Chapter Two – Scope of the Acts

Q1 Do you agree that the schedules to each Act (OIA and LGOIMA) should list every agency that they cover?

Q2 Do you agree that the schedules to the OIA and LGOIMA should be examined to eliminate anomalies and ensure that all relevant bodies are included?

Q3 Do you agree that SOEs and other crown entity companies should remain within the scope of the OIA?

Q4 Do you agree that council controlled organisations should remain within the scope of the LGOIMA?

Q5 Do you agree that the Parliamentary Counsel Office should be brought within the scope of the OIA?

Q6 Do you agree that the OIA should specify what information relating to the operation of the Courts is covered by the Act?

CR: As noted at 2.3, the question of accessibility to the legislation is key in the consideration of this section, in terms of ensuring the scope of what agencies are covered by the legislation is clear to both the public and practitioners, and also in ensuring the appropriate agencies are covered. With this in mind, we support the suggestions made in questions 1 to six.

Q7 Should any further categories of information be expressly excluded from the OIA and the LGOIMA?

CR: To introduce a system of categories of exempt information in terms of informal or third party information would derogate from the case by case approach, and so we would not support this

CR: However, we do suggest that more clarity regarding the relationship with the provisions of other enactments which concern the release of information could be achieved via an amendment to the definition of official information to expressly exclude information heed by the agency subject to information release / withholding requirements of another enactment. This would have the benefit of ensuring practitioners turn their mind to whether the information inconsideration is subject to overriding provisions contained in another enactment as this is currently 'hidden' in the s44 savings.

Chapter Three – Decision Making

Q8 Do you agree that the OIA and the LGOIMA should continue to be based on a case-by-case model?

Q9 Do you agree that more clarity and certainty about the official information withholding grounds can be gained through enhanced guidance rather than through prescriptive rules, redrafting the grounds or prescribing what information should be released in regulations?

Q10 Do you agree there should be a compilation, analysis of, and commentary on, the casenotes of the Ombudsmen?

Q11 Do you agree there should be greater access to, and reliance on, the casenotes as precedents?

Q12 Do you agree there should be a reformulation of the guidelines with greater use of case examples?

Q13 Do you agree there should be a dedicated and accessible official information website?

CR: Whilst from a practitioner's perspective, it may well be 'easier' to deal with requests if there were prescriptive rules in place, overall we support the continuance of the current case by case model as this allows each request to be decided based on its merits and avoids excessive rigidity.

CR: Given that the case by case model is likely to continue, we would welcome enhanced guidance in all the ways suggested. As well as assisting practitioners, this would hopefully increase public confidence buy engendering more confidence in the consistency of decisions.

Chapter Four – Protecting Good Government [Includes Free and Frank expression of opinion ground]

Q14 Do you agree that the "good government" withholding grounds should be redrafted?

Q15 What are your views on the proposed reformulated provisions relating to the "good government" grounds?

CR; No comment on the constitutional conventions provisions

CR: We agree that the 'free and frank expression' ground would benefit from redrafting, as it currently may not offer the level of protection that it is seeking if applied narrowly to only cover 'opinion' rather than 'advice'

CR: However, we question what is meant by "similar" in the suggested wording and suggest that this be removed as its interpretation could lead to more uncertainly. For example, one of the pertinent questions to be asked is whether the release of the information would inhibit that officer from being so free and frank in the expression of opinions or advice in the future, regardless of whether it is on the same subject matter

Chapter Five – Protecting Commercial Interests

Q16 Do you think the commercial withholding ground should continue to be confined to situations where the purpose is to make a profit?

CR: No – there are legitimate situations where there is a commercial interest but motivation is not profit

Q17 If you favour a broader interpretation, should there be a statutory amendment to clarify when the commercial withholding ground applies?

CR: Yes – define the term 'commercial' in section 2. Failing that, clear guidelines are required

Q18 Do you think the trade secrets and confidentiality withholding grounds should be amended for clarification?

CR: Agree that the confidentiality withholding ground should be extended to cover information generated by the agency rather than solely information supplied to it by a third party.

Q19 Do you agree that the official information legislation should continue to apply to information in which intellectual property is held by a third party?

CR: Yes. To do otherwise would introduce an exempt category of information, which goes against the case by case model, plus would allow a form of commercial interest to have precedence of the public interest. Echo the judgment in Wyatt that there is some responsibility on the part of the provider of the information to make themselves aware of the official information obligations of the agency, and chose whether or not to contract with them or provide information accordingly.

Q20 Do you have any comment on the application of the OIA to research work, particularly that commissioned by third parties?

Q21 Do you think the public interest factors relevant to disclosure of commercial information should be included in guidelines or in the legislation?

CR: We are cognisant of the LGC concerns that such lists may be treated as exhaustive. However, given that this is the type of information that we received most pressure to withhold, a clear statutory mandate on what needs to be considered would assist.

Q22 Do you experience any other problems with the commercial withholding grounds?

Chapter Six – Protecting Privacy

Q23 Which option do you support for improving the privacy withholding ground:

- *Option 1 – guidance only, or;*
- *Option 2 – an "unreasonable disclosure of information" amendment while retaining the public interest balancing test, or;*
- *Option 3 – an amendment to align with principle 11 of the Privacy Act 1993 while retaining the public interest test, or;*
- *Option 4 – any other solutions?*

CR: Option Three - the "seamless code" approach is preferred. As noted, in practice, many agencies us the privacy principle 11 as a starting point to asses whether there is a privacy interest involved, and this approach simply codifies and clarifies this. Rather than being confusing, we suggest that this would actually assist agencies by having all the relevant provisions relating to the release of information on request to a third party

contained in the same piece of legislation. The concerns about the public interest not being considered have been addressed by the proposal to have a separate section requiring the public interest to be considered, and the requirement to communicate this to the requester.

CR: Many practitioners of the official information legislation are likely to also be Privacy Officers, so there is a real opportunity for collaborative training of this group pf people between the Ombudsmen's office (or whichever body is given responsibility for education) and the Privacy Commissioner's' Office.

Q24 Do you think there should be amendments to the Acts in relation to the privacy interests of:

(a) deceased persons?
(b) children?

Q25 Do you have any views on public sector agencies using the OIA to gather personal information about individuals?

Chapter Seven – Other Withholding Grounds

Q26 Do you agree that no withholding grounds should be moved between the conclusive and non-conclusive withholding provisions in either the OIA or LGOIMA?

CR: We agree that there is little to be gained by moving any grounds between the two types of provision

Q27 Do you think there should be new withholding grounds to cover:

(a) harassment;
(b) the protection of cultural values;
(c) anything else?

a) CR: We do not think that a statutory amendment is requited to protect all cases of harassment, however clear guidance on the appropriateness of that use of the privacy withholding ground would be appreciated.

b) CR: In recognition of the fact that New Zealand is moving from being a bi-cultural to multi cultural population, we would welcome some broadening of the scope of the current ground to encompass wording similar to the NZGOAL exception wording.

Q28 Do you agree that the "will soon be publicly available" ground should be amended as proposed?

CR: Agree that this provision should not be used by agencies to intentionally delay the release of official information, and suggest that's its use will decrease given the decreasing 'administrative burden' in releasing information where it is held electronically, and can be transmitted without the need to photocopy etc. We support the proposed amendment, but no doubt there will still be debate regarding what it s "a very short" timeframe – perhaps again this is something the Ombudsmen could provide guidance on (presumably it will relate the resources of the agency and the nature of its impending release).

Q29 Do you agree that there should be a new non-conclusive withholding ground for information supplied in the course of an investigation?

CR: We agree that the interest agencies are seeking to protect in using this ground to withhold information obtained the course of an investigation is legitimate. We also agree however, that eth "maintenance of the law' ground is more properly used for where come form of criminal or civil proceeding is in contemplation. A new ground to cover the information supplied in the course of an investigation would remove the need to 'stretch' the current ground

Q30 Do you have any comments on, or suggestions about, the "maintenance of law" conclusive withholding ground?

CR: The most common use of the 'maintenance of the law' ground for us is where information is requested regarding either a current prosecution or where an offence is under investigation, pending a decision whether to prosecute.

CR: The introduction of a codified criminal disclosure regime under the Criminal Disclosure Act 2008 (CDA) has provided more certainty in responding these types of requests, as the CDA clarified that the appropriate avenue for the defendant or a person acting on their behalf to seek information relevant to the prosecution is via the criminal disclosure regime rather than the official information legislation.

CR: However, there are limitations to the assistance the CDA has provided as;

- It only governs the disclosure of information considered to be 'relevant' to the prosecution. It can therefore be the case that the same requestor has two active information requests at any give time – one for 'relevant' information governed by the disclosure regime and one for historical / peripheral information which may not be 'relevant' in terms of the of the CDA, but which they are nonetheless entitled to request. This information then needs to be assessed under the LGOIMA withholding provisions, which can impact in the judicial process in terms of timeframes.
- There is still a 'grey' area where prosecution is being considered but charges have not yet been laid. In these situations, the maintenance of the law ground will need to continue to be relied upon.
- The situation where a third party requests information relating to a current prosecution is also not covered by the CDA, and so LGOIMA provisions still apply.

Chapter Eight – The Public Interest Test

Q31 Do you agree that the Acts should not include a codified list of public interest factors? If you disagree, what public interest factors do you suggest should be included?

CR: We agree with the drawbacks to this approach identified by the Commission, notably that any such list is likely to be considered exhaustive and so agree that

Q32 Can you suggest any statutory amendment which would clarify what "public interest" means and how it should be applied?

CR: As noted at 8.3 and 8.12, the phrase "public interest" is widely used in legislation but no statutory definition exists. We acknowledge the Commission's comment that it is

doubtful whether it is possible to frame a "simple workable" statutory definition but do feel that assistance is required help practitioners in applying the test and suggest that the most appropriate vehicle for this through enhanced guidelines, and precedent.

Q33 Do you think the public interest test should be contained in a distinct and separate provision?

CR: Yes, to highlight the requirement to go on and consider any public interest considerations favouring release where one of the Section 7 withholding grounds has been found to exist.

Q34 Do you think the Acts should include a requirement for agencies to confirm they have considered the public interest when withholding information and also indicate what public interest grounds they considered?

CR: Yes, this would have the added benefit of assuring requesters that the act has been appropriately applied.

Chapter Nine – Requests-Some Problems

Q35 Do you agree that the phrase "due particularity" should be redrafted in more detail to make it clearer?

CR: We agree with the proposed amendment as it will assist in dialogue with requesters as it is a more useful starting point for consultation than the current wording, which itself requires some level of interpretation and explanation.

Q36 Do you agree that agencies should be required to consult with requesters in the case of requests for large amounts of information?

MB: No, it should remain a matter of discretion. Sometimes it will be necessary, other times not. Mandating it promotes procedural inefficiency. In any event, there will be problems in defining what "large" means in this context.

CR: We feel this is adequately covered by the current requirement to consider whether consulting with the requester would be of assistance (s17B) LGOIMA). There may be examples where the request is specified with due particularity, but still involves a "large" volume of information, but is able to able to be responded to without the need to for looking to refine charge. For example, monitoring information for resource consent files is mainly now held electronically so a large volume can be provided with minimal administrative burden.

Q37 Do you agree the Acts should clarify that the 20 working day limit for requests delayed by lack of particularity should start when the request has been accepted?

CR: Agree

Q38 Do you agree that substantial time spent in "review" and "assessment" of material should be taken into account in assessing whether material can be released, and that the Acts should be amended to make that clear?

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CR: Agree – this can actually make up the bulk of the time spent in actioning a request and it is appropriate that the actual amount of time spent responding to a request is reflected in any decision to refuse the request based on the substantial collation and research ground as well as any charging and/or extension of timeframe calculations.

CR: The wording of the Australian Freedom Of Information Act (Cth) s24 is a good model as it gives a realistic picture of what is involved for an agency in processing a request and includes not only the review & assessment and collation & research but also the time spend consulting with the requester and communicating a decision to them

Q39 Do you agree that "substantial" should be defined with reference to the size and resources of the agency considering the request?

CR: Yes – the key here is the extent to which responding to the request would interfere with the operations of that agency, which will depend on the extend of the agencies resources available at that time to deal with the request.

Q40 Do you have any other ideas about reasonable ways to deal with requests that require a substantial amount of time to process?

Q41 Do you agree it should be clarified that the past conduct of a requester can be taken into account in assessing whether a request is vexatious?

CR: Yes, this will often be the only basis on which an agency can make such a judgment.

Q42 Do you agree that the term "vexatious" should be defined in the Acts to include the element of bad faith?

CR: This is an appropriate test as looks at the reasonableness of the request and statutory definition will assist in removing any uncertainty as to its application

Q43 Do you agree that an agency should be able to decline a request for information if the same or substantially the same information has been provided, or refused, to that requester in the past?

CR: Where the information is time critical, the information requested may have changed overtime, and the reasons for a request to be refused may similarly be time critical, so the agency would need to consider the circumstances for the original response

Q44 Do you think that provision should be made for an agency to declare a requester "vexatious"? If so, how should such a system operate?

CR: Yes, as proposed in s9.37

Q45 Do you agree that, as at present, requesters should not be required to state the purpose for which they are requesting official information nor to provide their real name?

CR: Through experience we have found that many requestors are happy to disclose the reason for their request, particularly where the request has not been defined with due

particularity and we are having to consequently look to extend the timeframe / charge for he request. A basic tenant of freedom of information is that the reasons do not need to be given, but this makes the improper use ground effectively impossible to apply given that someone who is intending to us the information in this way is highly unlikely to disclose their reasons

Q46 Do you agree the Acts should state that requests can be oral or in writing, and that the requests do not need to refer to the relevant official information legislation?

CR: Definitely – this is a common misconception

Q47 Do you agree that more accessible guidance should be available for requesters?

CR: Clearer guidance for requesters will assist agencies in reducing the amount of time required in explaining our obligations and responsibilities and process

Chapter 10 – Processing Requests

Q48 Do you agree the 20 working day time limit should be retained for making a decision?

Yes

Q49 Do you agree that there should be express provision that the information must be released as soon as reasonably practicable after a decision to release is made?

CR: Yes – in practice we seek to make the information available within the 20 working days

Q50 Do you agree that, as at present, there should be no statutory requirement to acknowledge receipt of an official information request but this should be encouraged as best practice?

CR: this is good practice, and we mainly seek to acknowledge the requests which we know are going to ale slightly longer to action, as where a request can be answered promptly, it is an unnecessary administrative burden to also have to acknowledge the request. Suggest this is contained in the

Q51 Do you agree that 'complexity of the material being sought' should be a ground for extending the response time limit?

CR: absolutely. This is often one of the key factors that needs to be considered in determining whether a request can be responded to within the statutory timeframe

Q52 Do you agree there is no need for an express power to extend the response time limit by agreement?

CR: No – the agency is best placed to know what a reasonable extension of time is.

Q53 Do you agree the maximum extension time should continue to be flexible without a specific time limit set out in statute?

CR: Yes, this will depend entirely on the circumstances of eth request and resources of the agency available to respond to it.

Q54 Do you agree that handling urgent requests should continue to be dealt with by Ombudsmen guidelines and there is no need for further statutory provision?

CR: Agree – as noted, this will depend largely on the level of corporation between the agency and requester. Agree that failure to accord proper urgency to a request where the reasons have been given should be "undue delay" and subject to Ombudsman's review.

Q55 Do you agree there should be clearer guidelines about consultation with ministerial offices?

CR: NA

Q56 Do you agree there should not be any mandatory requirement to consult with third parties?

CR: Definitely – if this were to proceed there would need for a statutory definition of what constitutes a "significant third party interest" " The consultation to be undertaken is best agreed between the parties upon the receipt of the information

Q57 Do you agree there should be a requirement to give prior notice of release where there are significant third party interests at stake?

CR: No – as noted above, there will be difficulties in determining who is a significant third party. The proposed process will delay the response time for requester and place even further burden on agencies as the agency will not only need to make a decision on the request, but also communicate this to the third party, allow time for a response, consider that response and hen reply to the requester within the same timeframe as currently applies.

Q58 How long do you think the notice to third parties should be?

CR: See above

Q59 Do you agree there should be provision in the legislation to allow for partial transfers?

CR: Yes – this already happens in practice

Q60 Do you agree there is no need for further statutory provisions about transfer to ministers?

CR: N/A

Q61 Do you have any other comment about the transfer of requests to ministers?

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CR: N/A

Q62 Do you think that whether information is released in electronic form should continue to depend on the preference of the requester?

CR: Yes, and retainin the caveat that their preferred choice should only be mandatory if it doesn't impair efficient administration

Q63 Do you think the Acts should make specific provision for metadata, information in backup systems and information inaccessible without specialist expertise?

CR: Yes

Q64 Should hard copy costs ever be recoverable if requesters select hard copy over electronic supply of the information?

CR: Yes

Q65 Do you think that the official information legislation needs to make any further provision for agencies to place conditions on the re-use of information, or are the current provisions sufficient?

CR: As noted at 10.72, it is implicit only in the legislation that the agency may place conditions on the re-use f the information provided. We suggest that this would be better framed by an explicit provision

Q66 Do you agree there should be regulations laying down a clear charging framework for both the OIA and the LGOIMA?

CR: We would welcome the introduction of regulations for charging, as this is one of the most troublesome areas of the act to apply.

Q67 Do you have any comment as to what the framework should be and who should be responsible for recommending it?

CR: serious consideration needs to be given in the drafting of these to section 36 (e) and (f) of the RMA which allows a local authority to fix charges for *"providing information in respect of policies and plans and resource consents"*, and for the "supply of documents" so long as the decision making requirements of the Local Government Act 2002 are complied with. The opportunity needs be taken to clarify which charging regime takes precedence in the case of a request for official information which falls under the scope of charges made under the RMA.

Q68 Do you agree that the charging regime should also apply to political party requests for official information?

CR: Yes – it should apply across the board, but with the discretion to the agency to remit charges

Chapter Eleven – Complaints and Remedies

Q69 Do you agree that both the OIA and LGOIMA should set out the full procedures followed by the Ombudsmen in reviewing complaints?

Q70 Do you think the Acts provide sufficiently at present for failure by agencies to respond appropriately to urgent requests?

Q71 Do you agree with the existing situation where a person affected by the release of their information under the OIA or the LGOIMA cannot complain to the Ombudsman?

Q72 Do you agree there should be grounds to complain to the Ombudsmen if sufficient notice of release is not given to third parties when their interests are at stake?

Q73 Do you agree that a transfer complaint ground should be added to the OIA and the LGOIMA?

Q74 Do you think there should be any changes to the processes the Ombudsmen's follows in investigating complaints?

Q75 Do you agree that the Ombudsmen should be given a final power of decision when determining an official information request?

Q76 Do you agree that the veto power exercisable by Order in Council through the Cabinet in the OIA should be removed?

Q77 Do you agree that the veto power exercisable by a local authority in the LGOIMA should be removed?

Q78 If you believe the veto power should be retained for the OIA and LGOIMA, do you have any comment or suggestions about its operation?

Q79 Do you agree that judicial review is an appropriate safeguard in relation to the Ombudsmen's recommendations and there is no need to introduce a statutory right of appeal to the Court?

Q80 Do you agree that the public duty to comply with an Ombudsman's decision should be enforceable by the Solicitor-General?

Q81 Do you agree that the complaints process for Part 3 and 4 official information should be aligned with the complaints process under Part 2?

Q82 Do you agree that, rather than financial or penal sanctions, the Ombudsmen should have express statutory power to publicly draw attention to the conduct of an agency?

Q83 Should there be any further enforcement powers, such as exist in the United Kingdom?

Chapter Twelve – Proactive Disclosure

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Q84 Do you agree that the OIA should require each agency to publish on its website the information currently specified in section 20 of the OIA?

Q85 Do you think there should be any further mandatory categories of information subject to a proactive disclosure requirement in the OIA or LGOIMA?

Q86 Do you agree that the OIA and LGOIMA should require agencies to take all reasonably practicable steps to proactively release official information?

Q87 Should such a requirement apply to all central and local agencies covered by the OI legislation?

Q88 What contingent provision should the legislation make in case the "reasonably practicable steps" provision proves inadequate? For example, should there be a statutory review or regulation making powers relating to proactive release of information?

Q89 Do you think agencies should be required to have explicit publication schemes for the information they hold, as in other jurisdictions?

Q90 Do you agree that disclosure logs should not be mandatory?

Q91 Do you agree that section 48 of the OIA and section 41 of the LGOIMA which protect agencies from court proceedings should not apply to proactive release?

Chapter Thirteen – Oversight and Other Functions

Q92 Do you agree that the OIA and the LGOIMA should expressly include a function of providing advice and guidance to agencies and requesters?

Q93 Do you agree that the OIA and LGOIMA should include a function of promoting awareness and understanding and encouraging education and training?

Q94 Do you agree that an oversight agency should be required to monitor the operation of the OIA and LGO IMA, collect statistics on use, and report findings to Parliament annually?

Q95 Do you agree that agencies should be required to submit statistics relating to official information requests to the oversight body so as to facilitate this monitoring function?

Q96 Do you agree that an explicit audit function does not need to be included in the OIA or the LGOIMA?

Q97 Do you agree that the OIA and LGOIMA should enact an oversight function which includes monitoring the operation of the Acts, a policy function, a review function, and a promotion function?

Q98 Do you agree that the Ombudsmen should continue to receive and investigate complaints under the OIA and the LGOIMA?

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Q99 Do you agree that the Ombudsmen should be responsible for the provision of general guidance and advice?

Q100 What agency should be responsible for promoting awareness and understanding of the OIA and the LGO IMA and arranging for programmes of education and training for agencies subject to the Acts?

Q101 What agency should be responsible for administrative oversight of the OIA and the LGOIMA? What should be included in the oversight functions?

Q102 Do you think an Information Commissioner Office should be established in New Zealand? If so, what should its functions be?

Q103 If you think an Information Commissioner Office should be established, should it be standalone or part of another agency?

Chapter Fourteen – Local Government Official Information and Meetings Act 1987

Q104 Do you agree that the LGOIMA should be aligned with the OIA in terms of who can make requests and the purpose of the legislation?

Q105 Is the difference between the OIA and LGOIMA about the status of information held by contractors justified? Which version is to be preferred?

Chapter 15 – Other Issues

Q106 Do you agree that the official information legislation should be redrafted and re-enacted?

Q107 Do you agree that the OIA and the LGOIMA should remain as separate Acts?

Q108 Do you have any comment on the interaction between the PRA and the OI legislation? Are any statutory amendments required in your view?

Other matters that may be worth commenting on:

- The extent to which new technologies enable information to be manipulated and the implications of this – Jim P

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Chapter Six – Protecting Privacy

Q23 Which option do you support for improving the privacy withholding ground:

- *Option 1 – guidance only, or;*
- *Option 2 – an "unreasonable disclosure of information" amendment while retaining the public interest balancing test, or;*
- *Option 3 – an amendment to align with principle 11 of the Privacy Act 1993 while retaining the public interest test, or;*
- *Option 4 – any other solutions?*

SJ: I consider Option 3 to be the preferred approach. This will ensure consistency between LGOIMA and the Privacy Act. Agencies should already be familiar with the provisions of the Privacy Act anyway so I disagree that this will create further work by making people work with two pieces of legislation. Case notes from the Privacy Commissioner can then be applied in assessing the Principle 11 tests and then further guidance/case notes can be developed from the LGOIMA aspect regarding weighing up the public interest and when this overrides privacy.

Q24 Do you think there should be amendments to the Acts in relation to the privacy interests of:

(a) deceased persons?

SJ: It would be useful to follow the NSW approach and have a rule where people have been deceased for a certain number of years i.e. 30 years that they are excluded from protection under the privacy ground.

CG: I think that it would be useful to protect the privacy interests of the deceased with a time limit similar to NSW.

(b) children?

SJ: I do not think there needs to be a specific section in relation to this as children are already covered.

CG: I do not think that the additional factor needs to be incorporated as there is already a ground to protect the privacy of children.

Q25 Do you have any views on public sector agencies using the OIA to gather personal information about individuals?

SJ: There needs to be some rules around this to protect personal information.

CG: I agree that there should be rules around the public sector agencies using OIA for an information sharing initiative, as is already used in s109 of the Privacy Act for data matching purposes.

I would welcome further research on options or assist in clarifying ways in which government departments can work together with the sharing of information.

I guess similar to Australia where information that is held by government is valued and managed as a national strategic asset. If a framework was in place practical guidance for achieving the transfer of information across agency boundaries could be put in place. This could reduce costs of information collection and management, improve decision making for policy and improve accountability and transparency for citizens.

Chapter Seven – Other Withholding Grounds

Q26 Do you agree that no withholding grounds should be moved between the conclusive and non-conclusive withholding provisions in either the OIA or LGOIMA?
MB: Yes.

CG: No view.

Q27 Do you think there should be new withholding grounds to cover:
(a) harassment;
(b) the protection of cultural values;
(c) anything else?
MB: (a) No
(b) No
(c) No

CG: (a) No
(b) No
(c) Nothing else.

Q28 Do you agree that the "will soon be publicly available" ground should be amended as proposed?
MB: Yes
CG: No view.

.
Q29 Do you agree that there should be a new non-conclusive withholding ground for information supplied in the course of an investigation?
MB: No view.
CG: Yes, I agree that the section should be clarified to permit the withholding of information during an investigation. Then these acts would be in alignment with s16 of the Criminal Disclosure Act 2008.

Q30 Do you have any comments on, or suggestions about, the "maintenance of law" conclusive withholding ground?
MB: No view.
CG: In relation to cold cases it would be helpful to have clear guidelines available.

Perhaps, the wrong ground is being used as a withholding ground when s16 of the Criminal Disclosure Act 2008 is the correct withholding ground. This does not have any time exclusions, it simply states that communication dealing with matters relating to the conduct of the prosecution and is between the prosecutor and another agency may be a reason to withhold information.

I do not see a need to amend the statutory provision to deal with this situation, just an awareness that there is another act that provides for the withholding of information

Chapter Eleven – Complaints and Remedies

Q69 Do you agree that both the OIA and LGOIMA should set out the full procedures followed by the Ombudsmen in reviewing complaints?
CG: Yes

Q70 Do you think the Acts provide sufficiently at present for failure by agencies to respond appropriately to urgent requests?
CG: No

Q71 Do you agree with the existing situation where a person affected by the release of their information under the OIA or the LGOIMA cannot complain to the Ombudsman?
CG: No, where a person is affected by the release of their information under OIA or LGOIMA there should be the ability to make a complaint. The reverse argument may be that the authority checks the information disclosure to ensure that other acts are not breached.

Q72 Do you agree there should be grounds to complain to the Ombudsmen if sufficient notice of release is not given to third parties when their interests are at stake?
C: No view.

Q73 Do you agree that a transfer complaint ground should be added to the OIA and the LGOIMA?
CG: Yes.

Q74 Do you think there should be any changes to the processes the Ombudsmen's follows in investigating complaints?
CG: No view.

Q75 Do you agree that the Ombudsmen should be given a final power of decision when determining an official information request?
CG: No view.

Q76 Do you agree that the veto power exercisable by Order in Council through the Cabinet in the OIA should be removed?
CG: No view.

Q77 Do you agree that the veto power exercisable by a local authority in the LGOIMA should be removed?
CG: No view.

Q78 If you believe the veto power should be retained for the OIA and LGOIMA, do you have any comment or suggestions about its operation?
CG: No view.

Q79 Do you agree that judicial review is an appropriate safeguard in relation to the Ombudsmen's recommendations and there is no need to introduce a statutory right of appeal to the Court?
CG: No view.

Q80 Do you agree that the public duty to comply with an Ombudsman's decision should be enforceable by the Solicitor-General?
CG: No view.

Q81 Do you agree that the complaints process for Part 3 and 4 official information should be aligned with the complaints process under Part 2?
CG: No view.

Q82 Do you agree that, rather than financial or penal sanctions, the Ombudsmen should have express statutory power to publicly draw attention to the conduct of an agency?
CG: Yes.

Q83 Should there be any further enforcement powers, such as exist in the United Kingdom?
CG: No, I do not agree that there should be a range of sanctions as exist in the UK. I agree that the Ombudsmen should have an express statutory power to report publicly on the conduct of the agency. It would be too greater a step to move to the sanctions as they exist in the UK.