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11 August 2010

Iain Rennie
State Services Commissioner
State Services Commission
PO Box 329
WELLINGTON 6140

Dear Mr Rennie

**LAW COMMISSION REVIEW OF OFFICIAL INFORMATION
LEGISLATION**

In March this year Geoffrey Palmer and I met at SSC with your deputy John Ombler, John Whitehead, Maarten Wevers and Rebecca Ketteridge to discuss our review of official information legislation. I now enclose the draft Issues Paper on this topic. We are preparing this for electronic release on our website in early September and will be seeking feedback on our views from agencies and the wider public.

The Issues Paper discusses matters of concern identified from the literature and our survey of requesters and agencies at the end of last year, and contains our tentative proposals. SSC is likely to be particularly interested in Chapter 12: Proactive Disclosure and Chapter 13: Oversight and Other Functions.

The options we put forward are unlikely to change significantly but the final version will be edited further. Any comment you may wish to make before the Issues Paper is published is welcome. We hope to finalise the paper by Friday 27 August.

Yours sincerely

John Burrows
Law Commissioner



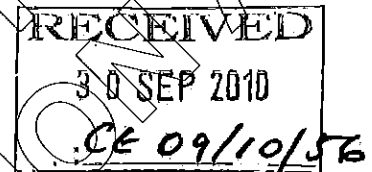
Ann Aspey

29 September 2010

Mr Iain Rennie
State Services Commissioner
State Services Commission
PO Box 329
WELLINGTON

President
Rt Hon Sir Geoffrey Palmer SC

Commissioners
Dr Warren Young
George Tanner QC
Emeritus Professor John Burrows QC
Val Sim



Dear Mr Rennie

REVIEW OF OFFICIAL INFORMATION LEGISLATION

The Law Commission has a project underway to review New Zealand's official information legislation. In December 2009 we asked both requesters and providers of information to let us know their main concerns with the operation of this legislation and in March 2010 we published a summary of the main findings from this survey.

We have now looked closely at the matters people drew to our attention and published an Issues Paper, *The Public's Right to Know: Review of the Official Information Act 1982 and Parts 1-6 of the Local Government and Meetings Act 1987*. This paper discusses the main areas where reform may be required and asks for comment on our preliminary proposals. It can be downloaded from the Law Commission's online consultation site, www.lawcom.govt.nz.

We do not suggest any change to fundamental principles but recognise several ways in which the Acts could operate more effectively. Electronic technology has transformed the information environment worldwide and we must ensure our legislation can reflect that transformation. We also think our legislation needs more ongoing administrative oversight and support and ask how this might best be achieved.

We are keen to hear the views of your agency. The closing date for submissions is Friday 10 December 2010.

Yours sincerely

John Burrows
Commissioner

Oversight and Other functions

1 The identified problems:

- the Office of the Ombudsmen is overstretched so that it lacks strategic oversight of the Act. Consequently there are no formal structures to improve practice and understanding;
- there is no body championing open government or as a watchdog of the principles underlying the Acts;
- there are no central statistics to enable oversight of the way the Acts are working;
- there is no cross-agency sharing of knowledge/issues/problems;
- provision of assistance and advice is ad hoc and not widely known or used; and
- there is no requirement to issue guidance or provide training.

2 In the Law Commission's view there is a need for an agency with dedicated oversight, monitoring the Official Information Act and Local Government Official Information and Meetings Act (LGOIMA). Of the organisations (State Services Commission and the Information Authority were the other two) that had functions in the early days of the Act only the Ombudsmen remain.

3 New statutory functions for an agency are proposed:

- **To issue guidance**
 - on interpretation of the Act and responding to queries;
 - to assist requesters to make requests
 - to provide advice to a Minister or agency on matters related to the operation of the Act.
- **Promotion and education**
 - To promote awareness and understanding of the Act
 - To arrange for the education and training of agencies subject to the Act
- **Oversight**
 - To monitor the operation of the Act
 - To collect information and statistics from agencies and Ministers about the operation of the Act and to report annually to Parliament
 - To receive and invite representations from the public on any matter relating to the Act I have doubts about this as it could encourage growth of a de facto complaints function if not satisfied with the Ombudsmen's decisions
- **Policy**
 - To examine proposed legislation or policy that may affect the right to access to official information and report to the Responsible Minister on results Doubts about this – could be dealt with by a requirement to be considered when writing Cabinet papers similar to that relating to the Human Rights Act or LAC Guidelines
- **Review**

- At 5 yearly intervals review the operation of the Act, consider whether amendments are necessary/desirable, and report findings to the responsible Minister.
- Promotion of proactive release
- 4 Proposal
- Ombudsmen
 - Complaints and guidance remain with Ombudsmen
 - Promotion and education could be with either the Ombudsmen or an oversight body
- State Services Commission and DIA
 - Oversight – monitoring of compliance, collecting data and statistics, providing policy advice, promoting open government and reporting annually to Parliament on matters relating to access to official information and monitoring compliance
 - State Services Commission – as a central agency.
 - “Ownership” of the Official Information Act would support the State Services Commission vision that “*NZers have a high performing, trusted and accessible State sector, delivering the right services in the right way at the right prices*”. With oversight of the wider state sector, responsibility for ensuring the state sector is efficient, provides value for money and effectively delivers services to the New Zealand public it fits alongside the review of machinery of government role.
 - Fits strategically with its leadership role of E-government programmes in the state sector and of developing overall E-government strategy. Fits with SSC role of developing and reviewing the policy framework for New Zealand government-held information and NZGOAL.

RELEASABLE INFORMATION OFFICIAL INFORMATION ACT

5 November 2010

Issues In the OIA Review

Anne and I have talked and divided the material in the Law Commission report into three:

- Big issues for SSC
- Other issues – particularly those which we may need to discuss with MoSS
- Other interesting stuff

Comments from Anne and me are in italics.

This note is not a summary of the entire Law Commission report or its recommendations.

Big Issues

- 1 Chapter 13 recommends that SSC become responsible for oversight and monitoring of the operation of the legislation. SSC to be the "owner" of the legislation.

This would not extend to technical guidance on the patterns and 'precedents' emerging from cases. Providing information on this is recommended to be the province of the Ombudsmen.

SSC oversight role to include monitoring, policy, review, and promotion. Promotion includes education and training which is not technical guidance but which does seem to include information on how to make a request, on how the Act works, on the impact on agencies of large requests, and issuing user friendly guidance for requestors. (see page 112 Chapter 9)

Nothing in the proposals would give SSC any role in relation to LGOIMA.

Other issues – particularly those needing MoSS consultation

- 2 Chapter 10 says that there should be clearer guidelines for ministerial consultation on OIA requests. The suggestion is that SSC develop these. Para 10.36 sets out an extensive list of matters to be covered including "the process by which the department and the minister will interact on any official information request?"

We think that Ministers should set any rules for Ministers and that the SSCer should provide guidance for CEs.

3 Chapter 11 proposes that the veto power be removed and that judicial review be the only recourse following a final opinion/direction from the Ombudsmen.

4 Chapter 11 also proposes that the Solicitor General be empowered to enforce Ombudsmen's decision when the Ombudsmen brings a breach of public duty, on the part of a public agency, to his attention.

5 Chapter 12, in relation to proactive disclosure proposes that agencies be obliged to take ^{reasonably} all practicable steps to proactively release information. ^{ie. the duty to comply with} (12.59) ^{and on} ^{rule}

s.9(2)(g)(i)

Other bits of interest

6 Chapter 3 proposes that the Office of the Ombudsmen be given formally the role of collating and analysing case notes so as to bring to light any consistent themes, patterns, and principles. ^{as precedent}

7 Chapter 4, makes recommendations in relation to subsection 9(2)(f), concerned with maintenance of constitutional conventions, and 9(2)(g)(i) concerning maintaining the effective conduct of public affairs through the free and frank expression of opinion. The Report says that these provisions are so confusing and unclear as to warrant redrafting. At 4.46 is put forward a redraft which would replace the current two subsections. ^{looks good}

8 Chapter 7 is concerned with 'other withholding grounds'. It proposes that the ground relating to information which "is or soon will be publicly available" be amended so that it provides that the information must be "readily available within a very short time".

s.9(2)(g)(i)⁹

Chapter 7 also proposes to include a new ground relating to withholding of information gained in the course of an inquiry which may, if released, prejudice the inquiry.

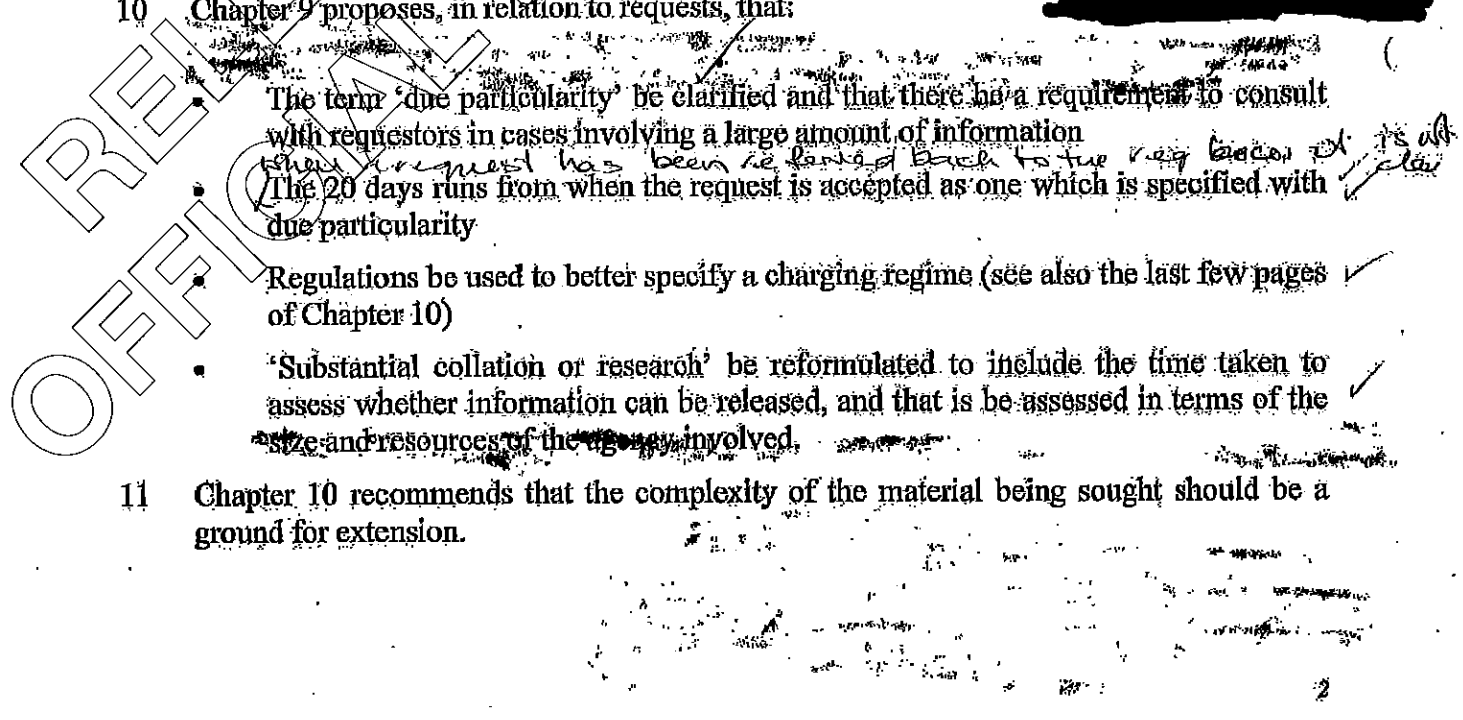
10 Chapter 9 proposes, in relation to requests, that:

- The term 'due particularity' be clarified and that there be a requirement to consult with requestors in cases involving a large amount of information ^{when request has been referred back to the requestor it is all clear}
- The 20 days runs from when the request is accepted as one which is specified with due particularity

• Regulations be used to better specify a charging regime (see also the last few pages of Chapter 10)

• 'Substantial collation or research' be reformulated to include the time taken to assess whether information can be released, and that is be assessed in terms of the size and resources of the agency involved.

11 Chapter 10 recommends that the complexity of the material being sought should be a ground for extension.



5 November 2010

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- Other issues – particularly those which we may need to discuss with MoSS
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Comments from Ann and me are in italics.

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SSC oversight role to include monitoring, policy, review, and promotion. Promotion includes education and training which is not technical guidance but which does seem to include information on how to make a request, on how the Act works, on the impact on agencies of large requests, and issuing user friendly guidance for requestors. (see page 112 Chapter 9)

Nothing in the proposals would give SSC any role in relation to LGOIMA.

s. 9(2)(g)(i)

[REDACTED]

s. 9(2)(g)(i)

Other Issues – particularly those needing MoSS consultation

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[REDACTED]

Comment (A2)

- 3 Chapter 11 proposes that the veto power of government be removed and that judicial review be the only recourse following a final opinion/direction from the Ombudsmen.
- 4 Chapter 11 also proposes that the Solicitor General be empowered to enforce Ombudsmen's decision when the Ombudsmen brings a breach of public duty (to observe an Ombudsman recommendation in respect of a request), on the part of a public agency, to his attention.
- 5 Chapter 12, in relation to proactive disclosure proposes that agencies be obliged to take all practicable steps to proactively release information.

[REDACTED]

Other bits of interest

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- 8 Chapter 7 is concerned with 'other withholding grounds'. It proposes that the ground relating to information which "is or soon will be publicly available" be amended so that it provides that the information must be "readily available within a very short time".
- 9 Chapter 7 also proposes to include a new ground relating to withholding of information gained in the course of an inquiry which may, if released, prejudice the inquiry.
- 10 Chapter 9 proposes, in relation to requests, that:

- The term 'due particularity' be clarified and that there be a requirement to consult with requestors in cases involving a large amount of information
- Where a request has been referred back to the requestor because it is not clear the 20 days should run from when the request is accepted as one which is specified with due particularity
- Regulations be used to better specify a charging regime (see also the last few pages of Chapter 10)

- 'Substantial collation or research' be reformulated to include the time taken to assess whether information can be released, and that is to be assessed in terms of the size and resources of the agency involved.

11 Chapter 10 recommends that the complexity of the material being sought should be a ground for extension.

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OIA Review Issues.

Info Unit in SSC.

Trust of community in State Sector, would be reason.

- policy exp to advise Mins on op'n of Act & changes to it.
→ who takes the review thro's
May need discuss with MoJ.

- monitoring - not be too prescriptive for Act provisions.
more likely test issues re op'n of Act with agencies.
reviewing implementation of Act

Not estab special position in Act - managerial issue.

tuusan.
NohO urb
function.

Promote open govt rep. to Parl ann re
access & poss. monitoring within agencies
compliance.

What does this mean?

On basis 'trust' might require SSC
periodically report on State sector's
discharge of op'n of Act & from to
time make recs on changes to Govt
(transparent acctg for pub of State sector)
provide for comments from pub & grps.
pubc reporting on discharge of repts of State sector
& trust etc.

[Probably need for agencies to disclose info on their website
- timeliness; vol of requests - part of business as usual
used on website] give base of data to be
supplemented by feedback.

Report to MOSS rather than Parl.

* Need talk DIA on their approach to recc on
h901MA. before responding to law Com: How

oversight functions might work - common view SSC & D

Promotion & training

Might find some natural team deliver -
ask one of big law firms. to do legal advice
on OIA

NOT specification in Act

Need views on what nature of the

Ministerial - Guidelines for Min. consultation

Guidance in Cab Manual should be clearer & fuller
Initiate for Cab Office to consider developing
advice for Min on the Cab Man, might
wish consult with SSCs to ensure interface
with subjects.

Consult Rebecca

Veto Power

No. change

Need keep function in system.

Proactive Disclosure - part of purpose deal

Especially - be part of SSC's function. Could also
require SSC in reviews function advise how
state sector prog. making info more available

ASPEY, Ann

From: OLIVER, Hugh
Sent: Friday, 12 November 2010 1:41 p.m.
To: ASPEY, Ann
Subject: RE: Law Commission review of OIA

Hi

This looks fine to me. I have put a couple of comments/suggestions in a purple sort of colour. Iain would, I think, like to see a timeline of how he will get a response to the Law Commission.

Thanks

Hugh

--
Hugh Oliver
Senior Advisor
State Services Commission

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Mob:
Fax: +64 4 495 6702
hugh.oliver@ssc.govt.nz
www.ssc.govt.nz | newzealand.govt.nz

DIA
Tues 16/11

New Zealand's State Services Commission: Providing leadership to the State Services so that government works better for New Zealanders

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Caution: If you have received this message in error please notify the sender immediately and then delete this message along with any attachments. Please treat the contents of this message as private and confidential.

From: ASPEY, Ann
Sent: Friday, 12 November 2010 9:54 a.m.
To: OLIVER, Hugh
Subject: Law Commission review of OIA

Hugh

Here are my notes of the meeting we had with Iain the other day. Can you please check them to see that they agree with your understanding of what was said?

Then there are 3 "consult" notes. I assume that will be for me to do. Do you know anyone in Justice or DIA who would be involved with this that I should talk to?

I will get Gordon to have a look at the Chapter 7 and Chapter 2 in case any of the suggestions might affect our conduct of inquiries.

Ann

--
Ann Aspey
Solicitor
State Services Commission
DDI:
Fax: +64 4 495 6703

Increasing no. of cases could work by ...

Notes of meeting with State Services Commissioner re Response to Law Commission Review of Official Information Act – comments to be provided by 10 December 2010

Proposals

Promotion and education

Proposal of a function to:

- Promote awareness and understanding of the Act and its operation.
- Arrange for provision of programmes of education and training for agencies subject to the Act

Oversight

This function would comprise

Monitoring the operation of the Act

- Collecting information and statistics from agencies and Ministers about the operation of the Act
- Reporting annually to Parliament on the operation of the Act
- Receiving and inviting representations from members of the public on any matter relating to the operation of the Act.

Policy

- To examine any proposed legislation or proposed policy of Government that may affect the right to access to official information, and report to the responsible Minister the results of that examination

Review

- At intervals of not more than 5 years
 - Review the operation of the Act
 - Consider whether any amendments are necessary or desirable; and
 - Report the findings to the responsible Minister.

Promotion

- To promote and encourage the public availability of official information including the proactive release of information

Provision for establishment of a special position or dedicated unit in the State Services Commission if State Services Commission given oversight responsibility

Comment:

- 1 The raison d'être for an information unit in the State Services Commission would be the rôle of the Commission in increasing the trust of the community in the State sector.

- 2 The recommendation for policy capability to advise Ministers on the operation of the Act and changes to it should be discussed with Justice.
- 3 Monitoring: Would not want the Act's provisions to be too prescriptive. It would be more likely that we would test issues relating to the operation of the Act with agencies, reviewing the implementation of the Act, that is, how the Act is working for stakeholders, i.e. to gauge how well it is contributing to Trust objective.
- 4 Performance information might be reported by departments/agencies in, for example, their annual reports.
- 5 Would not want the Act to establish a special position for the purpose – should be a managerial issue.
- 6 Promoting access and possible monitoring of individual agencies' compliance is a function that the Ombudsmen should perform.
- 7 Promoting open government reporting to parliament annually – what does this mean?
 - a. On the basis of "trust" might require State Services Commission to periodically report on the State sector's discharge of their responsibilities under the Act and from time to time make recommendations on changes to Government (transparent accounting for the performance of the State sector). Provide for comments from the public and grounds – performance reporting on the discharge of the responsibilities of the state sector and trust etc. [Probably need for agencies to disclose information on their performance – timeliness of responses; volume of requests – part of business as usual disclosed on agencies' websites that would give the basis of data to be supplemented by feedback.]
 - b. Report to Minister of State Services rather than Parliament.
- 8 Need to talk to DIA on their approach to the recommendations on the LGOIMA before responding the Law Commission – how the oversight functions might be performed; common view State Services Commission and DIA.
- 9 Promotion and Training: Might fund some training rather than deliver it; perhaps ask one of the big law firms to do training and advice on OIA or ask people in departments who have experience and good training programmes.
 - a. Not specify in Act
 - b. Need a view on what the nature of training would be.

Consultation with Ministerial Offices

- State Services Commission should develop general rules or guidelines about the way a department and Minister will interact in relation to OIA requests etc

- 10 The guidance in Cabinet Manual should be clearer and fuller:
 - a. Invite Cabinet Office to consider developing advice for Ministers which would be included in the Cabinet Manual. Might ask Cabinet Office to consult with the State Services Commissioner to ensure interface with the Public sector.

Consult Rebecca Kitteridge.

Veto Power

- Suggestion that the veto power be removed.
- 11 No – disagree. There is a need to keep the tension in the system.

Proactive Disclosure

- 12 Already a statutory requirement to make information progressively available – part of the purpose of the Act.
- 13 Education would be part of State Services Commission's function.
- 14 Could also require the State Services Commissioner in the review function to advise on the State sector's progress in making information more available.

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OFFICIAL INFORMATION ACT

ROYLE, Andrew

From: ASPEY, Ann
Sent: Friday, 12 November 2010 2:09 p.m.
To: OLIVER, Hugh
Subject: RE: Law Commission review of OIA

Can you have another look at this. I have amended the bit you put in. I think we probably need to indicate who stakeholders are – not ours but I would have thought the public, journalists etc. Why would we test compliance with the Minister or other stakeholders in the State Services Commission? I think that my notes must have been a bit short in this bit.

Do you have any idea who I should speak to in Justice/DIA?
Ann

--
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Hugh Oliver
Senior Advisor
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ROYLE, Andrew

From: ASPEY, Ann
Sent: Friday, 12 November 2010 4:14 p.m.
To: 'Rebecca Kitteridge'
Cc: OLIVER, Hugh
Subject: Law Commission review of the OIA

Good afternoon, Rebecca,

We are preparing to respond to the proposals made by the Law Commission, particularly as they affect the State Services Commission. One of the proposals is in Chapter 10 of the discussion document (pages 120 and 121). It relates to consultation with Ministerial offices.

The Law Commission asks if there should be clearer guidelines about consultation with Ministerial offices. Although they have not explicitly suggested that the State Services Commission should develop these they do quote from Nicola White who proposed that "the State Services Commission could develop a framework of general rules or guidelines, supplemented by a specific protocol between an agency and their Minister..."

Iain's view is that this is not the best approach but that perhaps guidance in Cabinet Manual could be more comprehensive. I wonder if you have some time to have a chat about this proposition. One possibility is that the Commission could work with Cabinet Office on any guidance to ensure that the interface with the Public Service works well.

I wonder, Rebecca, if I could make a time to chat with you to talk about this so that we can take your views into account when making our response to the Law Commission. The final date for submissions to the report is 10 December so if it were possible to meet some time in the next couple of weeks that would be great.

Regards

Ann

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ROYLE, Andrew

From: Rebecca Kitteridge [Rebecca.Kitteridge@dpmc.govt.nz]
Sent: Friday, 12 November 2010 4:21 p.m.
To: ASPEY, Ann
Cc: Michael Webster; OLIVER, Hugh
Subject: Re: Law Commission review of the OIA

Thanks, Ann. I have asked Michael Webster, Deputy Secretary of the Cabinet, to follow up with you about this.

Regards,

Rebecca

Rebecca Kitteridge
Secretary of the Cabinet and Clerk of the Executive Council, Department of Prime Minister and Cabinet Wellington

>>> <ann.aspey@SSC.govt.nz> 12/11/2010 4:13 p.m. >>>

Good afternoon, Rebecca.

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www.ssc.govt.nz<<http://www.ssc.govt.nz>> | newzealand.govt.nz<<http://newzealand.govt.nz>>

New Zealand's State Services Commission: Providing leadership to the State Services so that government works better for New Zealanders

ROYLE, Andrew

From: ASPEY, Ann
Sent: Friday, 12 November 2010 4:08 p.m.
To: 'Andrew Royle'
Cc: OLIVER, Hugh
Subject: Law Commission report on the OIA

Hi Andrew

Stephen tells me you are preparing the DIA response to the Law Commission. I wonder if we can have a chat about some of the proposals please? We have some comments to make to the Law Commission on the proposal (in chapter 13) that involves a role for the State Services Commission in relation to guidance, training and promotion of the OIA and oversight of the OIA with a similar role for the DIA.

We would like to discuss the proposals with you with a view to reaching a similar position on these points.

When would be a good time for you given that we have to respond by 10 December?

Ann

—
Ann Aspey

Solicitor

State Services Commission

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ROYLE, Andrew

From: Andrew Royle [Andrew.Royle@dia.govt.nz]
Sent: Monday, 15 November 2010 9:26 a.m.
To: ASPEY, Ann
Cc: Harriet Cartwright
Subject: RE: OIA review working group

Thanks Ann

Just to let you know, we're starting our meeting at 9am, so hopefully we can get through any specific OIA stuff first. At 10am, we should be able to give you a summary of where we have got to in the first hour, for your info and feedback, and also get on to discuss the "guidance/oversight" role aspect of the report. We thought this would be the most efficient way.

cheers

From: ann.aspey@SSC.govt.nz [mailto:ann.aspey@SSC.govt.nz]
Sent: Monday, 15 November 2010 9:19 a.m.
To: Harriet Cartwright
Subject: RE: OIA review working group

Thank you very much. See you then.

Ann

Ann Aspey
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Sent: Monday, 15 November 2010 9:14 a.m.
To: ASPEY, Ann; OLIVER, Hugh
Subject: OIA review working group

Good morning Ann and Hugh,

Andrew Royle suggested I get in touch with you both to invite you at 10am tomorrow to the working group we are holding to consider the Department's response to the latest Law Commission Issues paper on the OIA/LGOIMA review. The working group will take place in room 106 at 46 Waring Taylor.

We hope to see you in the morning.

Regards

Harriet Cartwright
Solicitor

ROYLE, Andrew

From: Harriet Cartwright [harriet.cartwright@dia.govt.nz]
Sent: Monday, 15 November 2010 3:16 p.m.
To: Jo Gascoigne; Rex Drummond; John Blakeley; Margaret Dugdale; Helen Baylis; Gaynor Bradfield; Peter Andrews; ASPEY, Anni; OLIVER, Hugh
Cc: Andrew Royle
Subject: Agenda for tomorrow's OIA working group
Attachments: Agenda OIA.doc

Harriet Cartwright
Solicitor
Office of the Chief Executive
The Department of Internal Affairs Te Tari Taiwhenua
Direct Dial
www.dia.govt.nz

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Agenda

16 November 2010

Response to the Law Commission's Issues Paper "The Public's Right to Know"

- Third party notice of a decision to release information
- Extend "*free & frank*" ground to include "*provision of advice*"
- Interpretation of "*commercial*" – profit driven only
- Difficulties of administering privacy test – firmer guidance rather than redraft
- Proactive disclosure of information – "*all reasonable practicable steps*"
- Reduce scope of "*is or will soon be publicly available*"
- New ground to protect information received in course of investigation
- Public interest test – guidance rather than codification
- Regulations for charging – ensure uniform practice
- Vexatious requesters
- Add "*review and assessment*" to the "*collation and research*" consideration
- Remove the power to "*veto*" an Ombudsman's recommendation
- Expanded oversight role for DIA - LGOIMA & SSC – OIA
- Potential education/promotional role
- Other grounds – harassment, protecting cultural values
- Introduction of a "reverse" complaint/review process
- Next steps for the response to the Law Commission

Oversight.

MoJ strong public law function - OIA, Priv, NZBORI

Monitoring of adherence

only capture formal but / not oral responses
not how satisfied with responses.

Local Govt sep of Ministerials

of Educa - support issue shld Omb be funded for

If advice from Omb Office might assist new people.

(i) Omb reorganise dept. to ensure like matters dealt with same person.

Clear definition Omb decisions & principles & guidance
focus divots.

Intro of review epld process.

Andrew

Resourcing issues

What is prob?

seems MoJ review OIA w/in

pub law

IP resourcing then MoJ get

funding for Omb

Monitoring old fall out but what value of that. Cost involved & what benefit

Practical solutions in Omb Office to deal with staff turnover.

? Is there case for staff timeframes on their acts

Synergies in keeping educa with Omb policy

Openly red. with points quote that need

Ann Rep / Arising

Link to Omb to pick up such issues for

1.1.2017 10:02:00 AM

ROYLE, Andrew

From: ASPEY, Ann
Sent: Tuesday, 16 November 2010 4:48 p.m.
To: 'Georgie Handley'
Cc: OLIVER, Hugh; CAYFORD, Jodie; 'Andrew Royle'
Subject: Law Commission OIA review

Hi Georgie

I wonder if we can come and have a chat to you about the proposals the Law Commission is making that affect the State Services Commission (and DIA), and of course Justice? Thursday morning any time between 9 and 11 would be good for us if that were ok with you.

The conversation at DIA was interesting and some views similar to those you expressed to me were laid out. As DIA is affected too in that proposals for a similar role in respect of the LGOIMA have been put out by the Law Commission I mentioned to Andrew Royle that we would be talking to you and asked him if he would be interested in coming along to any conversation that we might have. I hope that is ok with you.

Ann

--

Ann Aspey
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Law Commission Review of Official Information Act

Record of discussions with Georgie Handley, Justice and meeting at Internal affairs

Proposal

- 1 Promoting the OIA and LGOIMA and educating agencies and the public on their operation. Should this be the role of the oversight bodies recommended i.e. State Services Commission and DIA?
- 2 That the State Services Commission should pick up the oversight function in relation to the OIA and the DIA that role for the LGOIMA.
- 3 The oversight role would cover:
 - Monitoring the operation of the Act;
 - A policy function of reporting on prospective legislation or policy relating to access to official information;
 - A function of promoting the increasing availability of official information including the proactive release of such information.

Discussions with Georgie Handley

- 4 I talked to Georgie on the phone on Tuesday 16 November, to discuss the Law Commission's proposal that the State Services Commissioner have responsibility for policy on the Act – 'to advise Ministers on the operation of the Act and changes to it' (Iain's words).
- 5 The proposal in the Review Report is in para 13.46. – "be responsible for making reports on prospective legislation or policy relating to access to official information."
- 6 Georgie said this is odd, and likens it to a BORA vet function which is something different from what we had imagined. She said that it is not uncommon for them to be asked by departments to look at proposed legislation to assess whether there are any issues for the OIA involved.
- 7 She suggested also that a review of the Acts/Schedules would require an increase in personnel as the production of the Directory of Official Information is both time consuming and requires a number of employees to do it.

s 9(2)(g)(i)

Meeting at DIA

- 9 I was invited to participate in a meeting at DIA to discuss the Law Commission's proposals, at the time they had set to consider the suggested expanded oversight role for both agencies and the potential education/promotion role.

Promotion

- 10 The discussion covered the fact that Justice has a strong public law function with responsibility for the OIA, the Privacy and New Zealand Bill of Rights Acts. It was not

clear what the problem with this was. If it was a resourcing issue then Justice should be resourced for it,

- 11 Monitoring of adherence to the requirements of the Acts – the statistics that are kept in both departments capture only the formal requests not the informal ones that are dealt with by phone or email (on the principle that any request for information is an OIA request). Neither do we capture how satisfied requesters are with responses.
 - a. How valuable is monitoring? There would be a cost involved but what would the benefit be? Could State Services Commission do this via its surveys?

- 12 Local Government is constitutionally separate c.f. Ministers.

s 9(2)(g)(i)

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Kirby J - agency monitor experience o wise preventative
value of legislative test, shld aggregate experience
- draw lessons from it

Danks Cmde proposed

SSC advisory & co-ord vdp

Omb receive & investigate cplts

Info Auth resp to fault for reviewing Act & review
on catrgs of info to be accessed

Auth reviewed working of OIA; manner access given to OI &
manner of supplied. Recs for changes re access to & supply of info
○ Functions incl to
- receive & invite reps from public, Min, Depts re access & supply
- inquire into & report on whether coverage of OIA be included.
- inquire ser & report on any matters affecting access to &
supply or preservation of OI.

Propose:

Omb - receive & investigate cplts

Guidance

Precedent using casestds & commentary drawing atten to patterns &
principles arising from cases.

* Stat prom. to issue & maintain guidance to agencies & request
& gen advice to a Min/agency

Promotion & Guidance

* Stat prom to promote awareness & understandg of OIA
& arrange for prom educn & trng.

Oversight

monitoring; policy; review; promoth.

Assessments of whether OIA working well, what and is needed & other
measures to make it effective,

+ gather stats about OI matters across govt. => pub agencies provide
stats to overseer

+ receive reps from public on op'n of OIA / any systemic matters
in an agency

* Stat - monitor op'n.
collect info & stats from agencies & Min on op'n of Act
report ann. to fault.
receive & invite reps from public

Policy

* formal examine proposed legis'n / policy that may affect v. of access to OIA & report to responsible Min.

Review:

* intervals of not more than 5 yrs from comm. of actn
- review op'n of Act
- consider whether any amts necess/desirably
- report findings to resp Min

Promote:

* promote & encourage public availability of digital products
rise of info.

Complts:

✓ * Omb retain cpts twist.

Use:

Guidance:

Omb - written guidance gen. nature.

- Yes.

Promote + Educn:

- promote awareness & understandg of OIA
- arrange for educn & trng progs.

Oversight: monitor & review

SSC - OIA

Not stat provn for unit.

consult on policies & proposals

DIA - GOIMA

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Problem definition Chapt 13 'Oversight & Functions'

No provision for guidance, Irving, oversight - only for Omb complaints jurisdiction.

Kitby. need 'more closely monitoring experience under the FOIA
∴ otherwise the preventative value of the legislation
... would be lost. we should aggregate
experience & draw lessons from it.

i.e. lack of strategic oversight, an overstretched Omb
Office & a gap left by the demise of the Information
Authority. No formal structures in place to
improve practice & understanding.

Result

Means? No govt "owned" official information.

* No body responsible for championing open govt
or acting as a watchdog of the underlying principle
Omb lack mandate to do that & query whether they
should be promoting AoI

No central stations re OIA/LA/IMA requests to
provide overview of way Acts operate in practice
little ability to share knowledge across govt / share
common issues or problems → silos

Provision of assistance & advice is ad hoc &
informal & not widely used, known or used
No explicit reqt to issue guidance & material to
agencies & requesters to enhance their understanding
of the Act or to provide training.

Formalise education we need \$ - either to SSC/Omb

shed at most be w' held

Working more closely with Omb about issues that come
up. Is legissh needed rather than 'name/shame' -

MoJ admin OIA.

more to be made of info & guidelines

[REDACTED]

s 9 (2) (g) (i)

MoJ letter ad OIA to see if staff mandate for
outs of OAG

[REDACTED]

[REDACTED]

[REDACTED]

s 9 (2) (g) (i)

how much val info leg'vet provide. as natural state info → journal
get

(Egge briefing to Dep Se

issues identified by law com. MoJ comment: proper
solution.

+ Nicola White

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Notes of meeting at Ministry of Justice with Georgie Handley and Fiona Illingsworth – Justice (and Jodie Crayford, State Services Commission)

Discussion

- 1 The discussion focussed on the proposal that the State Services Commission pick up the oversight function in relation to the OIA.
- 2 The oversight function would cover:
 - a. Monitoring the operation of the Act;
 - b. A policy function of reporting on prospective legislation or policy relating to access to official information; and
 - c. Promoting the increasing availability of official information including the proactive release of such information.
- 3 We also discussed the suggestion that the SSC and DIA would have a role in educating agencies and the public on the operation of the OIA and LGOIMA.
- 4 We had previously spoken on the phone and had not at that point been clear about what the problem was the Law Commission was aiming to address.

Problem Definition

- 5 Chapter 13 sets out:
 - a. The legislation prescribes a complaints jurisdiction for the Ombudsmen but few other functions. The lack of provision for guidance, training or oversight roles is specified. Justice Kirby (Australia) was quoted as saying that there needed to be an agency closely monitoring their statutory equivalent “otherwise the preventative value of legislation of this character is lost...we should aggregate experience and draw lessons from it.”
 - b. The system’s problems are: a lack of strategic oversight, an overstretched Ombudsmen Office and a gap left by the demise of the Information Authority.
- 6 In paragraph 13.4 the perceived problems are identified more particularly:
 - No government “owner” of official information. The Law Commission refers to the State Services Commission’s *Policy Framework for Government Held Information*.
 - No body responsible for championing open government or acting as a watchdog of the underlying principle. “The Ombudsmen do not have a mandate to do so and it is questionable whether they should carry out a promotion role in any case.”
 - No central set of statistics relating to OIA or LGOIMA requests to provide an overview of how either Act is operating in practice.
 - Little ability to pool or share knowledge across government or share common issues or problems => agencies working in silos.
 - Provision of assistance and advice is ad hoc and informal and not widely known or used.
 - No explicit requirement to issue guidance and material to agencies and requesters to enhance their understanding of the Act or to provide training.

Consideration of identified problem areas

- 7 It is not clear what “no government owner of official information” means.
- 8 “No body responsible for championing open government or acting as a watchdog of the underlying principle.” –
- a. The Ombudsmen have no funding or legislated role. State Services Commission could work with the Ombudsmen to provide guidance, likewise DIA and Local Government New Zealand or the other stakeholder body.
- 9 “No central set of statistics relating to OIA or LGOIMA requests to provide an overview of how either Act is operating in practice.”
- a. It seems that some agencies produce spreadsheets of their OIA matters. Is there any value in a fuller revelation of all OIA requests? Many are informal as all requests of information are OIA requests, and are answered informally – by phone or email. No records are kept of those.
 - b. May be value in monitoring requests where information has been withheld.
- 10 “Little ability to pool or share knowledge across government or share common issues or problems => agencies working in silos.”
- a. This was seen as something that the State Services Commission could have a role in.
- 11 “Provision of assistance and advice is ad-hoc and informal and not widely known or used.”
- a. Should be linked with the Ombudsmen – how can this be better done?
- 12 “No explicit requirement to issue guidance and material to agencies and requesters to enhance their understanding of the Act or to provide training.”
- a. This role has been well done by the Ombudsmen. Query whether there is any basis for making it a legislative role.

s 9(2)(g)(i)

- c. A solution could be working more closely with the Ombudsmen about issues that arise.
- d. Is legislation needed rather than “name” or “shame”, which works well to date?

Other Issues

- 13 The Law commission report does not address the issue of administration of the Act – presently Justice’s role, nor such things as production of the Directory of Official Information. Is that to remain – should.
- 14 More could be made of information and guidance. The Ombudsmen are best placed to provide this as they are the ones who see the complaints and make the decisions on the application of the Act in response to complaints. Loss of the Quarterly Review has made it difficult to reinforce best practice.

s 9(2)(g)(i)

- [REDACTED]
- 16 There may be a role for State Services Commission and DIA, working with the Ombudsmen on ways to work with the sectors to educate and improve performance. A network is needed.
 - 17 Query how much value a legislated vet of legislation and policy would provide? (Fiona)
 - 18 Georgie is writing a briefing paper for management about the issues identified by the Law Commission, with MoJ comment and proposed solutions. Will provide a copy to State Services Commission for comment.

Ann

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NORMAN, Daniel

From: ASPEY, Ann
Sent: Tuesday, 23 November 2010 4:58 p.m.
To: Michael Webster
Cc: OLIVER, Hugh; CAYFORD, Jodie
Subject: law Commission review of the Official Information Act

Good afternoon, Michael.

As you are no doubt aware the Law Commission is proposing that the general rules or guidelines about the way a department and Minister will interact in relation to OIA requests should be clarified and suggests by its repetition of Nicola White's suggestion that the State Services Commission should have that role. I emailed Rebecca a week or so ago as the Commissioner wanted us to gain Cabinet Office's perspective on this. Rebecca said you would be in touch.

Michael is it possible for us to have a meeting about this some time in the very near future as we need to provide our submission to the Law Commission within due date – 10 December?

Can you please get back to me?

Cheers

Ann

--

Ann Aspey

Solicitor

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NORMAN, Daniel

From: ASPEY, Ann
Sent: Thursday, 25 November 2010 3:13 p.m.
To: 'Andrew Royle'; 'Georgie Handley'; 'Fiona Illingsworth'
Subject: Law Commission Review of OIA: Note for State Services Commissioner on recommendation for a role for the Commissioner
Attachments: Note to State Services Commissioner re Law Commission proposal following discussions with Justice an.DOC

Good afternoon

I have attached a note I am preparing for the State Services Commissioner about the issues we discussed relating to the role suggested for him in monitoring compliance with and promotion/guidance in relation to the Act. I have endeavoured to reflect our discussions in it but want to be sure that I have those right. Please feel free to provide any further comment/corrections if I have got your views wrong.

Since our discussions I have re-read the relevant extracts from Nicola White's book and thought a bit more about the issues so what I have in this note may not be the same as the views I expressed when we met.

I would like to be able to give the note to the Commissioner on Thursday next – 2 December – so that we can prepare our final response for 10 December. If you can provide your feedback by Wednesday next that would be fantastic.

Cheers

Ann

--

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SSC Internal Memorandum

To: Iain Rennie
From: Ann Aspey
Copies to: Hugh Oliver; Jodie Cayford
Date: 24 November 2010
Subject: Law Commission Review of Official Information Act. Comments on their Proposals for State Services Commission role following Discussions with Department of Internal Affairs, Ministry of Justice and Department of prime Minister and Cabinet

Law Commission Proposal - State Services Commission Role in Monitoring Operation of Act

- 1 The oversight function comprises:
- Monitoring the Operation of the Act;
 - Policy – examining proposed legislation or proposed policy of government that may affect the right to access to official information and report to Minister of State Services
 - Review of the Act – review the operation of the Act; consider whether any amendments are necessary or desirable; report findings to Responsible Minister;
 - Promotion of the OIA – promoting awareness and understanding of OIA and its operation; arrange for provision of programmes of education and training for agencies subject to the Act (and similar function for Internal Affairs).

Policy and Review Recommendations

- 2 Ministry of Justice (Justice) as administrator of the Act deals with policy for the Act.
- a. Policy: This function - “be responsible for making reports on prospective legislation or policy relating to access to official information” (paragraph 13.46) is presently carried out by Justice.

s 9(2)(g)(i)

- 3 To Review the operation of the Act – at 5 yearly intervals; consider whether any amendments are necessary or desirable; and report findings to Responsible Minister:

s 9(2)(g)(i)

Considerations

- 4 The Law Commission makes no suggestions as to which department should administer the Act nor which should be responsible for production of the Directory of Official

information. Both of these functions are carried out by Justice. It would seem that the Law Commission has no issue with those roles remaining with Justice.

- 5 The policy and review of the operation of the Act are functions that align with the administration and Directory functions. It would seem appropriate that they should all fall within Justice's purview. That would align with Justice's responsibility for three other pieces of legislation that are important to individual rights – the Privacy Act, the Human Rights Act and the New Zealand Bill of Rights Act.

Monitoring and promoting

Monitoring the operation of the Act

- 6 Monitoring – collecting information and statistics from agencies and ministers about the operation of the Act; reporting annually to Parliament on the operation of the Act; and receiving and inviting representations from members of the public on any matter relating to the operation of the Act.
- 7 My comments:
 - a. There are problems with a general monitoring function i.e. collection of information relating to all OIA requests received by an agency. Many OIA requests are not captured in spreadsheets as they are oral questions or emails that are responded to in the ordinary course of business. To instigate a formal process to capture every one of these would not promote the aims of the Act and could be counterproductive.
 - b. Already many departments maintain spreadsheets of OIA requests and handling of them. If the State Services Commission were charged with monitoring the operation of the Act it could require departments and other State sector agencies - to maintain such spreadsheets for purposes of monitoring.
 - c. The issue then is what information would be usefully provided to the State Services Commission? There seems little value in full information about all OIA requests responded to. It might be more valuable to obtain information about requests where information was withheld or refused, transfers were made, time limits to respond were extended, and any other provisions were applied that were or potentially could have been the subject of a complaint to an Ombudsman under section 28. That could be reported on via annual reports.
 - d. One of the State Services Commission's surveys of the public could be a vehicle by which the Commission could canvass the public for their views on the operation of the Act. Other vehicles would be needed to canvass other interested parties e.g. journalists, Opposition research units.

- 8 If we were to take on the monitoring role, which we could operate along the lines suggested above, we would want any legislative provision to be general. I suggest the Act might impose responsibility on the State Services Commissioner to monitor the operation of the Act but leave it to the Commissioner to decide how best to execute the function.

Promotion and education

- 9 Promotion and education, to:
 - a. promote awareness and understanding of the Act and its operation;

- b. arrange for provision of programmes of education and training for agencies subject to the Act;
 - c. promote and encourage the public availability of official information including the proactive release of information.
- 10 The origin of the above seems to be the Law Commission's view that there is no body responsible for championing open government or acting as a watchdog of the underlying principle of open government – a lack of strategic oversight. This results in:
- a. No government 'owner' of official information – Note State Services Commission *Policy Framework for Government Held Information*;
 - b. Little ability to pool or share knowledge across government or share common issues or problems resulting in agencies working in silos;
 - c. Provision of assistance and guidance is ad hoc and informal and not widely known or used; and
- 11 In addition the Law Commission points to no explicit requirement in the Act to issue guidance and material to agencies and requesters to enhance their understanding of the Act or to provide training.

Possible response

- 12 "Promoting open government", as an instrument to increase trust in government –
- use information gathered from monitoring function;
 - and work with the Ombudsmen
- to produce guidance for departments and perhaps other state services agencies c.f. the Ombudsmen Quarterly Review.

13 Would we be updating the *Policy Framework for Government Held Information*?

14 Education is a function that is carried out by the Office of the Ombudsmen – Justice is

s 9(2)(g)(i)

[REDACTED] The Ombudsmen have already set up a group to carry out this activity, even though it is not provided for in the legislation, but have seen a gap and have worked to fill it.

- a. The Commission could link into that education provision to encourage departments to take up the service; perhaps encouraging a 'train the trainers' model.
- b. It doesn't seem sensible to pay outsiders to provide education when the Ombudsmen already have a group established for the purpose who have direct links to those who deal with complaints and interpret the Act at 'the coalface'.
- c. There would still be a role for the State Services Commission to put out guidance on a regular basis in conjunction with the Ombudsmen to pick up issues that arise through the complaints the Ombudsmen are dealing with. Acquisition of information about complaints may also be used to encourage departments/State services agencies that are not operating well to take advantage of education in the operation of the Act.

15 On the basis of information gained from the Ombudsmen and from the monitoring mechanisms the State Services Commission could report to the Minister of State Services on the operation of the Act, on an annual basis.

- 16 These considerations would seem to encourage a closer relationship with the Office of the Ombudsmen requiring regular meetings to collect information on issues that the Ombudsmen are coming across that need to be addressed via guidance notes or further education of departmental or agency staff.

Nicola White's proposition

- 17 Nicola, in her discussion of the OIA suggested a system where the Ombudsman provided more guidance; with case notes becoming more explicit precedents. The State Services Commission would supplement those with more general administrative guidelines on general issues, based on Ombudsmen rulings to provide practical advice for the sector. That advice would be the executive's attempt to improve its own administration of OIA matters, working alongside the Ombudsmen and new guidelines or templates would be developed as new issues emerge. Nicola proposes some areas which could be covered by administrative guidelines.

- 18 Nicola does not see legislation required to achieve her model.

Does this require legislative recognition?

- 19 Recognition of a monitoring and guidance role for the State Services Commission would put this work on a formal footing.
- a. Although the Act has been in place for 25 years so that working with it and understanding the underlying principles of open government should now be second nature to departments and agencies but that does not seem necessarily to be the case.
 - b. A formal role set in legislation could ensure that ongoing work in monitoring and promotion and guidance continues to be undertaken. It would provide agencies with clarity and more confidence about a government source of advice, given that the Ombudsmen have a slightly different role.
 - c. Any recognition in the statute should be of a general nature, allowing the State Services Commissioner to decide how that role should be put into action.

Where in the State Services Commission could such a function sit?

- 20 Given the rationale for taking on any monitoring/promotion function is reinforcing trust in government the State Services Commission Trust and Values team would be a good home for it.

Department of Internal Affairs (DIA) and LGOIMA

- 21 The Law Commission recommends a similar role to that of State Services Commission for the OIA for DIA in relation to the LGOIMA.

- 22 I attended a meeting at DIA where the Law Commission's recommendation was discussed.

s 9(2)(g)(i)

Recommendation re Clearer Guidelines about Consultation with Ministerial

offices

I am meeting with Michael Webster from Cabinet Office on Tuesday 30 November to discuss this.

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Nicola White.

OIA.

SSC shld take on an explicit leadership role, be responsible for developing guidelines on any issue where they would be useful to give a clearer understanding of what to expect 'Centre of excellence' ^{on OIA admin} to support the sector

Strengthening capacity of ~~sector~~ ^{exec} agencies to engage thoroughly with the ombudsman where there are major concerns → better balance
Central leadership in the SSC supporting a network of skilled OIA practitioners across sector shld create this capacity (p.292)

↓ Omb develop more over precedent system + SSC develop admin rules + guidelines that draw on the rulings + develop them into practical advice for the sector (Omb shld need to accept that such admin guidelines were appropriate starting point)

Mixed system

Omb more guidance - case notes → more explicit precedents
SSC supplement ^{with more gen. admin} guidelines on general issues
SSC + Omb work together. Advice = exec's attempt to improve its own admin of OIA matters, working alongside the Omb. → new guidelines or tribunals as new issues emerge.

Embedding open govt values across state sector. p.241

How to embed the values of the OIA in organisational culture of govt

- leadership role to SSC to promote understanding of the OIA + to disseminate gen. guidance + info on the Act + emerging issues
- govt + more systematic efforts for ongoing + deeper things
- sector engagement of state sector agencies in overall outcomes

Re: Law Commission OIA review - note to supersede yesterday's

Tuesday, 21 August 2012

3:41 p.m.

Subject	Re: Law Commission OIA review - note to supersede yesterday's
From	Georgie Handley
To	ASPEY, Ann
Sent	Friday, 26 November 2010 12:55 p.m.

Hi Ann

thanks for the opportunity to provide comments on your memo to the State Services Commissioner. We have the following comments to make:

1. Para 2 - this para will need amendment because Justice does not currently make reports on prospective legislation or policy relating to access to official information. What we do is provide advice to other departments during the policy development phase, for example a department will consult us on a Cabinet paper or policy proposal.

[REDACTED]

Happy to discuss further

s 9(2)(g)(i)

thanks

Georgie

Georgie Handley
Senior Adviser
Public Law
Ministry of Justice
Ph (04)

Please note I only work 9am - 3pm on Tuesday to Friday

>>> <ann.aspey@SSC.govt.nz> 26/11/2010 11:47 a.m. >>>

Sorry about this, but I received some comments today that led me to amend the note I sent out to you. It may be better if you look at this one. I would really appreciate any comments you may have, please.

Ann

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Ann Aspey

SSC Internal Memorandum

To: Iain Rennie
From: Ann Aspey
Copies to: Hugh Oliver; Jodie Cayford
Date: 30 November 2010
Subject: Law Commission Review of Official Information Act: Comments on their Proposals for State Services Commission role following Discussions with Department of Internal Affairs, Ministry of Justice and Department of Prime Minister and Cabinet

Law Commission Proposal - State Services Commission Role in Monitoring Operation of Act

- 1 The Law Commission proposes that the State Services Commission have an oversight role in respect of the Act. Oversight would comprise:
- Monitoring the Operation of the Act;
 - Policy – examining proposed legislation or proposed policy of government that may affect the right to access official information, and report to the Minister of State Services
 - Review of the Act – review the operation of the Act; consider whether any amendments are necessary or desirable; report findings to Responsible Minister;
 - Promotion of the OIA – promoting awareness and understanding of the OIA and its operation; arrange for provision of programmes of education and training for agencies subject to the Act (and similar function for Internal Affairs).

Policy and Review Recommendations

- 2 Ministry of Justice (Justice) as administrator of the Act deals with policy for the Act.
- a. Policy: This function - “be responsible for making reports on prospective legislation or policy relating to access to official information” (paragraph 13.46). At present Justice provides advice to other departments during the policy development phase, for example are consulted on a Cabinet paper or policy proposal.
 - b. Justice suggests that the Law Commission proposal will require something similar to a New Zealand Bill of Rights vet, that Justice is responsible for.
 - c. We would require additional legal resource if this function were to be carried out by State Services Commission.
- 3 To review the operation of the Act – at 5 yearly intervals; consider whether any amendments are necessary or desirable; and report findings to Responsible Minister:
- a. Justice says that the production of the Directory of Official Information has been time consuming (less so now that is being dealt with electronically) and they engage additional resources for the purpose.

- b. Reviewing the Act and its schedules in Justice's view is a bigger job than just producing the Directory of Official Information which would suggest that more resource would be required.
- c. It would seem that this proposal is based on the requirement for the privacy Commissioner to review the Privacy Act every 5 years.

Considerations

- 4 The Law Commission makes no suggestions as to which department should administer the Act nor which should be responsible for production of the Directory of Official information. Both of these functions are carried out by Justice. It would seem that the Law Commission has no issue with those roles remaining with Justice.
- 5 The policy and review of the operation of the Act functions align with the administration and Directory functions. It would seem appropriate that they should all fall within Justice's purview. That would align with Justice's responsibility for three other pieces of legislation that are important to individual rights – the Privacy Act, the Human Rights Act and the New Zealand Bill of Rights Act.

Suggestion

- 6 I suggest that the policy and review functions remain with Justice.

Monitoring and promoting

Monitoring the operation of the Act

- 7 Monitoring – collecting information and statistics from agencies and ministers about the operation of the Act; reporting annually to Parliament on the operation of the Act; and receiving and inviting representations from members of the public on any matter relating to the operation of the Act.
- 8 My comments:
 - a. There are problems with a general monitoring function i.e. collection of information relating to all OIA requests received by an agency. Many OIA requests are not captured in spreadsheets as they are oral questions or emails that are responded to in the ordinary course of business. To instigate a formal process to capture every one of these would not promote the aims of the Act and could be counterproductive.
 - b. Already many departments maintain spreadsheets of OIA requests and handling of them. If the State Services Commission were charged with monitoring the operation of the Act it could require departments – and other State sector agencies – to maintain such spreadsheets for purposes of monitoring.
 - i. The issue then is what information would be usefully provided to the State Services Commission? There seems little value in full information about all OIA requests responded to. It might be more valuable to obtain information about requests where information was withheld or refused, transfers were made, time limits to respond were extended, and any other provisions were applied that were or potentially could have been the subject of a complaint to an Ombudsman under section 28. That could be reported on via annual reports.

- c. One of the State Services Commission's surveys of the public could be a vehicle by which the Commission could canvass the public for their views on the operation of the Act. Other vehicles would be needed to canvass other interested parties e.g. journalists, Opposition research units.
- 9 The above are some options that the Commissioner could consider if this function were to be undertaken at the State Services Commission.

Suggestion

- 10 If we were to take on the monitoring role we would want any legislative provision to be general. I suggest the Act might impose responsibility on the State Services Commissioner to monitor the operation of the Act but leave it to the Commissioner to decide how best to execute the function.

Promotion and education

- 11 Promotion and education function, the Law Commission sees this as to:
- a. promote awareness and understanding of the Act and its operation;
 - b. arrange for provision of programmes of education and training for agencies subject to the Act;
 - c. promote and encourage the public availability of official information including the proactive release of information.
- 12 The origin of the above seems to be the Law Commission's view that there is no body responsible for championing open government or acting as a watchdog of the underlying principle of open government - a lack of strategic oversight. This results in:
- a. No government 'owner' of official information - Note State Services Commission *Policy Framework for Government Held Information*;
 - b. Little ability to pool or share knowledge across government or share common issues or problems resulting in agencies working in silos;
 - c. Provision of assistance and guidance is ad hoc and informal and not widely known or used; and
- 13 In addition the Law Commission says there is no explicit requirement in the Act to issue guidance and material to agencies and requesters to enhance their understanding of the Act or to provide training.

Comment

- 14 "Promoting open government", as an instrument to increase trust in government -

- use information gathered from monitoring function;
- and work with the Ombudsmen

to produce guidance for departments and perhaps other state services agencies c.f. the Ombudsmen Quarterly Review.

- 15 Would we be updating the *Policy Framework for Government Held Information*?

- 16 Education is a function that is carried out by the Office of the Ombudsmen. The Ombudsmen have already set up a group to carry out this activity, even though it is not provided for in the legislation, but have seen a gap and have worked to fill it.

Nicola White's proposition

- 17 Nicola, in her discussion of the OIA suggested a system where the Ombudsman provided more guidance; with case notes becoming more explicit precedents. The State Services Commission would supplement those with more general administrative guidelines on general issues, based on Ombudsmen rulings to provide practical advice for the sector. That advice would be the executive's attempt to improve its own administration of OIA matters, working alongside the Ombudsmen and new guidelines or templates would be developed as new issues emerge. Nicola proposes some areas which could be covered by administrative guidelines.
- 18 Nicola does not see legislation required to achieve her model.

Suggestions

19 Role for the Commission:

- a. The Commission could link into the Ombudsmen education provision to encourage departments to take up the service, perhaps encouraging a 'train the trainers' model.
 - i. It doesn't seem sensible to pay outsiders to provide education when the Ombudsmen already have a group established for the purpose who have direct links to those who deal with complaints and interpret the Act at 'the coalface'.
 - ii. If resourcing of the Office of the Ombudsmen is an issue in determining whether this function continues it might be preferable for additional funding to be given the Ombudsmen rather than to the State Services Commission to create a totally new function here.
- b. There would still be a role for the State Services Commission to put out guidance on a regular basis in conjunction with the Ombudsmen to pick up issues that arise through the complaints the Ombudsmen are dealing with. Acquisition of information about complaints may also be used to encourage departments/State services agencies that are not operating well to take advantage of education in the operation of the Act.

20 On the basis of information gained from the Ombudsmen and from the monitoring mechanisms the State Services Commission could report to the Minister of State Services on the operation of the Act, on an annual basis.

21 These considerations would seem to encourage a closer relationship with the Office of the Ombudsmen requiring regular meetings to collect information on issues that the Ombudsmen are coming across that need to be addressed via guidance notes or further education of departmental or agency staff.

Does this require legislative recognition?

- 22 Recognition of a monitoring and guidance role for the State Services Commission would put this work on a formal footing.
- a. The Act has been in place for 25 years so that working with it and understanding the underlying principles of open government should now be second nature to departments and agencies but that does not seem necessarily to be the case.
 - b. A formal role set out in legislation could ensure that ongoing work in monitoring and promotion and guidance continues to be undertaken. It would provide

agencies with clarity and more confidence about a government source of advice, given that the Ombudsmen have a slightly different role.

- c. Any recognition in the statute should be of a general nature, allowing the State Services Commissioner to decide how that role should be put into action.

Where in the State Services Commission could such a function sit?

- 23 Given the rationale for taking on any monitoring/promotion function is reinforcing trust in government the State Services Commission Trust and Values team would be a good home for it.

Department of Internal Affairs (DIA) and LGOIMA

- 24 The Law Commission recommends a similar role to that of State Services Commission for the OIA for DIA in relation to the LGOIMA.

I attended a meeting at DIA where the Law Commission's recommendation was discussed.

NOTE: No comment received from DIA on this note.

s 9(2)(g)(i)

Recommendation re Clearer Guidelines about Consultation with Ministerial offices

- 27 Jodie and I met with Michael Webster from Cabinet Office. His view is that there could be two outcomes;

- a. That State Services Commission updates the *Release of Information Guidelines for Co-ordination* to guide the relationship of departments with Ministers; and
- b. That Cabinet Office adds some information to the Cabinet Manual, reminding Ministers of their responsibilities under the OIA.

- 28 While advice could be prepared by State Services Commission in conjunction with Cabinet Office to cover both facets that would need to go out as a Cabinet Office Circular which will be required to first receive the overview and approval of the Prime Minister's Office.

- 29 If we were to adopt the 2 outcome approach Cabinet Office would work with us to prepare the updated guidance for departments.

Ann

SSC Internal Memorandum

To: Iain Rennie
From: Ann Aspey
Copies to: Jodie Cayford; Hugh Oliver
Date: 3 December 2010
Subject: Draft response to Law Commission proposals related to their Review of the Official Information Act

- 1 Attached is a draft response to the Law Commission's proposals contained in their 29 September Issues paper re Review of the Official Information Act for your consideration.
- 2 I have endeavoured to cover off everything we have discussed. I have also added comment on the proposal to give the Solicitor-General power to enforce an Ombudsman's recommendation on an Official Information Act complaint.
- 3 Please advise if there is anything you would like changed or added.
- 4 The closing date for responses is Friday 10 December 2010.

Ann

RELEASED UNDER THE OFFICIAL INFORMATION ACT



8 December 2010

Professor John Burrows
Commissioner
Law Commission
PO Box 2590
WELLINGTON 6011

Dear Professor Burrows

Review of Official Information Legislation

Thank you for your invitation to provide my views on the Issues Paper – “*The Public’s Right to Know: Review of the Official Information Act 1982 and Parts 1-6 of the Local Government Official Information and Meetings Act 1987*.”

In taking this opportunity to make comment on the proposals in the paper, I have confined myself to matters that are particularly relevant to the State Services Commission or have a constitutional aspect. These are the proposals:

- 1 For a role for the State Services Commission in promotion and education and oversight of the Official Information Act 1982 (the Act).
- 2 For clearer guidelines about consultation by departments with Ministerial offices.
- 3 That the Ombudsmen be given a final power of decision when determining an official information complaint, and the veto power of government be removed.
- 4 That the public duty to comply with an Ombudsman decision should be enforceable by the Solicitor-General.
- 5 That the Act require agencies to take all reasonably practicable steps to proactively release official information.

I will address each separately.

1 A role for the State Services Commission in promotion and education and oversight of the Act

The oversight role seems to include:

- monitoring of the Act
- policy - examining proposed legislation or proposed policy of government that may affect the right to access to official information, and to report to the responsible Minister
- reviewing the operation of the Act, considering whether any amendments are necessary or desirable and reporting findings to the Responsible Minister, and

- promotion of the Act which would include promoting awareness and understanding of the Act and its operation and arranging for the provisions of programmes of education and training for agencies subject to the Act.

Policy and Review functions

I note that the Law Commission is making no recommendations about changing the role of the Ministry of Justice in administering the Act; as the department administering the Act the Ministry of Justice deals with policy relating to the Act.

The examination of proposed legislation or policy and review of the operation of the Act functions align with the administration function. It seems more appropriate that should fall within the Ministry of Justice's purview. This would align with the Ministry's responsibility for the Privacy Act, the Human Rights Act and the New Zealand Bill of Rights Act. Consequently, I do not consider that it would be appropriate for the State Services Commission to take on these functions.

Monitoring the operation of the Act and Promoting the Act

The role of the State Services Commission in increasing trust in government would provide a *raison d'être* for a role for the State Services Commission in both monitoring the operation of the Act and promoting it.

Monitoring the operation of the Act

I agree that there is good reason for the State Services Commissioner to have a role in monitoring the way in which State services agencies are operating the Act. (This aligns with the State Services Commissioner's integrity and conduct responsibilities, which also cover the Parliamentary Service.)

If this is to be provided in legislation I would want the function to be generally described so that the manner in which it is carried out can be determined by the State Services Commissioner.

Promotion and education

There appear to be three limbs to this function:

- promoting awareness and understanding of the Act and its operation
- arranging for provision of programmes of education and training for agencies subject to the Act, and
- promoting and encouraging the public availability of official information including the proactive release of information.

Education

This is a function that the Office of the Ombudsmen has taken up and which I believe should remain with the Ombudsmen.

The State Services Commission could link into that education provision, encouraging agencies to take advantage of it, however there would be no need for legislative recognition of this function.

Promoting awareness and understanding of the Act and encouraging the public availability of official information

The State Services Commission could put out guidance in conjunction with the Ombudsmen to, amongst other things, pick up issues that arise through the complaints the Ombudsmen are dealing with. The State Services Commission could also report to the Minister of State Services on the operation of the Act based on information gained from the monitoring role.

Again, however, any recognition of such a role in legislation should only be in general terms, leaving the State Services Commissioner of the time to decide how best to carry out the functions.

2 That the State Services Commission issue clearer guidelines about consultation by departments with Ministerial offices

This suggestion has been considered with Cabinet Office and further work by both agencies will be undertaken in this area.

3 That the Ombudsmen be given a final power of decision when determining an official information complaint, and the veto power of government be removed

I do not agree with this proposal. The veto power is important to maintain the appropriate tension in the system. The Act is based on the premise of effective government, which has led to the statutory support for open government in the Act. That premise is evident throughout the Act in, for example, the reasons for withholding information in section 6 and section 9(2)(f) and (g) particularly. Following on from that it should be for the government to decide in the final analysis whether it is appropriate to comply with a recommendation from the Ombudsmen. Consequently, I consider the power of veto should remain.

4 That the public duty to comply with and Ombudsman decision should be enforceable by the Solicitor-General

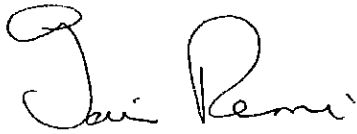
I do not agree with this proposal. This does not seem a necessary amendment. The power of publication has over the years been sufficient to ensure compliance in the majority of cases. Unless it was clear that that a problem existed (which I do not see any evidence of) I consider the status quo should remain.

5 That the Act require agencies to take all reasonably practicable steps to proactively release official information.

I do not believe there is any need for a specific legislative requirement requiring agencies to take all reasonably practicable steps to proactively release official information. The legislation already states as one of its purposes increasing progressively the availability of official information. I believe that is sufficient. A blanket requirement to take all reasonably practicable steps to proactively release official information does not seem to add much of value and to specify categories would be very difficult.

Instead, if the State Services Commission had a responsibility to promote awareness and understanding of the Act encouraging public availability of information could be part of that function, without specifying it in the statute.

Yours sincerely

A handwritten signature in cursive script that reads "Iain Rennie".

Iain Rennie
State Services Commissioner

RELEASED UNDER THE
OFFICIAL INFORMATION ACT



10 February 2012

Gordon Davis,
Chief Legal Advisor
State Services Commission
PO Box 329
WELLINGTON 6140

President
Hon Sir Grant Hammond KNZM

Commissioners
Emeritus Professor John Burrows QC
Professor Geoff McLay

Dear Mr Davis

REVIEW OF LAW COMMISSION LEGISLATION

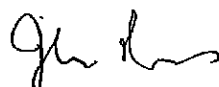
In response to our letter of 8 December to Mr Rennie, I understand that you are the contact person within SSC in relation to the law Commission review of the Official Information Act 1982 and the Local Government Official Information and Meetings Act 1987. I now enclose, as a confidential document, the draft chapters of our final report.

Our purpose in providing this draft is for you to have an opportunity to give feedback at an early stage on aspects significant to SSC. We are also providing the draft to some other key agencies. I enclose the full draft to provide background but we do not expect you to comment on the whole document or to give detailed feedback. This is still a work in progress with more editing and checking to be done, and indeed some of the policy direction may change as a result of further consideration of issues.

You are welcome to comment in writing on any aspect or to contact me if you would like to meet with the small team working on this project. We would like to hear from you by Monday 5 March if possible.

We expect the report to be tabled in Parliament in the first half of this year.

Yours sincerely


John Burrows QC
Commissioner

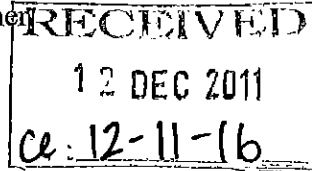
s 9(2)(g)(i)

Our ref:



8 December 2011

State Services Commissioner
100 Molesworth Street
Wellington 6011
PO Box 329
WELLINGTON 6140



1751015

President
Hon Sir Grant Hammond KNZM

Commissioners
Emeritus Professor John Burrows QC
George Tanner CNZM QC
Professor Geoff McLay

Dear Mr Rennie

**LAW COMMISSION REVIEW OF OFFICIAL INFORMATION
LEGISLATION**

We are now drafting the final report in our review of the Official Information Act 1982 and the Local Government Official Information and Meetings Act 1987. We expect it to be tabled about April 2012 and would like an opportunity to discuss some of the issues with you and your officials in February.

We received nearly 100 submissions on our Issues Paper "The Public's Right to Know" published in September 2010. They were mainly from agencies and local authorities, but there was also robust comment from public interest groups and the media. While there is strong endorsement for the current legislation, there were many opinions about how its operation could be improved. Clearly the framework should be updated for the electronic document age, including encouragement of more pro-active disclosure and alignment with related Government initiatives. Our report will suggest amendments to enhance understanding and improve operational effectiveness.

In developing the final report we have been meeting regularly with the Ombudsmen to discuss draft chapters. We could similarly send you some draft chapters, in advance of finalising them, and meet with you or your officials to discuss the proposals. Topics of particular interest to you include scope of the OIA, the good government and commercial withholding grounds, pro-active disclosure, and oversight of the legislation. If convenient for you, we would send relevant chapters in mid-January and arrange a meeting in February 2012.

This would continue our liaison with Chief Executives of the central agencies begun with a meeting in April 2010 at SSC and followed by provision of advance copies of the Issues Paper in August, prior to publication.

Yours sincerely

John Burrows QC
Commissioner

NORMAN, Daniel

From: ROYLE, Andrew
Sent: Friday, 9 March 2012 4:04 p.m.
To: RENNIE, Iain; DAVIS, Gordon; PEEK, Frank; CABLE, Jon; RENNIE, Iain; BEATIE, Sandi; ORANGE, Ryan; NORTON, Jenni; OMBLER, John; SINCLAIR, Liz; HARTEVELT, Tony; BROWN, Peter
Subject: Comments to Law Commission re: OIA Review
Attachments: 1778068_1.docx; Memo to Commissioner re Comments to Law Commission_ Public_s Right to Know March 2012 (2).nrl

Good afternoon

The Commissioner has been provided with an opportunity to comment on a draft of the Law Commission's final report on the Official Information Act 1982 (OIA).

The attached memorandum contains details about the Law Commission's proposal to establish an independent statutory role to provide leadership, independent advice, monitoring and review, and oversight of performance of OIA obligations. It would also extend to official information controls over local government.

In the memorandum, I seek your thoughts on the following matters:

- Do we agree with establishment of an independent official information statutory function?
- Do we continue to see a role for SSC in this area?
- In light of the consolidation of the Government Chief Information Officer, Chief Archivist and other related roles within DIA, do we now see a role for that Department as leader in this area for both central and local government?

Unfortunately our opportunity to comment is brief, so I would appreciate your thoughts by Tuesday if possible.

I have included both the link and document, in case there is an issue with my grasp of worksite.

--
Andrew Royle
Solicitor
State Services Commission
DDI:
Fax: +64 4 495 6686
Andrew.Royle@SSC.govt.nz
www.ssc.govt.nz | newzealand.govt.nz

New Zealand's State Services Commission: Providing leadership to the State Services so that government works better for New Zealanders

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Memorandum

To: Iain Rennie, Deputy Commissioners
From: Andrew Royle
Copies to: Gordon Davis, Frank Peek, Jon Cable
Date: 9 March 2012
Subject: Comments on "The Public's Right to Know"

- 1 The Commissioner has been provided with an opportunity to comment on a draft of the Law Commission's final report on the Official Information Act 1982 (OIA) and Local Government Official Information and Meetings Act 1987 (LGOIMA). LGOIMA contains nearly identical provisions to the OIA for local government.
- 2 The report is comprehensive, and one aspect in particular would benefit for further consideration before any final comments are made by the Commissioner. Your comments are sought on the Law Commission's proposal to establish an independent statutory officer to provide leadership, independent advice, monitoring and review, and oversight of performance of OIA/LGOIMA obligations.

Continued Role for Ombudsmen

- 3 The Law Commission proposes that the Ombudsmen would maintain the role of resolving complaints, and suggests some improvements (including codification of Ombudsmen decisions). It also suggests that a role of providing guidance lives naturally with this complaint resolution function.

New oversight function

- 4 In addition to this continued role for the Ombudsmen, the Law Commission proposes an "oversight agency" for OIA/LGOIMA matters for both local and central government. The role would include the following functions:
 - 4.1 Leadership – similar to the "leadership" role carried out by the Chief Archivist and Human Rights Commissioner in their respective fields, the Law Commission sees the need for a specific statutory leader in OI management.
 - 4.2 Policy advice – a positive obligation to provide policy advice on access to information across Government, including implications of proposed legislation and policies on the OI framework.
 - 4.3 Monitoring and Review – at present compliance is dispersed across all Government agencies, but little information is gathered. The Law Commission recommends regulations/guidelines to oblige agencies to keep relevant statistics and report against them;
 - 4.4 Oversight – without interference with the Ombudsmen's role, the Law Commission sees a need for oversight of the gathering of statistics and data about performance, training of officials and advice to requesters.

Location of the oversight role

- 5 In the Commissioner's 2010 submission to the Law Commission's initial paper in this matter, he noted the following points:
 - 5.1 The role of the SSC in increasing trust in government would provide a *raison d'être* for it assuming a role in monitoring, education and promotion. However, note that at that stage it was being suggested that Department of Internal Affairs (DIA) would pick up an equivalent role for local government.
 - 5.2 Responsibility for the legislation should remain with MQJ, as it aligns with the Ministry's responsibility for the Privacy Act, the Human Rights Act and the New Zealand Bill of Rights Act.
- 6 The final Law Commission report does not express a final view on the location of this new oversight role. It specifically discusses issues around locating the role:
 - 6.1 as a stand-alone agency (e.g. an information commission). It notes concerns about agency proliferation, and specifically refers to the Chief Archivist's location within the DIA as a example of an independent officer located within a broader department, or
 - 6.2 within the Ombudsmen's office, with this option being rejected in order to maintain the Ombudsmen's independence of function for complaints.
- 7 Otherwise, the report make the following recommendations:
 - 7.1 The functions should be grouped into one agency, rather than divided into two agencies overseeing government and local government. Informally, the Law Commission staff has advised me of its view that the need to oversee local government means SSC is not the preferred home for these functions.
 - 7.2 Leadership should be vested in a statutory officer (wherever located).
 - 7.3 The review/monitoring/policy advice functions must be independent.
 - 7.4 The position should be ongoing, not a short term appointment.
- 8 The Law Commission notes that the few submissions received on this issue in its initial paper were split between locating any such functions with SSC, DIA, the Ombudsmen or an independent Commission. At that stage it proposed splitting the functions between DIA and SSC, for local and central government.

Cost

- 9 The Law Commission has not attempted to undertake any cost assessment.

Questions

- 10 I would appreciate your thoughts on the following matters:
 - 10.1 Do we agree with establishment of an independent OI statutory role?
 - 10.2 Do we continue to see a role for SSC in this area?
 - 10.3 In light of the consolidation of the Government Chief Information Officer, Chief Archivist and other related roles within DIA, do we now see a role for that Department as leader in this area for both central and local government?

Next steps

- 11 The Law Commission is seeking comments from a small number of agencies on the draft report. Although the Law Commission has not recommended a final location for any independent officer, this will obviously be a key issue for SSC following release of the report.
- 12 There is no specific requirement to comment on the Law Commission's paper at this stage. However, it may be worthwhile signalling SSC's views. Any comments must be provided to the Law Commission by Thursday 15 March, and therefore I would appreciate your comments by Tuesday 13 March 2012.

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NORMAN, Daniel

From: ROWLAND, Helen on behalf of OMBLER, John
Sent: Friday, 9 March 2012 4:28 p.m.
To: ROYLE, Andrew
Subject: RE: Comments to Law Commission re: OIA Review

Andrew

May be useful for Gordon and Mary Slater (Assistant Commissioner for DIA) to discuss pros and cons of location/splitting/consolidating.

Regards
John

From: ROYLE, Andrew
Sent: Friday, 9 March 2012 4:04 p.m.
To: RENNIE, Iain; DAVIS, Gordon; PEEK, Frank; CABLE, Jon; RENNIE, Iain; BEATIE, Sandi; ORANGE, Ryan; NORTON, Jenni; OMBLER, John; SINCLAIR, Liz; HARTEVELT, Tony; BROWN, Peter
Subject: Comments to Law Commission re: OIA Review

Good afternoon

The Commissioner has been provided with an opportunity to comment on a draft of the Law Commission's final report on the Official Information Act 1982 (OIA).

The attached memorandum contains details about the Law Commission's proposal to establish an independent statutory role to provide leadership, independent advice, monitoring and review, and oversight of performance of OIA obligations. It would also extend to official information controls over local government.

In the memorandum, I seek your thoughts on the following matters:

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Unfortunately our opportunity to comment is brief, so I would appreciate your thoughts by Tuesday if possible.

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Andrew Royle
Solicitor
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New Zealand's State Services Commission: Providing leadership to the State Services so that government works better for New Zealanders

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NORMAN, Daniel

From: ROYLE, Andrew
Sent: Monday, 12 March 2012 10:00 a.m.
To: SLATER, Mary
Subject: RE: Comments to Law Commission re: OIA Review

Hi Mary

DIA were included in the initial consultation, but I do not think that they have been consulted over this final draft. The DIA view initially (and which, I suspect, remains the case) was that DIA was a natural home for these OIA functions, in light of the consolidation of information-related functions into that Department.

I'll see what the conversation with the DC's turns up, in terms of a view within SSC. If there is no firm view, we can simply make no comment on the final report.

--
Andrew Royle
Solicitor
State Services Commission
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Andrew.Royle@SSC.govt.nz
www.ssc.govt.nz | newzealand.govt.nz

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From: SLATER, Mary
Sent: Friday, 9 March 2012 4:55 p.m.
To: ROYLE, Andrew
Subject: FW: Comments to Law Commission re: OIA Review

Hi Andrew

Thanks for including me in this. I have to confess that I don't know how to approach this, although it does occur to me that DIA might have a view. Have you talked to them and if not, should we do that ?

If the DIA take on this is not material to our submission, I am happy to rely on your contribution; and would appreciate being copied in.

Cheers

Mary

--
Mary Slater
Assistant Commissioner
State Services Commission
DDI: -
Mob:
Fax: +64 4 495 6700

New Zealand's State Services Commission: Providing leadership to the State Services so that government works better for New Zealanders

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From: ROYLE, Andrew
Sent: Friday, 9 March 2012 4:33 p.m.
To: SLATER, Mary
Subject: FW: Comments to Law Commission re: OIA Review

Mary

It's been suggested that you may have a view too!

Regards
Andrew

From: ROYLE, Andrew
Sent: Friday, 9 March 2012 4:04 p.m.
To: RENNIE, Iain; DAVIS, Gordon; PEEK, Frank; CABLE, Jon; RENNIE, Iain; BEATTIE, Sandi; ORANGE, Ryan; NORTON, Jenni; OMBLER, John; SINCLAIR, Liz; HARTEVELT, Tony; BROWN, Peter
Subject: Comments to Law Commission re: OIA Review

Good afternoon

The Commissioner has been provided with an opportunity to comment on a draft of the Law Commission's final report on the Official Information Act 1982 (OIA).

The attached memorandum contains details about the Law Commission's proposal to establish an independent statutory role to provide leadership, independent advice, monitoring and review, and oversight of performance of OIA obligations. It would also extend to official information controls over local government.

In the memorandum, I seek your thoughts on the following matters:

- Do we agree with establishment of an independent official information statutory function?
- Do we continue to see a role for SSC in this area?
- In light of the consolidation of the Government Chief Information Officer, Chief Archivist and other related roles within DIA, do we now see a role for that Department as leader in this area for both central and local government?

Unfortunately our opportunity to comment is brief, so I would appreciate your thoughts by Tuesday if possible.

I have included both the link and document, in case there is an issue with my grasp of worksite.

Andrew Royle
Solicitor
State Services Commission
DDI:
Fax: +64 4 495 6686
Andrew.Royle@SSC.govt.nz
www.ssc.govt.nz | newzealand.govt.nz

NORMAN, Daniel

From: RENNIE, Iain
Sent: Tuesday, 13 March 2012 3:45 p.m.
To: ROYLE, Andrew; DAVIS, Gordon; PEEK, Frank; CABLE, Jon; BEATIE, Sandi; ORANGE, Ryan; NORTON, Jenni; OMBLER, John; SINCLAIR, Liz; HARTEVELT, Tony; BROWN, Peter
Subject: RE: Comments to Law Commission re: OIA Review

Hi Andrew

While I agree with the LC's views about assigning a clear leadership, policy and monitoring function around the OIA, it's not clear why this function should or needs a statutory basis or independence in carrying out that function.

While I see that SSC may well have a role in this space going forward given the importance of performance around OIA issues in helping to shape perceptions of the trustworthiness of the state services, I see the logic around DIA, particularly if the leadership role is to cover LGOIMA as well as OIA (although it may be worth teasing out why these functions could be combined) although I'm less convinced by the linkage around GCIO and Archives. I suspect evaluating these two options would require more analysis than is able to be carried out in the time available.

Cheers

Iain

Iain Rennie
State Services Commissioner
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Fax: +64 4 495 6700
Iain.Rennie@ssc.govt.nz
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From: ROYLE, Andrew
Sent: Friday, 9 March 2012 4:04 p.m.
To: RENNIE, Iain; DAVIS, Gordon; PEEK, Frank; CABLE, Jon; RENNIE, Iain; BEATIE, Sandi; ORANGE, Ryan; NORTON, Jenni; OMBLER, John; SINCLAIR, Liz; HARTEVELT, Tony; BROWN, Peter
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NORMAN, Daniel

From: ROYLE, Andrew
Sent: Wednesday, 14 March 2012 1:58 p.m.
To: RENNIE, Iain; DAVIS, Gordon; PEEK, Frank; CABLE, Jon; BEATIE, Sandi; ORANGE, Ryan; NORTON, Jenni; OMBLER, John; SINCLAIR, Liz; HARTEVELT, Tony; BROWN, Peter
Subject: RE: Comments to Law Commission re: OIA Review
Attachments: Letter from the Commissioner to the Law Commission re location of leadership function for OIA (2).nrl

Thank you Iain.

Attached is a letter from Gordon to the Law Commission, incorporating the various comments we've received along with some of our own thinking. We are planning to send it tomorrow, and any comments would be welcomed.

Regards

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Sent: Tuesday, 13 March 2012 3:43 p.m.
To: ROYLE, Andrew; DAVIS, Gordon; PEEK, Frank; CABLE, Jon; BEATIE, Sandi; ORANGE, Ryan; NORTON, Jenni; OMBLER, John; SINCLAIR, Liz; HARTEVELT, Tony; BROWN, Peter
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Cheers

Iain

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16 March 2012

Emeritus Professor John Burrows QC
Law Commission
Wellington
BY EMAIL

Dear Professor Burrows

Review of the Official Information legislation

Thank you for the opportunity to reply to the Law Commission's report: "The Public's Right to Know". The report is comprehensive and provides a valuable contribution to the development of the law and public sector practice in this area.

I understand that the Treasury has provided you with a comprehensive set of comments on the report, along with some residual concerns. I will not reiterate those points here, except to echo the Treasury's concerns about the effect of not extending the protection against liability in section 48 of the Official Information Act 1982 (OIA) to cover the proactive release of information. There is a real risk that agencies will not embrace proactive release, if the exclusion from liability does not apply. I understand your principal concern to be that potential defamation claims in relation to released material could be unreasonably restricted by any extension to section 48. One option could be to ensure that the current section 48 good faith obligation is retained, in such a way that an agency or individual can be protected against liability for a good faith disclosure of information without the original author of a defamatory comment necessarily being protected from a claim. Any publication in bad faith, by either the original author or the agency, would not be protected.

However, my key response relates to the discussion in chapter 13, relating to the promotion of a leadership function for official information.

The detailed thought that you have given to these issues is appreciated. The Commission agrees that there is a need to assign a clear leadership, policy and monitoring function around the OIA. I also acknowledge your view that the current lack of statutory oversight has resulted historically in gaps and inefficiencies. However, the Commission considers that further assessment is required of the need to provide specifically in the OIA for these functions or the need for a statutorily independent officer to undertake them. Existing agencies and mechanisms may be able to address some or all of those concerns. I also note that, especially with the congested legislative programme and competing priorities for Parliament's time, it may prove to be more timely and effective for a clear

mandate to be provided by Cabinet to an existing agency to lead in this area, rather than to undertake legislative change.

In terms of the choice of agency to be responsible for performance of the oversight role, you will be aware that current policy is to resist proliferation of agencies and offices, and I note that you did not reach a firm view on location. SSC may be well placed to perform a role given the importance of performance around OIA issues in helping to shape perceptions of the trustworthiness of the state services. Again, the location of these functions is a matter that requires further detailed consideration and your work in setting out and analysing the various options will greatly assist this process.

I look forward to receiving your final report in due course.

Yours sincerely

G P Davis
Chief Legal Advisor

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NORMAN, Daniel

From: RENNIE, Iain
Sent: Wednesday, 14 March 2012 9:08 p.m.
To: ROYLE, Andrew
Subject: RE: Comments to Law Commission re: OIA Review

Hi Andrew

I think the letter looks fine.

Cheers

Iain

--
Iain Rennie
State Services Commissioner
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NORMAN, Daniel

From: VINCENT, Toni
Sent: Thursday, 15 March 2012 3:04 p.m.
To: mthompson@lawcom.govt.nz
Subject: Review of the Official Information legislation
Attachments: Letter to the Law Commission re location of leadership function for OIA.PDF

Please see attached letter from Gordon Davis.

Kind regards,
Toni

--
Toni Vincent
Executive Assistant
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Fax: +64 4 495 6703
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15 March 2012



Emeritus Professor John Burrows QC
Law Commission
Wellington

BY EMAIL

Dear Professor Burrows

Review of the Official Information legislation

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Yours sincerely



Gordon Davis
Chief Legal Advisor

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23 March 2012

Mr Gordon Davis
Chief Legal Adviser
State Services Commission
PO Box 329
WELLINGTON

President

Hon Sir Grant Hammond KNZM

Commissioners

Dr John Burrows PHD, Lond. QC

Dr Geoff McLay SJ, Mich

Hon Dr Wayne Mapp Ph D, Cantab

Dear Mr Davis

COMMENTS ON OIA REVIEW DRAFT REPORT

Thank you for your letter containing comments on the Commission's draft report on the Official Information Act. They are very helpful, and we are giving them close consideration.

We appreciate the time you have spent on our behalf.

Yours sincerely


John Burrows
Commissioner