



26 October 2022

Roger Brown

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Tēnā koe Roger

Official Information Act 1982 (OIA) request dated 10 September 2022 (ref OIA2223-0214)

Thank you for your OIA request dated 10 September 2022 to the Department of Internal Affairs (Department). You asked for the following information:

“1a) Did DIA recommend to Police that charges be laid against the 'Counterspin Media' cranks for posting a link to a website that allowed users who accessed that website to play a video that was later classified as objectionable by the Office of Film and Literature Classification?

1b) Did DIA recommend to Police that charges be laid against the 'Counterspin Media' cranks for posting a document that makes broadly similar claims to said video, which OFLC has confirmed is not, itself, classified as objectionable?

1c) Please provide all communications made with Police/Crown Solicitors prior to laying these charges, which seem questionably founded to say the least.

2a) The Films, Videos, and Publications Classification Act 1993 provides a very clear definition of the meaning of 'distribute' in the context of the offenses with which the cranks have been charged. It is very obvious that the act only covers the actual electronic transmission of objectionable publications, whether on its own (publishing/hosting objectionable publications yourself on your own website) or as part of a wider set of material (publishing/hosting a website which includes offensive material as a subset of the content of a web page, or embedded on such). Please provide any documents relevant to how the DIA reinterprets the Act in the context of publications on the World Wide Web.

2b) Does DIA consider linking (providing an internet location that a user might choose to visit) to content that has been classified as objectionable to constitute 'distributing' objectionable publications?

2c) Does DIA consider linking to web pages that include embedded links to content that has been classified as objectionable to constitute 'distributing' objectionable publications?

2d) Does DIA consider linking to web pages that link to content that has been classified as objectionable to constitute 'distributing' objectionable publications?

2e) Does DIA consider linking to web pages that include embedded links to content that is classified as objectionable after the links are originally posted to constitute 'distributing' objectionable publications?

3) Please provide all communications with other agencies, besides Police, and ministers prior to these charges being laid.”

Response to your request

Our response to each part of your request is outlined below.

1(a) and (b) of your request

The Department did not recommend to Police that charges be laid against Counterspin Media.

1(c) Please provide all communications made with Police/Crown Solicitors prior to laying these charges, which seem questionably founded to say the least.

We found **51** documents within scope of part 1(c) of your request. Of these documents, we are releasing **22** of those documents to you in part and those documents are attached to this letter.

To the extent specified in the 22 documents that are released in part, we are withholding some information under section 6(c) of the OIA. In particular, the making available of the redacted information in question would be likely to prejudice the maintenance of the law, including the prevention, investigation and detection of offences, and the right to a fair trial.

In these 22 documents, some information is necessary to withhold under section 9(2)(a) to protect the privacy of officials within the Department and the Police. In addition, email addresses of certain officials have also been withheld under section 9(2)(g)(ii) to protect officials from improper pressure and harassment in order to maintain the effective conduct of public affairs. The withholding of this information is not outweighed by other public interest considerations which render it desirable to make this information available. Therefore, sections 9(2)(a) and 9(2)(g)(ii) constitute good reasons for withholding in this particular case.

All other documents within scope of your request are withheld in full under section 6(c) of the OIA as their disclosure could prejudice the upcoming proceedings concerning the prosecution of Mr Alp and Ms Spierer of Counterspin Media.

2(a) to (e) of your request

We do not hold any documents relevant to the interpretation of the Act for the matters you have raised in parts 2(a) to (e) of your request. These parts of your request are refused under section 18(e) of the OIA.

Please note that section 122 of the Films, Videos and Publications Classification Act 1993 sets out the meaning of 'distribute' in sections 123 to 132 of that Act. A copy of this section is publicly available below:

<https://www.legislation.govt.nz/act/public/1993/0094/latest/DLM314126.html>

3) Please provide all communications with other agencies, besides Police, and ministers prior to these charges being laid.

There are 4 documents within scope of part 3 of your request, three of which are withheld in full under section 6(c) of the OIA. We are making available one document within scope of this part of your request (see Document 42), which is attached to this letter.

Some information within Document 42 is withheld under sections 6(c), 9(2)(a) and 9(2)(g)(ii) of the OIA. The withholding of information under sections 9(2)(a) and 9(2)(g)(ii) is not outweighed by other public interest considerations which render it desirable to make this information available. Therefore, sections 9(2)(a) and 9(2)(g)(ii) constitute good reasons for withholding in this particular case.

We did not locate any emails or other correspondence with the Minister of Internal Affairs prior to the charges being laid against Counterspin Media. Accordingly, this aspect of part 3 of your request is refused under section 18(e) of the OIA.

Future review of information

Once the matters concerning Counterspin Media are fully resolved through the Courts, we are willing to reconsider the redacted information within scope of your request to decide on what information could be made available.

Access to the Ombudsman

If you are dissatisfied with our decision on your request for information, you have the right, under section 28 of the OIA, to make a complaint to the Office of the Ombudsman. The Office of the Ombudsman can be contacted by phone on 0800 802 602, via post at PO Box 10152 Wellington, or via email to info@ombudsman.parliament.nz.

Ngā mihi

A handwritten signature in black ink, appearing to be 'JM', with a long horizontal line extending to the right.

Jared Mullen

Director Digital Safety