



NEW ZEALAND
FOREIGN AFFAIRS & TRADE



Ministry of Foreign Affairs and Trade
Wellington

4 March 2016

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Private Bag 18-901
Wellington 5045
New Zealand

Alex Harris
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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

A handwritten signature in blue ink, appearing to read 'Joana Johnston', with a stylized flourish at the end.

Joana Johnston
for Secretary of Foreign Affairs and Trade

Talking Points on New Zealand-US relationship

Out of scope

[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.

[If needed]

- Invitations have been issued to over 30 nations to participate in the 75th 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.

US Defence Policy Settings as they relate to New Zealand

New Zealand ships to the US

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Out of scope

s6(a)

s6(a)

s6(a)

- 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).

s6(a)

s6(a)

- 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:

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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 under 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)
- MFAT 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.

§9(2)(h)

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Dr Coleman's Visit to Washington DC

Dr Coleman will be in Washington on 28-29 October. He currently has calls confirmed with Secretary Hagel, NSC Asia Director Evan Medieros amongst others.

RNZN 75th anniversary

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Meanwhile, NZDF has continued with its preparations for the year's events. This now includes an ADMM+ exercise as well as the Fleet Review, as well as a series of commemorative activities. NZDF has agreed with Ministers a list of countries to invite, and invitations have started to be sent out.

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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 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.

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NEW ZEALAND
FOREIGN AFFAIRS & TRADE



21 November 2014

Minister of Foreign Affairs

For action by 28 November 2014

s6(a)

Recommended referrals

Minister of Defence	For concurrence by	5 December 2014
Prime Minister	For concurrence by	5 December 2014

Contact details

NAME	ROLE	DIVISION	WORK PHONE	MOBILE PHONE
Andrea Smith	Deputy Secretary	Americas and Asia Group		
Jane Coombs	Divisional Manager	Americas Division		

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Minister's Office comments

Signed / Referred

Date: ____ / ____ / ____

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Key points

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- The New Zealand process under the nuclear free zone legislation for approving foreign warship visits is well-established.

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Recommendations

It is recommended that you:

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Yes / No

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Andrea Smith
for Secretary of Foreign Affairs and Trade

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Report

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Background

4. The United States' restrictions on the United States – New Zealand relationship have been progressively lifted since 2010.

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Process

New Zealand

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 nuclear 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.

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Pages 5 to 7 are withheld in full under s6(a)

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ANNEX 1:

Out of scope

The New Zealand legal framework

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).

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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 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. 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.

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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.

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From: SMITH, Andrea (DS AAG)
Sent: Monday, 12 October 2015 5:57 p.m.
To: (Inet); **s9(2)(a) P/SEC MFA**
SEC MFA
Cc: BUCHANAN, Felicity (AMER); BARRINGTON, Brook (CEO);
(ESD) **s9(2)(a)**
Subject: **s9(2)(a)**

(Inet) **s9(2)(a) PRESS**

(AMER);

s9(2)(a) P/SEC MFA and PRESS SEC MFA

As discussed, attached and below are media points from the Ministry to support any Ministerial engagement with **s9(2)(a)**

Kind regards
Andrea

Talking Points on New Zealand-US relationship

Out of Scope

[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.

[If needed]

- Invitations have been issued to over 30 nations to participate in the 75th 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.

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Background

Out of scope

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Advice

s9(2)(f)(iv)

Recommended response:

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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

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Pages 1-7 are withheld in full under
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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.

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

Background

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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

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3. During his visit in 2012, the US Secretary of Defense Leon Panetta, 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 Guam in 2013 and once at Pearl Harbor in 2014). The practice of formal annual military to military talks is also now embedded.

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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).

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s6(a)

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- 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. 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.

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.

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12.

Americas Division
Ministry of Foreign Affairs and Trade
November 2014

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sb(a)

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sb(a)

sb(a)

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Americas Division
Ministry of Foreign Affairs and Trade
November 2014

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