



4 March 2016

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Alex Harris
Fyi-request-3322-75b04740@requests.fyi.org.nz

#### Dear Alex Harris

I refer to your email of 4 November 2015 in which you request the following under the Official Information Act 1982 (OIA):

"...Any advice or internal briefing from the last five years about the possibility of a visit by a US warship..."

Attached are the documents relevant to your request. Some portions of the documents are withheld under the following sections of the OIA:

- 6(a): to avoid prejudicing the international relations of the new Zealand Government;
- 6(b): to protect the passing of information from another government on a confidential basis;
- 9(2)(a): to protect individuals' privacy;
- 9(2)(f)(iv): to protect the confidentiality of advice tendered by Ministers of the Crown and Officials; and
- 9(2)(h): to maintain legal professional privilege.

Some documents are withheld in full under the following sections of the OIA:

- 6(a): to avoid prejudicing the international relations of the new Zealand Government;
- 6(b): to protect the passing of information from another government on a confidential basis; and
- 9(2)(h): to maintain legal professional privilege.

Where the information has been withheld under section 9 of the OIA, no public interest in releasing the withheld information has been identified that would be sufficient to override the reasons for withholding it.

You have the right under section 28(3) of the OIA to seek a review of this response by the Ombudsman.

Yours sincerely

Joana Johnston

for Secretary of Foreign Affairs and Trade



#### [If asked]

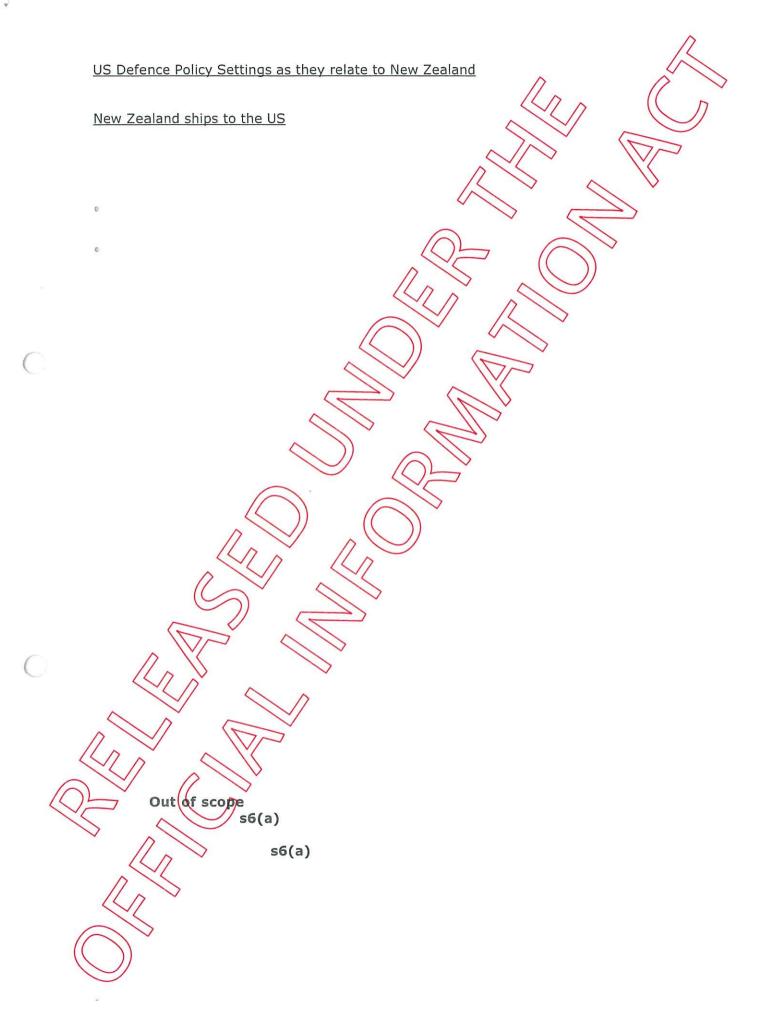
- The PM has stated publicly that he would welcome a US ship visit to New Zealand.
- There has been no change to New Zealand's 1987 anti-nuclear legislation. In fact our existing legislation is not an impediment to a ship visit.
- Since 2008, ships from a wide range of countries have visited New Zealand. This includes vessels from China, the UK and France, which are all nuclear powers, have visited New Zealand.

#### [If asked]

- The New Zealand Navy is commemorating its 75th Anniversary in 2016.
- It is standard practice for navies from a wide range of nations to be invited to participate in appropriate commemorative activities. The nature of the US involvement in the commemorations is yet to be determined.

#### fif needed

- Invitations have been issued to over 30 nations to participate in the 75<sup>th</sup> Anniversary and naval fleet review.
- We will not be disclosing the nationalities of the visiting ships until closer to the time when the full list of participants is confirmed.





New Zealand's nuclear free legislation does not prevent visits by naval vessels including from countries which are nuclear weapons states (we receive regular visits from UK, Chinese and French ships).



- Any visit would be against the background of New Zealand law as it stands; ie there is no appetite in New Zealand for amending the nuclear-free legislation (the New Zealand Nuclear Free Zone Disarmament and Arms Control Act 1987).
- The process that would apply is the same that applies to the visit of any naval vessel from any country. The full process is set out in the annex to this paper. In brief, the Minister of Foreign Affairs, on the basis of advice from the Ministry of Foreign Affairs and Trade, provides a recommendation to the Prime Minister on whether the vessel is nuclear powered and on whether the Prime Minister can be satisfied that the vessel is not carrying nuclear weapons.
- The process is a New Zealand process and does not require foreign governments to provide confirmation that their ships are not nuclear armed or powered.

Ministers may also wish to bear in mind the following:





#### Annex: Process for granting approval for visit by foreign warship.

## What does the Act say?

The New Zealand Nuclear Free Zone, Disarmament and Arms Control Act (1987) prohibits entry into New Zealand's internal waters (ie ports) of any ship that is carrying a nuclear explosive device or is nuclear powered. Sections 9, 10 and 11 of the Act set out the essential provisions:

- Section 9(2): The Prime Minister may only grant approval for entry into the internal waters of New Zealand by foreign warships if the Prime Minister is satisfied that the warships will not be carrying any nuclear explosive device upon their entry into the internal waters of New Zealand.
- Section 9(1): When the Prime Minister is considering whether to grant approval to the entry of foreign warships into the internal waters of New Zealand, the Prime Minister shall have regard to all relevant information and advice that may be available including information and advice concerning the strategic and security interests of New Zealand.
- Section 11: Entry into the internal waters of New Zealand by any ship whose propulsion is wholly or partly dependent on nuclear power is prohibited.

Under section 2, a "foreign warship" is any ship which:

- (a) belongs to the armed forces of a state other than New Zealand; and
- (b) bears the external marks that distinguishes ships of that state's nationality; and
- (c) Is under the command of an officer duly commissioned by the Government of that state; and
- (d) Is manned by a crew upder regular armed forces discipline.

#### What is the process?

Any request for a port visit by a naval vessel from any country is handled as follows:

- a standard request for diplomatic clearance is made to the Ministry of Foreign Affairs and Trade (MFAT)
- MEAT prepares a draft recommendation for the Minister of Foreign Affairs to send to the Prime Minister on whether the vessel is nuclear powered and on whether the Prime Minister can be satisfied that the vessel is not carrying nuclear weapons.

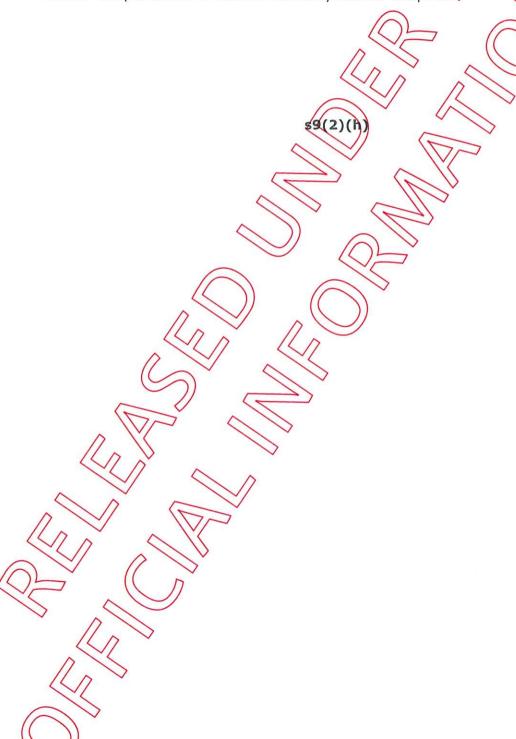
If the vessel is not nuclear powered and if the Prime Minister is satisfied that the vessel is not carrying a nuclear weapon, approval is granted to the visit and MFAT issues a diplomatic note to the relevant Embassy authorising entry into New Zealand.

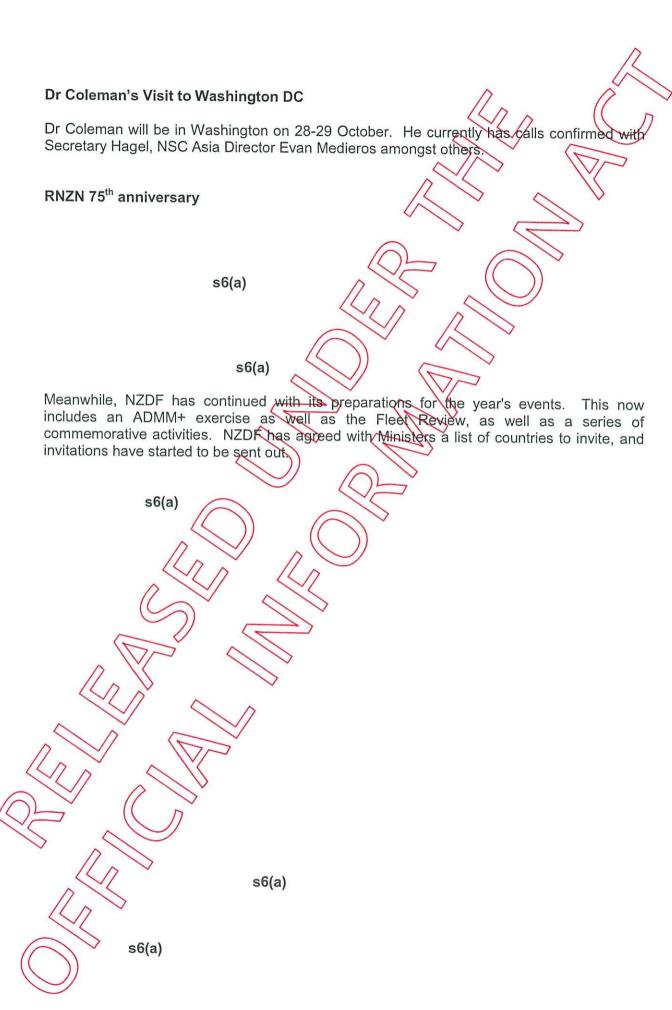
## What is the basis of the assessment?

As directed by the Act, the advice to the Prime Minister on whether he or she can be satisfied that a vessel is not carrying nuclear weapons is based on "all relevant

information". For the most part, this is public information. Classified sources can sometimes be used to corroborate public information.

Information on specific ships and aircraft is given in various reference books. There are various publications on countries' nuclear holdings. Additionally, there are publicly available nuclear doctrines and official statements from nuclear weapons states on weapons holdings and dispositions, including the 1991 US Presidential directive on the removal of tactical nuclear weapons from US Navy surface vessels, attack submarines and naval aircraft. Regard is also had to the certification requirements applied by nuclear weapon states to vessels that carry nuclear weapons.





s6(a)

We will ensure that Dr Coleman is briefed explain the New Zealand settings and processes as follows on an 'if asked' basis:

Any visit would be against the background of New Zealand law as it stands; ie there is no appetite in New Zealand for amending the nuclear free legislation (the New Zealand Nuclear Free Zone Disarrhament and Arms Control Act 1987).

The process that would apply is the same that applies to the visit of any naval vessel from any country. In brief, the Minister of Foreign Affairs, on the basis of advice from the Ministry of Foreign Affairs and Trade, provides a recommendation to the Prime Minister on whether the vessel is nuclear powered and on whether the Prime Minister can be satisfied that the vessel is not carrying nuclear weapons.

The process is a New Zealand process and does not require foreign governments to provide confirmation that their ships are not nuclear armed or powered.





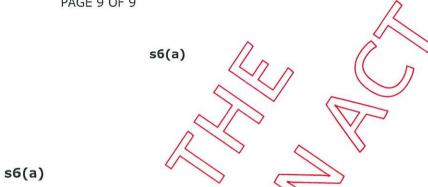
9. The New Zealand process for granting permission for a United States Navy or Coastguard (also covered by the definition of a foreign warship under the Act) vessel to enter the internal waters of New Zealand is well established. At its core it involves a New Zealand determination that the vessel (and any embarked helicopters) will not be ruglear powered or carry any nuclear explosive device. The same process is used for all foreign naval ship visits, including those from other nuclear-capable countries.

10. It is the same process that is used for visits of military aircraft.

s6(a)



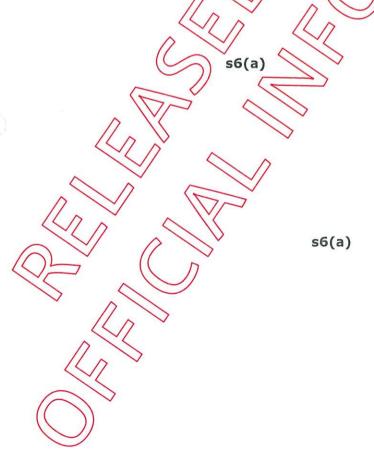
s6(a)



Set out below are the key elements in the legal process to be considered in the event of a proposed visit by a United States' naval ship:

- Any visit would be against the background of New Zealand law as it stands; i.e. there is no appetite in New Zealand for amending the fuclear free legislation (the New Zealand Nuclear Free Zone Disarmament and Arms Control Act 1987).
- The process that would apply is the same that applies to the visit of any naval vessel from any country. In brief, the Minister of Foreign Affairs, on the basis of advice from the Ministry of Foreign Affairs and Trade, provides a recommendation to the Prime Minister on whether the vessel is nuclear powered and on whether the Prime Minister can be satisfied that the vessel is not carrying nuclear weapons.
- The process is a New Zealand process and does not require foreign governments to provide confirmation that their ships are not nuclear armed or powered.

The Nuclear Free legislation applies equally to military aircraft as well as naval vessels.



#### Cleared Media lines for

s9(2)(a) Media Enquiry 29 October 2015

The New Zealand Navy is commemorating its 75th Anniversary next year. This includes an International Naval Review in November 2016. It is common practice to invite a large number of navies to participate in such commemorative activities.

Over 30 other nations have been invited to attend the review, including the US. This reflects the good bilateral relationship we have with the US.

The US is considering the invitation. We do not expect to receive decisions about how invitees will be represented until closer to the time.



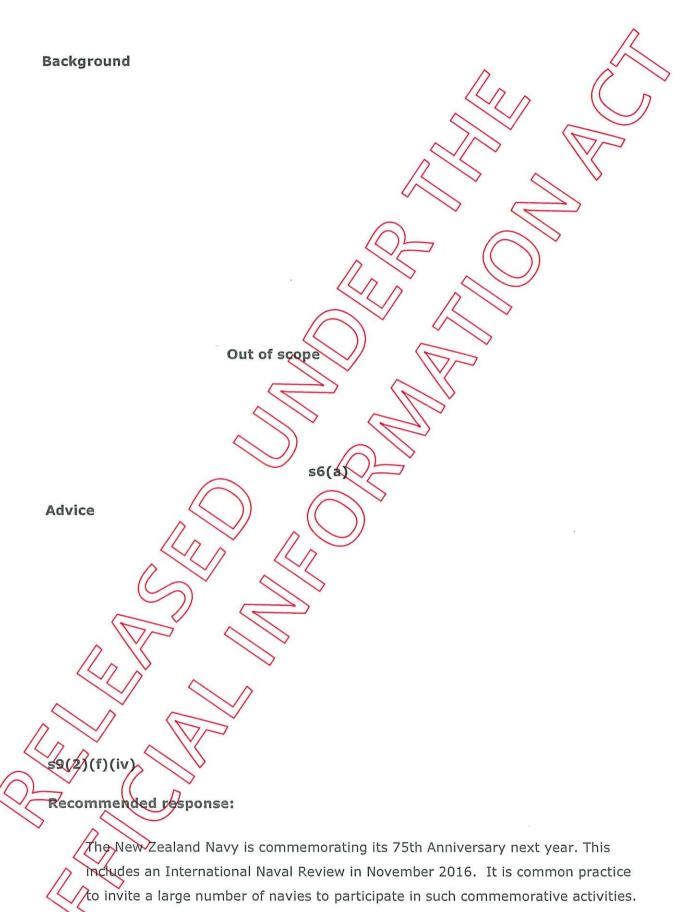
Since 2008, ships from a wide range of countries have visited New Zealand. This
includes vessels from China, the UK and France, which are all nuclear powers, have
visited New Zealand.

## [If asked]

- The New Zealand Navy is commemorating its 75th Approversary in 2016.
- It is standard practice for navies from a wide range of nations to be invited to participate in appropriate commemorative activities. The nature of the US involvement in the commemorations is yet to be determined.

## [If needed]

- Invitations have been issued to over 30 nations to participate in the 75<sup>th</sup> Anniversary and naval fleet review.
- We will not be disclosing the nationalities of the visiting ships until closer to the time when the full list of participants is confirmed.



Over 30 other nations have been invited to attend the review, including the US. This reflects the good bilateral relationship we have with the US.

The US is considering the invitation. We do not expect to receive a decision about how the US will be represented until closer to the time.

It is not appropriate for officials to give an on-camera interview. We recommend that MFAT and NZDF respond with the same agreed talking points above.

Andrea Smith Deputy Secretary Ministry of Foreign Affairs and Trade

28 October 2015

Pages 1-7 are withheld in full under Our public line, as articulated by the Prime Minister, has been that we are happy with current arrangements and policy settings, and we focus on the large space we have for cooperation in defence matters. S6(a).

A United States naval vessel has not visited New Zealand since the ANZUS rift nearly 30 years ago. Background 1. The New Zealand-United States defence relationship has had restrictions placed on they the United States (through a Presidential Directive) since the ANZUS fift nearly 30 years ago. United States defence policy settings towards New Zealand 3. During his visit in 2012, the US Secretary of Defense Leon Paretta, announced a further shift of US defence policy towards New Zealand. This resulted in the removal of the remaining restrictions on formal military to military talks and allowed New Zealand ships to visit US military ports, via a waiver, on a case by case basis. Under this waiver process, New Zealand naval ships have docked twice at US naval ports (once in Guard in 2013 and once at Pearl Harbor in 2014). The practice of formal annual military to military talks is also now embedded. The legal framework New Zopland's nuclear free regislation does not prevent visits by naval vessels including from countries which are nuclear weapons states (we receive regular visits from United Kingdom, Chinese and Rrench ships). 56(a)

56(a)

- 9. Set out below are the key elements in the legal process to be considered in the event of a proposed visit by a United States' naval ship:
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  - The process is a New Zealand process and does not require foreign governments to provide confirmation that their ships are not nuclear armed or powered.
- 10. The Nuclear Free legislation applies equally to military aircraft as well as naval vessels.

The clearance process for a vessel will be exactly the same process that the United States has already gone through for aircraft.

11.

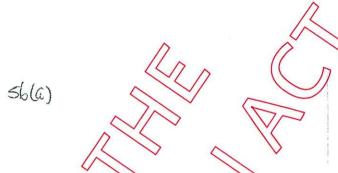
Sh(a)

Americas Division
Ministry of Foreign Affairs and Trade
November 2014

156(a)



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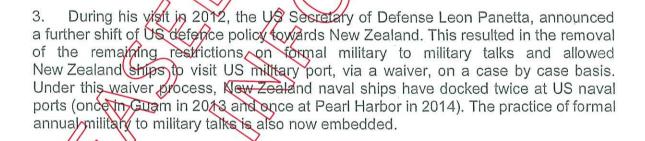


A United States naval vessel has not visited New Zealand since the ANZUS rift nearly 30 years ago.

# Background

1. The New Zealand-United States defence relationship has had restrictions placed on it by the United States (through a Presidential Directive) since the ANZUS rift nearly 30 years ago.

United States defence policy settings towards New Zealand





sb(a).

## The legal framework

7. New Zealand's nuclear free legislation does not prevent visits by naval vessels including from countries which are nuclear weapons states we receive regular visits from United Kingdom, Chinese and French ships).



- event of a proposed visit by a United States' naval ship:
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56(a)

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56(6) Americas Division Ministry of Foreign Affairs and Trade November 2014 4