

30 May 2018

Andrew Ecclestone
Fyi-request-7805-501a9c6f@requests.fyi.org.nz

Dear Mr Ecclestone

Official Information Act request for documents relating to Law Commission recommendation 37

I refer to your email of 28 May 2018 responding to the Ministry's reply to your Official Information request of the same date. You asked for clarification on four parts of this request, which is provided below.

1. I confirm that the Minister holds no additional information within the scope of your request.
2. I attach a copy of document 1, *Note: R37 Act to apply to Ombudsmen (26 November 2012)*, which was omitted from my earlier reply in error. I apologise for this oversight.
3. You have asked me to clarify why you received no documents relating to paragraph (b) of your request for copies for all correspondence and notes of meetings held with the Ombudsman, Privacy Commissioner or others relating to this issue. As we discussed over the phone, the Ministry has not been able to locate any further information within the scope of your request. For clarity, therefore, this part of your request is refused under s 18(e) – that the document alleged to contain the information requested does not exist or, despite reasonable efforts to locate it, cannot be found.
4. You have also requested details about our decision to withhold document 6 (drafting instructions to Parliamentary Counsel) under s 9(2)(h) (legal professional privilege). In particular, you have asked for the reasons in support of withholding on this ground, including any public interest factors considered by the Ministry under s 19(a) of the Official Information Act 1982.

As s 61 of the Legislation Act 2012 sets out, drafting instructions are subject to legal professional privilege. Parliamentary Counsel is only authorised to draft policies that are agreed by Cabinet. We consider the public interest in accountability for departing from the Law Commission's recommendation 37, and effective participation in the making of laws, is met through providing document 1, which sets out the policy rationale behind the modified proposal. Cabinet confirmed this modified proposal in the Government's supplementary response to the Law Commission report (document 3) and in its 2014 decisions to reform the Privacy Act 1993 (documents 5 and 5A).

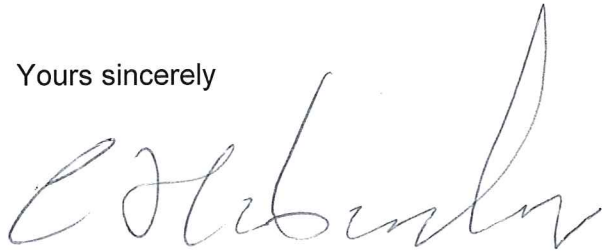
Nevertheless, the instructions relating to recommendation 37 are substantially similar to material that has been proactively released by the Ministry. Accordingly, we consider that privilege has been waived insofar as the instructions relate to recommendation 37.

A copy of those instructions, along with the covering letter to Parliamentary Counsel, are attached.

For completeness, we also note that further useful information about this recommendation, including the Office of the Ombudsman's view about it, can be found in the Law Commission's report *Review of the Privacy Act 1993* at [4.20] – [4.24].

We trust this response assists you with your submissions to the Justice Committee on the Privacy Bill.

Yours sincerely

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

Chris Hubscher
Policy Manager, Electoral and Constitutional