

8 December 2010

Official Information Legislation Review  
Law Commission  
P O Box 2590  
WELLINGTON 6140

**SUBMISSION TO REVIEW OF THE OFFICIAL INFORMATION ACT 1982 AND  
PARTS 1 - 6 OF THE LOCAL GOVERNMENT OFFICIAL INFORMATION AND  
MEETINGS ACT 1987.**

This submission from the Mackenzie District Council is concerned mainly with the Local Government Official Information and Meetings Act 1987 – we note that it does not cover the meetings provisions in LGOIMA.

Attached is *Appendix A – Questions* pages from the Summary document of the Issues Paper. Some discussion questions which are agreed with have been ticked or otherwise commented on.

In assessing questions of making available or withholding information, it would be useful if detailed guidelines and examples from case law precedent were easily accessible on a dedicated website. On the occasions we have sought advice, the Office of the Ombudsman has provided information which has been helpful in clarifying issues.

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# Appendix A

## Discussion questions

### CHAPTER 2

- Q1 ✓ Do you agree that the schedules to each Act (OIA and LGOIMA) should list every agency that they cover?
- Q2 ✓ Do you agree that the schedules to the OIA and LGOIMA should be examined to eliminate anomalies and ensure that all relevant bodies are included?
- Q3 Do you agree that SOEs and other crown entity companies should remain within the scope of the OIA?
- Q4 ✓ Do you agree that council controlled organisations should remain within the scope of the LGOIMA?
- Q5 Do you agree that the Parliamentary Counsel Office should be brought within the scope of the OIA?
- Q6 Do you agree that the OIA should specify what information relating to the operation of the Courts is covered by the Act?
- Q7 Should any further categories of information be expressly excluded from the OIA and the LGOIMA?

### CHAPTER 3

- Q8 ✓ Do you agree that the OIA and the LGOIMA should continue to be based on a case-by-case model?
- Q9 ✓ Do you agree that more clarity and certainty about the official information withholding grounds can be gained through enhanced guidance rather than through prescriptive rules, redrafting the grounds or prescribing what information should be released in regulations?
- Q10 ✓ Do you agree there should be a compilation, analysis of, and commentary on, the casenotes of the Ombudsmen?
- Q11 ✓ Do you agree there should be greater access to, and reliance on, the casenotes as precedents?
- Q12 ✓ Do you agree there should be a reformulation of the guidelines with greater use of case examples?
- Q13 ✓ Do you agree there should be a dedicated and accessible official information website?

CHAPTER 4 Q14 Do you agree that the "good government" withholding grounds should be redrafted?

Q15 What are your views on the proposed reformulated provisions relating to the "good government" grounds?

CHAPTER 5 Q16 Do you think the commercial withholding ground should continue to be confined to situations where the purpose is to make a profit? *No*

Q17 If you favour a broader interpretation, should there be a statutory amendment to clarify when the commercial withholding ground applies? *The Ontario definition (S.27) seems suitable.*

Q18 Do you think the trade secrets and confidentiality withholding grounds should be amended for clarification?

Q19 Do you agree that the official information legislation should continue to apply to information in which intellectual property is held by a third party?

Q20 Do you have any comment on the application of the OIA to research work, particularly that commissioned by third parties?

Q21 Do you think the public interest factors relevant to disclosure of commercial information should be included in guidelines or in the legislation? *Guidelines*

Q22 Do you experience any other problems with the commercial withholding grounds? *no*

CHAPTER 6 Q23 Which option do you support for improving the privacy withholding ground:

Option 1 - guidance only, or;

Option 2 - an "unreasonable disclosure of information" amendment while retaining the public interest balancing test, or;

Option 3 - an amendment to align with principle 11 of the Privacy Act 1993 while retaining the public interest test, or;

Option 4 - any other solutions?

Q24 Do you think there should be amendments to the Acts in relation to the privacy interests of:

(a) deceased persons?

(b) children?

Q25 Do you have any views on public sector agencies using the OIA to gather personal information about individuals?

- CHAPTER 7
- Q26 Do you agree that no withholding grounds should be moved between the conclusive and non-conclusive withholding provisions in either the OIA or LGOIMA?
- Q27 Do you think there should be new withholding grounds to cover: *no*
- (a) harassment;
- (b) the protection of cultural values;
- (c) anything else?
- Q28 Do you agree that the “will soon be publicly available” ground should be amended as proposed?
- Q29  Do you agree that there should be a new non-conclusive withholding ground for information supplied in the course of an investigation?
- Q30 Do you have any comments on, or suggestions about, the “maintenance of law” conclusive withholding ground?

- CHAPTER 8
- Q31  Do you agree that the Acts should not include a codified list of public interest factors? If you disagree, what public interest factors do you suggest should be included?
- Q32 Can you suggest any statutory amendment which would clarify what “public interest” means and how it should be applied?
- Q33  Do you think the public interest test should be contained in a distinct and separate provision?
- Q34  Do you think the Acts should include a requirement for agencies to confirm they have considered the public interest when withholding information and also indicate what public interest grounds they considered?

- CHAPTER 9
- Q35  Do you agree that the phrase “due particularity” should be redrafted in more detail to make it clearer?
- Q36  Do you agree that agencies should be required to consult with requesters in the case of requests for large amounts of information?
- Q37  Do you agree the Acts should clarify that the 20 working day limit for requests delayed by lack of particularity should start when the request has been accepted?
- Q38 Do you agree that substantial time spent in “review” and “assessment” of material should be taken into account in assessing whether material can be released, and that the Acts should be amended to make that clear?
- Q39  Do you agree that “substantial” should be defined with reference to the size and resources of the agency considering the request?
- Q40 Do you have any other ideas about reasonable ways to deal with requests that require a substantial amount of time to process?

Q41 ✓ Do you agree it should be clarified that the past conduct of a requester can be taken into account in assessing whether a request is vexatious?

Q42 ✓ Do you agree that the term "vexatious" should be defined in the Acts to include the element of bad faith?

Q43 ✓ Do you agree that an agency should be able to decline a request for information if the same or substantially the same information has been provided, or refused, to that requester in the past?

Q44 ✓ Do you think that provision should be made for an agency to declare a requester "vexatious"? If so, how should such a system operate? *We agree with C1 9-37*

Q45 ✓ Do you agree that, as at present, requesters should not be required to state the purpose for which they are requesting official information nor to provide their real name?

Q46 ✓ Do you agree the Acts should state that requests can be oral or in writing, and that the requests do not need to refer to the relevant official information legislation?

Q47 ✓ Do you agree that more accessible guidance should be available for requesters?

CHAPTER 10

Q48 ✓ Do you agree the 20 working day time limit should be retained for making a decision?

Q49 ✓ Do you agree that there should be express provision that the information must be released as soon as reasonably practicable after a decision to release is made?

Q50 ✓ Do you agree that, as at present, there should be no statutory requirement to acknowledge receipt of an official information request but this should be encouraged as best practice?

Q51 Do you agree that 'complexity of the material being sought' should be a ground for extending the response time limit?

Q52 Do you agree there is no need for an express power to extend the response time limit by agreement?

Q53 Do you agree the maximum extension time should continue to be flexible without a specific time limit set out in statute?

Q54 Do you agree that handling urgent requests should continue to be dealt with by Ombudsmen guidelines and there is no need for further statutory provision?

Q55 Do you agree there should be clearer guidelines about consultation with ministerial offices?

Q56 Do you agree there should not be any mandatory requirement to consult with third parties?

Q57 Do you agree there should be a requirement to give prior notice of release where there are significant third party interests at stake?

Q58 How long do you think the notice to third parties should be?

- Q59 Do you agree there should be provision in the legislation to allow for partial transfers?
- Q60 Do you agree there is no need for further statutory provisions about transfer to ministers?
- Q61 Do you have any other comment about the transfer of requests to ministers?
- Q62  Do you think that whether information is released in electronic form should continue to depend on the preference of the requester?
- Q63 Do you think the Acts should make specific provision for metadata, information in backup systems and information inaccessible without specialist expertise?
- Q64  Should hard copy costs ever be recoverable if requesters select hard copy over electronic supply of the information?
- Q65 Do you think that the official information legislation needs to make any further provision for agencies to place conditions on the re-use of information, or are the current provisions sufficient?
- Q66 Do you agree there should be regulations laying down a clear charging framework for both the OIA and the LGOIMA?
- Q67 Do you have any comment as to what the framework should be and who should be responsible for recommending it?
- Q68  Do you agree that the charging regime should also apply to political party requests for official information?
- CHAPTER 11  Q69 Do you agree that both the OIA and LGOIMA should set out the full procedures followed by the Ombudsmen in reviewing complaints?
- Q70 Do you think the Acts provide sufficiently at present for failure by agencies to respond appropriately to urgent requests? *yes*
- Q71 Do you agree with the existing situation where a person affected by the release of their information under the OIA or the LGOIMA cannot complain to the Ombudsman?
- Q72 Do you agree there should be grounds to complain to the Ombudsmen if sufficient notice of release is not given to third parties when their interests are at stake?
- Q73  Do you agree that a transfer complaint ground should be added to the OIA and the LGOIMA?
- Q74 Do you think there should be any changes to the processes the Ombudsmen's follows in investigating complaints?
- Q75 Do you agree that the Ombudsmen should be given a final power of decision when determining an official information request?
- Q76 Do you agree that the veto power exercisable by Order in Council through the Cabinet in the OIA should be removed?

Q77 ✓ Do you agree that the veto power exercisable by a local authority in the LGOIMA should be removed?

Q78 If you believe the veto power should be retained for the OIA and LGOIMA, do you have any comment or suggestions about its operation?

Q79 Do you agree that judicial review is an appropriate safeguard in relation to the Ombudsmen's recommendations and there is no need to introduce a statutory right of appeal to the Court?

Q80 Do you agree that the public duty to comply with an Ombudsman's decision should be enforceable by the Solicitor-General?

Q81 Do you agree that the complaints process for Part 3 and 4 official information should be aligned with the complaints process under Part 2?

Q82 Do you agree that, rather than financial or penal sanctions, the Ombudsmen should have express statutory power to publicly draw attention to the conduct of an agency?

Q83 Should there be any further enforcement powers, such as exist in the United Kingdom?

CHAPTER 12 Q84 Do you agree that the OIA should require each agency to publish on its website the information currently specified in section 20 of the OIA?

Q85 Do you think there should be any further mandatory categories of information subject to a proactive disclosure requirement in the OIA or LGOIMA?

Q86 ✓ Do you agree that the OIA and LGOIMA should require agencies to take all reasonably practicable steps to proactively release official information?

Q87 Should such a requirement apply to all central and local agencies covered by the OI legislation? *no*

Q88 What contingent provision should the legislation make in case the "reasonably practicable steps" provision proves inadequate? For example, should there be a statutory review or regulation making powers relating to proactive release of information?

Q89 Do you think agencies should be required to have explicit publication schemes for the information they hold, as in other jurisdictions?

Q90 ✓ Do you agree that disclosure logs should not be mandatory?

Q91 ✓ Do you agree that section 48 of the OIA and section 41 of the LGOIMA which protect agencies from court proceedings should not apply to proactive release?



- CHAPTER 13
- Q92 ✓ Do you agree that the OIA and the LGOIMA should expressly include a function of providing advice and guidance to agencies and requesters?
- Q93 ✓ Do you agree that the OIA and LGOIMA should include a function of promoting awareness and understanding and encouraging education and training?
- Q94 Do you agree that an oversight agency should be required to monitor the operation of the OIA and LGOIMA, collect statistics on use, and report findings to Parliament annually?
- Q95 Do you agree that agencies should be required to submit statistics relating to official information requests to the oversight body so as to facilitate this monitoring function?
- Q96 Do you agree that an explicit audit function does not need to be included in the OIA or the LGOIMA?
- Q97 Do you agree that the OIA and LGOIMA should enact an oversight function which includes monitoring the operation of the Acts, a policy function, a review function, and a promotion function?
- Q98 Do you agree that the Ombudsmen should continue to receive and investigate complaints under the OIA and the LGOIMA?
- Q99 ✓ Do you agree that the Ombudsmen should be responsible for the provision of general guidance and advice?
- Q100 What agency should be responsible for promoting awareness and understanding of the OIA and the LGOIMA and arranging for programmes of education and training for agencies subject to the Acts?
- Q101 What agency should be responsible for administrative oversight of the OIA and the LGOIMA? What should be included in the oversight functions?
- Q102 Do you think an Information Commissioner Office should be established in New Zealand? If so, what should its functions be?
- Q103 If you think an Information Commissioner Office should be established, should it be standalone or part of another agency?
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- CHAPTER 14
- Q104 Do you agree that the LGOIMA should be aligned with the OIA in terms of who can make requests and the purpose of the legislation?
- Q105 Is the difference between the OIA and LGOIMA about the status of information held by contractors justified? Which version is to be preferred?
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- CHAPTER 15
- Q106 Do you agree that the official information legislation should be redrafted and re-enacted?
- Q107 Do you agree that the OIA and the LGOIMA should remain as separate Acts?
- Q108 Do you have any comment on the interaction between the PRA and the OI legislation? Are any statutory amendments required in your view?

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