)	Response (Count)
Yes	44.6%	120
No	31.2%	84
Vaguely	19.0%	51
Other	5.2%	14
No. of respondents who answered		269
No. of respondents who skipped the question		51

Graph 11: Q13 analytical data



Q14. Do you have any further suggestions of issues you would like addressed in the Open Government Action Plan 2016-18?

Results

- 18% of all participants completed the question.

Discussion:

- Poor respondent count. Likely due to near end of the survey and it was the second time they'd been asked this question.

Table 14: Q14 analytical data

Total Response (Count)	58
No. of respondents who skipped the question	262

SECTION FOUR: Ideas from civil society

Q15. How important is it...

Results

a) ..that the Open Government Partnership agreement continues through successive changes of government?

- 97% = essential or important (73% = essential)
- 1% = irrelevant or not important

b) ..to raise awareness about how the public can find published government information readily?

- 96% = essential or important (approx. 58% = essential)
- 1% = irrelevant or not important

c) ..to increase transparency around political party funding and who makes funding available?

- 92% = essential or important (approx. 72% = essential).
- 2% = irrelevant or not important .

d) ..to increase transparency around disclosure of beneficial ownership of trusts?

- 91% = essential or important (approx. 60% = essential).
- 2% = irrelevant or not important .

e) ..to strengthen the watchdog role of the media?

- 85% = essential or important (approx. 61% = essential).
- 3% = irrelevant or not important .

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f) ..for the New Zealand government to work closely with stakeholders in providing open source access to government data?

- 89% = essential or important (approx. 53% = essential).
- 2% = irrelevant or not important .

g) ..to have clear cross-government policy to allow public servants and those receiving public funding to speak out on significant public issues whilst retaining legal protection from reprisals?

- 92% = essential or important (approx. 73% = essential).
- 2% = irrelevant or not important .

h) ..for greater Budget transparency including a breakdown of spending and break down of where funds have been cut?

- 92% = essential or important (approx. 64% = essential).
- 2% = irrelevant or not important .

i) ..for regular annual reporting on New Zealand government intelligence information?

- 83% = essential or important (approx. 50% = essential).
- 5% = irrelevant or not important .

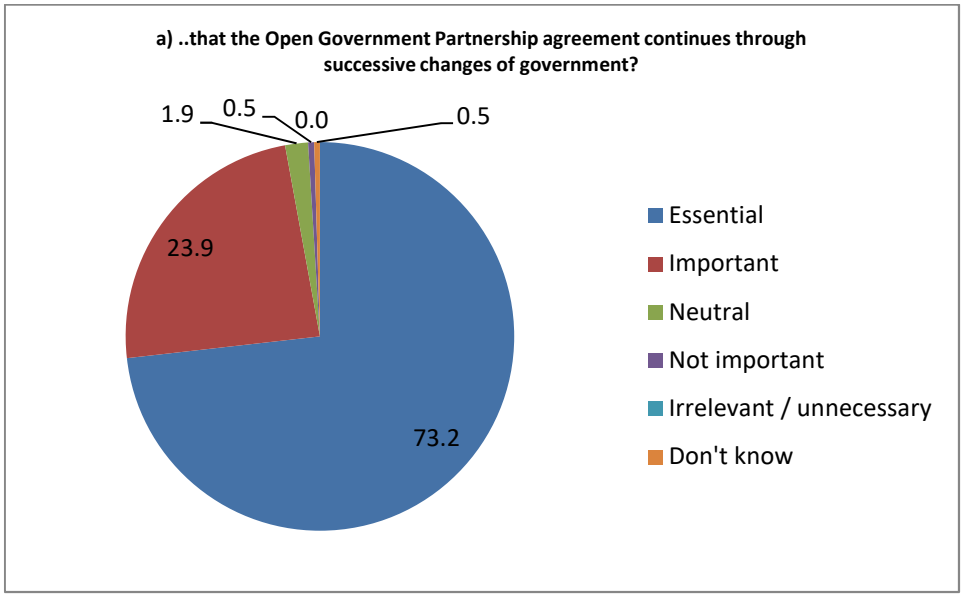
Discussion

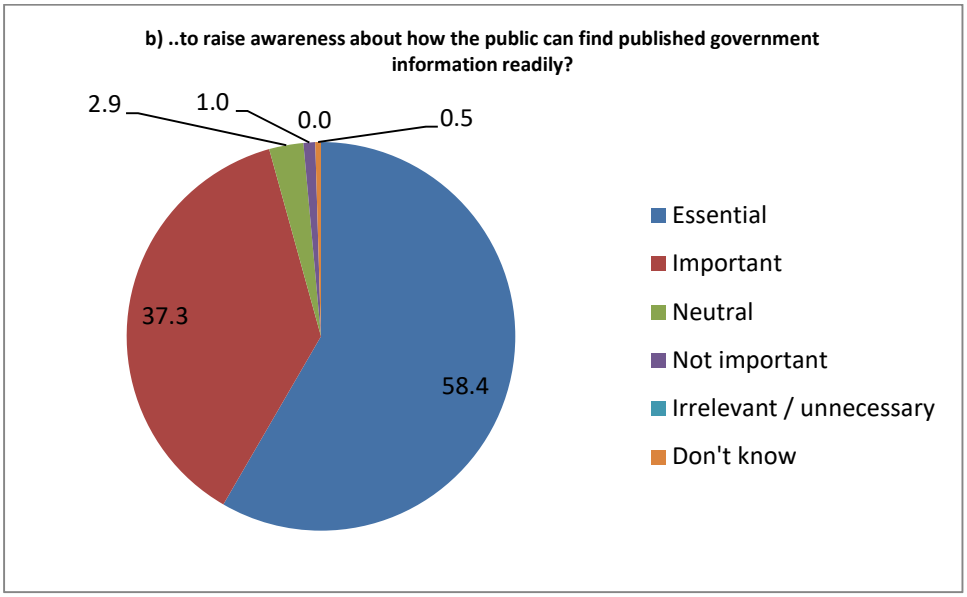
- Wide support for all action suggestions.
- High support for suggestions a), c) & g)
  - Support for a) backs up data for Q3 – similar questions of cross party support. Suggestion g) also has a cross-party component to it - respondents perhaps placing highest value on actions that they foresee having long term government commitments.
  - Suggestion c) particular focus on 'party-politics' or the democratic process at general elections (i.e. where most party funding comes in?)
- Least support for suggestion i) (although still majority support).

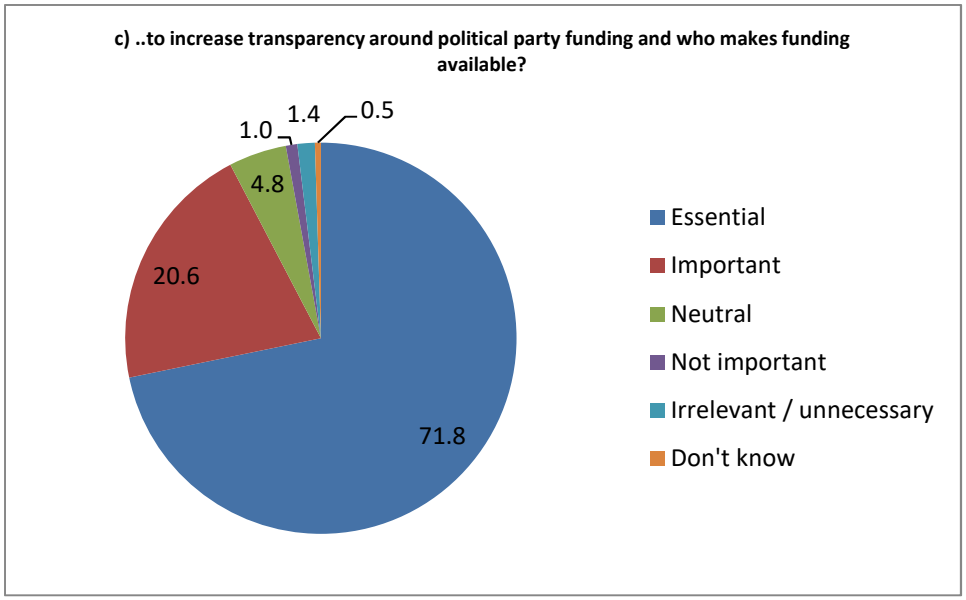
Table 15: Q15 analytical data

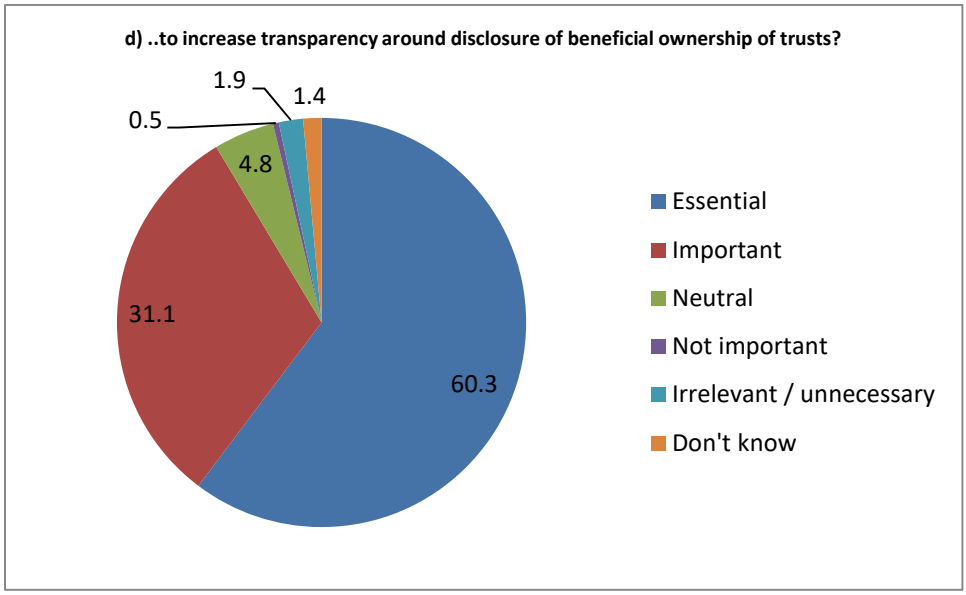
Question (15)	Answer Options												Total Response (Count)
	Essential		Important		Neutral		Not important		Irrelevant / unnecessary		Don't know		
	Response (Count)	Response (%)	Response (Count)	Response (%)	Response (Count)	Response (%)	Response (Count)	Response (%)	Response (Count)	Response (%)	Response (Count)	Response (%)	
a)	153	73.2	50	23.9	4	1.9	1	0.5	0	0.0	1	0.5	209
b)	122	58.4	78	37.3	6	2.9	2	1.0	0	0.0	1	0.5	209
c)	150	71.8	43	20.6	10	4.8	2	1.0	3	1.4	1	0.5	209
d)	126	60.3	65	31.1	10	4.8	1	0.5	4	1.9	3	1.4	209
e)	128	61.2	50	23.9	23	11.0	2	1.0	5	2.4	1	0.5	209
f)	111	53.4	74	35.6	13	6.3	3	1.4	1	0.5	6	2.9	208
g)	152	73.1	40	19.2	12	5.8	1	0.5	3	1.4	0	0.0	208
h)	132	64.1	57	27.7	13	6.3	1	0.5	3	1.5	0	0.0	206
i)	103	49.8	69	33.3	24	11.6	8	3.9	3	1.4	0	0.0	207
No. of respondents who commented in response to: "Any further suggestions?"													**21**
No. of respondents who answered													**209**
No. of respondents who skipped the question													**111**

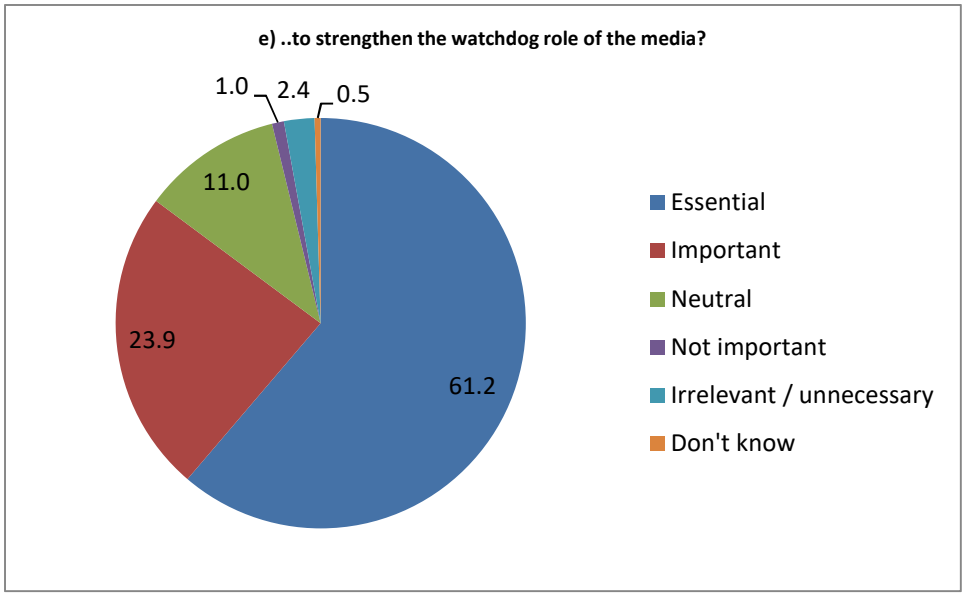
Graph 12a) through i) : Q13a) through i) analytical data – Response (%)

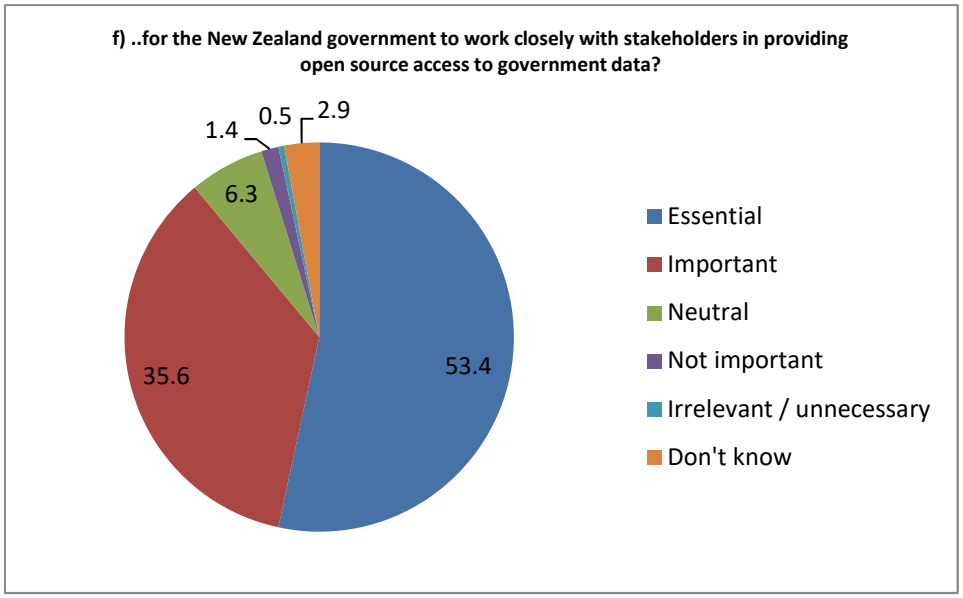


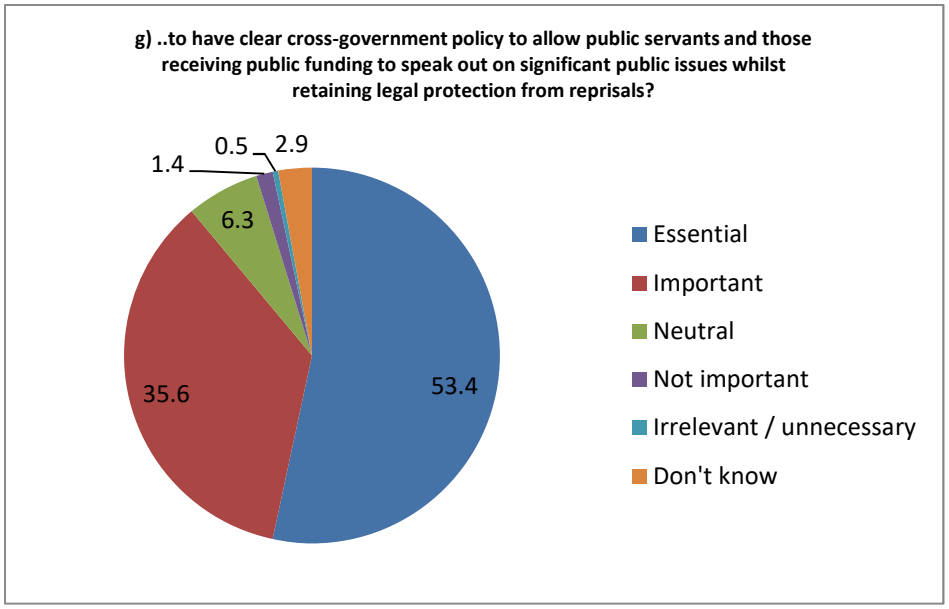


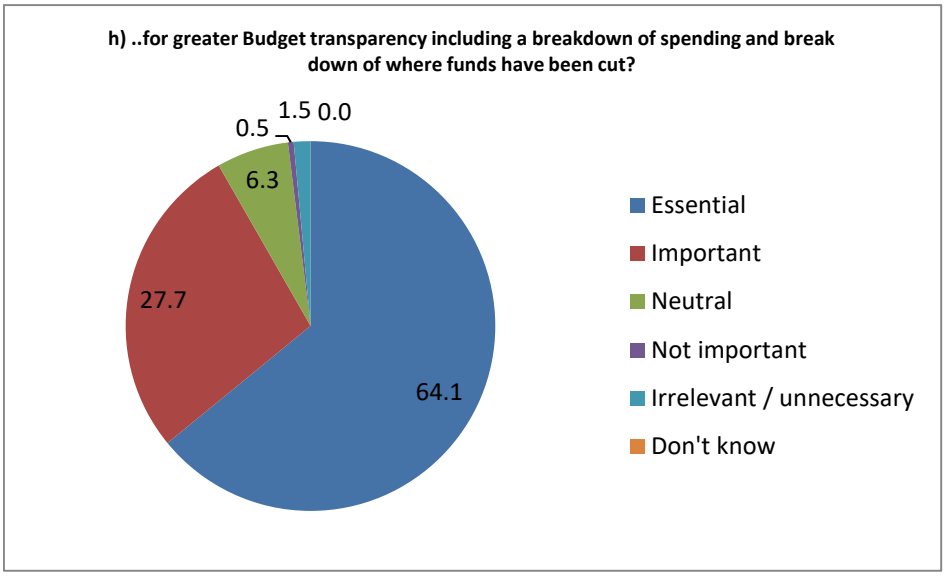


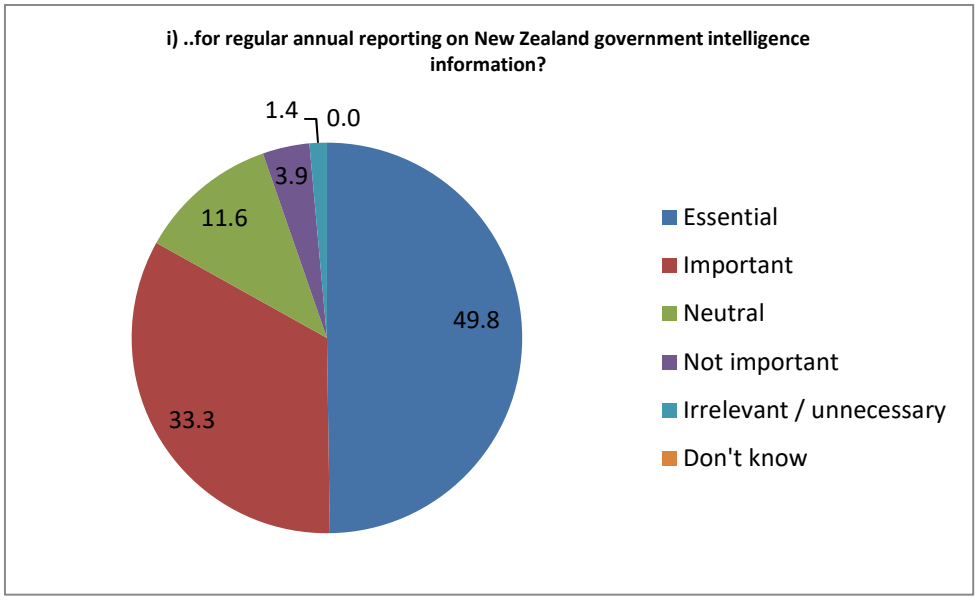












SECTION FIVE: About You

Q16. Are you completing this survey...

Table 16: Q16 analytical data

Answer Options	Response (%)	Response (Count)
..as an individual independent of any organisation? (SKIPS TO Q20)	87.9	239
..on behalf of an organisation?	9.9	27
Other (please specify)	2.2	6
No. of respondents who answered		272
No. of respondents who skipped the question		48

Discussion

- Most respondents elected to complete the survey as an individual.
- These topics are often highly personal and cross-cut many different social sectors. Too hard to answer with only one 'hat'. Alternatively, it is also likely the three week time period for responses (driven by the short time for imput to SSC) was insufficient to put the questions through internal democratic processes. Survey monkey also presents difficulties for organisations since it is not possible to circulate the questions for discussion.

Q17. If you have chosen to complete the survey on behalf of an organisation please answer the following:

Results

a) What sector best describes that which the organisation you work for is part of? (please choose the one that fits best).

- 68% of all respodents = Not for profit sector.

b) Which field best describes the organisation you work for? (please choose the one that fits best)

- 36% = 'other'.
- 14% = health, education and social services sector.

Discussion

- The not-for-profit sector perhaps gives the most freedom for individual expression / 'voice' without fear of identification.
- Part b) failed to accurately provide all fields of job type for selection.
- Health, education and social services sectors capture many forms of vocation.
- Most people were not answering for organisations so skipped this question.

Table 17: Q17a) analytical data

Answer Options	Response (%)	Response (Count)
Not for profit	67.9	19
Self employed	0.0	0
Voluntary	7.1	2
Public sector	3.6	1
Private sector / for profit	3.6	1
Union	7.1	2
Professional association	3.6	1
Other (please specify in the box below)	7.1	2
No. of respondents who commented		3
No. of respondents who answered		28
No. of respondents who skipped the question		292

Graph 13: Q17a) analytical data – Response (%)

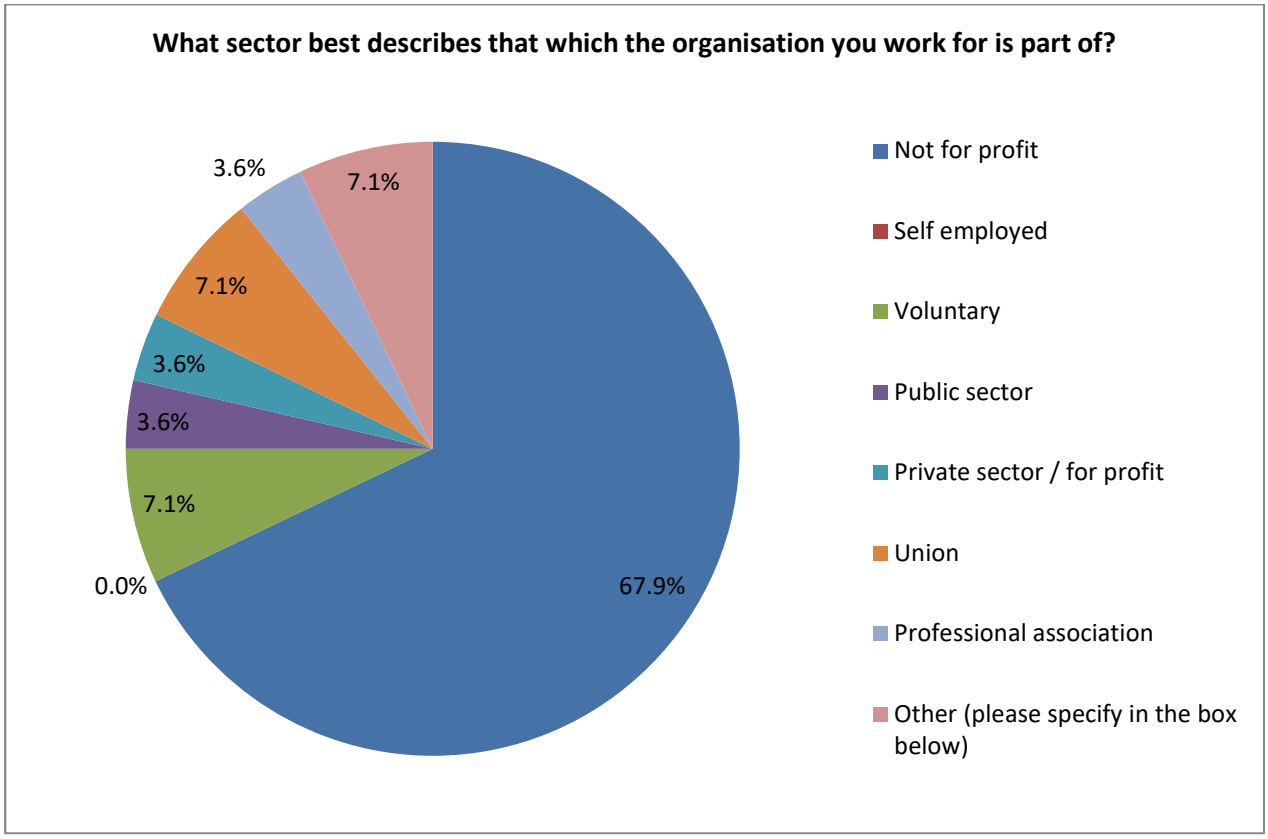
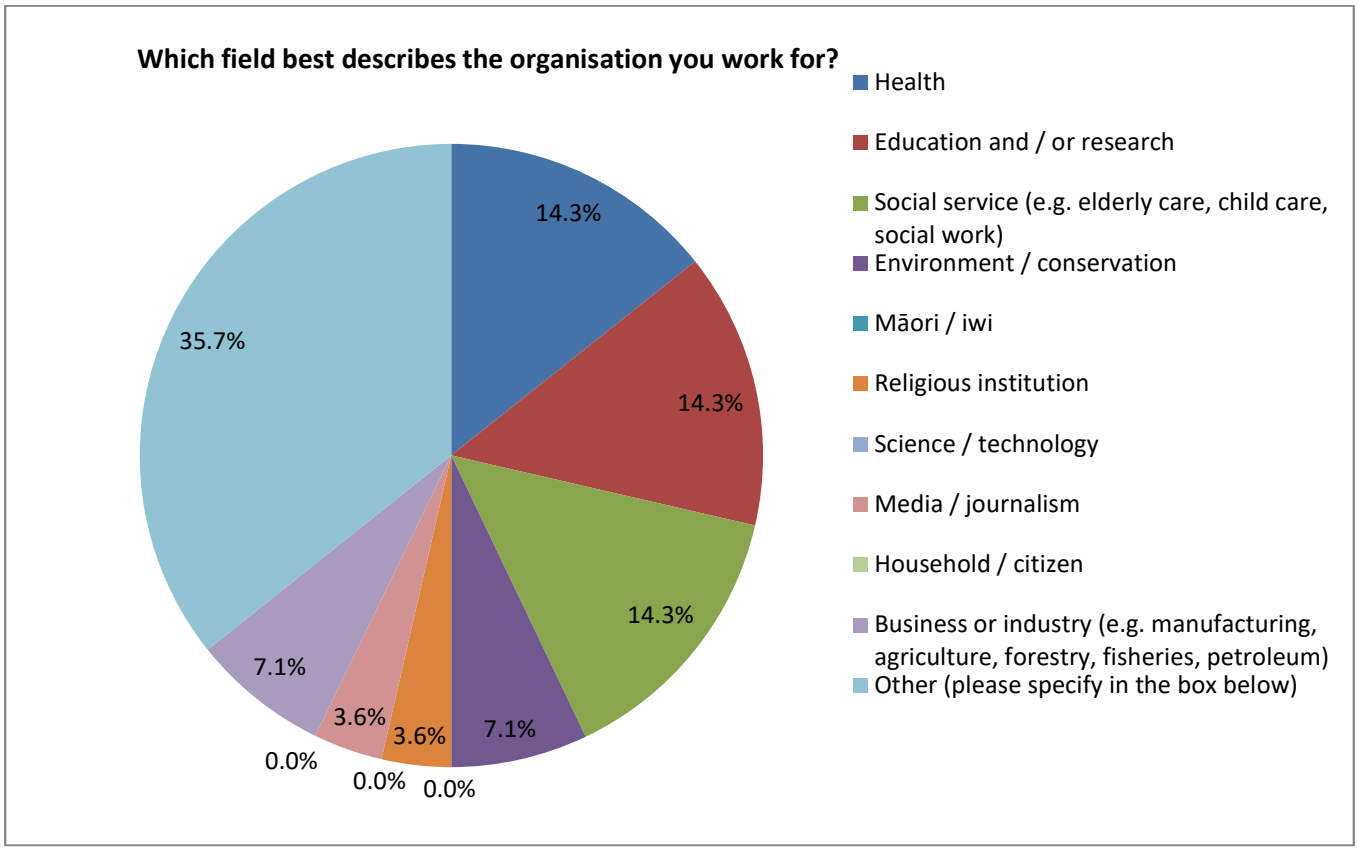


Table 18: Q17b) analytical data

Answer Options	Response (%)	Response (Count)
Health	14.3	4
Education and / or research	14.3	4
Social service (e.g. elderly care, child care, social work)	14.3	4
Environment / conservation	7.1	2
Māori / iwi	0.0	0
Religious institution	3.6	1
Science / technology	0.0	0
Media / journalism	3.6	1
Household / citizen	0.0	0
Business or industry (e.g. manufacturing, agriculture, forestry, fisheries, petroleum)	7.1	2
Other (please specify in the box below)	35.7	10
No. of respondents who commented 'Other'		**10**
No. of respondents who answered		**28**
No. of respondents who skipped the question		**292**

Graph 14: Q17b) analytical data – Response (%)



18. What is the name of your organisation? (Optional) N/A

19. Which geographical region(s) best relates to the work of the organisation you are answering on behalf of (choose all that applies)?

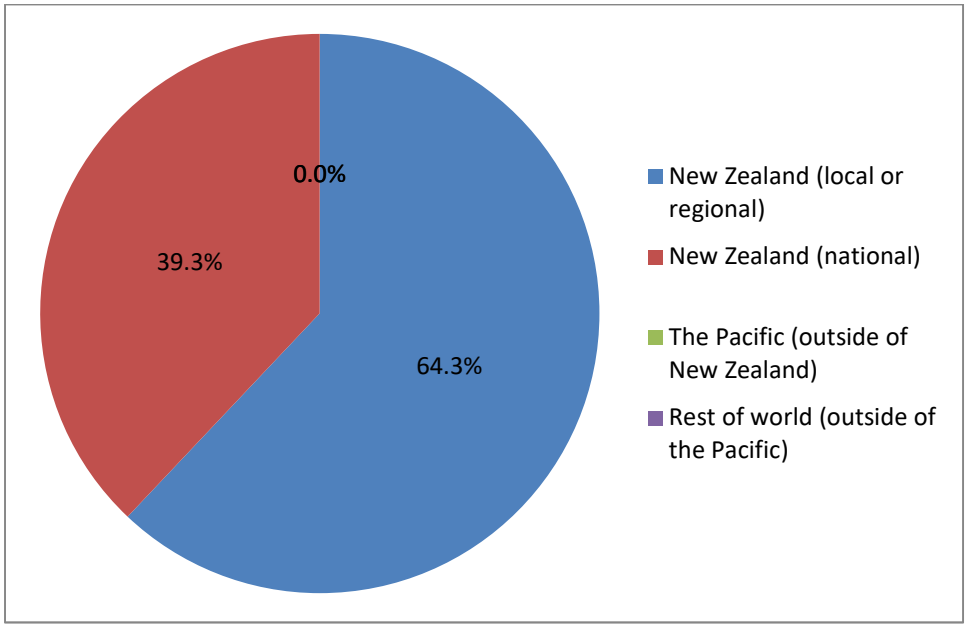
Discussion

- Majority are respondents with local area concerns.
- No link to wider Pacific or further abroad – likely due to the limitations of how wide spread the survey was able to be diistributed.
- Again, the large number of respondents who skipped the question reflects that most people answered the survey as individuals not as organisations.

Table 19: Q19 analytical data

Answer Options	Response (%)	Response (Count)
New Zealand (local or regional)	64.3	18
New Zealand (national)	39.3	11
The Pacific (outside of New Zealand)	0.0	0
Rest of world (outside of the Pacific)	0.0	0
No. of respondents who answered		28
No. of respondents who skipped the question		292

Graph 15: Q19 analytical data – Response (%)



Q20. Before receiving our invitation to take part in this survey were you aware that the New Zealand government…

Results

a) ..is signed up to the Open Government Partnership?

- 52% = yes or vaguely

b) ..had published the Open Government Action Plan 2014-16?

- 64% = No

c) ..is soon to publish the Open Government Action Plan 2016-18?

d) 69% = No

Discussion

- Almost half of respondents had no idea what the OGP is.
- A clear majority knew nothing of the action plans.
- The lack of knowledge by respondents who could be expected to know more than the public due to their self-selection to answer the survey reflected poor communication by the government about the Partnership and its obligations to commit to ambitious open government actions.

Table 20: Q20 a) analytical data

Answer Options	Response (%)	Response (Count)
Yes	36.6	97
No	47.9	127
Vaguely	15.5	41
No. of respondents who answered		265
No. of respondents who skipped the question		55

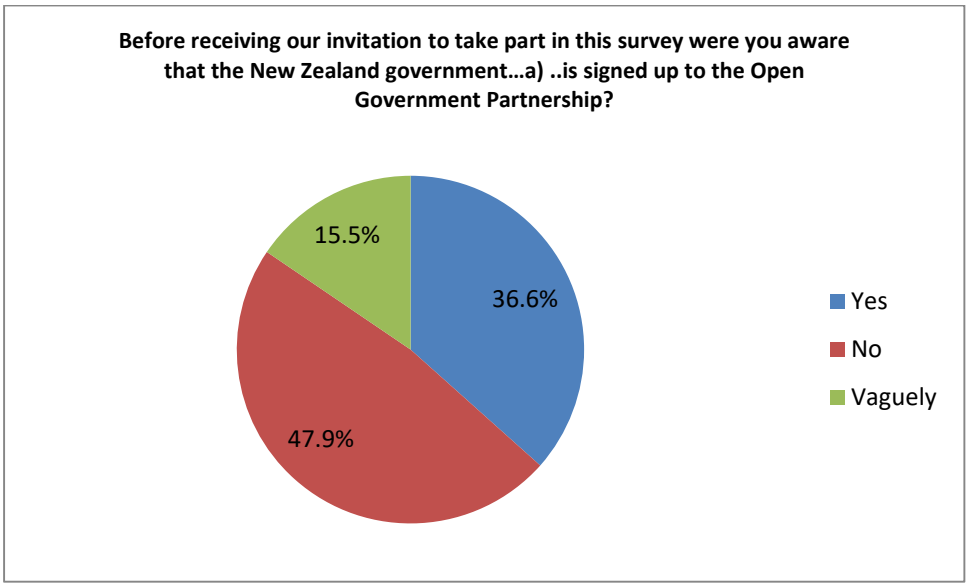
Table 21: Q20 b) analytical data

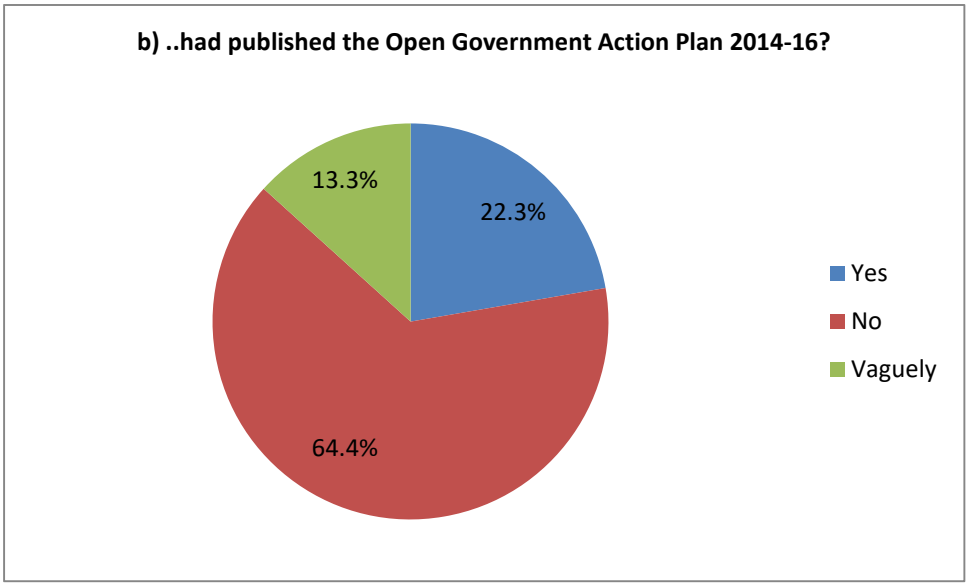
Answer Options	Response (%)	Response (Count)
Yes	22.3%	59
No	64.4%	170
Vaguely	13.3%	35
No. of respondents who answered		264
No. of respondents who skipped the question		56

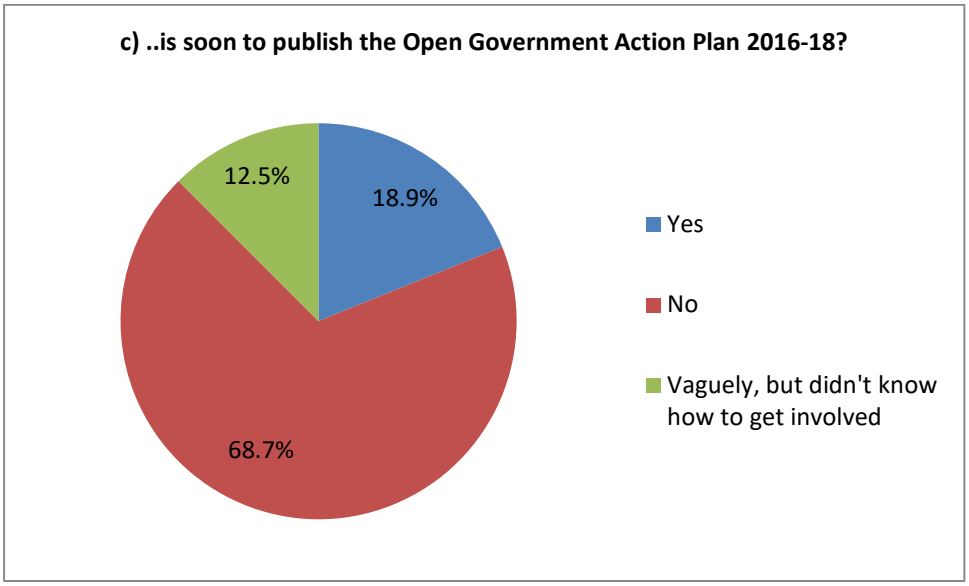
Table 22: Q20 c) analytical data

Answer Options	Response Percent	Response Count
Yes	18.9%	50
No	68.7%	182
Vaguely, but didn't know how to get involved	12.5%	33
No. of respondents who answer		265
No. of respondents who skipped the question		55

Graph 16a-c: Q20a) through c) analytical data – Response (%)







Q21. Have you ever requested official information since Official Information Act 1982 took effect?

Results

- 43% of respondents have requested official information.
- 57% of respondents have not requested official information.
- <1% = Don't know how or not sure.

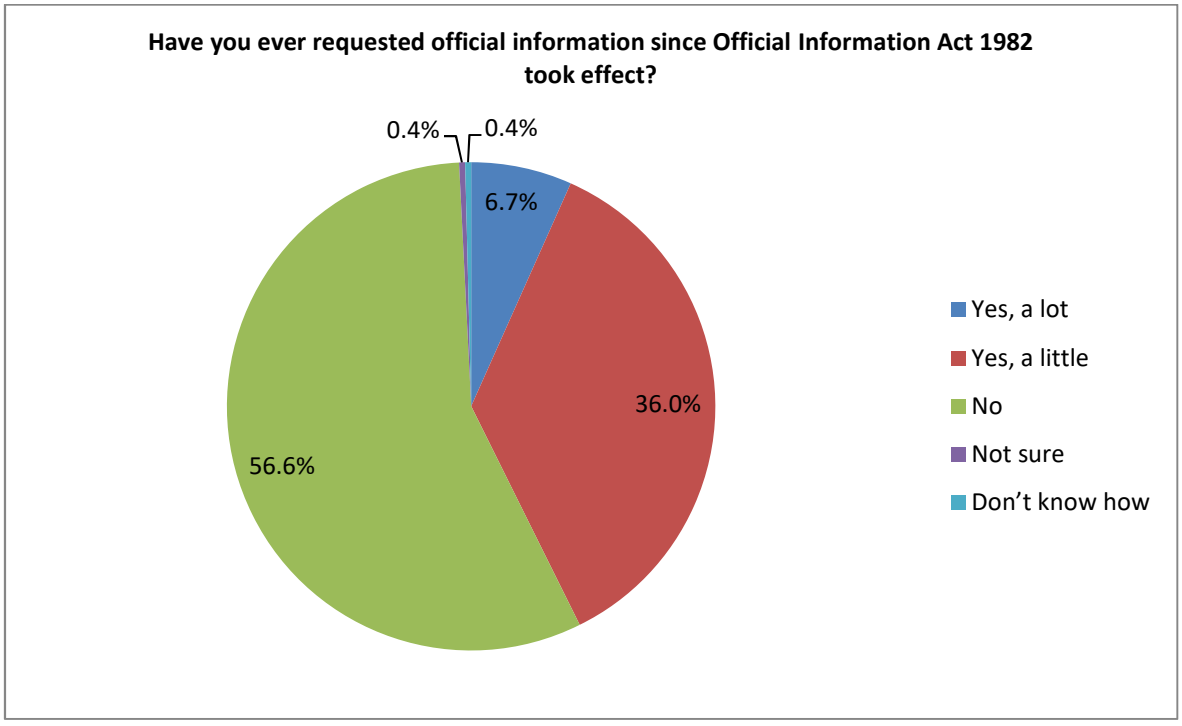
Discussion

- Almost half of respondants have requested official information. quite a lot – and therefore the OIA is an important tool for open government.
- However the majority have not. The respondents do, however, appear to know how to request information.

Table 23: Q21 analytical data

Answer Options	Response (%)	Response (Count)
Yes, a lot	6.7	18
Yes, a little	36.0	96
No	56.6	151
Not sure	0.4	1
Don't know how	0.4	1
No. of respondents who commented		29
No. of respondents who answered		267
No. of respondents who skipped the question		53

Graph 17: Q21 analytical data – Response (%)



Q22. Please choose whether you want your survey response to be:

Results

- 49% = anonymous (i.e. that the survey team cannot know whose response theirs is.

Discussion

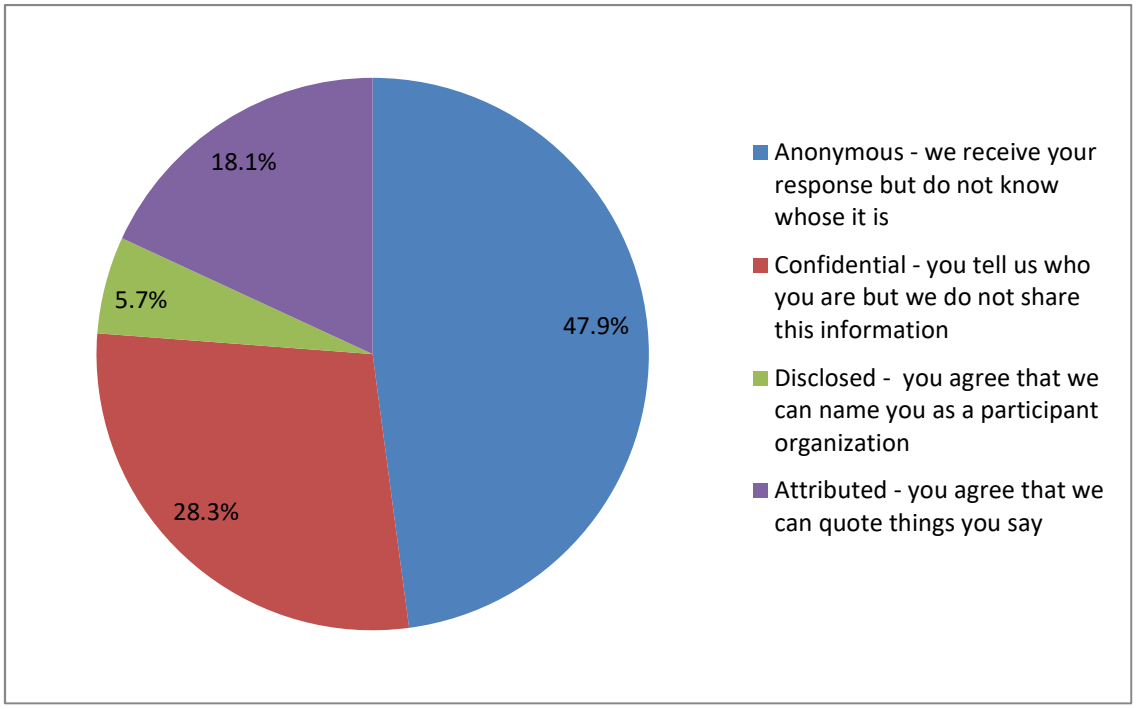
- People want free expression of their views with complete privacy. Some may fear reprisals from employers or simply want to be able to say what they think without their views being associated with their organisations and other roles.

- This rate of selection of annoymity is interesting in view of the fact that the State Services Commission (SSC) insisted that respondents to their request for input identify themselves. If people are concerned to keep their identities private when expressing their views, for any reason, then those people may decline to engage with the SSC process.

Table 24: Q22 analytical data

Answer Options	Response (%)	Response (Count)
Anonymous - we receive your response but do not know whose it is	47.9	127
Confidential - you tell us who you are but we do not share this information	28.3	75
Disclosed - you agree that we can name you as a participant organization	5.7	15
Attributed - you agree that we can quote things you say	18.1	48
No. of respondents who answer		265
No. of respondents who skipped the question		55

Graph 18: Q22 analytical data – Response (%)



Q23. Name (optional): N/A

Q24. email address (optional): N/A

Q25. Are you interested in being contacted about being involved in future work with the ECO on open government?

- **135 people supplied ECO with their contact detail so that they could collaborate with our efforts on open government. This suggests a high level of concern about the matter and the desire to work further on these issues with ECO.**

Table 25: Q25 analytical data

Answer Options	Response (%)	Response (Count)
Yes	54.2	135
No	45.8	114
No. of respondents who answer		**249**
No. of respondents who skipped the question		**71**

References

1. SurveyMonkey, (23 August 2016); http://help.surveymonkey.com/articles/en_US/kb/How-do-I-create-a-Ranking-type-question

Qualative Suggestions on proposal for Actions for Open government from ECO's survey of civil society in 2016 on views for the Open government Partnership Action Plan.

Note: only some of these relate to the OIA, a few are off-topic entirely, but they are drawn from responses from our qualitative survey questions.

Category	Action	
Constitutional approaches	International integration eg fully embraces the United Nations Universal Declaration on Human Rights in all its plans, signing conventions and supporting sustainable development goals and being accountable on global issues such as UN treaties.	
Constitutional approaches	Continue with the work towards developing a NZ constitution.	
Democratic values	The New Zealand Government should establish a working party to review the schedules to the Official Information Act 1982 and Local Government Official Information and Meetings Act 1987 and other relevant legislation to ensure that all agencies which should be within the scope of the legislation are included.	*
Democratic values	The New Zealand Government should legislate to require government agencies to take all reasonably practicable steps to proactively make official information publicly available, subject only to the withholding grounds of the Official Information and Local Government Official Information and Meetings Acts.	*
Democratic values	The New Zealand Government should proactively publish all Cabinet papers, agendas, and minutes, subject only to redactions consistent with those permitted by the Official Information Act 1982.	
Democratic values	That government should investigate with a tripartite body of civil society including unions in the media industry (including publicly owned media and community sector media) and media industry the failure of the market model in news which will seek to implement the recommendations of the Civics and Media project and implement its findings http://igps.victoria.ac.nz/publications/files/0beed3e7118.pdf	Data from 15 e on the media add here
Democratic values	Official Information Act improvements. That government implement a code of practice, release of responses publication, staff an office with OIA expertise, guidance and training to provide a services across government.	Comments on Text answers to 13 added here and data answers from 15 b
Democratic values	That government action which binds society beyond an electoral cycle (such as trade agreements, privatised	

	contracts, divestments of goods and services of public ownership and actions which increase carbon emissions) are undertaken only after an examination of the scientific / research evidence of benefits to NZ society as a whole rather the benefits the business sector or a section of it.	
Democratic values	Citizenship and civics education programme in schools	
Democratic values	The New Zealand Government should proactively publish all Cabinet papers, agendas, and minutes, subject only to redactions consistent with those permitted by the Official Information Act 1982.	
Deterrence to corruption	Strengthen the role of the Ombudsman's office including greater independence and ensuring all decisions made are in the public interest.	
Deterrence to corruption	The New Zealand Government should establish a public register of company and trust beneficial ownership information. The registry should contain information about who ultimately owns and controls companies, trusts, and other legal entities.	Data from 15 d add a note here.
Deterrence to corruption	The New Zealand Government should review the Protected Disclosures Act 2000 with the aim of expanding and strengthening whistleblower protections and allowing disclosures to be made directly to MPs or media.	Data from 15 g on the media add here
Deterrence to corruption	Ensure that private companies delivering public contracts operate to the same level of transparency as public sector delivery including making annual financial reports available to the public for any organisation	
Deterrence to corruption	Greater openness on the nature of surveillance and the usage of New Zealander's data Including on the ability of police and GCHB to spy on New Zealanders	Data from 15 i on the media add here
Quality of decision making	Strengthen the role of environmental reporting in line with the 2012 report of the Parliamentary Commissioner for the Environment . http://www.pce.parliament.nz/publications/how-clean-is-new-zealand-measuring-and-reporting-on-the-health-of-our-environment.	
Quality of decision making	Improve the quality of data available for evidence based decision making including social and environmental reporting datasets that have been stopped and those which allow meaningful overseas comparisons	
Quality of decision making	Same point expressed in two ways We would like to see the government being informed by *Public Health* research and policies for a better stronger more equitable society. Evaluation of strategies and policies can then be evaluated	

	and used to effectively address the most pressing issues for our community. And do it in a co ordinated and comprehensive way. **OR** Evidence and transparency to the public around: A. Where and how decision-making is made. B. Legislation in place for government to be forced to understand it's decision-making should *always* be able to be questioned by the public and accounted for by the provision of data and information, regardless of how embarrassing it may be for *any* government. Eg cost benefit/evidence on the use of privatised models and contracting.	
Quality of engagement	An action that improves the regulatory environment for creating social enterprises	
Quality of engagement	Improve the quality of engagement with Maori	
Quality of engagement	Improve the quality of consultation and implement standards including consultation periods, limits on the use of urgency and improved advertising and 6 week minimum consultation plan, a formal and universal engagement process and a commitment to active transparency and encouragement of engagement	Comments from q 12 a and b discussed here.
Quality of engagement	Improve the skills available in public servants such as improved skills in engagement and agile methods impartiality, code of conduct.	
Quality of engagement	Repeat the 2014-16 programme but do it properly i.e. a better plan for the Actions related to the TINZ review 2013 from the 2014-16 Action Plan.	
Specific topics	Aligns with the Hui-e reg framework to create social enterprises	

	Other actions – other issues (including ones we don't agree with eg binding referenda	
	Q2 – OG Principles	
	Creation of Community Associations comprising a range of interested local professional, business, trades, sports, ethnic, age, and social services people, listened to in a formal process by local boards and council, and be recognised by either nominal payment, awards and/or other benefits for their time invested.	Q2
Quality of	Technology enabled consultation and decision making tools like Loomio	Q2

engagement	should be used and additional resources available to take consultation to people not able or willing to participate in technological space but who want to be heard.	
	Full disclosure of government negotiations e.g. trade deals	Q2
Quality of engagement	Maori be an integral part of decision making as of cultural right in NZ.	Q2
	Information should be anonymised and/or aggregated and made available as open data in a free useable manner. Researchers and NGOs and others should be able to check what is happening and compare groups of data - eg compare treatment of people in different areas.	Q2
	Q4 - Consultation Methods	
	Invite submissions from interested parties, including the public, community organisations and political organisations, identify key themes and incorporate them into the Action Plan.	Q4
	If we [government] want an open conversation to underpin the move to open government then we should engage in the public in a way that does not influence the conversation they are having e.g. we should be quiet observers in the forums where the public is engaging in conversation around these issues, listening and recording.	Q4
	A 'help line' available for those having difficulty in how to go about submitting; making it easy!!!!	Q4
	A series of meetings facilitated by community organisations themselves (supported financially by the Government).	Q4
	Flexibility to receive feedback in any form available to a participant & to respect the weighting of that participation equally	Q4
	pen discussion and consensus building tools like Loomio coupled with facilitators and good open processes.	Q4
	Organise all-day (or even 2-day) meetings of say up to 20 people in a quiet place with a couple of good facilitators, to spend time and consider these issues carefully.	Q4
	Q5 – Consultation requirements	
	There should be an independent ombudsman.	Q5
	It should be flexible. One size doesn't fit all [consultation methods and ways for government to receive feedback due to variable technology access)	Q5
	6 month consultation period	Q5
	Requirements: Duty of Disclosure. By both the Government entity involved and by participants in the consultation process. Any partisan interests need to be declared. Any personal links need to be declared. Stakeholder acknowledgement. A tone of respect, mutual enquiry and responsibility towards both the decision-makers and the submitters. An undertaking to take the result of the consultation seriously. Otherwise its a waste of time for everyone involved. An Appeal Process. This is essential for those who feel passionately about their input and views but nevertheless the majority or the decision-makers	Q5

	didn't agree. It is essential in a Democracy that there is an outlet for the minority to disagree. Later events may or may not prove them right. It needs to be publicly acknowledged. I must repeat - that without binding rules and a written Constitution, all the above is mere fluff which fills out the appearance of Democracy in NZ today.	
	Ombudsmen appointed to ensure all decisions made are in the public interest, and that person has oversight and authority on any surveillance of individuals.	Q5

	Other ideas	
Quality of engagement	• Notification of all consultation in a way that businesses, civil society and others can track. There is an all of government website www.govt.nz but no mandate that agencies use it. Other options would be possible e.g. a consultation RSS feed / agency or through social media eg a twitter tag or using the consultation pages of www.govt.nz Could also consider a uniform method for notification of all government publications.	New?
•	• A project to achieve encoding of text based public governance documents e.g. annual plans, SPE, BIM, annual reports using a text encoding method so that they can be treated like data and interrogated by open data processes.. (Legislation is already drafted in this way so there is government expertise for this).	New?
•	• Buying Keith Ng's budget data so that the government takes on responsibility for making government budget data transparent. If budget data for service agencies provided year on year comparisons including allowances for past year population growth and inflation it would be possible to see where increases and cuts are being applied.. (The issues here is that for example for this year anything less than a 6%-7% increase is effectively a cut to public services).	New?
•	• Establishing a fund that recipients of public funding for service delivery are able to call on when OIA questions are asked of them. (these are not catered for in the funding process). This would mean that private recipients of public funding can respond on the same basis as the public sector. (Some spending is explicitly outside the requirement such as Charter Schools which is problematic)	New?
•	• A public tri-partite panel funded to ensure the operation of algorithms that deliver services and goods in government and beyond are open to enquiry eg flag referendum was first use in central government of STV voting , encoding of payments by payroll companies for example has cost workers more than $1bn over more than a decade, delivery of medicines and identification of people 'at risk', delivery of news eg through social media could easily be manipulated/	New
•	Carry through on tri-partite initiatives eg equal pay review which was agreed by business, union and government	

Bottcher, Jenna

From: E SMITH s9(2)(a)
Sent: Thursday, 18 April 2019 4:37 PM
To: OIAfeedback@justice.govt.nz
Subject: OIA Feedback

Hello

My opinion for your survey on the OIA is that I don't believe there is the necessary transparency. I believe I have been spied on for several years by various government organisations and my OIA requests came back with no information. I fail to see the point of the OIA if there is not absolute transparency.

Thanks

Elaine Smith.

Bottcher, Jenna

From: Emma MacDonald s9(2)(a)
Sent: Thursday, 18 April 2019 5:56 PM
To: OIAfeedback@justice.govt.nz
Subject: feedback

hello

After reading Minister Hipkins' comments on the OIA on Stuff, I thought it a good idea to summit and suggest we could colour redactions using different colours. The colours would represent redactions requested by Department/Ministries and then redactions requested by Ministers/their offices. It would interesting to see who is really playing games with the OIA.

I've yet to meet an Official who is not supportive of legitimate use of the Act.

Kind regards
Emma MacDonald

Sent from my iPhone

Federated Mountain Clubs was founded in 1931 and advocates for New Zealand's backcountry and outdoor recreation on behalf of more than 22,000 members in over 80 clubs. A key part of this advocacy is engaging with Crown agencies responsible for management of places where outdoor recreation takes place. Our key Crown relationship is with the Department of Conservation. Others include Land Information New Zealand, Walking Access Commission, Worksafe, Sport New Zealand and local authorities.

1. In your view, what are the key issues with the OIA?

The key issue is the frequent failure of agencies to comply with the spirit of the legislation. Sometimes this arises from poor understanding of the Act; sometimes from wilful obstruction; and sometimes from lack of resourcing.

There seems to be a lack of understanding in some quarters that any request for information is governed by the Act – even asking a simple question at a visitor centre. Instead, staff consider certain requests as coming within the Act, which then triggers a more complex and resource-hungry approach, as well as slowing down the whole process. In some cases, people making a simple request are told "you'll have to request that under the Act" – again, showing a lack of understanding of what constitutes a request as well as creating an additional layer of compliance for the requestor.

Once a request has been diverted to the more complex process that comes from it being officially recognised as being made under the Act, this seems to be a licence to slow down the whole process. It seems that the default is the twenty working days, without recognition that the Act requires a response as soon as practicable, with twenty days a maximum, not a target. Further, our experience is that the twenty day target is frequently exceeded.

Agencies frequently forget that the underlying principle of the Act is that information should be publicly available unless there is a valid reason for it not to be. Some refusals are plainly silly. In one case, where we were seeking information about the proposed expansion of a commercial operator from one area of conservation land into the neighbouring catchment, the agency claimed that the name of the operator was commercially sensitive. It was self-evident that only the existing operator was able to expand its operation. In another, we were seeking information about a publicly-notified concession application. The online advertisement contained no detail about the applicant or activity. We were initially told that "you don't need the application". When we objected, we received a copy redacted so as to be of no practical use on the last day for submissions. The intention may not have been to prevent participation and defeat the purpose of the consultation, but that was certainly both the impression and the effect.

A further example of that underlying principle being overlooked or subverted is the practice of redacting anything that the agency considers to be "out of scope". There is no provision for this in the Act and so unless the redacted information is in one of the Act's categories of information

that should be withheld, it should be released, regardless of whether it was directly germane to the request. Apart from complying with the Act's intent that information is available unless there is a good reason to withhold it, doing this would reduce the resources the agency puts into preparing the information.

There is a feeling that fees are sometimes used to intimidate NGOs (and, presumably, citizens). On one occasion, we were initially advised that we'd be charged a fee that we considered exorbitant. Fortunately, an appeal to senior management saw that overturned. The information we sought led to a complaint to the Ombudsman about the process we were inquiring about being upheld, with the agency severely chastised by the Ombudsman. While the Ombudsman has provided guidance on the use of fees, their implementation seems to be variable.

The Act's purposes, one of which is "to increase progressively the availability of official information" could be better met if more information was routinely available online. One example would be Department of Conservation concession documents. Having such information available would also reduce the resource load for agencies in responding to requests.

The practice of some agencies to seek the approval of the relevant Minister before releasing information has no basis, except in cases of papers prepared for the Minister.

We have the impression that the centralised teams that agencies use to process requests are often under resourced. This adversely affects both the quality and timeliness of response. It is also clear that the Ombudsman's office is significantly under resourced, which means that matters that are escalated there can take a very long time to resolve.

2. Do you think these issues relate to the legislation or practice?

An overt statement that parts of a document that do not pertain to a request should not be withheld unless there is a substantive good reason to withhold it would be a useful change.

The word "significantly" should be added to s9(2)(b)(ii) before "prejudice". "Significantly prejudice" was the term used in the now-repealed s8 and, while we recognise that it's application was different, it's use in s9 would be in keeping with the Act's principles and would provide better guidance to agencies.

As the only sanction available for refusing or delaying a request is referral to the Ombudsman followed by a directive from the Ombudsman, and reiterating our view that the problems with the Act are largely around implementation, the ability of the Ombudsman to impose penalties should be seriously considered.

3. What reforms to the legislation do you think would make the biggest difference?

n/a

I. Introduction

Thank you for the opportunity to submit on the reform of the OIA. The basis for this submission came from an administrative law undergraduate research assignment.

It is submitted that the OIA is reformed for decisions to be made independent of the minister, the creation of a statutory whole-of-government oversight body, and legislative proactive release requirement which mirror the withholding grounds under ss 6 and 9 would better meet the purposes of the OIA.

II. Issues

The OIA suffers from both a perception of and a real political interference in the release of information by the Executive.

There is a clear perception by requesters of sensitive information that political control exists. Steven Price found that requesters are sceptical of minister's and official's motivations.[1] However, contrary to the perception, Price found that political and media requests were met faster than the average response time, with responses on average 10, 12.5, and 13 days respectively.[2]

In its review of the Freedom of Information Act 2000, the UK Justice Select Committee found that that Act had not increased trust for the majority of people, due to media reporting evidence of irregularities, deficiencies and errors in filling requests.[3] It is likely that this is reflected in New Zealand, due to media perceptions of political interference.

There is evidence of actual political interference with official's decisions to release information. Price found there were two OIAs; one OIA for non-sensitive requests, one for sensitive requests.[4] While the first works well, within the time limit, with little or no information withheld, and for no charge, the second operates differently.[5]

Requests are overdue without extension, requests are transferred to the minister with questionable justification, and many refused outright, and reasons for withholding information bear little resemblance to the permissible reasons.[6] Media requesters had information withheld on s 9 grounds 43 per cent of the time, compared to Academics having information withheld on these grounds only 23 per

[1] Steven Price "The Official Information Act 1982: A Window on Government or Curtains Drawn?" (New Zealand Centre for Public Law, Victoria University of Wellington, Wellington, 2005) at 11.
[2] At 23.
[3] Justice Committee (UK) *Post-legislative scrutiny of the Freedom of Information Act 2000* (House of Commons, 3 July 2012) at [37].
[4] Steven Price "The Official Information Act: Does it Work" [2006] NZLJ 276 at 276.
[5] At 276.
[6] At 276.

cent. Rt Hon John Key admitted to his government delaying the release of information for 20 days due to political interest.[7]

White found that the political level of decision-makers felt that they could not rely on the judgement of public servants about what was appropriate to release.[8] The Ombudsman found ministers were giving mixed messages to the expectation of compliance with the Act.[9]

There are serious issues in the consultation that takes place between ministers and officials. One respondent to research done by Eichbaum and Shaw described a huge increase of departmental OIAs going to minister's offices.[10] The respondent described the no surprises principle formerly dictating a briefing and the decision being made by the department, now being interpreted so that political advisors are putting pressure on the department to limit information.[11]

The Ombudsman stated: 'it seems to me that the phrase 'no surprises' has developed an unfortunate connotation that the principle is designed to avoid legitimate scrutiny and is tantamount to 'no embarrassments.'[12] Ministerial staff used the consultation or no surprises period prior to release to try to convince the agency to change the final decision that the agency intended to make by seeking to: limit the scope of the request, alter the decision proposed by the agency, and or reduce the additional contextual information the agency proposed to include in the response.[13] The Ombudsman's quantitative survey showing about 40 per cent of current and former workers routinely or occasionally saw inappropriate interference by ministerial political advisors in changing the scope or applying the withholding provisions.[14] Sometimes these were for unwarranted reasons.[15] Some officials had fears that their agency would succumb to the demands of the minister in order to maintain a good relationship.[16] However, the Ombudsman concluded such attempts were rejected by agency officials and the final decisions made by the agency were compliant with the OIA.[17]

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[7] Craig McCulloch "PM Admits Govt Uses Delaying Tactics" *RNZ.co.nz* (16 October 2016).

[8] Nicola White *Free and Frank: Making the Official Information Act 1982 Work Better* (Institute of Policy Studies, Wellington, 2007) at 149.

[9] Beverly Wakem "Not a Game of Hide and Seek: Report on an Investigation into the Practices Adopted by Central Government Agencies for the Purpose of Compliance with the Official Information Act 1982" (December 2015) at 3.

[10] Chris Eichbaum "Free and Frank Advise Fast Disappearing" *Stuff.co.nz* (8 August 2017).

[11] Eichbaum.

[12] Wakem, above n 9, at 120.

[13] At 115.

[14] At 116.

[15] At 116.

[16] At 116.

[17] At 4.

On the contrary, one requester told White "the minister's views generally prevail."[18] Some officials tried to receive clearance to release information from the minister.[19] Some bitter confrontational discussions were had between Ministers and officials about the requests.[20] White records one public servant was concerned of 'an insidious type of control from political overseers.'[21]

If the political level of government can avoid providing information to the relevant forums for them to be assessed, then those forums cannot adequately assess their conduct, and provide sanctions through democratic accountability; subversion of the OIA for political means undermines the Act's stated purpose of accountability of ministers. Both perceived and real issues in the OIA must be reformed to improve trust in institutions. This could be achieved by legislative and non-legislative changes.

III. Reform

a. Reactive Release

The OIA should be reformed to assert that a decision on a request must be made independent of the relevant minister, but with regard to consultation if relevant. Both South Australia and New South Wales have provisions requiring the department to whom the decision is made to make a decision independent of the Minister.[22] The NSW Ombudsman interpreted that notification should be up the chain only.[23] A similar provision should be legislated in New Zealand. This would limit political interference into the decision-making process, however, provide for the operation of the no surprises principle. However, it would not allow a minister to raise concerns with the release, even where appropriate. In that situation, a department would need to consider if it is more appropriate to transfer the request to the Minister under s 14. This is a valid trade-off for a reduction to real and perceived interference in the operation of the OIA. The serious issues in consultation show the political incentives for a minister to pressure officials have materialised with an ability to consult. This ability should be removed. However, the Law Commission declined to make this recommendation; blanket withholding ground of 'cabinet information' and 'Executive Council information' in New South Wales was thought to distinguish that legislation from the New Zealand requirement to make decisions on a case by case basis with reference to the material sought.[24] The Commission believed the OIA was structurally sound.[25] There could be ways for the case by case decision making could be retained, but still clearly require an agency to either make the decision independent of the Minister subject to the no surprises

[18] White, above n 39, at 148.
[19] Wakem, above n 12, at 9.
[20] At 117.
[21] White above n 8, at 99.
[22] Law Commission *The Public's Right to Know: Review of the Official Information Legislation* (NZLC R125, 2012) at [4.61].
[23] At [4.24].
[24] At [4.63].
[25] At [4.65].

principle, or to transfer it to the Minister. The statutory affirmation could provide needed reassurance of the effectiveness of the OIA to ensure trust in institutions.

The Law Commission proposal of the creation of a statutory body to oversee the OIA should be followed. The Commission recommended the establishment of an independent oversight body with the intention of creating leadership, whole-of-government oversight, and the promotion of the purposes of the Act.[26] These goals would be achieved through policy advice; review; statistical oversight; promotion of best practice; oversight of training; oversight of requester guidance and annual reporting.[27] This has not been adopted by the Government and is not provided for in the next Independent Reporting Mechanism annual plan.[28]

b. Proactive Release

There should be legislative reform to create a strong proactive release requirement to meet the purposes of the OIA. There has been a clear overseas trend towards proactive release of information with Australia and UK both having proactive release requirements in legislation.[29] Those working in Government will not always have considered information which others require, as useful or important to publish.[30] Therefore, providing as much information proactively allows requesters to determine what they believe as important.

Proactive release would also create more prospective control. The former Cabinet Secretary Marie Schroff reflected that where she expected the release of information:[31]

> 'I am going to be extraordinarily careful to get my facts right, to avoid trespassing into politics, to give comprehensive reasons for and against a proposal, and to think very carefully about my recommendations. My advice will therefore be balanced, accurate and comprehensive.'

If all information were to be released, following Schroff's remarks, this would result in better advice from the public service.

Proactive release will not allow time limits to be gamed when the information is already in the public domain.

Proactive release cannot be fully implemented through policy alone. The Policy Framework for Government-held Information states that government departments should make information 'easily,

[26] Law Commission, above n 22, at [13.53].

[27] At [R 107].

[28] Keitha Booth *Independent Reporting Mechanism (IRM): New Zealand Progress Report 2016-2018* (Open Government Partnership, 2018) at 21.

[29] Law Commission, above n 22, at [12.42].

[30] Wakem, above n 9, at 3.

[31] Cited in Rick Snell "Freedom of Information Practices" [2006] 13(4) Agenda 291at 296.

widely and equitably' available.[32] The Cabinet Manual states it is generally expected that Cabinet material on significant policy decisions will be proactively released following a decision.[33] It directs the Minister to consider:[34]

> (a) The principles in the Official Information Act, the Privacy Act, and the Protective Security Requirements;
>
> (b) Whether any information would be withheld under the OIA;
>
> (c) Whether it would be withheld due to other legislation; and
>
> (d) If publication on the web is the best means of public release in the circumstances.

However, as Price noted, this is policy relates only to cabinet and related documents, it is non-binding, and is weighted towards protection.[35] It is too restricted. Further, it is not clear that the policy is being meet; in 2014 under an earlier policy, the Ombudsman considered 78 per cent of agencies had no policies for proactive disclosure.[36] And as the Law Commission states, it would seem odd that legislation is structured around individual reactive requests while policy and the Cabinet Manual directs proactive release.[37] Therefore, legislation is to be amended to meet and enforce proactive release policies.

Australian federal legislation requires an agency to proactively release information in documents which routinely are given access to as a result of requests, or information routinely provided to Parliament.[38] Tasmanian legislation states reactive response is a method of last resort.[39]

The Law Commission has recommended that an Act should include a clear statement about the use of proactive release as a disclosure method.[40] It would go towards the purposes of the OIA of making information more freely available, and strengthen the principle of availability.[41] The Commission recommended a positive duty in the OIA to take all reasonably practicable steps to proactively make information available, with internal policies taking into account matters such as the type of information, public interest, an agency's resources, and government policy.[42] As the Commission notes, this is not a particularly strong duty.[43] As the recommended legislative considerations include an assessment of an

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[32] Law Commission *The Public's Right to Know: A Review of The Official Information Act 1982 And Parts 1–6 of the Local Government Official Information And Meetings Act 1987* (NZLC IP18, September 2018) at [12.12].
[33] Cabinet Office, above n , at [8.17].
[34] Law Commission, above n 32, at [8.18].
[35] Booth, above n 28, at 33.
[36] Wakem, above n 9, at 7.
[37] Law Commission, above n 32, at [12.47].
[38] Freedom of Information Amendment (Reform) Act 2010 (Aus), s 8.
[39] Law Commission, above n 32, at [12.46].
[40] At [12.44].
[41] At [12.25].
[42] At [R85]
[43] At [12.63].

agency's resources, the Ombudsman may be hesitant to make a recommendation due to the chief-executive's expertise in their resources, further weakening the requirement. Due to the current issues in reactive release of sensitive information, a proactive release requirement should be as strong, uniform, and clear as practicable.

It would seem that the categories in ss 6 and 9 of the OIA already provides reasonable and discrete criteria for an agency to consider the proactive release. These should form withholding grounds for proactive release; anything not within those grounds should be released. A separate duty for proactive release assessed against reasonableness in the circumstances would provide for different considerations for proactive release than for reactive release. It would seem logical that considerations for proactive release be the same as those for reactive release; if increasing access to information is the goal and that goal can be fulfilled by both proactive and reactive release, then that goal should be met with the same criteria, namely those set out in ss 6 and 9. There is already room in ss 6 and 9 to protect the public service against unwarranted disclosure, including the protections of free and frank advice.

Protections for officials in the Act should be amended to expressly include proactive release.

However, there have been issues in the UK with non-compliance of proactive release requirements. The Independent Commission on Freedom of Information Report report found that proactive release measures were not being followed by government agencies in the UK and that they should be enforced by the information commission.[44] Palmer highlights that rigid, defined rules do not guarantee that administrative non-compliance, adversarialism, or malicious non-compliance will not occur, and comprise space for loopholes to appear.[45] Therefore there should be oversight by the Ombudsman and whole-of-government oversight by the to-be-created independent oversight body.

IV. Conclusion

Transparency and open government are fundamental for democratic and participatory government; it allows governments to be assessed by the media and the public, and for democratic consequences to be passed onto them. However perceived and real political intervention into the OIA has undermined the ability for democratic accountability. This interference should be minimised through legislative reform. Sections requiring independent decision making, the formation of a whole of government oversight body, and proactive release mirroring reactive release should be inserted into the OIA.

Felix Drissner-Devine

18 April 2019

[44] Independent Commission on Freedom of Information *Report* (March 2016) at p 23.

[45] Geoffrey Palmer "A Hard Look at the New Zealand Experience with the Official Information Act after 25 Years" (Address to International Conference of Information Commissioners, Wellington, 27 November 2007) at [100].

Fire and Emergency Feedback on the OIA Review

Overall Fire and Emergency New Zealand (Fire and Emergency) finds the Official Information Act 1982 (OIA) easy to administer and is impressed with how well it has stood the test of time.

In response to the consultation document, we have sought the views of personnel who administer or frequently engage with the OIA for Fire and Emergency. The key recurring themes are:

- that the information and data we hold as an agency has become far more wide-ranging and complex, enabled by technology, since the enactment of the OIA; and
- it is now commonplace for different types of information – particularly personal information – to be interwoven. Sometimes, this means that different statutory requirements need to be applied to different parts of the information requested (eg Privacy Act 1993 as opposed to the OIA). This can present significant challenges, particularly where requests for large volumes of information – including 'everything' requests – are made and different evaluation requirements and withholding grounds apply to different information within scope of a request.

In considering the three questions posed for consultation, Fire and Emergency has focused on identifying issues that it experiences when administrating the OIA and whether or not these are legislative or practice issues. The third question that asks submitters what they think would make the biggest difference is answered from the perspective of what would make the biggest difference for Fire and Emergency, as an agency subject to the OIA.

Fire and Emergency would be happy to discuss its submission in person with officials.

Suggested changes to the OIA

In no particular order, Fire and Emergency recommends the following key legislative amendments:

1. Formalise the position on interagency consultation about requests, beyond the provisions dealing with the transfer of requests. Ideally, include a Privacy Act exemption and ensure that agencies respond to consultation inquiries within timeframes.
2. Introduce a process, or new rationale, allowing agencies to extend decision-making and information release timeframes when extenuating circumstances make it difficult to standard OIA timeframes (eg in Fire and Emergency NZ's case, many personnel are diverted from their regular work and availability during national or local emergencies, or other large scale incidents – this means that personnel responsible for administering OIA requests have less time available and other personnel who need to provide potentially relevant information often cannot prioritise the work for extended periods).
3. Clarify the interface between the Privacy Act and the OIA, particularly in the context of 'mixed' personal information that may be subject to both pieces of legislation simultaneously. Alternatively, or require more directive guidance from the Privacy Commissioner and the Office of the Ombudsman on this issue.

In addition, Fire and Emergency recommends the following more minor legislative amendments:

1. Review the definitions of 'information' and 'official information' to clarify their application to non-text data.
2. Develop separate provisions to govern responses to requests for non-text data.
3. Clarify how the OIA applies to information that is subject to licensing or intellectual property rights.
4. Clarify the point at which an agency is deemed to have received a request, with particular regard to electronic information systems.
5. Clarify who and what entities can make an official information request, including what level of proof is required. In particular, clarify whether inter-governmental requests for official information are/are not requests for the purposes of the OIA.
6. Expand the permissible reasons for time extensions to accommodate requests that relate to information that has not yet been created (the formal requirement is currently to decline these requests on the basis that the information is not currently 'held', which puts an onus back on the requestor to make a renewed request at some future point in time).
7. Place a maximum timeframe on time taken for the Office of the Ombudsman to make a determination on complaints received.
8. Define 'employee' to make it clear that it encompasses other personnel who may hold information on behalf of an organisation but who are not employees per se: eg contractors and volunteers.
9. Expand the scope of the OIA so that statutory immunities apply to information proactively released, if it is assessed against statutory withholding grounds beforehand.
10. Require requestors to engage with the request clarification process.

Suggested OIA practice changes

1. Provide guidance on 'urgent' requests, when grounds justify urgency, and what this means in contrast to the usual obligation to provide information 'as soon as reasonably practicable'.
2. Update the default charging guidelines.
3. Clarifying how to determine when a request is 'more closely aligned to the functions of another agency' and provide a more accessible list of agencies subject to the OIA.
4. Provide a searchable catalogue of decisions on complaints, potentially jointly administered by the Offices of the Ombudsman and the Privacy Commissioner.

Consultation between agencies

As part of its core functions, Fire and Emergency works closely with other emergency services agencies. Information is commonly shared to allow partner agencies – eg the Police or ambulance services – to effectively respond to emergency incidents and to provide appropriate operational support to each other. It is common for us to need to consult with partner agencies on the release of information. While we have developed common practice and entered into high-level memoranda of understanding to clarify expectations of what agencies expect to be consulted on, we often need to consult on specific incidents.

Issues

There have been occasions where consultation can be made difficult as we need to consider the application of the Privacy Act when seeking feedback from other agencies. We acknowledge that the Office of the Ombudsman has recently published revised guidance on this topic, which helps to clarify expectations under the current legislation. However, this can still result in impracticalities where Person A makes a request about Person B, who is notified for consultation purposes but then wants to know who Person A is. The result is competing OIA requests by people who both want their own details suppressed but the other's revealed. This leads to tensions in the administration of the OIA and, frequently, complaints by either or both persons when a decision is ultimately made.

In addition, requests requiring consultation with external agencies often require extension of time to enable that. This can be difficult for the agency responsible for the decision on the request, as the agency being consulted does not need to respond within any particular timeframe (or at all) and so a 'best guess' (often framed conservatively) needs to be made from a time extension perspective. This can disadvantage requestors.

Extenuating circumstance

As an emergency service organisation, Fire and Emergency's normal business operations are often disrupted by responses to significant events. For example, following the Kaikōura earthquake sequence Fire and Emergency was displaced from its National Headquarters. Fire and Emergency splits the processing of its OIAs across its five regions, which provides some resilience, however it can be challenging to continue to meet OIA timeframes across the organisation in these sorts of circumstances or when large numbers of personnel are diverted to deal with national or local emergencies or other large scale incidents.

Fire and Emergency suggests consideration could be given to:

- introducing a process, or new rationale, allowing agencies to extend decision-making and information release timeframes when extenuating circumstances make it difficult for it to meet standard OIA timeframes; and/or
- developing a process which allows an agency to apply to the Ombudsman for an extension of timeframes across all its requests during a defined period. The process would need to be clear that the obligation to respond as soon as reasonably practicable still applies, but recognises that due to a significant event the maximum 20 working days may no longer be feasible in all cases.

Fire and Emergency does note that this may create pressure following the event, particularly as significant wildfire events are a catalyst for OIA requests being made. However, such a process

would give agencies time to assess their resource requirements and to procure additional support following a significant event.

Interface between the Privacy Act and OIA

It is now commonplace for different types of information – particularly personal information – to be interwoven. Sometimes, this means that different statutory requirements need to be applied to different parts of the information requested (eg Privacy Act 1993 as opposed to the OIA). This can present significant challenges, particularly where requests for large volumes of information – including 'everything' requests – are made and different evaluation requirements and withholding grounds apply to different information within scope of a request.

For example, the grounds for withholding personal information under the Privacy Act are much more limited than under the OIA and do not include the same sorts of 'administrative' grounds for refusal, such as where information cannot be made available without substantial collation or research. Fire and Emergency's experience is also that requestors' approach to personal information has an aspect of 'having your cake and eating it too', in that access is frequently (and often forcefully) sought to others' personal information while simultaneously seeking to suppress access to information about the requestor.

Determining whether information is personal information, whether it is one person's personal information or mixed personal information about two or more people, and which statute to apply, are some of the most difficult evaluative decisions that Fire and Emergency encounters in this area. It would assist both processing agencies, requestors, and people whose personal information is held by agencies for there to be clearer statutory expectations around how these requests will be handled and a better interface between the OIA and the Privacy Act in this regard.

Data

Fire and Emergency holds significant volumes of data ranging from financial information to incident statistics and data for geospatial systems.

The existing statutory mechanisms for handling requests for data are inelegant and not fit for purpose. Depending on the amount of data requested and the way in which it is stored and reported on, it can be practically difficult to answer specific requests, particularly when the requests do not match how systems report. While Fire and Emergency is aware that it is not required to create new information in order to respond to requests, that principle can be difficult to apply when information is already held but interrogating systems to present it in the manner requested is challenging.

Fire and Emergency has been exploring how it can proactively make its data more accessible as there is significant public value in being able to understand causes and impact of fire and other emergencies.

Consideration may be given to defining when a request is for data rather than text-based information and apply different withholding grounds, particularly when a dataset is too large to practically release or where the data is licensed by an agency from a private provider.

Receiving requests

The Ombudsman has made a number of determinations on when an agency is deemed to have received a request. Fire and Emergency has invested significant resources to ensure that its

systems have back up mechanisms to stop requests from being lost through email filters, such as SPAM. Despite these systems, given the multitude of email addresses a request could be sent to there needs to be greater clarity and practicality applied as to when an agency is deemed to have received a request.

Reasons for extending a request

Fire and Emergency receives a number of requests in anticipation of information being created, particularly from insurance companies that know Fire and Emergency is likely to create an incident report for a fire. While Fire and Emergency is able to decline the request on the basis the information does not exist, the requestors find this to be an impractical approach as they are aware the information takes time to create and are happy to wait for the information.

Fire and Emergency recommends that an additional time extension ground be added (potentially to section 15A(1) of the OIA) to provide for requests being made in anticipation of information being completed, and to allow for these requests to be extended again beyond the original 20 working day timeframe. Alternatively, a 'floating' extension runs until information has been created (or some defined period of time after that) would be useful.

Ombudsman investigation timeframes

Fire and Emergency recognises the significant efforts that the Ombudsmen's Office has gone to in order to improve the timeliness of its investigation processes and decisions on OIA-related complaints. However, in some cases, Fire and Emergency has found that persons involved in disputes are using the Privacy Act and OIA to stall discussions and recently have experienced the use of a complaint to the Ombudsman to create further delays. It would be helpful to have a maximum timeframe (or at least a default statutory expectation) for the resolution of OIA-related complaints.

Proactive release

From a legislative perspective, there is not currently any incentive to agencies to proactively release information to the public. Consideration could be given to extending some provisions within the OIA – particularly the immunity in section 48 – to create incentives for agencies to proactively release information, rather than waiting for or provoking a request for that same information.

Clarifying definition of personnel

Section 9(2)(g) of the OIA refers to members, officers and employees of an organisation. These terms are unduly limited and arguably exclude a large portion of Fire and Emergency's personnel; particularly its volunteers. Fire and Emergency recommends that any review of the legislation should clarify its application to a broader range of people working in departments and organisations subject to the OIA.

Contact: Amelia Dalley on amelia.dalley@fireandemergency.nz or 04 474 4810

Bottcher, Jenna

From: Kevin Hackwell s9(2)(a)
Sent: Thursday, 18 April 2019 3:35 p.m.
To: [redacted]
Subject: Feedback fro Forest & Bird on the function of the OIA

Chris Hubscher
Policy Manager
Electoral and Constitutional
Ministry of Justice

Dear Chris

Feedback on the function of the OIA.

Forest & Bird is a regular user of the Official Information Act and therefore welcomes the opportunity to provide the feedback to the Ministry of Justice on the function of the Act.

In requesting feedback the Ministry has posed three questions:

- In your view, what are the key issues with the OIA?
- Do you think these issues relate to the legislation or practice?
- What reforms to the legislation do you think would make the biggest difference?

The following are some of the key issues from Forest & Bird's experience. We will attempt to identify whether they relate to the legislation or practice and will suggest possible reforms to both practice and legislation that might fix these issues.

Issue 1: Departments/organisations not committing adequate resources to deal with responses.

It is F&B's experience that some government departments/organisations do not commit adequate resources to deal with Official Information Act requests. In the last couple of years, we have experienced significant delays in OIA responses that were justified by the high workload on staff. This was particularly the case with requests to MBIE.

This issue is caused by poor practice. Departments/organisations bodies know that there is no significant consequence for poor performance and therefore there is little true incentive to improve performance and provide adequate resources for handling OIA requests.

The Act could be reformed to require that each department/ agency has a dedicated OIA officer who is responsible for making sure that their system works efficiently, with a similar role to the existing privacy officer system.

Issue 2: Timeframes, etc. are not enforced.

This issue speaks to the lack of resources for Ombudsman's office and is mainly an issue of political, and therefore financial, commitment by Parliament. Departments/organisations know that the Office of the Ombusdman is under-resourced and therefore any complaint will take months to be considered and resolved. They know that many requesters will not bother to seek a review of the decision, particularly if the decision being reviewed was about the timely release of the requested information.

However, there are some things that the Ombudsman could do to speed up its processes. The Ombudsman must make similar judgements on literally hundreds of complaints relating to the same sorts of decisions that are made by departments and organisations to deny access to information. The Ombudsman could publish best practice guidelines to departments and agencies based on the precedents that have been established by many years of dealing with OIA complaints. Such guidelines would also be available to the general public and would help them in formulating their complaints.

The Ombudsman should be given more enforcement powers. If the Ombudsman's decisions could be enforced there would be a significant incentive for departments and agencies not to game the system. This would reduce the workload of all involved.

If an extension of time is needed, the time period should be limited to the maximum of another 20 days.

Issue 3: The "no-surprises policy" required by ministers means that departments and organisations are often over-cautious about what they release and in some cases OIAs are 'signed off' by Ministers rather than the departments.

In the last few years Forest & Bird has had a couple of really bad experiences with significant delays and large amounts of redactions in responses from MBIE. F&B followed up by requesting all of the correspondence and timelines associated with how MBIE had dealt with those requests and discovered that of the delays revolved around the considerable correspondence and to-ing and fro-ing between the Ministry and the Minister's office.

The Act intends that the decisions relating to the release of information will be made by the department or the Minister of the Crown or the organisation to which the request applies. The Act does not require that the decisions to departments or organisations be made by their minister.

However, section 15(5) of the Act could be clarified to make it clear that if "… consulting a Minister of the Crown or any other person on any request in relation to the decision that the chief executive . . . proposes to make on a request...", it is still the chief executive who is required to make the decision.

Issue 4: Legal privilege is being overused.

It is Forest & Bird's experience that legal privilege is regularly used by many agencies to not release the reasons for decisions. Legal staff are often used to make a decision and the department then will not release the reasoning or paper work behind that decision because they will claim legal privilege.

In these cases the legal staff are not providing advice, they are the decision maker. One of the key purposes of the Act is to "promote the accountability of Ministers of the Crown and officials" (s.4). Such accountability is impossible if decision makers are able to hide behind the defence of legal privilege to refuse information that would lead to open accountability.

Legal privilege should only apply if the matter is before the courts, or will soon be before the courts and could therefore harm the government's position. If the legal advice was sought and relied on for the purposes of making a decision, then the accountability provisions of the Act should require the release of that advice.

Issue 5: A failure of agencies to engage with requesters to refine and focus requests.

We have regularly had situations where after waiting 20 working days a department or organisation has responded that they are refusing the information because it would take substantial collation or research (s.18A).

At the moment s 18B provides for a duty to consider consulting the requester if the request would be refused under 18(e) or (f). This consideration should also apply to a potential refusal under s.18A.
The section 18B requirement to consider consultation should also apply to 18 (g), (i) and (ii).

Yours sincerely

Kevin Hackwell
Chief Conservation Advisor

Royal Forest and Bird Protection Society of New Zealand Inc.
Ground Floor. 205 Victoria Street . PO Box 631 . Wellington . New Zealand
DD 04 801 2215 . **M** s9(2)(a) . **F** 04 385 7373

You can join Forest & Bird at www.forestandbird.org.nz

Submission: The merits of a review of the Official Information Act.

18 April 2019

FYI.org.nz appreciates this opportunity to help inform a decision on a potential Official Information Act review.

Summary

We strongly favour a comprehensive review of New Zealand's official information regime[1], including the legislation itself. Changes in technology and real-world practice have rendered even the 2012 Law Commission review out of date. While recent work on improved practice is appreciated, legislative changes are required to make further progress.

The review should actively seek the involvement and views of casual OIA requesters who use the law in their personal capacity. Such users' experiences of the OIA are often quite different from professional requesters such as journalists.

We firmly believe that our Official Information regime is for everyone, and that ensuring it works well for all requesters can enhance New Zealand's democracy in ways well beyond mere access to information itself.

Our background

Founded in 2010, FYI.org.nz is a non-government civic technology project to make the OIA more accessible to the general public. It does this primarily by operating a website which guides users through the request process, sends the request, keeps track of associated correspondence and responses, and publishes it all online.

[1] By referring to the Official Information regime we include both the OIA and LGOIMA. Both should be reviewed together, and local and central government OI law should be aligned.

The majority of our users are therefore casual requesters making requests in their personal capacity, usually without significant experience or knowledge of law and government.

This submission is informed by our experience helping people make nearly 10,000 OIA and LGOIMA requests.

Legislation informs practice

We note the decision to be made - as described in the call for submissions - is whether to focus on practice improvements or review legislation. We believe both are required, as legislation is the primary driver of practice. We see this, for example, in the lack of priority given by public sector managers to creating and improving the systems and processes to fully meet their Official Information obligations.

This can be contrasted with health and safety. Where improvements in health and safety practice have occurred, this can be traced directly to an improved legislative regime which has focused the minds of managers and directors. Penalties and remedies in official information practice need not be overly punitive or draconian to drive home for decision-makers the importance of compliance with Official Information law.

The lack of provision in the legislation for any significant consequences when officials (or Ministers or Councillors) break the law appears to have led to a number of poor practices. There are many such examples, but some of these which we have seen impact particularly on casual requesters are briefly summarised below.

A two-speed system

Many agencies appear to run a two-speed system with level of service depending on the nature of the request and requester. The fast track sees answers given in hours or days; the slow track involves delaying tactics and eventual responses on or after the legal maximum time limit.

Contentious requests, which may show an agency in a poor light, take the slow track. Sometimes an exception is made when the requester is a professional (such as news media, a political party, or a lobbyist), and the agency knows a news story will soon be published for which they wish to influence the narrative. This does not apply to general public requesters, who are disadvantaged in comparison.

Resourcing and training

We see significant variability in the resources given to meeting Official Information legal obligations. This includes whether a team or individual is tasked with handling requests, the resources available to perform that function, and training of employees and contractors to understand the law.

This lack of resourcing is a symptom of the lack of importance given to OIA/LGOIMA compliance by leadership, and a lack of funding sought, received, and allocated. When budgets are tight, Official Information is one of the first areas to suffer, along with the agency's intrinsically linked records and information management function.

State Services Commission statistics show that timeliness remains a significant problem. Despite the law requiring decisions "as soon as reasonably practicable," responses are still disproportionately received on or after the last allowable day. Whether from a lack of people to process requests, a lack of support by the rest of the organisation, or a lack of investment in systems and processes: the most common cause is low prioritisation by leadership.

While most agencies ensure their workers are trained to understand (for example) the State Services Code of Conduct, and many are trained to understand their public records obligations, training on Official Information Act obligations seems to be rare and usually limited to the immediate OIA officer. The former Chief Ombudsman's 2015 report, *Not a game of hide and seek*, also indicated that if all staff do receive training, it is generally of a very superficial nature during their initial induction as employees. This is despite any request for information to any member of an agency being an Official Information request (whether formal or not).

We see frequent cases of agency officials misleading requesters as to their rights under the law. For example, users are often told - wrongly - that they "must" complete a particular form, visit an office, or contact an agency through a specific channel. We generally attribute this error to a lack of training rather than malice.

In this way, non-professional requesters suffer disproportionately when misled as to their rights.

Eligibility games

The OIA sets criteria for who is eligible to make a request. Thankfully it is rare that agencies attempt to verify this eligibility. When we do see eligibility evidence demanded, it sometimes appears to be intended to delay the request or discourage the requester from proceeding. Sadly this tactic is frequently successful.

In the worst cases we have seen eligibility requirements abused as a low level form of intimidation, exploiting the power imbalance between a private individual and an agency which may hold significant power such as in law enforcement or welfare.

The Ombudsman has made it clear[2] that eligibility must not be used to impose an unnecessary barrier to requests, yet this behaviour continues.

We see no reason for the eligibility requirement to remain. The LGOIMA has no such eligibility requirement and does not suffer for it. Likewise, there are no eligibility criteria for making requests under the freedom of information laws of New Zealand's peers, the USA and UK. Eligibility should not be seen as a tool for workload reduction or hiding unflattering information. In our view, OIA requesters perform a valuable civic service by shining a light on government, and New Zealand gives up significant value by refusing requests from ineligible requesters.

[2] *Requests made online: A guide to requests made through fyi.org.nz and social media*, April 2016 http://www.ombudsman.parliament.nz/resources-and-publications/documents/requests-made-online

Privacy and consultations

It is perhaps unsurprising that certain requests are handled as a public relations "problem" to be solved; this is intrinsic to a law that helps shift the balance of political power towards the public and away from those in power. However the current legislation facilitates this in ways which unfairly impact on the privacy rights of individual requesters.

Responses are often forwarded to the Chief Executive for approval, and this is not a problem. However the "no surprises" policy of recent governments also leads to many responses being forwarded to a Minister's office before release. OIA s 15(5) specifically allows consulting a Minister in order to make a decision. This section is not just being used when a Minister could conceivably hold information relevant to making an OIA decision, but as a matter of course on any potentially embarrassing request. This causes unnecessary delays - often by weeks.

More concerning is that the requester's private information is shared with the Minister along with research on their background, associations, past behaviour, and guesses at what they will do with the information. We can see no justification for this, as the requester's identity should not have any bearing on the OIA decision. It is a breach of privacy rights.

Requesters' details have also been shared with third parties during the "consultation" phase or to subsequent requesters, and this is similarly a breach of privacy. In an egregious case, requesters' identities and contact information was shared with a journalist in the full knowledge that this would be published. It appeared to be a form of retaliation.

The Ombudsman this month released new guidance that sharing private information with third parties (though seemingly not ministers) under the guise of consultation is unacceptable. We believe this should go further, and could be made explicit in the law.

The way forward

This submission has sought to summarise some of the problems encountered particularly by personal users of the Official Information regime. We intentionally

have largely avoided prescribing specific solutions to these problems as we strongly believe in the Open Government Partnership principle of a genuinely open co-creation process.

This should include exploration of ways to improve the freedom of information regime in New Zealand in ways which work best for everyone: professionals and non-professionals, agencies and requesters.

We look forward to taking part in that process.

Oliver Lineham

FYI.org.nz

Box 10-492, Wellington 6143

requests@fyi.org.nz

Bottcher, Jenna

From: Genevieve Davidson s9(2)(a)
Sent: Friday, 26 April 2019 8:47 AM
To: OIAfeedback@justice.govt.nz
Subject: Feedback on the operation of the Official Information Act 1982 (OIA).

Feedback on the operation of the Official Information Act 1982 (OIA).

1. **In your view, what are the key issues with the OIA?**

   Although Courts are excluded from the sphere of OIA, as access to court documents is under the control and at the discretion of judges, there is a good argument that Courts hold information of an administrative kind, this is especially relevant in respect of Maori Land Court Minute Books. Maori Land Court Minute Books are publicly available, but they are held only at specific Maori Land Courts and are difficult for people to search efficiently for the information they require. Native Land Court minutes are even more inaccessible, mostly being held at Archives NZ or scattered in different Maori Land Courts around the country. To access both these records, in person visits must be made. It would be beneficial if these documents could be requested and complied under the OIA Act.

   With progressive I.T technological development there is a greater public expectation of detailed and larger responses to OIA requests. There is also a growing public expectation that answers and access to information is transparent, quicker and more easily obtained, the ability of people to use web search engines effectively in their everyday life probably contributes to this expectation.

   There is agency/ministerial and regional inconsistencies and differences of application of withholding grounds as there is no clear set of principles. The 'good reasons' for withholding set out in sections 9 -9 of the OIA are broad and open-ended qualifiers.

   There is concern that OIA officials under under-resourced, understaffed, inexperienced, overworked and perhaps not valued for their work, this can lead to uncertainty in timeframes and quality of OIA responses, especially where the OIA process is a 'case-by-case' system, requiring IOA officials to make sometimes very difficult balancing decisions of openness vs privacy.

   The possibility of pro-active release of OIA material by agencies/ministries is desirable, especially where there is large public demand for information. Currently there is no legislative requirement that can push this t happen

2. **Do you think these issues relate to the legislation or practice?**

   They are interrelated.

3. **What reforms to the legislation do you think would make the biggest difference?**

   Potentially a codified set of principles to supplement the withholding grounds and give better guidance to OIA officials, this could be done through amending the Act or it could be incorporated into practice, where different agencies/ministries each develop principles specific to their area. Development of cross-agency/ministry protocols/principles or best practice model would also be beneficial.

   Ability to request under the OIA Maori Land Court minute books and Native Land Court minute books.

Genevieve Davidson

> SOLICITOR

s9(2)(a)

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Bottcher, Jenna

From: Grant Cotty s9(2)(a)
Sent: Thursday, 18 April 2019 5:57 AM
To: OIAfeedback@justice.govt.nz
Subject: OIA

Having worked for the government, I can say that the process is flawed in a number of ways, which I won't detail here, and takes a huge amount of time. The obvious change is just to publish everything. Analyst would prepare his or her and a redacted version if necessary, and once a month it all get published to the web.

18 April 2019

Greg Rzesniowiecki

s9(2)(a)

Ministry of Justice

Email: oiafeedback@justice.govt.nz

Subject: OIA reform consultation: https://consultations.justice.govt.nz/policy/access-to-official-information/

Dear Ministry of Justice,

I participated in the Open Government Partnership (OGP) National Action Plan development 2018-2020 and my focus was particularly the OIA 1982.

The Plan includes a commitment to test the merits of undertaking a review of the OIA and provide and publish advice to government by June 2019.

I strongly urge you to undertake a formal review of the act with a view to overhaul or renovate it to ensure it applies the highest principles to enable that the NZ constituency is fully informed on all that those in Government are doing in the people's name.

My sense of the OIA 1982 is that it is an impediment to the application of just law and acts against Rule of Law. It faciliates corruption and the covering up of malfeasance and crime. The worst crime is the crime of aggression. I have proof positive that the New Zealand Government hides its knowledge of crimes of aggression behind the legal convenience of OIA 1982 sec 6 “Comprehensive Grounds For Withholding Information.”

In addressing my concerns and encouragement that you undertake the proposed review I answer the questions posed on your webform:

1. In your view, what are the key issues with the OIA?

Lack of a public interest test to balance the department or agency's decision to withhold information, particularly sec6 'Comprehensive Grounds For Withholding Information' see my paper to the UN Periodic Review of NZ. That paper sets out my case as of July 2018.

My concern is that the NZ OIA1982 breeches the highest law which is the UN Charter which New Zealand signed early on. This notwithstanding natural and common law which is premised in "doing no harm."

The UN Charter's key principle is to avert war. As such the NZ OIA as presently constituted is an active instrument employed to deny international law, as it enables war crimes and aggression; in their planning, execution and afterwards either as a complicit party or in covering up the truth. This is the key to my concern in respect to the OIA.

I support the many further recommendations that flowed from the OGP workshops and public suggestions for the reform of the OIA.

2. Do you think these issues relate to the legislation or practice?

Both legislative amendment and practice – there are cases of both in the OGP recommendations;

a) Practice alterations

For instance here is an example of practice - about how the OIA is supposed to work revealed today in the news.

Eric Crampton on the Spinoff; "How an OIA laid bare the pork barrel shambles that is Shane Jones' provincial growth fund"

b) Legislative ammendment

In respect to alterations requiring legislative change, I have many examples of rejected OIA requests for information relating to NZ's participation in wars or knowledge of events that involve privileged information, that powers use to demonise and make aggressive postures against 'chosen enemies' when the publicly available information suggests or even proves

the public posturing of NZ's Government or its allies is based in false or fake information – Four examples from many;

1. **9/11 Crime:** NZ Defence claims that it has not investigated the cause of the crime. NZ's intelligence services and the Government claim to have no knowledge of what happened on 9/11 yet NZ committed troops to a declared war on Afghanistan on the pretext of the 9/11 crime, without a forensic examination of the crime scene.

2. **UK Skripal Novichok:** UK government claim that Sergei and Yulia Skripal were poisoned March 2018 with a nerve agent known as Novichok is a complete fabrication. New Zealand cancelled trade negotiations and agreed to sanction Russian diplomatic staff on the basis of the UK's lies. I requested information from NZ Government in support for their decision. The response was unsatisfactory.

3. **Skyria Douma Nerve Gas:** The NZ Government effectively supported the claim by the US and UK that the Syrian Government or its agents gassed residents of Douma on 7 April 2018. I requested information seeking proof. The UK, US, France and Israel bombed Syrian assets as retribution for the alleged gas attack before any proof was provided to meet the claim. Later the OPCW investigated the site and determined that there was no trace of nerve agent present.

4. **Iraq War:** I was advised that NZ's intelligence services, particularly the GCSB, had advised the NZ Government that there was no justification for the Iraq war of 2003 by the Hon Phil Goff in a select committee hearing, FADT 28 November 2014. I requested the advice from the GCSB and NZSIS along with a number another matters – 35 questions in all. They refused it under under sec 6 of the OIA after a convoluted process that extended over several years including referalls to NZ Defence and reframing the question through the agency of the Ombudsman's office to each of NZSIS and GCSB (Note Justice Boshier's comments in refusing my application to the GCSB and his reference to the OIA sec 6).

New Zealand's commitment to the UN Charter means that it will use all means possible to avert war. Why didn't the New Zealand Government call out the US, UK and Australian Governments as war criminals in the lead to the 2003 Iraq War given NZ knew the proposed war was bogus and an act of aggression?

NZ shared intelligence through 5 Eyes with those supposed allies, which means the allies had the same intelligence that proved the Iraq War was premised on a lie.

It is apparent that despite knowing that NZ allies lie and cheat with their intelligence and make false or fake statements in respect to past wars and events (Iraq War2003), the NZ Government continues to uphold the alliance on more recent matters (Skripal and Douma)!

Only legislative amendment to make those decisions transparent to the public the government has a duty to protect, will alter the course of bloody history where NZ is committed to peace.

3. What reforms to the legislation do you think would make the biggest difference?

The inclusion of a public interest test and associated guidance "that it's not in the public interest to cover up crime," would aid New Zealand to be a much improved global citizen and encourage the other near 200 nations to approach their relations and provision of public intelligence in similar vein.

This is very relevant in a globalised world where NZ seeks to lead on questions of online social morals and ethics.

It is hypocrisy to control public hate speech online and continue to support war and killing through state secrets or information based on false/fake manufactured intelligence – all covered up through the OIA 1982.

The OIA as it relates to inquiries conducted under the Inquiries Act of 2013

The Law Commission report A New Inquiries Act, May 2008 authored by Sir Geoffrey Palmer underpinned the Inquiries Act 2013 recommended open discovery of the facts to bolster public confidence in the inquiry's outcomes - see clause 21 of its Summary, subclauses;

> *(a) the risk that private hearings will inhibit public confidence in the inquiry's proceedings;*
>
> *(b) the need for the inquiry to properly ascertain the facts;*

Two inquiries (there are likely more, including the Pike River inquiry) face problems discovering the truth because of the limits built into the OIA being reflected in the terms of reference of the respective inquiries.

A. Operation Burnham Inquiry

Burnham Inquiry faces difficulty as the representatives for the Afghanistan villagers attacked by NZ Defence Forces state that the secretive arrangements governing the inquiry is frustrating their ability to gain proper discovery. As such they believe the exercise is more about covering up the NZ Defence role rather than discovering the truth of the matter.

Lawyers for the Afghanistan villagers challenge the inquiry secrecy about whom they are interviewing, denied by the High Court.

Operation Burnham inquiry statement by Attorney General Hon David Parker:

Operation Burnham Inquiry terms of reference, particularly clause 14 which provides for secrecy and an opaque investigation. Wherever there is secrecy, shenanigans is more likely (not most likely).

B. Christchurch terror attack royal commission of inquiry

As soon as it occurred I was both shocked and fascinated at the Christchurch terror attack of the Ides of March. I felt it critical that a high level open inquiry be mounted to investigate and disclose the full nature of the attack and all that contributed to enable or assist its prosecution.

I reasoned that a royal commission the highest public inquiry was appropriate and launched a petition to the NZ Parliament to that effect.

> *Petition request*
>
> *That the House of Representatives urge the New Zealand Government to establish a Royal Commission into the Christchurch Mosques terror attacks of Friday, 15 March 2019, including any intelligence and police failures that enabled the terrorists to evade capture until they had perpetrated their acts.*
>
> *Petition reason*
>
> *I believe that the Christchurch Mosque terror attacks are a catastrophic failure on a number of levels, intelligence ignored, focus on incorrect targets for surveillance, loose supervision of gun laws, ease of access to military armaments;*

https://thespinoff.co.nz/society/17-03-2019/we-warned-you-we-begged-we-pleaded-and-now-we-demand-accountability/

and that the focus on Muslim terrorists is premised on the bogus war on terror that is predicated on bogus intelligence as to the cause of 9/11.

I circulated a media release setting out my reasons. I quote several M.P.s offerings in the House in respect to the terror attack, here's part of what the Hon. David Carter said;

Speaking in the debate the Hon. David Carter MP (previous Speaker of the House) reinforced the call for a Royal Commission referencing Hon. Gerry Brownlee's statement of Tuesday 19 March. David Carter also tied the Christchurch Terror Attack to the 9/11 attack on the US, stating that had changed New Zealand;

The final point I wish to make is to disagree, respectfully, with those who say, "On Friday, 15 March 2019, New Zealand changed for ever". I think the world and New Zealand changed for ever with 9/11, 2001. Sadly, I think there was an inevitability that terrorism would hit New Zealand. It was only a matter of when. But I never thought it would be my home city, the city of Christchurch; the city that has been through so much, the city that was finally coming right, and now we have to cope with this. But we are resilient; we will overcome this dreadful act of terror.

The Government announced publicly 25 March that the inquiry would be a royal commission. As the Government was agreeing with the need that the inquiry take the form of a royal commission I made it public that I would not proceed with the Parliamentary Petition via a further media release.

On Monday 8 April PM Jacinda Ardern made the terms of reference (TOR) public.

Upon studying them I discovered similar clauses to the TOR for the Operation Burnham inquiry. I found further evidence that the TOR were designed to disallow discovery of the full scope of what occurred in the lead to, thoughout the event and in the aftermath of the Christchurch terror attack.

I had already made some of my concerns known to both the NZ Police in respect to the timeline of the attack event, and to the NZ Parliamentary representatives about the confusion surrounding the attack timeline and who else might have been involved despite the lone gunman narrative. A concern at the time of writing to the NZ Police 27 March, and M.P.s 28 March, was the fact that the police were yet to clarify the timeline of the event.

How long does it take to copy entries from the police log(s) of the incident? The official police timeline was provided around midday Wednesday 17 April.

I've set out my reasoning as to why I consider the Christchurch terror attack royal commission is designed to fail, in two pieces of writing, one a further media release Sunday 14 April 2019; Christchurch terror attack royal commission set up to fail, and in an email to all NZ M.P.s Monday 15 April 2019, Truth of the Christchurch terror attack – how will it be discovered when there is a cover up?

These identify that state secrets are to be left as secrets. Where the inquiry seeks information from foreign powers or matters deemed of National Security the pubic will not be informed.

Hiding criminality behind state secrets must cease!

Recall Lord Acton's famous quotes on Power and Authority

> *"Power tends to corrupt and absolute power corrupts absolutely. Great men are almost always bad men, even when they exercise influence and not authority; still more when you superadd the tendency of the certainty of corruption by authority."*
>
> *"Despotic power is always accompanied by corruption of morality."*
>
> *"Authority that does not exist for Liberty is not authority but force."*
>
> *"Everybody likes to get as much power as circumstances allow, and nobody will vote for a self-denying ordinance."*
>
> *"Absolute power demoralizes."*

Greg Rzesniowiecki

Wellington

Bottcher, Jenna

From: greyhound concerns s9(2)(a)
Sent: Wednesday, 17 April 2019 12:23 PM
To: OIAfeedback@justice.govt.nz
Subject: submission

To the committee considering these changes,

As an animal welfare advocate I have found it extremely frustrating to have OIA requests refused because the Minister for Racing does not attain key information regarding racing's social license and relevant indicators, namely death and injury statistics.Knowing these things is essential to understanding how well the industry is performing in the eyes of the public in terms of animal welfare.

The three racing codes (Thoroughbred, Harness and Greyhound racing) are all answerable to the Minister but in their own right, are incorporated societies.

The end result is that while the Minister is in Charge, he deliberately does not have key information of public interest, and the three codes themselves are immune to the OIA. This is patently ridiculous. Both National and NZFirst have deliberately failed to seek this essential information from the racing industry therefore keeping it secret.

If a Minister is in charge of an industry like the racing industry- and he is- it exists by the governments grace and the social license of the people, then the racing industry should not be immune to the OIA requests.

I think the Minister should have to answer such queries - or the codes themselves- and the OIA act should extend to full cover the racing industry.

Sincerely,
Aaron Cross
For the Greyhound Protection League of New Zealand.

Bottcher, Jenna

From: Gwen Shaw s9(2)(a)
Sent: Thursday, 18 April 2019 4:01 PM
To: OIAfeedback@justice.govt.nz
Cc: s9(2)(a)
Subject: Review of the Official Information Act (OIA): Green Party submission (below and attached)
Attachments: 2019 04 18 Submission on OIA.docx

Thank you for the opportunity to submit to this enquiry.

It is vital that the political system is more open and accountable. This is a cornerstone of an effective participatory democracy.

Open and accessible government can only be assured through a legislative review and reform of the OIA. There has been some progress in recent years in the operation of the OIA and of transparency in government. This is largely due to the work of the Office of the Ombudsman under Chief Ombudsman Peter Boshier and the work of this current Government on proactive release of Cabinet papers and ministers' diaries.

However, this recent work has not gone far enough, and the positive changes are also contingent on future governments and Chief Ombudsmen maintaining the decisions and practices that have developed.

The limitations of only focusing on non-legislative changes can be seen in the state sector response to the report *Not a Game of Hide and Seek* by then Chief Ombudsman Dame Beverly Wakem. This report focused on OIA practices and identified a range of situations of "non-compliance" by public sector agencies. While some of the progress made recently has been tied back to that report, a number of the relatively mild recommendations have not been implemented and non-compliance with the Act remains. For example, the State Services Commission is now collecting and releasing data on timeliness of OIA responses which shows that 5% of the time agencies are breaching the law by not providing responses within the statutory deadlines. It is unclear whether other breaches of the law identified by Dame Beverly Wakem have been addressed.

In terms of legislative review, there has never been a proper consideration of the detailed Law Commission report from 2012. The then National Government said that the "current fiscal environment" and other priorities stopped them from considering substantial legislative reform. The 2012 Law Commission report shows that there are a large number of ways to strengthen the OIA and provide better public participation and access to our democratic systems. A number of these recommendations also related to Local Government Official Information and Meetings Act (LGOIMA), which should be considered in a legislative review of the OIA.

The Green Party has a number of policies for legislative change of the OIA that include:

- Require all OIA request responses to be published on a designated website seven days after they have been sent to the requester (with certain exceptions for privacy).
- Ensure that there are effective review mechanisms in place for those who do not receive the requested information.

- Give the Office of the Ombudsman greater powers to censure agencies for non-compliance or lack of co-operation.

- Review withholding grounds. For example, ensure the national security exclusion is only available where the issue has been reported to, and the exclusion approved by, the responsible Minister.

- Stop the practice of excluding application of the OIA to certain agencies, and bring Parliamentary Service under the OIA, with an exemption to protect communication between constituents and MPs and to protect opposition parties from government intervention. The resourcing constraints for opposition parties might be a factor in increasing the scope of OIAs.

- Investigate removing the Cabinet and local government 'veto' power over an Ombudsman's recommendations.

- Narrow the ability of agencies to charge for OIA requests.

ENDS

Gwen Shaw

General Secretary
Green Party of Aotearoa New Zealand

s9(2)(a)

Authorised by: Gwen Shaw, Level 1, 17 Garrett Street, Wellington.

Green Party submission:

Review of the Official Information Act (OIA)

Green Party of Aotearoa New Zealand

Submission made in the name of:

Gwen Shaw, General Secretary, Green Party of Aotearoa New Zealand

18 April 2019

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- Investigate removing the Cabinet and local government 'veto' power over an Ombudsman's recommendations.
- Narrow the ability of agencies to charge for OIA requests.

ENDS

18 April 2019

Hamish Peters
Geocivil Consulting Engineers
s9(2)(a)

REF: OIA-4933

Dear Hamish,

Request made under the Official Information Act 1982

Thank you for your email to the NZ Transport Agency (the agency) on 1 April 2019 requesting the following information under the Official Information Act 1982 (the Act):

> *"My request for information is how many 1970 Plymouth Barracuda cars are registered in New Zealand?"*

The NZ Transport Agency is refusing your request under section 18(d) of the Act because the information is publicly available. The Agency publishes a point-in-time 'snapshot' of all vehicles currently registered in New Zealand, as of the last day of the previous month. The data includes make, model and sub-model, class, colour, vehicle year and other variables.

The information you have requested can be found at the following link: www.nzta.govt.nz/resources/new-zealand-motor-vehicle-register-statistics/new-zealand-vehicle-fleet-open-data-sets/.

User guides[1] for the Transport Agency's open data portal are available if you require them.

Under section 28 of the Act, you have the right to ask the Ombudsman to review my decision to refuse this request. The contact details for the Ombudsman can be located at www.ombudsman.parliament.nz.

If you would like to discuss this reply with the NZ Transport Agency, please contact Kerry Greig, Manager Data Services, by email to kerry.greig@nzta.govt.nz or by phone on 04 894 5251.

Yours sincerely,

Galina Mitchelhill
Senior Manager, Research & Analytics

[1] https://opendata-nzta.opendata.arcgis.com/pages/how-to-use-the-open-data-portal

Bottcher, Jenna

From: Hamish Peters - Geocivil Consulting s9(2)(a)
Sent: Tuesday, 23 April 2019 9:30 AM
To: Official Correspondence
Cc: OIAfeedback@justice.govt.nz
Subject: RE: OIA-4933 RESPONSE
Attachments: OIA-4933 Hamish Peters - FINAL.PDF

Follow Up Flag: Follow up
Flag Status: Flagged

Hi

This is a reply to the OIA attached.

I have tried to click on the download link on the top right hand side and the spreadsheet does not download. I have called NZTA and got Alisha (last name not given) in the Palmerston North call centre who said she talked to the team that administers the Motor Vehicle Database and they said the information is not publicly available, I will need to reply to the OIA and get the information you request.

I offered to email Alisha the OIA letter that said it is publicly available and the link to the NZTA website that confirms this but she didn't want to see it and said I would have to reply to the OIA.

My further request for information is: How many 1970 Plymouth Barracuda cars are registered in New Zealand?

Regards

Hamish Peters
Geotechnical / Civil Engineer
Geocivil Consulting Engineers
Phone: 06 3484091
Mobile: s9(2)(a)
Address: Level 1, 69 Taupo Quay, Wanganui 4500
www.geocivil.kiwi.nz

From: Official Correspondence [mailto:Official.Correspondence@nzta.govt.nz]
Sent: Thursday, 18 April 2019 12:12 PM
To: Hamish Peters - Geocivil Consulting
Subject: OIA-4933 RESPONSE

Dear Hamish

Please find attached the response to your request of 1 April 2019 for information under the Official Information Act 1982.

Regards

Ministerial Services
Office of the Chief Executive

National Office / Victoria Arcade, 50 Victoria Street,
Private Bag 6995, Wellington 6141, New Zealand

Find the latest transport news, information, and advice on our website:
www.nzta.govt.nz

18 April 2019

Hamish Peters
Geocivil Consulting Engineers
s9(2)(a)

REF: OIA-4933

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Yours sincerely,

Galina Mitchelhill
Senior Manager, Research & Analytics

[1] https://opendata-nzta.opendata.arcgis.com/pages/how-to-use-the-open-data-portal

Bottcher, Jenna

From: s9(2)(a)
Sent: Wednesday, 27 March 2019 9:03 AM
To: OIAfeedback@justice.govt.nz
Subject: OIA feeback

Dear Justice Ministry folks

I wish to make the following submission in response to your request for public feedback on the Official Information Act. My submission also refers to problems with the Criminal Disclosures Act.

Please note that the submission below is entirely factual, though the names of the protagonists have been changed because the courts have imposed permanent name suppression. I am prepared to disclose the full names of the people involved to you, but only on the explicit condition that the public name suppression is continued.

I am also prepared to be interviewed by your officials, as this feedback reflects only a small proportion of the effects of the abuse of the OIA by the police in this case.

Thank you

s9(

[I am also prepared to disclose my full name to you on condition of anonymity.]

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Submission to the Ministry of Justice on the Review of the Official Information Act

Some bureaucrats may treat avoiding OIA questions as something of a sport but, in the real world, this denial of information can have catastrophic consequences.

Take my friend Tom*. He is an intelligent, educated and thoroughly decent man who was primary caregiver for his daughter and his partner Sally's* two older children. Without any warning, the police came to his home one day and arrested him for allegedly inappropriately touching his 13 year old step-daughter Maria*. They took him away and he has **never** been allowed to return to his home in the nearly ten years since.

Devastated and disoriented, Tom sought desperately to come to some understanding of how and why such an allegation could have been made, especially given that he had neither the opportunity nor the inclination to offend in any way. A number of unusual details emerged quite quickly: Maria had been drinking alcohol given to her by her mother; the police admitted asking Maria a series of leading questions, effectively forcing her to make more and more fanciful allegations; the police refused to interview the witnesses who could prove that Tom had no opportunity to offend; his partner Sally (a lawyer) was having an intimate affair with one of her clients; in her first interview, she explicitly told the police that she was going to leave Tom anyway and was not interested in hearing his side of the story. [On this last point alone, why did the alarm bells not start ringing for the police? From the very first minutes of their inquiry, they had an admission from the mother of the accuser that she had an ulterior motive for encouraging the false allegations.]

Although these revelations were disturbing, Tom was also very aware of the background that Maria suffered from a rare and potentially fatal kidney disease which periodically put her in hospital. During her healthier periods, the effects of her kidney malfunction were controlled by daily doses of Prednisone (a cortico-steroid drug) and Tom learned that side effects of the drug

may include delusions and vividly realistic dreams. And that alcohol may exacerbate these side effects.

For privacy reasons the paediatrician refused to give Tom any details about Maria's dose of Prednisone, but he presumed that the police had acquired the information and that it would be on his police file. So his Family Court lawyer asked the police for a copy of the file, but they refused to provide it. Tom's District Court lawyer then asked for the file, as it had been excluded from discovery (the process in which an accused person is given all the information that can be used against them in the criminal court) but again the police refused. So Tom applied personally for the documents under the terms of the OIA, which is where the baffling behaviour of the police became really quite extraordinary.

As soon as the OIA request was received, the first action from the police was to apply for an extension of time in which to respond. The whole file was tiny, so there is no apparent reason why it would take more than the statutory 20 working days to photocopy just a handful of pages. Tom had no criminal history, so there was very little work required. Nonetheless, their request for an extension was granted and, when the second 20 working days period expired, the police wrote to Tom to tell him that they would still not provide the information as he should not have used the OIA, but the Criminal Disclosures Act. This is a vaguely similar act, but one which has no specified time limit for a response.

Finally, nearly a year and a half after he was arrested and removed – forcibly and permanently - from his home and family, the police released Tom's file to him less than a week before his trial. Less than a week! The file included the paediatrician's report which showed that Maria, who then weighed 40 kg, was taking 70 mg of Prednisone per day – which is right at the upper limit of medical acceptability - and quite explicitly stated that she was at imminent risk of suffering from steroid psychosis. By any standard, this is explosive exculpatory evidence but, because his lawyer was not able to find an expert witness in such a short time-frame, the lawyer was unable to use it in court and the jury never heard the evidence.

In essence, Maria had a medical record which showed that she was in imminent danger of suffering serious psychotic trauma and this danger had been greatly increased by her mother giving her alcohol. In another world, Maria may well have died (and would Sally have been charged with murder?) but in this case she clearly had "only" suffered a psychotic episode in which she imagined that Tom had behaved inappropriately with her.

But the delay by the police in releasing the exculpatory evidence meant that the court case proceeded without access to the full facts and Tom was found guilty. His appeal was even more surprising, as the Crown asserted that he should have known what was in the paediatrician's report and therefore it could not be accepted as new and novel evidence to justify a re-hearing. So Tom served a period of home detention and has carried for nearly ten years the burden of being falsely accused and wrongly convicted.

It is difficult to understand the reason for the behaviour of the police, but their initial investigation was deeply flawed. First, by their own admission, they asked 13 year old Maria a series of leading questions while she was clearly in a confused (and probably psychotic) state; second, they admitted that they failed to conduct a proper investigation; third, they failed to interview the eye-witnesses whose evidence would have proved Tom's innocence; fourth, they neglected to take into account Sally's significant history of betrayal and abandonment of a series of male partners and the fact that she was already engaged in an intimate relationship with one of her clients.

Did the police use the vagaries of the OIA to cover the incompetence of their initial investigation? Whatever, the fact remains that the OIA process was abused by them and an innocent man has been convicted of a crime that he could not possibly have committed. A comprehensive review of the way public servants deal with OIA requests is well overdue.

Bottcher, Jenna

From: James Scott s9(2)(a)
Sent: Thursday, 18 April 2019 9:19 AM
To: OIAfeedback@justice.govt.nz
Subject: OIA SUBMISSION

Hello,

I have only recently become acquainted with the Official Information Act 1982 (OIA) and have now made several requests under the OIA for research purposes.

I have also spent a lot of time browsing former OIA requests on the website fyi.org.nz.

I did not know there was currently a period of review/public submissions on the OIA but now that I am aware I will just quickly point out two observations. No doubt they have been raised en-masse but I will have my say anyway.

I think both of my suggestions look to put the onus back on government agencies/organisations who I think, while acting lawfully, attempt to remove or reduce transparency when responding to OIA requests which is directly opposite to the purpose of the act.

1). Organisations almost always wait until the deadline of a request (20 working days) before a response is sent. This might be ok if a substantial amount of work is required in order to respond, however, it doesnt take 20 working days to write a letter along the lines of:

"Your request is refused because the information is not held... "

It can't be suggested that these organisations have a backlog of OIA requests such that they get to the specific request a day before it is due and manage to respond on the day regardless of whether it is a simple refusal or not. In any case, organisations actually have a responsibility to respond as soon as possible.

2). There is a requirement for agencies to assist individuals with their requests. I see an awful lot of requests where the information being requested is refused because it is not held, but "for transparency" the information is held in another form. I think, in the absence of a proper basis for refusal, that information should be released.

Thank you for the opportunity to comment.

James

Bottcher, Jenna

From: John Conneely s9(2)(a)
Sent: Thursday, 18 April 2019 9:20 PM
To: OIAfeedback@justice.govt.nz
Cc: David Warrington; Chris Lord; Ray Wibrow
Subject: OIA public consultation : feedback to the Ministry of Justice

Hi,

1. There needs to be a mechanism within the Act to manage vexatious OIA requesters, by which I mean individuals who seem to want to make a career out of making multiple similar and / or repititious requests to one or more organisations

2. More clarity or guidance is needed about when to deny requests based on the amount of time / resources it would take to provide the requested information - how much time is “too much” - some requests could result in 40 hours or more work - the Act needs to be specific on the number of work hours that is considered reasonable to produce the requested information.

3. There needs to be a time limit imposed upon organisations by which time they are required to provide the requested information. The current requirement for organisations to provide the requested information “without undue delay” is far too non-specific and open to interpretation - there needs to be a specified limit e.g. 50 days.

Regards,

John Conneely

_____

Bottcher, Jenna

From: John Farquhar s9(2)(a)
Sent: Friday, 26 April 2019 11:38 AM
To: OIAfeedback@justice.govt.nz
Subject: review of the OIA

Follow Up Flag: Follow up
Flag Status: Flagged

Submissions may have closed, I have only now been made aware of the current review.
However I submit that the process needs an extensive overhaul and wish to engage in any process to do this particularly in respect of LOGIMAs with local authorities
regards
John farquhar
s9(2)(a)

Bottcher, Jenna

From: Julie Hopcroft s9(2)(a)
Sent: Thursday, 11 April 2019 10:55 a.m.
To: OIAfeedback@justice.govt.nz
Subject: OIA review feedback

11 April 2019

Thank you for the opportunity to provide feedback about the OIA legislation.

If you wish to be provided with corroborative material regarding the points that I've raised, please do not hesitate to contact me.

What are the key issues with the OIA?

The OIA is supposed to facilitate the release of information to enable New Zealanders to participate in democratic processes including:

enabling more effective participation in the making and administration of laws and policies.

I consider the following to be facets contributing to the failings of the Act to achieve its designated purpose:

- Information provided is not fit for purpose: i.e. It is not the information that has been requested.
- Information is not released in a timely manner. This can prevent authentic participation in submission processes that have a deadline for submissions to be received.
- A body will request clarification regarding a request. The 20-day release period then starts over.
- information requests are rewritten or amalgamated, therefore the response provided is meaningless
- Sections of the Act facilitate opting out of providing a response when a body does not wish to provide information
- Denial about the content of a document that official information was requested about. (The document was provided to the relevant body)
- There appear to be no real sanctions for bodies that fail to comply with the Act: therefore, no incentive to comply.
- The lengthy processing time when a decision review is sought from the Office of the Ombudsman
- Being asked to rewrite petition criteria after the wording had been validated by the Office of the Clerk of the House of Representatives and the petition had been presented. (Rewriting the petition would, of course, invalidate it)

- Information, per se, is not necessarily released as a static commodity, but is released according to the knowledge base of the recipient. Those without the requisite critical thinking skills or experiential knowledge are not able to apprise discrepancies between inconsistent response variables

- Over-reliance on sections 9 and 18 to justify non-release of information. (? A need to do a review on how often these sections are used, how many of these decisions are overturned after an Ombudsman's review, and how long the whole process takes from the time of the original submission of the request)

- Critiquing the sub-sections of the Act that rely on *assumption* to decline the release of information. i.e. subsection 9 (2) (ba) i

or,

- critiquing the assumptions made in subsection 9 (2)(g) i of the Act. Firstly, that the conduct of public affairs is *effective* and secondly that the *opinions* held by these individuals are congruent with fact. The fact that information is being requested from these bodies, could indicate that efficacy is not being achieved.

- The cost to the taxpayer that is inherent in the present inefficiencies of the Act, and the follow-through on processing a complaint to the Office of the Ombudsman

Do you think these issues relate to the legislation or practice?

Both. The legislation, as it stands does not appear to be fit for purpose; It fails in meeting its objective of enabling more effective participation in the making and administration of laws and policies.

(Although Prime Minister Jacinda Ardern promised the most open and transparent government in New Zealand's history, data shows that there was an increase in OIA complaints to the Office of the Ombudsman in the six months from 1 July to 31 December 2018. Discounting a block of complaints from one individual, the number of complaints received by this Office increased by 3.7%)

What reforms to the legislation do you think would make the biggest difference?

- Introducing sanctions for bodies that regularly fail to comply with the Act

- Aligning non-compliance with, where applicable, the purpose of the State Sector Act, where the expectations of public sector personnel are clearly outlined. Making non-compliance a performance-management issue with repercussions for the respective body.

- Reviewing the Act within a greater contextual legislative framework: i.e. in conjunction with the provisions and expectations of such legislation as the Ombudsmen Act (and adjunctive legislations) and the State Sector Act.

Conclusion

In 1990 a bloody massacre left thirteen dead in Aramoana; people indiscriminately blitzed down through the sights of automated weaponry.

Since then, there have been countless warnings sounded about how lax our gun laws were. There have been multiple inquiries, select committee reports and police investigations. The risks were well-known and documented, but no action was taken until the cumulative risk-factors resulted in further atrocity.

Subsequently, a massive reactive process has unfolded, retrospectively addressing risk factors that had been well recognised for decades.

To avert these kinds of tragedy from occurring, it is vital that legislation such as the OIA facilitates the release of information. Official information often validates and consolidates the factors that need to be addressed to protect and uphold the rights of everyday New Zealanders. Addressing the failings of the current legislation would be a step in the right direction to enable the people of New Zealand to participate more effectively in the processes that will result in enhanced respect for the law and the promotion of good government of New Zealand.

Yours sincerely

Julie Hopcroft

by email: s9(2)(a)

Bottcher, Jenna

From: Kaye Solomon and Lewis s9(2)(a)
Sent: Wednesday, 27 March 2019 1:45 p.m.
To: OIAfeedback@justice.govt.nz
Subject: OIA / LGOIMA

Hello

I have an adendum to my submission ANON - E8XQ - FTB3 - N

- I feel very strongly that both LGOIMA and OIA require revision and strengthening
- The reach of both Act needs to be extended to bodies that spend public money but are outside the reach of either Act. I am especially concerned about energy / electricity trusts.

Lew

Bottcher, Jenna

From: keith s9(2)(a)
Sent: Thursday, 18 April 2019 6:53 AM
To: OIAfeedback@justice.govt.nz
Subject: Feedback

Hello

I have only just become aware of this opportunity. I suppose my first comment then as one who has used the act extensively is to wonder out loud why I have not been contacted even in survey form. I must be missing in the loop. Why is this so?

My main experience of using the act have been to extract information in the form of data from NZQA and the MOE. While the reponses have mostly been timely with some delays, which by the way were not requested from me but stated as a fact, my greatest frustration was to be refused the information because the data had not been collected. This actually formed part of my own enquiry. I wanted to know of these institutions knew enough.

I suspect these bodies used the statutory limitation of time to keep me waiting and frustrate my efforts when they could have simply announced they did not have the data. If it is known there is no information available this should be told.

Also I suspect there might be data compartmentalized elsewhere and know to the bodies. If so, they made no effort it seems to offer information that was plainly close to that being sought.

I hope these kinds of matters can be considered. I am available for further consultation.

Keith Burgess
Canterbury College

Sent from my Samsung Galaxy smartphone.

Bottcher, Jenna

From: Keith Burgess s9(2)(a)
Sent: Thursday, 18 April 2019 12:44 PM
To: OIAfeedback@justice.govt.nz
Subject: Feedback

Follow Up Flag: Follow up
Flag Status: Flagged

Hello

Further to my previous feedback, I also wonder if the ombudsman office is sufficiently staffed or whether it thinks like, ""That's a difficult question, I'll get back to the person now and explain that it will take time" or "That's an easily resolved question, I'll answer it now". I have put a question to the ombudsman and four working days later I have not had a reply. It makes me wonder about the two things above.

Keith Burgess
Canterbury College

Bottcher, Jenna

From: Keitha Booth s9(2)(a)
Sent: Thursday, 18 April 2019 2:32 p.m.
To: OIAfeedback@justice.govt.nz
Cc: Justin Temple; Tinatin Ninua
Subject: OIA recommendations in Open Government Partnership's reports on NZ's OGP National Action Plans

Dear OIA review

In case you are not familiar with the Open Government Partnership's Independent Review Mechanism's recent detailed feedback on the OIA, here is the link to the OGP IRM End -of-term report on NZ's OGP 2016-2018 National Action Plan - https://www.opengovpartnership.org/sites/default/files/New-Zealand_End-Term_Report_2016-2018.pdf.

Please refer to discussion of the implementation of **Commitment Two: Improving official information practice**s on pages 14-18.

This assessment concludes on page 18 that "the following updated recommendation from the IRM midterm report remains relevant for Commitment 7 in NZ's 2018-2020 National Action Plan:

Initiate work to amend the OIA legislation to encompass Parliamentary Services, the Office of the Clerk, the Ombudsman and the Controller and Auditor General, whilst retaining parliamentary privilege, in line with the recommendations by the Law Commission report in 2012 and others, and building on administrative and legislative developments since then such as the Parliamentary Privilege Act 2014.

This repeats earlier recommendations for official information legislation reform in all of the OGP IRM's assessments of the OIA.

For your further information, the OGP's IRM report on the Design of NZ's 2018-2020 National Action Plan is being completed at the moment. This comments in detail on This comments in detail on *Commitment 7: Official Information* and assesses its potential impact should it be fully implemented as designed. The IRM will send the draft to the State Services Commission for comment within the next month or so and then it will be released for public comment. I will forward the report to you when it becomes available. This may be useful as you draw up your advice to the Minister of Justice.

Please come back to me if you have any queries.

Best wishes

Keitha Booth
OGP Independent Reporter on NZ's Open Government Partnership National Action Plan 2016-2018 and 2018-2020
Independent Consultant (Leading, Advising, and Commentating)
Associate, Open Data Institute (UK)
Linked In details
s9(2)(a)

Bottcher, Jenna

From: Kurutia Seymour s9(2)(a)
Sent: Friday, 19 April 2019 2:49 PM
To: OIAfeedback@justice.govt.nz
Subject: Official Information Act feedback

Thank you or the opportunity to comment on the changes that are being proposed for the act, and my apologies for the late response. I hope you will be able to consider my comments, despite the late submittal.

By way of back ground I worked for 20 years processing and eventually being responsible for a large government organisations responses to official information act requests. the area also looked after privacy act requests, and complaints to the Ombudsman, the Privacy Commissioner and the Health and Disability commissioner.

I have managed request from the General Public, Politicians, the Media, foreign governments and a variety of interest groups.

The underlying Principles
I continue to believe that the underlying principles that drove the original rationale regarding the act remain valid. The best government we can have is one that is open and transparent about its decision making unless there are good reasons not to be - and the bar should be set very high for a refusal to be sustained.

the beginning point for any request is that the information should be released. Hiding information is a slippery slope and leads down a road that most new zealanders would not be happy with.

Despite that passage of years and the introduction of new technologies, I do not see a reason for these underlying principles to change. Like many brilliant ideas, the passage of time has not weakened the constitutional and sociological import of having a set of legislation holding government and agencies to account and supporting straightforward, transparent governance.

What needs to change
The issues that have arisen almost all fall in expectations of agencies and requestors about the processing of requests.

I believe that the solution remains uncomfortably somewhere in the middle, likely to the dis satisfaction of both sides.

Agencies tend to take a conservative approach to releases. The act does not say you have 20 days to release information, it says you should make a decision as soon as possible, but at the latest in 20 days.

This delay in responding is most frustrating for reporters who may have a story whose arc of interest may start and finish within 24 hours.

This timelines is an issue for all agencies in this current era of the internet and social media platforms which run at a return rate of minutes rather than weeks which was the case when the act was originally designed. As such the act principles do not need to change, but the process of responding needs to be redesigned to take into account more rapid request and return times.

Smart organisations will have done or do the following:

they will design all forms and recordings of corporate information in a format designed for release.

they will maintain clear and easily discernible version protocols and controls

they should proactively publish all decision making and processes used by staff to make decisions.

Guidelines for agencies and requestors
they are currently comprehensive and detailed - and you would be lucky if anyone outside of the Ombudsman office has read them. they need to shorter and easier to access.

Agency training
Agencies are terrible at this. Mine was unusual because I fought tooth and nail to train a specialist team to manage these requests. I had 18 staff looking after OIA and Privacy requests. All were graduates and most had significant ant corporate experience. I employed a Barrister and Solicitor in Sole Practice who had worked for both the Privacy Commissioner and the Ombudsman Office to develop a three day training programme which all of my staff completed and refreshed every year. He did that for me for a decade and only stopped because he became the current Privacy Commissioner.

We needed to have this level of support and training because the rest of my organisation were poorly placed to respond to OIA requests.

As a general manager I had to remind other general managers, CEOs and Board Members how far the act can reach and what our responsibilities were. it was sometimes a very lonely place.

Reach of Ministers
Likewise Ministers can sometimes seek to reach into OIA responses when they should not. I remember telling one Senior Minister that if he continued to ask for information on employment decision matters before decisions were made that he could be considered an interested party by the Employment court and called as a witness in a proceeding. The protection garnered from statements such as “this is an employment matter for the CEO” is profound.

Most ministers seek a list of OIAs that are being processed by the agency as a way of keeping over risks. Most of my ministers were senior and familiar with how far they could look into OIA matters. The most that they did was review the list at officials meetings and sometimes seek some clarification. They may have offered advice about how we might want to process a request but they never instructed as they understood that the request was for the agency to respond to.

I cannot however say the same for the staff in many ministers office. most were extremely risk adverse on behalf of their ministers. Often they would take it on them selves to seek copies of OIAs and give notes on how he response should be responded to. I never had a problem suggesting to ministerial staff that they may want to think very carefully about seeking copies of information as this may result in them being captures by a later request for information. I have had ministers staff screaming down the telephone at me, threatening me with dismissal or being barred from parliament in an effort to get me to change my mind on how requests will be processed.

Over the time of my service in the area i noted the gradual politicisation of the ministerial services staff. once the staff were almost all provided by ministerial and parliamentary services. these people were skilled and understood how the act worked. However many new politicians distrusted people who had worked in the office of ministers from previous governments, and started bringing in people from their own political machines. these people tended to have more skills as a lobbyist then anything else.

Ombudsman
I have been carefully thinking about how the office of Ombudsman could be looked at. I think the careful selection of the right people has helped greatly on this area. I knew each of the Chief Ombudsman from Sir Brian Ellwood to Beverly wakem well, And had great respect for them. Even Sir Brian who had a real bee in his bonnet over my organisations refusal to implement a non binding recommendation he had made was impressive.

However, I think that the powers of the office have to be strengthened to balance against the strength of the new CEOs rising in the agencies, and the more commercial approach of ministers. I also think that the individuals selected have to be given significantly more arbitration and negotiation powers because settling matters are more complex now then they have been in the past.

And i think the ombudsman must exercise these powers more. I say this because I believe that powers must not be left to gather dust in a cupboard but must be seen as a viable option and utliised when appropriate.

I recall in the early 2000 when TVNZ and Bell Gully were given a salutary lesson in this regard when they tried to instruct an outgoing CEO to refuse to respond to a set of questions issued by their select committee. Bell Gully had advised the chair of TVNZ that the select committee could not seek answers to the questions it had asked and instructed the outgoing CEO to refuse to answer. Both TVNZ and Bell Gully were wrong, and found this out when they were both summonsed to give evidence at a special hearing of the select committee, where the chair was forced to apologise, the senior partner of BellGully was also forced to apologise and both parties provided the information requested. And then the committee fined TVNZ just to make sure everyone knew who was in authority.

I hope my comments are helpful. I think one of the reasons we rate so highly in the non corruption stats as a country is because of the OIA in large part and the effective operations of the Ombudsman. I think we have to be really careful about any changes in this area. Certainly we must change in order to be reflective of the changes in environment and how new zealander think, but the underlying principles used to establish the Office and the OIA I thin remain sound. If we change them, change them to reinforce the the tenants of transparency, access and openness.

yours sincerely

Kurutia Seymour

Submission on access to official information

1. I support a full and public review of the Official Information Act.

2. The Act has not been significantly updated since its passage in 1982, and no longer conforms to international best practice. While the Act has been reviewed repeatedly over the past decades, successive governments have refused to implement the recommendations of these reviews.

3. This failure and the government culture around requests has led to a public loss of faith in the Act and its administration, at least where it comes to politically relevant requests. A review and subsequent reform may help to fix this problem.

Key issues

4. Key issues the review should focus on include the following:

5. **Scope of the Act:** Currently the OIA does not cover all government agencies. Notable exclusions include mixed-ownership model SOEs, the Offices of the Ombudsman and Auditor-General, the Independent Police Conduct Authority, Inspector-General of Intelligence and Security, and statutory Intelligence and security Committee, the Parliamentary Counsel's Office, and of course Parliament itself. Various other bodies are excluded on apparently arbitrary grounds. There needs to be a clear and consistent principle governing inclusion, ideally aligned with the definition of "public office" in the Public Records Act, and including any body effectively controlled by the government or its agencies (similar to the definition of "Council Controlled Organisation" in the Local Government Act).

6. Parliament is the most notable exclusion. Past reviews have repeatedly recommended that it be subject to the OIA, and other jurisdictions (e.g. the UK) demonstrate that a legislative body can be subject to a freedom of information law without interfering with its functions. Its continued and deliberate exclusion sends a terrible message about the New Zealand government's commitment to transparency.

7. **Secrecy clauses:** Some bodies (e.g. the Ombudsman, parliamentary Commissioner for the Environment, and IRD) have secrecy clauses which override the Act. These do not protect the public interest - or rather, the legitimate interests they protect are already covered by existing withholding grounds. There needs to be a review of all secrecy clauses to determine whether they are necessary, and they should be explicitly made subject to the OIA rather than overriding it.

8. **Conclusive withholding grounds:** At present the Act distinguishes between conclusive and non-conclusive withholding grounds. This distinction should be abolished, and a public interest test introduced for all withholding grounds. It is perfectly possible to recognise the strength of the interest in withholding information, while also balancing it against the public interest in release - as is done routinely for legal advice. This could also be done for the s6 withholding grounds, and stripping agencies of the ability to effectively withhold with no oversight would result in improved accountability.

9. **Eligibility:** Section 12 of the OIA limits requests to New Zealand citizens or permanent residents or corporate equivalents. This is not just out of step with international best practice, it also encourages agencies to game eligibility to delay, deny or deter requests (the

Police are notorious for this, and have been repeatedly called to account for it by the Ombudsman). The Law Commission's 2012 review recommended the limits on eligibility be scrapped, and that the law follow s10 LGOIMA in allowing requests to be made by any person. This should be implemented as quickly as possible.

10. **Gaming the Act:** There is a widespread perception among requesters of unequal treatment and Ministers gaming the Act for their own political advantage (a perception apparently shared by the Minister of State services[1]).

11. **Response times:** The Act requires that requests be responded to "as soon as reasonably practicable, and in any case not later than 20 working days after the day on which the request is received". In practice, the first part of that is ignored, and the 20-day limit treated as a target.[2] The Ombudsman has also raised concerns about the Act being used to delay the release of information.[3]

12. **Lack of effective penalties:** part of the reason for the above abuses of the Act is the lack of effective penalties for breaching it. There is no effective remedy for delayed responses - complaints to the Ombudsman take six months, by which time a response has probably arrived. There are no penalties for obstructing a request. Agencies need to be able to be fined for delays to provide a direct financial incentive to obey the law, and there needs to be a criminal offence of obstructing a request, modelled on s67 of the Canadian Access to Information Act, to deter Ministers and officials and empower staff to stand up to them.

13. **Poor statistics:** another reason for abuses is the lack of proper monitoring. While the SSC and Office of the Ombudsman have introduced some statistics for the OIA, they are incomplete: they cover only request numbers and broad timeliness, and do not cover Ministerial offices at all. Other regimes[4] have better monitoring, including detailed information on timeliness and outcomes. These in turn enable better oversight and management of their freedom of information regimes, and a greater chance of detecting problems.

14. **Oversight:** The Law Commission's 2012 review recommended that oversight be transferred to a specialist and independent Information Commissioner. I support this change.

15. **The Veto:** Cabinet's power to veto release of information even when it has been recommended by the Ombudsman is an affront to the rule of law. It should be repealed.

16. These issues are widely recognised amongst the requester community, and they undermined confidence in the Act and public trust in government. A review and a commitment to implement its results may help rebuild that trust.

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1 "Redacted: State Services Minister Chris Hipkins says OIA needs 'more teeth'", Stuff, 18 April 2019. https://www.stuff.co.nz/national/politics/112087128/redacted-state-services-minister-chris-hipkins-says-oia-needs-more-teeth

2 Statistics on this, including response-time histograms showing how agencies respond at the 20-day mark, can be found here: https://features honestuniverse.com/oia-delays/

3 "Public service should not treat all media queries as OIA requests - Ombudsman", Radio New Zealand, 5 march 2019, https://www radionz.co.nz/news/political/383963/public-service-should-not-treat-all-media-queries-as-oia-requests-ombudsman

4 Examples: the UK: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/765807/foi-statistics-q3-2018-bulletin.pdf
Canada: https://www.canada.ca/en/treasury-board-secretariat/services/access-information-privacy/statistics-atip/access-information-privacy-statistical-report-2015-16 html#toc2-2

Bottcher, Jenna

From: Mark Hanna s9(2)(a)
Sent: Sunday, 14 April 2019 9:09 PM
To: OIAfeedback@justice.govt.nz
Subject: OIA feedback - Mark Hanna

Tēnā koutou,

Thank you for the opportunity to provide feedback on the Official Information Act. I am a transparency, justice reform, and anti-pseudoscience activist. For the past four years I have heavily used the Official Information Act in my activism, making on average around 1.5 requests per month over that period. I've also assisted others in using the OIA, written on its shortcomings both on my own website and on Stuff, and published a guide to the OIA.

In this time, I have noticed various patterns of problematic behaviour from agencies responding to OIA requests. Some of these I have noticed primarily through responses to my own requests. Others I have seen by looking at responses received by others on the website FYI, which allows people to make OIA requests in a way that makes the request and response publicly available. I also have some data, released under the OIA, regarding some of the issues I have observed.

As alluded to in the questions asked by the Ministry of Justice in its call for feedback, some of these issues are primarily due to practice and others are primarily due to the legislation itself. Clearly, different solutions are needed for these different types of problems.

Having seen these problems has led me to think that a review of the OIA is something that should take place. As part of this process, I believe a public consultation period would be necessary, rather than just a limited consultation with selected stakeholders. The OIA affects everyone, and I am concerned that a limited consultation would miss important stakeholders who had not been identified.

These are what I consider are the key issues with the OIA:

Responses sent at the last minute

Last year, I sent requests to 11 agencies subject to the OIA to ask for information regarding when they received and responded to requests for official information within a six month window in 2017. I published my findings, including links to the raw data used for my analysis, on my website: http://features.honestuniverse.com/oia-delays/

I had made these requests after more anecdotal observations that responses to my requests would often arrive on the day they were due, typically close to 5pm. In asking for raw data, I was able to see whether or not this was a more systemic problem among the agencies that responded.

With the exception of the State Services Commission and potentially the Department of Corrections (whose data I consider somewhat suspect, as I discussed in my analysis), every agency who responded had a clear spike of responses to requests being sent on the day they were due.

Of course, some agencies performed worse than others. For example, the Ministry of Health had 4.86 working days remaining on average (median 3 working days) when a response to a request was sent. The Ministry for Primary Industries, as a counter-example, had -0.19 working days remaining on average (median 0 working days) when they sent responses to OIA requests.

However, these differences were not well captured by the statistics gathered and reported by the State Services Commission. Even worse, this behaviour was obscured by those statistics. The SSC reported that the Ministry of Health responded to 73.4% of requests on time, whereas MPI responded to 87.2% of requests on time.

In an even more obvious example of how the SSC's statistics can obscure bad behaviour in this area, MSD had an average of -0.01 working days remaining (mean was 0 working days) when they responded to requests, but the SSC reported them as responding to 96.8% of requests on time.

As you know, the Official Information Act has two primary timeliness requirements around when a notice of their decision on a request must be sent to the requester:

First, barring extensions, the decision must be sent no later than 20 working days after receipt of the request. This is the only criterion used in the statistics reported by the SSC.

Second, the decision must be sent as soon as reasonably practicable.

It is this second requirement that is not being adhered to in so many cases. Part of the difficulty here is that it is very hard to prove in any individual case that a response was not sent as soon as reasonably practicable. For example, in February 2017 I sent an OIA request to New Zealand Police asking for them to specify where a specific piece of research, which they had referred to in a separate OIA response and said was "freely available on the internet", could be found.

I received a response 20 working days after my request had been received by NZ Police, at 5:03pm. Their response told me they were refusing my request under Section 18(d) because the information was publicly available, though they did not specify where it could be found.

Among other things, I considered this a clear case where the response had not been sent as soon as reasonably practicable. I laid a complaint with the Office of the Ombudsman (ref 448583) regarding both the refusal and the last minute response.

However, my complaint regarding the response not being sent as soon as reasonably practicable in this case was not upheld:

"I note that the Police made a decision on your request within the maximum timeframe permitted under the OIA. I also note that the Police deal with a large volume of information requests; and therefore it is not unreasonable to expect that, in a number of cases, the Police will use the maximum statutory time available to make a decision on a request."

Of course, the specifics of any individual complaint are important, and I don't mean to challenge this individual decision here. I only mean to use this one as an illustrative example of a wider problem.

Sadly, NZ Police were one of the few agencies that refused my request for OIA response time data last year, so I have not been able to see how widespread this problem is in their organisation. From looking at this data for various other agencies, however, I think it is clear that there is a widespread pattern of responding to requests later than would be reasonably practicable.

I consider the behaviour of the State Services Commission to be a good example for other agencies to follow. Though many of their responses were sent the day before they were due, almost all of those were requests that were extended, and the durations of their extensions appear likely to be well-considered regarding how much extra time is required to send an appropriate response. They also did not appear to have a practice of sending notices of extension at the last minute.

Clearly, this problem is a matter of practice rather than legislation. I think part of the problem is that the statistics collected and reported by the State Services Commission encourage this gaming of the system, where responses are sent within the statutory time limit but not as early as they reasonably could have been.

To help address it, I think **changing the statistics that are gathered and reported** to measure this behaviour would help. However, I am also aware that too much of a focus on the timeliness of a response may also lead to agencies unnecessarily refusing requests in order to send a response earlier. So I think it would also be appropriate for the SSC to **collect and report statistics on how many requests are granted** (in whole or in part) vs how many are denied.

Length of extensions

As well as asking for information on when responses were sent, I asked agencies for information about how they extended requests. This behaviour was more variable, but some agencies (for example, the Ministry of Business, Innovation and Employment) commonly sent notices of extensions exactly 20 working days after having received a request.

The OIA does not require that notices of extension must be sent as soon as reasonably practicable. This is an obvious and easily remedied oversight in the legislation, which **should be amended**.

Perhaps just as worrying is that some agencies seemed to have a practice of extending requests by whole numbers of weeks, and then often sending their responses on the last allowable day. Though the effect may seem small, this practice does seem to lead to information being released later than would have been reasonably practicable.

Among the agencies who provided data to me last year, the Ministry of Foreign Affairs and Trade was the worst offender in this regard. Every single one of their extensions were by a multiple of five working days, and extended requests were still quite likely to not have a response sent until the extended due date.

Similar practices could be seen among other agencies, for example MBIE tended to extend requests by 10 or 20 working days most of the time, and the Ministry of Justice also had spikes at multiples of five working days (though the Ministry of Justice extended far fewer requests than most agencies).

Unlike the issue of responses being sent at the last minute, I don't think this problem is a matter legislation. I'm not sure how this could best be addressed — clearly it would be appropriate in roughly 20% of cases in which a request is extended to extend it by a multiple of five working days, so discouraging that response would probably just be unhelpful.

Effectively, the duration of an extension would not be a problem if a response is still sent as soon as reasonably practicable, so I hope **my recommendations regarding last minute responses** would be able to also address this issue.

Eligibility requirements

Some agencies have practices of demanding proof of eligibility under the OIA from some or all requesters. Though it would be difficult to prove in any individual case, I think this tactic may be used in some cases to delay or deter requests that are seen as undesirable or potentially embarrassing.

For example, NZ Police and Treasury have both commonly challenged the eligibility of some requesters who make requests on FYI. These challenges typically take the form of asking them to provide private contact information, often including their postal address Here are some examples from them and other agencies this year:

NZ Police:

- https://fyi.org.nz/request/9337-auror-retail-crime-reporting-system#incoming-31189

Treasury:

- https://fyi.org.nz/request/9972-effects-of-additional-police-officers#incoming-33423
- https://fyi.org.nz/request/9351-all-reports-studies-memorandums-aide-memoirs-for-nz-government-investment-of-45-of-shares-in-chorus#incoming-31289
- https://fyi.org.nz/request/8794-treasury-graduate-analyst-training-programme#incoming-30895

University of Auckland:

- https://fyi.org.nz/request/9372-mbchb-rank-list#incoming-31328

Pharmac:

- https://fyi.org.nz/request/9190-list-of-most-most-costly-and-most-prescribed-medications?nocache=incoming-31522#incoming-31522

here are also numerous other examples available on FYI from before this year, such as this one from November last year in which the Ministry of Foreign Affairs and Trade refused a request after the requester did not provide proof of their eligibility: https://fyi.org.nz/request/8760-inquires-into-the-burglary-of-university-of-canterbury-academic-anne-marie-brady#incoming-29715

This behaviour is not isolated to these recent requests. Treasury appears to demand this information systematically, at least for requests received via FYI, and I have seen NZ Police demand this information from many people on FYI over the years, though I have never been able to figure out how they decide whose eligibility to challenge.

I do not believe that the eligibility requirements in the OIA fix a real problem. The LGOIMA, for example, has no eligibility requirements, and as far as I am aware this absence has not resulted in any problems. The existing guidelines already suggest that agencies might want to grant requests from people who are not eligible under the OIA.

However, the eligibility requirements do enable this behaviour, which I think runs clearly counter to the spirit of the OIA and the Principle of Availability. Though it could be described as a practice issue, more realistically I think this is a legislation issue, and that the best way to resolve it would be to **remove the eligibility requirements from the OIA**.

Little disincentive for delaying requests

Currently, the worst that can happen when an agency unnecessarily delays the request is that they will be asked to revisit it. In many cases, where an agency may have failed to send a timely notice of decision or extension, a request is likely to be resolved before the Office of the Ombudsman would be able to investigate a complaint regarding a delay deemed refusal.

This is similarly true for cases in which a request may have been delayed due to an agency having demanded proof of the requester's eligibility prior to fulfilling a request. Though in these cases it is unlikely that the request would be resolved before a complaint would be investigated, there would still be no real repercussions for the agency having caused an unnecessary delay, or any disincentive from them continuing with the same behaviour.

I think this issue could be **largely resolved by my prior recommendations** - removing the eligibility requirements from the OIA and changing what statistics are collected and published by the SSC to better incentivise timely responses instead of encouraging responses at the last minute.

However, there are **some related behaviours that could not be solved in this way**. For example, NZ Police has occasionally responded to requests for official information by telling the requester that they must make their request either via a particular form on the NZ Police website, or by physically visiting a police station. This advice is incorrect, and leads to the release of information being unnecessarily delayed or wrongly denied, but there are no repercussions for this unlawful behaviour to disincentivise it from continuing.

Confusing definitions of "working day"

A recent amendment to the LGOIMA has changed its definition of "working day" to be inconsistent with the definition used the OIA. The changes were essentially twofold:

1. Allowing regional anniversaries to not be counted as working days, if an agency is based in that region
2. Moving the "summer break" period five days earlier, from December 25-January 15 to December 20-January 10.

I am under the impression that this change to the LGOIMA was intended to bring it in line with the Building Act 2004. Unfortunately, the move of the "summer break" has made the LGOIMA inconsistent with the OIA

in this respect, and the exclusion of regional anniversaries has introduced significant complexity into the process of calculating due dates for requests made under the LGOIMA.

This has resulted in the useful "OIA Response Calculator" tool on the Office of the Ombudsman's website (http://www.ombudsman.parliament.nz/) no longer being applicable to requests made under the LGOIMA, and FYI is also no longer able to reliably calculate due dates for requests made under this act.

I think consistency is useful, but it is also very useful to be able to quickly and easily calculate the due date of an OIA request, to help hold agencies for account and prevent disputes around the due date. I would like to see **the "summer break" of the OIA and the LGOIMA be consistent**, but I do not think the exclusion of regional anniversaries from the definition of "working day" would be a good idea.

Inaccessible responses

I have written previously (https://honestuniverse.com/2017/11/17/oia-accessibility/ and https://honestuniverse.com/2018/01/31/oia-accessibility-follow-up/) about the issue of inaccessible responses to OIA requests. For a long time, it has been common practice for many agencies to print the response they intend to send, physically sign it, and then scan it before sending it. Often, this results in a PDF file based on an image of the response letter.

This makes responses inaccessible to people with visual disabilities, who rely on assistive software such as screenreaders. It also makes it difficult to search for text in large documents that have been released. In the case of tabular data, using an inaccessible format typically means the information will all have to be transcribed either by hand or via specialised software into a more usable format, such as a spreadsheet, before it could be useful.

Currently, the only way around this is to use Section 16(2) of the OIA to request that all information be released in an accessible format, and hope that agencies will abide by their requirements here. I have been doing this for over a year now, and still I have frequently received inaccessible responses. Many agencies simply don't seem to take that part of a request seriously.

I think the right way to address this problem is to **add accessibility as a specific requirement of the OIA**. I think this could be done via **an amendment to Section 16** so that, where reasonably practicable, information must be provided in an accessible format. The specifics of what agencies should aim for in terms of accessibility could then be clarified and kept current via guidelines.

This will allow for agencies to still release information in its existing form where converting it into an accessible format would take a significant amount of work (for example when they only possess a printed copy of a document), while also requiring that information held electronically must be released in an accessible format where possible (for example releasing tabular data in a spreadsheet).

I anticipate that many agencies who currently struggle with this would also appreciate guidance on how to meet such a requirement. Various free or otherwise affordable software exists which can be used to create accessible PDFs where information has been appropriately redacted, and it is possible for response letters to be physically signed and still released in an accessible format after they have been scanned. Some government agencies already use such software for this purpose.

Providing notice of a decision vs. releasing information

Currently, the distinction between when an agency must send a notice of their decision on a request and when they must release the information are not well understood by many requesters. To be fair, this is in large part due to the fact that many agencies will send the requested information alongside the notice that they will grant a request.

However, this is not always the case, and there are a few agencies that seem to abuse the distinction in a way that leads to delaying the release of information, and sometimes also keep requesters in the dark about when they can expect to receive it.

When I was examining how agencies respond to OIA requests last year, I found that the Ministry for Social Development uses this distinction in a way that delays the release of information. In just over a third of requests during the six month period I asked about, they sent a notice that they would grant a request without including the requested information, instead setting an internal deadline for themselves regarding when they should release the information.

The OIA's requirement as to when information should be sent without "undue delay" is included in Section 28(5), regarding how the Ombudsmen should investigate and review decisions on requests, rather than in Section 15, which describes how agencies should make and communicate their decisions on requests. For new or even experienced users of the Act, this makes it difficult to understand.

I have seen experienced journalists ask if the approach of sending a notice that a decision would be granted but not sending the information until later is legal, because of how difficult this is to understand and how rarely it comes up. Unlike extending a request, there is no requirement for an agency to keep a requester informed of when they could expect information to be made available to them, and the interpretation of what constitutes an "undue delay" is not easy for requesters to find or understand.

I think this is primarily a legislation issue.

I think the OIA could be improved by **adding requirements around when information should be sent to a requester** in the event of a request being granted, and **how they should be informed of timelines**. Ideally, I would like to see essentially the same requirements as currently exist for sending notices of extension for a request, i.e. that the information should be sent as soon as reasonably practicable and no later than within 20 working days of receipt of the request, and that **if this timeline must be extended the agency must notify the requester** of the reason for the extension and its duration.

Of course, if a request is extended, the decision to grant it may not be made within the first 20 working days. So the requirements for when an agency can extend the time limit for providing information would need to be somewhat different.

If an amendment along these lines is considered, its potential interaction with the ability for agencies to refuse a request on the basis that the information requested will soon be publicly available should also be considered. **It should not be considered acceptable for agencies to refuse a request for information on these grounds unless it would not be reasonably practicable for them to provide the information ahead of when it is expected to be made publicly available**, and if an agency decides to make the information publicly available in response to having received a request for the information then **they should not be able to be used as a reason to refuse the request**.

NZ Police exemption from Ombudsman investigations

In the most recent set of official OIA statistics published by the State Services Commission, following the implementation of a new OIA management tool by NZ Police, it appears that NZ Police handle more OIA requests (21,225 in Q3-4 2018) than every other Public Service Department and Statutory Crown Entity subject to the OIA, combined (18,834 total in Q3-4 2018).

However, the NZ Police are exempt from being investigated under the Ombudsmen Act.

Unfortunately I don't have data, because NZ Police was one of the few agencies who refused to release data to me on how they respond to OIA requests, but in my experience of making OIA requests to NZ Police and viewing others' public OIA requests on FYI, NZ Police appears to be one of the worst behaved agencies subject to the OIA.

Issues such as incorrectly informing requesters that they must fill out a form on the Police website or personally visit a police station in order to make a request, selectively requiring proof of eligibility by asking for a requester's home address and phone number, late responses, ignoring entire requests or parts of them, have been common.

I am currently waiting for NZ Police to respond to a question that I asked over six weeks ago, having sent a follow-up email a few days ago but not yet received any response. I also received clarification from NZ Police today that the reason why they did not send a notice of extension on another person's request, which was due to receive a response no later than 2019-03-18 but did not receive a response until 2019-04-08, was because they had no legal grounds to extend the request. So instead they chose to leave the requester in the dark about when they could expect a response.

Part of the cause of these ongoing issues has undoubtedly been due to poorly trained staff not understanding the requirements around the OIA, but there is little that can be done regarding these patterns of behaviour unless Police choose to address them, because the Office of the Ombudsman cannot investigate them.

This is a legislation issue, not merely one of practice. I think it is integral to the function of the OIA that **the Office of the Ombudsman should be able to investigate NZ Police regarding its general handling of requests for official information**, instead of being restricted to only investigating complaints about individual requests, lodged by the requester, under Section 28 of the Official Information Act.

Thank you again for the opportunity to provide feedback on the Official Information Act. I think a review of the Official Information Act, which may also need to consider amendments to related acts such as the Local Government Official Information and Meetings Act and the Ombudsmen Act, should take place. As part of this review, I think a consultation with the wider public should take place.

I would be happy to arrange a time to discuss my submission, and answer any questions you might have about it, if that would be helpful.

Ngā mihi,
Mark Hanna

Bottcher, Jenna

From: Max Rashbrooke s9(2)(a)
Sent: Thursday, 18 April 2019 4:04 PM
To: OIAfeedback@justice.govt.nz
Subject: Submission to OIA consultation

To whom it may concern,

This email is in response to the Ministry of Justice's call for feedback on how the Official Information Act is working in practice.

I have written extensively on open government, including the publication of a 2017 Institute for Governance and Policy Studies working paper, *Bridges Both Ways*. I also have direct practitioner experience of the Act, as a journalist.

I trust that others will submit in greater detail on specific points of the Act. The principal point I would like to make here is that I believe a full review of the legislation is required, not just practice improvements.

The Act has served us remarkably well, but it is nearly 40 years old; given the extraordinary changes in technology, citizen expectations and communication in the intervening decades, it would be extremely surprising if it were still entirely fit for purpose. I do not believe it is.

I believe the Act has a number of significant deficiencies that have been highlighted in recent years, including but not limited to:
– unwarranted interference by ministers and their staff in the decisions to release, or not release, information;
– a commercial confidentiality provision that is used to prevent information of very strong public interest from being released (one example recently, albeit it relates to local government, is the refusal to disclose the total amount of fines levied on non-compliant Wellington bus operators);
– inconsistent and sometimes excessive charges for information;
– manipulation of the process, for instance by releasing information requested by one journalist to another regarded as more favourable to the government (anecdotally I know that this happens, although I am not sure if it has been formally recorded);
– excessive and unjustified redactions of information;
– misuse of the provisions for delaying requests, such that a decision to delay responses by 20 working days is now virtually standard for any complicated request;
– a failure in the Act to sufficiently prioritise automatic disclosure of various classes of information, and a consequent lack of such disclosure in practice;
– very significantly, the lack of any meaningful penalties or sanctions for those who breach the provisions of the Act;
– a lack of clarity and a general inconsistency in terms of which public bodies are, or are not, covered by the Act;
– the failure to give sufficient weight to the public interest test, such that it is often inappropriately outweighed by commercial confidentiality provisions, as above;
– the failure to automatically cover private companies and non-governmental organisations delivering public services, when there should be a presumption that their contracts will be automatically disclosed, with redactions only in very limited circumstances;
– the failure to endow the Ombudsman, or indeed another such body, with the full suite of powers and responsibilities needed to ensure full openness of information, including formally stating training, education and other such responsibilities.

Some of these problems were laid bare in an extremely long and drawn-out complaint that I made against Corrections' handling of one of my requests, as below:

http://www.inequality.org.nz/the-sad-end-to-my-near-five-year-oia-battle-with-corrections/

Albeit such a long process would now probably not occur, given the greater resources now enjoyed by the Ombudsman, the illegitimate (in my view) use of commercial confidentiality provisions to prevent the release of genuinely public-interest information will undoubtedly recur.

While many of the above concerns could be *partially* addressed through practice improvements and attempting to use soft power to change agencies' culture around official information, I do not think any of them can be *completely* solved in this manner; and certainly all of them taken together represent far too great a set of deficiencies to be dealt with in any other manner than through embedding a different set of requirements in a new Official Information Act.

I appreciate that such an overhaul of the Act will be time-consuming and difficult, especially amidst an already crowded legislative programme. And I appreciate that decision-makers rightly regard new legislation as a step to be taken only if it is not possible to reach improvements by other means. Nonetheless I think the government must face up to the fact that, as numerous commentators and external reviews have found, a new Act is indeed needed to ensure that we have legislation fit for 2022, not 1982.

Regards,

Max Rashbrooke

--
Max Rashbrooke
Journalist, author and academic
Author of *Government for the Public Good: The Surprising Science of Large-Scale Collective Action* (BWB, 2018)
Editor of goodsociety.nz
Senior associate, Institute for Governance and Policy Studies, VUW

s9(2)(a)

Bottcher, Jenna

From: Michael Stockdale s9(2)(a)
Sent: Thursday, 14 March 2019 1:46 PM
To: OIAfeedback@justice.govt.nz
Subject: Response to OIA requests.

I have made numerous requests for information via the Official Information Act and in the main the response has been satisfactory.
However I do remember at least one response that was not .
After the then Minister of Justice Amy Adams made a payment of $925000 to David Bain I asked her to supply me with the details as to how that amount was arrived at. She refused, just saying it was a "global sum".
I then asked the Ombudsman if he could assist, but he replied that he was unable to.
So here we have a payment of $925000 made to a man who almost certainly murdered his family and we are not allowed to know how that figure was arrived at. No transparency there. Mr Karam is a master manipulator and I believe a "Dutch Auction" took place which ended with an amount of $925000 being agreed to. I understand that David Bain's legal team was "sneaked " in to the Beehive for a meeting with Ms Adams and the participants were sworn to secrecy. This should not have happened, in my opinion. Ms Adams did advise that she didn't know if that payment was split between Bain's legal team and Bain himself, but I still believe the public should have been told how that figure was arrived at.

Regards
Mike Stockdale
Author The Bain Killings Whodunnit?

This submission is based on personal observations drawn from several years spent answering OIA requests.

It is written at the end of three exhausting years for agencies. There were never more OIAs at a single time than in the 18 months after the 2017 election. This easily eclipsed the previous record holder, which was the 18 months before the election.

By far the biggest influences on OIA timeliness are resourcing and workload. If responses are late, the real reason isn't Ministerial interference or agency game playing, it's the complexity of the task at hand, and the amount of expertise necessary to manage it. The research, compilation, writing, redacting, editing, consultation, reporting and authorisation required to get a response out the door is significant.

The people that respond to requests are the same people who respond to letters to Ministers, proactively release information and answer written Parliamentary questions. These work items are all done in the interests of democratic participation and Ministerial accountability.

Over the last three years, we discovered that the OIA provided a strong framework for the release of information. However, some problems persist, and agencies which use the OIA to provide answers are sometimes often just left with questions.

Accessibility

- Too often, public servants are required to guess what people want, even after they've sought clarification. Requests can be as broad as they are vague. Requesters are simply not getting good enough advice about using the OIA,either from agencies or the Ombudsman. Make it a legislative requirement for the Ombudsman to raise awareness of the OIA, and to provide clear, accessible guidance material for requesters. Being able to refer to this at the point of clarification would provide agencies
- Section 5 should better reflect the rights of requesters. It should explain how to make a request, what can be asked for, how to do it, and when a response will be provided. It (like the rest of the OIA) needs to be written in plain English .
- If the public interest is important enough to swing the balance on redactions, it is important enough to define. The public interest largely sits in ensuring the requester is given information sufficient for them to reasonably understand a Minister or agency's decisions, motives and actions.

Timeframes

- Agencies should be able to better separate the decision from the work, and should be incentivised to make decisions on responses up front. Give agencies a short period to relay a decision (on a duly particular request), and a slightly longer one to provide documents. This leaves room for agencies to plan and undertake proper consultation across an entire workload by dividing requests into a discovery phase and a production phase.

Expertise

- Section 6 puts the national interest ahead of the public interest. The Ombudsman is a singular referral point, regardless of the reason, subject matter or harm. The Auditor General, Solicitor General and the Chief Coroner (among others) should be the first point for referral for redactions and refusals under sections 6, and 18(c).
- The State Services Commission's role in the process is considerable, but not official. The

legislation should give the SSC a role in managing system wide capacity and building agency expertise.

Redactions and refusals

- Introducing the concept of materiality to the OIA would help clarify what it means for information to be “out of scope”. In short, it means: you didn't ask for this. Information that hasn't been requested doesn't need a decision made on it. Make this a s9 redacting ground.
- Make lack of due particularity a s18 refusal ground.
- Address concerns about the release of staff contact information. Section 9(2) could be amended to allow information to be withheld because the information is not material to the request, and withholding information about the staff member concerned does not diminish reasonable understanding of the subject matter or affect the public interest.
- Some grounds are used either little or not at all, and agencies would struggle to even identify their purpose, yet alone their application. Get rid of sections 9(2)(d), 9(2)(e), 9(2)(f)(ii) and 9(2)(f)(iii).
- Substantial collation and research should be in its own section and subject to a public interest test.
- Split section 18(h) in two, and allow requests to be refused because they are vexatious *or* trivial. Agencies may be able to work out how much they spend on toilet paper, toner, pens, flowers and coffee and if asked, but there is very little public interest in this information, and it diverts resources away from significant and complex requests.

Neither confirm nor deny

- Information about agency staff rides a fine line between personal and official information. A lot of agencies will recently have responded to a request for information that included a reference to staff suicides. An agency shouldn't have to discuss whether it even holds this information. Right now, if someone decides it could make a good story, we would need to make an earnest attempt to respond. This sends an unwelcome signal to agency workforces that personal lives are public. This can apply to subjects such as sexual orientation, domestic violence and mental health.

11 April 2019 S19.04

Submission to the Ministry of Justice public consultation on the Official Information Act 1982

Introduction

0.1. The National Council of Women of New Zealand, Te Kaunihera Wahine o Aotearoa (NCWNZ) is an umbrella group representing over 200 organisations affiliated at either national level or to one of our 15 branches. In addition, about 450 people are individual members. Collectively our reach is over 450,000 with many of our membership organisations representing all genders. NCWNZ's vision is a gender equal New Zealand and research shows we will be better off socially and economically if we are gender equal. Through research, discussion and action, NCWNZ in partnership with others, seeks to realise its vision of gender equality because it is a basic human right.

0.2. NCWNZ welcomes the opportunity to make a submission to the public consultation on the Official Information Act 1982 (the Act). This submission was prepared by the NCWNZ Public Issues Standing Committee, within the framework of the NCWNZ Gender Equal NZ Movement and the Observations of the United Nations' Committee on the Elimination of Discrimination Against Women (CEDAW). In particular, it refers to the 2018 CEDAW Concluding Observations on the New Zealand 8th periodic report which recommends, in clause 12(c) that the state party include a gender-specific, rather than gender-neutral approach in its legislation, policies and programmes. This is in line with paragraph 5 of CEDAW's general recommendation No. 28.[1]

0.3. It has not been possible to consult with all NCWNZ branches, individual members and member organisations within the timeframe for submissions.

1. Executive Summary

1.1. NCWNZ welcomes the ongoing work to improve practice relating to the Act and, more broadly, the encouragement for all citizens to participate in democratic processes. NCWNZ also welcomes the

[1] Committee on the Elimination of Discrimination against Women. 2018. Concluding observations on the eighth periodic report of New Zealand. CEDAW/C/NZL/CO/8. https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fNZL%2fCO%2f8&Lang=en

acknowledgement that this work must reflect and respond to the increasing diversity of New Zealand society.

1.2. However, as there has been no gender-specific analysis of the purpose, accessibility and use of the Act, it is not possible to assess the impact or effectiveness of the different actions taken so far and whether only further practice improvements or a fundamental review of the Act is required.

1.3. NCWNZ recommends that the Act be reviewed and that the review include a gender specific analysis of how it is working for women. In particular, the review should address how information released under the Act can be made more accessible to women, as major consumers and employees of public services and as citizens wishing to participate in democratic processes and understand how Government policy decisions are made.

2. Themes and commitments in the National Action Plan

2.1. This consultation on the Act is one of the series of commitments made by Government within the overarching framework of the Open Government Partnership NZ National Action Plan 2018-2020.

2.2. NCWNZ strongly endorses the three themes of the National Action Plan:

- Participation in democracy
- Public participation to develop policy and services
- Transparency and accountability.[2]

2.3. In particular NCWNZ supports the recognition of the benefits and challenges of increasing diversity and the statement that:

> *With the shift to MMP, our Parliament has become more diverse and representative of modern New Zealand society. We have seen an increase in the number of women, Māori, Pacific, and Asian Members of Parliament. We aim to deliver the commitments in this Plan in a way that reflects a commitment to diversity and inclusiveness.* [3]

3. Gender Specific approach

3.1. NCWNZ is appreciative of the considerable effort put into responding to earlier criticisms of the Act, with measures to increase access and more pro-active release of information. It is acknowledged that there is now a wide range of reports, policies, strategies and other documents available on the websites of central and local government agencies. It is also acknowledged that there are steady improvements reflected in the OIA statistics for the six months to December 2018, showing increases

[2] National Action Plan p.30 http://ogp.org.nz/assets/Publications/91b28db98b/OGP-National-Action-Plan-2018-2020.pdf
[3] ibid P.9

in numbers of requests submitted on time (95%) and a large increase in numbers of agencies publishing OIA information on their websites.[4]

3.2. NCWNZ welcomes the progress made on a cultural shift in the public services to more openness and sharing of information with the public. The National Action Plan, however, acknowledges further improvements are needed, as reflected in the Plan's "Two Ambitions" for Official information:

New Zealanders:

- *Can have confidence that the regulation of official information remains fit-for-purpose.*
- *Have equitable access to official information released in response to specific request.*

3.3. However, NCWNZ is disappointed that the National Action Plan makes no reference to gender, barriers to civic participation by women and if and how, women are accessing and using official information.

3.4. Women are major consumers and employees of public services, and it is important to them that those services are transparent and accountable: yet NCWNZ questions whether many women are aware of the Act, its relevance to them and much less have the knowledge and confidence to use it. At present, release of OIA information is driven by individual cases, rather than a legal requirement to publish, which structurally discriminates against those already disadvantaged in society. A review of the Act should include exploration of a legal duty to publish, along with tools for easy access, such as accessible directories and "disclosure logs" as is already the case in a number of other jurisdictions.

3.5. Actions to improve practice on the Act must include specific actions to make women more aware of the Act, its relevance to them and wide and easily understandable dissemination of information that can be obtained under the Act.

3.6. Another very important point is that the Act is often used for research and advocacy about legislation and policy proposals. Recent examples are information relating to gender pay/promotion gaps in the public sector and advice to Cabinet on the impact of Fair Pay Agreements.

3.7. Therefore it is fundamentally important that those analysing and responding to legislative and policy proposals are able to access the advice Government is receiving from officials and other parties, so they can support, complement or challenge that advice.

4. Encouraging a cultural shift through review of the Act

4.1. From a broader human rights approach, a review of the Act could help shift the culture around the freedom of information, greater transparency in Government (and elsewhere), and the proactive release of information. This would only be to the advantage of women and other groups who experience structural discrimination.

[4] State Services Commission March 2019 www.ssc.govt.nz/latest-oia-statistics-released

4.2. The view of the Law Society is supported:

> *In reviewing the legislation, it is worth asking what further changes might be needed to the culture and mind-set of those operating the legislation in order to achieve its aims, and how these might be encouraged…*[5]

5. Conclusion and Recommendation

5.1. NCWNZ welcomes the ongoing work to improve practice relating to the Act and more broadly, the encouragement of all citizens to participate in democratic processes. NCWNZ supports the acknowledgement that this work must reflect and respond to the increasing diversity of New Zealand society.

5.2. However, there has been no gender-specific analysis of the accessibility and use of the Act and information obtained under it by women. Therefore, it is not possible to assess the impact or effectiveness of the different actions taken so far for women, especially those most reliant on public services.

5.3. NCWNZ, therefore, recommends that the Act be reviewed, including a gender specific analysis. This is in line with the 2018 CEDAW recommendation in the Concluding Observations on NZ's 8th periodic report, clause 12(c), that the state party include a gender-specific rather than gender-neutral approach in its legislation, policies and programmes.

Pip Jamieson
NCWNZ Board

Raewyn Stone
Public Issues Standing Committee

[5] Law Commission 2012 The Public's Right to Know para 4.86; p.87 (https://lawcom.govt.nz/our-projects/official-information-act-1982-and-local-government-official-information-act-1987

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NEW ZEALAND AIR LINE PILOTS' ASSOCIATION

SUBMISSISSIONS ON OFFICIAL INFORMATION SURVEY

18 April 2019

New Zealand Air Line Pilots' Association (NZALPA)

NZALPA is the Voice of Aviation. We represent over 2,500 pilots and air traffic controllers throughout New Zealand in professional, technical and industrial issues.

Our most significant contact with the Official Information Act (OIA) is consistently in the area of members of the media, and members of the public, seeking information about accidents or incidents which are actively under investigation as safety related events by the aviation operator's safety investigation department, by the Civil Aviation Authority, by the Transport Accident Investigation Commission or by the Police or Coroner.

Mostly, but not always, these requests relate to the fact that "there may be a story here" or there is a personal issue. Generally, our concern is that the information, if released, may have an unintended impact on the investigation itself. Seldom is there a valid reason for the information to be released before the investigation is complete and a report has been written. Trial and/or investigation by the media is seldom helpful.

This issue is addressed internationally in Annex 13 of the ICAO Convention to which New Zealand is a signatory. Clause 5.12 of the Convention provides:

The State conducting the investigation of an accident or incident shall not make the following records available for purposes other than accident or incident investigation, unless the competent authority designated by that State determines, in accordance with national laws and subject to Appendix 2 and 5.12.5, that their disclosure or use outweighs the likely adverse domestic and international impact such action may have on that or any future investigations:

(a) cockpit voice recordings and airborne image recordings and any transcripts from such recordings; and

(b) Records in the custody or control of the accident investigation authority being:

2) all communications between persons having been involved in the operation of the aircraft ....

4) recordings and transcripts of recordings from air traffic control units .....

As well as the issue of whether release of information of this type will make pilots and air traffic controllers wary of being recorded and, as a result, overly cautious or pedantic about the words they use (an "adverse domestic and international impact") NZALPA would also argue that those protections should also apply to information which is part of an investigation being carried out by an aviation

operator at the requirement, or under the designated authority, of the relevant aviation investigatory body.

Unfortunately, the Ombudsman's Office maintains that the obligation to release information under the Official Information Act overrides the provisions of all other legal requirements in New Zealand including the obligations voluntarily entered into by the New Zealand Government in relation to the ICAO Convention.

It is NZALPA's submission that the Act ought to be reviewed to make better provision for the non-publication of information which forms any part of an aviation safety related investigation.

Thank you for the opportunity to make this submission.

Adam Nicholson

Legal Officer

NZALPA

s9(2)(a)

NEW ZEALAND BEEKEEPING INC
RD 1, Ashburton 7771
Email info@nzbeekeeping.co.nz
www.nzbeekeeping.co.nz

SUBMISSION:
FROM NEW ZEALAND BEEKEEPING INCORPORATED.

TO THE CONSULTATION:
MINISTRY OF JUSTICE - OFFICIAL INFORMATION ACT REVIEW

Introduction

This submission is on behalf of NZ Beekeeping Inc (NZBI). NZBI represents several hundred commercial beekeepers across New Zealand – mainly family businesses.

NZBI is content to be identified as the author of this submission and for it to be published.

Background

Beekeeping has grown rapidly in New Zealand in recent years, especially as the value of manuka honey has risen. That has made the industry complicated, and often politically divided in the face of significant growing pains. These challenges range from important biosecurity threats through to the continuing controversy around the definition of manuka honey.

NZBI's experience of the Official Information Act (OIA) in practice is almost entirely in relation to Ministry for Primary Industries (MPI). Our experience is not a happy one; indeed, we consider that MPI consistently flout the law, and certainly pay little heed to its principles. In their case, the Ombudsman has not been able to act as an effective check.

Against that background, NZBI has set out its views on your specific questions.

1. In your view, what are the key issues with the OIA?

The OIA has been part of the administrative and constitutional landscape of New Zealand for nearly 40 years. Most other advanced economies have similar laws, and the OIA is probably unexceptional in that regard. Overall, NZBI considers the Act is good and the concept sound. However, our experience of the OIA in practice is anything but sound, at least with MPI. MPI has, in recent years sought to delay, to excuse and to invent reasons for non-compliance with OIA requests. Among these excuses has been:-

a. Resort to the claim that information was provided by a foreign government that its non-disclosure was necessary for foreign policy reasons, when we knew from departmental staff that this was not so;

b. Misleading claims as to the privacy status of information, something that also emerged during the *mycoplasma bovis* crisis, when the Privacy Commissioner publicly stated that MPI's claims that information was protected from disclosure was not correct;

c. Claims that information could not be released as it was subject to peer review ahead of publication (this was in relation to manuka honey science) – so the department placed the academic careers of its own staff ahead of its OIA responsibilities;

d. In the case of NZBI, we were invited to join a bee pathogen programme group, and then told that it was subject to a 'confidentiality agreement' that would have effectively purported to contract away our OIA rights. We refused, and proposed an alternative agreement that the department accepted – showing that the original agreement was excessive;

A related pattern of avoidance by the Management Agency for the American Foulbrood Pest Management Plan (AFB PMP) has also been evident. Apiculture NZ Inc are the management agency for the AFB PMP as provided in part 5 of the Biosecurity Act 1993, and subject to the OIA in this respect.

It has been the experience of NZBI, and some of our members, that Apiculture NZ also appear to avoid their obligations under the OIA and would prefer not to be placed under scrutiny.

It is ironic Apiculture NZ initiate punitive measures against beekeepers they consider are 'non-compliant' yet as an organisation fail to comply with the Official Information Act.

There are other examples too. MPI staff appear to view the OIA negatively and appear to respond accordingly. This seems to be a feature of the entire department. If there is nothing to hide then why not co-operate and supply information as quickly as possible? We are left with the conclusion that the abuse of the intent of the Act that we have seen suggests that the department does have something to hide.

The main issue is that people/organisations requesting information, do need assurance that any department subject to the OIA will be acting honestly, transparently and with integrity and fairness.

2. Do you think these issues relate to the legislation or practice?

Practice. However, the legislation does not have provision to address obtuse behaviour of the organisation in question. The Ombudsman has limited powers with few staff, and is not equipped to deal with deliberate foot-dragging or misleading behaviour. There are no further options open to a person or organisation to seek transparency or accountability.

3. What reforms to the legislation do you think would make the biggest difference?

Perhaps consideration could be given to a dedicated agency to oversee the OIA process. One that has some powers and respect that organisations should not 'play games' otherwise there are consequences.

We envisage the OIA requests could be made to a central agency who then log the request and seek action from the organisation responsible. The agency would be also in a position to oversee the process and negotiate any costs in providing the information.

In theory a central agency would be in a position to see which organisations took seriously their responsibility for transparency and which organisations were 'hiding the truth'. The agency should be in a position to seek removal of those personnel from organisations that do not conform to the requirements of the Act or were obtuse in providing information that was relevant to the request. At present there is no 'consequence' for an organisation or a staff member within an organisation that fails to comply with the OIA. Personal responsibility could be enhanced if there was a possibility of serious consequences in the event of being found lacking in providing OIA information in an accurate and timely manner.

Thank you for considering our submission.

JANE LORIMER
PRESIDENT

The Case for a Full Review of the Official Information Act

17th April 2019

Summary

The NZ Council for Civil Liberties firmly believes that New Zealand's Official Information Act needs a comprehensive review.

While a radical and far-sighted piece of legislation when it was passed in 1982, there have since been many changes in the way the world and government works. Shortcomings have become obvious and new opportunities have arisen. New Zealand's official information laws are now ranked only 51st in the world by Global RTI Rating and this shows how much scope we have to do better.

In that time the Official Information Act has become a keystone of the New Zealand government's transparency and openness. Any review must therefore also be done in a transparent and open process, with full participation by those who use the OIA - the people of New Zealand.

NZCCL Review

The Official Information Act is the legal expression of a very simple idea - we've got a right to know what our government is doing. The OIA is used every day by journalists, activists, the curious, and people wanting to know about the government actions and policies that affect their lives. It has been a powerful tool for open and accountable government - but it's shortcomings are becoming harder and harder to ignore.

Taking notice of the increasing number of complaints about the failings of the OIA, we thought to help the change process along by undertaking our own review (available here - https://nzccl.org.nz/content/a-better-official-information-act). We recommended radical changes including:

- Establishing a new Open Government Commission to take over enforcement of the act from the Ombudsman.
- Enhancing accountability for agencies subject to the OIA through both reporting and penalties.
- Create a new crime of actively subverting the OIA.
- Opening up government-commercial relationships by implementing open tendering and contracting.
- Any many more changes, both major and administrative.

Current Problems

When talking to journalists, it's not whether they have a bad OIA story, but how many they have and how bad they are. These problems are shared by activists, interested members of the public, and anyone else using the OIA to access government information.

The problems include:

- Political spin doctors are increasingly limiting and controlling the flow of information to the public.
- The 20 day limit is treated as a target rather than a limit, and is often ignored or delayed for no good reason.
- The public service increasingly prioritises avoiding Ministerial embarrassment to the point of self-censorship.
- Outsourcing of government services to private companies limits accountability by claiming commercial confidentiality.
- The Ombudsman, who we rely upon to uphold our OIA rights, has struggled to keep up with complaints, is powerless to enforce compliance, and there is no way to appeal their decisions.
- Release of data and information using methods that are deliberately hard to read and reuse (e.g.

While some of the issues and problems can be addressed by minor amendments, others will require new ways of thinking, possibly taking advantage of developments in freedom of information law overseas.

Opportunities for Improvement

At the same time, there is an opportunity not just to fix the OIA but to improve it and thus improve openness and transparency. Some of the opportunities we see are:

- Expanding the OIA to cover more bodies such as Parliament, the IPCA and IGIS, the Ombudsman, the Auditor-General, and state owned SOEs.
- Publishing more information proactively by defining types of documents that should be published automatically and empowering the regulator to investigate and sanction failures to do this.
- Open tendering and contracting to make commercial arrangements more transparent.
- Adding a public interest test to the section 6 withholding grounds.

There are undoubtedly more improvements which would be brought out in a full review.

How the OIA Should be Reviewed

The Official Information Act is now at the core of open and transparent government in New Zealand.

Any review must be wide-ranging and include all users of the Official Information act. Any changes should have significant support.

This process for developing improvements to our legislation on open government may take longer than an inward-facing department-dominated review of the OIA. But it is one that will command greater public confidence, and deliver better results, both for the public, Government, and agencies. Any less would risk being seen as illegitimate.

By locating reform of the OIA in the context of New Zealand's OGP Action Plan, the Government will send a strong signal, internationally and domestically, that it is committed to similarly high quality analysis, informed by requesters of official information as well as agencies, academics and others with an interest in public administration in New Zealand.

Conclusion

The Open Government Partnership Action Plan commits the government to "test the merits of undertaking a review of the Official Information Act 1982 and provide and publish advice to government".

We say the merits are obvious.

We call on the Government to commit to a comprehensive review of the Official Information Act that puts public participation in the policy development process at its heart. We can think of no better way for the Government to signal its commitment to the values of the OIA and open government than to commit to an open, inclusive, participatory process for improving it.

NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

Submission of the New Zealand Council of Trade Unions Te Kauae Kaimahi

to the

Ministry of Justice

on the

Need for a review of the Official Information Act 1982

P O Box 6645
Wellington

18 April 2019

1. Introduction

1.1. This submission is made on behalf of the 27 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With over 310,000 members, the CTU is one of the largest democratic organisations in New Zealand.

1.2. The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga) the Māori arm of Te Kauae Kaimahi (CTU) which represents approximately 60,000 Māori workers.

1.3. The CTU and its affiliates are regular, and by necessity sometimes intensive, users of the Official Information Act 1982 (OIA). We have previously submitted on its efficacy, including in 2010 to the Law Commission for its review of the OIA and the Local Government Official Information Act 1987, and to the Ombudsman's Office for its 2015 review of the working of the OIA.

1.4. We understand that the present consultation is simply to determine whether a review of the OIA is needed. Our comments below are therefore brief rather than attempting to provide examples and fuller rationale. We can provide more detail if requested. For brevity and relevance to the present request they focus on issues related to the need for legislative change, but we also have concerns about practice.

1.5. In summary, we believe that the OIA does need to be reviewed with a view to legislative change.

1.6. Most of the issues for the OIA are of course mirrored in the Local Government Official Information and Meetings Act. While we understand the present consultation is not intended to cover the latter, we submit that a review should cover both Acts.

2. The need for improvement

2.1. There are **gaps in coverage** by the OIA, particularly for contracted out services and commercial arms of government including SOEs. The contracting out of services is now ubiquitous and includes sensitive services in areas including health, welfare and justice. The providers of contracted services are not subject to the OIA yet the public information needs are at least as great: they should be covered by the Act. The "commercial sensitivity" reason for withholding needs to be reviewed in this light to ensure it is not used as a barrier to information that should be made public.

Parliamentary Counsel Office and as much information as possible relating to the operation of the Courts should be covered.

2.2. We suggest that a review of the provision of information to the public also consider the **responsibilities of large corporations** to make more information public, given their impact and influence.

2.3. The **negotiation of international treaties** has become increasingly contentious and their domestic impact increasingly broad. Their impacts are as great or greater than domestic legislation and they are considerably more difficult to amend, yet the negotiating process has been substantially exempted from requirements for information provision. This leaves citizens and civil society groups in great difficulty in making informed comment or decisions on such treaties until the process has gone too far in practice for changes to be made. It is an area in which international practice in providing information during negotiations is changing. New Zealanders' rights to such information need to be reviewed.

2.4. **Ministerial involvement** in the information releases of agencies for which they have responsibility has become increasingly obtrusive such as through demands for "no surprises" and intervention by Ministers' offices in what is released and when. The law should make clear that for information other than that from Ministers themselves, they have no right to delay or interfere with agencies' OIA responses.

2.5. **Public release** of responses to OIA requests is now routinely made by Treasury. This should be required of all agencies and Ministers, perhaps with a short grace period for the requester to have sole access to the information. There should be a requirement for pre-emptive release of as broad a category of information as practicable. Section 48 of the Act, providing protection against any resulting actions against agencies, may have to be reviewed with this in mind.

2.6. **Timeliness of responses** needs to be better defined with a presumption that information should be provided as soon as practicable rather than the current frequent practice of the 20 day limit being used as a target, and often with one or more extensions of time. In particular a request for urgency should be respected unless it is not reasonably practicable. There should also be a requirement for any appeal to the Ombudsman to be dealt with within a commensurate time.

2.7. Consideration should be given to **enforceability of the right to official information**. There is little practical pressure on agencies and Ministers to adhere to the OIA, and no significant consequences for failing to do so.

2.8. **Charging** should not be a prohibitive barrier to bona fide requests. Consideration should be given to not charging for labour costs and substantially reduced or nil charges where the request has a clear public interest element to it.

2.9. Information should be released **in the form requested** (such as electronic, spreadsheet, paper etc) unless there is a good reason not to, in which case the requester should be consulted. Releases should be, as far as practicable, in original form without defacement by watermarks etc (such as full-page watermarks reading "released under the OIA" used by some agencies, which can make parts unreadable by computerised text recognition programs) and without conversion to image formats, such as those produced by scanning a paper document, which are not searchable.

2.10. It should be unambiguous that **all requests for information are subject to the OIA**, and in particular it should be clear that requests do not need to make express reference to official information legislation.

2.11. There should be a review of what information is subject to **Budget secrecy**. For example we have had items withheld on this basis that were statistical data used in calculating forecasts or projections used in the Budget but not the forecasts or projections themselves. We needed the data for pre-Budget and timely post-Budget analysis. However there is also a broader issue as to the status of the Budget. There may be good reason to withhold information if it might lead to hoarding or panic buying, or public safety issues, or if it would have an undesired effect on financial markets. But many Budget decisions have little such sensitivity other than the political reason that the Budget is a major set-piece event.

2.12. A review of the **exemptions from the Act where they impinge on the privacy of an individual** such as where requests relate to assessments of individual performance, or are being used to harass individuals engaged in public policy debate.

2.13. Many agencies have useful **numerical data** that should be regularly pro-actively released and long term series made available or allowed to grow. Agencies and SNZ should be encouraged to work together to standardise releases and ideally use SNZ as a common portal for publication of the data with a role to maintain standards and independence.

24 April 2019

OIA Feedback
Ministry of Justice
Wellington

By email: oiafeedback@justice.govt.nz

Re: Access to official information – consultation

The New Zealand Law Society welcomes the opportunity to provide feedback to the Ministry of Justice on how the Official Information Act 1982 (the OIA) is working in practice. The Ministry's consultation will inform a decision whether to progress a review of the OIA or whether to keep the focus on practice improvements.[1]

For the reasons set out below, the Law Society considers that a comprehensive review of the OIA should be expedited, at the same time as the government continues to focus on practice improvements. Both are required to ensure the Act remains effective in achieving the fundamental objective of open and accountable government.

Executive summary

The OIA is central to New Zealand's constitutional arrangements. The purposes of the Act include –

> "… consistently with the principle of the Executive Government's responsibility to Parliament,—
>
> (a) to increase progressively the availability of official information to the people of New Zealand in order—
>
> (i) to enable their more effective participation in the making and administration of laws and policies; and
>
> (ii) to promote the accountability of Ministers of the Crown and officials,—
>
> and thereby to enhance respect for the law and to promote the good government of New Zealand"

In principle, the Act provides a sound basis for making information publicly available and improving transparency of government. However, in practice it still faces many of the challenges identified in earlier reviews, including the Law Commission's comprehensive review of the Act in 2012.

Most of the Law Commission's 2012 recommendations[2] have not been adopted and, in the Law Society's view, this has contributed to the continuing difficulties with the Act. We consider that

1 https://consultations.justice.govt.nz/policy/access-to-official-information/.

2 *The Public's Right to Know – Review of the Official Information Legislation*, Law Commission, NZLC R125, 2012, at pp8 - 17, and pp377 – 400.

neither the government response to the Law Commission report[3] nor the relatively minor amendments made in the Official Information Amendment Act 2015 do justice to the Commission's work. The Commission's 2012 report was the result of a thoroughly researched project led by eminent jurist John Burrows QC and it is disappointing that many of the recommendations have not been actioned.

The Law Society considers the Commission's recommendations should be the starting point for careful consideration in the current consultation. The Ministry should undertake a thorough review of the recommendations, with a view to implementing a much larger number of them. The Law Society's comments that follow highlight several of the Commission's key recommendations (but this is not meant to indicate that the Law Society does not support other recommendations by the Commission not specifically mentioned).

Consultation questions

1. In your view, what are the key issues with the Act?

Key difficulties identified in previous reviews include:

- the burden caused by large and broadly defined requests;
- tardiness in responding to requests;
- time constraints limit the ability to properly determine the scope of the information covered by a request,
- the 20-day maximum period allowed for responding to requests is for many agencies seen as the standard, with very few agencies responding in accordance with the direction to respond "as soon as reasonably practicable". We also question whether requests for urgency are being adequately met but there is a lack of detailed data on the operation of the OIA to properly measure timeliness of compliance;
- too strict reading of requests;
- concerns and perceptions about ministerial interference in agency responses to requests for information;[4]
- lack of application to agencies of Parliament.

The burden caused by large and broadly defined requests

The Law Commission's 2012 report identified tardiness in responding to OIA requests was in part caused by the burden of large and broadly defined requests and the need to balance this against available resources.[5] Large requests pose difficulties for smaller non-core state sector agencies, with tight budgets and lower staffing levels, in identifying the relevant information and then

[3] Government Response to Law Commission report on *the Public's Right to Know: Review of the Official Information Legislation,* presented to the House of Representatives on 4 February 2013.

[4] Concerns about Ministerial interference have been well documented, most recently in an article published in the media: https://www.stuff.co.nz/national/111130258/hide-and-seek-how-politicians-seek-to-hide-your-information-away. See also the Chief Ombudsman's 2015 report (footnote 9, below).

[5] Footnote 2 above, at pp10 – 11. This was also identified by the Law Commission in its 1997 report: *Review of the Official Information Act 1982,* NZLC R40, 1997, at 1.

deciding whether any withholding grounds apply. At the same time, the ground for refusing requests because they require substantial research or collaboration can often not be applied, and there is a high threshold for refusing a request on the basis that it is "vexatious". As a result, smaller agencies divert resources away from other functions, compromising their ability to meet those other functions.

To address this, the Law Commission recommended amendments to clarify when a request may be refused because the information is publicly available, and to deal with matters such as due particularity, substantial collation and research, and "vexatious" requests. As discussed below, some of these recommendations were not adopted and the Law Society considers that doing so would improve matters.

Tardiness

The high workload of the Office of the Ombudsman (although processing times have improved) makes it difficult for it to enforce compliance. In addition, there is a lack of real sanctions for delaying a response or incorrectly withholding information.

Significantly improved guidance provided by the Office of the Ombudsman[6] has made a difference in the level of output and ability of the Office to investigate and close complaints.[7] However, tardiness seems to be a continuing problem and information still seems to be unjustifiably withheld in some cases.

Time constraints limit the ability to properly determine the scope of the information covered by a request

Properly determining the scope of information covered by a request is essential to making an initial decision, within the initial time period, on whether an extension is required. This is particularly onerous for smaller non-core state sector agencies, which have tight budgets and staffing levels, with little ability to accommodate the work required to respond to large requests.

The 20-day period to respond to requests

The 20-day maximum period allowed for responding to requests is for many agencies seen as the standard, with very few agencies responding in accordance with the direction to respond "as soon as reasonably practicable". The 20-day limit appears to be applied as a means to delay responses.[8] Such practices are concerning and defeat the overarching purpose of the legislation. As discussed below, changes to the Act could reduce delays in responding to requests. The current lack of detailed data and statistics about the operation of the OIA makes measurement of delays difficult, including in gauging whether requests for urgency are being met or the extent to which the requirement in section 15(1) to decide requests "as soon as practicable" is being met.

6 See for example the guide entitled *The OIA for Ministers and agencies,* June 2016, available at: http://www.ombudsman.parliament.nz/system/paperclip/document_files/document_files/2995/original/the_oia_for_agencies_nov_2018.pdf?1543353943. See also four guides released by the Chief Ombudsman, April 2019: http://www.lawsociety.org.nz/news-and-communications/latest-news/news/new-oia-guidance-published-by-ombudsman.

7 The financial resources of the Office appear to have almost doubled since 2012: Annual Report 2017/18 at 60.

8 See comments made by the previous Prime Minister as reported in the media: https://www.radionz.co.nz/news/political/257009/pm-admits-govt-uses-delaying-tactics.

Too strict reading of requests

Some agencies read requests too strictly, especially when made by requesters who are not familiar with internal government processes, thereby limiting their scope.

Concerns and perceptions about Ministerial interference in agency responses to requests for information

The Commission's 2012 report identified issues regarding perceptions of political interference and recommended that any protocol between an agency and a Minister should be published on the agency website.

In 2015 the Chief Ombudsman issued a report[9] identifying five key areas of risk and vulnerability in how the OIA is implemented.[10] This 2015 report highlighted problematic practices involving ministerial staff and recommended approaches to improve proactive release of information, increase training for officials to ensure their understanding of the legislative obligations, improve policies and procedures for creating, storing and managing information, and improved practices that included deployment of available tools within the Act. Most government agencies have now introduced proactive release practices, but the volume and nature of information that is made available varies significantly as between agencies.

The Office of the Ombudsman published guidance in 2016,[11] and a model protocol in July 2017[12] that could reduce perceptions of political interference (although it does not appear that any such protocols have been agreed and/or published).[13]

Despite these steps, concerns about how the Act is implemented remain.[14]

Application to Parliamentary agencies

The Law Commission also recommended extending the OIA, on the grounds of open government, to include agencies of Parliament – namely, information held by the Speaker in his/her role with ministerial responsibilities for Parliamentary Service and the Office of the Clerk; the Parliamentary Service; the Parliamentary Service Commission; the Office of the Clerk in its departmental holdings; the Offices of Parliament (the Ombudsmen, the Office of the Controller and Auditor General and

9 *Not a game of hide and seek* – Report of the Chief Ombudsman December 2015 available online at: http://www.ombudsman.parliament.nz/system/paperclip/document_files/document_files/1573/original/not_a_game_of_hide_and_seek_-_review_of_government_oia_practices.pdf?1466555782.

10 These areas being: Leadership and culture, Organisation, structure, staffing and capability, Internal policies, procedures and systems, Current practices, Performance monitoring and learning.

11 See footnote 6.

12 *Model protocol on dealing with OIA requests involving Ministers*, available online at: http://www.ombudsman.parliament.nz/system/paperclip/document_files/document_files/2969/original/model_protocol_july_2017.pdf?1543277872.

13 The only protocol that does appear to exist is the protocol for the release of parliamentary information – see: https://www.parliament.nz/en/pb/parliamentary-rules/other-rules-and-protocols/protocol-for-the-release-of-information-from-the-parliamentary-information-communication-and-security-systems/.

14 A recent example of such concerns was published in media as recently as March 2019 – see: https://www.stuff.co.nz/national/111130258/hide-and-seek-how-politicians-seek-to-hide-your-information-away.

the Parliamentary Commissioner for the Environment); and the Parliamentary Counsel Office.[15,16] The Law Society supports that recommendation.

2. Do you think these issues relate to the legislation or practice?

As noted above, the Law Society considers that operational difficulties with the OIA relate to both the legislation and practice, and changes to both are required to improve the effectiveness of the Act.

3. What reforms to the legislation do you think would make the biggest difference?

The Law Society recommends that the following reforms suggested by the Law Commission in 2012 be implemented:

- Amend the "good government" grounds for withholding official information in sections 9(2)(f) and 9(2)(g).[17]
- Introduce a new non-conclusive withholding ground for information provided in the course of an investigation or inquiry.[18] (We note that section 32 of the Inquiries Act 2013 specifically excludes certain information from the application of the OIA,[19] but the Inquiries Act only applies to certain types of inquiries[20] and does not provide protection for other forms of inquiry or investigations by state entities.)
- Defining the meaning of “due particularity” to make it clearer what this means and specify that agencies cannot treat a request as invalid on the basis of a lack of due particularity, unless the agency has reasonably fulfilled its duty to assist the requester.[21]
- Include legislative provisions requiring notification to (and where appropriate consultation with) parties whose information is held by agencies, before release.[22] This would ensure that third parties whose information is held by agencies are better protected from inappropriate release.

15 2012 report (footnote 2 above), r122 – r129 (pp338 – 347). The same recommendation was made by the Commission in its 2010 report, *Review of the Civil List Act 1979 – Members of Parliament and Ministers*, NZLC R119, at r5.

16 The Commission also recommended that the OIA should not apply to proceedings in the House of Representatives, or Select Committee proceedings; and internal papers prepared directly relating to the proceedings of the House or committees; information held by the Clerk of the House as agent for the House of Representatives; information held by members in their capacity as members of Parliament; information relating to the development of parliamentary party policies, including information held by or on behalf of caucus committees; and party organisational material, including media advice and polling information. See R119 (footnote 15) at r6.

17 See 2012 report (footnote 2) at r8, at p378.

18 See 2012 report (footnote 2) at r24, at p381.

19 This includes information or evidence provided to the inquiry: see section 15(1)(a) of the Inquiries Act 2013.

20 The Act only relates to three specific types of inquiry: Royal Commissions, public inquiries and government inquiries – see section 6 of the Inquiries Act 2013.

21 See 2012 report (footnote 2) at r35, r36 and r38, at p383.

22 See 2012 report (footnote 2) at r58 and r59, at p387.

- Make amendments to recognise a positive duty of proactive disclosure of official information.[23] The information that could be included here would be data and information about the operation of the agency (such as key decisions made, dates of meetings and events, numbers of complaints handled, progress reports on work programmes, etc). This would serve the purpose of making information more available, and should also reduce the number of requests made to agencies.[24]
- Amend section 15 to include a deadline for the agency to make available any information it has decided to release.[25]
- Amend the Act to extend its coverage to: information held by the Speaker in his/her role with ministerial responsibilities for the Parliamentary Service and the Office of the Clerk; the Parliamentary Service; the Parliamentary Service Commission; the Office of the Clerk in its departmental holdings; the Offices of Parliament (the Ombudsmen, the Office of the Controller and Auditor General and the Parliamentary Commissioner for the Environment); and the Parliamentary Counsel Office.[26]

The Law Society also recommends amendments be made to the Act to improve its performance and to address aspects which may cause perverse behaviour that may undermine the legislative objective of open government. These include:

- Amendments to reduce the propensity for agencies to see the 20 working day limit as a goal instead of a maximum deadline. Such amendments could include:
    - Placing more emphasis in the Act on the requirement to respond as soon as reasonably practicable to a request, and making clear that the 20 working day limit is the maximum (unless there is an extension).
    - A three-month maximum deadline for extensions under section 15A, with no ability to extend further unless agreed by the Ombudsman. While such a provision may place added burdens on the Office of the Ombudsman, if implemented effectively it might reduce the numbers of complaints the Office is required to investigate.[27] Proactive assistance for agencies to meet their legislative obligations is likely to better serve the public interest than subsequent investigations into alleged breaches.
    - Provisions that encourage release of information in batches as soon as it has been reviewed, to respond more promptly to requesters and avoid holding back all the information until everything has been reviewed.
- An amendment requiring agencies to treat all information that can reasonably be considered as coming within the scope of a request as being covered by that request, and regardless of the form in which the information is held.
- Introducing amendments that improve the ability of government agencies to resist ministerial interference in responding to official information requests. These could include:

23 See 2012 report (footnote 2) at rr85 – 104, at pp391 – 394.

24 The Law Commission noted the same benefit in its 2012 report – see footnote 2, at [12.35(g)] and noted that this could ultimately reduce the burden of broadly defined requests – see [12.53] at p264.

25 See 2012 report (footnote 2) at r50, at p386.

26 See R5 in (NZLC R119) at 32-37 and R122-R129 in (NZLC R125) at 338 to 344.

27 Over the last 4 years the office has received an average of 12,000 complaints per annum.

- provisions confirming the independence required for agencies to make decisions on requests;
- provisions clarifying the role of Ministers and ministerial advisors in dealing with agency requests;
- provisions that mandate protocols between Ministers and agencies which can be based on the model protocol developed by the Office of the Ombudsman.

- Making further improvements to increase the monitoring and oversight role of central agencies. This would materially advance the leadership role recommended by the Chief Ombudsman in her 2015 report.[28] A similar recommendation was made by the Law Commission in 2012 and further consideration should be given to the Law Commission's recommendation that independent oversight of the official information legislation is warranted and overdue.[29] (It seems the State Services Commission is already playing a part in this through its current practice of providing guidance and publicly reporting statistics on agency response times.[30] However, this may not go far enough in monitoring agency compliance and protecting agencies from the risks of ministerial interference.)
- Consider more sanctions for failure to meet deadlines or where information is withheld and it is clear that the relevant agency has knowingly or carelessly applied the grounds for withholding – such as enabling the Ombudsman to provide detailed reports to the State Services Commission and chief executives of agencies on the performance of agency staff in responding to requests (these could be made confidential where they deal with personal information or identify individuals below a certain level within an agency).

If you wish to discuss these comments, please do not hesitate to contact the convenor of the Law Society's Public and Administrative Law Committee, Jason McHerron, via the Law Society's Law Reform Adviser Lucette Kuhn (lucette.kuhn@lawsociety.org.nz).

Yours faithfully

Tiana Epati
President

[28] See recommendation 3 in *Not a game of hide and seek* – Report of the Chief Ombudsman December 2015, at 14.
[29] See 2012 report (footnote 2) at Chapter 13 and r102 at pp 296-332 and 394
[30] See online at: http://www.ssc.govt.nz/official-information-statistics

NEW ZEALAND NURSES ORGANISATION
TŌPŪTANGA TAPUHI KAITIAKI O AOTEAROA

17 April 2019

OIAfeedback@justice.govt.nz

Tēnā koe

Tōpūtanga Tapuhi Kaitiaki o Aotearoa, New Zealand Nurses Organisation (NZNO) welcomes the opportunity to comment on the Ministry of Justice review of the Official Information Act 1982 (OIA). NZNO has consulted its members and staff in the preparation of this submission, in particular members of; Te Rūnanga o Aotearoa, and professional nursing and policy advisers. NZNO is the leading professional nursing association and union for nurses in Aotearoa New Zealand, representing 53,000 nurses, midwives, students, kaimahi hauora and health workers on professional and employment matters. NZNO embraces te Tiriti o Waitangi and contributes to the improvements of the health status and outcomes of all people of Aotearoa New Zealand through influencing health, employment and social policy development.

NZNO agree that the OIA 1982 is widely accepted as an essential tool of democracy, enhancing participation, ensuring accountability and protecting access to information from undue political interference. We strongly support access to official information that enables people to participate in government decision making and promotes accountability of government decision makers and which will promote good government and enhance respect for the law. We welcome legislative review that would provide consistent application of the OIA across government agencies and not restrict communities, whānau, hapū and iwi accessing OIA due to barriers such as prohibitive costs.

We support the submissions of the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU), and agree with the following concerns:

- timeliness of response;
- enforcement of the right to official information;
- costs should not be a prohibitive barrier to requests from communities; whānau, hapū or iwi; and
- ensuring consistent OIA practices across agencies.

Additionally, we have concerns regarding:

- the consistency of training and education for government officials to enable them to understand their responsibilities under the Act; and
- consultation practices of government agencies which have led to poor public service outcomes, with very little accountability.

NZNO is a regular and familiar user of the OIA process. We actively engage with government officials, in particular Ministry of Business Innovation and Employment, Ministry of Health and District Health Boards and other agencies on a wide range of issues specific to nursing, health and equity (the underlying social determinants of health). We have noted, that there are often inconsistencies in practice across government agencies in the interpretation or understanding of responsibilities under the OIA. We anticipate the review will address these issues. Please note our previous submission on the OIA effectiveness, interpretation and use by government officials and agencies.

Nāku noa nā

Leanne Manson
Policy Analyst Māori
s9(2)(a)

1 May 2019

Ministry of Justice
Review of the Official Information Act

By email: OIAfeedback@justice.govt.nz

Dear Sir or Madam,

SUBMISSION ON THE REVIEW OF THE OFFICIAL INFORMATION ACT

Introduction

1. Thank you for the opportunity to submit on the workings of the Official Information Act 1982 ("OIA"), and in particular your indication following the events leading up to the due date that you may accept this delayed submission. In addition to the *New Zealand Taxpayers' Union*, this submission is also on behalf of our sister group, the *Auckland Ratepayers' Alliance.*

2. For the purposes of this submission, our comments are generally applicable to both the OIA and local government equivalent, the Local Government Official Information and Meetings Act 1987 ("LGOIMA" and the "Acts"), unless otherwise specified.

3. If as part of this review the Ministry is meeting with submittors, we wish to meet with you to discuss this submission.

About the Submittor

4. Founded by David Farrar and Jordan Williams in 2013, the *New Zealand Taxpayers' Union* mission is *Lower Taxes, Less Waste, More Transparency.*

5. We enjoy the support of some 39,000 registered members and supporters, making us the most popular campaign group on championing fiscal conservatism and transparency. We are funded by our thousands of donors, and approximately 25 percent of our income is from membership dues and donations from private industry.

6. We are not a registered charity and do not accept taxpayer funding.

7. We are a lobby group not a think tank. Our grassroots advocacy model is based on international taxpayer-group counterparts, particularly in the United Kingdom and Canada, and similar to campaign organisation on the left, such as Australia's *Get Up*, New Zealand's *ActionStation*, and *Greenpeace*.

8. The *Union* is a member of the *World Taxpayers Associations* - a coalition of taxpayer advocacy groups representing millions of taxpayers across more than 60 countries.

9. Our work relies heavily on the Acts. Particularly in local government, our research has substituted the bygone era of strong local newsrooms to local newspapers, many of whom no longer have local reporters attending council meetings. Sadly, in provincial New Zealand, councils are often the largest advertisers for what newspapers remain. In short, we consider that particularly in local government, there is significant public interest benefit in the transparency our work achieves. An example of this work is our annual local government league tables – *Ratepayers' Report* - available at www.ratepayersreport.nz.

10. We also operate a confidential 'tip-line' and encourage members of the public, and insiders, to report examples of publicly funded misfeasance, extravagance, waste, and misspending. Some of our most high-profile work has come to us via the tip-line, often unanimously. Without exception, we verify claims using the OIA, or directly seeking comment from the relevant agency.

11. Because so much of our work is comparative, we regularly send the same information requests to multiple agencies. In the case of councils, we send many of our requests to all councils. As a result, we believe we are New Zealand's largest user of the freedom of information regime.

12. Since our launch we have also made numerous public commentaries about specific instances of breaches or abuse, or breach of the spirit of the Acts by agencies, and the Act generally. We were critical of the systematic problems with enforcement under the previous Ombudsman.

13. In this submission, we are heavily guided by our ability to obtain information relative to our international counterparts.

General comments on the Acts

Summary

14. Overall, we consider New Zealand's freedom of information regime to be mediocre in terms of information able to be obtained, the timeframes and the costs of doing so. We believe that, in general, it is stronger than Australia's, but weaker than the United Kingdom's equivalent regimes.

15. We are saddened to conclude that the regime is such that the adherence to the Acts highly varies depending on the agency and requestor.

Depends on who you are…

16. We have found that following periods of high publicity of the organisation, our requests have taken longer to be processed with information taking longer to be released to our staff. This was particularly evident following the 2015 trail of a high-profile defamation claim taken by one of the Founders: staff observed a considerable slowdown of responses, which we interpreted as officials being increasingly cautious (perhaps because they knew who the *Taxpayers' Union* were via the media).

17. Similarly, our junior staffers are sometimes treated less seriously by officials in comparison to those in senior roles. This is particularly the case with our Research Interns interacting with local government (we have four interns on staff, most of whom are law students working part time).

18. Only in one instance do we know of an agency choosing to breach and frustrate the purposes of the Act as a deliberate act of subterfuge under the instruction of senior officials. We know this because a whistle-blower from within the Ministerial team approached and met with us to describe the ways our information requests were treated differently and described the contempt by senior managers toward our efforts (and recent publicly resulting from it).

19. These reports and observations have led us to make more use of personal email addresses, the FYI.co.nz website and, on rare occasion, aliases to obtain information.

…and who you are asking

20. We are suspicious of OIA/LGOIMA compliance statistics as the volume of requests lodged may depend on whether an agency has a history and reputation for complying with the Acts.

21. For example, we have always struggled to obtain information from universities and the Ministry of Foreign Affairs, even relating to transactions of sensitive expenditure. But the poor performance of these agencies would not be shown in statistics; we just no longer bother asking for information.

Performance varies

22. The performance of agencies also changes over time. When the organisation was established, The Treasury was one of the most helpful and sincere champions of the OIA. Staff now rank it among the worst.

23. Because decisions under information law involves weighing-up of competing considerations — usually the public interest against those matters listed in section 9 — we fear that the increased politicisation of the State Sector is having a negative impact on officials' decisions under the Act. This could explain the difficulties we have with the universities, some of whom actively campaign against the *Taxpayers' Union* (Otago's public health department, for example).

24. The variability suggests that compliance is not merely an education or lack of knowledge issue. We submit that after 37 years since the passage of the OIA, the focus should now be on enforcement not excuses. We submit that cost and risks of breaching the Acts should be increased.

Formalisation of OIA processes

25. We are not convinced that the increased reporting and formalisation of OIA response processes is making official information more freely available.

26. Commonly we find that information which is likely to be at hand (or where the relevant official will have at top of head), is treated as an OIA, even when the requester does not want it to be.

27. In years gone by, officials could often be called directly for simple enquiries, in particular at councils or mid-size government agencies. We are often now referred to make a written request under the Acts.[1] Anecdotally, it is also a frustration faced by our *Ratepayers' Alliance* members when making enquiries of Auckland Council.

[1] Notwithstanding s12(1AA) of the OIA.

28. This can be incredibly frustrating, particularly where the official drafting the response to our request has little appreciation of financial systems. For example, we have been turned down when we have requested printouts of transactions attributable to specific general ledgers or cost codes on the basis that collation would involve significant time and resources. Any accounting system would produce this within a few key strokes. With the exception of one agency (refer below), we think it is a result of communications staff or information officers not understanding organisation's financial information systems, than finance teams frustrating the Act.

29. A possible solution could be recognition in the Act of informal disposal of requests where sufficient information has been provided that satisfies the requestor. Informal responses need not be in writing – providing an incentive for officials to avoid the formal process (and work created).

Accuracy of responses

30. We record our concern that we regularly discover instances of inaccuracy that agencies appear to have little concern for. We have seen this a lot with LGOIMA responses.

31. A high proportion of councils have changed figures and information provided in responses to LGOIMA request following our publication of the *Ratepayers Report* league tables (presumably once media or elected officials ask questions). Councils have even made material corrections in subsequent years where we have used time series data for the new league tables.

32. Naturally this causes concern about the integrity of the financial data, and has continued to happen despite our practise of giving councils their individual report, for error checking, prior to public publication.

33. We believe there needs to be more accountability for the accuracy of the responses, particularly where they contain financial data. We suggest that information request responses be required to have a real name of an official either listing the steps taken to ensure the accuracy and completeness of the response or making a positive statement that the information provided/response is true and accurate.

Delays and time extensions

34. Freedom of information depends on receiving information in a timely fashion. Our members and supporters expect us to be able to hold public agencies to account as they make decisions, not months afterwards. Information has a short half-life in the political realm, so holding decision-makers to account can be impossible if stories become dated and stale. This is unfortunate, but a reality in New Zealand's current media environment.

35. We understand that delays in releasing information are sometimes unavoidable. But we are seeing growing proportion of our requests for time extended under section 15A.

36. Notifications of delay typically occur close to – or at – the twenty-day deadline.

37. We submit that the remedy is in the hands of the Ombudsman. Where the nature of information request is straight forward, the Ombudsman should be much more willing to investigate within the 20 working days, or immediately upon an extension.

38. Where we have complained to the Ombudsman about unjustified delays, agencies have often provided the information within a few weeks resulting in the Ombudsman investigators immediately closing the

case on the basis of the requester having received the information. With respect to that Office, closing these investigations by habit serves to encourage the behaviour. While we complain to the Office to obtain the information, as a heavy user of the Acts we are just as concerned with the breach per se. We submit that the lack of sanction in these instances only serves to create a rod for the Ombudsman's own back; the behaviour is repeated.

Extension of time limits where consultations necessary

39. A large cause of frustration are extensions under section 15A(1)(b) which we think is being used as a ruse to delay.

40. A recent example was a request we made to a senior minister's office asking for a copy of a report and advice referred to in the media by the Minister. On the twentieth working day we received an extension to the request under section 15A (1)(b). We responded to the email immediately and asked the official who the necessary consultations were with. We said the question *could* be considered a new OIA request 'if necessary'. On the twentieth working day following our email, we received a two word response: "With colleagues".

41. We submit that the OIA should be amended to require agencies to identify who they are consulting with (or plan to), or at least identify the class of persons, when invoking section 15A (1)(b). Without this information it is very difficult for a requester to assess the reasonableness of the extention.

Scope of existing framework

42. Fundamentally, the OIA is a constitutional and democratic safeguard against abuse of state power, including, from a taxpayer perspective, the wastage of money obtained from coercion. We therefore submit that the obligations of freedom of information should broadly couple with the powers of the state and spending of taxpayer money.

43. We submit that the areas where the scope of the Acts do not match the breadth of agencies which spend taxpayer money, should be brought under the regime.

Parliament

44. In 2007, then Speaker of the House, Rt Hon Margaret Wilson called for Parliament to come under the Act. In a speech to the Information Law Conference she said:

> *Let me state at the outset that I personally find it anomalous that the administration of Parliament is not subject to the OIA, with suitable protections for the privacy of communications between Members of Parliament and their constituents and agencies that they petition on behalf of the public.*

45. We submit that the time has come for Parliament to be brought under the OIA, but acknowledge specific scope or restrictions which recognise Parliament's unique environment, similar to recommendations 122 to 129 of the Law Commission's 2012 review of official information legislation *The Public's Right to Know.*

46. We suggest either:

(a) wholesale coverage with special reasons to withhold Parliamentary information —

the common law has historically recognised a citizen's communication with his or her constituency Member of Parliament as a privileged communication.

Regardless of whether this survives the adoption of MMP in New Zealand, we recognise that the nature of communications Members of Parliament have with constituents, colleagues, and political staff is of a special class and should not generally accessible under the Act.

A new exemption would be similar to the existing section 9(g) – recognising the value of free and frank advice tendered to ministers; or

(b) coverage limited to Parliament's financial and administrative matters —

Members of Parliament are afforded taxpayer funded budgets and allowances. We submit the public are entitled to know what it is being spent on. Likewise, Parliamentary Services' budgets and asset holdings are not insignificant.

Local Government New Zealand

47. *Local Government New Zealand* ("LGNZ") is a fully ratepayer-funded organisation representing the interests of local councils and mayors. Its annual budget is approximately $6 million. The organisation is not covered by the LGOIMA and we submit that this review should recommend it be brought under the regime.

48. LGNZ enjoys a carve-out from the definition of "Council-Controlled Organisation" in section 6(4)(e) of the Local Government Act 2002 ("LGA").

49. As far as we can tell, LGNZ has the special provision to exclude it from the financial reporting obligations of council-controlled organisations contained in Part 5 of the LGA. Were it not for the carve out, every council in New Zealand would be required to have LGNZ with in their consolidated or group accounts for financial reporting purposes. Unfortunately this means that section 74 of the LGA does not apply: deeming CCOs a 'local authority' for the purposes of LGOIMA. We think this was an oversight.

50. We have previously enquired with the CEO of LGNZ on this matter. He has been unable to specify any reason or justification for the carve-out. In a subsequent email correspondence with LGNZ then-president, Laurence Yule, we were informed that protecting LGNZ's 'lobbying strategy' is important to the organisation to such an extent that it justifies the exception.

51. But many QANGO-type lobbying organisations are subject to freedom of information laws. *Fish and Game New Zealand* is an example. All of LGNZ's income is received through member organisations subject to the LGOIMA.

52. LGNZ is one hundred percent ratepayer funded, but other than the most basic financial reporting under the Incorporated Societies Act 1908, LGNZ has no direct accountability to ratepayers.

53. In 2017 we received reports of councillors using LGNZ as a vehicle for travel, and professional development related expenditure, which we were told would be difficult to justify if it were subject to

the same transparency as is required if the amounts were paid directly by member councils. When we have tried to request information from LGNZ – to confirm or otherwise the allegations – we were told, in no uncertain terms, that the information would not be forthcoming[2].

54. Under section 56 of LGOIMA, LGNZ is able to be inserted into Part 2 of Schedule 1 of the Act by order in council. In April 2018 we wrote to the Minister of Local Government, Hon Nanaia Mahuta, asking for her to consider adding LGNZ to the schedule. We are still waiting for a response.

Use of LGOIMA by elected members

55. While the OIA is recognised as an important part of New Zealand's constitutional framework, including Members of Parliament and political parties using it to perform their functions and hold the Executive to account, we continue to be surprised by the extent the LGOIMA is relied on by local government elected officials for similar purposes, despite the perception that local government officials report to councils as a whole.

56. In fact, it appears the freedom of information regime is even more important for councillors to undertake their duties in a local government context than Members of Parliament using the OIA as councillors have no equivalent to Ministerial questions (written or oral), nor do they have statutory rights to access information akin to company directors. But despite the importance of access to information in order for them to do their job, we submit that the LGOIMA is not currently fit for the purpose councillors need.

57. On numerous occasions sitting councillors have approached us suggesting our members make certain requests for information. Incredibly, we have been told by sitting councillors that low profile members of the public are more likely to be able to elicit certain information from the Council than their own efforts in writing to their Chief Executive.

58. Our efforts to strengthen the rights of elected members resulted in the National Party submitting a members bill (currently in the ballot) which adopts many of our suggested remedies to these issues.

59. The Local Government Official Information and Meetings (Rights of Members) Amendment Bill removes many of the barriers faced by members of a local authority when requesting information and reduces the statutory time limits on providing information and reasons officials can decline to provide it. As a quid pro quo also increases the safeguards applicable to information obtained through a members' request, but otherwise not publicly available (such as where information is commercially sensitive).[3]

60. We submit the merits of the Bill should be considered as part of this review.

Taxpayer-funded non-commercial organisations

61. We submit that the OIA should apply to organisations which are fully publicly funded and are not subject to commercial competition.

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[2] This is not a reflection on LGNZ or its staff. The OIA, like the duty of political neutrality contained in the State Services Commission Code of Conduct, is a protection of officials and staff as much as an obligation. Even if LGNZ's senior staff wanted to provide transparency, this would be difficult when elected officials with interest in the matter are giving instructions not to release.

[3] For a recent example of circumstances that submit justify the changes to LGOIMA see http://www.scoop.co nz/stories/PO1904/S00236/forcing-mike-lee-to-go-to-shows-flaws-in-gov-structure.htm

62. There are many organisations that were historically private or charities, are not subject to the Acts, despite now being mostly or totally government funded, and operating in lieu of public service provision.

63. Our attention was first brought to this issue in relation to a *Te Kohanga Reo* National Trustee's misuse of Trust money for personal items, including buying a wedding dress on a Trust debit card.

64. The Trust is fully taxpayer funded, receiving more than $2.5 million per year to manage about $80 million per year of taxpayer money allocated to *Te Kohanga Reo*.

65. The Trust refused to answer questions about the spending from media and even the then Minister of Education.

66. The normal safeguard against waste and misspending by organisations contracted by the Crown is competition – the threat of Government contracts being awarded to another operator. That is not the case though in many areas where the only feasible operator is the not for profit (often charitable) incumbent that often own the dedicated assets or have the specialist skills and historic knowledge. It will be immediately obvious that short of nationalisation there was no alternative provider for *Kohanga Reo*.

67. This breakdown in accountability is particularly evident where an organisation is not reliant on outside donations or sponsorship. There are no real accountability mechanisms usually applicable to charity groups where its sole 'donor' is the taxpayer.

68. We submit that where not-for-profit organisations, operating in areas that are not for commercial gain and essentially fully government funded (say more than 90 or 95 percent taxpayer / ratepayer funded), should be covered by the Acts.

Former SOEs purchased by public investment funds

69. We submit that companies operating as SOEs should remain under the Acts if purchased by the ACC investment fund, or New Zealand Superannuation Fund.

70. Since October 2016, Kiwibank, a former State Owned Enterprise, has not been covered by the OIA. Nevertheless, Kiwibank remains fully owned by the Crown (via a direct shareholdings, ACC and the Superfund). We submit that for the same reasons SEOs are covered by the Acts – specifically their lack of market signals and continuous information disclosure requirements – the company, and others in the same position, should be subject to the OIA. This can be contrasted with companies operating under the 'mixed ownership model', where the OIA does not apply (by continues disclosure does).

Reasons for withholding information – section 9(2)

71. In commenting on the application of a number of the statutory reasons justifying the withholding of information contained in section 9(2) of the OIA, we note that overall the Ombudsman's published guidance is sensible. But we submit that timeframes and policies should be codified into the Acts where possible.

72. In our experience, agencies often ignore Ombudsman's guidance, even when we point out clear breaches in decisions to refuse or delay, and refuse to engage directly, preferring we complain to the

Ombudsman. We believe that this suggests that agencies are taking advantage of the delay in Ombudsaman's investigations.

Privacy of natural persons – section 9(2)(a)

73. We submit that the protection for privacy is frustrating the Act's objections where agencies are using frivolous privacy concerns to prevent release of information.

74. For example, Auckland Council has refused to provide the *Ratepayers Alliance* with the contact details of other ratepayer groups despite having a database of this information and many in receipt of annual funding from the Council. Section 9(2)(a) was used on the basis that the emails of many of the organisations belong to private persons (usually the secretary of the group) and providing us with the email would breach the individual's privacy, notwithstanding that the email had been put forward to the Council as the ratepayer group's contact.[4]

75. We submit that a threshold, or objective standard should be inserted into the section such as:

> *[…] withholding the information is necessary to—*
>
> *(a) protect the privacy of natural persons, including that of deceased natural persons in circumstances where a reasonable person would expect that information to remain private; […]*

Privacy relating to remuneration in the public sector

76. A particular area of interest where agencies have consistently blocked our efforts is under s 9(2)(a) is our seeking of information relating to remuneration of officials.

77. While the salaries of elected officials, boards and Chief Executives are generally required to be published under public finance and accounting standards, agencies in all but one case (Watercare Ltd) have refused to provide us with precise remuneration of executive staff.

78. This creates an anomaly where a Chief Executive of a small government agency, or Town Clerk/CEO at a rural council who often earn similar amounts to an MP must have the information publicly disclosed, while those earning much more in larger public sector organisations, albeit in second or third tier roles, refuse disclosure.

79. Similarly, in mid-sized organisations where the management / salary hierarchy is obvious and salaries are disclosed in $10,000 bands in the annual report (or similar bands required under accounting standards), we submit that there is no material harm to privacy in knowing the precise amount (say around $327,000), rather than between $320,000 and $330,000.

80. We submit that to better balance the public interest against the privacy concerns of public sector employees, the Ombudsman's guidance should be based on classes of remuneration (such as where an official earns more than an MP or Cabinet Member) rather than focusing on just the remuneration of the CEO and board.

[4] The previous Ombudsman upheld Auckland Council's decision.

81. The inability to be able to obtain data on remuneration has frustrated legitimate research efforts in the public interest such as on the gender pay gap at senior levels in the public sector.

82. Our United Kingdom sister group, *The TaxPayers' Alliance,* have done a lot of work in this area where data has exposed, for example, the enormous pay gaps between male and female presenters at the BBC.

83. Privacy protections in EU law are generally considered to be stronger than in New Zealand. We ask for you to consider how and why UK citizens are able to access much more information about the public remuneration of senior officials, where New Zealanders are barred from doing so.

Trade secrets and prejudice of commercial position – section 9(2)(b)

84. We record our concern that section 9(2)(b) is commonly misunderstood, or misused, by agencies to hide the price paid for goods or services. We submit that in no circumstances could the *ex post* disclosure of an amount paid using taxpayers' money, disclose a trade secret or prejudice a commercial position. The section should reflect this.

Free and frank expression of opinions – section 9(2)(g)(i)

85. We submit that section 9(2)(g)(i) "free and frank expression of opinions" is being abused by agencies to refuse the release of information, particularly to protect general advice and correspondence with Ministers.

86. For example, The Treasury are currently using the section to prevent us accessing advice to the Minister about our own Research Fellow's requests to The Treasury. We do not accept that there is any impact on the effective conduct of public affairs in understanding the degree to which political considerations are being given to the release of information under the OIA.

87. The Office of the Ombudsman rightly emphasise that the provision is not about "free and frank opinions" but regards inhibitions to efficiently conducting public affairs. The Ombudsman lays out circumstances where efficient conduct would be prejudiced:[5]

    (a) ministries and agencies, do not get information and advice they need in order to do their job and make good decisions;

    (b) ministers and agencies get some information and advice but it's not as open, honest or complete as it could be, making it harder for them to do their jobs and make good decisions; or

    (c) the information or advice is received orally rather than in writing—again making it harder for agencies to do their jobs and make good decisions, and to hold them to account for the decisions they have made.

88. The Ombudsman guidelines on s9(2)(g)(i) protect opinions that are of a specific nature: those that directly affect the ability to conduct public affairs. The test for this provision relies on qualities of the opinion such as the relationship between the speakers and who is spoken to, as well as, the context with which the information was generated.[6]

[5] Office of the Ombudsman *Free and frank opinions* (March 2018) at 8
[6] *Free and frank opinions* n 1 at 4

89. The Ombudsman guidelines for s9(2)(g)(i) indicate that policy in "draft" form may not necessarily demand protection under this provision but are read in tandem with the context in which the draft is made.[7] This is an illustration of the proper role s9(2)(g)(i) plays in protection of the efficiency of conducting public affairs.

90. The Guidelines comment heavily on the role this provision has with consultants. This is consistent with to our limited reading of the Act. The Ombudsman writes:[8]

> *Consultants that have been commissioned because of their skill and professional expertise in a particular area are unlikely to be deterred from providing free and frank opinions in future. This would be detrimental to the conduct of their business.*

91. Consultants used in the formulation or implementation of official administrative policy should be protected by this provision.

92. However, we have seen agencies apply the provision to circumstances other than in consultation for the creation of policy, or to better inform officials when making good decisions. Informal correspondence and voicing of personal opinions divorced from the policy of an agency is commonly being protected by this provision by agencies.

93. When regarding the relationship between the opinion holder and their intended audience, opinions given in an informal setting are being sheltered by section 9(2)(g)(i). The fact an opinion is informal (or expressed in an informal way) should not warrant protection under the Acts.

Proposed changes to 'free and frank provision'

94. We agree that for unannounced policies and matters under consideration, agencies may use the section. But the use to avoid release of common advice/briefings, even if 'frank', particularly those on purely administrative matters and previously adopted policy, is unjustified.

95. We submit further guidance should be given to officials under the Act on what circumstances this provision applies to. Greater emphasis should be placed on the purpose of the provision being the protection of conducting public affairs efficiently and not to controversial opinions, or the seeking of controversial opinions. This may include a more detailed list of situations where section 9(2)(g)(i) is to be applied.

Legal professional privilege – section 9(2)(h)

96. Agencies commonly rely on legal advice in the media to justify actions, however when we request this – often to verify claims made in the media about legal advice received by the Government – we seldom are able to access it due to agencies relying on section 9 (2)(h).

97. Due to delays in any decision appealed to the Ombudsman we cannot recall ever complaining about these instances, i.e. where legal privilege has been publicly waived, but access nevertheless refused. We submit that a change in the subsection to ensure agencies consider the question of whether the privilege has been waived (on the common law standard) is considered, such as:

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[7] *Free and frank opinions* n 1 at 6
[8] *Free and frank opinions* n 1 at 7

> *[…]* withholding the information is necessary to—
>
> *[…]*
> *(h) maintain legal professional privilege <u>where that privilege has not been waived by, or on behalf of, that whom the privilege protects</u>*
> *[…]*

Commercial activities and negotiations – sections 9(2)(i)-(j)

98. Alleged protection of 'commercial activities' is commonly referred to by councils to prevent release of spending or procurement information in cases where there is no commercial activity by the agency. We submit that this is a misapplication of the section and could be clarified by amending the subsection:

> *[…]* withholding the information is necessary to—
>
> *[…]*
> *(i) enable a Minister of the Crown or any department or organisation holding the information to carry out, without prejudice or disadvantage, commercial activities <u>of the Minister of the Crown or organisation;</u>*
> *[…]*

99. We also find agencies commonly try to prevent us accessing historic information on the basis that there will be future negotiations or tenders.

100. This has happened to us where we have asked agencies the price paid under leases for office space.

101. We acknowledge that information about current negotiations may prejudice or disadvantage, but only in the most unusual of circumstances would this apply to historic information, particularly where there is competition or competitive negotiations. We submit section 9(2)(j) should make this clearer.

Refusal as information will soon be publicly available – section 18(d)

102. The Guidelines for section 18(d) suggest a loose time limit of eight weeks after refusal that proactive release is considered to be "soon" for the purposes of the provision.[9] We have experienced many occasions where information is released long after this eight-week limit is reached – up to six months.

103. We submit that an eight-week time limit be from the time of the request and not the time of refusal and for this timeframe to be inserted into section 18(d).

Proactive release of information

104. We are very supportive of agencies making information proactively available however note that on occasion agencies are using future 'proactive release' to delay or frustrate our efforts to obtain timely information on the basis of section 18(d).

[9] Office of the Ombudsman *Guide: Publicly available information* (April 2018) at 9

105. We question whether the purpose of the Acts are advanced with an annual 'dumping' of sensitive information and that 'proactive release' being used to keep the public in the dark for the rest of the year.

106. From a taxpayer perspective the best proactive disclosure would be the adoption of armchair audit legislation, which is common in the United States. Such legislation sees all transactions over a *de minimis* amount uploaded onto an online searchable database.

107. Armchair audit disclosure is likely to dramatically reduce administration costs in responding to information requests for financial information. But it would merely require a regular export of accounts payable transactions off agencies accounting system and uploading it to a database.

Enforcement and timelines - Ombudsman, or someone else?

108. We do not hold a firm view whether the Ombudsman, or a new agency should be the primary enforcer of the Acts, however we make the following observations:

(a) We believe the reluctance of the Ombudsman investigators to retrospectively call-out breaches by agencies after information is released, is a major cause of the Office's high workload.

(b) The office appears to have improved since the appointment of the new Chief Ombudsman.

(c) Lack of prompt triaging of complaints usually means those which are the most time sensitive are not worth complaining about. In cases where we know the information is only valuable to us within a week or two, we simply don't bother going to the Ombudsman. We suspect this attitude is common.

(d) Ombudsman officials should be careful not to allow political views, or views of individual requestors, to be expressed in such a way that may encourage agencies to take some requests more seriously than others. The Acts are democratic tools, they should apply equally and this should be emphasised by the Office.

(e) We understand from the former Chief Ombudsman that the powers conferred in section 27 of the Ombudsman Act 1975 have not been used for enforcement of the Acts since their adoption. We submit that where a *prima facie* serious abuse of the OIA has occurred the Office should be willing to use these powers in such a way that other agencies will take note of. This would serve to demonstrate to the public sector that the Acts should be complied with and there is a real risk of prompt and meaningful enforcement. We submit that only a few high profile examples would serve to change the culture of compliance, and likely materially reduce the number of complaints.

Alternative enforcement to the Ombudsman – right to appeal to the District Court

109. We submit that the District Court should be empowered to deal with appeals under the Acts, *in addition to* the current rights of appeal to the Ombudsman.

110. We submit that a straightforward complaints procedure, requiring the Court to take into account Ombudsman guidance, would be an efficient way to reduce the workload of the Ombudsman's office. The costs involved for District Court proceedings would be far less than the current alternate remedy

(judicial review) but likely to only be taken by those requesters with a legitimate claim for information of material value to them.

111. The frustration caused by uncertain timeframes under the previous Ombudsman has meant that we have seriously considered judicial review of an agency's flagrant disregard of the OIA. The costs of this would have been enormous. The Ombudsman is free, and the history of traditions of that Office is likely to mean that any fees regime for prioritisation, or similar measures, will be strongly resisted.

112. We believe that when a citizen seeks information he or she is entitled to under the Acts, and is refused unlawfully, timely appeal should be accessible, and not reliant on an Office with a monopoly on enforcement. The District Court appears to be an obvious solution.

113. Thank you again for the opportunity to submit.

Yours faithfully,
New Zealand Taxpayers' Union Inc.

Jordan Williams
Executive Director
s9(2)(a)

Submission by Department of Internal Affairs on the Reform of the Official Information Act 1982

Introduction

The Department of Internal Affairs provides this submission on the proposed reform of the Official Information Act 1982 (OIA or the Act). The submission is from specialist advisers in the Department's Governance, Risk and Assurance team, legal team, Information and Data team and Service Delivery and Operations group that provide guidance to the organisation regarding the application of the Official Information Act, and other related enactments.

This submission accordingly focuses on experience of the workability of the Act; problems or issues that have arisen which give rise to confusion or do not assist the objectives or spirit of the Act or which cause problems in terms of justification for withholding or cause inconsistency in that regard.

Proposed amendments to the Act are highlighted, to distinguish them from existing provisions.

Summary of proposed amendments

#	Section	Amendment
1	s2(1) "Official Information" (e) And S52	Amendment to give clarification to records that are controlled by the Public Records Act 2005 rather than the Official Information Act 1982
2	s2(1) "Official Information" (e) And S52	Amendment to give clarification to records that are controlled by the Births, Deaths, Marriages and Relationships Registration Act 1995 rather than the Official Information Act 1982
3	S2(h)	Amendment to resolve a conflict between the Official information Act and related provisions set out in the Inquiries Act 2013

4	2(1) – Working Day	Amendment gives optional consideration to anniversary days where the workplace of the responder is closed.
5	6(c)	Amendment to clarify that Maintenance of the law encompasses both statutory and common law, in addition to the criminal law
6	6(f)	Amendment to safeguard Budget information through a conclusive withholding ground prior to the announcement of the Budget
7	15A	Adding provisions to the extension grounds to allow for extension in circumstances of unusually high request volume following an event of national significance.
8	18(e), 18(g), 18B	Combining two highly similar refusal grounds used when information is not held, has not been found, or does not exist and reinforcing the requirement to consider whether the information may be held by other departments, Ministers of the Crown, organisations or local bodies.
9	18(f)	Amendment to substantial collation refusal ground to include option for substantial consultation, aligning this provision with the related 15AA
10	48	Extending the Protections from liability under s48 to cover proactive release of OIA responses, where this serves the public good, and information categories that cabinet has agreed must be automatically considered for proactive release

Consideration of individual proposed amendments

Number	1)
Section	***Section 2(1) – Official Information (e)*** ***AND*** ***Section 52 – Savings***
Introduction	This amendment clarifies that documents deposited to Archives NZ under the Public Records Act 2005 (PRA) that are regulated by that enactment rather than the Official Information Act 1982 (OIA). The records become explicitly not official information subject to the OIA. This resolves an unhelpful tension between these two enactments that has contributed to delay and frustration for members of the public seeking to access this information.
Amendment	*2(1)(e) Official Information does not include information contained in—* *(i) Any library, archive or museum material made or acquired and preserved solely for reference or exhibition purposes; or* *(ii) material deposited or transferred to Archives New Zealand under the control of the Chief Archivist by or on behalf of Ministers of the Crown or Government organisations or officials in their official capacity, to meet obligations under the Public Records Act 2005.* *(ii) material placed in the National Library of New Zealand Te Puna*

	Mātauranga o Aotearoa by or on behalf of persons other than Ministers of the Crown in their official capacity or departments; or *(iii) any oral history provided to the National Library of New Zealand Te Puna Mātauranga o Aotearoa in accordance with section 10 of the National Library of New Zealand (Te Puna Mātauranga o Aotearoa) Act 2003;* And *S52(2A) Nothing in this Act authorises or permits any person to make information available if that information relates to –* *(a) any library, archive or museum material made or acquired and preserved solely for reference or exhibition purposes; or* *(ii) material deposited or transferred to Archives New Zealand under the control of the Chief Archivist by or on behalf of Ministers of the Crown or Government organisations or officials in their official capacity, to meet obligations under the Public Records Act 2005.* *(ii) material placed in the National Library of New Zealand Te Puna Mātauranga o Aotearoa by or on behalf of persons other than Ministers of the Crown in their official capacity or departments; or* *(iii) any oral history provided to the National Library of New Zealand Te Puna Mātauranga o Aotearoa in accordance with section 10 of the National Library of New Zealand (Te Puna Mātauranga o Aotearoa) Act 2003*
Rationale	Currently the OIA does not make sufficiently clear to the public whether they are able to request information from Archives New Zealand collections or Government records that have been deposited or transferred to Archive New Zealand under the control of the Chief Archivist. The PRA and the OIA are meant to be complimentary enactments. The savings provision in s52 of the OIA permits the Public Records Act and its specialist access regime to override the Act where official information has been deposited or transferred to Archives New Zealand. As the position in law is however not made sufficiently clear in the OIA, this gives rise to an argument that the Act may continue to apply, which is detrimental to the maintenance of the law. Section 42 of the Public Records Act does not fully resolve this issue. This has practical consequences as ministerial papers, as a form of public record, are a “carve out” under that Act and as Ministers (including former Ministers) continue to own them and are able to impose long term requirements for public access. The amendments are proposed to make the relationship between the Acts (envisaged by s52) clearer and more transparent for the public. This amendment will reduce the number of requests for this information under the Official Information Act 1982, and by directing the public specifically to the Public Records Act 2005, will guide them to the appropriate channel and regime for making requests for this information, and thereby reduce unnecessary delays currently experienced in accessing this information.

Number	2)
Section	***Section 2(1) – Official Information (e)*** ***AND*** ***Section 52 – Savings***
Introduction	Access to information about births, deaths, marriages and relationships is held in several national registers and is regulated by the Births, Deaths, Marriages, and Relationship Registration Act 1995, according to highly specific access provisions in that enactment. This amendment, following on from the proposed amendment at 1 makes explicit that this information is not official information regulated by the Official Information Act 1982, thereby reducing delay and frustration for members of the public seeking to access this information.
Amendment	*2(1)(e) Official Information does not include information contained in—* *(i) Any library, archive or museum material made or acquired and preserved solely for reference or exhibition purposes; or* *(ii) material deposited or transferred to Archives New Zealand under the control of the Chief Archivist by or on behalf of Ministers of the Crown or Government organisations or officials in their official capacity, to meet obligations under the Public Records Act 2005.* *(ii) material placed in the National Library of New Zealand Te Puna Mātauranga o Aotearoa by or on behalf of persons other than Ministers of the Crown in their official capacity or departments; or* *(iii) any oral history provided to the National Library of New Zealand Te Puna Mātauranga o Aotearoa in accordance with* section 10 *of the National Library of New Zealand (Te Puna Mātauranga o Aotearoa) Act 2003; and* *(iv) information registers under the Births, Deaths, Marriages, and Relationships Registration Act 1995; and* And *S52(2A) Nothing in this Act authorises or permits any person to make information available if that information relates to –* *(a) any library, archive or museum material made or acquired and preserved solely for reference or exhibition purposes; or* *(ii) material deposited or transferred to Archives New Zealand under the control of the Chief Archivist by or on behalf of Ministers of the Crown or Government organisations or officials in their official capacity, to meet obligations under the Public Records Act 2005.* *(ii) material placed in the National Library of New Zealand Te Puna Mātauranga o Aotearoa by or on behalf of persons other than Ministers of the Crown in their official capacity or departments; or* *(iii) any oral history provided to the National Library of New Zealand Te Puna Mātauranga o Aotearoa in accordance with* section 10 *of the National Library of New Zealand (Te Puna Mātauranga o Aotearoa) Act 2003.* *(iv) Information registers under the Births, Deaths, Marriages, and*

	Relationships Registration Act 1995.
Rationale	Currently the OIA does not make sufficiently clear to the public whether they are able to request Births, Deaths, Marriages or Relationship registration information under the OIA. Making it clear in the interpretation section of the Official Information Act that this information is not official information subject to the Act would be likely to reduce the number of requests made and declined for this information, and to simplify notifications, as requests for this information would not be accepted, so requesters would not have to go through a process to be formally refused in order to be directed to the correct access channel. This would reduce unnecessary delay for the public.

Number	**3)**
Section	***Section 2(h) Official Information – Inquiries***
Introduction	This amendment resolves a conflict between the Official information Act 1982 and related provisions set out in the Inquiries Act 2013
Amendment	*(h) Official Information does not include evidence or submissions made to:* *(i) a Royal Commission; or* *(ii) a commission of inquiry appointed by an Order in Council made under the Commissions of Inquiry Act 1908; or* *(iii) a commission of inquiry or board of inquiry or court of inquiry or committee of inquiry appointed, pursuant to, and not by, any provision of an Act, to inquire into a specified matter; and* *(iv) an inquiry to which section 6 of the Inquiries Act 2013 applies.*
Rationale	The proposed amendment aligns the provisions of the Act (section 2(6) and s52) with s32 of the Inquiries Act 2013 and the general law that provides that evidence or submissions made to an inquiry are not official information. This corrects an oversight in previous amendments to the Act.

Number	**4)**
Section	***Section 2(1) – Working Day***
Introduction	Currently national public holidays are excluded from working day calculations, while Anniversary holidays are included, although their impact is identical in the course of responding to an OIA request.
Amendment	***working day*** *means any day of the week other than—* *(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and*

	(b) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and *(c) a day in the period commencing with 25 December in any year and ending with 15 January in the following year.* *(d) the anniversary day of the city in which the person handling the request is located, provided that:* *(i) the workplace of the person handling the request is closed on the anniversary holiday, and* *(ii) the person handling the request has made the requester aware of this anniversary holiday within seven working days of the date that the request was received.*
Rationale	Anniversary holidays typically result in the complete closure of the workplace. It is therefore not possible for responders to utilise that day to prepare their response. In cases where a full 20 working days are needed to respond adequately to the request, but where grounds do not exist to extend under the Act, this presents a problem and can result in late responses. It can also be frustrating for requesters that are unaware of the anniversary holiday closure. This amendment corrects that issue. It is phrased contingently, to make clear that it is not applied automatically. Responders must recognise and activate the holiday by notifying the requester early in the course of the request. They are at liberty to choose not to do so if it is not needed. This amendment is not dissimilar to other optional early stage adjustments, such as 15(1AA) and (1AB).

Number	**5)**
Section	***6(c) Prejudice to the maintenance of the law***
Introduction	The amendments to section 6(c) that are proposed, do not alter the law as it stands, but clarify that maintenance of the law is broader in its current effect that the wording of the current provision indicates. It is proposed that prejudice to enforcement of the criminal law (e.g. law enforcement purposes) is given its own ground, ending confusion to the public and agencies as to whether the maintenance of the law ground is confined to those purposes.
Amendment	*6(c) to prejudice the maintenance of the law, including the prevention, detection and investigation of offences, and the right to a fair trial* Is amended to *6(c) to prejudice the maintenance of the law generally, including common law or statutory law; or* *6(ca) to prejudice the enforcement of the law including the prevention, investigation, and detection of offences, and the right to a fair trial;*

Rationale	The 6(c) provision currently references considerations particular to the criminal law only, but these are not always suitable to recognise activities undertaken to ensure compliance with statutory or common law. The term "maintenance of the law" is a broad umbrella term that covers maintenance of the law generally and it is inclusive in wording. The criminal law wording are merely "examples" of how the law may be maintained through its enforcement and those examples relate only to enforcement of the criminal law. It would thus be clearer if the "law enforcement" purposes and the right to a fair trial which are associated with them, were separated out into a separate withholding ground. Currently the maintenance of the law provision is much wider (and this is not clear to the public) and applies to where there is prejudice caused to the law in all its forms including circumstances which could lead to breach of rights or statute, and to all forms of public sector inquiries such as administrative inquiries or reviews (not covered by the Inquiries Act) or coronial inquiries.

Number	**6)**
Section	***6(f) Budget information***
Introduction	The Official Information Act 1982 currently gives no direct consideration to Budget information, despite the annually recurring need to engage with this information. This amendment proposes to add a conclusive withholding ground for budget-sensitive information prior to finalisation of the Budget.
Amendment	*6(f) to prejudice the constitutional conventions that enable the government of New Zealand to consider and finalise an annual budget, by prematurely disclosing related sensitive information or advice*
Rationale	Budget information is subject to secrecy and there are cabinet requirements applying to public servants in that regard. However, there are currently no section 6 grounds that are able to be readily applied to budget sensitive information. A variety of section 9 grounds are currently used, with little consistency across responders. These grounds include 9(2)(ba), 9(2)(f)(iv) and 9(2)(g)(i). The variation in practice seen in the use of section 9 grounds to withhold budget sensitive information indicates a lack of clarity around the application of the Act in this area. Whenever any section 9 withholding ground is applied, it is implicit that the public interest in releasing information may outweigh the withholding of information. For this reason, a public interest test is undertaken. However, in relation to Budget-sensitive information, the balance of the public interest will largely rest on the side of withholding, in order to enable the New Zealand government to appropriately deliberate and finalise a budget is extremely. If sensitive budget information is prematurely released, likely negative impacts include prejudice to the ability of the government to consider the present budget without influence, and over the longer term, a likely decline in the quality and frankness of advice in regard to the Budget. An outcome that would damage the

	transparency and accountability of government over time and may result in other downstream negative impacts on programmes and policies that serve the public good. We consider that the reasons for choosing to protect sensitive budget information prior to finalisation of the b may in fact amount to conclusive grounds.

Number	**7)**
Section	***15A***
Introduction	The current extension grounds operate well, however it is worth considering an amendment to permit extension in circumstances of unusually high request demand, for example, following an event of national significance, state of emergency, national crisis or other event like the Christchurch Mosques Attack (define as a recent event). This extension ground would apply where, although requests are themselves may not be complex, due to the overall volume of requests an agency has received, a processing schedule has had to be implemented in order to manage request numbers within reasonable resource limitations.
Amendment	*(1) Where a request in accordance with section 12 is made or transferred to a department or Minister of the Crown or organisation, the chief executive of that department or an officer or employee of that department authorised by that chief executive or that Minister of the Crown or that organisation may extend the time limit set out in section 14 or section 15(1) in respect of the request if—* *(a) the request is for a large quantity of official information or necessitates a search through a large quantity of information and meeting the original time limit would unreasonably interfere with the operations of the department or the Minister of the Crown or the organisation; or* *(b) consultations necessary to make a decision on the request are such that a proper response to the request cannot reasonably be made within the original time limit, or* *(c) unusually high demand for official information as a consequence of a recent event has necessitated a processing schedule to appropriately manage request volume without unreasonably interfering with the operations of the department of the Minister of the Crown or the organisation.*
Rationale	A sudden unusually high demand for official information can contribute to a range of negative outcomes such as reduced quality of responses, increased incidence of late responses, and an increased likelihood that responders may need to extend requests under existing extension grounds. It is already permitted to refuse requests under section 18(f) of the Act where substantial collation and research would be likely to disrupt the normal operation of the organisation. This amendment would be consistent with that principle. Under 'exceptional' circumstance there is some public tolerance for extensions, which may be partially due to the temporary pressure on the system. It would however be more transparent for responders to be able to notify requesters if an extension is necessary due to an unexpected spike in demand putting pressure on

	the available resource. It would also enable requesters to have a better sense of the current status of processing in their request. It is believed that the reasonableness of the use of this provision would be readily able to be verified for the purpose of an extension-based Ombudsman complaint, if necessary, by providing statistics on the associated increase in request numbers following the event of significance

Number	**8)**
Section	***18(e), 18(g), 18B***
Introduction	Amendment is proposed to unify 18(e) – The information does not exist or cannot be found, and 18(g) – the document alleged to hold the information is not held by the department or Minister of the Crown or organisation As a result of unifying 18(e) and 18(g), 18B is amended to receive the part of 18(g) that confirms no grounds to believe the information is held by, or more closely related to the functions of another responder, in order to make clearer that consultation may be necessary to be able to confirm this.
Amendment	*18(e) that the document alleged to contain the information requested does not exist or, despite reasonable efforts to locate it, cannot be found:* And *18(g) that the information requested is not held by the department or Minister of the Crown or organisation and the person dealing with the request has no grounds for believing that the information is either—* *(i) held by another department or Minister of the Crown or organisation, or by a local authority; or* *(ii) connected more closely with the functions of another department or Minister of the Crown or organisation or of a local authority* And *18B Duty to consider consulting person if request likely to be refused under section 18(e) or (f)* *If a request is likely to be refused under section 18(e) or (f), the department, Minister of the Crown, or organisation must, before that request is refused, consider whether consulting with the person who made the request would assist that person to make the request in a form that would remove the reason for the refusal.* *To be amended to:* *18(e) That the information requested, or any document alleged to contain the information either is not held by the department or Minister of the Crown or organisation; or does not exist; or despite reasonable efforts to locate it, cannot be found;*

	And ***18B Duty to consider consultation if the request likely to be refused under section 18(e) or (f)*** *If a request is likely to be refused under section 18(e) or (f), the department, Minister of the Crown, or organisation must, before that request is refused,* *(a) Confirm that no grounds exist for believing that the information is either held by, or connected more closely with the functions of another department or Minister of the Crown or organisation, or by a local authority, and* *(b) Consider whether consulting with the person who made the request would assist the person to make the request in a form that would remove the reason for the refusal*
Rationale	Despite clarification by the Ombudsman regarding these two sections, they continue to be used incorrectly or interchangeably across and within agencies (the difference between the two can be quite nuanced). Combining the provisions would simplify their use and making an amendment of 18(b) to cover the 'and the person answering the request has no grounds for believing' contingency in 18(f) would emphasise that responders have a duty to undertake reasonable consultation and to consider transfer where possible instead of simply refusing as not held. This would better align responses across government and improve clarity for the public, who sometimes express confusion where both provisions are used within the same request.

Number	**9)**
Section	**18(f)**
Introduction	This amendment proposes to add an additional refusal provision on the basis of substantial consultation, in order to better align section 15A extension grounds and section 18 refusal grounds.
Amendment	*(18) A request made in accordance with section 12 may be refused only for 1 or more of the following reasons, namely:* *(f) that the information requested cannot be made available without substantial collation or research:* Amend to *(18) A request made in accordance with section 12 may be refused only for 1 or more of the following reasons, namely:* *(f) Your request would be likely to disproportionately disrupt the normal activity of the department, or Minister of the Crown, or organisation, as* *(i) the information requested cannot be made available without substantial*

	collation or research; or *(ii) substantial consultation or public engagement would be necessary to make a decision on your request*
Rationale	Currently it is only possible to refuse a request due to the volume of collation and research involved, however in some cases consultation necessary to make a decision in the request can itself be unreasonable in scope. For example, a consultation may involve contacting hundreds, or even thousands, of individuals, and the degree of engagement required can vary according to both volume (e.g. can consultation be undertaken across a group or must it be undertaken privately with each of a large number of individuals) and complexity (e.g. how old, specialised, technical or contested is the information to be consulted on), as well as the level of difficulty in locating and accessing the individuals. It can be very difficult in these cases to estimate how much time will be needed for consultation to be completed, for the purpose of an extension. However, where the requester is unwilling to discuss possible amendment to the scope of their request, there is currently no provision to refuse the request on the basis of substantial consultation and engagement necessary in the request. This increases the risk of responders failing to meet legislative timeframes, and is generally frustrating for both the requester and the responder The addition of this provision would fully align the s15A extension grounds with the s18 refusal grounds and would enable a more useful conversation to take place between responders and requesters regarding request scope in requests that involve substantial consultation. The parallel refusal ground – substantial collation and research, is helpful in making clear to the requester what their request entails and can form a basis for the discussion of scope refinement.

Number	**10)**
Section	***s48***
Introduction	This amendment proposes to extend the good faith protections of section 48 to information proactively released as a result of a cabinet agreement to automatically consider particular document categories for proactive release.
Amendment	*(1) Where any official information is made available in good faith pursuant to this Act; or where responses to Official Information Act requests are proactively released in order to serve the public good; or where official information is proactively released as a result of Cabinet agreements mandating consideration of such proactive release;* *(a) no proceedings, civil or criminal, shall lie against the Crown or any other person in respect of the making available of that information, or for any consequences that follow from the making available of that information; and* *(b) no proceedings, civil or criminal, in respect of any publication involved in, or resulting from, the making available of that information shall lie against the author of the information or any other person by reason of that author or other person having supplied the information to a department or Minister of the Crown or organisation.* *(2) The making available of, or the giving of access to any official information*

	released in accordance with this enactment, or where responses to Official Information Act requests are proactively released in order to serve the public good; or where official information is proactively released as a result of Cabinet agreements mandating consideration of such proactive release; , shall not be taken, for the purposes of the law relating to defamation or breach of confidence or infringement of copyright, to constitute an authorisation or approval of the publication of the document or of its contents by the person to whom the information is made available or the access is given.
Rationale	In view of the amount of time OIA requests can take, and the small audience for the information in many cases, it is preferable for government to be making information publicly available (where the information is of general public interest), so that members of the public are not obliged to ask for it. Proactive release therefore embodies the spirit of the Official Information Act 1982. The State Services Commission has been encouraging government to proactive release responses to OIA requests, in cases where the information would be of general public interest and proactive release would serve the public good. Additionally, on 03 September 2018, Cabinet agreed a policy titled 'Strengthening Proactive Release Requirements', which mandates the consideration of every Cabinet paper for proactive release. They also indicated the possibility that this required consideration could come to be applied to further document categories in future. One factor that limits proactive release or creates an environment of excessive caution is the fact that the good faith release protections of section 48 of the Official information Act do not provide any protection for proactive release in the circumstances that are being encouraged. This means that proactive release, as a side-effect, necessarily increases litigation risk across the whole of government. Proactive release is not inconsistent with the Act and there is no real practical difference between making response to a request directly to the requester through the publicly available FYI.org.nz website (release is covered by section 48 protections) and publishing the response proactively on the responder's website (release is not covered by section 48 protections). An amendment to section 48 protections to cover the advocated proactive release would serve the public interest by mitigating litigation risk, encouraging greater proactive release of information and reducing delays created by obligating the public to request the information directly.

18 April 2019

To whom it may concern,

This submission from Stuff - publisher of stuff.co.nz, the *Sunday Star-Times*, the *Dominion Post*, the *Press*, and other daily and community newspapers - strongly supports a review being conducted of the Official Information Act.

1. In your view, what are the key issues with the OIA?

In Stuff's experience as a large mainstream media organisation whose reporters routinely use the Official Information Act, we have found that too often:

- Respondents look for reasons to withhold information, rather than starting from the presumption that it should be released.
- Politicians and public servants structure information to hide it from easy discovery (such as obscuring the titles of reports) or by having 'off-diary' meetings or briefings with no written records.
- Respondents misinterpret the phrasing of requests.
- The minister's office is inappropriately involved in decisions about the release of information from agencies, meaning decisions can be influenced by political expediency rather than the public interest.
- Agencies demonstrate they are either unaware of the precedent set by Ombudsman's rulings or they are willing to flout the rulings.
- Agencies - particularly local authorities - announce an intention to charge a fee for all requests.
- Respondents will answer the letter of a request, not the spirit. The public needs to have confidence that those holding official information will respect both the letter and the spirit of the legislation.
- Respondents will redact information not because it is subject to a withholding ground, but because it is 'out of scope'.
- The 20-day response period is treated as a target, rather than a maximum.
- The 'free and frank' clause is abused, with agencies using it to withhold any sensitive advice.
- The process of appealing to the Ombudsman takes too long, and politicians and agencies exploit their knowledge of that delay to frustrate requesters.
- There is too much variation in responses from agencies, even when seeking the same data (e.g. a request to all district health boards for waiting time information will be handled differently by each DHB).

- Data on the quality of replies is patchy at best. While State Services Commission data tells us how many requests are processed in 20 days, it tells us nothing about the quality of replies.

2. Do you think these issues relate to the legislation or practice?

Stuff considers a thorough review is necessary.

The OIA is fundamental to sound government. Stuff strongly considers that a structural approach is required to achieve a far more robust and genuine application of the OIA's purposes and its underlying Principle of Availability.

Focus on 'practice improvements' within government agencies is laudable but can only achieve so much. Fundamentally, there is a strong disincentive for agencies to release information that reflects poorly on them or embarrasses their minister. The latter pressure in particular feeds a risk-averse culture, which means respondents too often seek ways to frustrate requests, either by withholding some or all of the information, finding spurious grounds to reject (such as exploiting poor record-keeping or document management to say that the requested material cannot be found without substantial collation), or delaying.

A focus on practice improvements may lessen but won't fix the problems with the OIA, because they're too entrenched. The legislation requires review to shake the foundation of the system.

3. What reforms to the legislation do you think would make the biggest difference?

- Resourcing of the oversight mechanisms of the OIA, via the Office of the Ombudsman, has been of ongoing concern and significantly reduces the legislation's effectiveness. Improvements in response times notwithstanding, this is an area of growing concern against the backdrop of an ever-accelerating news cycle.
- Agencies be required to conduct regular and standardised reporting on compliance with the OIA. They should routinely make public data on delays, full and partial refusals, extensions, transfers and withholding reasons.
- There should be greater accountability for failing to uphold the OIA. Agencies could be fined for delays that breach the maximum response time, and could be charged for the cost of investigations by the Ombudsman's Office when a complaint is upheld.
- How information is provided is important: Data should be provided in a digital format, not scanned PDFs.
- To avoid decisions being made for political expediency, a minister's involvement should be limited to specific circumstances and ministers should have no influence over the process of responding.
- As recommended by the Law Commission in 2012, an independent Information Commissioner should be appointed to oversee the law and enforce its tenets.

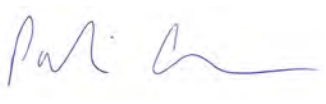
- If an extension is needed, the time period should be limited to another 20 working days, and agencies should have to specify what work is required to justify the extension.
- Information should only be able to be refused on the grounds it's about to be released publicly, if it will be published within two weeks of the decision on the OIA request.
- The OIA should be extended to cover Parliamentary Service and the Office of the Clerk, Ombudsmen, the Auditor General, the Independent Police Conduct Authority, the Inspector-General of Intelligence and Security, ACC complaints resolution contractor, Air New Zealand, and the state-owned power companies. The Solicitor-General should also be covered by the OIA, in their role as Law Officer of the Crown.
- Legal privilege should only apply if the matter is before the courts, or soon to be or could harm the government's legal position. Agencies must be required to demonstrate a strong case of harm before withholding legal advice.

Please see the following relevant reporting from Stuff:

- https://www.stuff.co.nz/national/111242168/protect-the-publics-right-to-know-cure-the-unhealthy-official-information-act
- https://www.stuff.co.nz/national/111130258/hide-and-seek-how-politicians-seek-to-hide-your-information-away
- https://www.stuff.co.nz/national/111211444/redacted--how-information-the-public-should-know-about-disappears-from-view
- https://www.stuff.co.nz/national/111181806/redacted--our-official-information-problems-and-how-to-fix-them

We are happy for this submission to be made public in its entirety.

Ngā mihi,



Patrick Crewdson
Stuff Editor in Chief

Bottcher, Jenna

From: Paula Harris s9(2)(a)
Sent: Thursday, 18 April 2019 4:27 PM
To: OIAfeedback@justice.govt.nz
Subject: OIA feedback

My feedback is to look at having chief executives be fined or penalised if their ministry/organisation doesn't meet the requirement of an OIA. Especially when there's deliberate time-wasting. There is no motivation for organisations to improve their OIA procedures because there's no punishment for doing it badly. It's only if the chief executives start to feel it that they're going to be motivated to make sure staff are doing a proper job. Having rules and procedures is lovely, but is a fight against human nature. Chief executives need to take more of the heat, and not just with a frowny face telling them to do better. Fines/penalties need to be seriously investigated. And not for the organisation as a whole, but genuinely to motivate the chief executive by hitting them in the pocket.

10 April 2019

Andrew Kibblewhite
Secretary for Justice and Chief Executive
Ministry of Justice
By email to:
Andrew.Kibblewhite@justice.govt.nz
Chris.Hubscher@justice.govt.nz

Dear Andrew

Consultation on the Official Information Act (OIA)

The Ministry of Justice is currently undertaking public consultation with a view to advising the Government on whether the OIA should be reviewed, or whether the focus should remain on practice improvements. Officials have asked to meet with me to discuss my views on the matter. The purpose of this letter is to set out my views in writing.

In essence, my view is that the fundamentals of the OIA, as a reactive access to information regime, are sound. I recognise the progress that has been made through practice improvement initiatives in recent years. In the event that the Government did decide to proceed with a review of the OIA, I set out the legislative reforms that I think would have the most impact.

A note on the LGOIMA

It is important to note that New Zealand's official information framework includes both the OIA and the Local Government Official Information and Meetings Act (LGOIMA). The Acts are largely aligned, and it is important that they stay this way.

The Ministry may wish to consider the LGOIMA in this discussion about whether the OIA should be reviewed. All references to the OIA in this letter should also be taken as references to the LGOIMA, unless stated otherwise.

The fundamentals are sound

I consider that the OIA is still very fit for purpose, insofar as it relates to the establishment of a regime for the reactive release of official information in response to requests. The harm-based, case-by-case approach reflected in the OIA remains a significant strength and advantage over comparative freedom of information (FOI) regimes overseas. I note that, when the Law Commission reviewed the legislation in 2012, it too *'endorse[d] the fundamentals of the legislation, such as the case-by-case approach to decision-making … [and] the role of the Ombudsmen as the arbiter of complaints about decisions made under the OIA and LGOIMA'.*[1]

[1] *The Public's Right to Know: Review of the Official Information Legislation* (NZLC R125, 2012) at 25.

Progress has been made

I also want to acknowledge the progress that has been made in recent years, just with policy and practice initiatives. For example, the government has developed policies of proactively releasing Cabinet papers and summaries of ministerial diaries.

The State Services Commission (SSC) has, alongside my Office's publication of OIA complaints data, been publishing OIA request data for the core state sector, including numbers of requests, compliance with statutory or extended timeframes, and proactive release of OIA responses. This has seen average rates of compliance with statutory or extended timeframes rise from 87.6 percent in 15/16 to 95 percent in 17/18; and proactive release rates rise from 553 OIA responses per year in 16/17, to 752 per year in 17/18, to 1138 in just the first half of the 18/19 year. SSC has also published guidance on proactive release, developed a capability development toolkit for agencies, and run a regular forum for official information leaders and practitioners.

My Office has heeded the Law Commission's call to publish better guidance on the OIA, including 'hot button' topics like ministerial involvement in OIA decision making, the good government withholding grounds, charging, administratively challenging requests, and frivolous or vexatious requests. A 2019 external stakeholder survey showed that three-quarters of respondents are using this guidance 'often' or 'regularly'. Feedback is that the new guidance is clear, authoritative, and useful when responding to OIA requests.

My Office has also been tasked by Parliament with undertaking a programme of proactive reviews of agencies' official information practices (referred to in this letter as 'OI practice investigations'). Four reviews have been completed and a further eight are currently underway.[2] These systemic own-motion reviews, conducted under the Ombudsmen Act 1975 (OA), are a very effective way of helping agencies to improve their official information practices.

General observations

While my Office can work with the Act as it is, and continue to push for improvements within that framework, it is apposite to make the following general observations, in order to inform the debate as to whether there should be a review of the OIA.

New Zealand's end-of-term report under the Open Government Partnership concluded there had been only *'marginal change'* as a result of the practice improvements to date.[3] Issues around OIA compliance have affected New Zealand's ranking in the World Press Freedom Index.[4] Users of the OIA have been advocating on social media to #fixtheoia. There is a problem with how the Act is perceived as working, and consequently, with its credibility.

[2] See http://www.ombudsman.parliament.nz/resources-and-publications/latest-reports/official-information-practice-investigations-oipi for more information.

[3] Booth, K *Independent Reporting Mechanism (IRM): New Zealand End-of-Term Report 2016–2018*, at 16.

[4] In 2017 and 2018, it noted *'the media continue to demand changes to the [OIA], which obstructs the work of journalists by allowing government agencies a long time to respond to information requests and even makes journalists pay several hundred dollars for the information'*, see https://rsf.org/en/new-zealand, accessed 22 March 2019.

The OIA is 37 years old. The LGOIMA—which is largely modelled on the OIA—is 32 years old. Some people find the language and structure hard to understand (the guides that this Office has produced in recent years have been directed at translating it, in a sense). The Act also lacks some components that are now generally recognised as an important part of an effective and functioning FOI regime, and that comparable jurisdictions have adopted in recent years.

As you know, there was a full review of the OIA and LGOIMA in 2012. The Law Commission concluded that *'significant legislative amendment'* was required, and recommended that the OIA and LGOIMA be re-drafted and re-enacted.[5] It also recommended a considerable number of other changes, most of which were not accepted. While some things have changed since 2012, the Law Commission made some valid suggestions that would be worth revisiting. The remaining discussion sets out the reforms that I think would make the most difference. Many of these were also recommended by the Law Commission.

Reforms that would have the most impact

In my view, the following reforms would have the most impact:

- Expanded obligations on agencies (including proactive release)
- A statutory oversight office or office-holder
- Extending OI practice investigations to cover all agencies subject to the OIA and LGOIMA
- Reforms related to burdensome requests (Chapter 9 of the Law Commission report)
- Measures to preserve the primacy of the OIA
- Making certain conduct unlawful under the OIA
- Removing the eligibility requirement

I would also take this opportunity to advocate for extending the exclusion covering Ombudsman-agency communications.

Expanded obligations on agencies

Currently the only obligations on agencies relate to the processing of individual requests. A number of other FOI regimes impose additional obligations on agencies. Examples include obligations:

- to proactively release information;
- to actively promote compliance with the agency's FOI obligations (for example, through the appointment of dedicated 'information officers');
- to actively promote awareness of the agency's FOI obligations;
- to develop appropriate policies and procedures;

[5] See note 1 at 368, and recommendation 136 at 372.

- to ensure appropriate staff training;
- to collect statistical data that enables performance to be measured over time; and
- to report annually on steps taken to implement the agency's FOI obligations, including statistical data.

Some of these obligations are discussed in more detail below.

A proactive release obligation

Most modern FOI regimes include a mandate and requirement for agencies to disseminate information about their functions and activities on a routine and proactive basis, even in the absence of a specific request.

The Law Commission recommended a duty on agencies to take all reasonably practicable steps to proactively make official information publicly available, taking into account matters such as the type of information held by the agency and the public interest in it, the agency's resources, and any relevant government policy.[6] The Commission also recommended that agencies develop and report against proactive release strategies,[7] which is a point I routinely raise in my official information practice investigations. The Commission considered that leaving proactive release to government policy, rather than mandating it in legislation, would be a *'missed opportunity'*.[8]

Information officers

The appointment of dedicated 'information officers', responsible for ensuring compliance with the OIA, would also help. In the Australian Capital Territory (ACT), for example, the Freedom of Information Act 2016 requires chief executives to appoint information officers, to deal with 'access applications', and give effect to the agency's proactive release obligations.[9] This is similar to the requirement for 'privacy officers' under the Privacy Act 1993.[10]

Statistical data

In my view, uniform collection and reporting of data on OIA requests is likely to have the single biggest impact on improving agency performance. This is evidenced by the impact of the release that has occurred to date (discussed above under Progress that has been made).

However, there are some gaps in the existing regime. It covers only central government agencies. It does not include Ministers, or agencies subject to the LGOIMA. By recording collectively whether requests were met in the statutory or extended time limit, it obscures how many extensions were made, and for how long. It does not show how many requests were met in full,

6 See note 1 recommendation 85 at 267.

7 See note 1 recommendation 86 at 267.

8 See note 1 at 263.

9 See s 19 Freedom of Information Act (ACT Aus.).

10 See s 23 Privacy Act.

met in part, or refused, or the reasons why. This means we cannot do the kind of comparative analysis that tells us whether the government is becoming more or less transparent over time.[11]

The Law Commission recommended a new statutory provision stating that regulations may be made specifying which statistics must be kept by agencies.[12] In Australia, there is a statutory basis for the collection of FOI statistics at federal and state levels. Whether in primary or secondary legislation, it would be immensely beneficial to see something similar here.

A statutory oversight office or office-holder

The Ombudsman is the enforcement mechanism under the OIA. My Office has the skill and expertise developed over 30+ years; it is trusted, effective, and authoritative. However, there is a definite need for greater oversight, coordination and leadership, across both central and local government sectors, in relation to matters other than the investigation of complaints.

In 1997, the Law Commission said one of the major problems with the OIA was *'the absence of a co-ordinated approach to supervision, compliance, policy advice and education regarding the Act and other information issues'*.[13] It recommended that the Ministry of Justice be given responsibility for ensuring a more co-ordinated and systematic approach to the functions of oversight, compliance, policy review, and education in relation to the Act. That recommendation was not accepted.

The same issue came through in the Law Commission's 2012 review. According to the Commission, *'the need to establish a high level leadership role for official information within Government's information management structure is now compelling in order to avoid problems and take advantage of opportunities'*.[14] It recommended the establishment of a statutory office or office holder responsible for policy advice, review, promotion of best practice, statistical oversight, oversight of training for officials, oversight of guidance for requesters, and preparation of an annual report.[15]

SSC has played more of an oversight role in recent years in relation to the core state sector. However, it cannot oversee Ministers of the Crown or local authorities. By way of example, the OIA request data published by SSC does not include data on requests to Ministers; nor does it incorporate local authorities. Later this year, I will begin publishing LGOIMA complaint data. However, there is unlikely to be any companion data on LGOIMA requests, because no agency has the mandate to collect and publish such data. The Department of Internal Affairs did not consider that it could assist in this role without legislative change. Accordingly, to be effective at both central and local government levels, it would be worth considering an oversight office or office-holder that is established and authorised to act by law.

[11] For example, see *'How a flawed freedom-of-information regime keeps Australians in the dark'*, The Guardian (Australia), https://www.theguardian.com/australia-news/2019/jan/02/how-a-flawed-freedom-of-information-regime-keeps-australians-in-the-dark, accessed 25 March 2019.

[12] See note 1 recommendation 110 at 318.

[13] *Review of the Official Information Act 1982* (NZLC R40, 1997) at xi.

[14] See note 1 at 297.

[15] See note 1 recommendation 107 at 317, and recommendation 115 at 325.

Extending OI practice investigations to cover all agencies subject to the OIA and LGOIMA

As noted above, I have been tasked by Parliament with conducting systemic own-motion investigations, under the OA, into agencies' official information practices. However, not all agencies subject to the OIA or LGOIMA are subject to the OA.

One notable exception is the New Zealand Police. Because the Police are not subject to the OA, I am presently unable to review the official information practices of that agency, outside of a specific complaint about an OIA decision that has been made. This is despite the fact that the Police regularly receive the most OIA requests and complaints of any agency. For example, Police completed more OIA requests in the six months to December 2018 than every other agency combined.[16]

It would assist to ensure overall scrutiny and accountability of agencies' official information practices if all agencies subject to the OIA or LGOIMA were made subject to the OA, but only for the purposes of review of their official information practices.

Reforms related to burdensome requests (Chapter 9 of the Law Commission report)

The Law Commission, which devoted a chapter of its 2012 review to 'requests and resources', noted that *'agencies are sometimes put under considerable pressure by certain types of requests, and rightly wonder whether something can be done to keep within reasonable bounds the resources they need to expend in meeting those requests'.*[17] It made a number of recommendations, including amendments to the 'substantial collation or research' and 'frivolous or vexatious' refusal grounds. I have seen agencies struggle in a very real way with requests that, on their own or as part of a pattern, impose an unwarranted and excessive strain on the agency's resources, and I think there would be merit in giving further consideration to the Law Commission's suggestions.

Measures to preserve the primacy of the OIA

One of the greatest threats to the OIA is the (sometimes unintended) impact of other legislation.

For example, an issue arose recently with respect to the interaction between the OIA and the Inquiries Act 2013. Section 15(1)(a) of the Inquiries Act permits the making of orders forbidding publication of evidence or submissions presented to an inquiry. Any matters subject to a section 15(1)(a) order are then excluded from the definition of *'official information'*.[18]

In a recent case, a section 15(1)(a) order was made in respect of advice from the State Services Commission to the Ministers of State Services and Police on the appointment of a Deputy Police Commissioner. The order remains in effect for 50 years. This information *was 'official information'*, as departmental advice to Ministers ought to be, but then ceased to be so, for a period of 50 years. It could no longer be requested under the OIA, and release would have

[16] See http://www.ssc.govt.nz/official-information-statistics, accessed 1 April 2019.

[17] See note 1 at 151.

[18] See s 32(2)(a) Inquiries Act and paragraph (ha) of the definition of *'official information'* in section 2 of the OIA.

constituted an offence under the Inquiries Act.[19] In this instance, the OIA was significantly undermined.

Paragraph 7.42 of the Cabinet Manual requires that *'Officers of Parliament should be consulted in their areas of interest as appropriate: for example, the Office of the Ombudsmen over the application of the [OA] to a new agency'*. It may be that the example provided (of consulting the Ombudsman about the application of the OA to a new agency) has limited the understanding of when my Office should be consulted. I note that consultation with the Ombudsman is also suggested in the Legislation Guidelines but, again, this concerns the creation of a new public body.[20]

I am strongly of the view that the Ombudsman should be consulted on any legislation that could impact on the operation of OIA, but this does not always happen. For example, we were not consulted on the Local Government Regulatory Systems Amendment Act 2019, which came into force on 21 March 2019, and amended the definition of *'working day'* in LGOIMA, so that it no longer aligns with the definition in the OIA (or the Privacy Act).[21] This has the potential to cause significant confusion, particularly where a request has to be processed under both the LGOIMA and the Privacy Act, and for bodies that are subject to the OIA and the meetings provisions in LGOIMA (like school boards of trustees), and will necessitate a lot of unnecessary work for my Office.

Review of the OIA would provide an opportunity to include stronger inducement to consult my Office when legislation could impact directly or indirectly on the OIA. I would also support a change to the OIA that underlines its primacy. For example:

- The Queensland Right to Information Act 2009 says *'this Act overrides the provisions of other Acts prohibiting the disclosure of information (however described)'*.[22] It has an exemption for information the disclosure of which would be prohibited by specified enactments.[23]
- The New South Wales Government Information (Public Access) Act 2009 says *'the Act overrides a provision of any other Act or statutory rule that prohibits the disclosure of information (whether or not the prohibition is subject to specified qualifications or exceptions), other than a provision of a law listed in Schedule 1 as an overriding secrecy law'.*[24]

A provision of this nature would require a clear and explicit intention for legislation to override

[19] See s 29(1)(e) Inquiries Act.

[20] See paragraph 20.5, pages 98–99, of the Legislation Guidelines (2018).

[21] See s 29(3), which excluded the relevant regional anniversary day and days between 20 December and 10 January from the definition of *'working day'*.

[22] See s 6 Right to Information Act (QLD Aus.).

[23] See s 12 Schedule 3 Right to Information Act (QLD Aus.).

[24] See s 11 Government Information (Public Access) Act 2009 (NSW Aus.).

the OIA, consistent with its status as a *'constitutional measure'*.[25]

Making certain conduct unlawful under the OIA

If the Government was to review the OIA, it may also wish to consider whether to follow the international example of introducing offences under that Act. There were offence provisions originally, but these related to obstruction of the Information Authority, and they expired, in accordance with the sunset clause applying to the Authority (section 53), in 1988. The offence provisions in the OA apply to the OIA.[26] However, these relate to obstruction of the Ombudsman (for which there is a paltry fine of $200), rather than non-compliance with an agency's obligations under the OIA.

The Crimes Act 1961 includes offences of wrongful communication, retention, or copying of official information that would prejudice the security or defence of New Zealand,[27] and the corrupt use or disclosure of official information to obtain an advantage or a pecuniary gain.[28] The Summary Offences Act 1981 includes an offence of unauthorised disclosure of certain official information likely to cause specified harms.[29] However, these provisions focus on the unlawful release of information.

There is presently no offence relating to wilful interference with the lawful operation of the OIA. Potential offences include failing to include information that a person knew to exist; intentionally providing misleading records or information (or recklessly failing); unauthorised concealment or destruction of records; and directing unlawful action, or recklessly/knowingly making a decision contrary to the OIA.

It is helpful to consider the following offences provisions in recently updated Australian state FOI laws.

- The ACT legislation establishes offences of making a decision contrary to the Act, giving a direction to act contrary to the Act, failing to identify information, and improperly influencing the exercise of functions under the Act. The penalty is $ AUD15,000 for an individual and $AUD 75,000 for an organisation.[30]
- The New South Wales legislation establishes offences for acting unlawfully or directing an unlawful action, improperly influencing a decision, and destroying, concealing or altering records to prevent disclosure. The penalty is $AUD 11,000.[31]
- The Tasmanian legislation establishes offences for deliberately obstructing or unduly influencing a decision maker in the exercise of their decision making power under the Act,

[25] See *Commissioner of Police v Ombudsman* [1988] 1 NZLR 385 at 391.

[26] See ss 29 and 35 OIA and ss 28 and 38 LGOIMA.

[27] See s 78A Crimes Act.

[28] See s 105A Crimes Act.

[29] See s 20A Summary Offences Act.

[30] See Part 9 Freedom of Information Act 2016 (ACT, Aus.).

[31] See Part 6 Division 2 Government Information (Public Access) Act 2009 (NSW Aus.)

and deliberately failing to disclose information which is the subject of a request, in circumstances where the information is known to exist, other than where non-disclosure is permitted in accordance with the Act or any other Act. The penalty is $AUD 7950.[32]

- The Queensland legislation establishes offences for directing someone to make the wrong decision or to act contrary to the Act, and providing false or misleading information to the Information Commissioner. The penalty is $AUD 13,055.[33]

I note that the introduction of similar provisions in New Zealand would send a strong signal that people cannot willfully interfere with the lawful operation of the OIA, with impunity.

Removing the eligibility requirement

The eligibility requirement in section 12 of the OIA would benefit from review. There is no similar eligibility requirement under the LGOIMA. The eligibility requirement in the Privacy Act has also been removed. Comparable jurisdictions like the United Kingdom, Ireland, the United States, and Australia (at federal and state levels) do not limit the eligibility of requesters. The Law Commission recommended removing the eligibility requirement in the OIA, noting it is hard to enforce in any event because of the ability to make requests by proxy.[34] My sense is that it is open to misuse by creating an unnecessary hoop that requesters have to jump through, and it should go.

Extending the exclusion covering Ombudsman-agency communications

Lastly, I suggest extending the exclusion to the definition of *'official information',* that currently covers *'correspondence or communication … between the … Ombudsmen and any [agency] which relates to an investigation'*,[35] to correspondence and communications exchanged during preliminary enquiries in relation to a complaint, or where formal resolution of a systemic issue was initiated.

Not all complaints are investigated. The OA specifically envisages that preliminary enquiries will be made to determine whether an investigation is necessary.[36] However, the OIA does not exclude these preliminary exchanges between the Ombudsmen and agencies.

In the past, we have faced situations where we have identified a complaint or serious or systemic issue that warrants investigation, and we wish to enter into discussions with the agency to see whether the matter can be resolved expeditiously without the need for an investigation, but the agency either:

- does not wish to enter into resolution discussions as they would be discoverable under the OIA; or

[32] See s 50 Right to Information Act 2009 (TAS. Aus.).

[33] See Chapter 5 Part 2 Right to Information Act 2009 (QLD Aus.).

[34] See note 1 recommendation 134 at 366.

[35] See paragraph (i) of the definition of *'official information'* in s 2 of the OIA / paragraph (b)(iii) of the definition of *'official information'* in s 2 of the LGOIMA.

[36] See s 17(f)(i) OA.

- feels constrained in resolution discussions as they would be discoverable under the OIA, resulting in a sub-optimal resolution, or no resolution.

Engaging at an investigation level is much more involved and resource intensive for both the agency and the Ombudsman than addressing an issue by way of resolution, and should be reserved for those matters which the agency is unable or unwilling to resolve itself.

Conclusion

I trust that the Ministry finds these comments helpful in preparing advice for the Government. I am happy to be consulted at any point on the shape of that advice.

I note (and endorse) the Ministry's decision *'to publish all written submissions on the Ministry of Justice's website'*. I confirm that I have no objection to the release of this letter proactively or in response to an OIA request.

Yours sincerely

Peter Boshier
Chief Ombudsman

2 May 2019

Ministry of Justice
oiafeedback@justice.govt.nz

To whom it may concern

Feedback to Ministry of Justice consultation on access to official information

Thank you for providing us with the opportunity to respond to your consultation on how the Official Information Act 1982 (the Act) is working in practice, to inform a decision on whether to progress a review of the OIA legislation.

PHARMAC understands that one of the key purposes of the Act is to increase transparency for the public through increasing the availability of official information. As an organisation we are supportive of this purpose, as demonstrated by one of our priority areas being to improve transparency (alongside increasing responsiveness and eliminating inequities in access to medicines). PHARMAC is committed to making its funding decisions faster, clearer and simpler for New Zealanders.

However, we think there could be some improvements made around the lack of a definition for 'commercial activity', protections for the proactive release of information, and the increasing volume of requests to government agencies.

Definition of 'commercial activity' in the Official Information Act
PHARMAC has a longstanding concern about the interpretation of section 9(2)(i) of the Act (which relates to withholding information in order for organisations to carry out commercial activities without prejudice or disadvantage). PHARMAC considers that many of its activities in managing the pharmaceutical schedule, including contracting for the supply of pharmaceuticals, are 'commercial activities' even though these activities are not carried out 'for profit'. As part of its core function, PHARMAC uses similar techniques that a commercial enterprise would employ to maximise profit in seeking to secure the supply of a pharmaceutical for the best price (in pursuit of PHARMAC's statutory objective of securing the best health outcomes reasonably achievable from within the funding provided).

However, different parties have different interpretations of 'commercial activity' and the Ombudsman has previously reached a view that withholding of information in reliance of section 9(2)(i) is only available in relation to activities pursued for profit[1].

PHARMAC considers that it holds information which is commercial in nature – for example market analyses, procurement plans, negotiation strategies, therapeutic group plans, comparative ranking lists for medicines it might fund, pharmaceutical budget management options analyses etc.

[1] http://www.ombudsman.parliament.nz/system/paperclip/document_files/document_files/3191/original/commercial_information.pdf?1554952347

PHARMAC's position is that there would be prejudice or disadvantage to it in the disclosure to suppliers of such information, with opportunities for gains to New Zealanders' health forgone as a result. In our experience, most pharmaceutical suppliers are large and sophisticated corporations who closely monitor information in the public arena and would immediately factor such information into their commercial strategies.

Some of the information we hold can be withheld under section 9(2)(j) (to carry on negotiations without prejudice or disadvantage); however much of the information would not relate to a specific negotiation in train or reasonably contemplated so section 9(2)(j) may not always be able to be relied on.

The Ombudsman has previously held that, for the purposes of the OIA, PHARMAC does not undertake commercial activities by purchasing medicines. The Ombudsman accepts that PHARMAC uses similar techniques that a commercial enterprise would employ. However, because PHARMAC is not in competition with any other agency nor is it pursuing a profit, the Ombudsman considers this means that sections 9(2)(b)(ii) and 9(2)(i) of the OIA are not available to PHARMAC as withholding grounds.

One way this could be resolved is by including a definition of 'commercial activity' in the Act to include activities that are undertaken by non-profit making entities.

Proactive release of information

The second area of concern is around safeguards for the proactive release of information. PHARMAC is supportive of efforts to improve how information is made available to the public in a timely manner, and we are committed to progressively increasing the release of information on a proactive basis. However, section 48 of the Act, which provides legal protections for agencies releasing information in good faith under the Act in response to requests received, fails to provide protection to entities when information is proactively released. We note this creates a disincentive for agencies in relation to the proactive release of information and we consider this should be remedied.

Volume of Official Information Act requests

Finally, we would like to note the increasing volume and complexity of information requests that are being responded to by PHARMAC, and the state sector more broadly. This presents an emerging issue for the state sector to ensure that the objectives behind the Act are met, while managing the resource implications. We consider that a review of the Act may present a timely opportunity to consider these issues.

We would be happy to discuss any of these points in more detail at any time. If you would like to discuss these points further, please contact in the first instance Rachel Read, Policy Manager on +64 4 916 7510 or alternatively at rachel.read@pharmac.govt.nz

Thank you again for providing PHARMAC with the opportunity to respond.

Yours sincerely

Lisa Williams
Director, Operations

OIA REVIEW – FEEDBACK TO MOJ
COMMENTS FROM NZ POLICE LEGAL

Issue number	In your view, what are the key issues with the OIA?	Do you think that this issue relates to the legislation or practice?	What reforms to the legislation do you think would make the biggest difference?
1 EFFECT OF TECHNOLOGY	The OIA is out of date in dealing with information requests in light of the current era of modern technology. It was enacted in 1982, when volumes of information held by agencies were often small (compared to modern standards), held in physical records, and more easily retrievable. Today, given the significant advances in technology, the prevalence of the internet, emails and social media, there are vast volumes of information that are held by agencies, such as New Zealand Police, that were unlikely to have been foreseen at the time (37 years ago). There is therefore somewhat of a disconnect between the assumptions underpinning the Act in terms of the nature and volume of information that it was likely envisaged agencies reasonably held and managed at the time the OIA came into force, and the modern day reality of the vast volume of information that agencies do in fact hold and that fall within the scope of the OIA. This disconnect becomes particularly apparent when requests for information to agencies are open ended (e.g. I want all information held by your agency on this issue) and/or span long periods of time.	Legislation	The provisions under the OIA should be reviewed to assess whether the policy rationale underpinning those provisions needs updating in light of the vastly different information technology era agencies now operate in.
2 ALL INFO 'FISHING' REQUESTS – DUE PARTICULARITY	For some information requests, the work required to find the requested information, or bring it together, would have a significant and unreasonable impact on an agency's ability to carry out its other operations.	Legislation	In relation to the provision that requires a requester to make a request with "due particularity" (s 12(2), consideration could be given to, for example, reviewing and prescribing what is meant by "due

	While section 12(2) of the Act requires a request to be made with due particularity, this does not require a requester to limit or narrow what could be perceived as an unreasonably wide request, which allows some requesters to undertake, in effect, fishing expeditions. For example, a request for a very large closed high-profile Police investigation file may be made with due particularity – its scope is clear – but there is no onus on the requester to narrow that scope to something manageable. It is reasonable to think that the OIA was not intended as a vehicle for any and many people to undertake their own review of an entire Police investigation. Therefore, unless a requester voluntarily agrees to narrow the scope of a wide or open-ended request, the agency must deal with and make a decision on the request, despite the administrative burden.		particularity" in s 12(2), including requiring requesters to provide details to identify what specific information they are after, or if they are unsure about what exists, to provide their objective in order to guide an agency to the relevant information, and any relevant time period that applies. This would provide more certainty for agencies and would help avoid agencies having to deal with fishing expeditions for information. It would also help requesters get what they really want and not 'garbage' which they jettison.
3 SECTION 18(f) COLLATION & RESEARCH	The clear message from the OOTO about agency use of s 18(f) (refusing a request on the grounds of substantial collation and research) is that it is a "last resort" power. Therefore, unless a requester voluntarily agrees to narrow the scope of a wide or open-ended request, before considering whether to refuse the request under section 18(f), the agency must deal with the request and undertake a number of other steps: • consider whether consulting with the person who made the request would assist that person to make the request in a form that would remove the reason for the refusal – s 18B – such as refining the request (which the requester is not obliged to do); and • consider whether charging for the making available of the information under section 15, and/or extending	Legislation	In relation to the provision that allows an agency to refuse a request on the basis that the information requested cannot be made available without substantial collation or research only after certain pre-conditions are met (ss 18(f), 18A and 18B), consideration could be given to, for example, where an agency is deciding to refuse a request under section 18(f), allowing an agency the power to *request* that a requester make the request in a form that would remove the reason for the refusal (e.g. to narrow or refine the scope of the request) rather than simply the current situation which places an obligation on the agency to

	a time limit for response under section 15A, would enable them to grant the request – s 18A; These considerations may include employing additional staff to deal with the request, or making the information available in alternative forms. However, the calculation of a charge or extending the timeframe can be time-consuming and are often ineffectual. Commonly, information sought from Police can only be assessed for release by staff closely associated with the case or experienced criminal investigators. A charge or extension does nothing to alleviate the burden on them in the face of their daily workload. Finding a suitable external contractor (such as a retired detective) to undertake the work is not often feasible.		consult with that person about reformulating their original request (which the person is not obliged to do). If that person declines to reformulate their request in a way that would remove the reason for the refusal, *without reasonable grounds*, the agency perhaps should have the power to decline the request without having to go through the section 18A process – i.e. an agency would not need to determine whether the original request can be granted by fixing a charge under section 15 or extending a time limit under section 15A before refusing a request under s 18(f), if the request by the agency to the requester to reformulate the original request has been declined without reasonable grounds.
4 CHARGING	The OOTO's guidance on charging is that it may be reasonable to charge for costs where requests require "considerable labour and materials". Working out what is "considerable" in the circumstances, what is an activity that can or cannot be charged for, what is the size of the job, as well as the financial administration involved, usually renders the option of charging nugatory. Some agencies may be reluctant to adopt and enforce charging policies involving requests seeking large amounts of information, as this could act as a deterrent to requesters or seen to undermine the principle of making official information more freely available. Charging is not a useful solution for NZ Police to assist with the administrative burden of particularly wide requests.	Legislation	The OIA should be reviewed to consider whether agencies should be provided with additional tools to manage wide and/or open-ended requests that appear to be fishing expedition situations and/or would otherwise place an unreasonable burden on the operations of an agency.

5 MORE FLEXIBLE DISCLOSURE METHODS	At the time the OIA was enacted, discussions or decisions were usually oral and may have been recorded in formal letters, memoranda, minutes or reports. Today, discussions often take place by way of email. The consequence is often long email trails to discuss an issue or to share views containing a lot of repetition, extraneous matters, social chit chat, and personal details of the sender. In addition, officials may have property and freely shared their opinions. A request for "the review", or "the report" will often comprise all the email trails to distil the information requested. Where a large amount of information needs to be redacted, what is left can look like there has been a concerted effort to prevent the requester from getting the information they want, and can be quite meaningless, and not really satisfying the request. In this way the public interest underlying the OIA of information being available to the public is not being achieved. One way of addressing this is by agencies providing a summary of the information to the requester, for the reason that there would be so many redactions to the document that it is more informative to give a summary of the information requested, rather than the redacted version. The public interest underlying the OIA of information being available to the public is better achieved in this way. While agencies are able to disclose information in a variety of ways, including by giving an excerpt or summary of the contents (s 16(1)(e)), an agency is required to make the information available in the way preferred by the requester unless to do so would impair efficient administration, be contrary to any legal duty of the agency, or prejudice interests protected by ss 6, 7 or 9. These grounds could be	Legislation	Consideration could be given to, for example, amending s 16(2) of the OIA to permit an agency to decide not to release information in the way preferred by the requester where a document has such substantial deletions or alterations (as are necessary) that the making available of the document itself would be meaningless.

	expanded to cover a situation where such substantial redactions have been made to a document – on valid grounds – that would render release of the document itself meaningless.		
6 REPEAT REQUESTS	While there are grounds to refuse a request where information is publicly available or will be soon publically available (s 18(d)) or on the basis that the request is frivolous or vexatious (s18(h)), there are no explicit grounds under the OIA for an agency being able to refuse a request where the same information has already been released to the requester previously. While there may be genuine grounds for a requester seeking the same information again, in some instances, an agency should be able to refuse a request on this ground where a requester requests repeat information, without a genuine reason (e.g. the previously released information has since been lost or destroyed).	Legislation	Amend s 18 to allow a request to be refused where the same information has been released to the requester previously (in the absence of a genuine reason for the request).
7 VEXATIOUS	The inability to determine that a *requester* is vexatious, rather than a specific request. There are certain people who demand information endlessly of numerous agencies so they disproportionately place pressure on individual agencies and across the wider public sector. At present the OIA can be weaponised by requesters.	Legislation	A legislative change should be made to provide that the Ombudsman has a process available to determine that a requester is vexatious in the same way that a litigant can be determined to be vexatious. As with vexatious litigants, the threshold would be high and there would still be an ability to make genuine, necessary requests but the person would need to have any request considered by the Ombudsman and determined to be meritorious before it could be made to an agency.

8 FREQUENT REQUESTERS	Police, and no doubt every Government agency, is obliged to deal with requesters who cause an unreasonable – by any standard – drain on resources. For example, Police receives requests, many containing multiple sub-requests, from several individuals on a regular basis often on a singular topic. While the requests cannot be characterised as 'repeats' or necessarily frivolous or vexatious, they are nevertheless often for petty information, unmeritorious, and cause a disproportionate drain on an agency's resources. The requesters often stage their requests to ensure they are not treated as a single request and charged for accordingly. Police ventures to suggest New Zealand citizens would be appalled by the cost to them of such requests.	Legislation	The Ombudsman is aware of many requesters placing an undue burden on government agencies. While an agency such as Police may be expected to manage and negotiate with these frequent requesters to keep their expectations reasonable, the requesters are often uncooperative with Police, and even rude. The legislation could be reviewed to include some level of reasonableness on the part of requesters – Police has no concrete suggestions for addressing this particular problem.
9 LPP	Legal professional privilege should provide a conclusive reason for withholding information. The current approach undermines the privilege as the agency cannot have confidence in the confidentiality of any such communications. This is likely to discourage free and frank written advice.	Legislation	A legislative change should be made to include legal professional privilege in the conclusive grounds for withholding official information under s 6.
10 GOOD FAITH PROTECTION	It is not clear whether the good faith protection provided by s 48 applies to proactive releases of official information. Given that one of the objectives of the OIA is making official information available, proactive disclosure should be encouraged.	Legislation	Make it clear that s 48 does (or does not) include protection from suit for agencies proactively releasing official information in good faith.
11 REQUESTS BETWEEN GOVERNMENT AGENCIES	The Act does not make it clear whether a request made by one government agency to another is governed by the Act. Section 12 does not read as if it is. Some government agencies cite the OIA when making requests; others consider the OIA was intended for public access to official information, not intra-government agency sharing, and rely on the Privacy Act to disclose information, or their own statutory powers to obtain or disclose information.	Legislation	Clarify in the Act whether sharing information between government agencies is governed by the Act.

12 RESPONSE TIMEFRAME & EXTENSION	The statutory timeframe for responding to requests for information under the OIA does not take into account the demand nature of OIA requests. This can cause real problems for Police. At times when there is a surge in requests – for example, following the Christchurch terror attack and gun reform – Police must manage the influx despite fixed funding and resources. While much of Police's work is also demand-driven, Police can prioritise its services and responses according to demand. Such prioritisation cannot occur for OIAs as responding is mandatory within the statutory timeframe. Notifying an extension does not assist as a s 15A does not permit extensions to manage unusual workloads.	Legislation	Section 15A could extend to permit extensions when an agency is dealing with unusually increased workloads of OIA requests.
13 EXTENSIONS ON COMPLAINTS	Under section 29A, agencies are required to respond to requests from the OOTO to provide information that relates to an investigation no later than 20 working days after the day on which the requirement is received by the agency. Under section 29A(2), an agency may extend the time limit if certain conditions are met (e.g. the requirement necessitates a search through a large quantity of information or papers and meeting the time limit would unreasonably interfere with the operations of the agency) and it shall be for a reasonable time having regard to the circumstances. The practice to date seems to be that agencies request an extension from the OOTO, which the OOTO investigator can then agree to, or set the timeframe, or can even decline. This would appear to be inconsistent with the intent of section 29A(2) which gives the power to the agency to notify an extension if good grounds exist. This should be made clear as a matter of practice, that is, that the agency has the power to notify an extension if good grounds exist, rather than the assumption that agencies must request extensions, the terms of which will be set by the OOTO investigator.	Practice	Nil – this is more a practice rather than a legislative issue.

Bottcher, Jenna

From: Ray Hellyer s9(2)(a)
Sent: Thursday, 14 March 2019 7:39 AM
To: OIAfeedback@justice.govt.nz
Subject: OIA feedback

I assisted my neighbour in an issue he had with the Tasman District Council. We required the Council to provide a copy of a building consent. They refused saying that there was no record of a consent. My neighbour could not have built legally unless he had a consent. After the project was finished he was visited by a valuer from Quotable Value as the TDC has a Capital Value rating system. So we went to Quotable Value for their record and after a wait they claimed they had no such record. The Public Records Act requires Local and Central Government and their agencies to securely store records and maintain that storage. So the TDC regularly refuses to provide information and if the information wanted is related to a building of some sort that a consent has been granted Quotable Value, after consulting with the Council, refuses also.
Under the OIA they can refuse to provide information if the information is no longer available. How can anyone prove otherwise. They know that and that's what they resort to regularly!
R.N. Hellyer

Bottcher, Jenna

From: Richard Fletcher s9(2)(a)
Sent: Thursday, 18 April 2019 12:50 PM
To: OIAfeedback@justice.govt.nz
Subject: An old article
Attachments: oia3.pdf

Dear People

I am not sure but perhaps you will find my thoughts in this article, written in 2016, useful

Please feel free to come back to me with any queries about it.

Kind regards,
Richard Fletcher
Principal

Woods Fletcher and Associates
169 The Terrace (Ground floor), Wellington, New Zealand
Ph: 0064 4 4998933
Fax: 0064 4 4998934

The public's right to public information

Richard Fletcher

Back in the early 1980s your columnist was a journalist at the *National Business Review (NBR)*. Robert Muldoon was prime minister and official information was 'official secrets'. This did not stop credible and, at times, incredible government information, including documents, ending up in the hands of *NBR* journalists. The relationship between journalists, particularly those at *NBR*, and officialdom was symbiotic. Good and faithful servants, even when leaking information, seemed to genuinely want to ensure good government, but the Official Secrets Act 1951 limited what they could say, even if they wanted to promote the good things that were going on.

The Danks Committee recommended changes that became the Official Information Act 1982 (OIA). Driving the change process was the State Services Commission (SSC), the control agency responsible for the machinery of government. The SSC issued protocols, guidelines, and flow charts, all of which raised the eyebrows of a somewhat sceptical media. Under the new rules, official information was *public* information unless there was good reason. Surprisingly, many officials, used to being secretive, did become more open. When they did not, the Ombudsman and, occasionally, the courts intervened.

Over the following years protocols became more refined, the Ombudsman kept an eye on things and 'open government' appeared to be heading in the right direction.

By 1988 the Court of Appeal said "the permeating importance of the Act is such that it is entitled to be ranked as a constitutional measure".

What did it mean?

Constitutional law expert Professor Philip Joseph has suggested that: "A legal right to access to information supplies the constitutional right to scrutinise public decision-making and hold governments to account". He said the OIA enabled this and fulfilled a primary constitutional role.

All pretty lofty stuff but what happened in practice? Some of the history was well told a couple of months ago in *Kelsey and others v The Minister of Trade* where a law lecturer, Jane Kelsey, and groups including the Consumers Institute, questioned the minister not releasing documents about the Trans-Pacific Partnership Agreement (TPPA) negotiations. The way the institute's Sue Chetwin put it, the case was "more about our precious Official Information Act" than whether it was right for minister Tim Groser to dismiss requests. She said the OIA's lofty purposes had largely been respected. However, when Kelsey asked, she got a blanket refusal to release anything.

The court was not overly impressed with how Groser and his officials handled things. It also fired one or two shots at the Ombudsman for agreeing with some of what the minister was doing.

Meanwhile the Ombudsman was working on a year-long review of how officials worked with the OIA. The 147-page report was released in early December. The Chief Ombudsman said the OIA had caused greater transparency and openness but there were problems. Government agencies were getting mixed messages from ministers.

Among other things, the Ombudsman recommended that the SSC and the Ministry of Justice should prioritise assisting agencies to comply with the OIA. She also asked that protocols be developed for handling OIA requests and fired a couple of shots at the media for a 'gotcha' mentality when dealing with OIA request successes.

Hang on, didn't the SSC prioritise assisting agencies in the early 1980s? What happened to protocols that were put in place? What had changed to cause the Ombudsman concern? On reflection and after discussion with colleagues, your correspondent would like to pose a few propositions the Ombudsman did not specifically consider that might warrant further investigation. These are:

- the State Sector Act;
- politicisation of the Beehive bureaucracy;
- the rise of communications professionals, particularly in the state sector; and
- the impact of 'spin' versus statutory obligation.

The State Sector Act changed the relationship between officialdom and ministers. Put very simply, state sector heads became chief executives, they were more accountable to ministers in some aspects of their work, and the SSC became much less of a control agency. This may explain some of what led to the mixed messages from ministers referred to in the Ombudsman's report. In the past few years there has been some winding back with the SSC regaining some control and the Ministry of Justice, guardian of the Bill of Rights Act (and the constitution?), putting its view into the mix.

Having said that, there is a sense that state services have changed. Good and faithful servants from the top down may be more acutely sensitive to the government of the day's short-term political agenda and the desire to sell that agenda.

Back in the early 1980s, apart from Prime Minister Muldoon's press office and one or two individuals, virtually everybody who worked in the Beehive was a public servant seconded from a government department. There were some party loyalists inside National's and Labour's research units, housed outside the Beehive. The 1984 Labour Government began a process of bringing in its own people — often party members — as advisers.

Since then, whoever is in power has had a good many of its people in the Beehive. This can mean that how the message is told becomes almost as important as what the message is. The process has an impact on responses under the OIA.

The message from the Beehive has increasingly come from a relatively new breed —communications professionals. In the past many PR people were came from journalism's ranks. Though this still happens, many in the 'new' communications business have developed their careers purely in that business. They have not worked in the media. Indeed, virtually all their working lives have been spent dealing with, or rather dealing to, the way the media and interest groups handle their clients'/employers' issues.

Lack of media experience and more political colour among advisers may mean the relationship is more confrontational than in the past.

A similar rise of communications professionals has occurred within the state sector. Rather than one or two people preparing press (now media) releases, teams now prepare internal/external communications strategies, stakeholder relations programmes, and a raft of other things designed to explain what government policy is and how officialdom is implementing that policy. Rather than dealing with the official doing the job, the

Continued to page 27

100 top charts

Goldman Sachs' passion for charts is undimmed to the point they've amassed 100 of what they consider to be the world's 100 most important. The bundle includes their 'Now and Then' table showing just how much has changed in the last five years: iron ore down 77%, global smartphone penetration up to 75% from 19%, 89% more robots sold pa, cost of sequencing a genome down 97% and total global market capitalisation up 21%. Read more scanning QR code:

Smartphone market nears saturation

Smartphone makers like Apple and Samsung took less than a decade to put their addictive devices in the hands of close to two billion people. Getting phones in the next billion pairs of hands looks to be a tougher challenge, reported the Wall Street Journal.

"Global smartphone shipments are expected to see their first full year of single-digit growth worldwide in 2015, after years of galloping growth topping 10%, according to the International Data Corporation, a market research firm. Smartphone shipments globally will grow 9.8% in 2015 to a total of 1.43 billion units, according to the study, and the slower growth is expected to intensify over the next several years."

The newspaper said Smartphone sales in developing countries such as China, India and Indonesia have driven growth in recent years. "But China is well-saturated now. It has shifted from a market of first-time smartphone buyers to a place where most consumers are replacing a previous phone, the IDC says. The firm forecasts smartphone shipment growth in China to be in the low single digits this year."

Uber unbelievable

Uber Technologies, the company behind the rapidly growing taxi-hailing app, could be valued at more than US$60 billion after its latest fundraising round, reported The Guardian newspaper.

The 5-year old app-based booking company arrival in New Zealand is likely to be as controversial as the other markets it has disrupted. Now it aims to stretch into delivery of food parcels. It is still rolling out its taxi calling operation in Asia.

The San Francisco-based car-booking business was seeking up to $2.1 billion in new cash. The documentation suggests this would value the business at $62.5 billion, according to Bloomberg. This would exceed General Motors, the US carmaker behind the Chevrolet, Cadillac and Vauxhall brands, whose market value is $55.6 billion.

Steve Jobs's wish soon fulfilled

Apple and Samsung have been embroiled in a court case since 2011 when Apple accused Samsung of copying its design of the iPhone. Now, reported thenextweb the dispute is close to conclusion.

"The two rivals filed a joint statement with the United States District Court for the Northern District of California, which said Samsung agrees to complete its $548 million settlement to Apple.

This is part of a bigger $1 billion payment that the South Korean company was ordered to pay in 2012 but which was reduced when on appeal Samsung got split into two parts – $548 million for the technology patents Apple says it copied and $382 million for reportedly copying packaging as well.

Thenextweb added, "Apple's founder Steve Jobs is quoted in his biography by Walter Isaacson as saying: 'I will spend my last dying breath if I need to, and I will spend every penny of Apple's $40 billion in the bank, to right this wrong. I'm going to destroy Android, because it's a stolen product. I'm willing to go to thermonuclear war on this.'

And it seems his wish is on the way to being fulfilled, albeit in a less dramatic sense. Samsung has agreed to pay the initial $548 million to Apple within 10 days of receiving an invoice, just four months before the case's fifth anniversary. The second set of damages will be decided on by a jury in 2016."

MG Legal

Continued from page 24

media frequently deal with a media relations specialist in the communications team. Particularly in technical areas, this can lead to genuine misunderstandings as messages are passed through various hands.

Somewhere in here, as well, and often confused with broader communications issues, are statutory and constitutional obligations under the OIA. The OIA mandates processes for responding to information requests, times to respond and reasons for withholding information. Not quite mandated, but based on protocols developed early and through court and other rulings there also are processes for how information should be released. If these processes are followed, few people, including the media, would have much to complain about.

The problem, partly illustrated through the Ombudsman's report, is that, rather than following best practice that had been in place, often for some years, government agencies have sometimes followed their own path. The result, to outsiders, rather than being transparent and standardised, the process can appear opaque, frustrating and designed to prevent public information getting to the public.

A possibly more insidious part of this process is the element of spin that can creep into what should be a relatively straightforward transmission of information from officialdom to the general public, interest groups or the media. In regard to OIA requests, this may involve timing the release to the media or interest groups in a way that might appear designed to ignore media deadlines or to allow appropriate reaction from politicians. Also information one might expect to be neutral — whatever *that* may be — may appear to be massaged.

In your columnist's experience the best, easiest and safest way to deal with all of this is to play it straight and follow what the OIA says. Paramount is that official information is public information — not secrets. Protocols, old or new, may help. Sticking to statutory timeframes, following OIA processes and only withholding for reasons the OIA allows, lessen the likelihood that official actions will be questioned.

A move from any of these and officials can — and should — be open to criticism. MG

Te Rua Mahara o te Kāwanatanga
ARCHIVES
NEW ZEALAND

7 May 2019

Archives New Zealand, 10 Mulgrave Street, Wellington
Phone +64 499 5595
Websites www.archives.govt.nz
www.records.archives.govt.nz
www.dia.govt.nz

Chris Hubscher
Policy Manager, Electoral and Constitutional
via email: chris.hubscher@justice.govt.nz

Dear Chris

Submission on the need for a review of the Official Information Act 1982

Recently you contacted me regarding my views on the need to review the Official Information Act 1982 (the OIA).

As the Chief Archivist, I have an all-of-system regulatory role to ensure the creation and maintenance of appropriate public records. In the first audit programme of public sector recordkeeping, the results of which were tabled in the House of Representatives in 2015, we found that barely half of public offices audited had recordkeeping maturity at or above the level of a managed approach to records management.

Based on the evidence that my staff gather in their work, I can say with confidence that there are issues arising during the process of locating, compiling and releasing information for OIA requests that are the direct result of poor recordkeeping practices and inadequate information management systems. Such practices include but are not limited to poor filing practices, poor record naming and metadata practices, and the storage of records in email inboxes, shared drives and locked locations with EDRMS systems. These issues frustrate the access to official information to which New Zealanders are entitled.

My interest in a potential review of the OIA therefore concerns how the OIA and the Public Records Act 2005 (the PRA) are aligned to ensure that public sector information is created, stored, and made accessible as part of a complete and accurate public record. Both the OIA and the PRA are vital to New Zealand's democratic process in this respect.

A 2015 amendment to the OIA (section 28(6)) provides that the Office of the Ombudsman may refer complaints to the Chief Archivist when an agency has refused to make official information available because it is believed not to exist, cannot be located, or cannot be made available without substantial collation and research. Archives New Zealand has begun to investigate such complaints, and findings have been helpful for both Archives, as the regulator, and agencies for understanding their obligations under

both the OIA and PRA. With the recent escalation in numbers of OIA requests these complaints will continue to come to us via the Ombudsman, other agencies, and sometimes directly from requesters.

In order to achieve better alignment between the two Acts there are a number of relatively simple steps that could be taken, but we are also open to working with the Ministry of Justice on wider initiatives as these will be mutually beneficial for improving the information management system.

The OIA and PRA have slightly different definitions of regulated parties, scope of mandate and what constitutes information and records. In any review consideration should be given to aligning definitions and interpretations wherever possible. It may be appropriate to address the scope of the mandates if a major review is undertaken. The PRA covers executive, legislative and judicial branches. If the OIA applicability to Parliament and the Courts is tested in any review, the desirability of alignment of the OIA and PRA in this respect should be considered. Similarly, the PRA covers local government, which could also bring in the Local Government Official Information and Meetings Act 1987. Some clarity on when Ministers' and Parliamentary Undersecretary records are subject to the OIA is required for requesters as well as practitioners, as the current provisions of the Cabinet Manual and Standing Orders can be complex to navigate.

It would be useful to strengthen and clarify within both Acts the grounds on which the Chief Archivist may investigate and work with public offices to improve compliance with the OIA. While the PRA enables the Chief Archivist to penalise non-compliance, and the OIA does not, it is more helpful for the Acts to enable referral of issues arising from poor information management to the Chief Archivist so that the problem may be resolved within agencies at a system level, rather than enforcing penalties without addressing the underlying issue.

Some clarification is required in a couple of particular clauses of the two Acts. The interpretations section of the OIA includes the following:

(e) [official information] does not include information contained in—(i) library or museum material made or acquired and preserved solely for reference or exhibition purposes; or [material held at the National Library]

We have found that there is some confusion on whether or not this also applies to archival material held in the repositories of Archives New Zealand, which could be considered to be held in part for reference purposes. Similarly, section 58 of the PRA states, "to avoid doubt, public records transferred under this Act to the possession of Archives New Zealand or an approved repository are not subject to the Official Information Act 1982 just because they have been so transferred." Some direction on when public records are subject to the OIA is required. The PRA was set up to manage, preserve and provide access to the public record, so some clarity around

how access to current information in agencies as opposed to archival information held by Archives is regulated would be most useful.

I look forward to working further with the Ministry of Justice on this matter. My Executive Assistant Raewyn Vogel will contact Anne Naganathan to arrange a meeting to further these conversations, as suggested.

Ngā mihi

Richard Foy
Chief Archivist
Archives New Zealand

15 April 2019

Submission on the Official Information Act 1982

To the Justice Ministry

From Ross Francis, Wellington

Contact details: s9(2)(a)

NB. I am happy for this submission to be made publicly available. My contact details can also be released.

1. My name is Ross Francis. I am an independent researcher. In 2007, I authored a two-part paper entitled "New evidence in the Peter Ellis case" which was published in the *New Zealand Law Journal*.[1] During the course of my research, I have sought information from a number of government agencies.

2. My experience of trying, often unsuccessfully, to obtain information by way of the Official Information Act (OIA) has convinced me that the OIA – which came into effect in July 1983 – is not working as intended.

3. What follows are examples of requests I have made and the responses I have received.

4. On 19 December 2018, I asked the Justice Minister for the following information:

   In March 2000, the late Sir Thomas Eichelbaum was appointed to chair an inquiry into the Peter Ellis case. Please send me all communication between the Justice Minister (including communication between his private secretary) and Sir Thomas dated 1 February 2000 to 31 March 2000.

   When was the Minister (or his private secretary) informed that Sir Thomas had been approached to take part in an inquiry into genetic modification?

   When Sir Thomas' inquiry was established, appointees were required to declare any actual or possible conflicts of interest. Did Sir Thomas declare any actual or possible conflicts of interest? Did the Minister (or his private secretary) ask Sir Thomas if he had any actual or possible conflicts of interest to declare?

   Did the Minister consider anyone other than Sir Thomas to chair the inquiry? If so, who?

   Please send me all records held about these matters. Please also send me a copy of Sir Thomas' letter of appointment.

   The Minister replied on 20 March 2019, well outside the statutory maximum of 20 working days. (I advised the Minister on 11 February 2019 that a response was overdue.) He claimed the delay was due to a "handling error" in his office. He advised that he held no information pertaining to my request. This is despite the fact that a government or public inquiry into a criminal conviction is extremely rare, and that record-keeping relating to such an inquiry might be expected to be exemplary. The Minister did not explain why his office did not hold any information, or whether the information may be held elsewhere.

5. On 14 June 2017, after I had queried the Justice Ministry's recording-keeping during the Ministerial Inquiry into the Ellis case, Jeff Orr stated that the Ministry's

[1] http://www.peterellis.org.nz/docs/2007/new_evidence.pdf

record-keeping practices "were robust in 2001 and remain so today". I subsequently made the following request of the Ministry on 17 June 2017:

What role (if any) did Mr Orr have with the Justice Ministry in 2001, and did his role include auditing the record-keeping practices of senior officials such as Val Sim or Michael Petherick? Who (if anyone) did Mr Orr communicate with to enable him to state that the Ministry's record keeping practices were robust in 2001?

Please provide a copy of the policy from 2001 that allowed senior officials within the Ministry to hold high level discussions about a possible miscarriage of justice without having to create a record of those discussions.

Mr Orr replied that his employment at the Ministry did not begin until 2005. He had taken no part in the Ministerial Inquiry and had no knowledge of the record-keeping practices that existed at the time. He said he could not locate the records management policy applicable at the time of the Ministerial Inquiry. When Parliament enacted the OIA, it presumably did not intend that supposition or wishful thinking would be used as substitutes for official information.

6. On 12 November 2017, I asked the Justice Ministry:

Given that it is Government policy to introduce a Criminal Cases Review Commission (CCRC), which if implemented may improve public confidence in the criminal justice system, have Ministry officials identified any benefits that might emanate from introduction of a CCRC? If so, what possible benefits have been identified by officials including any information about possible benefits that is held in the minds of officials?

Mr Orr replied on 8 December 2017 that the Ministry had "previously provided [me] with information regarding the potential benefits of establishing an independent tribunal to investigate potential miscarriages of justice in our letter to you of 28 May 2008 responding to your request dated 6 December 2007".

When I made my request on 12 November 2017, I had anticipated that the Ministry may have carried out work into the establishment of a Criminal Cases Review Commission (CCRC). Indeed it had. On 9 November 2017, Mr Orr provided the Justice Minister with a briefing paper entitled *Establishing a Criminal Cases Review Commission.* The briefing, which was written by Mr Orr, included reasons for establishing a CCRC. The briefing stated that one reason, based on overseas experience, was "existing post-appeal mechanisms were not sufficiently independent or were not functioning independently". However, when I made a request asking for details of the benefits, or possible benefits, of establishing a CCRC, Mr Orr labelled my request "vexatious". He also referred me to a letter he wrote in 2008. That letter did not include any records held by the Ministry about the benefits, or potential benefits, of establishing a CCRC; it merely explained the position of advocates for a CCRC.

Mr Orr could have assisted me by providing me with details of the possible benefits of establishing a CCRC. I note that on 11 December 2017, the Justice

Ministry provided the Minister with additional details about the likely benefits of establishing a CCRC. The Ministry would have been aware of these likely benefits when it responded to me on 8 December 2017.

7. On 21 June 2018, I made the following request of Police:

The Joint CYPS and Police Operating Guidelines for Evidential and Diagnostic Interviewing, dated May 1996, state at 4.3.1: "The interviewer should only conduct one evidential interview. Special circumstances may require more than one interview." The Policy and Guidelines for the Investigation of Child Sexual Abuse and Serious Child Physical Abuse, dated March 1989, state at 6.2.1: "Skilled interviewing, utilising a team approach and video taped recording, should mean that in most instances only one detailed interview with the child will be necessary. In some instances, however, it may be necessary to establish a trusting relationship with the child over several interviews before the child feels free to divulge detailed information."

Were the guidelines at 6.2.1 in effect between March 1989 to May 1996, or was there a change to the guidelines prior to May 1996? Please provide me with copies of any changes to the guidelines between 1989 and 1996. Was the recommendation, at 4.3.1, that the interviewer should conduct only one interview, introduced in May 1996 or prior to that date? If prior, when was it introduced?

Please provide me with a copy of the relevant section(s) of the most recent Police Operating Guidelines for Evidential and Diagnostic Interviewing in relation to the number of evidential interviews that should be conducted. Do the most recent guidelines encourage or allow interviewers to establish a relationship with a non-disclosing (and potentially non-abused) child over several interviews, and what are the risks (if any) of exposing such a child to multiple interviews?

The Policy and Guidelines for the Investigation of Child Sexual Abuse and Serious Child Physical Abuse, dated March 1989, were based on, among other things, papers published by the National Committee on Child Abuse. Please provide me with a copy of those papers.

Police responded on 21 June 2018, advising me to "go to the police website and submit the form for the information you require". Police provided me with a belated response on 7 September 2018, well outside the 20 working day maximum. Police did not apologise for (wrongly) advising me to go the their website to make my request nor did they apologise for the delay in responding.

On 11 March 2018, I made a request of Police. On the same day, Police responded with the following comment:

If you would like any of the requested information from Police, this information will need to be applied for at a local police station via the Official Information's (sic) Act.

I note that despite Police saying I needed to go to a local police station to make my request, I received a response on 16 April 2018, once again outside the statutory 20 working day limit. Police did not apologise for (wrongly) advising me to make my request at a local police station nor did they apologise for their late response.

8. On 12 April 2017, I asked Police for information pertaining to my research.

Please send me copies of all communication between Dr Karen Zelas and Police between 1 February 1992 and 30 November 1992. This request is in regards to the investigation into employees of the Christchurch Civic Creche.

In October 1992, Detective Ken Legat handed Lesley Ellis a search warrant, giving police access to her Buffon St flat. They expected to find "instruments or sexual aids used in sexual offending". An affidavit supporting the search warrant said that overseas studies and investigations showed that "this type of abuse on children have (sic) occurred in various crèches and play schools."

What overseas studies and investigations was the affidavit referring to? Please provide me with all records held by police in regards to this question.

Police responded on the same day, asking me to "attach a copy of some form of identification, namely your drivers licence, passport, etc , so we can progress your Official Information request". I have made a number of requests of Police since 2005. It is unclear why, in 2017, Police needed to identify me. After receiving no response from Police, I advised them on 16 May 2017 that a response was overdue. The following day Police advised that I had not provided any ID, and that my request was being refused under section 18(f) of the OIA: "The information cannot be made available without substantial collation or research". It is unclear why Police needed to identify me when they refused my request under s 18(f).

The Office of the Ombudsman has stated, in regards to s 18(f):

*Refusing a request on the grounds of substantial collation or research is a **last resort**, to be done only if the other mechanisms in the legislation do not provide a reasonable basis for managing an administratively challenging request. Agencies have a duty to provide **reasonable assistance** to a requester, and…to consider consulting with them in order to assist them to make their request in a way that wouldn't require substantial collation or research.*[2] (emphasis in original)

Police did not explain why or how my request was administratively challenging. My request included specific dates and other details which should have made it relatively easy for Police to locate the requested information. Police provided me with no assistance nor did they consult with me. At the time of writing this submission, I have received none of the information requested.

2 http://tinyurl.com/y295f396

9. On 19 October 2017, I made the following request of Police:

When did Police make the decision to destroy videotaped interviews of the complainants involved in the Peter Ellis case? Please send me copies of any correspondence related to the Police's decision to destroy the videotaped interviews of the complainants involved in the Ellis case.

How many interviews were destroyed by Police?

Since 2010, what action (if any) have Police taken to determine the existence of the Ellis complainants' videotaped interviews? Please send me copies of all correspondence related to any action taken by Police to determine the existence of the Ellis complainants' videotaped interviews.

Detective Neville Jenkins responded to my request on 15 November 2017, advising me that my request "necessitates a search through a large quantity of information…" Police advised me they were extending the timeframe for a response to 17 January 2018. On that date, Mr Jenkins emailed a response by way of a letter dated 11 January 2018. Each of my questions, bar one, was rejected under s 18(e) of the OIA. Mr Jenkins advised that Police could not locate any information. In regards to my question: **"**How many interviews were destroyed by Police?", Mr Jenkins refused this part of my request under section 18(f) of the OIA. Despite an extension of time for Police to respond, and a wait of almost three months, I received none of the information requested.

It is highly unlikely that the videotaped interviews were destroyed without Police discussing their destruction. The Peter Ellis case has been the subject of two formal appeals, a ministerial inquiry, a parliamentary inquiry, and three formal requests for a pardon. Repeated calls for a Commission of Inquiry have been rejected. The complainants' videotaped interviews are arguably the most important evidence pertaining to the case. Indeed, when the Justice Ministry's chief legal counsel, Jeff Orr, asked Police in 2009 whether they held copies of those interviews, he wrote: "Without that evidence, there would be little point in an inquiry into Mr Ellis's conviction." It is hard to believe that Police would destroy such evidence, given Mr Ellis has not exhausted his appeal rights, before taking advice and or discussing the possible consequences of destruction. At the time of writing this submission, I have received none of the information requested.

10. On 12 September 2018, I made the following request of Police:

In November 1997, former Detective Colin Eade told reporter Melanie Reid that there were "more than ten offenders" in the Christchurch Civic Creche (Peter Ellis) case. Exactly how many suspected offenders did Police identify and how many of these were female?

Were any of the 20 child complainants given diagnostic interviews? If so, how many of the child complainants underwent such interviews?

How many formal evidential interviews did each of the complainants undergo?

On 24 October 2018, Police belatedly responded by saying that my request had been “missed” due to an “administrative error”. On 29 October 2018, Police advised that my request had been refused under section 18(f) of the OIA. I was not consulted or asked to refine my request. I was provided with no assistance.

11. At the heart of the OIA is the principle of availability: information must be made available unless a good reason exists to withhold. However, my experience suggests that some officials work on the principle of unavailability: information is to be withheld unless a compelling reason exists to release.

12. It is apparent that the OIA needs to be improved. Financial penalties ought to be considered for agencies that breach their statutory obligations. There is no excuse for an agency refusing a request under s 18(f) when it has not contacted the requestor to discuss how their request may be refined. Using s 18(f) other than as a last resort should incur a modest financial penalty. A fine should also be imposed where a researcher’s request is refused and the agency has not consulted with the requestor or provided them with reasonable assistance where such assistance might remove the reason for the refusal. Persistent delays are unacceptable and should incur a fine.

Bottcher, Jenna

From: Simon Tapp s9(2)(a)
Sent: Friday, 10 May 2019 10:03 AM
To: Wheeler, Sally
Subject: RE: Your enquiry about our consultation on access to official information

Mōrena Sally

My brief thoughts below. Thank you again for the opportunity to deliver a late submission.
This submission is made in my capacity as a private citizen.

1) Key issues with the Act:
    a. It was written in, and to respond to, an environment radically different to the one in which it is now applied. The volume of information now within scope of the Act is incomprehensibly vast. This makes full and complete delivery an almost impossible task, subsequent assessment of the material deemed in scope laborious, and the 20 day timeline feels inadequate.
    b. In response to this, an entire industry of OIA compliance has sprung up – which was not the intention of the Act. There will be hundreds of FTEs across the state sector who are almost exclusively responsible for delivering responses to OIA requests.
    c. Operationally, the Act does not serve purpose in a number of important ways. My colleagues in MoE have submitted on this matter, and I include a few concerns below in response to Q3.
    d. As a tool of accountability and transparency it can be quite powerful. However the Ombudsman needs more powers (out of scope of this review), and the Act can be used to unduly interfere in the operations of agencies, particularly smaller bodies like Ministers' Offices.
2) I think 1a relates to legislation, 1b relates to practice, however this is necessary to ensure compliance, and 1c relates to legislation. 1d relates to both.
3) The Act would benefit from both modernisation and attention to its operational inadequacies.
   Modernisation should reflect the changed environment in which the Act now applies, including to reflect the volume of information generated and held by agencies. Modernisation should also include a simplification effort, making the Act more accessible to the public.
   Operational amendments are necessary to ensure the Act delivers on its purpose, nearly 40 years on from its original passage. Some operational amendments described below.
    a. Information proactively released by agencies should be treated as having been released under the Act.
    b. The Act does not contain provision for withholding information due Budget sensitivity, despite this being a long-recognised convention.
    c. The Act does not contain provision for withholding information as 'out of scope'.
    d. Empower/require the SSC to deliver agency guidance on operational application of the Act.
    e. Revise the timelines for delivery of a decision and response. Suggest a longer timeframe for response, and potentially shorter for decision.

A full review of the Act, incorporating official consultation with State sector agencies and heavy users of the Act (journalists, opposition Members) would be highly beneficial to developing a full understanding of any issues present in the Act.

Again, my thanks for accepting my brief thoughts. I am happy to elaborate if necessary.

Ngā mihi nui,

Simon

Simon Tapp | Senior Advisor
s9(2)(a)

From: Wheeler, Sally [mailto:Sally.Wheeler@justice.govt.nz]
Sent: Wednesday, 8 May 2019 4:30 PM
To: Simon Tapp s9(2)(a)
Subject: RE: Your enquiry about our consultation on access to official information

One further thought
For the consultation, we invited submitters to tell us their views on the following questions:

1. In your view, what are the key issues with the OIA?
2. Do you think these issues relate to the legislation or practice?
3. What reforms to the legislation do you think would make the biggest difference?

It would maintain the integrity of the process if you could address you submission to these questions.
Thanks
Sally

Sally Wheeler
Principal Advisor - Implementation
Commissioning and Service Improvement
P +64 4 978 7089 | Ext 45089
Justice Centre | 19 Aitken Street | Wellington

From: Simon Tapp s9(2)(a)
Sent: Wednesday, 8 May 2019 3:32 p.m.
To: Wheeler, Sally <Sally.Wheeler@justice.govt.nz>
Subject: RE: Your enquiry about our consultation on access to official information

Kia ora Sally

My mistake, I misunderstood the scope of that consultation.
I will get something to you by 1000 Friday 10 May.

Thank you kindly for this!

Ngā mihi

Simon

Simon Tapp | Senior Advisor
s9(2)(a)

From: Wheeler, Sally [mailto:Sally.Wheeler@justice.govt.nz]
Sent: Wednesday, 8 May 2019 3:28 PM
To: Simon Tapp s9(2)(a)
Subject: RE: Your enquiry about our consultation on access to official information

Kia ora Simon
The consultation that ran between 8 March and 18 April 2019 was for both private and agency submissions. We are currently in the process of analysing the submissions.

I could include an additional submission from you, in either your capacity as a public servant or private citizen, if you get it to me by 10am Friday 10 April 2019.
Kind regards
Sally

From: Simon Tapp s9(2)(a)
Sent: Wednesday, 8 May 2019 3:16 p.m.
To: Wheeler, Sally <Sally.Wheeler@justice.govt.nz>
Subject: RE: Your enquiry about our consultation on access to official information

Tēnā koe Sally

Thanks kindly for your prompt email.
Unfortunately I missed the deadline for a personal submission, however I was wondering if there is scope for a Ministry/agency submission or consultation phase in the process.

Ngā mihi nui,

Simon

Simon Tapp | Senior Advisor
s9(2)(a)

From: Wheeler, Sally [mailto:Sally.Wheeler@justice.govt.nz]
Sent: Wednesday, 8 May 2019 3:10 PM
To: Simon Tapp s9(2)(a)
Subject: Your enquiry about our consultation on access to official information

Kia ora Simon
I've been advised that you have been in touch about our consultation on access to official information and the merits of undertaking a formal review of the Official Information Act.
I'm currently leading this work and am happy to answer any questions you may have.
Kind regards
Sally

Sally Wheeler
Principal Advisor
Electoral and Constitutional Team, Policy Group
Ministry of Justice
Justice Centre | 19 Aitken Street | Wellington

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(2) do not act on this email in any other way.
Thank you.

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(1) reply promptly to that effect, and remove this email and the reply from your system;
(2) do not act on this email in any other way.
Thank you.

Bottcher, Jenna

From: Siobhan donnell s9(2)(a)
Sent: Thursday, 18 April 2019 8:15 AM
To: OIAfeedback@justice.govt.nz
Subject: Experience

Greetings.

I have through two Ministers of IRD asked for release of information from IRD.

They will not release information re anonymous or other malicious complaints.

Which they act on.

And that, in my experience, has been known to come in part from within that service itself.

NZ is a very small place so it is easy to stalk and harrass people especially when they have someone within the IRD as a perpetrator.

Also lying about potential risk to yourself if information were to be shared with the subject of your stalking, when the only risk is that you will be exposed as a malicious actor, is not a sufficiently good excuse to withold information. It merely colludes with those of ill intent.

Yours

Dr T S O'Donnell

26 April 2019

National Office
Ministry of Justice
SX10088
Wellington

By email: Stephen Sullivan-Tham: Stephen.Sullivan-Tham@justice.govt.nz

Tēnā koe Stephen,

Feedback on the operation of the Official Information Act 1982

1. Thank you for your email dated 12 April 2019 regarding your office's request for feedback on the Official Information Act 1982 ("OIA").

2. Further to your email, we provide our feedback below on the operation of the OIA from our perspective, with a focus on:

   a. the key issues with the OIA;

   b. whether these issues relate to the legislation or practice; and

   c. suggested reforms to overcome these issues.

Delays

3. We have observed that agencies are often not forthcoming when responding to information requests. Agencies will often repeatedly extend the 20 working days' time limit on vague grounds, such as 'the information request being for a large quantity of information'.

4. We suggest that the Government amend the OIA to require agencies to make their decision and release requested information as soon as possible.

5. We support the NZ Council for Civil Liberties in its suggestion that the OIA be amended to:[1]

   a. require agencies to record when each stage of processing an OIA request was started and finished, and provide this information to the requester alongside the decision;

[1] NZ Council for Civil Liberties, *A better Official Information Act* (2018), accessed at <www.nzccl.org.nz/content/a-better-official-information-act>.

b. limit the maximum time for any extension to 20 working days, and require the extension notice to specify what work is required to justify the extension;

c. reduce the time limit for an agency to notify the requester that an extension will be made from 20 working days to 'as soon as possible and no later than 5 working days after the day on which the request was received'; and

d. impose a per-day financial penalty on agencies for delays in response beyond these limits.

Grounds for withholding information

6. The grounds provided for the withholding of official information contained in section 6 and section 9 are particularly vague. Agencies often simply cite these grounds when withholding information without providing any details as to the particular reasons invoking such grounds.

7. We suggest that the OIA be amended to require agencies to provide in detail their reasons for why their decision to withhold information falls within a certain section 6 or section 9 ground.

Limited accountability

8. The OIA contains:

a. no substantive repercussions for Government agencies failing to meet their obligations under the OIA; and

b. no provisions requiring the collecting and reporting of information by agencies on the operation of the OIA.

9. This approach is inconsistent with overseas legal developments. For example, Canadian law provides for up to two years imprisonment, while Indian law provides for significant fines for the public servants that are personally responsible for delays or obfuscation.

10. We support the NZ Council for Civil Liberties in its suggestion that the OIA be amended to:[2]

a. provide for daily increasing fines against the agency (or individual Minister) in the event of delays in making a decision on a request, or in releasing the information;

b. provide for fines when agency officials withhold information without providing a sufficient reason for why the information is withheld under section 6 or section 9; and

[2] NZ Council for Civil L berties, *A better Official Information Act* (2018), accessed at <www.nzccl.org.nz/content/a-better-official-information-act>.

c. fine or imprison officials who actively subvert the law by destroying, falsifying, or hiding information or encouraging others to do so.

Independent Government commission

11. We appreciate that the Ombudsman's Office is responsible for oversight of the OIA. In practice, the Ombudsman's office is slow to respond and has no power to make binding decisions or to enforce compliance with the OIA. Furthermore, opinions provided by the office cannot be appealed or be judicially reviewed.

12. We suggest that the Government adopt overseas developments and establish an independent Government commission to:

    a. publish guidance on the interpretation and application of the OIA;

    b. monitor agency compliance with the OIA; and

    c. make binding decisions regarding agency compliance with the OIA.

13. It is appreciated that the Ombudsman's office has recently released guidance notes on the operation of the OIA. Such guidance notes should be reviewed by the independent Government commission and adopted or amended as required.

Outdated

14. The OIA was enacted before the age of the internet and other significant technological developments. Consequently, the OIA fails to account for the ability for agencies to locate, present and distribute information at a much greater speed and with relative ease. Time limits provided for under the OIA are applicable for the era preceding such technological developments.

15. We suggest that a specific review of time limits under the OIA is to be conducted in light of such technological developments.

Reduced accessibility

16. Agencies often deliver information to requesters in a format that inconveniences the requester when accessing and reading the information. For example, information is often scanned into images preventing simple electronic keyword searches and requiring requesters to manually type information.

17. We suggest that the OIA is amended to compel agencies to

    a. provide information in its original file format; and

    b. if unable to be provided in original file format, to be provided in either Microsoft Word, Excel, PDF or other open, accessible and reusable file format.

18. We thank you for your consideration of our feedback and hope that the Government undertakes the necessary review of the OIA. We look forward in anticipation of the upcoming review.

Yours sincerely
TAMAKI LEGAL

Darrell Naden
Managing Director

Patron – Lyn Provost CNZM
P O Box 10123
The Terrace
Wellington 6143

www.transparency.org.nz

Official Information Act Review Questions April 2019

Comments from Transparency International New Zealand (TINZ)

Our Expertise on this Topic

Transparency International New Zealand (TINZ) welcomes the opportunity to make a submission on this matter. It fits closely with our objectives, and we are pleased to offer an expert civil society perspective.

We are happy to meet to discuss the submission, if that is useful to you.

In preparing this submission TINZ has relied on the expertise of Liz Brown, a Member with Delegated Authority and lead reviewer of National Systems Integrity Assessment 2018 update. One of our Directors, Ann Webster, has also contributed. Ann is a former Assistant Auditor-General Research and Development at the office of the Auditor-General. Julie Haggie, CEO, has facilitated the submission.

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1. In your view, what are the key issues with the OIA?

Transparency International NZ undertook a National Integrity Systems Assessment in 2015, and has been updating this assessment throughout 2018. This will be launched on 22 May 2019.
We are able to share comments made in this assessment, including comments from the 2013 report that are still relevant, as well as subsequent observations.

Key issues with the Official Information Act (OIA) are:

a. The Law Commission report of 2012 is as relevant now as it was then. The recommendations in the report should be implemented.

b. The scope of the OIA should be broader, including Officers of Parliament and parliamentary services.

c. Adherence to the spirit of the OIA is variable, though has improved over the last five years. The practice of 'Hide and Seek' appears to continue in some government agencies.

d. There remains opaqueness around public funding provided to political parties.

e. The OIA does not necessarily, and should, apply to all information held by organisations in receipt of public funds.

Other points we wish to make are:

- To further clarify point e. above, there has never been an explicit statement of principles about the sort of organisations that should be subject to the OIA. Organisations have been added to and deleted from the appendices over the years - at first apparently with an eye to ownership. If an entity was publicly owned, then it was usually subject to the OIA. This was fine in the early 1980s, but with the reforms of the 80s came much blurring of the line between public and private entities. It seems obvious that the OIA should cover all use of public funds – i.e if a privately-owned organisation is operating on public funding, then it should be subject to the same transparency regime as a publicly owned one, at least for its publicly funded activities.

- There is a need for an oversight authority with the power to inspect and audit processes for handling information requests and perhaps also to provide education and training. At present this work is fragmented and under resourced.
- There need to be real sanctions for delays caused by inefficient and overly complicated processes for dealing with information requests, and for deliberate delay and obstruction. There is far too much scope for organisations to delay responding to a request until the information is no longer useful. And there should be a time limit on the provision that allows an organisation to withhold information if it will "soon be publicly available". Soon should not mean "in two years' time".
- All organisations should have an initial simple triage process for all information requests - remembering that there are no special rules for "requests under the OIA" - all requests for information are subject to the OIA. Essentially an organisation should ask itself not "is this an OIA request?" but "Do we have any concerns about releasing this information?" If the answer is "no", then the information can be released - if it is "yes" then it should get referred to someone with knowledge of the OIA to decide whether any of the withholding reasons apply.
- The Act review provides an opportunity to give thought as to how to how to give effect to the OIA efficiently and effectively. This means looking beyond legislation to practices of proactive release and efficient information management, to facilitate public access to information, rather than the Act's principles being reactively met through responses to specific requests. The approach to responding to OIAs needs to move toward a more modern 'ínformation management' approach towards making information available to the public. This could involve the provision for the proactive release of commonly requested information, such as advice provided to Ministers. Such practices are already being advocated and pursued by some Ministers. This is not a legislative change.

2. Do you think these issues relate to the legislation or practice?

Some relate to legislation (ie. Principles, scope, local government, sanctions).
Some relate to its implementation and practice (eg triage, proactive release of commonly requested information).

3. What reforms to the legislation do you think would make the biggest difference?

Clarifying principles of coverage, which should result in extension of the coverage of the Act to include all agencies using public funding; as well as the administration of parliament and officers of parliament, and public money provided to political parties.

Contact:

Julie Haggie, CEO, Transparency International

s9(2)(a)

Bottcher, Jenna

From: Trevor Richards Richards s9(2)(a)
Sent: Thursday, 18 April 2019 8:06 AM
To: OIAfeedback@justice.govt.nz
Subject: OIA Feedback

The fact that no statistics are taken on OIA requests that are not fully answered demonstrates a level of beauracratic incompetence beyond belief.

Submission by Warren Forster to the Official Information Act Review

By email to oiafeedback@justice.govt.nz.

I am a barrister and researcher with expertise in the Official Information Act, the Privacy Act, the ACC system, and access to justice. Further information about my work is available here: www.forster.co.nz

This is my submission in a personal capacity. I provide this to highlight an example of the gaming of the Official Information Act.

I will provide feedback based upon my interactions with FairWay Resolution Limited (Fairway) and failure of the various accountability mechanisms (Office of Ombudsman, State Services Commission, and Ministers) to ensure FairWay's compliance with the Official Information Act and hold FairWay, its Board and its staff into account between 2015 and 2018.

1. The Key issues with the Official Information Act (OIA)

1.1. The OIA can work well for many minor cases where the person who is requesting knows exactly what it is they were asking for and where the agency responding is cooperative and the people in that agency tasked with doing the work believe in open and transparent government.

1.2. When these conditions are not met, the OIA can be gamed by Chief Executives and staff to deny its intent. Due largely to resourcing issues, the Ombudsman staff can be ineffective, particularly when called upon to deal with complex issues.

Case Study of gaming of OIA by FairWay to show key issues

1.3. FairWay Resolution Limited (FairWay) was formerly known as Dispute Resolution Services Limited (DRSL) and was previously a subsidiary of ACC. Its purported function was to administer the ACC Review process under Part 5 of the Accident Compensation Act. It was then "sold" by ACC to the Minister for ACC and the Minister for Finance in 2010. It had a long history of resisting transparency and refusing to provide information requested under the Official Information Act using one or more of various grounds and gaming strategies.

1.4. In 2014 and 2016, iformation that was being leaked out of ACC and FairWay raised real issues with the independence of FairWay and its reviewers. This added to the existing public concern of the lack of independence of the review process. The high point of the allegations were that FairWay reviewers were being told how to decide cases.

This was very concerning as it undermined trust and confidence in the justice system.

1.5. In May 2015, a requestor requested official information from FairWay. This was declined and the matter was then referred to the Office of the Ombudsman (the Ombudsman).[1] The Ombudsman then investigated and decided in its final opinion in May 2016:

> 70. For the reasons set out above, I have concluded that FairWay should not have refused the request. In particular:
>
> a. FairWay's reviewers are not undertaking judicial functions for the purposes of section 2(6) of the OIA;
> b. notwithstanding that, the Benchbook is also held by FairWay and it is FairWay, not its reviewers, which asserts ownership of the document;
> c. the Benchbook is not a trade secret, and section 9(2)(b)(i) of the OIA does not apply;
> d. disclosure of the Benchbook is not likely to cause unreasonable prejudice to FairWay's commercial position, nor is withholding the Benchbook necessary to protect the interest contemplated by section 9(2)(b)(ii) OIA; and
> e. public interest factors favour disclosure.

1.6. FairWay leadership continued to be unhappy with the implications of the Ombudsman's decision because FairWay was now undeniably subject to the Official Information Act and it would have to provide requested information which it did not want to provide. This new approach from the Ombudsman was significantly different to FairWay's previous reliance on the various exceptions that has been used to reduce transparency for the previous decades.

1.7. At the same time that Professor Paterson was conducting his investigation (between late 2015 and May 2016), Miriam Dean QC's review (the Dean Review)[2] of work undertaken by Acclaim Otago's report "Understanding the Problem" was being conducted. This earlier research identified several barriers to access to justice for injured people.[3] During Miriam Dean's review, issues arose about the relationship between ACC and FairWay, in particular how ACC

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[1] Investigation into availability of FairWay Reviewers' Benchbook under the Official Information Act, Case Number 399972, May 2016, available here: < http://www.ombudsman.parliamant.nz/system/paperclip/documant_files/documant_files/2265/original/399972_-_investigation_into_availability_of_FairWay_reviewers__benchbook.pdf?1501015962investigation_into_availability_of_FairWay_reviewers__benchbook.pdf?1501015962>

[2] Independent Review of the Acclaim Otago (Inc) July 2015 report into Accident Compensation Dispute Resolution Processes <https://www.mbie.govt.nz/assets/bb3b087c54/independent-review-acclaim-otago-july-2015-report-acc-dispute-resolution.pdf>

[3] http://acclaimotago.org/wp-content/uploads/2015/07/Understanding-the-problem-Access-to-Justice-and-ACC-appeals-9-July-2015.pdf

controls reviewers through FairWay. This arose after a leaks were made that Fairway was telling reviewers what to do on instruction from ACC. Documents subsequently released under the Official Information Act[4] showed the process for this as follows:

> Provide Feedback to FairWay Resolution Ltd (FairWay) regarding the quality of the review decision …
>
> At the weekly meeting the Review Panel members consider whether any feedback on the adverse review decision is warranted to…
> FairWay (feedback in provided via the Review Panel Minutes)…
>
> Note: FairWay will discuss the Review Panel's feedback directly with the Reviewer involved on each occasion. Any cases which require further or more in depth discussion will be included in the agenda for the monthly operational meetings between FairWay and ACC.

1.8. During the Dean Review, ACC and FairWay made claims about the relationship between ACC and FairWay, and between FairWay and Reviewers, as being completely independent where ACC would not provide such information to FairWay and FairWay would not provide such information to individual reviewer and that it would be completely inappropriate for ACC to tell Fairway or reviewers what to do and instead the relationship was completely independent. These claims made by ACC and Fairway were inconsistent with the evidence leaking out of of ACC and FairWay but this was not publicly available information that could be provided to Miriam Dean QC's review.

1.9. As a result of the inconsistency between the claims made by ACC and Fairway to Miriam Dean QC and the evidence that was leaking out, a detailed Official Information Act request was made specifying relevant information that needed to be provided to accurately establish whether or not there was complete independence.[5] This request was made by a research team from the University of Otago[6], that was led by Warren Forster as part of the Solving the Problem research project. The detail of that request included what information that FairWay had told reviewers having received advice from ACC about what ACC disagreed with in particular cases.

1.10. After receiving the reports from the Office of the Ombudsman and the request from the research team in May 2016, FairWay the met with Warren Forster and another member of the research team in mid 2016 and assured them that information that had been requested

[4] Released by ACC Pursuant to the Official Information Act on 20 March 2018, document 3, page 1.
[5] Solving the Problem, Causation, transparency and access to justice in New Zealand's personal injury system, Appendix 17, available here: <http://acclaimotago.org/appendices/17.pdf>
[6] https://www.otago.ac.nz/legal-issues/research/otago643051.html

would be provided in full, but Fairway explained that the information would be provided in stages as it became available.

1.11. At the meeting in Christchurch in July 2016, FairWay requested that the matter be dealt with collaboratively rather than through the Ombudsman.

1.12. It has later been revealed by information released under the Official Information Act by Treasury in 2018 that by July 2016 FairWay's Board had approached treasury seeking a management buyout of FairWay.[7]

1.13. The Management and Board of FairWay (including the Chief Executive) were conscious of the Dean Review and the requested information from the University of Otago Research Team, and its potential impact of the release of that information on the reputation of FairWay and the public's trust and confidence in FairWay.

1.14. By 10 March 2017, some information was provided by FairWay, but the key information showing what FairWay had told its reviewers to do had still not been provided. The acting Chief Executive advised that second tranche of information would be provided in the week of 27 March 2017.

1.15. On 12 April 2017, Mr Rhys West was again asked to provide the information. He was specifically asked:

> Please provide whatever information is ready immediately. The reports to ACC should be readily available and I have raised this multiple times. Can you please advise when you expect the rest of the information to be available.

1.16. On 19 April 2017, Mr Rhys West replied:

> Late last week I received the information that our team were able to obtain, and given the level of this I will need to provide a fairly comprehensive review prior to releasing this to you. I am currently travelling so will not have an opportunity to do so until late this week/early next week. I hope to be in a position, subject to my own questions/queries to the team, to send this to you towards the end of next week.

1.17. In the weeks that followed, Mr West continued to express "concerns" about "issues" with the information that had been collated which needed to be "resolved" before that information was provided to Warren Forster.

[7] Documents released under the Official Information Act 24 May 2018 by Treasury, page 20, paragraph 5, Treasury Report, extract from Thursday 20 April 2017, available here: <https://treasury.govt.nz/sites/default/files/2018-07/oia-20180163.pdf>

1.18. Documents released under the Official Information Act by Treasury in May 2018 show that Mr Rhys West was aware that FairWay would be privatised on or before 19 April 2017.[8] There was a group of Fairway Board members and senior staff known as the "FairWay Buyers Group" who were directly involved with the purchase.

1.19. Mr West was aware that if he delayed providing the requested information to Warren Forster until privatisation, FairWay would not need to provide the official information because it would no longer be "official information" and instead would be come the "private information" of Fairway.

1.20. Mr West knew that is the information was provided under the Official Information Act, it would seriously undermine the independence of FairWay and particular reviewers.

1.21. Mr West repeatedly promised Warren Forster that the relevant information that Mr West had concerns about would be provided in the very near future to delay in order to delay or avoid Warren Forster raising the matter with the Ombudsman.

1.22. Mr West's assertions to Warren Forster were made with the intent to delay or avoid the Ombudsman's jurisdiction.

1.23. Mr West stopped answering phone calls or returning phone messages from Warren Forster about the release of information in May 2017.

1.24. On 1 June 2017, Warren Forster made a complaint to the Ombudsman about FairWay.

1.25. On 4 July 2017, FairWay's ownership was secretly transferred from the Crown to an employee owned trust. This immediately rendered all information held by Fairway to transform from "official information" to "private information".

1.26. On 12 July 2017, FairWay refused to make information available to another requestor because of the change of ownership meant that none of the information held by Fairway was official information.

1.27. In July and August 2017, the Ombudsman explained that they have no authority to continue their investigation into FairWay and that the complaint would be closed.[9]

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[8] Documant released under the Offical Infomration Act 24 May 2018 by Treasury for example page 20, paragraph 5, Treasury Report, extract from Thursday 20 April 2017, available here: <https://treasury.govt.nz/sites/default/files/2018-07/oia-20180163.pdf>

[9] Letters from Ombudsman 27 July 2017 and 31 July 2017, ref 454936 (Complaint ground: 456481).

1.28. The situation remains unresolved. See attached letter to the Minister for ACC dated 17 July 2018, which included the list of information requested in May 2016.

1.29. On 3 August 2018 the State Services Commission confirmed:

> The State Services Commission (SSC) has no jurisdictionon in regard to employment issues at Fairway Resolutionon Limited.
>
> Although SSC may have an interest in integrity issues regarding the conduct of the agency (and its employees) SSC no longer has any statutory powers to investigate, obtain information and make findings in relation to the conduct of the agency, now that it has been privatised and removed from the State services and therefore from the Commissioner's mandate.

1.30. The relevant Minister has confirmed that no ministerial oversight is available over Fairway.

2. Do you think these issues relate to the legislation or practice?

2.1. The issues relate both to the legislation and practice.

2.2. The legislation needs to make it clear that all information regarding all public functions need to be transparent and accessible. It is completely unacceptable in a free and democratic society that justice has not been done and justice has not been seen to be done.

2.3. These issues are not "one off", they are systemic. We see from this case study that there the systematic avoidance oversight. This conduct could best described as an abuse of process to avoid the intent of Parliament.

2.4. The legislation needs to ensure that *all* official information is made available regardless of the gaming of the Official Information Act by individuals.

3. What reforms to the legislation do you think would make the biggest difference?

3.1. Reforms must clarify that organisations performing public functions including statutory and administrative functions (for example FairWay)

are transparent and accessible and that this is demonstrable through the provision of information.

3.2. Reforms must provide real powers of investigation, enforcement and accountability to the Office of the Ombudsman. It is not acceptable for technical process to deny the intention of the legislation. Effective resources must be made available to investigate complex requests.

17 July 2018

Hon Iain Lees-Galloway
Minister for ACC
<i.lees-galloway@ministers.govt.nz>

Dear Minister

Reasons for concern regarding Fairway Resolution Limited

There are structural flaws in the oversight arrangements for Fairway that continue to undermine public trust and confidence in the dispute resolution process. These cannot be allowed to continue. New Zealand citizens are entitled to have their disputes with ACC decided according to the rule of law. Your intervention as Minister is required.

Perception is a policy problem

On 10 July 2018, you acknowledged that there is a sincerely held perception among many claimants that Fairway is not independent. Miriam Dean QC also made that finding and pointed to structural factors contributing to this perception.[1]

It is important that you do not overlook stakeholders' sincerely held objections about the process followed by Fairway Resolution and by ACC. From a policy perspective, there is little difference between perception and reality: both generate grievances against the system and unnecessary appeals.

Further, there is no disinterested institution that can authoritatively declare which grievances are a matter of perception and which are a matter of reality (let alone resolve them). Fairway is defending its own conduct and ACC has an interest as a party to the dispute.

Because there is so little transparency around Fairway's processes and its relationship with ACC, claimants and their representatives also cannot remove any doubts they have about Fairway's processes. The revelations about the Review Monitoring Panel are only the latest example of the reasonable grounds for problems of perception among claimants and their representatives.

Case studies: no remedy under current arrangements

To illustrate the structural issues with the current contractual arrangement, I have attached a series of case studies. These case studies are drawn from stakeholders' experiences and involve current and former Fairway reviewers and management. The case studies illustrate how perception problems come about. **There is no remedy for these problems when they do occur.** I urge you to seek advice on this point and I request the opportunity to respond.

Because there is no final remedy for these perception problems, they simply hang around to aggravate perceptions among claimants. This aggravation is worse where claimants do not

[1] We have attached brief excerpts illustrating that Miriam Dean QC had concerns about contractual performance monitoring by ACC over Fairway. ACC did not want this relationship disturbed. We believe it is unlikely Ms Dean was aware of the existence and content of communications by the Review Monitoring Panel to Fairway at the time of her review.

have a trusted legal advisor to help them to understand and accept the situation they are facing.[2]

It is difficult to investigate specific allegations of procedural failure. That is because of individual privacy and the difficulty of separating concerns about process from disagreement about the outcome of that process. Further, each complaint about process becomes a matter of applying law to evidence, which quickly becomes complicated and reasonably arguable.

Perception of injustice is a legitimate policy problem that should be dealt with. My advice to you is that, often, perceived injustices do contain a real problem with substantive merit. It is the failure to address this problem in a manner that a claimant perceives as fair that leads to the kinds of correspondence received by your office.

The goal of the dispute resolution process should be that, regardless of the outcome reached, both parties have confidence in the integrity of the process followed. All parties are agreed that too many people do not have confidence in the review process, including Miriam Dean QC, Acclaim Otago Inc, ACC itself, Fairway in its comments to Ms Dean, and in your own public statements.

Fairway and ACC will reject case studies

I predict that the response to these case studies from Fairway and ACC will be:

1) "That would never happen"

This response is predicated on trust and confidence. The question is not whether Fairway and ACC trust such events would never happen, but whether claimants share that trust. It is clear that many people do not perceive Fairway has justified that trust. There are historic examples that have undermined this trust. The function of the law is to provide a remedy for situations where the worst case happens. Fairway reviewers do not have the training, vetting or accountability of members of the judiciary.

We also note that stakeholders will not (and do not have to) take Fairway and ACC's word when they say "trust us". Instead, actual documents can be provided that will allow people to consider the situation for themselves. We have attached a list of the documents we consider should be released to improve the perception problem and note Ms Dean made similar recommendations.

2) "That would be inconsistent with a reviewer's statutory obligations"

A claimant has no way of enforcing these obligations or confirming whether they are being complied with. Compliance with those obligations probably varies widely amongst reviewers. Compliance is not examined on appeal. The reviewer faces conflicting obligations, including those imposed under the contract between ACC and Fairway and the reviewer's contract with Fairway. The proper course of action is to acknowledge that these obligations may conflict and set transparent structures that will allow the risk of conflict to be reduced.

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[2] I refer you to the case in *Henson v ACC* [2018] NZACC 104 where a claimant filed 46 review applications, leading to substantial expenditure of resources by Fairway, the Court, and ACC. The resulting impact on the dispute resolution system is negative regardless of the outcome of that case. ACC was awarded $20,000 in legal costs, which could easily have funded independent counsel at the outset to advise Mr Henson on a more prudent course of action and avoided subsequent disputes.

3) "The claimant can appeal if they are dissatisfied"

From a policy perspective, it is not enough to simply say that claimants can appeal if they are dissatisfied. First, the Courts are unanimous that appeals do not examine procedural defects in the process followed by a reviewer. Second, it is vital that the review process does the majority of the heavy lifting under Part 5 of the Act. As far as the complexity of the case permits, reviews are meant to be cheap, swift, reliable and effective. Third, there are consequences beyond the immediate dispute when someone has to appeal. There are increased human and economic costs that result from an appeal, both for claimants and for ACC.[3] Even if a claimant succeeds on appeal, their access to entitlements has been delayed. It is far preferable that the review process operate in a way that prevents appeals and finally determines disputes in a way that leaves parties feeling confident that justice has been done, even if the outcome is not to their liking.

House of cards: high risk of big impact

Having been through this situation several times before, I can advise you that the first likely response from ACC and Fairway will be to continue deny the existence of the problems. The second response will be to delay the release of the evidence to both yourself and the public, and they will then attempt to discredit those who have spoken out. I do not consider these types of responses from ACC and Fairway will help to solve these problems. I hope that I am wrong in this regard.

I advise you that these problems of perception are not being dealt with in a sustainable way. The consistent response from Fairway, the Government and ACC has been "that would never happen, trust us". When evidence does emerge that justifies these issues of perception, the impacts are significant.

My view is that we are in a "emperor's new clothes" situation: your officials seem to perceive that you as Minister wish to hear that everything is in order rather than being made aware of real problems that require your attention.

It is clear that Ms Dean QC noted that contractual arrangements between ACC and Fairway did contribute to perceptions that Fairway was not independent. Since then, the problems that have been identified with these arrangements have only escalated. I have tried to bring these to your attention, and they include:

- issues with formal and informal feedback from ACC to Fairway, that may or may not be passed to individual reviewers, and may or may not occur within the context of the review monitoring panel;
- the role of the "peer review" process in influencing a reviewer's judgement and decision-making;
- the impact of KPIs around timeframes (also noted by Ms Dean at p 28) and whether reviewers adopt a duly investigative approach;
- the conflicts posed by Fairway reviewers considering whether a deemed review decision has arisen;
- the impact of very low payments for reviewers for completing reviews on their ability to perform their statutory obligations;
- the impact of Fairway's ownership structure.

[3] We refer you to the excerpts from a report by the University of Otago Legal Issues Centre examining delays in Civil Justice disputes.

Conclusion

It is not good enough for Fairway or ACC to simply say, "trust us". We are dealing with a process that determines the rights and obligations of New Zealand citizens that lacks the traditional safeguards and transparency of the judicial processes.

It is fundamental not only that justice is done, but also that justice is "seen to be done". Appeals are driven by perceived grievances, not just grievances with substantive merit. There is no independent institution that conclusively determines whether problems of perception with review processes are made out.

The Government's policy goal should be to achieve a sound process, where claimants accept that justice has been done even if their application for review is dismissed. The review process and the structural safeguards around that process are inadequate. The assurances you are receiving from Fairway and ACC are unreliable. They are directed at avoiding greater scrutiny rather than proactively resolving policy issues. Neither Fairway nor ACC have an interest in departing from the status quo. The independence of the review process has been an issue for too long. It is time for a responsible government to resolve it once and for all.

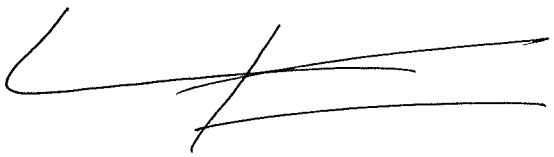
Recommended action

I recommend that you:

1. Direct ACC to release the official information sought in the attached table.
2. Direct officials to prepare advice to you on the Personal Injury Commissioner proposal to act as an independent third party in matters of policy development and implementation, contracting, monitoring and oversight (see *Solving the Problem*, 2017).
3. Direct officials to prepare advice to you on transferring control of the review process out of ACC's hands to the Ministry of Justice following the blueprint devised for the Accident Compensation Tribunal proposal, with a right of appeal to proceed as normal to the District Court.

As always, I am available to provide advice to you on any of the matters raised in this communication.

Yours faithfully,



Warren Forster
s9(2)(a)

CASE STUDY "A"

Issues raised in this case study include: contracting reviewers, conflicts of interest, peer review, independence, natural justice, predetermination

Before reviews are sent to Fairway, ACC "codes" the case for funding purposes under its contract with Fairway. This code sets out the issue ACC is contracting Fairway to hear. These codes are set out in the Contract. ACC coded this case as a Z5 "jurisdictional issues" review. ACC tells Fairway and the Reviewers that the sole issue for determination is "jurisdiction". The result of this categorisation by ACC is that the reviewer does not consider the substantive issue raised by the claimant.

The reviewer was a contracted reviewer (rather than employed) and was to be paid $450 for the entire review (preparation, case conference, review hearing, decision writing). The review involved the ACC fraud unit. ACC raised a jurisdictional issue. The reviewer's training manual at the time instructed reviewers to decline jurisdiction when the ACC Fraud Unit was involved. The reviewer wrote to the manager complaining that he did not want to hear the review, the reviewer raised issues with the complexity of the case and asked for an "employed reviewer" to do the review. The reviewer described the client's case as a "ticking time bomb" and also referred to media coverage of the client.

Documentary evidence shows the reviewer and the senior manager had a phone discussion. No notes were kept by either the reviewer or the manager about the content of the discussion. The manager then emailed the reviewer to continue by determining the jurisdictional issue. He appreciated the reviewer taking the case.

The applicant demanded that the reviewer take an investigative approach as required by the statute. The applicant produced the email correspondence between the reviewer and his manager and alleged that a conflict of interest had arisen from the reviewer's conduct. The reviewer decided to hear the review anyway.

The reviewer then issued his decision declining jurisdiction as instructed, following the process set out in the Reviewer's training manual.

Once the reviewer had made their decision, it was sent for "peer review". The peer reviewer advised the reviewer to change his reasoning and commended the reviewer's decision to decline costs for the client's representative.

The reviewer then changed his decision in line with the peer reviewer's comments and the changed decision was provided to the applicant.

At the District Court, ACC's lawyer told the Court that it had no jurisdiction to hear any complaints about the Review process because the appeal was by way of rehearing. The Court accepted this position and ignored the procedural problems at review.

The High Court later determined that decisions involving the Fraud Unit can be decisions capable of review and appeal.

CASE STUDY "B"

Issues raised in this case study include: conflicts of interest, independence, and natural justice

The reviewer rang and spoke to the branch staff about what to do with the review. The occurrence of one of these phone calls was recorded on ACC's computer system. It is unknown exactly what was said by the branch staff to the reviewer.

The reviewer then set directions that did not suit the applicant's needs. The applicant inferred that the direction matched the directions ACC had requested. These directions were followed by the applicant. There was then further communication between ACC and the reviewer about amending the process set out in directions to allow ACC to get further evidence from ACC's Medical Advisor. ACC was then permitted to get further medical evidence. The ACC advisor simply reiterated their earlier position to the applicant's detriment. The reviewer relied upon the medical evidence in declining the review.

ACC later accepted the reviewer's decision was wrong and back-paid compensation, but ACC refused to pay interest for the period prior to the review because it said its decision was correct at that time, as it was upheld by the reviewer.

CASE STUDY "C"

Issues raised in this case study include: conflicts of interest, independence, natural justice

Reviewers are required by law to issue decisions within 28 days of the hearing being completed. Fairway wishes to allow for time to fulfil its internal processes. Accordingly, it requires that reviewers must write decisions within two weeks of the hearing and then provide these to Fairway to be "peer reviewed" according to an unspecified process.

The reviewer held the hearing and wrote a decision where she found in the client's favour and quashed ACC's decision. Despite having completed her statutory duty, she could not issue the decision until it was peer reviewed. The decision was sent for peer review.

During the peer review process, the reviewer's contract was terminated by Fairway and the reviewer was not allowed to formally issue her decision. The review was then heard again according to some unspecified process by another reviewer. The new reviewer then issued a decision dismissing the review.

CASE STUDY "D"

Issues raised in this case study include: peer review, conflicts of interest, independence, natural justice

Reviewers are required to write decisions within less than two weeks of the hearing and then provide these to Fairway management to be "peer reviewed".

The reviewer held the hearing and it is unknown whether or not the issue was decided in the client's favour as the information has never been provided by Fairway. The decision was then sent for peer review but according to Fairway, the reviewer did not "complete" his decision.

Fairway claims that the Reviewer then "resigned" and refused to "complete" the review decision. The reviewer has not commented on whether this is true. The review application was "reheard" by another reviewer who dismissed the review based upon an argument that was never raised by the first reviewer, ACC, or the applicant.

The Court confirmed that it would not consider the procedural failing of the reviewer because the District Court proceeds by way of rehearing.

CASE STUDY "E"

Issues raised in this case study include: conflicts of interest, independence, natural justice, peer review

Reviewers are required to write decisions within less than two weeks of the hearing and then provide these decisions to management to be "peer reviewed".

At the conclusion of the hearing, the reviewer indicated at the conclusion of the hearing that the decision would be in favour of the client on one review but not the second review. The reviewer accompanied the representative outside the door to say goodbye and then explained that the second review should also be decided in favour of the client but in reference to her management, she said "they would never let me do that".

It is unknown whether or not any issues were ever decided in the client's favour as the information from the first reviewer has never been provided. The decision was then sent for peer review but the reviewer did not issue his decision.

The representative was then advised by Fairway that the reviewer is "no longer available" and that a second reviewer would have to hear the case. None of the communication has been provided so it is unknown to what extent Fairway's communication reflects the actual state of affairs. The second reviewer allowed one review but declined the other review.

This case went through the District Court but was then settled on appeal to the High Court.

CASE STUDY "F"

Issues raised in this case study include: conflicts of interest, independence, natural justice, management's influence

One of Fairway's key performance indicators (KPI) in the contract with ACC is that reviews are completed (presumably, a decision issued) within 6 months of the referral from ACC to Fairway. The meeting of this KPI is a precondition to the contract being extended. In 2018 ACC releases an invitation to express interest through a government tendering platform. It appears unlikely that this KPI is being met. On that basis it seems unlikely the contract will be extended in July 2019. Both ACC and Fairway are aware of this.

ACC gave evidence at Select Committee that its Board is not satisfied with the performance of Fairway, including in relation to delays in process review applications. The Board of ACC receives regular reports from ACC staff about review delays. The number of adverse decisions being reviewed has increased.

Fairway's staff and contractors have been advised that they must reduce the timeframes for processing reviews. No direct evidence of this advice has been made available.

Since late 2017, there have been a number of occasions where reviewers are issuing hard timetabling directions, particularly regarding delays in obtaining medical evidence. They rely on the parties to provide evidence rather than taking an investigative approach. There is a perception that reviewers are refusing to issue further adjournments, even when both parties agree an adjournment is necessary, or there is no objection. Given that neither party has objected, the only participant with an interest in proceeding appears to be the reviewer. It is hard to understand the reasons that reviewers will refuse adjournments given acknowledged access to justice barriers in obtaining medical evidence. This practice gives rise to judicial review applications by claimants seeking to admit relevant evidence (*Moir v IHC* [2018] NZHC 1360), meaning the involvement of the High Court in ACC reviews.

The contract between reviewers and Fairway has revealed the contractual obligation on the reviewer to meeting Fairway's objectives. Fairway has a specified objective of resolving disputes within six months. This appears to be achieved by reviewers declining to take an investigative approach, declining to grant adjournments, or declining to direct ACC to obtain further medical evidence.

Reviewers increasingly "allow the review with directions", where reviewers do not directly deal with the issues at hand and instead direct ACC to go back and reinvestigate. During that process, ACC and accredited employers are refusing to reinstate entitlements, despite doubt about the integrity of the original decision on cover and entitlements.

CASE STUDY "G"

Issues raised in this case study include: conflicts of interest, independence, natural justice, management's influence

Fairway offered two dates for a hearing. The parties were both unavailable on those dates and instead suggested other dates. 80 minutes later, Fairway set down a hearing without the agreement of either party.

The applicant asked for information from the reviewer. It appears that Fairway took the step to avoid a contractual penalty of up to $25,000 that arises when a review is not set down within three months. The applicant indicated that a perceived conflict of interest had arisen as the reviewer would be required to consider his own conduct and that of Fairway in deciding whether of not the review was lawfully set down.

The reviewer set down a case conference after repeated requests from the applicant. A few minutes before the case conference, the reviewer withdrew because of a conflict of interest. Another reviewer phoned into the case conference. The conflict of interest point was made and the applicant asked that Fairway return the file to ACC so that it could exercise its statutory powers to appoint an independent non-Fairway reviewer to consider the case. The reviewer holding the case conference said she could not make this decision and she would pass it up the chain to management for consideration and a decision.

Another reviewer then purported to set the hearing down. The applicant requested disclosure of all of her information held by all of the reviewers and Fairway. The applicant asked both ACC and Fairway to exercise their discretion under s 137(3) and appoint a non-Fairway Reviewer. ACC advised that it was not appropriate for ACC to interfere in a review by replacing the reviewer, despite the applicant's request. The applicant's perception is that Fairway simply ignored all of this communication. Fairway later suggested that Fairway's policy is to ignore requests for information while the review is "live". The reviewer refused to acknowledge and manage the conflict of interest and did not make any information available.

Section 137(3) allows ACC to replace a reviewer for any reason. It is unclear whether Fairway has the authority to exercise this discretion.

CASE STUDY "H"

Issues raised in this case study include: conflicts of interest, independence, natural justice, management's influence, the review monitoring panel and the operational meetings

ACC required Fairway to provide weekly reports on review decisions that went against ACC (ie, where the reviewer quashed ACC's decision (Contract with Fairway, Sch 1, cl 8.3)). These reports include the names of specific reviewers.

ACC required Fairway to provide monthly "Operations reports", "contract KPI reports" and "adverse decision reports."

The adverse decision report went to the ACC review monitoring panel. This panel gave feedback to Fairway on the assumption it would be passed to individual reviewers.

ACC paid Fairway up to one million dollars per year to report on reviewers to ACC (Contract with Fairway, Sch 2, cl 2.13).

Fairway held monthly performance results meetings where the "performance" of Fairway is discussed (Contract with Fairway, Sch 3, Service KPIs). Fairway in turn monitors the "performance" of individual reviewers who are either employed or subject to short term contracts.

The terms of reference of the review monitoring panel require that "Fairway will discuss the Panel's feedback directly with the reviewer involved on each occasion". They also note that any case which required "further or more in depth discussion will be included in the agenda of monthly operational meetings between ACC and Fairway."

Fairway discussed the panel's feedback directly with the reviewers on each occasion. Reviewers took it very seriously when one of their decisions was discussed at the monthly operational meetings.

Fairway and ACC both denied that this individual feedback occurred. Their position appears to be that the contract is designed to ensure that "quality assurance" feedback is not actually implemented by the party receiving it.

the howard league
Canterbury + Otago + Wellington

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18 April 2019

OIA review
Ministry of Justice
Wellington
New Zealand
OIAfeedback@justice.govt.nz

Proposed Official Information (OIA) Act Review

Tēnā koutou

Thank you for this opportunity to make a submission regarding how the Official Information Act 1982 (OIA) works in practice.

1. **Key issues with the OIA?**
   The key issues we have found with using the OIA to access information are:

   a) **Response times**
      i. long response times, the use of a 20 day extension appears to be automatic for some departments
      ii. notification of an extension arriving (like clockwork) 20 working days after the request, with final responses almost always being on the very last day possible.

   b) **Seemingly cynical use of extensions**
      i. the use of form letters to explain the need for an extension. In one department we deal with frequently the same wording is used regardless of its relevance, the need for an extension always being "*as consultations necessary to make a decision on the request are such that a proper response to the request cannot reasonably be made within the original time limit*." This was perhaps most cynically used when after 40 working days we were told the department did not have the information that we had requested.
      ii. extensions used for OIA requests for copies of standard department policy

   c) **Refusal of information that, in other contexts, the government has stated that they hold and is available on request**: In one particular instance, an OIA, requesting information that the government had reported to the United Nations was available to the public on request, was refused on the grounds that the information was not collected.

   d) **Officious unhelpfulness**: Sometimes when you do not work in a government department you don't necessarily use the correct wording even if you do convey the sense of the sort of information you would like. There does not appear to be

a culture of assisting people to get the information required, but rather a bureaucratic and obstructive unhelpfulness as you effectively end up poking in the dark trying to work out what the right question to ask is in order to get a useful response. This is a waste of everybodies' time and does not create a sense of transparent access to official information.

e) **Complaints to the Ombudsman:** It is good that it is possible to complain to the Ombudsman. This needs to be encouraged as I'm sure many people don't consider their request significant enough to disturb the Ombudsman. Additional funding to increase the timeliness of the Ombudsman's complaint process would be appreciated.

f) **Knowledge of the OIA**: We have recently had an incident where we were asked by a department to comment on another department's response to our initial letter. The response we had to comment on referred to several attachments that were not forwarded on to us. When we asked for the attachments to enable us to make our comment we were informed that our request would be treated as an OIA request and that it would take up to 20 working days for this.

2. **How do these issues relate to the legislation or practice?**

These issues:

a) often suggest practice does not support the purpose of the Act *"to enable ... more effective participation in the making and administration of laws and policies; and to promote the accountability of Ministers of the Crown and officials*" (OIA s4(a)(i) and 4(a)(ii))
b) often appear to reflect a culture of obstructionism, and a lack of transparency
c) can discourage people requesting information from government
d) can waste time (at both ends)
e) point to the importance of the Ombudsman, and the need for the Ombudsman to be funded at a level which increases his accessibility and responsiveness
f) suggest that the use of the 20 working day extension should be limited, and require an explicit reason that can be challenged

3. **What reforms would make the biggest difference?**

The following would assist in improving the OIA system

a) Cultural and attitudinal change within some departments appears to be needed.
b) Monitoring of department response times and their provision of information may assist in cultural change
c) Instituting a state sector-wide internet customer satisfaction survey following the final response would provide important feedback and quickly identify problems. Including an email link to the Ombudsman to facilitate complaints would also help, but I suspect would initially require additional funding for the Ombudsman (hopefully just short term).
d) Reviewing the use of redaction.
e) Public service assistance to requesters for framing questions to facilitate them obtaining the information wanted.
f) Encouraging a kaupapa where officials are proactive in responding with a suggested revision of the OIA request when information sought is not clear, is obviously incorrect, or is not available in the form requested.
g) Providing more publicly available information. OIA requests should inform decisions regarding increases to the material that is normally publicly available.

4. **Conclusion**

The Wellington Howard League for Penal Reform strongly supports a genuine and functioning OIA system. Such a system needs to proactively support all New

Zealanders' right to official information, regardless of their knowledge of the workings fo the public service and government processes. We consider this to be vital for a robust democracy. We are fully supportive of a review of the current use of the OIA.

Nāku iti noa nā

Christine McCarthy
President
Wellington Howard League for Penal Reform

Meeting notes – Andrew Ecclestone – 8 March 2019

Discussion about the need for a review. Andrew identified the following issues as reasons why a review is needed. The main need for a review is because the OIA is increasingly out of step/lagging behind other jurisdictions.

- Lack of a review process for decisions made by the Ombudsman. Currently it is not possible to appeal on the merits of the Ombudsman's decision. A model similar to the Privacy Act could be set up (appeal to HRRT etc) or a free-standing information commissioner role could be set up whose decision can be appealed to the HRRT and then to the Courts. An appeal system for the Ombudsman's decisions would help provide for a better body of jurisprudence on the OIA.
- The OIA should apply to Officers of Parliament as recommended by the Law Commission with the appropriate exemptions.
- The OIA should apply to the Ombudsman, except in relation to the Ombudsman's investigation function.
- Section 6 withholding grounds should allow for a public interest override.
- The eligibility test in section 12 should be extended. Anyone should be able to make an OIA request. Many countries allow anyone to make a request.
- The OIA should override secrecy provisions in other legislation.
- There should be a statutory requirement for agencies to publish OIA requests and information releases. They should also be required to report on the operation of the OIA in each agency.
- Changes are needed to the definition of official information.
- There should be no change to section 48 to indemnify liability.
- Investigation into OIA practices should be under the OIA and not rely on the Ombudsman Act. The OIA needs to be free standing.

Meeting notes – Privacy Commissioner – 2 April 2019

- The OIA is good legislation and was pioneering in its time.
- Is the principle of availability the right place to start in relation to personal information? There is a possible disjunct between the Privacy Act and the OIA. The starting point in the Privacy Act (PA) is that information should *not* be disclosed unless there is good reason to do so. The OIA has a different emphasis - information *should* be made available unless there is good reason not to make the information available.
- A purpose of the OIA is "to increase progressively the availability of official information" – to what end?
- OPC gets many questions about mixed information.
- The PA is subservient to the OIA. Should this continue to be the case? Privacy has evolved in the last 30 years. It may be useful to go back to first principles and ask if there should be a carve out for personal information in the OIA.
- The Privacy Commissioner noted there is a potentially significant undermining of privacy where the OIA is used to request someone else's personal information. The Privacy Commissioner's view is that the presumption of availability should be reversed in relation to personal information, unless there is a good reason to disclose (as per Ireland FOIA).
- A potential review could re-examine the privacy expectation of officials - there may be an opportunity to clarify some categories of personal information. E.g. under Canadian legislation you can withhold personal information if the disclosure would breach personal privacy. Canadian legislation then goes on to list situations where there will be a presumption of breach of privacy and situations where there will not be.
- Privacy is highly contextual and OIA processes concerning personal information could be made simpler and smoother. There are opportunities for efficiency.
- Freedom of Information Authorities are not unusual in other parts of the world. Is there a need to re-examine the levers in place for accountability in New Zealand?
- Personal information often makes its way into the media - are privacy interests being given sufficient weight?
- Important to ensure a carve out for personal information if immunity from liability for proactive release is progressed. There could also be a chilling effect on other withholding grounds e.g. commercial sensitivity.

Meeting with the Chief Ombudsman and three staff – 15 April 2019

- The Chief Ombudsman talked through his written submission.
- Important to align the OIA and LGOIMA—can't consider reform of one without the other.
- OIA data publication is important along with proactive investigations of agency OI practices, as well as training and guidance.
- Well-resourced agencies or larger local councils may be able to respond better to OIAs.
- There is no central agency responsible for leadership in local government overseeing LGoIMA.
- The Law Commission made a number of helpful recommendations, but there is some risk in changing withholding grounds that have been the subject of 30+ years of interpretation. Updated guidance on the withholding grounds should be helpful to agencies.
- Consider Law Commission's recommendation of adding in a new withholding ground around competitive position and financial interests.
- As outlined in the written submission, there are elements of the OIA that could be improved. E.g. the interaction between the Ombudsmen Act and the OIA.
- There may be a role for an oversight body that could provide oversight, coordination and leadership on both the OIA and LGOIMA. New infrastructure may not be needed.
- Personal information should not be carved out from the OIA.
- Keen to be involved in legislative changes that could help support/drive/reinforce culture change.
- Not strongly supportive of carte blanche immunity for proactive release. Proactive release obligations should be set out in the OIA .
- Justice should review other jurisdictions laws on proactive release. What evidence is available that proactive release without the liability waiver is a problem?
- Ombudsman's preliminary inquiries should not be subject to the OIA or LGOIMA.

Meeting notes – Sir Douglas White (Law Commission) – 1 April 2019

- The Law Commission stands by its previous report and is available to carry out another review of the OIA if required, subject to resourcing and other priorities. There are options here – the Law Commission could do another review or could revisit specific aspects of their first report e.g. liability for proactive release and oversight and enforcement of the Act.
- Another option is a Ministerial Briefing Paper from the Law Commission similar to the one done last year for Abortion law reform. This would be over a shorter time frame but could still take up to 8 months.
- The number of OIA requests received by the Law Commission has doubled over the last two years and more resourcing is needed to deal with OIA requests, particularly from the media.
- If stronger oversight of the OIA is needed, it would be preferable to provide more resourcing for the Office of the Ombudsman rather than create another new agency.

Meeting notes – Sir Geoffrey Palmer– 29 March 2019

- The Act needs a complete overhaul. The Law Commission took an overly cautious approach.
- Discussed the High Court decision in *Kelsey v Minister of Trade* and the failure of both the relevant Minister and the Office of the Ombudsman to apply the OIA correctly.
- Different agencies apply the OIA differently. There should be uniformity in approach and predictability about agencies' responses to OIA requests. It would be helpful for agencies to draw on precedent.
- There appears to be a lack of political will to overhaul the OIA and free up information for release to the public.
- The OIA does not sit well with the classical function of the Ombudsman's office.
- An Information Authority/Commission could be set up that has the power to make binding decisions on agencies to release information. This entity could also provide guidance and training. Decisions by the Information Authority/Commission could be appealed to the High Court.
- The OIA is imperfectly executed and is a weak public information act.
- There are legal gaps – e.g. section 32 of the Inquiries Act.
- There is a high cost to complying with the OIA, but this should be seen as part of democratic decision making.
- LGOIMA and the OIA should be incorporated into a single Act. The LGOIMA is not working well e.g. overuse of the commercial withholding ground by local authorities.
- The OIA should apply to more agencies including the Parliamentary agencies. MP's should be subject to the OIA.
- There should be a uniform approach to proactive release.
- Supportive of Ministers and agencies being protected from liability when information is proactively released.

Meeting with Sir Kenneth Keith – 18 April 2019

- The legislation has already been the subject of reviews by the Law Commission and the Office of the Ombudsmen. The Government response has been limited at best. Given that history, what is the point of another review?
- The problem appears to be the administration of the Act rather than the legislation itself.
- Any such review at the government level should be the responsibility of the SSC and possibly DPMC as well. It requires an all of government approach.
- Preferable for the OIA to remain under the jurisdiction of the Ombudsmen. A 'power to recommend' is preferable to a power of decision that is subject to judicial appeal.
- There could be a role for an oversight body like the Information Authority that could also oversee Ministers and local government responses to LGOIMA requests.
- Not supportive of carte blanche immunity from liability for proactive release. Is there evidence of a problem?

Notes of phone call with Dr Gavin Ellis – 10 April 2019

- Very little has changed since 2016.
- While the letter of the OIA may be observed, the spirit is not.
- There is a lack of political will to make any changes to the OIA.
- The number of grounds for withholding information is excessive and there needs to be a higher threshold than “good reason” to withhold information.
- The legislation is highly prescriptive and can easily be manipulated for political purposes. For example, information and advice are not the same thing. Information briefings should be not withheld under the free and frank advice withholding ground.
- Practice is the issue.
- One reform would be to set up Information Commissioner - similar to the Privacy Commissioner’s role in privacy protection, the Information Commissioner could have a role in championing the release of official information.
- The Ombudsman function is an appeal process and is no longer fit for purpose.
- Information belongs to the public not to the state. This was what was envisaged when the OIA was enacted. There has been a shift towards the state considering that it owns the information but “the state is the servant, not the master of the public”.
- Information which belongs to the public should be released to the public unless there is “very good reason” not to.
- There could be benefit in reducing the number of withholding grounds.
- With regards to resourcing, an Information Commissioner could be co-located with the Privacy Commissioner and share resources. They could be of equal standing.
- The Information Commissioner could also have a role in looking at agency systems and processes and identifying improvements and opportunities for efficiency.

Phone call with Professor Burrows – 11 April 2019

- Professor Burrows headed the Law Commission's inquiry into the OIA in 2011/12
- The Law Commission review received less submissions from users of the OIA than it did from agencies. However, agencies that submitted to the Law Commission's review found the OIA difficult and the withholding grounds hard to understand, in particular the 'free and frank' withholding ground.
- The Law Commission recommended improved guidance and training and the publishing of precedent cases.
- Agency resourcing can be an issue. Staff responding to OIA requests do not always use the tools available to them in legislation e.g. substantial collation and frivolous and vexatious.
- Guidance on the free and frank withholding ground recently published by the Ombudsman is helpful, as it specifies that blue sky thinking does not need to be disclosed.
- Of the users who submitted to the review, the 2 main areas of complaint were the OIA response timeframes (too slow) and the information released (information is invariably redacted).
- The Law Commission recommended legislative change to some of the withholding grounds. One ground that could be clarified further is commercial sensitivity.
- The schedules could be clarified. Consider adding Air NZ as the government is a majority shareholder. Parliamentary Services and PCO could also be considered.
- The OIA's relationship with material subject to an inquiry could be clarified.
- Information that is 'publicly available' could be clarified.
- Consulting with third parties before release could be provided for in the Act.
- The Law Commission attempted to redraft the 'good government' grounds. The Law Commission noted these grounds are not well drafted and could be restructured (this was a marginal decision).
- The Law Commission recommended setting up an Information Authority, but was conscious of the cost implications.
- Traditionally, the Ombudsman role in general does not encompass activities like providing guidance and training and oversight, but the NZ Ombudsmen have undertaken something akin to such a role in relation to the OIA.
- Agencies should be encouraged to proactively publish material.
- An Information Authority could keep agencies performance under review and recommend changes from time to time.
- Was not supportive of immunity from liability for proactive release because could mean that government is not liable for anything published.
- Privacy considerations in the OIA can be a confusing area and there are opportunities for efficiency by making the starting point for personal information the same as it is in the Privacy Act (but with the public interest override).
- Question as to why personal information held by government agencies should be held on a different basis from that held by private organisations.

Stakeholder Engagement Plan: case for a review of the Official Information Act 1982

Introduction

1. This document outlines how the Ministry of Justice will engage with targeted stakeholders to inform its advice to the Minister of Justice on the case for a review of the Official Information Act 1982 (OIA).

Why are we undertaking this engagement?

Open Government Partnership Commitment

2. New Zealand is a signatory to the Open Government Partnership (OGP). The OGP is an internal agreement by states committed to making government more open, effective and accountable. The OGP involves developing two-year action plans to improve openness and engagement between government and citizens.
3. The government has recently worked with New Zealanders to develop New Zealand's third National Action Plan 2018-2020.[1] This consultation elicited a number of suggestions from civil society, academics and other members of the public relating to the OIA[2].
4. The final Plan contains 12 commitments responding to three themes that were important to New Zealanders. They were:
   - participation in democracy
   - participation in the development of policy and service design; and
   - transparency and accountability.
5. The latter theme includes commitment to:
   - test the merits of undertaking a review of the OIA and provide and publish advice to government by June 2019
   - progressively increase the proactive release of official information by publishing responses to requests made under the OIA.
6. This engagement builds on the Plan development process by consulting in a targeted way with experts, governmental and non-governmental organisations, and other interested parties.

[1] https://www.ogp.org.nz/assets/Publications/91b28db98b/OGP-National-Action-Plan-2018-2020.pdf

[2] https://www.ogp.org.nz/assets/Publications/0e5de0eeea/Summary-of-Public-Comments-on-draft-Plan-2018-2020-and-Responses.pdf

Cabinet agreement

7. The Minister of Justice has asked the Ministry of Justice to carry out targeted engagement to inform a decision on whether to progress a formal review of the OIA [CAB-18-MIN-0418 refers]. As the agency that administers the OIA, the Ministry of Justice will lead the targeted engagement with support from the State Services Commission (SSC).

The Law Commission's report *The Public's Right to Know*

8. In 2012 the Law Commission published *The Public's Right to Know*[3] on the functioning of the official information legislation. The report's recommendations included significant legislative change.
9. The Law Commission found that the fundamentals of the OIA remained sound, but that reform was necessary to respond to the context in which the Act now operates, such as changes in technology. Its recommendations included:
    - extending the OIA's application to certain parliamentary information (e.g. Parliamentary Services and the Office of the Clerk)
    - clarifying and adding withholding grounds, and
    - establishing a statutory oversight function, such as an Information Commissioner.
10. The previous Government favoured largely operational improvements to the OIA. The focus since then has been on improving OIA practice and strengthening proactive release requirements.[4]

The Ministry of Justice's regulatory stewardship role

11. This engagement supports the Ministry of Justice in its regulatory stewardship role to:[5]
    - assess the operation of the OIA to ensure it is, and will remain, fit for purpose
    - take a proactive and collaborative approach to the monitoring and care of the OIA
    - identify what factors pose the greatest risk to good regulatory performance.

Purpose of the engagement

12. The targeted stakeholder engagement is an initial step that will inform our advice to the Minister on whether a review of the OIA is warranted. The purpose of the engagement is to:
    - understand stakeholders' views and perspectives on the OIA, particularly stakeholders' views on potential weaknesses and gaps in the legislation
    - help inform our advice to the Minister of Justice on the possible scope of any review (should we recommend this).

[3] https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20R125.pdf

[4] Cabinet papers lodged from 1 January 2019 will be proactively released as part of the Government's wider plan to improve openness and as a reflection of its commitment to the Open Government Partnership [CAB-18-MIN-0418 refers].

[5] The State Sector Act 1988 makes a chief executive of a department responsible for the stewardship of legislation administered by their department [section 32(1)(d)(ii) refers].

13. The stakeholder views gathered during this exercise will not be determinative on the Ministry's advice to its Minister. Our advice will fairly and accurately reflect the views we have gathered, but the recommendations we make are for the Ministry to determine.
14. If Ministers do decide on proceeding with a formal review, the information obtained though targeted engagement and the relationships we build with stakeholders will be a valuable resource to draw on.

Relationship to other related work underway

15. The SSC is focussing on improving agencies operational practice in the public sector. We will work with the SSC to ensure they are aware of stakeholders' views on OIA issues that relate more to agency practice than to the legislation.

Approach to the targeted stakeholder engagement

Who we will engage with

16. We propose engaging the following groups during the targeted consultation:
    - appropriate bodies (e.g. Office of the Ombudsman, Office of the Privacy Commissioner, Archives New Zealand, New Zealand Law Society, the Law Commission)
    - subject matter experts (academics, researchers)
    - non-government organisations/civil society (Transparency International, NZ Council for Civil Liberties, OGP Expert Advisory Group)
    - journalists, media commentators and bloggers
    - government agencies
    - local government representative bodies (LGNZ)
    - Crown entities (e.g. Commerce Commission, Human Rights Commission)
    - Other members of the public through a limited public consultation exercise.
17. Stakeholder engagement will run for six weeks in March and April 2019.

What we will explore

18. The engagement is about exploring stakeholder's perspectives on whether a review of the OIA is warranted. We therefore want to know how stakeholders currently experience the OIA and the issues they consider could benefit from a review of the legislation.
19. As we do not want to pre-determine the issues we think stakeholders may wish to discuss, we will not provide an issues paper as a basis for engagement. Instead we will ask questions focussing on how the OIA is functioning with regard to providing access to official information, based on stakeholders' experience, and the key issues and challenges they think we need to be aware of.
20. These key issues may include the matters raised by the Law Commission in its 2012 report. For example, one topical issue to be tested in targeted engagement is whether protections from liability should be applied to proactive releases of official information.
21. We propose that the following questions are used as a basis for discussion.

General questions

22. Over recent years, the Office of the Ombudsman has done significant work on the interpretation and application of the OIA, and on its complaint resolution activities. At the same time, the Ministry of Justice and more recently the State Services Commission have been providing guidance on OIA practice, and reporting on compliance with the OIA as part of a broader programme to improve implementation by agencies of the spirit and the letter of the OIA.
23. In this context, please consider the following questions.
    a) In your view what are the key issues with the OIA that we need to be aware of? Do you think these issues relate to the legislation or practice?
    b) Do you think that any changes are needed to the legislation? Please explain why.
    c) What reforms to the legislation would make the biggest difference in your opinion?

Questions focused on Law Commission recommendations

    d) You may be aware that the Law Commission reviewed the OIA and identified some areas for change. What is your view of the Law Commission's recommendations?
    e) Do you think these recommended changes are still needed?

How we will engage

24. Stakeholders will have different interests and concerns about the engagement. A summary of stakeholder interests and our response to that interest is in **Appendix One**.
25. Key stakeholders such as the Office of the Ombudsmen, academics and commentators, will be alerted to the engagement via email. We will describe the engagement process and include the focus questions in the email together with a summary of the Law Commission's recommendations. We will also offer an opportunity to provide verbal feedback via teleconference or in person.
26. The focus questions will be hosted by the Ministry of Justice website on the 'Citizen Space' tool. The questions will be accompanied with supporting information about the exercise being undertaken.
27. Any in-person engagement will be stakeholder-led, and so we will not seek to provide supporting material or more detailed questions beyond that available on the website. We will instead listen carefully and take a record of the key messages.
28. Once we have summarised and analysed stakeholder views, there may be a need to re-engage with some key stakeholders, particularly the Office of the Ombudsman. This will likely be through face-to-face meetings.

Advice to the Minister

29. Advice to the Minister on the case for an OIA review will be developed by the Ministry of Justice in consultation with the State Service Commission (SSC). That advice will accurately and fairly reflect the views we have heard. If there is any room for doubt about what we have heard, we will reconfirm that stakeholder's position with them.
30. The Ministry's advice itself, however, is for it to develop, in consultation with the SSC. Stakeholder views will inform but not be determinative on its advice.

Activity and timing

Activity	Timing (2019)
Internal (MoJ and SSC) sign-off on stakeholder engagement plan and focus questions	February
Minister approval of stakeholder engagement plan and focus questions	Late February
Stakeholder engagement • Emails to targeted stakeholders / engagement questions made available online • face-to-face meetings/teleconferences	March - April
Submissions summary and analysis	April – May
Possible further engagement with some stakeholders (e.g. Office of the Ombudsmen)	May - June
Report back to Minister of Justice on the case for a review of the OIA	30 June
Advice published	Following the Minister's consideration and any Cabinet decision

Link to communications plan

31. A communications plan for the review will be developed which will highlight key times for communications activity – including key messages, announcements, timings etc.

Evaluation

32. The stakeholder engagement will be successful if:

- advice to the Minister of Justice accurately represents the full range of stakeholder views that we heard;
- stakeholders feel like they have had a fair opportunity to make a contribution to the Minister's consideration.

Appendix one: stakeholder interests and our responses

The interests of stakeholders and our response to that interest are set out in the table below.

Stakeholder	Stakeholder interest in the targeted engagement	Our Interest in the Stakeholder	How we will work with the stakeholder
Ministers	• Will be looking for frank advice, clarity about the issues with the OIA and effective engagement with stakeholders	• Prepare Minister(s) well for decision making about whether to progress a review	• Provide the evidence to support that a review is warranted or demonstrate no/low evidence that a review is warranted • Ensure relevant government officials and key stakeholders are involved in the engagement • Ensure the engagement covers all relevant issues
Office of the Ombudsman (incl the Chief Ombudsman)	• Will have a very high level of interest in the engagement • Being involved in the engagement	• Their expertise and practical experience is highly relevant; their knowledge and information is very valuable • Quality input into the engagement which will strengthen the outcome	• Early and ongoing engagement • Ensure the engagement covers all relevant issues • Possibly re-engaging once we have analysed submissions
Government agencies generally (for specific see below)	• Being involved in the engagement	• Agencies that deal with a large amount of OIA requests have a lot of useful information that can contribute to quality policy advice	• Combination of face to face engagement (where specifically requested) and responses to the focus questions • Ensure the engagement covers all relevant issues

Stakeholder	Stakeholder interest in the targeted engagement	Our Interest in the Stakeholder	How we will work with the stakeholder
Central agencies (State Services Commission, DPMC)	• SSC oversees agencies' progress on their commitment in the OGP National Action Plan and works with the Ombudsman and government agencies to improve agencies compliance with the OIA • DPMC has an interest in how agencies comply with the OIA	• Central agency support will help to build consensus on the outcome of the engagement	• SSC to help support the project • DPMC to be consulted at key points in the process
The Public	• Well thought through advice that acknowledges the importance of government transparency and accountability and any problems with the OIA	• We want to know what people think about government transparency and accountability under the OIA • Receiving enough input to be able to adequately reflect people's views to Ministers	• Responses to the questions, for those who are aware of this activity and want to participate. • Use ideas generated through online engagement and workshops on the draft OGP Third National Action Plan • Ensure the communications plan has key messages for the public posted on the Ministry website and included in any media releases
Māori	• Will want to ensure that we have deliberately thought about the impact of the OIA and how it works/does not work for Māori	• We want to understand specific impacts and concerns about the OIA for Māori	• Engage with academics, bloggers and commentators who can provide a Māori perspective/focus e.g. Panui, Maui Street, He Tangata
People with specific expertise/interest in the OIA: e.g. the Office of the Privacy Commissioner, and academics such as Andrew Geddis and Paul Roth	• High level of interest	• Experts on the OIA offer diverse views; their expertise and practical experience is relevant; their knowledge and information is valuable • Quality input into the engagement which will	• Opportunities for face to face engagement where this is specifically requested and appears warranted. • Responses to the questions.

Stakeholder	Stakeholder interest in the targeted engagement	Our Interest in the Stakeholder	How we will work with the stakeholder
		strengthen the quality and outcome of the work	
Media commentators and bloggers: E.g. Andrew Ecclestone, Malcolm Harbrow	• High level of interest • Will want to ensure their views/experience is captured	• They offer diverse views; their experience of the OIA is relevant and useful	• Opportunities for face to face engagement where this is specifically requested and appears warranted. • Responses to the questions.
Non-government organisations: E.g. Transparency International, NZ Media Council	• High level of interest • Well thought through advice that acknowledges the importance of government transparency and accountability and any problems with the OIA	• Quality input into the engagement which will strengthen the quality and outcome of the work	• Opportunities for face to face engagement where this is specifically requested and appears warranted. • Responses to the questions.
Local government: LGNZ, SoLGM, DIA	• Level of interest dependent on if changes are needed to LGOIMA	• Understand if changes are needed to LGOIMA	• Opportunities for face to face engagement where this is specifically requested and appears warranted. • Responses to the questions.

Excerpt from *Weekly Report For Minister of Justice and Minister for Courts*

Report from the Ministry of Justice to the Ministry of Justice and Minister for Courts

22 March 2019

[out of scope - pages 1-3 and paragraphs 1-4]

Official Information Act 1982 targeted consultation

5. We have begun targeted consultation on how the Official Information Act 1982 (OIA) is working in practice. Consultation closes on 18 April 2019. So far there has been a health degree of interest.
6. We have asked stakeholders, including subject matter experts, non-government organisations, journalists, media commentators and government agencies to share their views through the Ministry's online consultation tool or (in some cases) through face to face interviews.
7. We will be meeting with key stakeholders including the Privacy Commissioner, the Chief Ombudsman and other subject matter experts (e.g. s9(2)(a)) in the next few weeks. We will provide you with updates through weekly reports on how this work is progressing.

Contact: Chris Hubscher, Policy Manager, Electoral & Constitutional. Ph s9(2)(a)

Rajesh Chhana, Deputy Secretary, Policy s9(2)(a)

[out of scope - paragraphs 8-10]

Open Government Partnership New Zealand

National Action Plan 2018-2020

Progress report

Commitment 7: Official information

Lead agency: Ministry of Justice and the State Services Commission

Objective: To improve the availability of official information by:

- *providing advice to the Government on whether to initiate a formal review of official information legislation*
- *progressively increasing the proactive release of official information by publishing responses to requests for information made under the Official Information Act 1982 (OIA). This commitment builds on work - undertaken as part of the National Action Plan 2016-2018 - on official information to make information more accessible, which promotes good government and trust and confidence in the State Services.*

Ambition: New Zealanders:

- *can have confidence that the regulation of official information remains fit-for-purpose*
- *have equitable access to official information released in response to specific requests.*

OGP values: Public Participation, Transparency, Accountability

	Milestones	Progress
1	*Test the merits of undertaking a review of the Official Information Act 1982 and provide and publish advice to Government* *Start date: Following the report back of the Privacy Bill* *End date: ~~June~~ September 2019*	☺

Progress key: 😐 some delays ☺ underway 😀 completed

WHAT WE HAVE BEEN DOING

- On 13 March 2019 the Justice Committee reported back on the Privacy Bill.
- Between 8 March and 3 May 2019 the Ministry of Justice carried out public and targeted consultation on access to official information. We asked people's views on key issues with the OIA, whether these relate to the legislation or practice, and what reforms would make the biggest difference.

- We received 286 written submissions and carried out 8 key discussions with people with specific expertise and interest.

HOW WE ARE INCLUDING DIVERSE VOICES

- The consultation was publicly available through the Ministry of Justice Consultation Hub.
- We identified and emailed interested individuals and organisations, including those representing minority groups, inviting them to make written submissions. We also encouraged them to forward the invitation to others.

HOW WE ARE KEEPING DIVERSE COMMUNITIES INFORMED

- We will publish the written submissions on our website in due course.

WHAT'S NEXT?

- We are currently analysing submissions, noting emerging themes, such as scope, compliance, timeliness, and oversight.
- We will provide advice to the Minister of Justice by September 2019. Note, this new end date differs from that set out in the Action Plan.

LINKS – EVIDENCE OF PROGRESS AND MILESTONES ACHEVED

- Nil

OFFICIAL INFORMATION ACT POLICY

JULY 2018

PURPOSE

The purpose of the Official Information Act Policy is to:

- Reinforce the commitment of the Ministry of Justice to the principles and purposes of the Official Information Act 1982 and its significance for the Ministry as administrator of the Act;
- Provide guidance on the relationship between the Ministry and relevant Ministers and their offices when handling requests under the Act; and
- Provide guidance on the proactive release of official information and responses to requests under the Act.

SCOPE

This policy applies to all Ministry of Justice employees, contractors and consultants and informs them of their responsibilities under the Act when handling requests to the Ministry for official information, and drafting responses to requests on behalf of Ministers.

The Ministry is bound by the Official Information Act and in any inconsistency of interpretation between this policy and the law, the Act must prevail.

CONTEXT

The Ministry administers the Official Information Act and is responsible for policy related to the Act, and so it must be an exemplar for the Public Sector in the way it deals with requests.

The Act is an important part of New Zealand's constitution. Freedom of information allows New Zealanders to more fully participate in their democracy and to hold governments and Public Sector agencies to account. When New Zealanders ask for information, government agencies need to be responsive.

All requests for information are potentially requests for official information, including requests for publicly available and previously released information.

"Official information" means any information held by an agency that is subject to the Act and includes documents, emails, drafts, recordings, videos, and information in officials' memories. An "agency" includes Ministers acting in their official capacity and government departments and organisations like the Ministry of Justice.

However, information held by the courts is not subject to the Act because the courts (and tribunals in their judicial capacity) are excluded from the definition of an "agency" under sections 2(6)(a) and (b).

PRINCIPLES

The guiding principle of the Official Information Act is that information should be made available unless there are good reasons under the Act to withhold it. In handling requests for official information, the Act requires the Ministry to:

- Deal with requests for official information carefully, conscientiously, and in accordance with the law.[1]
- Respond to all requests as soon as practicable, and always within statutory time frames.
- Assist requesters, directing them to publicly available information, clarifying requests, and transferring requests to relevant agencies where appropriate.

The Ministry will also:

- Inform or consult with third parties about requests for official information that concerns them, and consider any feedback provided.
- Inform or consult the judiciary about requests for official information that concern them, and consider any feedback provided, given the Ministry's role in supporting the work of the courts and tribunals.
- Inform relevant Minister(s) of all requests for official information it receives, provide copies of proposed responses to the relevant Minister's office in accordance with the 'no surprises' approach where appropriate, and consult the Minister(s) on any requests that relate to their functions or involve Cabinet material and consider any feedback provided.
- Proactively release selected responses to requests for official information to make information more available and assist in public understanding of issues.

WORKING WITH MINISTERS' OFFICES

Informing the Minister's office about requests to the Ministry
Under the 'no surprises' approach, the Ministry notifies the relevant Minister's office of all requests for official information it receives.

Likewise, the Ministry will also advise the Minister if it intends to release any information that is particularly sensitive or potentially controversial. A notification for this purpose is not the same as consultation and should not unduly delay the release of information.[2]

Consulting a Minister on a request to the Ministry
The Ministry will consult the relevant Minister if the request relates to the Minister's functions or Cabinet material, because such material relates to his or her activities as a Minister. In instances involving the Minister's functions or Cabinet material, it may be appropriate to transfer the request to the Minister.

The Ministry will be clear it is consulting rather than providing the request for the Minister's information, and sufficient time will be given for the Minister's office to raise any concerns about the proposed decision. The Ministry will have regard to any feedback, but the decision on how to respond to the request must be made by the Ministry in accordance with the Act.

[1] Cabinet Manual section 8.30 https://www.dpmc.govt.nz/our-business-units/cabinet-office/supporting-work-cabinet/cabinet-manual/8-official-information-2
[2] Cabinet Manual section 8.53 https://www.dpmc.govt.nz/our-business-units/cabinet-office/supporting-work-cabinet/cabinet-manual/8-official-information-2

Ministerial OIA requests

The Ministry may, at the request of a Minister's office, prepare draft responses for requests to a Minister for official information. The draft response will be provided within timelines set by the Chief Executive and the relevant Minister's office.

WORKING WITH THE JUDICIARY

The Ministry supports the work of the courts and tribunals in their constitutional role to deliver justice services. Given this important relationship, when appropriate, the Ministry informs or consults the judiciary about requests for official information that concern them, and considers any feedback provided.

Requests for official information that touch on the work of the Senior Courts should be directed to the Judicial Office of the Higher Courts, whilst requests related to other courts or tribunals should be directed to the appropriate Head of Bench.

PROACTIVE PUBLICATION OF RESPONSES

The Ministry will proactively publish selected responses to requests for official information on its website to make information more available and to assist in public understanding of issues.

Section 48 of the Act protects agencies from any criminal or civil proceedings from the release of official information under the Act if it is released in good faith. These protections do not apply to information (including responses to requests for official information) that are proactively published. Careful consideration will need to be given whether such responses should be released, or whether additional information might need to be withheld.

RESPONSIBILITIES, ALLOCATION AND APPROVAL

The **Ministry of Justice** administers the Official Information Act and the **Secretary for Justice** is responsible for policy work related to official information. Responsibility for providing guidance to the Public Sector on the Act has been delegated to the **State Services Commissioner.**

The **Official Correspondence Team** logs, assigns and provides reporting on all requests to the Ministry under the Act, and those Ministerial requests that are sent to the Ministry to prepare a draft response. The team maintains detailed guidance on handling requests for official information on the Ministry Intranet. Where more than one business unit holds information relevant to a request, the Official Correspondence Team, after consulting with those units, will assign it to one unit, which will lead the response.

Business units prepare responses to requests for official information and consult with other business units, judicial officers, other agencies, third parties and Ministers' offices as required. If assigned to them, business units will lead on responses that require input from more than one unit.

Strategic Leadership Team members are responsible for all responses prepared by the business groups they are responsible for (including overall timeliness and quality), and approve all Ministry responses to requests for official information (unless delegated to a senior manager). They also approve all draft responses prepared for Ministerial requests. SLT members will also ensure employees handling requests for official information receive appropriate training.

The **Media Team** in Communication Services reviews all draft responses to reporters, bloggers and public websites, issues final responses to them and deals with any subsequent questions from the requester. It also provides communications guidance if a response may attract wider political, public or media interest.

The **Office of the Chief Executive** reviews responses that might attract wider political, public or media interest, particularly those being provided to a Minister's office either for information or consultation.

The **Office of Legal Counsel** provides legal advice on the Act.

Ministers' offices provide feedback on any proposed responses to requests to the Ministry for official information that are sent to them for consultation, and any draft Ministerial responses that the Ministry has been asked to prepare. They will also receive any proposed responses to Ministry requests sent to them for their information, in accordance with the 'no surprises' approach.

Ministers approve any responses to requests for official information directed to them.

IMPLEMENTATION

This policy will come into effect immediately, apart from the sections on proactive release which will come into effect on 1 October 2018.

RELATED POLICIES, PROCEDURES AND LEGISLATION

- Official Information Act 1982
- Privacy Act 1993
- Cabinet Manual
- Media Policy
- Code of Conduct
- Public Sector Guidance
- State Services Commission Guidance
- Ombudsman Guidance

CONTACT	Antony Paltridge, Team Leader Media and External Relations	OWNER(S)	General Manager Communication Services
LAST REVIEWED	18 July 2018	NEXT REVIEW	18 July 2020
APPROVER	Planning and Resources Committee		

Proactively release Cabinet papers

Last updated 12/5/2020 | Content owner Jenna Bottcher

What you need to know about publishing Cabinet papers and related documents on our website in accordance with the Government's proactive release policy

Government policy on proactive release of Cabinet material and key advice papers

From 1 January 2019, the Government expects Cabinet papers, attachments and minutes, and, if the Minister chooses, 'key advice' papers relating to the Cabinet paper, to be proactively released on departments' websites.

The policy applies to all Cabinet papers other than appointment (APH) papers. We're also not expected to publish material that wouldn't be released in response to a request under the Official Information Act 1982 (OIA) request.

The documents must be published within 30 business days of the matter being considered by Cabinet, unless there's a good reason not to. The information that's published must be approved by the relevant Minister.

SSC provided this helpful summary of the policy and the requirements to the OIA Forum on 31 October 2018

OIA Forum-31 Oct-2018 - SSC Presentation - proactive release Cabinet material [PDF, 950 KB]

The full details of the policy are set out in this Cabinet Office Circular CO (18) 4 Proactive Release of Cabinet Material Updated Requirements

https://dpmc.govt.nz/publications/co-18-4-proactive-release-cabinet-material-updated-requirements

Who has to do this?

Anyone who drafts a Cabinet paper on behalf of a Minister needs to know about this policy and how to review and publish the documents.

There are 2 key roles internally

- The group responsible for the subject matter or function addressed in the Cabinet paper drafts the Cabinet paper, identifies what should or shouldn't be released and works with the Minister's office to get the Minister's approval to release the information.
- The Ministerial Services team in Strategy, Governance, and Finance (SGF) undertakes the technical process of redacting and publishing the documents based on the instructions of the responsible business group.

When do you need to do this?

The Cabinet paper itself must say whether it will be proactively released once it's been considered by Cabinet – so you need to think about proactive release before the paper is lodged with the Cabinet Office.

Once the paper has been to Cabinet, the documents are generally expected to be published within 30 business days – you'll need to agree the exact timing with the Minister's office.

Step 1: Draft the Cabinet paper

See related procedure: Prepare a Cabinet paper https://jet.justice.govt.nz/how-do-i/prepare-a-cabinet-paper/

We draft Cabinet papers on behalf of Ministers. The relevant Minister 'owns' the paper and takes it to Cabinet, so the decision on what, if anything, should be released sits with the Minister (or joint Ministers, if the paper's in the name of more than one Minister).

When you're drafting a Cabinet paper you must include a section on proactive release that says whether the Minister intends to proactively release the paper in whole or in part, or to delay the release beyond 30 business days. It's the Minister's decision, so you don't need to include anything on proactive release in the recommendations.

That means you'll need to get input from the Minister (or their office) on whether the paper should be proactively released during the drafting process.

Note that the proactive release policy does not apply to papers considered by the Cabinet Appointments and Honours Committee (APH).

Step 2: Cabinet considers the paper

See related procedure: Attend a Cabinet Committee meeting https://jet.justice.govt.nz/how-do-

Contacts

Ministerial Services team
minservices@justice.govt.nz

Part of

Ministers and cabine

Templates

Process map for proactive release
Proactive release cover sheet template
Proactive release approval briefing template

Appendix B

i/attend-a-cabinet-committee-meeting/

The 30 business days for proactively releasing the Cabinet material and any key advice papers starts on the day of the Cabinet meeting at which Cabinet makes a final decision.

Business day' is defined in CO (18) 4 - Proactive Release of Cabinet Material Updated Requirements [PDF, 950 KB]

Step 3: Agree the timing for publication

Ultimately, the Minister decides when the documents will be published. They're generally expected to publish the papers within 30 business days of the Cabinet decision. They may, however, want to publish the documents earlier - particularly if they want to announce the decisions at the same time the papers are published. Conversely, they may decide there's a good reason to delay publication.

The key is to talk to the Minister's office about timing as early as possible, so you can plan the timeline for collating, reviewing, and publishing the documents.

As soon as you know the likely timing, let the Ministerial Services team in SGF know as soon as possible.

Step 4: Collate the documents

Identify the documents to be released

- the Cabinet paper – don't include the Cabinet summary sheet or agenda
- any attachments and appendices to the Cabinet paper
- the Cabinet minute
- any 'key advice' documents – these are papers addressed to the Minister who took the item to Cabinet, and that seek agreement from the Minister to recommendations that were subsequently decided by Cabinet. Publishing key advice papers is optional – it's up to the Minister to decide whether they want to include them in the proactive release.

It's our responsibility to ensure we publish only the final versions of Cabinet material – that means

- the version of the Cabinet paper approved by the Minister for lodgement in CabNet or tabled in the meeting, and
- the minute published by the Cabinet Office on CabNet

All the documents need to be in a text searchable format.

- electronic copies of the final versions of Cabinet material can be downloaded from CabNet for the purposes of proactive release - keep the watermark
- for any key advice papers, start with the final Word version of the document and save it as a pdf so it meets the accessibility requirements – don't use a scanned version of the document
- if a key advice paper contains important handwritten information (eg, comments from the Minister), consider also publishing a scanned version or including that information in the cover sheet that's released with the documents.

Step 5: Assess the content of the documents and draft the cover sheet and approval briefing

The group that drafted the Cabinet paper is responsible for reviewing the content, considering any issues, assessing what, if anything, needs to be withheld, and agreeing that with the Minister.

The documents will be published as a single 'pack' with a cover sheet. Start drafting the cover sheet while you're reviewing the content of the documents.

You should also start drafting the approval briefing, which seeks the Minster's approval for what should be published, at the same time.

While the information is being proactively released rather than released under the OIA, you should still have regard to the grounds that would be used to withhold information under the OIA.

There's no expectation that information that would not be released under the OIA should be proactively released. There's also no expectation that exploratory advice, 'blue skies' thinking or advice generated in the early formative stages of a policy development process and intended to ensure the free and uninhibited exchange of ideas that's necessary for the development of robust policy advice should be released.

If you're not sure whether there would be grounds for withholding information under the OIA, talk to the Office of Legal Counsel.

If any of the information has already been released, you can choose to link to that, but think about what will be easiest and most accessible.

Due diligence section 48 of the OIA

While we should have regard to the OIA when considering what should be released, proactively released information is not covered by the OIA. This means section 48 of the OIA, which protects Ministers and agencies from civil or criminal liability when information is released in good faith under the OIA, does not apply to information that is released proactively.

We must therefore consider any potential liability, civil or criminal, that might result from proactively releasing the Cabinet material and any key advice papers before seeking the Minister's approval to publish them.

Once Cabinet material is published on ine, the security classification of the original document may no longer apply. Unless some information has been withheld from the version that's proactively released, you should review the security classification of the original version.

Step 6: Prepare the documents

The electronic documents will be published in one package with a cover sheet that outlines what's being released and the reasons for any redactions.

The Ministerial Services team in (SGF) will make the redactions and prepare the documents for publication based on the instructions from the responsible business group.

Once you've got internal approval for what should be released, what, if anything, should be withheld and the grounds for that, send the documents and draft cover sheet to Ministerial Services team to make the redactions.

Talk to Ministerial Services team about the best way to get the instructions to them. For straightforward releases, an email attaching the documents and noting the redactions may be enough. For more complex matters, it may be helpful to meet and talk through the redactions.

Step 7: Review the pack

Ministerial Services team wi l provide the pack with the redactions marked to the responsible business group to review and check.

Step 8: Approval from the Minister

The decision on what to release sits w th the Minister – or joint Ministers if the paper went to Cabinet in the name of more than one Minister.

The approval briefing is the mechanism for getting formal agreement from the Minister on what is released and when. You should have started drafting the approval briefing when you were assessing the content of the documents for release (step 5).

The responsible business group provides the approval briefing to the Minister attaching the marked documents and setting out their recommendations on what should be released and when. The approval briefing should also note where the papers will be published on the Ministry's website (Ministerial Services team will give you that information).

Step 9: Publish the documents

Once the documents have been approved by the Minister, send them back to Ministerial Services team to publish.

Let Ministerial Services team know whether any changes are required – Ministerial Services team will liaise with you to make those changes and confirm they've been done correctly.

Ministerial Services team wi l arrange for the documents to be uploaded on to the external website on the agreed date.

Do you have any feedback on this page?

Process for the proactive release of Cabinet papers and related documents

Responsible business unit

Responsible business unit **drafts** Cabinet paper for Minister – paper must include a statement on whether it will be proactively released

30 day timeframe triggered

Responsible business unit **agrees with the Minister** or their office ***when*** the documents will be published

Responsible business unit **collates** Cabinet material and any key advice papers

Responsible business unit:

- **assesses** documents to identify any issues and whether there might be grounds to withhold any information – seeking advice from OLC if necessary
- **drafts** cover sheet and approval briefing

Responsible business unit **reviews** redacted documents and finalises approval briefing

Responsible business unit **sends** documents, cover sheet and approval briefing to Minister **for approval**

Responsible business unit **notifies** Operational Improvement once the pack has been approved by the Minister and can be published

Appendix C

Operational Improvement

Operational Improvement **monitors** CabNet for Cabinet papers requiring publication.

Operational Improvement **prepares** documents for release, including making electronic **redactions**

Operational Improvement **publishes** coversheet and documents on website, and notifies the responsible business unit that it has been published

KEY TERMS	
Responsible business unit	The unit responsible for the subject matter or function addressed in the Cabinet paper. They draft the Cabinet paper, identify what should or shouldn't be released and work with the Minister's office to get the Minster's approval to release the information.
Operational Improvement	The team in Corporate and Governance that undertakes the technical process of redacting and publishing the documents based on the instructions of the responsible business group.
Cabinet material	All Cabinet papers, any attachments or appendices to those papers, and the associated minutes. This includes minutes resulting from the consideration of oral items at Cabinet.
Key advice papers	A key advice paper is a document addressed to the Minister who took the item to Cabinet that seeks agreement from the Minister to recommendations on the matter.
Cover sheet	Cabinet material and any related key advice will be published as a single pack with a cover sheet that contains key information like a list of the documents being released and whether and why anything has been withheld (redacted).
Approval briefing	The briefing to the Minister seeking agreement on what documents will be released and any redactions.

9 May 2019

[Hon XXX YYYY]
[Minister of/for XXXX]

[Proactive release – name of the package]

[Date of issue: DD Month YYYY] **Appendix D**

The following document[s] [has/have] been proactively released in accordance with Cabinet Office Circular CO (18) 4.

[Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.]

No.	Document	Comments
1	**[Title of the document]** *[Type of document – eg "Cabinet paper", "Cabinet minute", "Attachment to Cabinet paper", "Key advice", and so on]* [Author of document – eg, "Office of the Associate Minister of Justice", "Cabinet Office" (for minutes) or "Ministry of Justice" for key advice] *[Date of the document – for Minutes: "Meeting date: dd mm yyyy"]*	[For example: "Some information has been withheld in accordance with section 9(2)(f)(iv) of the OIA to protect the confidentiality of advice tendered by Ministers of the Crown and officials." Where regulations or other legislative instruments have been agreed: "*Note that the copies of the regulations and commencement orders provided to Ministers with this paper have been withheld in accordance with section 61 of the Legislation Act 2012 and section 9(2)(h) of the Official Information Act 1982 to maintain legal professional privilege.* *The legislative instruments are publicly available from www.legislation.govt.nz."]*
2	**[Title of the document]** *[Type of document]* [Author of document] *[Date of the document]*	[For example: "Some information has been withheld in accordance with the following sections of the OIA: • section 9(2)(a) to protect the privacy of natural persons, and • section 9(2)(f)(iv) to protect the confidentiality of advice tendered by Ministers of the Crown and officials."]
3.	**[Title of the document]** *[Type of document]* [Author of document] *[Date of the document]*	[For example: "Released in full."]

Appendix E

To	Hon XXXX YYYY, **Minister [of/for etc]**
From	[Firstname Lastname], **[Role]**
Date	[DD Month YYYY]
Subject	**Proactive release of documents relating to…**

Purpose

1. This paper seeks your approval to publish documents relating to [XXXXX] on the Ministry's website on [DD Month YYYY] in accordance with the Government's policy on proactive release of Cabinet and related material [CO (18) 4].

Information to be released

2. [Note what the Minister indicated they would do in relation to proactive release (Ministers must indicate whether they intend to release in the Cabinet paper itself).]

3. [Describe the documents we recommend releasing:

   3.1. There is an expectation that papers **and** any attachments and appendices will be released (see para 18 of CO (18) 4).

   3.2. There is an expectation that the **minute** will also be published. Use the minute of the Cabinet Committee, if that is where the substantive discussion took place, provided it has subsequently been confirmed by Cabinet (see para 18 of CO (18) 4).

   3.3. Note what, it any "key advice papers" we recommend releasing.

   Prepare the coversheet to be published with the pack at the same time that you're completing this section of the approval briefing.]

4. [Explain what, if any, information we recommend withholding and the grounds for that. Did you need to seek legal advice on any of the withholding grounds? If so, explain.]

5. [Add or modify headings and sub-headings as required.]

Sub-heading format [if required]

6.

   6.1.

Issues

7. [For example: do the papers include any information that is likely to attract wider media, political or public attention? Is it a one-off paper, or is it part of a bigger project or series of papers? Is any of the information to be released already in the public domain?]

8. [Delete this heading if it's not required – any issues may have been addressed in the previous section.]

Timing

9. [For example: what is the 30-day deadline for publishing the papers? Did they Minister decide to delay publication? When do we recommend publishing the material? Have we talked to the Minister's office about linking the release to an announcement or press release? If publication is expected to line up with a Ministerial announcement or press release, we may need to agree a specific time for publication, and not just the date of publication.]

Consultation

10. [Did we need to consult any other organisations or individuals about what should be released? What was their feedback?]

Publication details

11. The proposed publication details are set out in the **appendix.**

Recommendations

12. It is recommended that you **approve publication** of the following documents on the Ministry's website on [DD Month YYYY]:

No.	Document	Comments	Approval
1	[Title of the document] [*Date of the document – if applicable*]	[For example: "We recommend withholding some information as it is likely it would, if requested under the Official Information Act 1982, be withheld under section 9(2)(f)(iv) to protect the confidentiality of advice tendered by Ministers of the Crown and officials. No public interest has been identified that would outweigh the reasons for withholding it."]	**Yes / No**

[Make sure the signature blocks are on a page with other text – they shouldn't be on a standalone page.]

_____

[Name of person signing the briefing]
[Role]

APPROVED SEEN NOT AGREED

_____

[Hon Firstname Lastname]
Minister [of or for] XXXX]

Date / /

Attachments:

- Draft pack for publication [the pack should include the coversheet and the documents with any proposed redactions marked]

Appendix – publication details

13. The documents will be published on [DD Month YYYY].

14. The following table outlines the details for loading the documents onto the external website.

Topic *The "topic" is the top-level tag for material in the publications finder on the website*	[You **must** include at least one "topic" - see the publications finder for options.] [If you're releasing Cabinet and related material you **must** include "Cabinet and related material" as a topic, but you can add others if applicable (eg, "Policy").]
Category *The "category" is the second-level tag for material in the publications finder*	[There are currently no categories under "Cabinet and related material", but there may be applicable categories if you include another "Topic". If you're not including any categories, write "Not applicable".]
Title	[Use the title from the coversheet for the pack of documents to be proactively released.]
Description *This is different from the title – it's what appears in the search results, so it needs to be meaningful.*	
Key words *Any additional keywords to be tagged – you don't need to include any words already mentioned in the **title** or **description***	Proactive release [this term must be included] [Add other key words if applicable]
Content owner *This must be a person*	[Firstname Lastname], **Role**
Business unit and group	
Owner's email address *Use a generic team address if you have one – eg, teamname@justice.govt.nz*	

Appendix F

Guidance on the proactive release of Cabinet papers

Out of Scope

Out of Scope

MINISTRY OF JUSTICE
Tāhū o te Ture

1 July 2020

What is the proactive release policy?

What is the proactive release policy?

Proactive release of information promotes good government and transparency and fosters public trust and confidence in agencies. Proactive release of Cabinet papers is part of the Government's wider plan to improve openness and reflects its commitment to the international Open Government Partnership.

From 1 January 2019, the Government expects Cabinet papers, attachments and minutes, and, if the Minister chooses, 'key advice' papers relating to the Cabinet paper, to be proactively released on departments' websites.

Proactive release is different from release under the Official Information Act 1982 (OIA) in that Cabinet material is published in the interests of transparency, not in response to a request under the Act.

What needs to be published?

The policy applies to all Cabinet papers other than appointment (APH) papers. We're also not expected to publish material that wouldn't be released in response to a request under the Official Information Act 1982 (OIA) request.

All Cabinet papers, and any attachments or appendices to those papers and associated minutes, must be released proactively and published online (excepting APH material), unless there is good reason not to publish all or part of the material. This includes minutes resulting from the consideration of oral items at Cabinet.

Electronic copies of the final versions of Cabinet material can be downloaded from CabNet for the purposes of proactive release. The watermark on these copies should be retained (documents downloaded from CabNet are watermarked with the user's unique identification number and the date and time that the document was downloaded – it's a code in the bottom left of each page).

Each release must be accompanied by a coversheet.

Ministers may also choose to proactively release related key advice papers provided to the Minister by departments or agencies. A key advice paper is a document addressed to the Minister who took the item to Cabinet, which seeks agreement from the Minister to recommendations on the matter. Ministers should consult with the Chief Executive of the department or agency who drafted the advice before key advice papers are proactively released.

Where possible, Cabinet papers, relevant minutes, and any key advice papers should be proactively released together so that readers have context for the decisions made by Cabinet.

Papers prepared in a Minister's office should also be published on the relevant department's website.

What are the requirements for publishing information?

The documents must be published within 30 business days of the matter being considered by Cabinet, unless there's a good reason not to. Day 1 is the day the decision is taken by Cabinet.

The information that's published must be approved by the relevant Minster.

Ministers have authority to approve the proactive release of Cabinet material within their own portfolios. In the case of joint papers, the agreement of joint Ministers is required. Depending on their administrative arrangements with departments or agencies, Ministers' offices may choose to review the finalised content before publication.

A publisher is the person in an agency or a Minister's office who is responsible for administering the proactive release and publication of the Cabinet material online. It is the publisher's responsibility to confirm that the due diligence steps have been undertaken before Cabinet material is proactively released and published online.

A due diligence process must be undertaken by the Minister's office, department or agency before Cabinet material or key advice papers are proactively released. Information about this process is in the due diligence section below.

Where information is redacted, the reasons should be clearly stated.

As a protection against misuse of information, copyright statements should be included with the content of each paper published.

It is the publisher's responsibility to confirm that the following actions have been undertaken before Cabinet material is proactively released and published online:

- the Minister's office, department or agency has conducted a due diligence process, as described in paragraph 34 above;
- the Minister has approved the material for proactive release and publication online;
- it is the correct and final version of the paper approved by the Minister for lodgement on CabNet that is being published, subject to any final amendments requested by Cabinet, and redactions that may be necessary;
- the Cabinet committee minute has been confirmed by Cabinet;
- the title and other reference information is accurate;
- the related Cabinet material (paper and minute and any appendices and attachments) is included; and
- a coversheet for the material has been provided.

All material published should be in a text searchable version. If a key advice paper contains important handwritten contextual information, a PDF version of the paper may also be published, or the contextual information can be included in the coversheet that is released with the official information.

Responsibilities

Ministers

- Approve release of Cabinet material in their portfolio
- Decide whether to release related key advice papers
- Joint papers require agreement of all Ministers
- May decide to issue press release

Agencies

- Build proactive release into internal processes and systems
- Support Ministers to prepare the release
- Carry out due diligence and quality assurance processes
- Publish information on agency website

The full details of the policy are set out in this Cabinet Office Circular - CO (18) 4 - Proactive Release of Cabinet Material: Updated Requirements: https://dpmc.govt.nz/publications/co-18-4-proactive-release-cabinet-material-updated-requirements

Our Jet guidance on the policy can be found here: https://jet.justice.govt.nz/how-do-i/proactively-release-cabinet-papers/

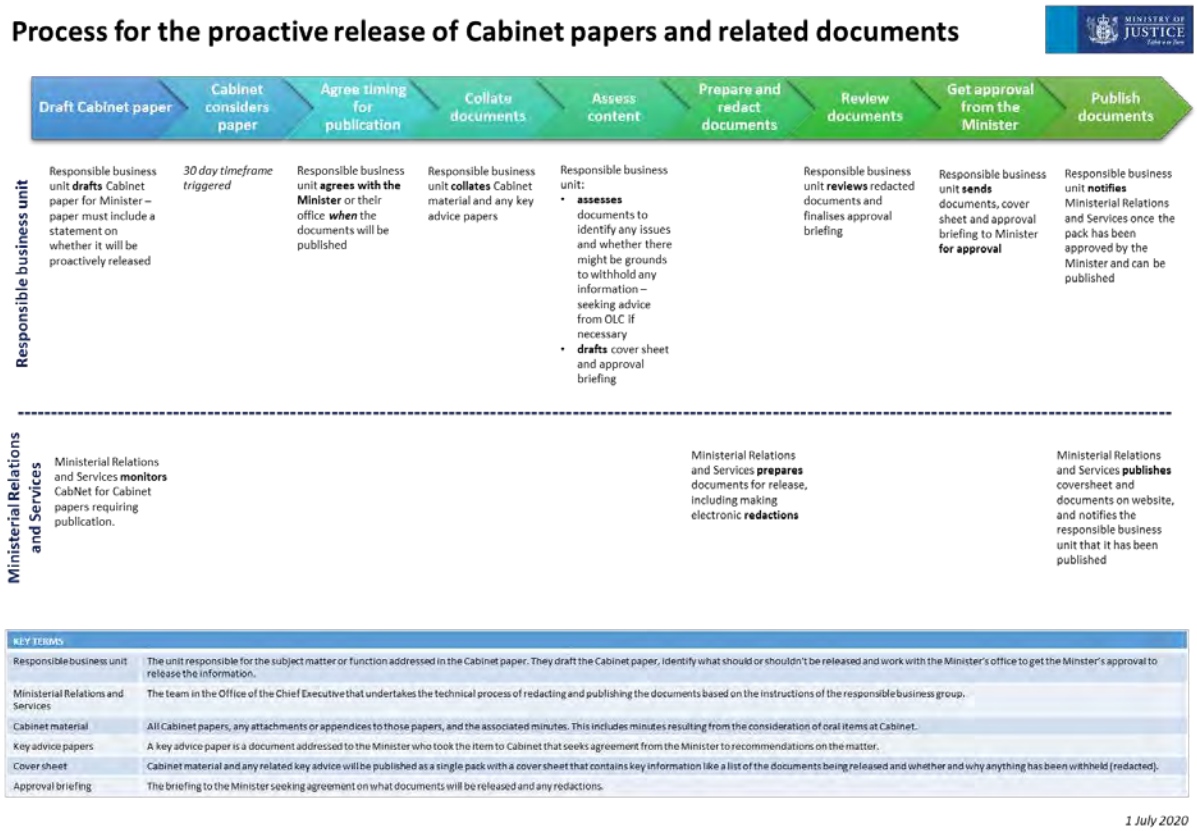
What is our proactive release process?

What is our proactive release process?

There are 2 key roles internally:

1. The group responsible for the subject matter or function addressed in the Cabinet paper drafts the Cabinet paper, identifies what should or shouldn't be released and works with the Minister's office to get the Minster's approval to release the information.
2. The Ministerial Services and Relations team in the Office of the Chief Executive undertakes the technical process of redacting and publishing the documents based on the instructions of the responsible business group.

The following process map shows the steps involved and who is responsible for each step:



KEY TERMS	
Responsible business unit	The unit responsible for the subject matter or function addressed in the Cabinet paper. They draft the Cabinet paper, identify what should or shouldn't be released and work with the Minister's office to get the Minster's approval to release the information.
Ministerial Relations and Services	The team in the Office of the Chief Executive that undertakes the technical process of redacting and publishing the documents based on the instructions of the responsible business group.
Cabinet material	All Cabinet papers, any attachments or appendices to those papers, and the associated minutes. This includes minutes resulting from the consideration of oral items at Cabinet.
Key advice papers	A key advice paper is a document addressed to the Minister who took the item to Cabinet that seeks agreement from the Minister to recommendations on the matter.
Cover sheet	Cabinet material and any related key advice will be published as a single pack with a cover sheet that contains key information like a list of the documents being released and whether and why anything has been withheld (redacted).
Approval briefing	The briefing to the Minister seeking agreement on what documents will be released and any redactions.

1 July 2020

Our Jet guidance on the process can be found here: https://jet.justice.govt.nz/how-do-i/proactively-release-cabinet-papers/

Step 1: Draft the Cabinet paper

See related procedure: Prepare a Cabinet paper https://jet.justice.govt.nz/how-do-i/prepare-a-cabinet-paper/

The Ministry drafts Cabinet papers on behalf of Ministers. The relevant Minister 'owns' the paper and takes it to Cabinet, so the decision on what, if anything, should be released sits with the Minister (or joint Ministers, if the paper's in the name of more than one Minister).

When the owner of the Cabinet paper (e.g. the relevant Policy team) is drafting a Cabinet paper, a section must be included in the Cabinet paper on proactive release that says whether the Minister intends to proactively release the paper in whole or in part, or to delay the release beyond 30 business days. It's the Minister's decision, so a specific recommendation is not required.

That means input is needed from the Minister (or their office) on whether the paper should be proactively during the drafting process.

Step 2: Cabinet considers the paper

See related procedure: Attend a Cabinet Committee meeting https://jet.justice.govt.nz/how-do-i/attend-a-cabinet-committee-meeting/

The 30 business days for proactively releasing the Cabinet material and any key advice papers starts on the day of the Cabinet meeting at which Cabinet makes a final decision.

Step 3: Agree the timing for publication

Ultimately, the Minister decides when the documents will be published. They're generally expected to publish the papers within 30 business days of the Cabinet decision. They may, however, want to publish the documents earlier - particularly if they want to announce the decisions at the same time the papers are published. Conversely, they may decide there's a good reason to delay publication.

The key is to talk to the Minister's office about timing as early as possible, so the timeline for collating, reviewing, and publishing the documents can be planned out carefully.

As soon as the likely timing is known, let the Ministerial Services and Relations team know as soon as possible.

Step 4: Collate the documents

Identify the documents to be released:

- the Cabinet paper – don't include the Cabinet summary sheet or agenda
- any attachments and appendices to the Cabinet paper
- the Cabinet minute
- any 'key advice' documents – these are papers addressed to the Minister who took the item to Cabinet, and that seek agreement from the Minister to recommendations that were subsequently decided by Cabinet. Publishing key advice papers is optional – it's up to the Minister to decide whether they want to include them in the proactive release.

It's our responsibility to ensure we publish only the final versions of Cabinet material – that means:

- the version of the Cabinet paper approved by the Minister for lodgement in CabNet or tabled in the meeting, and
- the minute published by the Cabinet Office on CabNet

All the documents need to be in a text searchable format.

Electronic copies of the final versions of Cabinet material can be downloaded from CabNet for the purposes of proactive release - keep the watermark.

For any key advice papers, start with the final Word version of the document and save it as a pdf so it meets the accessibility requirements – don't use a scanned version of the document.

If a key advice paper contains important handwritten information (eg, comments from the Minister), consider also publishing a scanned version or including that information in the cover sheet that's released with the documents.

Step 5: Assess the content of the documents and draft the cover sheet and approval briefing

The group that drafted the Cabinet paper is responsible for reviewing the content, considering any issues, assessing what, if anything, needs to be withheld, and agreeing that with the Minister.

The documents will be published as a single 'pack' with a cover sheet. Start drafting the cover sheet while reviewing the content of the documents.

Start drafting the approval briefing as well, which seeks the Minster's approval for what should be published, at the same time.

While the information is being proactively released rather than released under the OIA, the grounds that would be used to withhold information under the OIA should still be considered.

There's no expectation that information that would not be released under the OIA should be proactively released. There's also no expectation that exploratory advice, 'blue skies' thinking or advice generated in the early formative stages of a policy development process and intended to ensure the free and uninhibited exchange of ideas that's necessary for the development of robust policy advice should be released.

If you're not sure whether there would be grounds for withholding information under the OIA, talk to the Office of Legal Counsel.

If any of the information has already been released, you can choose to link to that, but think about what will be easiest and most accessible.

Due diligence – section 48 of the OIA

While we should have regard to the OIA when considering what should be released, proactively released information is not covered by the OIA. This means section 48 of the OIA, which protects Ministers and agencies from civil or criminal liability when information is released in good faith under the OIA, does not apply to information that is released proactively.

We must therefore consider any potential liability, civil or criminal, that might result from proactively releasing the Cabinet material and any key advice papers before seeking the Minister's approval to publish them.

Once Cabinet material is published online, the security classification of the original document may no longer apply. Unless some information has been withheld from the version that's proactively released, the security classification of the original version should be reviewed.

Step 6: Prepare the documents

The electronic documents will be published in one package with a cover sheet that outlines what's being released and the reasons for any redactions.

The Ministerial Services and Relations team in the Office of the Chief Executive will make the redactions and prepare the documents for publication based on the instructions from the responsible business group.

Once there is internal approval for what should be released, what, if anything, should be withheld and the grounds for that, send the documents and draft cover sheet to the Ministerial Services and Relations team to make the redactions.

Talk to the Ministerial Services and Relations team about the best way to get the instructions to them. For straightforward releases, an email attaching the documents and noting the redactions may be enough. For more complex matters, it may be helpful to meet and talk through the redactions.

Step 7: Review the pack

The Ministerial Services and Relations team will provide the pack with the redactions marked to the responsible business group to review and check.

Step 8: Approval from the Minister

The decision on what to release sits with the Minister – or joint Ministers if the paper went to Cabinet in the name of more than one Minister.

The approval briefing is the mechanism for getting formal agreement from the Minister on what is released and when. The approval briefing should have been started when assessing the content of the documents for release (step 5).

The responsible business group provides the approval briefing to the Minister attaching the marked documents and setting out their recommendations on what should be released and when. The approval briefing should also note where the papers will be published on the Ministry's website (Ministerial Services and Relations team will have that information).

Step 9: Publish the documents

Once the documents have been approved by the Minister, send them back to Ministerial Services and Relations team to publish.

Let Ministerial Services and Relations team know whether any changes are required – Ministerial Services and Relations team will liaise with the owner of the Cabinet paper to make those changes and confirm they've been done correctly.

Ministerial Services and Relations team will arrange for the documents to be uploaded on to the external website on the agreed date.

When is this needed?

The Cabinet paper itself must say whether it will be proactively released once it's been considered by Cabinet – so think about proactive release before the paper is lodged with the Cabinet Office.

Once the paper has been to Cabinet, the documents are generally expected to be published within 30 business days – the exact timing will need to be agreed with the Minister's office.

DATA AND INFORMATION POLICY

MAY 2020

Appendix G

PURPOSE

This policy defines our principles for the management and use of data and information for which the Ministry has accountability in accordance with the Public Records Act (PRA) 2005. It supports the Ministry in using evidence to deliver better services and outcomes.

SCOPE

This policy applies to data and information, regardless of format, held by the Ministry or for which the Ministry has accountability.

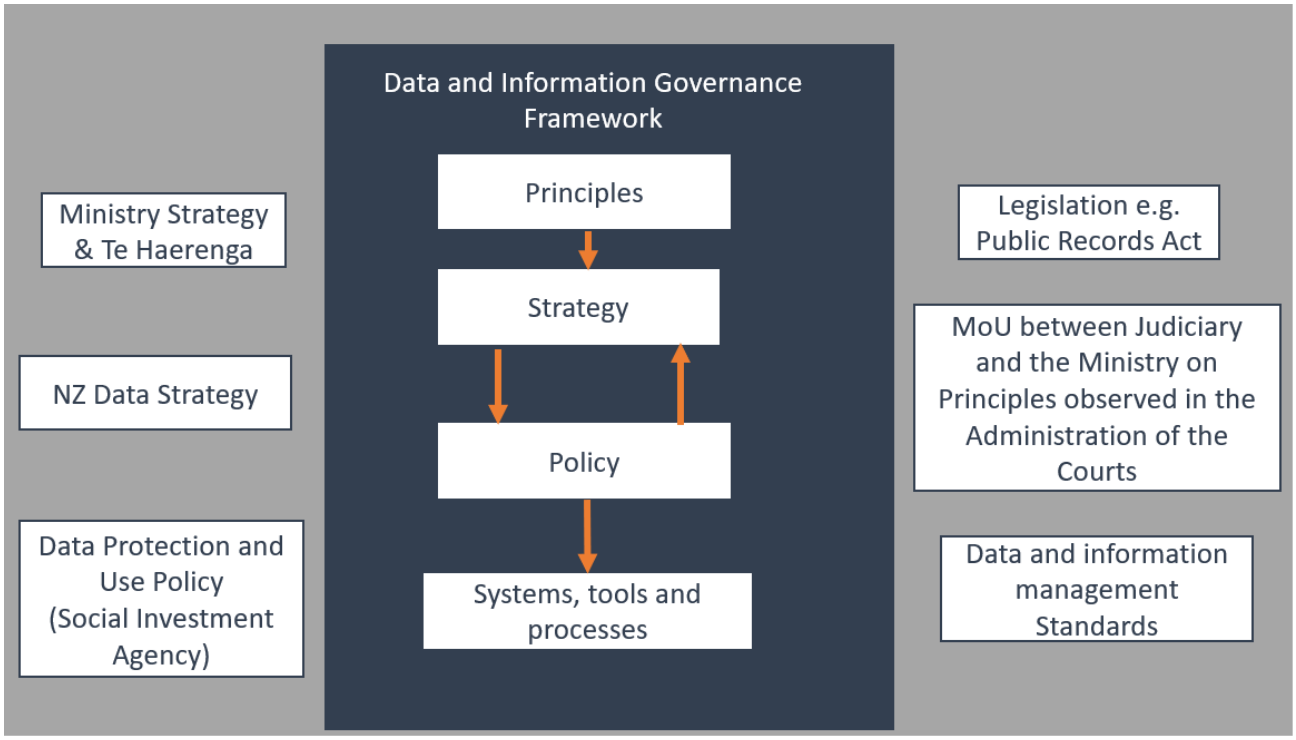
This policy covers and includes:

- all people[1] who carry out or support Ministry functions, or functions on behalf of the Ministry
- all business systems and activities performed by, or on behalf of, the Ministry
- all data and information created, used or received in the conduct of the Ministry's affairs.

This policy **does not** apply to Court, Judicial or Tribunal, information, data and records.

CONTEXT

The Ministry operates within a wide and diverse environment. This is a constantly evolving landscape; the diagram below shows some of the key components.



Our data and information governance framework is regulated by legislation and standards and informed by strategies and policies. These define how Public Sector agencies collect, create, store, use and manage, disclose, and give access to data and information.

[1] Permanent and temporary employees, contractors, consultants, service providers and individuals seconded from other agencies.

It is very important that the distinction between Court, Ministry, and Judicial information is understood and respected. The Principles agreed by Judiciary and Ministry of Justice in the Administration of Courts[2] outlines our respective and shared responsibilities regarding the operation of the courts.

Court and judicial information is under the control and supervision of the Judiciary. Where the Ministry has permitted use of court information for administering the court system, statistical research and policy development, this is deemed "Ministry of Justice information" and this policy applies.

OUR POLICY

Our policy will build a strong data and information culture and capability through:

- Carrying out Data and Information Assessments for new initiatives and changes to existing systems, services or processes where data and information is collected, created and used.
- Use of the Information Asset Register/Data Catalogue.

This policy should be read in conjunction with Data and Information Guidance. The activities and good practices in this guidance support this policy.

Applying our principles enables the Ministry to:

- Use data and information as a valuable resource to meet strategic objectives
- Honour our responsibilities to Māori
- Meet government and public expectations on how we manage the data and information we hold to ensure trust in the justice system is maintained
- Work with sector partners and other agencies to derive greater value from collective data and information assets
- Support the administration of the Courts
- Measure our performance.

PRINCIPLE 1

Information is a core strategic asset

Data and information provide evidence of Ministry performance, supporting accountability and transparency; good governance and management are fundamental to realising value.

Intent

- Appropriately govern data and information
- Manage and use Data and information well throughout their lifecycles
- Data and information is saved in a business system
- Tier 1 statistics[3] are relevant, authoritative and trustworthy, enabling national and international comparability
- Products and services are designed to ensure the availability and accessibility of data and information beyond the life of systems and services.

PRINCIPLE 2

Information is authoritative and trusted

As a trusted custodian of data and information, the Ministry is accountable for safe and ethical use of data and information in our care.

Intent

- Data and information collection and use has a clear purpose
- Data and information is captured once, is accurate, complete and reliable; metadata is captured
- Data and information is accessible and discoverable where suitable, and comply with the relevant standards using common and understood terms
- Continuously improve data and information quality to support use and reuse within the Justice sector and across the state sector
- Data and information assets have a business owner who has information management

[2] Principles observed by Judiciary and Ministry of Justice in the Administration of Court - MoU Statement of Principles
[3] Tier 1 statistics are New Zealand's most important statistics, and are essential to help the Government, business, and members of the public to make informed decisions and monitor the state and progress of New Zealand; data.govt.nz – Official statistics

responsibilities
- Stipulate data and information responsibilities in contracts and agreements with any external parties who manage systems for or on behalf of the Ministry
- Identify risks when data is isolated from context, maintaining human oversight of how data is used to make decisions.

PRINCIPLE 3

Information is open, protected as needed

Data and information is open by default, safety and ethics are key considerations in decisions to use, release or share data.

Intent:
- Honour responsibilities to Māori by treating records of importance to Māori and the nation as taonga; showing appropriate sensitivity, respect and care
- Manage risk related to unintended access by managing data and information according to its government security classification
- Demonstrate awareness of the people behind the data, managing potential risks from reidentification through data matching
- Make the data and information we hold easily accessible and available internally and externally[4], except where legislation (such as the Privacy Act 1993, the Official Information Act 1982), government guidelines, regulatory standards, or business risks specifically prevents it
- Respect the intellectual property rights of other parties in accordance with the Copyright Act 1994 and comply with any conditions contained in any license or sharing agreement that applies to the data and information the Ministry uses, or that the Ministry holds on behalf of another party.

PRINCIPLE 4

Information is digital by design, paper by exception

Data and information will be created, received and managed in digital form wherever possible.

Intent:
- Ensure consistency, discoverability and reuse of data and information, now and in the future with well-designed systems and processes, with management beyond the life of systems and services
- Reduce risk of information loss and support disaster recovery and business continuity
- Support the Ministry to demonstrate openness, enabling collaboration internally and externally
- Continue to manage paper while in a digital environment.

RESPONSIBILITIES

This section outlines the responsibilities of specific staff under this policy.

People, Property and Enterprise Services Governance
- Oversight of data and information strategy, roadmap, and delivery
- Ensure outcomes for information and data meet our objectives.

Executive Sponsor
- Strategic and executive responsibility for overseeing information and records management, as per the Information and Records Management Standard issued under section 27 of the Public Records Act 2005 [5].

People Managers
- Monitor how information is managed, including through regular compliance reporting
- Manage quality, availability, safe use, risk, and disposal of data and information
- Ensure staff have been assigned responsibilities in role descriptions and performance plans, and have the skills to use and manage data and information relevant to their role

[4] Externally through agreements such as Agency Information Sharing Agreements and Memorandums of Understanding. For more information please visit the Data & Information section on Jet.
[5] "Executive Sponsors", https://archives.govt.nz/manage-information/resources-and-guides/governance/executive-sponsors

	• Promote staff completing the information and data module(s) on Thrive.
Business owner	• Ensure any new or altered, system, process, practice, or service contract meet this policy, undertaking a data and information impact assessment.
Data and Information team	• Establish, promote, and support data assurance and adherence to data standards, enabling data and information governance and stewardship.
Employees, contractors and consultants	• Understand and apply this policy • Complete the data and information modules on Thrive • Refer to the data and information guidance.

DEFINITIONS

Court information	Information, irrespective of format, remains under the control of the Court due to its inherent power to control its processes and practices, until disposed of either according to the practice of the Court or under legislation.
Judicial information	Personal information about judges (such as salary and leave) and judicial communications (whether they relate to particular cases).
Data	Data is 'raw', figures, values or details. When the data is put in context, interpreted and analysed it becomes informative/information [for a technical definition see ISO 16175-3:2012].
Data and information stewardship	Ensures responsible and ethical collection, management, safe and effective use, and appropriate disposal of data and information.
Data quality	A way to measure or assess how good or fit for purpose data is. Usually there are different aspects or factors to this such as accuracy, relevancy, timeliness, accessibility, consistency and completeness [for a technical definition see ISO/IEC 40180:2017].
Disposal	Actions to data and information including transferring control to another public office or the Chief Archivist, alteration or destruction, selling or discharging the data and/or information. Sourced from the Public Records Act 2005 [section 20 (1), (a) to (e)].
Information	The result of processing, gathering, manipulating, and organising data in a way that adds to the knowledge of the receiver. [Sourced from AS/NZS ISO 16175-1:2012].
Information asset	A body of information and/or records that can be defined and managed as a single unit, so it can be understood, shared, protected, and exploited effectively. [Sourced from GEA-NZ Information Asset Catalogue Guidelines v2.0].
Lifecycle	An approach to data and information management that recognises the value of information changes over time and must be managed accordingly from creation/collection, management and use, through to disposal (archive, transfer or destroy).
Metadata	"Data about data" or "information about information". Controlled information that describes, explains, locates, or in other ways makes it easier to retrieve, use, or manage an information resource [for a technical definition see ISO 16175-3:2012].

Record	Information, whether in its original form or otherwise, including (without limitation) a document, a signature, a seal, text, images, sound, speech, or data compiled, recorded, or stored. Sourced from Public Records Act.
Value (of information)	Service potential or economic benefit (based on criticality) to the performance of the Ministry, performance of the Justice Sector, and value to NZ society.

RELATED POLICIES AND LEGISLATION

- Copyright Act 1994
- Official Information Act 1982
- Privacy Act 1993
- District Court Act 2016
- Senior Courts Act 2016
- Public Records Act 2005
- Information and Records Management standard and Implementation guide [issue under section 27 of the PRA 2005]
- Code of Conduct
- Privacy and Personal Information Policy
- ICT Acceptable Use Policy
- Information Security Policy
- Official Information Policy
- Social Media Policy
- Information Gathering Standards Policy
- Protective Security Requirements [https://protectivesecurity.govt.nz/]
- Data Protection and Use Policy (DPuP) [https://dpup.sia.govt.nz/]
- Principles observed by Judiciary and Ministry of Justice in the Administration of Courts in an MoU.

CONTACT	*General Manager Data & Information*	OWNER(S)	*Deputy Secretary Corporate & Digital Services*
LAST REVIEWED	*May 2020*	NEXT REVIEW	*24 months*
LAST UPDATED		STAKEHOLDERS CONSULTED	*Sector* *Policy* *Operational Service Delivery* *Corporate and Digital* *Strategy and Governance* *Māori Reference Group*