



Office of the Prime Minister

Prime Minister

Minister for National Security and Intelligence

Minister of Tourism

Minister Responsible for Ministerial
Services

16 JAN 2015

Aaron Hicks

Email: fyi-request-2217-fa0475cd@requests.fyi.org.nz

Dear Aaron Hicks

Official Information Act Request Relating to Phones Issued to the Prime Minister

I refer to your Official Information Act request of 27 November 2014 that raises the following questions:

- *“What processes and procedures are in place around the issue of phones and other communication devices that use text or instant messaging to the Prime Minister that ensure that these devices are secure, and that communications sent via these devices are properly retained and stored in order to comply with the Public Records Act.*
- *What processes and policies are in place to prevent the Prime Minister's communications being accidentally or intentionally being deleted, changed or otherwise unrecorded when these devices are used by other persons or by the holder of the Prime Minister's phone acting in other roles or duties.*
- *What processes and policies are in place around the removal of messages or communications from these devices when they have been used for purposes other than the Prime Minister's business to be sure that the messages that are covered by the Public Records Act are not changed or removed.*
- *The following request for usage statistics and metadata should not compromise the security or privacy of the Prime Minister. If exact numbers cannot be provided, written summaries are acceptable :*
 - *Could a total of messages received and sent from these devices be provided.*
 - *Could a total of messages stored for the purpose of complying with the Public Records Act be provided.*
 - *Could a total of messages deleted, changed or otherwise removed from these devices be provided.”*

Details relating to any processes and procedures in place to ensure the security of communication devices (including telephones) used by the Prime Minister is withheld under section 6(a) of the Official Information Act 1982 as the making available of that information would be likely *“to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand”*.

The Prime Minister addressed many of the issues raised by your questions in relation to the retention of text messages as part of the public record in response to a recent Parliamentary Question for Written Answer. The Prime Minister's response to written question 9367 (2014) can be found on the Parliament website at: www.parliament.nz. In this response, the Prime

Minister explained that he receives a large volume of text messages on his cellphone which he routinely deletes for security purposes. It is not his practice to conduct substantive Ministerial business by text message.

As confirmed by the Prime Minister, the vast bulk of text messages the Prime Minister receives in his ministerial capacity relate to minor administrative matters such as transportation arrangements, diary rescheduling or drawing his attention to an email he may need to read. Occasionally the Prime Minister may ask officials for information which is then provided to him usually in the form of an email or briefing note - the content of which is retained for the public record. The Prime Minister confirmed that he does not use a private cellphone.

The Prime Minister uses his cellphone for convenience of contact, particularly when travelling away from the office. It is not used for conducting significant business as a Minister of the Crown. It is anticipated that any relevant government business that may be initiated or contributed to via a text message or telephone call from the Prime Minister would result in advice produced by the relevant officials that would capture the information from that initial telephone call or text message and be retained this way as part of the public record. The process or procedure for retaining text messages sent or received as a Minister of the Crown is for that information ultimately to be captured by the official who receives it.

In relation to compliance with the Public Records Act 2005, the Chief Archivist has announced a review of recordkeeping practices of the Prime Minister in regard to text messages. The terms of reference for this review can be found on the Archives New Zealand website at: archives.govt.nz/about/news/2014/12/recordkeeping-review-terms-reference. The introductory paragraph to the terms of reference notes that such messages may or may not be considered public records.

I would also note the provisions of the Public Records Act relating to "Ministers' papers", which are defined in section 2 of that Act as "*records created or received ... by a Minister while holding office as a Minister of the Crown*". Under section 42(1)(b), "*The Chief Archivist may accept for deposit in Archives New Zealand ... Ministers' papers*". Under section 42(3), "*Papers and records deposited under subsection (1)(b) ... remain under the care of the Chief Archivist; and unless the Minister or the person depositing the papers or records otherwise agrees in writing, remain in the ownership and control of the Minister or that person...*" It is clear from the Public Records Act that it is within a Minister's discretion whether to deposit such papers with Archives New Zealand.

As confirmed, the Prime Minister does not use a private cellphone and text messages and phone calls made or received by the Prime Minister could be undertaken in several different capacities – as a Minister of the Crown, as the leader of the Parliamentary National Party or member of the National Party, as a Member of Parliament, or in his private capacity. Information relating to text messages sent or received in his capacity as a Minister of the Crown is 'official information,' information on any other text messages is not, and so is not subject to the Official Information Act.

With the large volume of text messages received and sent by the Prime Minister every day, these need to be regularly deleted not only for security reasons but also to ensure that the Prime Minister is always able to send or receive messages by preventing the cellphone exceeding its memory capacity.

With the messages being deleted regularly and there being no other record kept by this Office on the numbers of messages, there is no easy way to respond to your request for statistics and metadata relating to the number of text messages received and sent. There may be some limited information held by the mobile phone provider but this is likely to only relate to text messages sent and would not be a complete record. In addition, there is no way to establish in what capacity a text message was received or sent and, therefore, whether or not it would be covered by the Official Information Act. Accordingly, your request for this information is formally declined under section 18(e) of the Official Information Act “*that the document alleged to contain the information requested does not exist or cannot be found.*”

You are entitled to ask the Ombudsman to review this response under section 28(3) of the Official Information Act.

Yours sincerely

A handwritten signature in blue ink that reads "Wayne Eagleson". The signature is written in a cursive, flowing style.

Wayne Eagleson
Chief of Staff