

Alex Harris
fyi-request-2094-bd767b8d@requests.fyi.org.nz

Dear Alex Harris

Official Information Act 1982 request

Thank you for your email of 9 October 2014 regarding the government's response to the Law Commission report '*The Public's Right to Know: Review of the Official Information Legislation*'. Under the Official Information Act 1982 (OIA), you request:

- (1) *"all advice produced in response to the report. I'm aware that there's a publicly available government response to the report (tabled in the house of representatives in 2013); I'm interested in the advice that produced that response,*
- (2) *as well as anything since on legislation to implement the government's policy choices;*
- (3) *any advice unrelated to the above on reform of or changes to the Official Information Act"*

1. Appendix 1 lists the documents containing information that falls within the scope of your request. These documents constitute all of the advice provided to the Minister of Justice during the process of producing the government response to the Law Commission Report on *The Public's Right to Know: Review of the Official Information Legislation*. Some information has been withheld under section 9(2)(a) of the OIA to protect the privacy of natural persons.
2. Regarding anything since on legislation to implement the government's policy choices, a number of recommendations are being progressed in the following areas;

Provisions for protecting commercially sensitive information

The Commission recommended introducing a new withholding ground to provide protection if releasing information could cause material prejudice to competitive positions or financial interests. It also proposed clarifying how the existing legislation applies to commercially sensitive information and the treatment of third party information. The Government intends to progress this work as priorities allow.

Extending the OIA to the administrative functions of the court

One of the key recommendations made by the Law Commission was to extend the OIA to the administrative functions of the court. The Government agreed. This has been progressed in the context of the Judicature Modernisation Bill 2013. This Bill can be viewed at www.legislation.govt.nz (see clauses 171 and 419).

The proposal in the Judicature Modernisation Bill will make some administrative and financial information available, such as expenditure, resources and statistical information about court cases. Much of this information is already made available, but the change would clarify what is subject to the OIA. Information about individual cases will not be made available under the OIA.

Statutes Amendment Bill

Statutes Amendment Bills (SAB) are legislative vehicles for technical, short, and non-controversial amendments to a range of Acts. For an amendment to be included in an SAB, the agreement of all other parties and any independent members of Parliament is necessary.

A number of Law Commission recommendations met the criteria for inclusion in a SAB, and have been included in Part 23 of the Statutes Amendment Bill (No 4) 2014. This Bill can be viewed at www.legislation.govt.nz.

Improved education and guidance

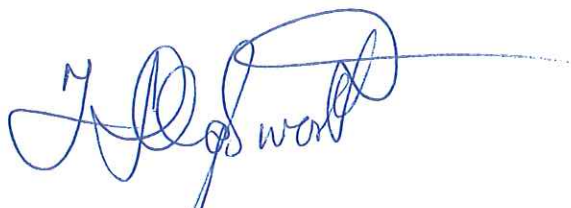
The Law Commission recommended improved education and guidance from the Office of the Ombudsman. The Ombudsman has already made significant progress in planning to implement these recommendations. The Government is supporting the work that the Ombudsman is undertaking to progress the Law Commission recommendations regarding guidance.

3. Regarding advice unrelated to the above on reform of or changes to the Official Information Act, no further options for major reform or change to the OIA have been considered, and no material relating to reform of the OIA has been produced. Therefore, that part of your request is refused under Section 18(e) of the OIA – the documents alleged to contain the information requested do not exist.

While reform of the official information legislation is not being progressed at this time, the Government is keeping the operation of the official information legislation under review and will consider whether it will progress any of the remaining recommendations, as competing priorities allow.

You have the right under section 28(3) of the Official Information Act 1982 to complain to the Ombudsman about the decisions made in relation to your request.

Yours sincerely



Fiona Illingsworth
Policy Manager, Electoral and Constitutional

Appendix 1: Documents released

	Date	Document	Comment
1	20/7/12	Briefing – Law Commission Report – <i>The Public's Right to Know</i> Attachments (not released): Law Commission recommendations Letter to President of the Law Commission	Phone numbers withheld under section 9(2)(a) of the Official Information Act 1982 to protect the privacy of natural persons. - Publicly available - Out of scope
2	18/12/12	Briefing – Law Commission Report – <i>The Public's Right to Know</i> Attachments (not released): Draft Cabinet paper Draft government response Option 1 Draft government response Option 2	Phone numbers withheld under section 9(2)(a) of the Official Information Act 1982 to protect the privacy of natural persons. The draft Cabinet paper and draft responses are not provided as the final versions are publicly available.
3	23/1/13	Cabinet paper – Government Response to Law Commission Report: <i>The Public's Right to Know</i> Attachments (not released): Appendix 1: Law Commission recommendations Appendix 2: Summary of Law Commission report Appendix 3: Proposed government response	Released in full, excluding attachments. - Publicly available - Out of scope - Publicly available



1

Hon Judith Collins, Minister of Justice

Law Commission Report – *The Public's Right To Know*

Date	20 July 2012	File reference	CON-06-03-08
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Action Sought	Timeframe/Deadline
Agree that the Ministry of Justice and the Department of Internal Affairs lead work on the Government response to the Law Commission Report <i>The Public's Right to Know</i> .	27 July 2012
Sign the attached letter to Hon Sir Grant Hammond, inviting the Law Commission to remain involved in the project.	

Contacts for telephone discussion (if required)

Name	Position	Telephone (work)	Telephone (a/h)	1st contact
Lauren Perry	Acting General Manager, Public Law	04 494 9855		
Fiona Illingsworth	Manager, Constitutional Policy	04 494 9717		✓

Minister's office to complete

Noted
 Approved
 Overtaken by events
 Referred to: _____
 Seen
 Withdrawn
 Not seen by Minister
 Minister's office comments

20 July 2012

Hon Judith Collins, Minister of Justice

Law Commission Report – *The Public's Right To Know*

Purpose

1. This paper:
 - 1.1. notes some key recommendations of the Law Commission's report on the Official Information Act 1982 (OIA) and the Local Government Official Information and Meetings Act 1987 (LGOIMA)
 - 1.2. seeks your approval to the Ministry of Justice and Department of Internal Affairs (DIA) preparing the Government Response to the report, in consultation with the Law Commission.

Executive summary

2. The Law Commission has provided you with its final report reviewing the OIA and Parts 1–6 of the LGOIMA. The Report is to be presented to the House during sitting week 24–26 July 2012.
3. The Government Response to the Report will fall due in early February 2013. You and the Minister of Local Government are the responsible portfolio Ministers for the OIA and LGOIMA respectively.
4. The Report makes 137 recommendations comprising: substantive amendments to the OIA/LGOIMA (eg, a new official information oversight body), new operational processes (eg, guidance) and relatively minor amendments (eg, clarification of the withholding grounds). Our initial view is that the Report is well-researched, balanced and that there are a number of opportunities for the Government arising from it. There are also fiscal implications and potential risks which will need to be explored in developing the Government Response.
5. Cabinet Office circular CO (09) 1 notes that the portfolio Ministers will decide which agency will prepare a draft Cabinet paper responding to the Law Commission's recommendations on the Ministers' behalf. We seek your agreement that the Ministry of Justice and the Department of Internal Affairs lead work on the Government Response to the Law Commission Report *The Public's Right to Know*, in conjunction with the Law Commission (letter to Hon Sir Grant Hammond attached).
6. We further propose that the work on the response be staged, similar to work on the *Review of the Privacy Act*.

Background

7. On 2 July 2012, the Law Commission provided you with its final Report (*The Public's Right to Know*) reviewing the OIA and Parts 1–6 of the LGOIMA. You (as Minister of Justice) and the Minister of Local Government are, respectively, the responsible portfolio Ministers.
8. The Government asked the Law Commission to review the Acts in 2009. There has been no other comprehensive review of the OIA and LGOIMA by the Government since their enactment. The Commission's process included publication of an Issues Paper in September 2010 and consulting extensively with the public and with public sector agencies.
9. As Minister Responsible for the Law Commission, you are also responsible for presenting the Report to the House. Your Office has indicated that it is likely that you will present the Report during sitting week 24–26 July 2012.

Discussion

The Report

10. The Law Commission's Report concludes that the fundamental principles on which the Acts are based (ie, the presumption in favour of openness) remain sound. It notes some issues with their operation (eg, some delays in processing requests, misapplication of the withholding grounds, the administrative burden on agencies). It also notes the need to keep pace with the evolving technological environment and with international freedom of information best practice.
11. The Report's 137 recommendations fall into three main categories:
 - 11.1. **Substantive changes to OIA/LGOIMA:** for example, new statutory duties relating to the proactive release of official information, creation of a new official information oversight office, and the extension of the OIA to other bodies (ie, the Parliamentary agencies and the Speaker, the Officers of Parliament¹ and the Courts). Our initial view is that these recommendations have sound objectives, but some (eg, the oversight office) will need further careful consideration, particularly within the current fiscal environment.
 - 11.2. **New administrative processes:** for example, setting up officials' bodies to develop guidance on specific issues where gaps currently exist (eg, consultation/notification of Ministers on departmental OIAs), new Ombudsmen guidance (including publication of cases and accompanying commentary), and new charging guidelines. This work will support the operation of the OIA and LGOIMA and our initial view is that overall these recommendations appear sensible.
 - 11.3. **Minor changes to OIA/LGOIMA:** for example, clarifying or modernising the grounds for withholding official information and streamlining the processing of OIAs. Many of these recommendations are aimed at reducing the current

¹ The Officers of Parliament are the Auditor-General, the Ombudsmen and the Parliamentary Commissioner for the Environment. The Parliamentary Commissioner for the Environment is currently subject to the OIA.

administrative burden for agencies while maintaining the public's right of access to official information. Our initial view is that this balance has been struck well.

12. The Law Commission also recommends that the OIA be redrafted entirely and that consideration be given to amalgamating it with the LGOIMA. No draft Bill is attached to the Report.
13. The Law Commission also recommends that the current privacy withholding ground² should remain, but that new and comprehensive guidance on this withholding ground should be developed as a matter of priority by the Office of the Ombudsmen and the Office of the Privacy Commissioner. In considering its recommendation, we will ensure alignment with matters being considered under the ongoing *Review of the Privacy Act*.
14. We consider that there are a number of significant opportunities arising from the Report. These include providing better services to the public, re-confirming New Zealand's commitment to freedom of information, and cutting back the administrative burden for agencies (redirecting those energies into other services for New Zealanders). This is also an opportunity to consider other measures to complement the regime proposed by the Law Commission, or to take it further. The high profile of official information legislation may also be an opportunity to highlight other initiatives the Government is making in the official information space (eg, the Data Re-Use project).
15. There are some risks. For example, some recommendations may be fiscally challenging in the current climate. If so, we intend to explore options for achieving the same objectives with an alternative solution and/or considering implementation of the recommendation at a later time.

Government Response

16. In due course, you and the Minister of Local Government will need to (refer CO (09) 1):
 - 16.1. submit a Cabinet paper seeking approval of the recommendations in the Law Commission's report to the extent you consider appropriate; and
 - 16.2. present a Government Response to the House within 120 working days of the Commission's report being presented, if Cabinet does not agree with the Law Commission's recommendations.
17. Current plans for presentation mean that the Government Response will fall due in early February 2013.
18. CO (09) 1 also notes that the responsible portfolio Minister/s will decide on a case by case basis which agency will prepare the draft Cabinet paper on your behalf (eg, Justice/DIA, the Law Commission, or jointly preparing the Cabinet paper).
19. We seek your agreement that Justice and DIA lead further work in this area and develop the necessary Cabinet paper. We also recommend that the Law Commission remain closely involved in its development. We **attach** a letter to Hon Sir Grant Hammond to this effect.

² Currently, official information may be withheld if it is necessary to protect the privacy of natural persons, including that of deceased persons (provided that there are not any other considerations which make it desirable, in the public interest, to make that information available).

20. The Government Response could:

20.1. provide a final response to all of the Law Commission's recommendations;

20.2. signal further work which will be done by the Government; or

20.3. combine the above approaches (similar to the approach taken to the Government Response to the *Review of the Privacy Act*).

21. We recommend a combination approach to managing the work, due to the number of recommendations and the consultation exercise which will be required. DIA agrees with a staged approach.

Consultation

22. The Department of Internal Affairs was consulted on this paper.

Timeframe

23. If you agree to Justice and DIA leading the Government Response with a staged approach, we anticipate the following timeframes (presuming a bill is required):

Milestone	Timeframe	Departmental actions
Presentation of Report to the House	During 24 – 26 July 2012	Provide support for media release
SOC / Cabinet (<i>initial policy decisions</i>)	December 2012	<p>July – early November 2012: identifying recommendations which Government can agree to immediately and those which it may not progress</p> <p>November 2012: seek policy decisions by responsible Ministers</p>
Government Response considered by LEG/Cabinet	January 2013	Develop Government Response and accompanying LEG paper
Government Response presented to the House	By early February 2013	Provide support for media release
SOC / Cabinet (<i>final policy decisions</i>)	May 2013	<p>January – April 2013: develop final policy</p> <p>May 2013: seek policy decisions by responsible Ministers</p> <p>Instructions to PCO and development of Bill</p>
Implementation of any new administrative processes agreed by Cabinet (not requiring legislative change)	commencing June 2013	Work with agencies to implement processes (eg, new departmental working groups, new guidance by Ombudsmen)
LEG / Cabinet Introduction of Bill	August 2013	<p>Draft Bill and develop LEG paper</p> <p>Provide support for media release</p>

Milestone	Timeframe	Departmental actions
House processes	August 2013 – March 2014	Support Minister in House Select Committee process
Implementation (matters requiring legislative change)	March 2014 – June 2014 (to coincide with finalisation of departmental SOIs and new financial year)	Support agencies to implement new regimes

Next Steps

24. On the day the Report is presented to the House (during 24–26 July), the Law Commission will hold a media conference to announce its release. We have provided draft media statements to your Office (choice of individual or joint with Minister Carter) welcoming the Report.
25. This Report affects all branches of government. We recommend notifying the Offices of the Prime Minister, the Speaker and the Ministers of Finance, State Services and Internal Affairs (as the Government Chief Information Officer with responsibility for the Public Records Act 2005 and as Minister responsible for Archives NZ and the National Library) in particular.

Recommendations

26. It is recommended that you:
1. **Agree** that the Ministry of Justice and the Department of Internal Affairs lead work on the Government response to the Law Commission Report *The Public's Right to Know* YES / NO
 2. **Sign** the attached letter to Hon Sir Grant Hammond, inviting the Law Commission to remain involved in the project. YES / NO

Lauren Perry
Acting General Manager, Public Law

APPROVED / SEEN / NOT AGREED

Hon Judith Collins
Minister of Justice

Attachments:

- Law Commission recommendations from *The Public's Right to Know*
- Letter to Hon Sir Grant Hammond, President of the Law Commission

RELEASED UNDER THE
OFFICIAL INFORMATION ACT



Hon Judith Collins, Minister of Justice

Law Commission Report – *The Public's Right To Know*

Date	18 December 2012	File reference	CON-06-03-08
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Action Sought

Timeframe/Deadline

Advise the Ministry of your preferred option for proposed Government response to the Law Commission Report <i>The Public's Right To Know</i> to allow drafting to proceed on a paper for Cabinet consideration on 30 January 2013 (tbc).	14 January 2013
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Contacts for telephone discussion (if required)

Name	Position	Telephone (work)	(a/h)	1st contact
David King	General Manager, Civil and Constitutional	04 494 9945		
Fiona Illingsworth	Manager, Electoral and Constitutional	04 494 9717		✓

Minister's office to complete

- Noted
- Approved
- Overtaken by events
- Referred to: _____
- Seen
- Withdrawn
- Not seen by Minister

Minister's office comments



18 December 2012

Hon Judith Collins, Minister of Justice

Law Commission Report – *The Public's Right To Know*

Purpose

1. This paper outlines options for the proposed government response to the Law Commission's report on the review of the official information legislation, *The Public's Right to Know*, and attaches a draft Cabinet paper and two draft government responses. A government response is required to be tabled in the House by 4 February 2013.

Law Commission Report

2. On 2 July 2012, the Law Commission provided you with its final report - *The Public's Right to Know* (the Report) reviewing the Official Information Act 1982 (OIA) and Parts 1–6 of the Local Government Official Information and Meetings Act 1987 (LGOIMA). You (as Minister of Justice) and the Minister of Local Government are, respectively, the responsible portfolio Ministers and therefore a joint draft Cabinet paper has been prepared.
3. The review of the Acts was proposed by the Law Commission in 2007 and was formally referred by the government to the Law Commission in 2009. There has been no other comprehensive review of the OIA and LGOIMA by the government since their enactment. The Commission's process included publication of an issues paper in September 2010 and consultation with the public and public sector agencies.
4. On 25 July 2012, you presented the Report to the House of Representatives. If the government does not wish to accept all or some of the Law Commission's 137 recommendations, it must table a response in the House by 4 February 2013 in accordance with Cabinet Office circular CO (09) 1.

Government Response

5. A review of the official information legislation is not considered a high priority for the Ministry of Justice for 2013.
6. The Law Commission finds that the legislation is generally working well and the principles the Acts are based on remain sound. While there are a number of useful proposed changes, the proposals are not central to the government's objectives for responsible fiscal management, supporting economic growth or delivering on the Better Public Services targets.
7. Two options for a draft government response have been developed for your consideration.

Option One

8. The first option for the draft response notes the Law Commission's generally positive findings. For these reasons the response indicates that the Government is prioritising its response on particular recommendations. For those recommendations the response indicates whether the recommendation is accepted or not, and where further work is proposed. No major legislative change is proposed. This response includes:

8.1. The government supports the work of the Ombudsmen in providing improved education and guidance including updated guidelines, a case notes directory and accompanying analytical commentary

8.2. The Parliamentary Service Commission will consider the proposal for extending the OIA to Parliament

8.3. The Ministry of Justice will consider the proposal for extending the OIA to the administrative functions of the courts in the context of the Courts and Tribunals Enhanced Services Bill and the review of the Judicature Act 1908

8.4. The Ministry of Business, Innovation and Employment will consider proposals for new commercial protections

8.5. The statutory creation of a new oversight office will not be progressed

8.6. The government will not combine the OIA and LGOIMA into one Act

[Note: DIA has expressed interest in taking over from MoJ as the administering agency for the OIA – effectively giving DIA the oversight role referred to in the Law Commission's recommendations. DIA indicates this aligns with their role as the Government Chief Information Officer; and their functional responsibility for Government information matters. The Ministry has not formed a position on this matter and intends to have further discussions with DIA and the States Services Commission early in the New Year to consider the implications of this proposal.]

8.7. The proposals about protection of third party information, including the relationship with the Privacy Act, will be aligned with the privacy review.

9. This option for response meets the requirements of the Cabinet Office circular and indicates some progress will be made thereby reducing, though not fully mitigating, the potential risks with the Law Commission and Ombudsmen. It does not prevent a reassessment of the level of priority given to this work at a later date.

Option two

10. The second option for a draft government response provides that, given the Law Commission's generally positive findings and competing government priorities, the government is unable to progress work to progress the recommendations as a whole at this time. For clarity the response also notes that the recommendations are not necessarily agreed.

11. This option for response meets the requirements of the Cabinet Office circular but raises a number of relationship risks with the Law Commission and Ombudsmen. It

does not prevent a reassessment of the level of priority given to this work at a later date.

Potential Risks

12. There are potential risks associated with the two options for the draft government response, including:
 - 12.1. The Law Commission has stated that they are expecting a significant redrafting of both Acts (NOTE: as per Cabinet Office circular (CO (09)1), the Cabinet paper is to include the views of the Law Commission). You may wish to discuss the proposed government response directly with the Chair to outline the reasons for the proposed response you have chosen.
 - 12.2. The Ombudsmen were closely involved in the review and in the drafting of the Report. We will need to consult with the Ombudsmen prior to the Cabinet paper being submitted and their office is expected to have concerns if most of the recommendations are not adopted. You may wish to discuss the proposed government response directly with the Chief Ombudsman.
 - 12.3. The Ministry has not consulted with government agencies other than the Department of Internal Affairs. There has been significant interest from central agencies, particularly the State Services Commission and the Cabinet Office. Given the level of interest in this subject and the timeframes available, substantive issues may be raised.
 - 12.4. If Option Two is tabled, then there may be risk in the ongoing issue about interactions between private business and government being subject to the OIA. The Law Commission advised that the current situation was unclear and needed addressing. Several prominent firms, including Westpac New Zealand and Simpson Grierson, made submissions to the Law Commission on these issues, highlighting their concerns. These concerns may be amplified if not addressed. As proposed in the Option One response these issues could be referred to the Ministry of Business, Innovation and Employment for consideration.

Next Steps

13. In order to table the government response in the House by 4 February 2013, a Cabinet paper and response needs to be submitted at the latest to Cabinet Office by 23 January 2013 for consideration at the next available Cabinet meeting (30 January 2013 – tbc).
14. We seek your direction on which option for a government response you prefer, to inform drafting of the Cabinet paper. We have provided a draft Cabinet paper based on Option One for your consideration.
15. The Department of Internal Affairs is briefing the Minister of Local Government separately. You may wish to discuss the proposed response with him. You may also wish to consider discussing the proposed approach with the Chair of the Law Commission and the Chief Ombudsman.
16. You may wish to discuss the proposed referral to the Ministry of Business, Innovation and Employment with the Minister for Economic Development, and the proposed referral to the Parliamentary Service Commission with the Speaker.

17. Upon receiving your direction the Ministry will proceed to consult with other government agencies, the Ombudsmen and the Law Commission on the draft Cabinet paper and draft government response.
18. The Ministry will prepare a draft media release based on your preferred draft government response.

Recommendations

19. It is recommended that you:

1. note that a government response to the Law Commission Report on the review of the official information legislation, *The Public's Right to Know* is required to be tabled in the House by 4 February 2013
2. agree to proceed with a draft government response and Cabinet paper that recognises the Law Commission findings that official information legislation is generally working well, and for that reason, either:

2.1. *Option One* – the government agrees to refer some matters for further consideration and indicates that some specific recommendations are not agreed (including that at this stage it is unlikely that major legislative change will be undertaken); OR

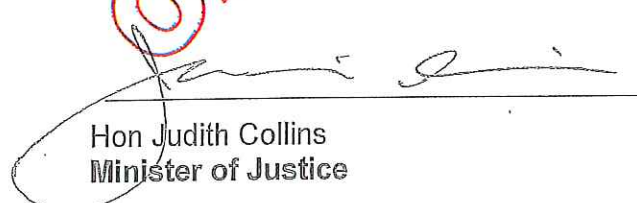
YES / NO

2.2. *Option Two* – the government is not able to progress the recommendations from the Law Commission's Report as a whole at this time due to competing government priorities (and noting that the recommendations are not necessarily agreed).

YES / NO


 Fiona Illingsworth
 Policy Manager, Electoral and Constitutional

APPROVED / SEEN / NOT AGREED


 Hon Judith Collins
 Minister of Justice

Attachments: Draft Cabinet paper and draft government responses for options one and two.

In confidence

Office of the Minister of Justice

Cabinet Business Committee

Government Response to Law Commission Report: *The Public's Right to Know: Review of the Official Information Legislation*

Proposal

1. This paper seeks approval of the government response to the Law Commission Report *The Public's Right to Know* that should be tabled in the House by 4 February 2013 in accordance with Cabinet Office circular CO (09) 1.

Executive summary

2. The Law Commission's Report reviews the Official Information Act 1982 (OIA) and Parts 1-6 of the Local Government Official Information and Meetings Act 1987 (LGOIMA). The Report concludes that the fundamental principles on which the Acts are based remain sound but there are some issues with the operation of the Acts.
3. The Report includes 137 recommendations for change, including redrafting both Acts. Other key proposals include: improved Ombudsmen's guidance; expanding the OIA to Parliamentary agencies and the courts; creating a new oversight office; new commercial protections; extending proactive release; and increasing third party protections.
4. Having considered the findings of the Law Commission, the current fiscal environment and the range of other urgent government priorities, I have targeted the government response toward priority recommendations, rather than proposing to undertake a major reform of the official information legislation.
5. Consequently, the government response thanks the Law Commission for the Report, notes that major legislative reform to the official information legislation will not be undertaken at this time but the following recommendations will be progressed:
 - 5.1. The government supports improved education and guidance from the Ombudsmen;
 - 5.2. The government agrees with extending the OIA to the administrative functions of the courts and this will be progressed alongside the review of the Judicature Act 1908;
 - 5.3. The Ministry of Justice and the Ministry of Business, Innovation and Employment will progress work on the proposed new commercial protections, together with the Department of Internal Affairs in relation to commercial protections in LGOIMA;
 - 5.4. Recommendations concerning the relationship with the Privacy Act 1993 will be progressed in the context of the review of the Privacy Act;
 - 5.5. Minor or technical legislative changes will be assessed for inclusion in appropriate legislative vehicles as they become available.
6. The proposed response states that the government does not agree to the following Law Commission recommendations:
 - 6.1. Combining the OIA and LGOIMA in one Act;

- 6.2. Creating a new oversight office;
- 6.3. Extending the OIA to the Offices of Parliament (the Office of the Auditor-General and the Office of the Ombudsman), Parliamentary Counsel Office, Office of the Clerk and Parliamentary Service, and the Speaker.

Law Commission review of official information

7. On 2 July 2012, the Law Commission provided the Minister of Justice and the Minister of Local Government with its final Report *The Public's Right to Know: Review of the Official Information Legislation* (the Report). The Report reviews the Official Information Act 1982 and Parts 1–6 of the Local Government Official Information and Meetings Act 1987. The Minister of Justice and the Minister of Local Government are, respectively, the responsible portfolio Ministers.
8. The review was proposed by the Law Commission in 2007 and formally referred by the government to the Law Commission in 2009. There has been no other comprehensive review of the OIA and LGOIMA by government since their enactment. The Commission's process included publication of an issues paper in September 2010 and consulting extensively with the public and with public sector agencies.
9. On 25 July 2012, I presented the Report to the House of Representatives. If the government does not wish to accept all or some of the Law Commission's recommendations, it must table a response in the House by 4 February 2013 in accordance with Cabinet Office circular CO (09) 1.

Law Commission recommendations

10. The Law Commission's Report concludes that, while evolving technology and the public's expectations relating to access to information have substantially changed, the fundamental principles on which the Acts are based (for instance, the presumption in favour of openness) remain sound. It notes some issues with the operation of the Acts (including some delays in processing requests, misapplication of the withholding grounds, and the administrative burden on agencies). It also notes developments such as the Declaration on Open and Transparent Government and the movement to proactive release of information, and recommends the need to keep pace with the evolving technological environment and with international freedom of information best practice.
11. Key recommendations include:
 - 11.1. Statutory creation of a new oversight office – establishing a high-level government leadership role for official information;
 - 11.2. Proactive release – agencies should take reasonable steps to make information available to the public;
 - 11.3. Extending the OIA – to include the administration of the courts, the Offices of Parliament, Parliamentary Counsel Office, Office of the Clerk and Parliamentary Service, and the Speaker;
 - 11.4. New commercial protections – including competitive positions, financial interests and relationship with the public sector;
 - 11.5. Notifying third parties – a duty to notify parties prior to release of official information (which relates to both commercial protections and privacy);

- 11.6. New Ombudsmen guidelines – including case reports, commentary and comprehensive guidance.
12. The Law Commission also recommends that the OIA be redrafted entirely and that consideration be given to amalgamating it with the LGOIMA.
13. A summary of the Report is attached as Appendix 1 and the Law Commission's recommendations are attached as Appendix 2.

Proposed Government Response

14. The official information legislation is designed to promote accountable governance through transparency and freedom of information about public sector actions and decisions, balanced with appropriate protections to allow effective decision-making. The government supports these aims and has carefully considered the Law Commission's detailed report and recommendations.
15. The Law Commission notes that:
- "our initial impressions were that the Official Information Act 1982 and Local Government Official Information and Meetings Act 1987 are central to New Zealand's constitutional arrangements and that their underlying principles are sound and that they are fundamentally working well. These have been confirmed as the review has progressed... However, the Commission has reached the view that much could be done to improve the operation and efficiency of the official information legislation, through a mix of legislative and non-legislative means."* (para 1.33 - 1.34, pg 25).
16. Having considered the findings of the Law Commission, the current fiscal environment and the range of other urgent government priorities, I have targeted the government response toward priority recommendations, rather than proposing to undertake a major reform of the official information legislation. The government response (Appendix 3) thanks the Commission for its report and provides responses to a number of priority recommendations, but does not respond to each of the Law Commission's 137 recommendations.
17. While the Government will not progress the recommendations as a whole, particular recommendations are responded to, including:
- 17.1. *The Law Commission recommends improved education and guidance. This includes improving the current Ombudsmen's guidelines, creating a case notes directory, and creating an analytical commentary to accompany the case notes. We understand that the Ombudsmen have already made significant progress in implementing these recommendations. The Government supports the work that the Ombudsmen are undertaking to progress the Law Commission recommendations regarding further guidance and education. There may be resource implications for the Ombudsmen, and the Office of the Ombudsman notes that additional baseline funding to their Vote will be sought in the 2013 budget.*
- 17.2. *The Law Commission recommends extending the OIA to the Offices of Parliament, Parliamentary Counsel Office, Office of the Clerk and Parliamentary Service, and the Speaker. The Government does not agree with the Law Commission's recommendation and supports the status quo. New Zealand has an open Parliament by international standards and Parliament currently makes a great deal of information available. Parliament has processes for developing rules*

around access and use of information and this is more likely to achieve the desired balance between access to information and the proper functioning of Parliament. This approach is consistent with the approaches taken in the Australian and Canadian federal parliaments and the US Congress. The Law Commission recommended that the OIA be extended to include administrative and financial information of the Offices of Parliament (excluding any audit, assurance work, inquiry or investigation by them). Given the proposed exclusion of the substantive aspects of the work undertaken by the Offices of Parliament, the existing scrutiny provided through the Parliamentary estimates and financial review processes is considered appropriate. This scrutiny is publicly accessible and provides transparency in the work and spending of the Offices of Parliament.

17.3. *The Law Commission recommends extending the OIA to the administrative functions of the courts.* This would include information about expenditure, resources and operations, and statistical information about court cases. Information about specific court cases, judicial communications, and judges' performance and functions would continue to be excluded from the scope of the OIA. Most of the information that would be covered by this extension is held by the Ministry of Justice. The Law Commission consulted extensively with the judiciary to achieve broad agreement as to the substance of this amendment. The government agrees that the administrative functions of the courts should be covered by the OIA and I intend to progress this recommendation as part of courts-related policy work in the context of the current review of the Judicature Act 1908.

17.4. *The Law Commission recommends that new commercial protections are created.* The new withholding ground would provide protection where material prejudice to competitive positions or financial interests could result and to clarify how the legislation applies to the commercially sensitive information of companies in commercial relationships or interacting with the public sector. I consider these recommendations are an important issue for business and the government. The Ministry of Justice and the Ministry of Business, Innovation and Employment will work together to progress this work. The Department of Internal Affairs will also contribute to this work as it relates to the commercial protections in LGOIMA.

17.5. *The Law Commission recommends the statutory creation of a new oversight office.* The government considers that the oversight provided by the Ombudsmen, including responsibility for complaints and guidance, is effective and that the creation of a new oversight office may duplicate work. Government departments and agencies should continue to look to the Office of the Ombudsman for guidance. The Office of the Ombudsman provides specific training and education to agencies subject to the Acts, as well as publicly available information and guidance. The Ombudsmen also have responsibility for complaints under the OIA, giving them an overview of areas or agencies needing particular attention. These functions are performed effectively by the Office of the Ombudsman and should continue.

17.6. *The Law Commission recommends that consideration be given to combining the OIA and LGOIMA into one Act.* The government does not consider that work to consider combining the two Acts should be progressed. The Report notes that the arguments are 'finely balanced'. There are matters where it is appropriate for there to be differences in approach and subject matter between the OIA (covering central government) and LGOIMA (covering local government) and these should be retained. The Report notes that the need for clarity and accessibility is paramount and that increased complexity would result from combining the Acts.

17.7. *A number of the Law Commission's recommendations relate to the protection of third party information, including the relationship with the Privacy Act. Most of these do not recommend major legislative change, but improved guidance or clarifying legislative amendment. These recommendations will be aligned with the review of the Privacy Act 1993, and any necessary clarifying or technical legislative changes to the official information legislation will be considered in the course of the review.*

17.8. *The Law Commission makes a number of recommendations to clarify existing provisions and to make minor or technical legislative changes. The government will assess these recommendations for inclusion in appropriate legislative vehicles (such as the Statutes Amendment Bill) as they become available.*

Forward work programme and other matters to be considered

18. Some matters have been identified that warrant further consideration to determine whether we can improve access to information, and whether the right balance has been achieved between the public interest and the burden on public agencies of responding to OIA requests. These include:
- proactive release
 - requests and refusals eg, handling vexatious and frivolous requests or large volume requests.
 - whether the scope and level of the 2002 charging guidelines remain appropriate.
19. The Ministry of Justice and central agencies will develop the details of a forward work programme for these matters and the work arising from the Government response for reporting to the State Sector Reform and Expenditure Control (SEC) Committee in July 2013. The work programme will also outline the associated resource implications.

Next steps for the Government Response

20. I will present the government response to the House by 4 February 2013.

Consultation

21. This paper was prepared by the Ministry of Justice and the Department of Internal Affairs and the following agencies have been consulted: State Services Commission, Office of the Ombudsman, Law Commission, Office of the Privacy Commissioner, Crown Law, Ministry of Business, Innovation & Employment, Treasury, Te Puni Kōkiri, New Zealand Customs Service, Department of Corrections, Ministry for Primary Industries, Inland Revenue, Ministry of Transport, New Zealand Transport Agency, Accident Compensation Corporation, Department of Conservation, Ministry for Culture and Heritage, Ministry for the Environment, Ministry of Foreign Affairs and Trade, New Zealand Police, Ministry of Education, Statistics New Zealand, Ministry of Social Development, Veterans' Affairs New Zealand, Serious Fraud Office, and Ministry of Health. The Department of the Prime Minister and Cabinet has been informed.
22. The Law Commission, as part of its official information review, consulted with the public, non-government organisations and government agencies on its recommendations to reform the Acts.

Comment from the Law Commission

23. The Law Commission is an independent agency. After its Reports have been tabled in Parliament it does not have an advocacy role, nor does it lobby for adoption of its proposals. The Report must speak for itself, and the adoption and implementation of its recommendations are for the government of the day. In this instance, given an indication that a major legislative initiative is unlikely in this subject area, the Commission has had a useful exchange with officials as to what matters should be considered to have priority and will assist in their implementation, where appropriate. It does urge that this subject area, said by most analysts to be the most important feature of the democracy after democracy itself, be kept under review.

Financial implications

24. Development of education and guidance material may result in additional work for the Office of the Ombudsman. The Ombudsmen intends to consult partner agencies, and prepare a work plan that would enable this work to be done, probably over a number of years, within existing baselines. However, the Office of the Ombudsman has noted that it will seek additional funding in Vote Ombudsmen 2013. There may also be increased costs associated with the extension of the scope of the OIA to the administrative functions of the courts.

Human Rights

25. The proposals in this paper appear to be consistent with rights affirmed in the New Zealand Bill of Rights Act 1990.

Legislative implications

26. At this stage, no major legislative change is proposed. The legislative implications arising from the government's response to priority recommendations will be addressed as part of the legislative process for each identified legislative vehicle. Minor clarifications will be considered as appropriate legislative vehicles such as Statutes Amendment Bills become available.

Regulatory impact analysis

27. As there are no legislative changes proposed in this paper, no regulatory impact analysis is required.

Publicity

28. The presentation of the government response to the House may draw some publicity. I will issue a press release at that time.

Recommendations

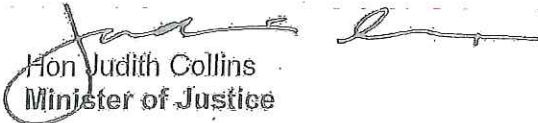
29. The Minister of Justice recommends that the Committee:
1. **note** that the Law Commission Report *The Public's Right to Know: Review of Official Information Legislation* was presented to the House of Representatives on 25 July 2012;

2. **note** that the government response to the Law Commission Report *The Public's Right to Know: Review of Official Information Legislation* must be tabled in the House of Representatives by 4 February 2013;
3. **note** that the Law Commission in its Report considers that the Official Information Act 1982 and Local Government Official Information and Meetings Act 1987 are central to New Zealand's constitutional arrangements and that their fundamental principles are sound;
4. **note** that the Law Commission Report has 137 recommendations for change and improvement to the official information legislation, including redrafting the Acts;

Government Response

5. **agree** that the government response indicates the government is unlikely to progress the Law Commission recommendations for major legislative reform;
6. **agree** that the government response will respond in the following way to particular recommendations in the Law Commission's Report:
 - 6.1. The government supports improved education and guidance from the Ombudsmen;
 - 6.2. The government does not support extending the Official Information Act to the administrative aspects of Parliament or the Offices of Parliament;
 - 6.3. The Ministry of Justice will progress extending the Official Information Act to the administration functions of the courts in alignment with the review of the Judicature Act 1908;
 - 6.4. The Ministry of Justice and the Ministry of Business, Innovation and Employment will consider the new commercial protections, along with the Department of Internal Affairs in relation to the commercial protections in the Local Government Official Information and Meetings Act;
 - 6.5. The government does not support the statutory creation of a new oversight office;
 - 6.6. The government will not progress work to consider combining the Official Information Act and Local Government Official Information and Meetings Act into one Act;
 - 6.7. The protection of third party information, including the relationship with the Privacy Act, will be progressed in the review of the Privacy Act 1993;
 - 6.8. Minor or technical legislative changes will be assessed for inclusion in appropriate legislative vehicles as they become available;
7. **note** that some other matters may warrant further consideration to determine whether access to information can be improved and whether the right balance is being achieved between the public interest and the burden on public agencies of responding to OIA requests (e.g. charging guidelines);
8. **agree** that the Ministry of Justice will, with the support of central agencies, report to the Cabinet Committee on State Sector Reform and Expenditure Control in July 2013 with details of a forward work programme and associated resource implications; and

9. invite the Minister of Justice to present to the House of Representatives the attached government response to the Law Commission Report *The Public's Right to Know: Review of Official Information Legislation*.


Hon Judith Collins
Minister of Justice

Date signed: 23/01/2013

Appendix 1: Law Commission's recommendations in *The Public's Right to Know: Review of Official Information Legislation*

Appendix 2: Summary of the Law Commission Report *The Public's Right to Know: Review of Official Information Legislation*

Appendix 3: Proposed government response to Law Commission Report *The Public's Right to Know: Review of Official Information Legislation*

RELEASED UNDER THE
OFFICIAL INFORMATION ACT