

## Julie Chuor

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**From:** Julie Chuor  
**Sent:** Wednesday, 8 December 2010 4:56 p.m.  
**To:** Nicole MacFarlane  
**Subject:** OIA Draft Submission  
**Attachments:** COR-131803 OIA Submission v01.doc; OIA Submission Questions.pdf

Hi

Here is my draft submission so you can read it if you have time before our meeting tomorrow. I am still considering the questions highlighted in yellow. Also attached is the complete list of questions so you can see which ones I don't think we really need to provide a response on.

**Julie Chuor**  
Corporate Solicitor

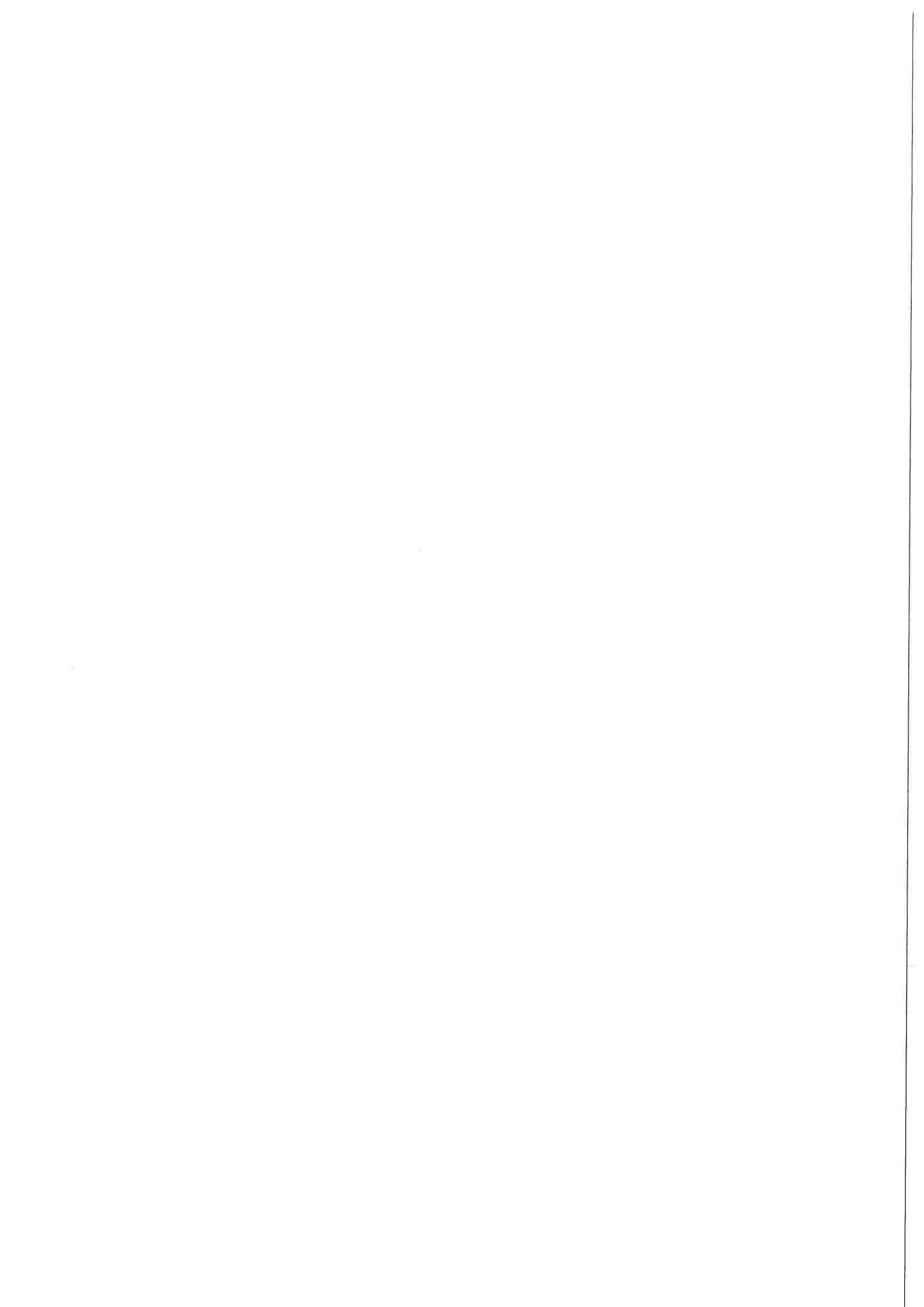


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# Appendix A

## Discussion questions

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- CHAPTER 2
- 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?
  - Q7 Should any further categories of information be expressly excluded from the OIA and the LGOIMA?
- 
- CHAPTER 3
- 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?

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- CHAPTER 4
- 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?
- 

- CHAPTER 5
- Q16 Do you think the commercial withholding ground should continue to be confined to situations where the purpose is to make a profit?
- Q17 If you favour a broader interpretation, should there be a statutory amendment to clarify when the commercial withholding ground applies?
- Q18 Do you think the trade secrets and confidentiality withholding grounds should be amended for clarification?
- 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?
- 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?
- Q22 Do you experience any other problems with the commercial withholding grounds?
- 

- CHAPTER 6
- 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?
- 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 7
- 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?
- Q27 Do you think there should be new withholding grounds to cover:
- (a) harassment;
  - (b) the protection of cultural values;
  - (c) anything else?
- Q28 Do you agree that the “will soon be publicly available” ground should be amended as proposed?
- Q29 Do you agree that there should be a new non-conclusive withholding ground for information supplied in the course of an investigation?
- Q30 Do you have any comments on, or suggestions about, the “maintenance of law” conclusive withholding ground?

- CHAPTER 8
- 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?
- Q32 Can you suggest any statutory amendment which would clarify what “public interest” means and how it should be applied?
- Q33 Do you think the public interest test should be contained in a distinct and separate provision?
- 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?

- CHAPTER 9
- Q35 Do you agree that the phrase “due particularity” should be redrafted in more detail to make it clearer?
- Q36 Do you agree that agencies should be required to consult with requesters in the case of requests for large amounts of information?
- 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?
- 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?
- Q39 Do you agree that “substantial” should be defined with reference to the size and resources of the agency considering 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?
- Q42 Do you agree that the term "vexatious" should be defined in the Acts to include the element of bad faith?
- 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?
- 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?
- 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?
- 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?
- Q47 Do you agree that more accessible guidance should be available for requesters?

CHAPTER 10

- Q48 Do you agree the 20 working day time limit should be retained for making a decision?
- 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?
- 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?
- Q51 Do you agree that 'complexity of the material being sought' should be a ground for extending the response time limit?
- Q52 Do you agree there is no need for an express power to extend the response time limit by agreement?
- Q53 Do you agree the maximum extension time should continue to be flexible without a specific time limit set out in statute?
- 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?
- Q55 Do you agree there should be clearer guidelines about consultation with ministerial offices?
- Q56 Do you agree there should not be any mandatory requirement to consult with third parties?
- Q57 Do you agree there should be a requirement to give prior notice of release where there are significant third party interests at stake?
- Q58 How long do you think the notice to third parties should be?

- Q59 Do you agree there should be provision in the legislation to allow for partial transfers?
- Q60 Do you agree there is no need for further statutory provisions about transfer to ministers?
- Q61 Do you have any other comment about the transfer of requests to ministers?
- Q62 Do you think that whether information is released in electronic form should continue to depend on the preference of the requester?
- Q63 Do you think the Acts should make specific provision for metadata, information in backup systems and information inaccessible without specialist expertise?
- Q64 Should hard copy costs ever be recoverable if requesters select hard copy over electronic supply of the information?
- 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?
- Q66 Do you agree there should be regulations laying down a clear charging framework for both the OIA and the LGOIMA?
- Q67 Do you have any comment as to what the framework should be and who should be responsible for recommending it?
- Q68 Do you agree that the charging regime should also apply to political party requests for official information?

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CHAPTER 11

- 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 12

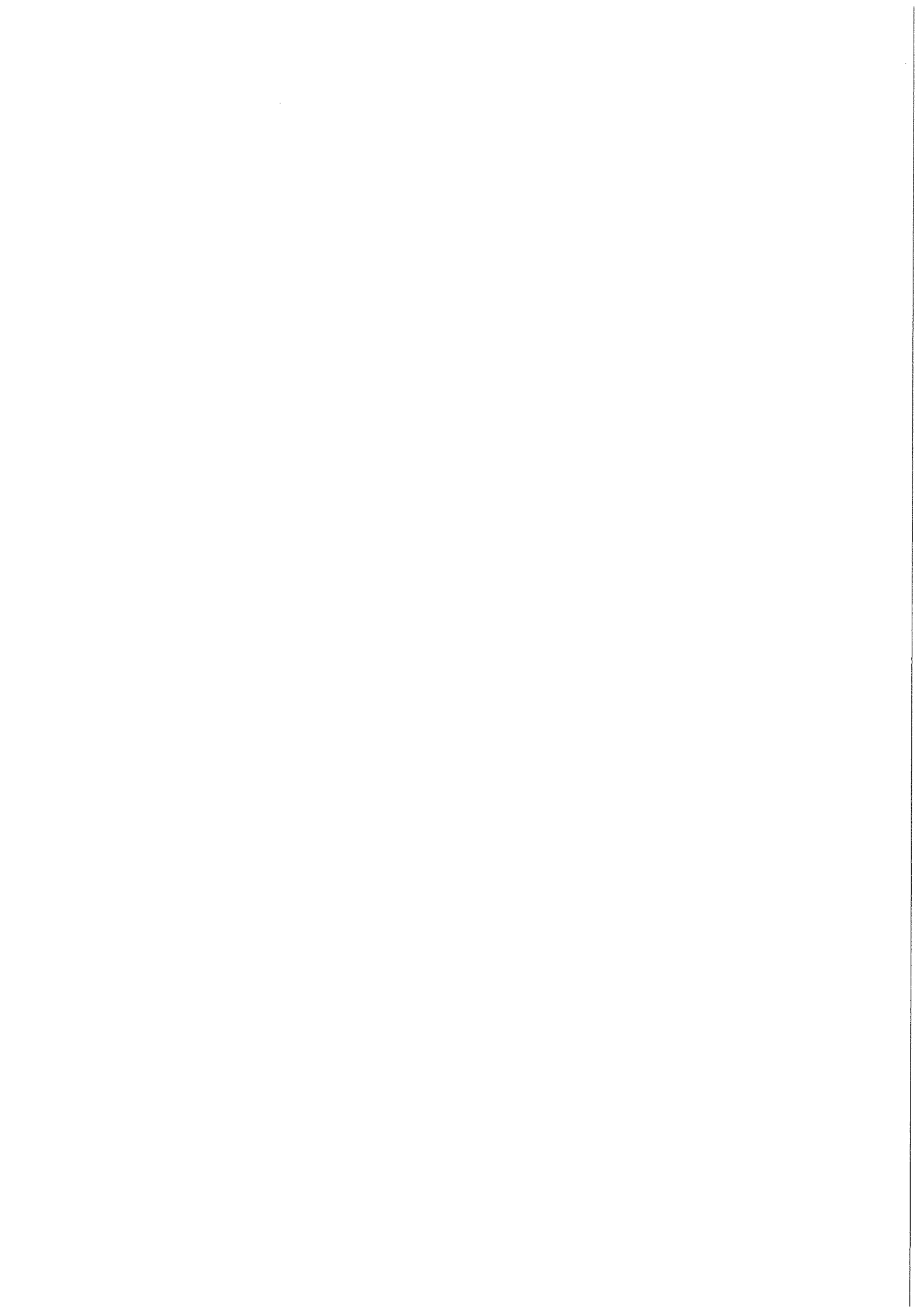
- Q84 Do you agree that the OIA should require each agency to publish on its website the information currently specified in section 20 of the OIA?
- Q85 Do you think there should be any further mandatory categories of information subject to a proactive disclosure requirement in the OIA or LGOIMA?
- Q86 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 13
- 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 LGOIMA, 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?
- 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 LGOIMA 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 14
- 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
- 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?



DRAFT

**PUBLIC TRUST**

**SUBMISSION TO**

**THE LAW COMMISSION**

**ON THE**

**OFFICAL INFORMATION LEGISLATION REVIEW**

**10 DECEMBER 2010**

## **Introduction**

This submission is from Public Trust. Public Trust is a Crown entity established under the Public Trust Act 2001. Public Trust is New Zealand's largest and oldest trustee organisation, set up in 1873 with a unique mandate to protect the future of New Zealanders. Public Trust offers independent, professional trustee services and related financial services to New Zealanders at different stages of their lives, and assists with carrying out their wishes after they have died. In these capacities, Public Trust works with a range of charitable trusts, term estates and other customers, managing their funds and helping to improve their lives in many different ways. Public Trust also acts as an independent trustee for a number of other investment schemes, protecting the interests of investors.

Public Trust offers a wide range of products and services. Under its Corporate Trustee Services umbrella Public Trust has approximately \$28 billion under supervision. All of the services provided by Public Trust are tailored to meet the requirements of three key market segments - Personal, Business and Corporate.

Public Trust's primary purpose is to help all New Zealanders grow and protect the important things in their lives. Public Trust's vision is to be the leader in the trustee services market.

## **Public Trust's Submission**

Public Trust appreciates this opportunity to comment on the Official Information Legislation Review. Public Trust is broadly of the opinion that some parts of the Official Information Act 1982 (**OIA**) need to be amended or clearer guidance needs to be provided and responds to some questions specifically relating to the OIA only;

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

We agree that agencies should be explicitly listed rather than having some listed in the OIA and others cross-referenced to the schedules in the Ombudsmen Act 1975. This will make it easier to see exactly which agencies are covered.

**2 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?**

We agree that the OIA should be updated to include all relevant bodies. There are no policy reasons why the OIA should continue to arbitrarily include some agencies while excluding others who should be included by virtue of their nature, function and relationship with the Crown.

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

We agree that SOEs and other crown entity companies should remain within the scope of the OIA. It is the nature, function and relationship of an agency with the Crown that should be given consideration, regardless of whether they have an objective to be profitable.

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

Do we hold information from third parties which are not subject to the act which we would want to withhold? See page 40.

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

We agree that the OIA should continue to be based on a case-by-case model and that it should not move to a system that prescribes categories of information which should or should not be included. It is the content of the information in the document should be considered, not the type of document. While it is true that the case-by-case model can lead to inconsistency in the application of the OIA, we believe that this would be better addressed through improved practical guidance on how to apply the OIA.

**9 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?**

We agree that enhanced guidance will improve the understanding and application the OIA. We do not believe that redrafting the existing rules or implementing more rules will achieve the same level of understanding.

**10 Do you agree that there should be a compilation, analysis or, and commentary on, the casenotes of the Ombudsmen?**

We agree that the Ombudsmen casenotes need to be revised to make them easily accessible, to provide a collation of examples linked to the relevant withholding grounds and have relevant commentary to highlight the reasoning and basis of the decision in each case.

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

We agree that there should be greater access to, and reliance on, the casenotes as precedents on the basis that the casenotes are improved. The casenotes should provide clear guidance on the withholding grounds and should be understood to be the source of guidance as to the application of the OIA.

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

We agree that the practice guidelines would be improved if they contained specific examples and were linked to the casenotes.

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

We disagree that the commercial withholding ground should be confined to situations where the purpose is to make a profit. Public Trust was set up to protect the interests of New Zealanders and as an example one of our primary services is to provide free Wills. Any business decision, strategy, or information we hold with respect to our Wills service would not meet the current definition which requires the purpose of the activity to be for profit. Our position in the industry would be negatively affected as disclosure of such information might unfairly provide an advantage to our competitors. We support a broader interpretation of the commercial withholding ground that would allow such information to be withheld.

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

We agree that the OIA should be amended to provide a definition of “commercial” rather than relying on the interpretation in the Practice Guidelines. The definition should also be broad enough to allow for activities which would be regarded as commercially sensitive irrespective of whether they are activities for profit.

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

We believe public interest factors relating to the commercial withholding grounds should be included in guidelines rather than in the OIA as there should continue to be flexibility in the factors which should be taken into account for each agency.

**34 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?**

It shouldn't

**35 Do you agree that the phrase “due particularity” should be redrafted in more detail to make it clearer?**

We agree that the OIA should be amended to clarify that ‘due particularity’ requires requests for information to be for specific information. In cases where requests are received for any or all information held about an issue or topic, this potentially incurs large costs for both the agency and the requester which may have been avoidable if the requester was more specific in their request.

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

We agree that the 20 working day limit should start when the request has been clarified and accepted by the agency. To have the 20 working day limit continue to run from the time of receipt of the initial request imposes unfair time restrictions on the agency when they are in good faith consulting with the requester to clarify the request and where considerable time may be taken to reach an accepted amended request.

**38 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?**

We agree that substantial time spent reviewing and assessing material should be a consideration when deciding whether material can be released. As reviewing and assessing material is a necessary step prior to releasing any information it is logical that both the time spent reviewing and assessing material should be considered alongside the time and resources spent collating and researching it.

**39 Do you agree that “substantial” should be defined with reference to the size and resources of the agency considering the request?**

We agree that the term substantial should be defined to be relative to the size and resources of the agency.

41 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?

Do we have problems with repeated requests for info from the same people?

42 Do you agree that the term “vexatious” should be defined in the Acts to include the element of bad faith?

43 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?

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

46 Do you agree that 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?

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

We agree that there should be more information available to requesters to assist them in making clearer requests for information. This would save both the agency and the requester time and money in actioning the request.

50 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?

We agree that there should be no new statutory requirement to acknowledge receipt of an official information request and that this should be dealt with in the Practice Guidelines as best practice. Implementing further compliance, which can be effectively managed though best practice would increase the administrative burden on agencies especially where resources are already stretched.

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

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

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

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

Is this a concern for PT?

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

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

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

We agree that whether information is released in electronic form should depend on a specific request by the requester. However, we believe that there should continue to be options available for the format of information that is to be released and unless a preference is indicated by the requester, that format should be at the discretion of the agency.

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

We believe that it should only be compulsory to provide metadata where it has been specifically requested (and where it is possible to retrieve such data). We do not support any amendment to the OIA that would impose an obligation on an agency to provide metadata for every request for information.

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

We agree that agencies should be able to recover their costs for hard copy information as they may currently do under the Ministry of Justice Charging Guidelines for OIA Requests.

**71 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 Ombudsmen?**

**72 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?**

**79 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?**

**82 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?**

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

**84 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?**

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

**88 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?**



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

**90 Do you agree that disclosure logs should not be mandatory?**

We do not agree that disclosure logs should be mandatory. This would add unnecessary administrative burden on the agency with little benefit. A person is going to request information regardless of whether they can see if it has been previously disclosed. The only benefit is that the agency will be able to quickly see if they have previously provided that exact same information and if so respond within a shorter timeframe. This can be achieved by the agency administratively without imposing a mandatory requirement on an agency to keep a decisions log that is publicly available.

**91 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?**

We agree that an agency should be protected from court proceedings if they have voluntarily and proactively made information publicly available.

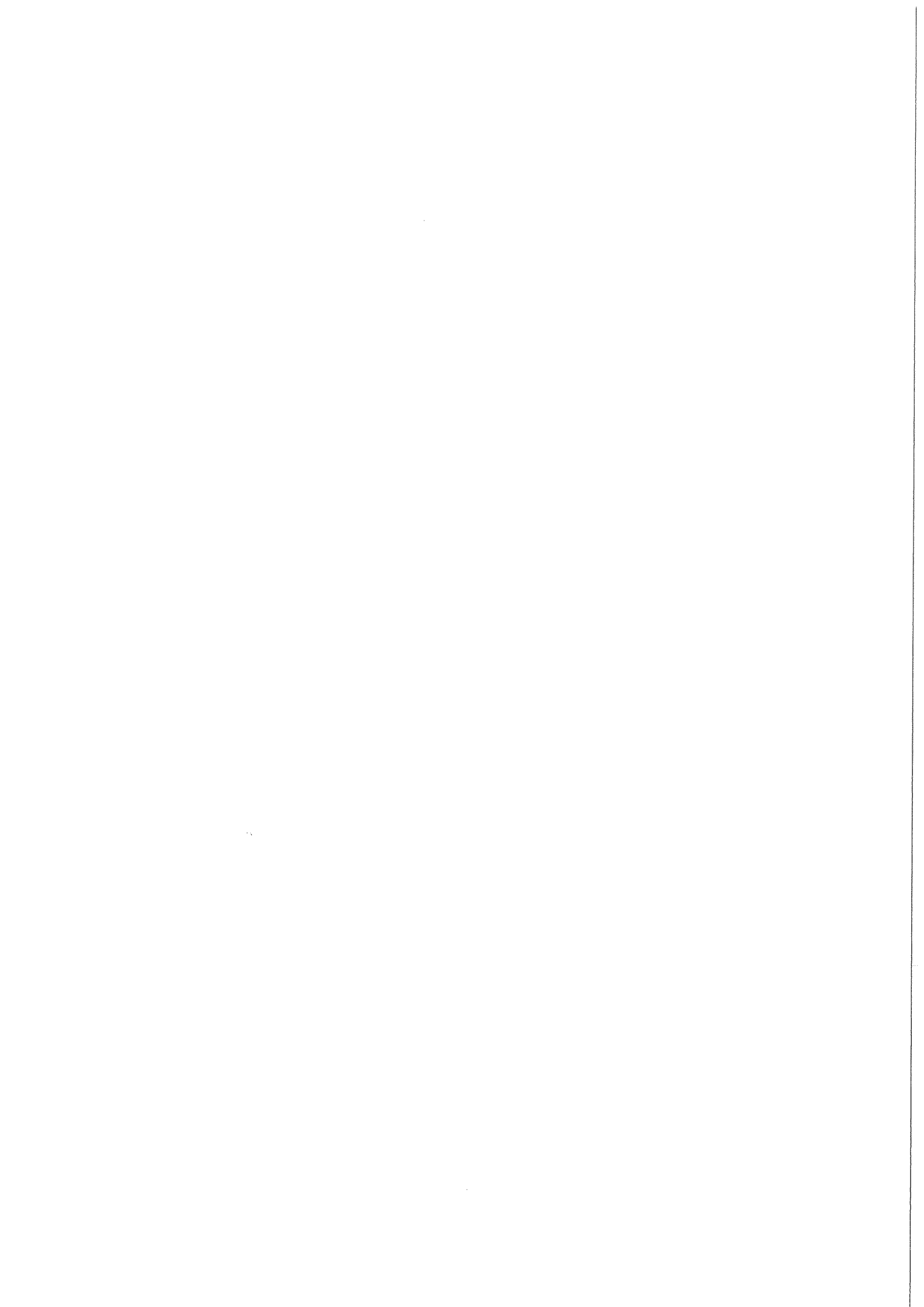
### **Consultation**

We are happy to discuss any of these comments in further detail. We are available to meet with the Law Commission to discuss our submission. Please contact:

Ann Brennan  
General Counsel  
Public Trust

DDI: 04 978 4520  
Email: [ann.brennan@publictrust.co.nz](mailto:ann.brennan@publictrust.co.nz)

**Public Trust  
10 December 2010**



## Julie Chuor

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**From:** Julie Chuor  
**Sent:** Friday, 10 December 2010 9:58 a.m.  
**To:** Nicole MacFarlane  
**Subject:** updated OIA submission  
**Attachments:** COR-131803 OIA Submission v01(1).doc

Note new Q7 which I have used to refer to our exemption where we hold information as trustee.


**Julie Chuor**  
Corporate Solicitor

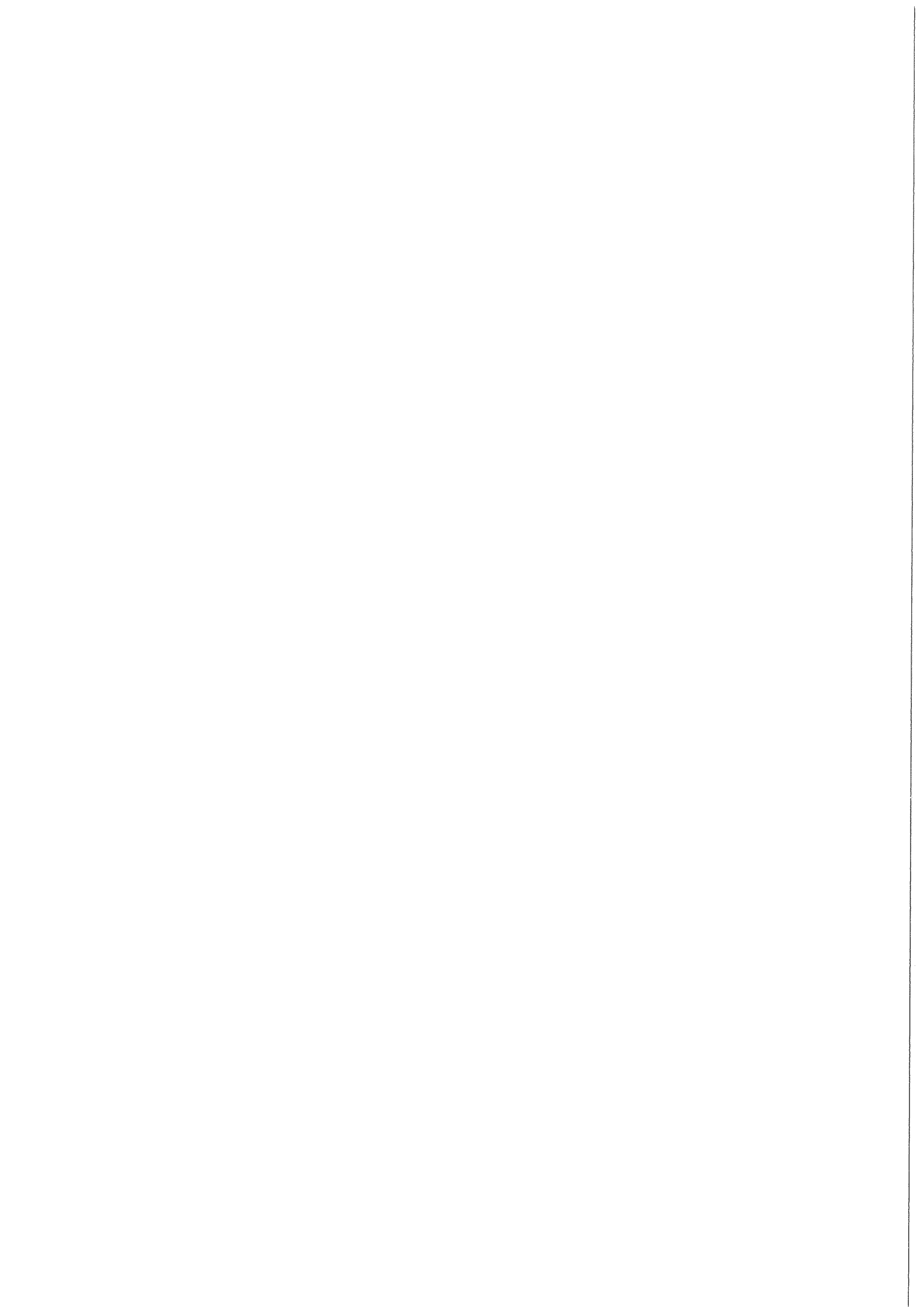


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**10 DECEMBER 2010**

## **Introduction**

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Public Trust offers a wide range of products and services. Under its Corporate Trustee Services umbrella Public Trust has approximately \$28 billion under supervision. All of the services provided by Public Trust are tailored to meet the requirements of three key market segments - Personal, Business and Corporate.

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## **Public Trust's Submission**

Public Trust appreciates this opportunity to comment on the Official Information Legislation Review. Public Trust is broadly of the opinion that some parts of the Official Information Act 1982 (**OIA**) need to be amended or clearer guidance needs to be provided and responds to some questions specifically relating to the OIA only.

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

We agree that agencies should be explicitly listed rather than having some listed in the OIA and others cross-referenced to the schedules in the Ombudsmen Act 1975. This will make it easier to see exactly which agencies are covered.

### **2 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?**

We agree that the OIA should be updated to include all relevant bodies. There are no policy reasons why the OIA should continue to arbitrarily include some agencies while excluding others who should be included by virtue of their nature, function and relationship with the Crown.

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

We agree that SOEs and other crown entity companies should remain within the scope of the OIA. It is the nature, function and relationship of an agency with the Crown that should be given consideration, regardless of whether they have an objective to be profitable.

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

We believe that the current definition of 'official information' sufficiently covers the types of information that should be excluded.

In this regard, we consider it appropriate that any information held by Public Trust in their capacity as a trustee or in any other fiduciary duty continues to be excluded from the definition of 'official information'.

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

We agree that the OIA should continue to be based on a case-by-case model and that it should not move to a system that prescribes categories of information which should or should not be included. It is the content of the information in the document that should be considered, not the type of document. While it is true that the case-by-case model can lead to inconsistency in the application of the OIA, we believe that this would be better addressed through improved practical guidance on how to apply the OIA.

**9 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?**

We agree that enhanced guidance will improve the understanding and application the OIA. We do not believe that redrafting the existing rules or implementing more rules will achieve the same level of understanding.

**10 Do you agree that there should be a compilation, analysis or, and commentary on, the casenotes of the Ombudsmen?**

We agree that the Ombudsmen casenotes need to be revised to make them easily accessible, to provide a collation of examples linked to the relevant withholding grounds and have relevant commentary to highlight the reasoning and basis of the decision in each case.

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We agree that the Practice Guidelines would be improved if they contained specific examples and were linked to the casenotes.

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We disagree that the commercial withholding ground should continue be confined to situations where the purpose is to make a profit. For many businesses including Public Trust, there will be products and services offered as part of the commercial business for which the purpose is other than to make a profit. Public Trust would be at a commercial disadvantage against its competitors who are not subject to the OIA if the commercial

withholding ground was not available to allow the withholding of information relating to parts of the business which do not have a purpose of making a profit. We support a broader interpretation of the commercial withholding ground that would allow such information to be withheld.

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

We agree that the OIA should be amended to provide a definition of 'commercial' rather than relying on the interpretation in the Practice Guidelines. The definition should be broad enough to allow for activities which would be regarded as commercially sensitive irrespective of whether they are activities for profit.

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We believe public interest factors relating to the commercial withholding grounds should be included in guidelines rather than in the OIA as there should continue to be flexibility in the factors which should be taken into account for each agency.

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We do not agree that it is necessary to introduce a power enabling the Solicitor-General to enforce a public duty to follow an Ombudsman's decision. We question how such decisions would be enforced and what sanctions will be available to the Solicitor-General in carrying out that power.

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We do not agree that it is necessary for an agency to publish the information set out in section 20 of the OIA on its website as this information is already currently available on the Ministry of Justice website. We note that the OIA requires the Ministry of Justice to update that material at intervals of not more than 2 years and we understand it is their policy to only update the material every 2 years unless the changes are minor. We believe this information should be reviewed more regularly than every 2 years especially where there have been significant changes.

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**91 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?**

We disagree that an agency should not be protected from court proceedings if they have voluntarily and proactively made information publicly available. To encourage agencies to move to an environment where information is increasingly available and accessible, agencies must have comfort that where they have in good faith proactively disclosed information, they will not be subject to court proceedings.

## **Consultation**

We are happy to discuss any of these comments in further detail. We are available to meet with the Law Commission to discuss our submission. Please contact:

Ann Brennan  
General Counsel  
Public Trust

DDI: 04 978 4520  
Email: [ann.brennan@publictrust.co.nz](mailto:ann.brennan@publictrust.co.nz)

**Public Trust**  
**10 December 2010**

## Julie Chuor

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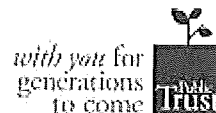
**From:** Julie Chuor  
**Sent:** Friday, 10 December 2010 2:33 p.m.  
**To:** 'OfficialInfo@lawcom.govt.nz'  
**Subject:** Review of Official Information Act 1982  
**Attachments:** Public Trust Submission on Review of the OIA 1982.pdf

Hi

Please find attached Public Trust's submission on the Review of the Official Information Act 1982.

Regards,

**Julie Chuor**  
Corporate Solicitor

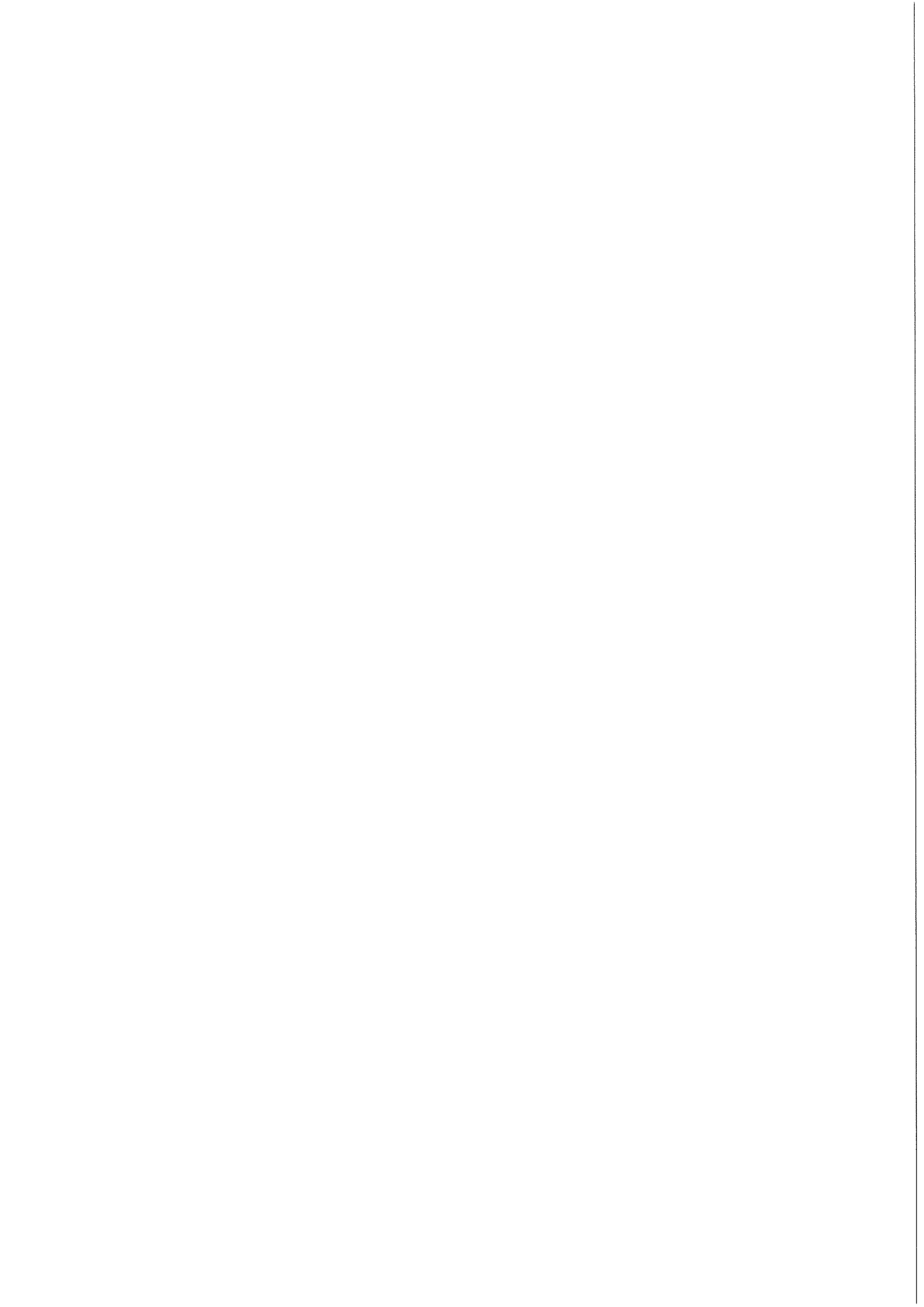


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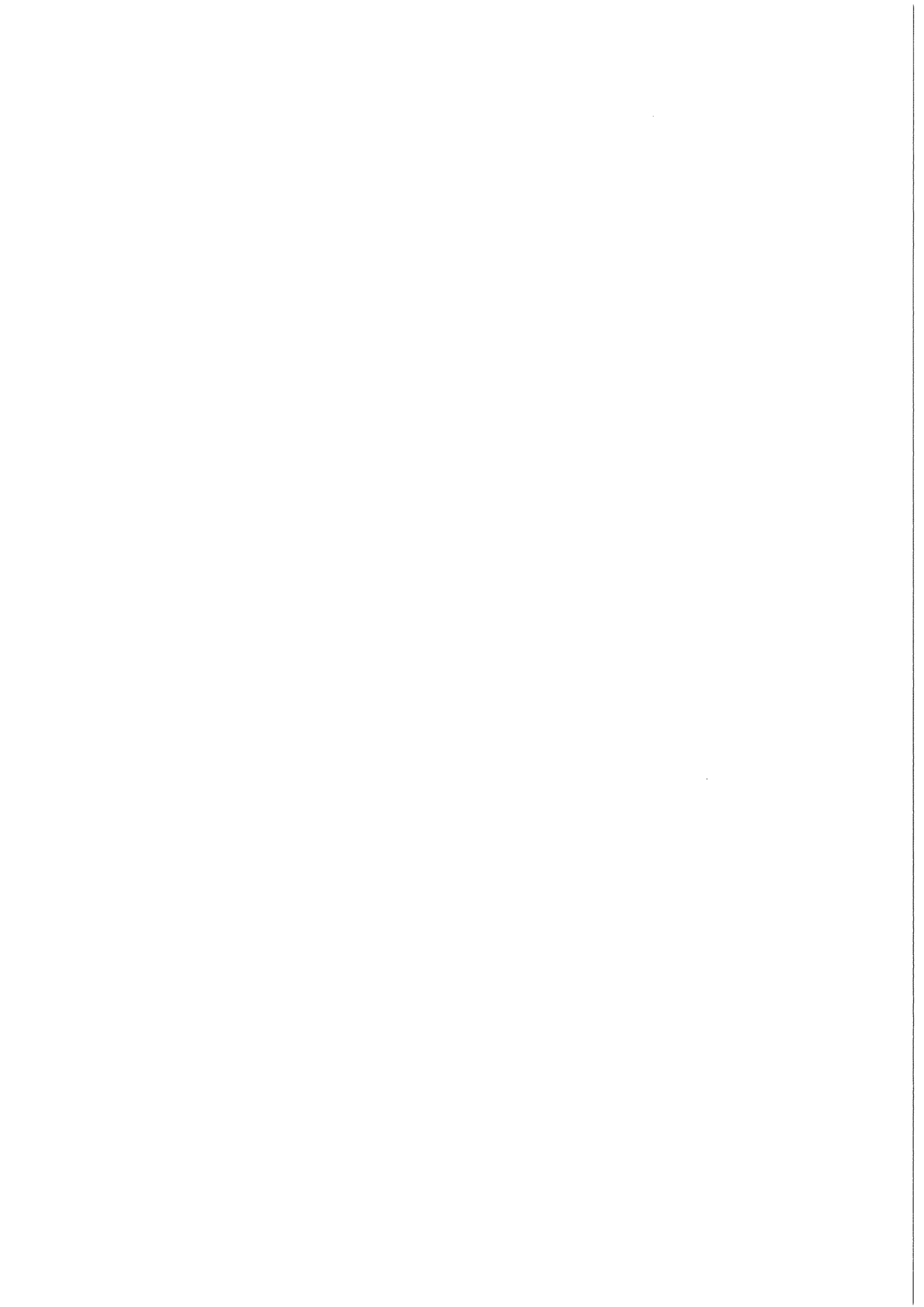
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**PUBLIC TRUST**  
**SUBMISSION TO**  
**THE LAW COMMISSION**  
**ON THE**  
**OFFICAL INFORMATION LEGISLATION REVIEW**

**10 DECEMBER 2010**





## **Introduction**

This submission is from Public Trust. Public Trust is a Crown entity established under the Public Trust Act 2001. Public Trust is New Zealand's largest and oldest trustee organisation, set up in 1873 with a unique mandate to protect the future of New Zealanders. Public Trust offers independent, professional trustee services and related financial services to New Zealanders at different stages of their lives, and assists with carrying out their wishes after they have died. In these capacities, Public Trust works with a range of charitable trusts, term estates and other customers, managing their funds and helping to improve their lives in many different ways. Public Trust also acts as an independent trustee for a number of other investment schemes, protecting the interests of investors.

Public Trust offers a wide range of products and services. Under its Corporate Trustee Services umbrella Public Trust has approximately \$28 billion under supervision. All of the services provided by Public Trust are tailored to meet the requirements of three key market segments - Personal, Business and Corporate.

Public Trust's primary purpose is to help all New Zealanders grow and protect the important things in their lives. Public Trust's vision is to be the leader in the trustee services market.

## **Public Trust's Submission**

Public Trust appreciates this opportunity to comment on the Official Information Legislation Review. Public Trust is broadly of the opinion that some parts of the Official Information Act 1982 (OIA) need to be amended or clearer guidance needs to be provided and responds to some questions specifically relating to the OIA only.

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

We agree that agencies should be explicitly listed rather than having some listed in the OIA and others cross-referenced to the schedules in the Ombudsmen Act 1975. This will make it easier to see exactly which agencies are covered.

**2 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?**

We agree that the OIA should be updated to include all relevant bodies. There are no policy reasons why the OIA should continue to arbitrarily include some agencies while excluding others who should be included by virtue of their nature, function and relationship with the Crown.

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

We agree that SOEs and other crown entity companies should remain within the scope of the OIA. It is the nature, function and relationship of an agency with the Crown that should be given consideration, regardless of whether they have an objective to be profitable.

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

We believe that the current definition of 'official information' sufficiently covers the types of information that should be excluded. In particular, we consider it remains appropriate for any information held by Public Trust in its capacity as a trustee or in any other fiduciary capacity to continue to be excluded from the definition of 'official information'.

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

We agree that the OIA should continue to be based on a case-by-case model and that it should not move to a system that prescribes categories of information which should or should not be included. It is the content of the information in the document that should be considered, not the type of document. While it is true that the case-by-case model can lead to inconsistency in the application of the OIA, we believe that this would be better addressed through improved practical guidance on how to apply the OIA.

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We agree that enhanced guidance will improve the understanding and application the OIA. We do not believe that redrafting the existing rules or implementing more rules will achieve the same level of understanding.

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We disagree that the commercial withholding ground should continue to be confined to situations where the purpose is to make a profit. For many organisations including Public Trust, there are products and services offered as part of a commercial business for which the purpose is other than to make a profit. Such organisations would be at a commercial disadvantage against their competitors which are not subject to the OIA if they were not able to withhold information relating to those products and services which

do not have a purpose of making a profit. We support a broader interpretation of the commercial withholding ground that would allow such information to be withheld.

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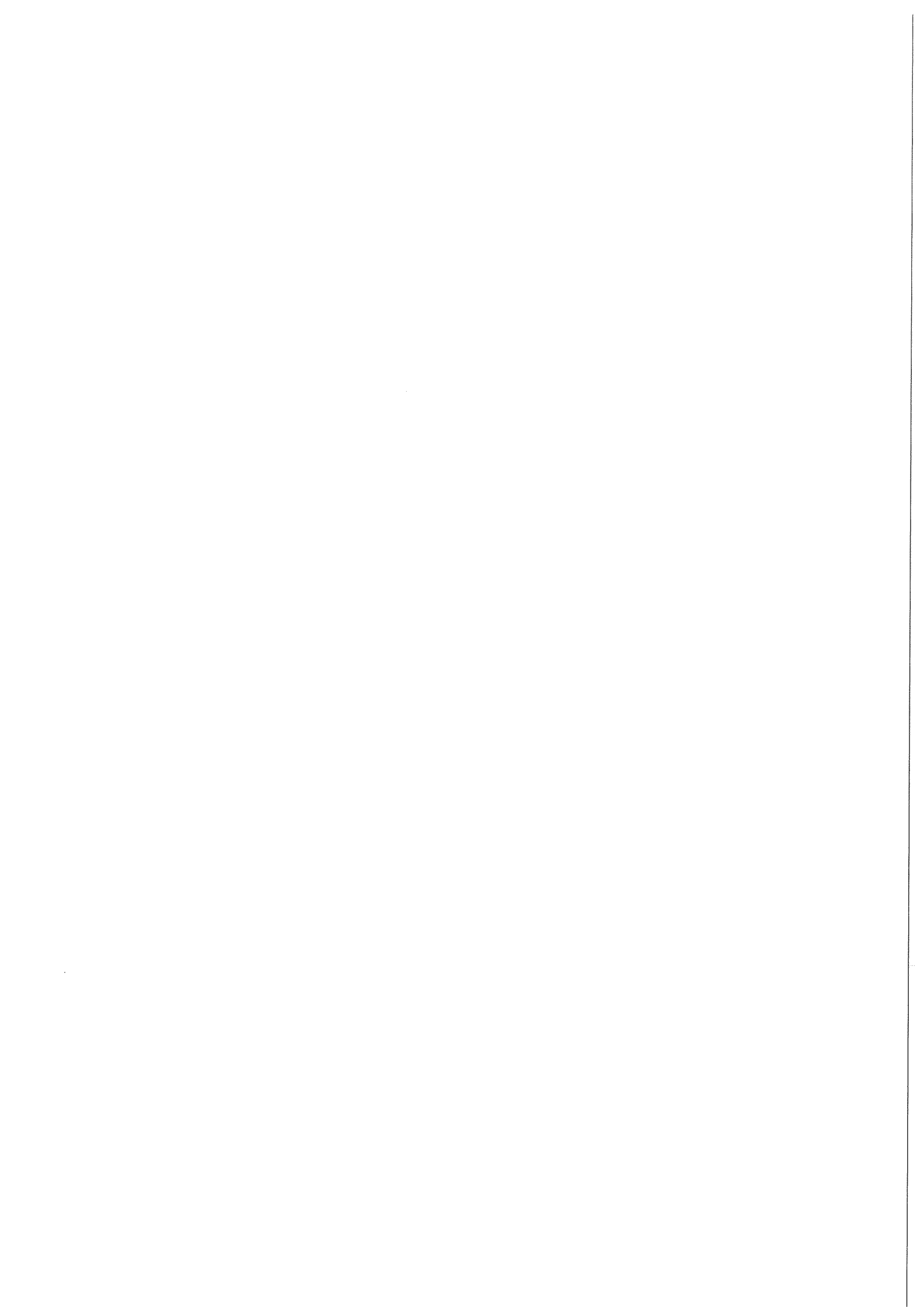
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Ann Brennan  
General Counsel  
Public Trust

DDI: 04 978 4520  
Email: [ann.brennan@publictrust.co.nz](mailto:ann.brennan@publictrust.co.nz)

**Public Trust**  
**10 December 2010**





**Julie Chuor**

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**From:** Official Information Act [OfficialInformationAct@lawcom.govt.nz]  
**Sent:** Friday, 10 December 2010 4:50 p.m.  
**To:** Julie Chuor  
**Subject:** RE: Review of Official Information Act 1982

Thank you for your submission to the Commission's review of official information legislation.

Margaret Thompson  
Law Commission

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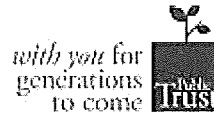
**From:** Julie Chuor [mailto:Julie.Chuor@PublicTrust.co.nz]  
**Sent:** Friday, 10 December 2010 2:33 p.m.  
**To:** Official Information Act  
**Subject:** Review of Official Information Act 1982

Hi

Please find attached Public Trust's submission on the Review of the Official Informatin Act 1982.

Regards,

**Julie Chuor**  
Corporate Solicitor



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