



10 August 2017

Ross Francis
rossdf Francis@gmail.com

Department of Internal Affairs
147 Lambton Quay
Wellington 6011
PO Box 805
Wellington 6140
Phone +64 4 495 7200
Website www.dia.govt.nz

Reference: 17/18 0022; 17/18 0024

Dear Mr Francis

I refer to your emails of 15 and 16 July 2017 in which you requested information from the Department of Internal Affairs under the Official Information Act 1982 (the Act):

- *Are public inquiries (eg, a ministerial inquiry) bound by record-keeping legislation, and are those administering public inquiries bound by record-keeping legislation? Please provide all material held by Archives NZ about this question.*

As defined in section 33 of the Inquiries Act 2013 (IA), an inquiry is a public office for the purposes of the Public Records Act 2005 (PRA) and all information created or received by it in the course of its proceedings is a public record. The Department of Internal Affairs (the Department) administers the IA and is the controlling public office for the records under the PRA. Each inquiry is required to obtain disposal coverage for its records through a Disposal Authority. As soon as is reasonably practicable after the inquiry has reported, the Department must dispose of the public records in accordance with its Disposal Authority.

- *What action (if any) can be taken by Archives NZ or another agency if records are disposed of, or not created, in breach of the Public Records Act?*

Upon receiving a request for intervention or information about a potential non-compliant act, Archives New Zealand considers the appropriate response. The actions available to the Chief Archivist in response to evidence of non-compliance are:

- issue advice and guidance;
- direction to report (s31);
- inspection (s26, s29, s36);
- direction to transfer (s26, s37, s40);
- direction to a person in possession of an estray record on its management, accessibility or custody (s37);
- identify the agency in the annual report on recordkeeping (s32); and
- prosecution (s61 and s62).

Section 61 of the PRA sets out the instances where non-compliance with the PRA could attract criminal liability. These instances include:

- damage to a public record;
- disposal or destroying a public record otherwise than in accordance with the PRA; and
- failing to comply with any provision of the PRA.
- *Has Archives NZ or another agency investigated any alleged or apparent breaches of the Public Records Act? If so, has Archives NZ or another agency found an agency or ministry in breach of the Act?*

We are unable to comment on investigations into alleged non-compliance with the PRA undertaken by other agencies.

Rather than apply a specific compliance threshold, Archives New Zealand's approach has been to use the range of powers available under the PRA, such as issuing instructions, directions to report, or standards and guidance to the regulated party or individual, to advise them of their obligations under the PRA. In some instances, Archives New Zealand has worked with a regulated party to ensure compliance with the PRA.

- *In the financial year ending 2016, what proportion of its total budget did Archives NZ spend on investigating apparent or possible breaches of the Public Records Act?*

Archives New Zealand's Government Recordkeeping Directorate is responsible for the regulatory functions of the PRA, which include a range of activities from standard setting, facilitating Disposal Authorities and transfer of government records to Archives New Zealand, through to monitoring, auditing and assessing possible non-compliance. All of this work contributes to compliance across the government information system. The directorate budget for the year ended June 2016 was \$1.84 million. This represented 22% of Archives New Zealand's total controllable budget. The proportion of the \$1.84 million spent specifically on assessing non-compliance is not separately recorded. The controllable budget excludes major items such as capital charges, overhead allocations and depreciation.

- *Have any inquiries been established since the introduction of the Inquiries Act? If so, what inquiries have been established and which agency or ministry was involved in administering the inquiry or inquiries?*

Government inquiries under the IA are established by notice in the Gazette and the information you have requested is therefore publicly available. To assist your research, we have provided copies of the relevant Gazette notices at the following link:

<https://gazette.govt.nz/home/NoticeSearch?act=Inquiries+Act&soloRedirect=false&sortField=PublicationDate&sortOrder=DESC>

The agency or ministry involved with administering the inquiry in each case is identified with the notice, and in most cases under the heading *Relevant Department* in the body of the notice.

Public inquiries are established by Order in Council under section 6(2) of the IA. It is our understanding that no public inquiries have yet been established under the IA. We have checked our understanding with the Cabinet Office, who have confirmed that no such public inquiries have been established to their knowledge.

You have the right, under section 28(3) of the Act, to seek an investigation and review by the Ombudsman of this response. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Yours sincerely



Richard Marshall
Director Policy