



23 May 2011

Margaret Thompson
Official Information Legislation Review
Law Commission
PO Box 2590
Wellington 6140

Dear Ms Thompson

NZLC IP 18 The Public's Right to Know – A Review of the Official Information Act 1982

Please would you accept this late submission on *NZLC IP 18 The Public's Right to Know – A Review of the Official Information Act 1982* ("**NZLC IP 18**"). I am aware that it is well beyond the closing date for submissions, but I have only recently become aware that the review is of particular relevance to my role as Parliamentary Commissioner for the Environment, and Ombudsman David McGee has suggested that I write to you.

I have had the benefit of reading the Ombudsmen's submission on NZLC IP 18 and I support the approach taken at page 3-4 of their submission.

Of the three Officers of Parliament (the Ombudsmen, the Auditor-General and the Parliamentary Commissioner for the Environment), the Parliamentary Commissioner for the Environment is the only Officer of Parliament subject to the Official Information Act. Like the Auditor-General, the Parliamentary Commissioner for the Environment is not subject to the Ombudsmen Act 1975 ("**the Ombudsmen Act**"), although sections 28 and 36 of the Official Information Act allow the Ombudsmen to review decisions of the Parliamentary Commissioner for the Environment to refuse to release "official information". The Auditor-General is not subject to the Ombudsmen Act, meaning that the Parliamentary Commissioner for the Environment is the only Officer of Parliament subject to the scrutiny of another Officer of Parliament in this way.

Under section 20(2) of the Environment Act 1986 ("**the Environment Act**"), the Parliamentary Commissioner for the Environment has an obligation to maintain secrecy in respect of all matters that come to her knowledge in the exercise and performance of her functions under the Environment Act.

My functions under the Environment Act 1986 include undertaking investigations and providing advice to Members of Parliament. Like the Ombudsmen, confidentiality is essential for the effective conduct of many of my functions under the Environment Act.

As a result of some unfortunate legislative drafting, the interplay between my obligation of secrecy in the Environment Act and the Ombudsmen's obligations to review decisions under the Official Information Act is unclear. The two sets of obligations appear to point in opposite directions.

In their submission, the Ombudsmen put forward the proposition that they be subject to the Official Information Act, but only in regard to administrative matters such as accounting and reporting on the use of public resources. I support this proposition. Further, as another Officer of Parliament, I submit that a similar approach should apply to the Parliamentary Commissioner for the Environment. Such a limitation on the current application of the Official Information Act to the Parliamentary Commissioner for the Environment would resolve the legal and practical uncertainty that arises between two Officers of Parliament as a result of the unfortunate legislative drafting mentioned above. It also seems a workable and practical balance that recognises the status of the Parliamentary Commissioner for the Environment as an Officer of Parliament, the necessity for confidentiality for the effective conduct for much of my work, and the principle of openness inherent in the Official Information Act.

I hope that you are able to accept this late submission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jan Wright', written in a cursive style.

Dr Jan Wright

Parliamentary Commissioner for the Environment