

Dear Ms Harris

Official Information Act request

I refer to your email of 30 July 2012 requesting a copy of the Ministry's submission to the Law Commission's review of the Official Information Legislation together with all drafts, advice, and internal communications (including emails) relating to that submission under the Official Information Act 1982.

The Ministry of Justice commented on the Law Commission's issues paper by letter dated 16 December 2010 and this is publicly available on the Law Commission's website at www.lawcom.govt.nz/publications, along with other submissions received by the Law Commission. This part of your request under the Official Information Act 1982 is formally declined under section 18(d) of the Act because the information is publicly available.

The documents listed in the attached schedule also fall within your request and are attached to this response.

The Ministry of Justice is responsible for preparing the Government response to the Law Commission report. The draft documents disclosed do not represent Government policy but reflect early thoughts within the Ministry on the issues raised during the Law Commission review. Policy development related to the Government response to the Law Commission report is separate from the Ministry's comments on the issues paper. The Ministry is developing the Government response to the report, and this is due to be tabled in Parliament in February 2013.

Some deletions have been made to the documents listed in the attached schedule as parts of some documents are out of scope of the request. The remaining deletions are made under section 9(2)(a) of the Official Information Act in order to protect the privacy of natural persons, under section 9(2)(ba)(i) in order to protect information which is subject to an obligation of confidence, and under section 9(2)(g)(i) in order to maintain the effective conduct of public affairs through the free and frank expression of opinions.

I am satisfied that there are no other public interest considerations that render it desirable to make the information available.

You have the right under section 28(3) of the Official Information Act to complain to the Ombudsman about the decision to refuse your request in part and the decision to withhold some of the information requested.

Yours sincerely

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

Jeff Orr

Acting Deputy Secretary, Policy Group

APPENDIX 1 – TABLE OF DOCUMENTS WITHIN SCOPE OF REQUEST

| Doc number | Document Description | Doc Date(s) | Status |
|-------------------|-----------------------------|-----------------------------------|--|
| 1. | Internal memorandum | 17 September 2010 | Deletions made pursuant to section 9(2)(ba) to protect information which is subject to an obligation of confidence and section 9(2)(g)(i) to protect the free and frank expression of opinions |
| 2. | Internal memorandum | 2 November 2010 | Deletions made as parts of the document are out of scope and pursuant to section 9(2)(g)(i) to protect the free and frank expression of opinions |
| 3. | File note | 12 January 2011 (refers to doc 2) | Deletions made pursuant to section 9(2)(a) to protect the privacy of natural persons |
| 4. | Internal memorandum | 1 December 2010 | Deletions made as parts of the document are out of scope and deletions made pursuant to section 9(2)(g)(i) to protect the free and frank expression of opinions |
| 5. | File note | 12 January 2011 (refers to doc 4) | Deletions made pursuant to section 9(2)(a) to protect the privacy of natural persons |



MEMORANDUM

To Jared Mullen, Deputy Secretary Policy
From Fiona Illingsworth, Manager, Constitutional Policy
cc Sarah Turner, Stuart Beresford, Emma Speight, Susan Howan
Date
Subject LAW COMMISSION: ISSUES PAPER ON OFFICIAL INFORMATION LEGISLATION
For Approval Review Comment Action Noting

File reference
CON 06-03-08

Action required by

Attachments
Summary of the Law Commission's Issues Paper

Purpose

1.

Background

2.

Key concerns

3. The Issues paper raises several matters of concern, and we recommend that the Ministry meet with the Commission and make a submission on these matters. One recommendation has the potential to affect the Ministry and its operation of the courts system. Other recommendations would, in our view, reduce the effectiveness of the Official Information Act 1982 (OIA) as a constitutional check and balance, and result in unintended consequences for New Zealand's wider constitutional arrangements.

Removal of part of the Courts' exemption from the OIA

The Commission recommends the qualification "in relation to their judicial functions" should also apply to Courts.¹

¹ Courts are excluded from the official information regime entirely, but tribunals are excluded only "in relation to their judicial functions". This means that purely administrative information about the Courts (eg, matters of expenditure, building and resources) is excluded from the ambit of the OIA.

4. Making the administration of the Courts subject to the OIA simply because the information is held by the Ministry (as a government department) may risk blurring the separation of powers and compromising judicial independence. We consider that there is a difference in degree and kind between administrative tribunals and the Courts, particularly the superior courts.

We recommend making a submission to the Commission in consultation with Susan Howan, Service Design Manager, Operations, District Courts.

Oversight and policy functions

The Commission recommends introducing an oversight function encompassing monitoring, policy, review and promotion of official information legislation. It recommends responsibility for overseeing the OIA rest with the State Services Commission.

5. We agree that agencies and the public would be better served if there was more guidance and oversight, to help agencies better respond to OIA requests. We also agree that the SSC is well-placed to carry out such a coordinating role.
6. However, we do not agree with the suggestion that the SSC also take on responsibility for policy and review of the OIA. Administration of the OIA sits well with Justice's other constitutional and rights-based policy function.
7. The Commission has over-emphasised the coordination function and under-emphasised the policy considerations, particularly about the OIA's place within the broader system of constitutional arrangements.
8. There would be advantages in separating the policy and review function from the guidance, promotion and oversight functions. It reduces the risk that operational functions capture policy advice by creating a healthy tension between policy and operational perspectives. Separation along these lines is more likely to result in the policy of the OIA reflecting its central role in open and accountable government.

We recommend making a submission to the Commission making these points.

Changing the role of the Ombudsmen

The Commission recommends removing the veto power of both local and central government and giving the Ombudsmen the final decision-making power.²

9. The Commission's recommendation aims to avoid "scepticism" about the veto and provide certainty about the nature of the Ombudsmen's decision. Practically, the change may be unnecessary and could undermine the current success the Ombudsmen can have.
10. A major departure from the Ombudsmen's current role is risky. Making the Ombudsmen's decisions enforceable changes the role from a persuasive to a judicial one. Careful review of the Ombudsmen Act 1975 and the extent to which the change is consistent with the Ombudsmen's role as an Officer of Parliament is necessary.

² In the case of central government, the veto power refers to Cabinet's ability to veto an Ombudsmen recommendation which the Minister would otherwise be under a public duty to comply with it.

11. The proposed change also risks agencies litigating each step of the process to stave off the final decision. This may have the unintended consequence of extending the time taken to resolve complaints and reducing the current high levels of voluntary compliance with the Ombudsmen's recommendations.

We recommend making a submission to the Commission outlining the possible unintended consequences.

Maintenance of the law

The Commission recommends a new withholding ground for information supplied in the course of an investigation or inquiry where disclosure of that information might prejudice the inquiry or investigation.

12. This would be in addition to current ground 6(c) of the OIA which protects information if disclosure 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. The Commission's view is that the "maintenance of the law" withholding ground can only be properly applied to ensure *criminal* conduct is properly investigated.
13. However, "maintenance of the law" has been used in the OIA since 1982 and in the Privacy Act since 1993. Both Acts are administered by Justice and this is the first time we have seen the suggestion that "maintenance of the law" is only intended to apply to the criminal law. We are not convinced, therefore, that this is anything more than a hypothetical concern.
14. If the Commission's recommendation was adopted, a parallel change would be required to the Privacy Act 1993, which contains an identical provision. Otherwise, significance could be read into the different approaches, and that would have implications for the Privacy Commissioner's complaints handling.

We recommend making a submission to the Commission that a consideration of the wider implications of creating a new ground is appropriate, including the impact on the Privacy Act.

Agencies subject to the Act

The Commission recommends reviewing the Schedules to the OIA 1982 (OIA) and the Local Government Official Information and Meetings Act 1987 (LGOIMA) to make them more accessible and to examine whether all relevant bodies are included in them.

15. This recommendation raises a policy issue, but also a broader issue about the Commission's emphasis on meeting deadlines and how this impacts on the quality of its reports.
16. In terms of the first issue, we acknowledge that the current approach of listing agencies in various Schedules provides certainty as to which agencies are subject to the OIA and LGOIMA, but at the expense of efficiency and full coverage.
17. Alternatively, an opt-out approach could be used. Under that approach, all public sector or state sector agencies exercising a public function would be subject to the OIA unless

a conscious decision was made to exclude them. This would enable the OIA to cover new or renamed agencies without having to amend the Schedules by Order in Council. It would, thus, reduce transaction costs for government while helping the OIA to fulfil its purpose.

18. Turning to the second issue, the Commission's approach suggests that it is planning to recommend that government undertake the mechanical work of reviewing the Schedules. The Commission has done this in a number of recent reports, including the review of public registers, and in relation to surveillance devices. In leaving a major piece of work undone, the Commission makes it difficult for government to implement its reports.
19. The review of the Schedules would require significant coordination across a number of public sector and wider state sector agencies. It is technical work that is unlikely to be of a higher priority. These two factors alone make this kind of work appropriate for the Commission to undertake.
20. We would support a deferral of the deadline for the final report in order to enable the Commission to complete the work.

We recommend a submission to the Commission identifying the alternative opt-out approach.

Next steps

21. We intend to meet with the Commission prior to submitting a response to the Commission's finalised Issues Paper. If you have particular concerns arising from this Memorandum or the attached Summary of the draft Issues Paper it may be appropriate to discuss these in detail.
22. We would like an indication of your preferred approach to discussing the review of the OIA Schedules with the Commission.

Recommendations

23. It is recommended that you:
 1. Note the contents of this memorandum;
 2. Yes / No
 3. Agree that specific submissions to the Law Commission be Yes / No made about the:
 - 3.1. risks involved in removing part of the Courts' Yes / No exemption from the Official Information Act 1982;

- 3.2. benefits of separating policy and review functions from guidance, promotion and oversight functions; Yes / No
- 3.3. possible consequences of changing the Ombudsmen's current role and removing the veto power of local and central government; Yes / No
- 3.4. wider implications of creating a new withholding ground for information supplied in the course of an investigation or inquiry; Yes / No
- 3.5. alternative "opt out" option to a complete review of the Schedules in the official information legislation; Yes / No
4. Agree that the Ministry raise separately the implications of the Commission recommending that the Schedules in the official information legislation be reviewed; Yes / No
5. Direct the Constitutional Policy team on how the separate discussion should be approached.

Fiona Illingsworth
Manager, Constitutional Policy

Recipient/s to complete

Comments:

Signature:

Name:

Date:



MEMORANDUM

To Jared Mullen, Deputy Secretary Policy
Sarah Turner, General Manager, Public Law

From Fiona Illingsworth, Manager, Constitutional Policy

Cc

Date 2 November 2010

Subject LAW COMMISSION REVIEW OF THE OIA –
OVERSIGHT BY SSC

For Approval Review Comment Action Noting

File reference

Action required by

Attachments

Purpose

1. You are meeting with John Burrows from the Law Commission (the Commission) on Wednesday 3 November at 2.30pm to discuss the Commission's proposal that the State Services Commission (SSC) is charged with oversight of the operation of the Official Information Act (the Act). This memo provides background information and talking points for that meeting.

Background

2. The Commission released its issues paper on the review of the Act on 29 September 2010. The Commission is seeking submissions by 10 December 2010.

Law Commission Proposal: Oversight

The problem

3. The Commission considers that a lack of formal structures to improve practice and understanding of the Act creates the following problems:
 - There is no government "owner" of official information;
 - There is no body responsible for championing open government or acting as a watchdog of the underlying principles. The Ombudsmen does not have this mandate;
 - There is no central set of statistics relating to requests for information to provide an overview of how the Act is operating in practice;

- There is little ability to pool or share knowledge across government or share common issues or problems. This results in agencies working in silos;
- The provision of assistance and advice is ad hoc and informal and not widely known or used; and
- There is no explicit requirement to issue guidance and material to agencies and requesters to enhance their understanding of the Act or to provide training.

The Solution

4. The Commission considers that these problems can be resolved by giving an agency oversight of the Act. The Commission has proposed that SSC provide this oversight. It suggests that oversight might encompass:
 - 4.1. *a monitoring function*; to ensure that there are assessments of whether the Act is working well, whether amendments are needed, or whether other measures are required to enhance its efficacy. Statistics about official information matters across government should also be collected, such as the number of requests received, whether information was withheld and what withholding grounds were relied upon;
 - 4.2. *a policy function*; the oversight body should also be responsible for making reports on prospective legislation or policy relating to access to official information;
 - 4.3. *a review function*; the oversight body would be required to carry out a review of the official information legislation periodically; and
 - 4.4. *a promotion function*; the oversight body should be charged with promoting proactive release.

Constitutional policy team comment

5. The Commission has identified some essential elements of an effective oversight regime. However, there are some gaps. The Commission has not included education, which we consider critical to good compliance. We suggest that education fits logically with the 'promotion' function, which is currently very narrowly focused.
6. Another gap is the day to day administration of the Act. The policy function mentioned by the Commission seems to relate only to vetting draft legislation or policy with freedom of information implications (for example draft legislation containing a secrecy clause), rather than policy advice regarding the Act itself.
7. In relation to the monitoring function, we note that the Commission's description is essentially looking at public sector compliance and transparency, rather than monitoring the effectiveness of the legislative framework.

The purpose of the Official Information Act

8. In order to determine whether oversight of the Act is necessary, and who should fulfil that role, it is useful to consider the purpose of the Act. The Act serves a number of purposes. We have set them out below with an indication of the government departments with a policy or constitutional interest that may suit a lead role.

| Purpose | Agency |
|---|-------------------------------|
| Enabling Parliament to hold the Executive to account - the Act plays a pivotal role in the balance of power between Parliament and the Executive | Ministry of Justice |
| Increasing transparency - the Act is an effective check on the Executive by making it accountable to Parliament and the people | Ministry of Justice |
| Empowering citizens by providing access to information | DIA, SSC |
| Protecting the provision of free and frank advice from officials. This helps to uphold a politically neutral public service, a cornerstone of the Westminster system of government | Ministry of Justice, SSC |
| Ensuring agencies get the information they require to carry out their regulatory functions by protecting commercially sensitive and personal information | MOJ |
| Managing relationships between the State and citizens - Information allows citizens to participate in government and hold the Executive to account. This is a precursor to a well functioning, legitimate democratic government | Ministry of Justice, DIA, SSC |

One oversight body or multiple roles?

9. The Commission appears to have started from the assumption that it is preferable to have all oversight functions performed by one agency. We do not agree that this is necessarily the tidiest or most efficient approach. We consider that the oversight regime should be organised to play to different agencies' strengths, as long as gaps and duplications are avoided. This approach will avoid unnecessary disruptions while an agency not previously involved in the administration of freedom of information develops capability in this area.
10. We think some useful analogies can be drawn with the Human Rights Commission (HRC) and the Privacy Commissioner. These agencies perform roles that include some of the functions the Commission has identified as oversight functions. The Ombudsmen also performs some of these functions, albeit without a legislative mandate. The legislation establishing these three agencies and setting out their functions are all administered by the Ministry. The policy and implementation split can provide benefits, such as increased transparency, which allows policy advice to be provided at arm's length from operational matters.
11. The roles of these three agencies are examined below.

The Human Rights Commission

12. The primary functions of the HRC are to:
 - advocate and promote respect for, and observance of, human rights; and
 - encourage the maintenance and development of harmonious relations between individuals and among the diverse groups in New Zealand society.
13. Education is a significant means of fulfilling this mandate. The HRC is an advocate for human rights. It promotes and protects the observance of human rights by education and publicity.

14. In the year ending June 2010, the HRC advocated for the incorporation of human rights standards in legislation, policy and practice in 56 submissions to Parliament, and in responses to consultation documents. It also responded to requests from government agencies for human rights expertise in the early stages of policy development.

The Privacy Commissioner

15. Part of the Privacy Commissioner's role involves promoting an understanding and acceptance of the information privacy principles. The Privacy Commissioner's Office:
- Maintains an 0800 number so people may call without charge;
 - Maintains a website with guidelines, case notes, fact sheets, newsletters, speeches and reports;
 - Gives regular workshops and seminars on legislation, security breach guidelines and information matching;
 - Comments on legislative, policy or administrative proposals that have privacy implications;
 - Undertakes policy projects, such as developing guidance material for agencies;
 - Monitors compliance with the public register privacy principles; and
 - Can report to the Prime Minister on matters of concern.

The Office of the Ombudsmen

16. The Ombudsmen proactively seek to assist agencies to improve the quality of decision making, delivery of services and administrative processes. They do this by:
- Monitoring trends and developments and identifying skill and knowledge gaps;
 - Reviewing legislative, policy and administrative proposals and practices to ensure consistency with principles of good administration and decision making and open and transparent government; and
 - Providing advice, training and information resources to build state sector capability in administrative, decision making, and complaints handling processes, and in the operation of the official information legislation.
17. In order to build state sector capability the Ombudsmen:
- Provide advice on relevant legislative, policy and administrative proposals, and the operation of the official information legislation;
 - Offer training on the role of the Ombudsmen and the operation of the official information legislation; and
 - Produce resources to assist agencies to develop good administrative, decision making and complaints handling processes and improve compliance with the official information legislation.

18. In the year ending June 2010, the Ombudsmen provided advice on 35 proposals and conducted 23 workshops and training seminars on the Act and the role of the Ombudsmen to agencies.

Success criteria

19. The Commission has suggested some changes to New Zealand's freedom of information regime. We consider that any changes to the regime must meet certain criteria if they are to be successful and an improvement on the current situation. We have identified the following criteria:
- 19.1. Changes should not increase bureaucracy or costs to users or agencies subject to the regime;
 - 19.2. There should be no duplication of roles between agencies involved in administering and monitoring the regime;
 - 19.3. The role and responsibilities of different agencies must be clear and unambiguous;
 - 19.4. There should be no gaps in the administration of the regime.
20. The changes proposed by the Commission should be measured against the above critical success factors.

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Next steps

23. The next steps are to meet with the Commission on 3 November to discuss the oversight issue, and then to consider whether the Ministry will be making a submission to the Commission by 10 December 2010.

Recommendations

24. It is recommended that you note the contents of this briefing.

Fiona Illingsworth
Manager Constitutional Policy

Attachments:

Recipients to complete

Comments:

Signature:

Name:

Date:

FIVE NOTE

This memo is the final
version given to Javed
but it was never signed
by either Fournier or
Javed - just the subject
of discussion. It resulted
in the 2nd memo dated
1 Dec.

12/1/2011

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Given to JM

MEMORANDUM

To Jared Mullen, Deputy Secretary Policy Group **File reference**

From Melinda Geary, Policy Manager, Public Law **Action required by**

Cc Sarah Turner, General Manager of Public Law

Date 1 December 2010

Subject FURTHER INFORMATION ON THE LAW COMMISSION REVIEW OF THE OIA – OVERSIGHT BY SSC **Attachments**

For Approval Review Comment Action Noting

Purpose

1. This memorandum provides the further information you have requested relating to the Law Commission's (the Commission) proposal that the State Services Commission (SSC) be charged with oversight of the operation of the Official Information Act (the Act).

Background

2. The Commission released its discussion paper on the review of the Act on 29 September 2010. The Commission is seeking submissions by 10 December 2010. You met with the Commission on 3 November. As a result of that meeting, you requested further information on the Commission's oversight proposal.

Discussion

3. You have requested the following information:

What issues is the Commission trying to remedy?

4. The Commission considers that a lack of formal structures to improve practice and understanding of the Act creates the following problems:

- 4.1. There is no government "owner" of official information;
- 4.2. There is no body responsible for championing open government or acting as a watchdog of the underlying principles. The Ombudsmen does not have this mandate;

- 4.3. There is no central set of statistics relating to requests for information to provide an overview of how the Act is operating in practice;
 - 4.4. There is little ability to pool or share knowledge across government or share common issues or problems. This results in agencies working in silos;
 - 4.5. The provision of assistance and advice is ad hoc and informal and not widely known or used; and
 - 4.6. There is no explicit requirement to issue guidance and material to agencies and requesters to enhance their understanding of the Act or to provide training.
5. We have met with the Commission to discuss the issues they have identified. It became clear in the meeting that the oversight proposal is not seen as a priority in comparison to the Commission's other proposals, and that they were not settled on SSC providing oversight; instead they were asking the question of whether oversight is required at all. Who provides the oversight seemed to be a secondary matter for the Commission. When asked about the issues identified, the Commission did not discuss the individual issues but said that the survey conducted has indicated that people would like better advice on the Act. The Commission believe that the Act is falling behind other regimes (for example in the privacy area) because it does not have adequate oversight of its constitutional foundations.
6. The Commission has referenced the work undertaken by Nicola White in her review of the Act entitled *Free and Frank: Making the Official Information Act 1982 work better*. Attached as an appendix to this paper is a summary of what Ms White found was and was not working well in New Zealand's freedom of information regime.

The Commission's Solution

7. The Commission considers that the problems it has identified can be resolved by giving an agency oversight of the Act, although it has not provided any analysis to demonstrate how the solution will fix the problem. The Commission has proposed that SSC provide this oversight in the text of its report. However, the Commission has not asked for submissions on whether SSC should provide this oversight, instead leaving the question open as to which agency should provide the oversight. It suggests that oversight might encompass:
- 7.1. *a monitoring function*; to ensure that there are assessments of whether the Act is working well, whether amendments are needed, or whether other measures are required to enhance its efficacy. Statistics about official information matters across government should also be collected, such as the number of requests received, whether information was withheld and what withholding grounds were relied upon;
 - 7.2. *a policy function*; the oversight body should also be responsible for making ~~reports on prospective legislation or policy relating to access to official information~~;
 - 7.3. *a review function*; the oversight body would be required to carry out a review of the official information legislation periodically; and
 - 7.4. *a promotion function*; the oversight body should be charged with promoting proactive release.

8. In addition to the oversight function, the Commission has proposed that SSC be given the function of promoting awareness and understanding of the Act and to arrange for the provision of education programmes and training. The Commission notes that there would be advantages in the Ombudsmen being involved in the provision of training, but there are advantages in SSC having responsibility for setting up training programmes, and monitoring attendance and effectiveness.

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The status quo

33. Both Nicola White and the Commission identified that there is a need for agencies and the public to learn more about the freedom of information regime. Both conclude that the regime is not fatally flawed and made no recommendations that go to the heart of the philosophy of the Act. However both did conclude that better education and guidance is required.

34.

Timeframe and next steps

37. We seek your direction as to whether you would like the Ministry to make a submission to the Commission. The Commission is seeking submissions by 10 December 2010.

Recommendations

38. It is recommended that you:

1. Note the contents of this briefing;
2. Decide whether the Ministry will provide a submission to the Law Commission.

YES / NO


Melinda Geary
Policy Manager, Public Law

Attachments

Recipients to complete

Comments

Signature:

Name:

Date:

Previous consideration of the Act – Nicola White's research

1. The Commission has drawn on Nicola White's research on the Act entitled *Free and Frank – Making the Official Information Act 1982 work better*. It is useful to take into account the positives, issues and solutions identified by Ms White when considering the Commission's oversight proposal.
2. The following is what Ms White identified as working well with the official information system:
 - 2.1. *Many government systems are now geared to openness* – most commentators agree that the Act has had a significant role in changing the culture of government in relation to information. This shift in culture can be seen in other legislation, such as the Public Finance Act 1989 and the Local Government Act 2002. She cites examples of pro-active release, such as the regular publication of all background reports that accompany any major government announcement;
 - 2.2. *Basic systems for processing requests generally work well* – a steady stream of commentary and some empirical evidence support the proposition that the basic Act systems work fairly well in easy cases (requests by 'ordinary citizens' about 'ordinary matters'). The problems largely came when the request was large or poorly specified, and political in some way;
 - 2.3. *Quality of decision-making and advice has improved* – the scrutiny that comes from openness has significantly improved the quality of advice and quality of decision-making across government; and
 - 2.4. *Role of the Office of the Ombudsmen as the review authority has worked well* – the work of the ombudsmen is respected and appreciated by all sectors, even if people inevitably disagree with decisions sometimes on particular issues.
3. The following is what Nicola identified as not working well with the Act:
 - 3.1. *Managing the political-administrative interface* – there is considerable uncertainty about the relevant principles or rules that should guide behaviour. The complexity of these issues is exacerbated by uncertainty about the Act's apparent conferral of independent decision-making responsibility on chief executives for decisions that might have direct political consequence for ministers;
 - 3.2. *Managing large requests* – big and poorly specified requests were often identified as problematic;
 - 3.3. *Time-frames* – from the outset, failure among those responding to requests with the time-frames in the Act has been a problem. Delay has been the subject of comment in almost every ombudsmen annual report since the Act's implementation;
 - 3.4. *Information management in an electronic age* – the electronic age has greatly increased the volume of information that is created and stored by

the state sector. This increases the pressure on the administrative provisions of the Act that are designed to deal with large requests, such as time extensions and charging.

- 3.5. *Protecting government advice and decision-making processes* – Increased openness has come at a price; papers are written differently and work has been driven off paper because people do not perceive the protection provided in the Act as reliable or effective;
- 3.6. *Administrative impact of the Act* – agencies across the state sector accept that responding to requests is core business, but the reality is that the state sector is busy and demanding, with limited resources;
- 3.7. *Building up systematic expertise* – there are no established networks that enable departments to seek advice from one another, or to disseminate the results of a complex request that might have general application;
- 3.8. *Overall balance in the system* – there is strong evidence that requesters use requests at times as a tactic, to slow the government machinery down or to punish or annoy, and use information to embarrass the government. It is therefore unsurprising that those responding to requests attempt to match the tactics; and
- 3.9. *Building trust* – the system as it works now is eroding trust in the state sector rather than building it. In essence, the ambiguity of the rules leaves people free to judge behaviour against different standards, or to infer motives and conduct from their own perspective.

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FILENOTE

This memo was never signed by Jared. Instead he discussed it with Sarah Turner. The result of these discussions was the letter to Margaret ~~Trampson~~ Trampson @ the law Commission.

12/1/2011

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