



5 February 2020

Sam Mellor
fyi-request-11854-febeda33@requests.fyi.org.nz

Dear Mr Mellor

Official Information Act 1982 request – Combatting online misinformation

Thank you for your request of 11 December 2019 seeking the following information under the Official Information Act 1982 (the Act):

“all briefing documents or other materials provided to the Minister on the subject of combatting online misinformation in relation to:

- the referendums taking place in 2020; and*
- the general election taking place in 2020.”*

For context, you noted a story on the RNZ website regarding plans to combat misinformation in election-year referendum debates.

Before addressing your specific request, it may be helpful to set out the Ministry’s role regarding public information related to the 2020 General Election and referendums.

The role of government agencies is not to lead the public debate on the subject matter of the referendums. The Ministry of Justice (the Ministry) has not set up a team to combat misinformation in the lead-up to the referendums.

The Ministry, in conjunction with the Ministry of Health, has prepared, and will continue to prepare, explanatory information materials for the public in advance of the referendums, to provide neutral and impartial information about the content of the End of Life Choice Act and draft Cannabis Legalisation and Control Bill. These information materials are limited to explaining what the End of Life Choice Act or the draft Cannabis Legalisation and Control Bill do. They will not explore the merits or risks of either proposal.

The website’s focus is on the provision of public information materials for voters and the media, and that can be used to help people to come to their own views on any other information or claims made about the referendum topics.

The Minister of Justice has set out his expectations about the type of public information materials that the Ministry will provide for the referendum. This is outlined in his Cabinet Paper *Provision of Public Information for the 2020 Referendums*, which you can access at: www.referendum.govt.nz/materials

Enclosed with this letter is a list of documents that are considered in scope of your request, and which may be helpful in providing context to the Ministry’s role in preparing public information materials for the referendums. Information has been withheld under the following sections of the Act to protect or maintain:

- the privacy of natural persons [s9(2)(a)],
- the confidentiality of advice tendered by Ministers of the Crown and officials [9(2)(f)(iv)], and
- the free and frank expression of opinions by or between Ministers and officials.

In addition to the documents being released, it may be helpful to note that Parliament's Justice Committee has also recently released its final report on its Inquiry into the 2017 General Election and 2016 Local Elections. The report covers a wide range of electoral topics and provides recommendations to the Government to improve our electoral system. Information manipulation, which includes misinformation, was addressed by the Committee and can be found at: www.parliament.nz/en/pb/sc/reports/document/SCR_93429/inquiry-into-the-2017-general-election-and-2016-local-elections

If you require any further information, please contact Jerram Watts, Acting Team Leader, Media and External Relations, by calling (04) 918 8980; or emailing media@justice.govt.nz

If you are not satisfied with my response to your request, you have the right to complain to the Ombudsman under section 28(3) of the Act. The Ombudsman may be contacted by email at info@ombudsman.parliament.nz

Thank you for taking the time to write.

Yours sincerely

A handwritten signature in cursive script that reads "Caroline Greaney".

Caroline Greaney
General Manager, Civil and Constitutional Policy

Appendix

Doc #	Date	Description	Status	OIA section
1	5/7/19	Public information for the 2020 referendum(s)	Withheld in full	9(2)(g)(i)
2	29/7/19	Excerpt from Aide Memoire: Referendums Framework Bill	Release in part	9(2)(f)(iv), rest of document out of scope
3	29/7/19	Cabinet paper: Referendums Framework Bill: Supplementary Advice	Release in part	9(2)(f)(iv), and some material is out of scope
4	15/8/19	Provision of public information for the cannabis referendum	Withheld in full	9(2)(g)(i)
5	20/11/19	Aide memoire: Provision of public information for the 2020 referendums	Withheld in full	9(2)(g)(i)

Excerpt from

AM Referendums Framework Bill 29 July 2019 (Rest of AM is out of scope)

Supplementary Advice: Questions raised by Cabinet LEG

10. At its meeting on 23 July, the Cabinet LEG Committee asked for some further information about risks of foreign interference, 'fake news', and misleading advertising around the referendum. This information has been provided as a supplementary advice paper.
11. The supplementary paper notes that the same concerns have been raised in respect of election advertising. It is important to ensure consistency between the advertising rules in the Referendums Framework Bill and the Electoral Act 1993. As such, legislative amendments to address concerns about social media use or foreign influence would be best addressed, in the first instance, through changes to the Electoral Act.
12. Under both the Electoral Act and this Bill, the definition of an election or referendum advertisement is broad and non-medium specific. This definition excludes personal political views of individuals published online, to respect freedom of expression. It also excludes editorial context of news media, to protect the freedom of the press.
13. The paper outlines the existing rules and processes that govern electoral advertising; e.g.
 - The promoter of an advertisement is required to include an identification statement on the advertisement. But this can be difficult to police, especially where, on the face of it, online adverts can look like individuals sharing 'personal political views'. Fake accounts are easy to create, and the person behind them can be hard to identify.
 - The Advertising Standards Authority (ASA) advertising guidelines apply to election and referendum adverts. The ASA fast-tracks its consideration of complaints about the content of electoral advertising (2-3 days) in the election period.
 - Case law interpretation of the media editorial exemptions in other statutes makes it clear that the exemption applies to legitimate "news media", and so "fake news" sites would not be covered. The Electoral Commission would refer unlawful election adverts to the Police for investigation, but there may be difficulties in identifying the instigator against which to take action.
 - An overseas person can only be an 'unregistered' promoter; they are still subject to the rules requiring promoter statements on advertisements but are only permitted to spend up to \$13,200 (indexed annually) on advertising during the regulated period.
14. The paper outlines several streams of work already underway looking to address these issues more generally, including:

s9(2)(f)(iv)

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- The Justice Committee's Inquiry into the 2017 General Election, which was specifically extended to consider the risk of foreign interference to our democracy.
- The Ministry for Culture and Heritage and the Department of Internal Affairs' review of broader media settings will consider disinformation and misinformation; s9(2)(f)(iv) r.

15. The Electoral Commission is also enhancing its approach to security for General Election 2020. This includes working with social media platforms, including Facebook, to achieve commitments to improved transparency.

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In Confidence

Office of the Minister of Justice
Chair, Cabinet

Referendums Framework Bill: Supplementary Advice

Purpose

1. This note supplements the Cabinet Paper *Referendums Framework Bill: Approval for Introduction*.
2. The first part of this paper provides information requested by the Cabinet LEG Committee at its meeting of 23 July 2019 (LEG-19-MIN-0102). LEG asked for advice on:
 - 1.1. how disinformation, including via “fake news” and bots, can be addressed
 - 1.2. whether the exemption for media editorial content from election/referendum advertising rules should be strengthened, and

Out of Scope

3. The Committee raised these matters in the context of referendums, but the same issues arise with election advertising more generally.
4. The second part of this paper discusses work underway across government to address these and related issues, and the opportunities to progress legislative change.

Disinformation, “fake news” and bots

5. Disinformation is false or misleading content that is designed to achieve a strategic purpose. Social media is increasingly a vector for disinformation. “Fake news” is a more general term that can include disinformation and misinformation (i.e. false information or rumours that are not created with a malicious or strategic purpose). Disinformation can take many forms, such as purporting to be news, advertising or individual comments. Bot accounts can be used to quickly spread disinformation online. Messages may appear to have grassroots support but actually be from people with vested interests (e.g. paid participants) or bots (this is known as “astroturfing”).
6. Under the Electoral Act, the promoter of an item is the person that initiates or instigates it. For this reason, bots and astroturfing are covered by the rules, and failing to identify the instigator breaches these rules. But these activities can be difficult to police. On the face of it, bots can look like individuals, and the personal political views of individuals, if published online, would not normally be classed as election advertising. Fake accounts are relatively easy to create, and the person behind the activity can be hard to identify.
7. The Advertising Standards Authority (ASA) considers complaints about the content of electoral advertising in digital media, including social media and websites. It defines advertising to include any message, the content of which is controlled by the advertiser, with the intent to influence the choice, opinion or behaviour of those to whom it is addressed. In the period prior to an election, the ASA fast-tracks complaints about election advertising. Advertisers are given 24 hours to comment and the adjudication takes place 24-48 hours later. The ASA’s findings do not carry legal consequences, however, and compliance is voluntary.

The exemption for media editorial content from election/referendum advertising rules

8. The editorial content of a news media Internet site is not an electoral advertisement under the Electoral Act. This exemption reflects the crucial role of the media in protecting our democracy.
9. LEG asked whether “fake news” sites could benefit from this exemption. Case law on the interpretation of similar exemptions in other statutes (for example, the Privacy Act and the Evidence Act) makes it clear that to gain the benefit of the exemption, the relevant site must be legitimate “news media”. “Fake news” sites would not be covered. Potential difficulties in prosecuting instigators of “fake news” are more likely to relate to identifying the instigator against which to take action. The Electoral Commission would refer such a matter to the Police for investigation.

Out of Scope

Work underway to address these issues

The Electoral Commission

13. Since the US Presidential election, Facebook, Google and Twitter have made changes to their systems and processes for election material. In the US, EU, UK, Canada and some other countries, Facebook has introduced an authorisation process that includes:
 - 12.1 labelling ads as a ‘political ad’ with information showing who paid for it
 - 12.2 establishing a searchable database of political advertisements that allows the public to see what advertisements a campaigner has taken out, how much has been spent and the audience it reached (number, age, location and gender)
 - 12.3 requiring verification that advertisers running ads related to political campaigns and certain political issues are in country by requiring them to submit government-issued ID and have a physical mailing address.
14. Here in New Zealand, the Electoral Commission has enhanced its approach to security for General Election 2020. This includes working with social media platforms, including Facebook, to achieve commitments to improved transparency.
15. The Commission also intends to extend the notion of security concern to include the integrity of information that the public relies upon. It will provide information for voters about how to be alert to misinformation, how to check sources, and where people can complain about content (including online content).

Justice Committee inquiry

16. At my request, as part of its inquiry into the 2017 General Election, the Justice Committee is looking into the risk of foreign interference to our democracy. Its Terms of Reference include examining the risk that political campaigns on social media can be made to appear as though they are domestic but are in fact created or driven by foreign entities. I expect the Committee to make recommendations later this year.

Work underway in Government agencies

17. Misinformation impacts many areas (trust, political disengagement, traditional and digital media quality). Out of Scope
18. Considering disinformation and misinformation will also form part of the Ministry for Culture and Heritage and the Department of Internal Affairs' review of broader media settings. In February 2019, officials provided advice to the Minister for Broadcasting, Communications and Digital Media and the Minister of Internal Affairs setting out issues that have been identified with New Zealand's current media content regulatory regime and proposing comprehensive reforms. While the reforms are on hold while a response to address violent extremist material in the aftermath of the 15 March terror attacks is developed, s9(2)(f)(iv)

Potential law reform

19. Some overseas jurisdictions are considering the potential for additional regulatory steps if social media platforms do not respond voluntarily. Potential reforms could include new obligations on online content hosts, for example, making it an offence for organisations selling advertising space to knowingly accept foreign-funded election advertising in breach of electoral advertising rules.

s9(2)(f)(iv)

s9(2)(f)(iv)

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