

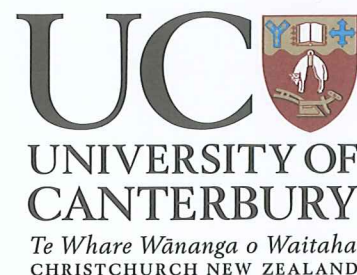
## Office of the Registrar

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Joshua Grainger

via 'FYI' website: [www.fyi.org.nz](http://www.fyi.org.nz)

FOI#377 email

30 August 2012

Ref: 12/24

Dear Joshua

### **INTERNAL REVIEW OF OIA REQUEST**

Further to my letter of 8 August 2012 noting the University was seeking advice from the Office of the Ombudsman regarding your request that the University review its decision to withhold submissions on recent Change Proposals.

The University has reviewed and identified the following issues as they relate to your request:

- the content requested includes submissions made either via a form produced by the University's Human Resources department, or made directly via email or physical correspondence to a number of University officials, independent of the formal process
- in addition to the submissions themselves, you requested the names of the individuals who had made submissions.
- the request for information was made via the public website FYI (accessible at: [www.fyi.org.nz](http://www.fyi.org.nz)) and any response by the University will be posted on that site in both pdf and html formats.
- the University initially declined the request, under s9(2)(ba) of the OIA, on the basis that the information had been provided on the assumption of confidence, and that to release the content would likely prejudice the supply of similar information in the future.
- You have requested that the University review this decision, citing advice from the Office of the Ombudsman published in the Ombudsman Quarterly Reviews (OQR), Volume 6, Issue 2, 2000 and Volume 10, Issue 3, 2004.

The University acknowledges that the form used to solicit submissions is not clear with regard to matters of confidence. Indeed, upon review of the advice published in OQR v6, i2, 2000, the University appears to be in the 'difficulty' that advisory note describes: at issue is the 'extent to which the submissions should be considered as private to the submitters or otherwise confidential'. The University is of the view that, due to the particulars of the issue, there are good grounds for assuming an undertaking of confidentiality in light of the exceptional and special circumstances at play. These include:

- the change proposal concerned highly contentious and emotive matters relating to the proposed withdrawal of academic programmes, and were intended to inform the University Council, as the final statutory decision making body
- many submissions were made independent of the process or form established by Human Resources. In other words, the issues at hand were such that individuals and families wrote directly (and without reference to advice or process) to senior officials within the University's management structure.
- the University values such submissions, and is concerned to ensure the continuation of feedback such as this.
- the publication online via the third party website FYI may consequently have a chilling effect on the ability of the University to solicit or receive similar feedback in the future, or expose the University to grievance or complaint from submitters who had provided information in the expectation that this information would be managed with sensitivity and due regard to implied assumptions of confidentiality.

The University is currently investigating ways of ensuring greater clarity in its processes, following advice provided by the Ombudsman in OQR v6, i2, 2000 in light of this matter.

The University acknowledges that in the past it has provided similar information to attendees of the University Council meetings as part of papers tabled during these sessions. However, in this instance, the University's primary concerns are:

- many of the submitters may not have taken the trouble to make their submissions if it were known that their information would be published to a (potential) global audience on a third party website. This is especially apposite, given the contentious and highly charged nature of the proposal and the vociferous support and defence it received.
- the publication of these papers (some 90 odd submissions) on a public website potentially represents a breach of individuals' privacy under Principles 3, 6 and 11. The University is particularly concerned that submissions made independent of the Human Resource process will be discoverable online to all-comers, or indeed, via a basic 'Google search' without their knowledge or consent.
- that publication on the FYI website represents a significant departure in terms of potential public access to papers that traditionally have been provided in physical format to individuals who have made the effort to attend a specific meeting. The University's view is that this 'broadcast' aspect of publication together with the inference/assumption of confidentiality (by either party) necessarily requires greater caution and circumspection than more traditional modes of release.

The University notes that the University Council decided on the change proposals in its May meeting, and the matter is now closed.

In light of this review, and following discussions with the Office of the Ombudsman and the Privacy Commissioner's Office, the University is willing to provide you access to the submissions in hard copy onsite for your review, on the basis that this would follow previous precedent, support the access provisions of the OIA and yet prevent widespread broadcast of content online via a third party

website. Please feel free to contact me to arrange a convenient time to view the papers if you would like to.

I note that the advice from the Privacy Commissioner's Office was that although this request did deal in matters of personal privacy, the Office of the Ombudsmen was the most appropriate agency to manage advice/guidance on the issues, as they more properly fall under the ambit of the Official Information Act. In addition, the Office of the Ombudsmen provided general advice and guidance on how to approach the management and solicitation of submissions in the future, but could not provide specific advice regarding this issue, due to a potential appearance of bias if an investigation was later requested. Indeed you have the option under s28(3) of the OIA to request the Office of the Ombudsmen to investigate this response if you do not feel it adequately addresses your concerns.

I look forward to hearing from you in due course.

Regards

A handwritten signature in purple ink, consisting of a stylized 'T' and 'N' followed by a long horizontal line that ends in a wavy flourish.

Tom Norcliffe  
Information and Records Manager