



7 February 2020

Mr Dave Clemens
[REDACTED]

Mr Clemens

Official Information Request
Our Ref: SSCOIA 2019-269

I refer to your official information request received on 18 December 2019 requesting access to following files held at Archives New Zealand:

- CAXA 3292 CH788/Box 2
- CAXA 3292 CH788/Box 2
- CAXA 3314 CH788/Box 6

On 15 January 2020 we advised you that on our first review we identified that the information held on these files are primarily previous individual OIA requests or Privacy requests received and the agency's response back to these requestors.

On 20 January 2020, you further clarified the information you are requesting is:

"the documents related to the planning and administration of the OIA over these years.

If there is any summary data on those requests I would be keen to view that though.

If there were to be admin type files, circulars, statistics or information of this type then I would be interested to view that content."

Information being released

On further review, we have found following documents within scope of your clarified request. Please find attached these documents.

Item	Date	Document Description
1	11 November 1995	Memorandum Release of Personal Information
2	5 December 1989	Memorandum to all departments and organisations covered by the official information act 1989
3	21 April 1989	Memorandum to all departments and organisations covered by the official information act 1989
4	3 May 1989	State Sector – the Circular

5	18 November 1987	The Public Service Official Circular
6	11 November 1987	State Services Commission Circular Memorandum 1987/122
7	5 June 1987	Note to Staff – Official Information Amendment Act 1987
8	16 December 1985	State Services Commission Circular Memorandum 1985/165
9	10 September 1984	State Services Commission Circular Memorandum 1984/86
10	2 July 1984	State Services Commission Circular Memorandum 1984/69
11	26 March 1984	State Services Commission Circular Memorandum 1983/35
12	8 April 1987	State Services Commission Circular Memorandum 1987/37
13	22 September 1983	State Services Commission Circular Memorandum 1983/81
14	21 September 1983	The Public Service Official Circular
15	1 September 1983	State Services Commission Circular Memorandum 1983/71
16	31 August 1983	The Public Service Official Circular
17		Press Release – Release of the Public Service Classification List
18	30 June 1983	State Services Commission Notice to all SSC staff
19	29 June 1983	The Public Service Official Circular
20	23 June 1983	State Services Commission Circular Memorandum 1983/48

21	22 June 1983	The Public Service Official Circular
22	21 June 1983	SSC Circular Memorandum 1983/49
23	21 June 1983	State Services Commission Circular Memorandum 1983/47
24	20 June 1983	State Services Commission Circular Memorandum 1983/41
25	17 June 1983	State Services Commission Circular Memorandum 1983/46
26	15 June 1983	The Public Service Official Circular
27	8 June 1983	The Public Service Official Circular
28	1 June 1983	The Public Service Official Circular
29	1 June 1983	Cabinet Office Official Information Act 1982: Departmental Background notes on estimates
30	19 May 1983	State Services Commission Circular Memorandum 1983/39
31	12 May 1983	State Services Commission Circular Memorandum 1983/36
32	27 April 1983	The Public Service Official Circular
33	18 April 1983	State Services Commission Circular Memorandum 1983/34
34	28 March 1983	State Services Commission Circular Memorandum 1983/21
35	16 March 1983	The Public Service Official Circular
36	9 March 1983	The Public Service Official Circular

37	22 February 1983	State Services Commission Circular Memorandum 1983/12
38	2 February 1983	State Services Commission Circular Memorandum 1983/6
39	23 December 1982	State Services Commission Circular Memorandum 1983/134

If you wish to discuss this decision with us, please feel free to contact Ministerial.Services@ssc.govt.nz.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Please note that we intend to publish this letter (with your personal details removed) and enclosed documents on the State Services Commission's website.

Yours sincerely



Nicky Dirks
Managing Principal – Ministerial Services
State Services Commission

9.8

Executive Department

Northland Health Limited
P.O. Box 742
Whangarei, New Zealand
Phone: 0-9-438 2079
Fax: 0-9-430 8010



**NORTHLAND
HEALTH**
Hāuata o te Tairāwharau

11 November 1995

MEMORANDUM FOR: Chief Executive/Executive Team
FROM: Communications Manager
SUBJECT: RELEASE OF PERSONAL INFORMATION

The Chief Ombudsman has issued 11 pages of guidelines about the interface between the Official Information Act and the Privacy Act. These are too convoluted to be of much use as an easy reference to support decisions on the release of personal information or the protection of privacy.

I have therefore distilled from the Ombudsman's notes a number of general guidelines for Northland Health. They are for quick and ready reference and don't replace the Company's policy on privacy as set out in the Manual

In summary, I think we should err on the side of caution in releasing personal information and let such decisions be tested by others if necessary (the Office of the Ombudsmen or the Privacy Commissioner). In the practical application of these guidelines - if in doubt, don't, or 'refer up' for an opinion.

I have also attached an information paper backgrounding the issue, and summarising the main points covered in the Chief Ombudsman's guidelines and a press statement by the Attorney-General.

General Guidelines - Northland Health

- 1 As a public Company financed by public funds, Northland Health should **release as much information as possible** about its activities and operations unless matters of individual personal privacy or commercial sensitivity are involved.
- 2 **The overall effect** of the disclosure of information (particularly on individuals and in matters of personal privacy) is the most important consideration.
- 3 A request cannot automatically be refused simply because the information relates to another person, but as a general rule **Northland Health should not release personal information** about individuals other than to that individual or, where appropriate, close relatives such as parents.

- 4 Where the matter at issue is one of **major public interest**, each case should be assessed on its merits but Northland Health should **lean towards refusal** to release personal information and wait to have the decision tested by available instruments of State - the Privacy Commissioner or the Office of the Ombudsmen.
- 5 Where practicable, **consultation should be undertaken** with the person to whom the information relates or with any other person whose privacy might be affected by the release of information.
- 6 **If in doubt, don't**, or refer the matter to Northland Health's duly appointed Privacy Officer (Chris Higgins) for an opinion with the Chief Executive being kept informed and acting as the ultimate arbiter in any decisions to release particularly sensitive or controversial information.

RELEASED UNDER THE OFFICIAL INFORMATION ACT

Appendix A

INTERFACE BETWEEN PRIVACY/OFFICIAL INFORMATION ACTS

Release of Official Information and Protection of Privacy

Information Paper

1.0 INTRODUCTION

The Chief Ombudsman's guidelines (Ref: 10/16/5 dated 31 October 1995) were issued as a result of recent media debate about access to information concerning hospital patients and because of apparent confusion in the interpretation of provisions in three different Acts that regulate the manner in which personal information may be obtained or made available - the Official Information Act, the Local Government Official Information and Meetings Act and the Privacy Act.

2.0 BACKGROUND

2.1 Recent disclosures by two Ministers of the Crown about an individual's medical history and treatment have highlighted conflicts in interpretation and legal aspects of various provisions in legislation concerning personal information and privacy - and which provisions take precedence in law.

This has made the position even more confusing for agencies such as CHEs trying to administer the provisions of the Acts and the Minister for Crown Health Enterprises (who is also the Attorney-General) has advised CHEs to tread cautiously.

In a recent press statement of 27 October, he noted:

“Although the Commissioner (the Privacy Commissioner) seems to be encouraging them to speak out if they think information is in the public interest, I would advise the CHEs to ensure that they are not acting unlawfully. I have received advice from the Crown Law Office confirming that the Privacy Act does not provide for public interest as a defence. Nor does it provide that partial disclosure by a patient allows for complete disclosure by a government agency in order to give a more balanced perspective”.

Protection of Privacy

2.2 The Ombudsman notes that: in matters of controversy the application of the Official Information Act needs to be given primary consideration. And while the Privacy Commissioner was publicly encouraging CHEs to speak out on matters of public interest, the Attorney-General said that he can find no authority within the Privacy Act which allows crown health enterprises to make public comments on individual cases simply because the matter is of widespread public interest.

These differing views probably indicate that there is some doubt in law about the legal precedence attached to provisions of various Acts covering personal information and the protection of privacy in any litigation. In turn, this situation lends credence to a recommendation in Northland Health's proposed general guidelines that it should err on the side of caution and, as a general rule, not release personal information leaving others to test such decisions.

3.0 THE OMBUDSMAN'S GUIDELINES

3.1 Which Act?

Commenting on the release of information about an identifiable person, the Chief Ombudsman notes that:

"Put simply, the Official Information Act applies to requests by a third party for information about an identifiable person and the Privacy Act applies to requests by an identifiable person for information about him or herself".

The Privacy Act covers requests by or on behalf of persons for information about themselves where the information is readily able to be retrieved and the requested is a New Zealand citizen, a permanent resident, or is in New Zealand.

(Note: While this is an over-simplification of the provisions of this Act by the Ombudsman, the Company's detailed policy developed from the requirements of the Privacy Act is set out in the Manual. Northland Health also has a duly appointed Privacy Officer - the Health Services Manager).

The Official Information Act applies to bodies corporate for personal information about themselves; requests by persons for information about natural persons (living or dead) other than themselves; and requests for personal information which is a mix of the two.

3.2 Grounds to Release Personal Information

The Ombudsman notes that:

“privacy is not an all or nothing concept and the fact that a request is for information about someone else does not necessarily mean that the information is private”.

The Official Information Act requires the holder of information to consider:-

- (a) Whether it is necessary to withhold information to protect the privacy of a person or deceased person; and if so,
- (b) whether there is a public interest in release which is stronger than the need to withhold.

3.3 Refusing a request

Before refusing a request for personal information, the agency (in this case Northland Health) must be satisfied that:-

- (a) The withholding of information requested is necessary to protect the privacy of natural persons including that of deceased natural persons; and
- (b) this interest is not outweighed by other considerations which render it desirable, in the public interest, to make that information available.

3.4 Consultation

Where practicable, consultation with the person to whom the information relates, or any other person whose privacy might be affected by release of the information, should be undertaken.

The view of the person concerned about whether they believe disclosure of certain information would infringe their privacy is likely to assist an assessment of whether the information should be withheld. However other relevant factors may also be taken into account (presumably such as ‘public interest’).

3.5 Objective Assessment

In every case an objective assessment of the facts and circumstances must be made, including the Privacy Act, before a deciding whether or not the test under s.9(2)(a) of the Official Information Act has been satisfied.

Agencies should keep in mind the possibility that provisions in both the Privacy and the Official Information Acts may apply to requests for information, that there is interface between the two Acts, and that there could be overlaps.

However nothing in the Privacy Act derogates from any provision in any Act of Parliament (such as the Official Information Act) that regulates the manner in which personal information may be obtained or made available. This suggests that the provisions of the Official Information Act should be accorded primary consideration.

4 CONCLUSION

The whole question of the legal considerations in releasing personal information and the protection of an individual's privacy is obviously a complicated one.

Common sense is probably the most necessary credential for those making decisions to release personal information, in concert with Northland Health's own guidelines.

The legal niceties involving three separate Acts of Parliament suggest that most staff are ill-equipped to make judgements based on the finer point of law and therefore, unless the issue is clear cut, Northland Health should not release information which may compromise the privacy of an individual - and let the instruments of the State act as the check and balance.

As a general rule when considering the release of personal information:-

When in doubt, don't, or 'refer up' for an opinion.

DEPARTMENT OF JUSTICE

Private Box 180
Wellington
Telephone 725-980

Charles Fergusson Building
Bowen Street,
Wellington
In reply, please quote

15 December 1989

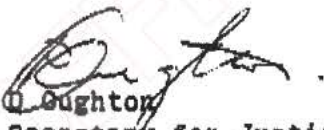
MEMORANDUM TO ALL DEPARTMENTS AND ORGANISATIONS COVERED BY THE OFFICIAL
INFORMATION ACT 1982

OFFICIAL INFORMATION ACT: CHARGING FOR SERVICES

This is an addition to the charging guidelines issued earlier this year, 21 April 1989. Please attach it to that memorandum. The need for this addition has arisen from confusion in some organisations regarding the role of the Ombudsman.

10 Ombudsman Investigations

- 10.1 "Any Ombudsman discharging statutory functions of investigation under the Ombudsmen Act, whether for the purposes of that Act, or for reviews under the Official Information Act or the Local Government Official Information and Meetings Act, is not subject to any charging regime. A statutory duty is imposed under that legislation on the person or organisation to comply with the request and charging regimes under Government policy are not applicable".


G. Soughton
Secretary for Justice

○ NOTICE BOARD ○

DEPARTMENT OF JUSTICE

OFFICIAL INFORMATION ACT:
CHARGING FOR SERVICES

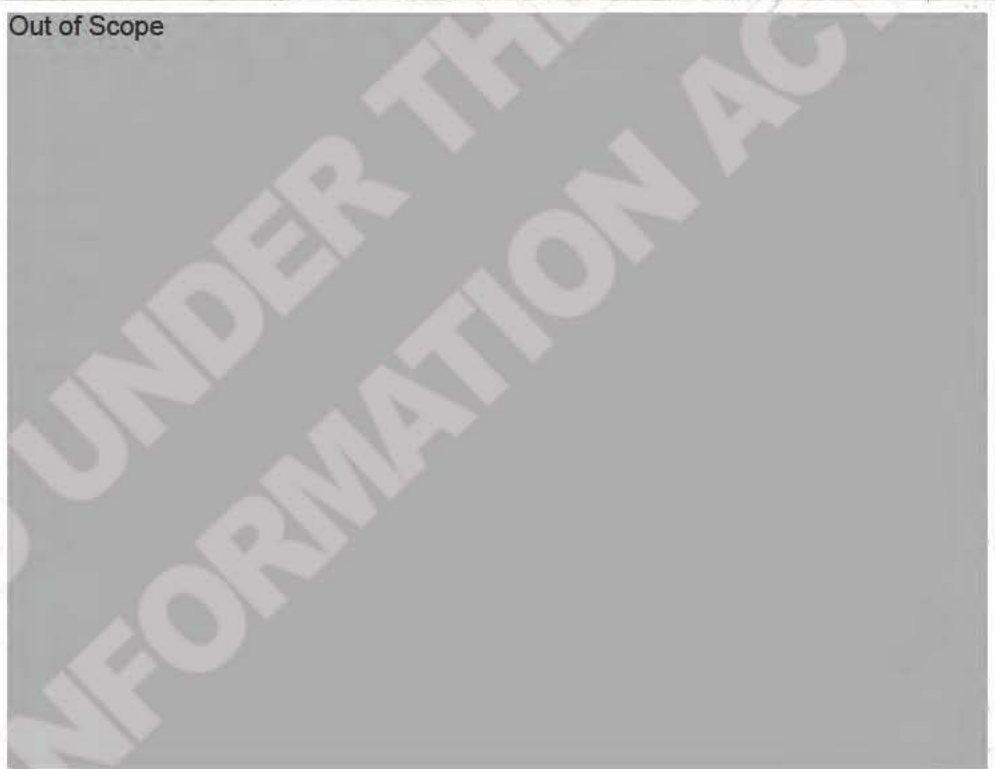
On 22 March 1989 the Government approved revised guidelines for charging for official information.

The main changes are in respect to charges for staff time with the rate for the first chargeable half hour or part thereof and each additional half hour or part thereof being increased from \$20 to \$25.

There are also some changes to the guidelines with respect to remission of charges, with additional guidelines placing greater emphasis on the question of public interest when considering whether it may be appropriate to modify or waive any charges.

A circular outlining the full details of charging guidelines and policy will be sent to all departments and organisations covered by the Act.

Out of Scope





DEPARTMENT OF JUSTICE

Private Box 180
Wellington
Telephone 725 980

Charles Fergusson Building
Bowen Street, Wellington

In reply, please quote

21 April 1989

MEMORANDUM TO ALL DEPARTMENTS AND ORGANISATIONS COVERED BY THE OFFICIAL INFORMATION ACT 1982

OFFICIAL INFORMATION ACT: CHARGING FOR SERVICES

On 22 March 1989 the Government approved the following revised guidelines for charging for official information.

The guidelines replace those issued by Cabinet in November 1987 (P(87) M 38/4). They are provided for all organisations covered by the Act, including Public Service departments, State-owned enterprises and Education and Health boards. They represent what the Government regards as reasonable charges for the purposes of the Official Information Act. Organisations covered by the Act who wish to develop their own charging regimes should be aware that charges are liable to review by the Ombudsman.

1 EXISTING CHARGES TO REMAIN

- 1.1 There are currently areas where access to official information is given free of charge or pursuant to an existing charging arrangement. Section 52 of the Official Information Act 1982 does not derogate from such access; those arrangements are not changed by these guidelines.

2 FIXING THE AMOUNT OF CHARGE

- 2.1 The amount of charge should be determined by:

- (a) establishing whether or not the request is made by an identifiable natural person seeking access to any personal information about that person (Section 24).

Such requests are NOT subject to any charge.

- (b) the aggregate amount of staff time exceeding one hour spent in actioning the request.

This will include search and retrieval of information, the provision of transcripts and the supervision of access.

- (c) the number of pages of A4 sized or foolscap photocopy to be provided exceeding 20.

Non standard sized photocopy such as that used for maps and plans will be charged on an actual and reasonable basis.

- (d) for any other cost, the amount actually incurred in responding to the request.

This will cover the provision of copies of video, audio and film tapes, computer time or other situations where a direct charge is incurred.

- 2.2 Where repeated requests are made in respect of a common subject over intervals of up to eight weeks, requests after the first should be aggregated for charging purposes.

- 2.3 The charge should represent a reasonable fee for access given. It may include time spent:

- in searching an index to establish the location of the information;
- in locating (physically) and extracting the information from the place where it is held;
- in reading or reviewing the information; and
- in supervising the access to the information.

The charge should not include any allowance for:

- locating and retrieving information which is not where it ought to be; or
- time spent deciding whether or not access should be allowed and in what form.

- 2.4 Where the free threshold is only exceeded by a small margin it is a matter of discretion whether any fee should be paid and if so, how much.

3 STAFF TIME

- 3.1 Time spent by staff searching for relevant material, abstracting and collating, copying, transcribing and supervising access where the total time involved is in excess of one hour should be charged out as follows:

- an initial charge of \$25 for the first chargeable half hour or part thereof; and

- then \$25 for each additional half hour or part thereof.

3.2 The rate of charge applies irrespective of the seniority or grading of the officer who deals with the request.

3.3 Time spent in deciding whether or not to approve access and in what form should not be charged.

4 PHOTOCOPYING

4.1 Photocopying on standard A4 or foolscap paper where the total number of pages is in excess of 20 pages should be charged out as follows:

- 15c for each page after the first 20 pages.

5 ACTUAL COSTS

5.1 All other charges incurred should be fixed at an amount which recovers the actual costs involved. This would include:

- producing a document by the use of a computer or other like equipment;
- reproducing a film, video or audio recording;
- arranging for the applicant to hear or view an audio or visual recording; and
- providing a copy of any map, plan or other document larger than A4 or foolscap size.

5.2 It is reasonable to recover actual costs involved when information provided will be of personal/commercial gain to the user, rather than benefitting the public at large. Personal gain does not include obtaining access to personal information (see paragraph 2.1).

6 REMISSION OF CHARGES

6.1 The liability to pay any charge may be modified or waived at the discretion of the department or organisation receiving the request. Such decisions should have regard to the circumstances of each request. However, it would be appropriate to consider inter alia:

- whether payment might cause the applicant financial hardship;
- whether remission or reduction of the charge would facilitate good relations with the public or assist the department or organisation in its work; and

- whether remission or reduction of the charge would be in the public interest because it is likely to contribute significantly to public understanding of or effective participation in the operations or activities of the government, and that the disclosure of the information is not primarily in the commercial interest of the requester.

6.2 Questions which could be asked by decision makers in order to establish the level of public interest are, inter alia:

- Is the use of the information by the requester likely to make a significant contribution to operations and activities of government?
- Has the government requested submissions from the public on a particular subject and is the information necessary to enable informed comment?
- Is the use of information likely to contribute significantly to the understanding of the subject by the public at large as opposed to the individual understanding of the requester or a narrow segment of interested people?
- Is the information meaningfully informative about operations and activities of government that have a direct connection to the reason for the request?
- Is the information already in the public domain in either the same or similar form which the requester could acquire without substantial cost?
- Is the public at large the primary beneficiary of the expenditure of public funds necessary to release the information or is it the requester or a narrow segment of interested people?
- Is the information primarily in the commercial interest of the requester rather than the public interest?

6.3 While it might appear on initial consideration that requests for information for say, research purposes, or to write a book, or to have available in a library, might be considered in the "public interest" and answer some of the criteria; this may not necessarily be so. There should still be reasonable evidence to show that the wider public benefit will accrue as a result of that research, or book or library depository. In the case of the media, however, it can be reasonably assumed that they do have access to means of public dissemination. Each request should be considered on a case-by-case basis in light of all relevant information.

6.4 Members of Parliament may be exempted from charges for official information provided for their own use. In exercising this discretion it would be appropriate to consider whether remission of charges would be consistent with the need to provide more open access to official information for Members of Parliament in terms of the reasonable exercise of their democratic responsibilities.

7. DEPOSITS

7.1 A deposit may be required where the charge is likely to exceed \$40 or where some assurance of payment is required to avoid waste or resources. A deposit may only be requested after a decision has been made to make the information available.

7.2 The applicant should be notified of the amount of deposit required, the method of calculating the charge and the likely final amount to be paid. Work on the request may be suspended pending receipt of the deposit.

7.3 The unused portion of any deposit should be refunded forthwith to the applicant together with a statement detailing how the balance was expended.

8 REVIEW OF DECISIONS ON CHARGES

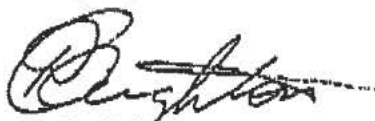
8.1 Section 28(1)(b) of the Official Information Act 1982 provides that the Ombudsman may investigate and review any decision on the charge to be paid in respect of a request for access to official information. When informing applicants of charges to be paid, organisations should point out this right of appeal to the Ombudsman.

8.2 A record should be kept of all costs incurred. Wherever a liability to pay is incurred the applicant should be notified of the method of calculating the charge and this fact noted on the record.

9 GST

9.1 The charges given in these guidelines are inclusive of GST.

10 A notice will appear in the State Sector Circular.


D Oughton
Secretary for Justice

23 NOV 1987

18 November 1987, No

Applications for vacancies

close

2 December 1987



THE PUBLIC SERVICE OFFICIAL CIRCULAR

Information of General Interest

1. CHARGING FOR SERVICES PROVIDED UNDER THE OFFICIAL INFORMATION ACT 1982: GUIDELINES

On 3 November 1987 the Government approved the following revised guidelines for charging for official information.

The guidelines replace those issued by Cabinet in June 1983 (CO (83) 13)*. They are provided for all organisations covered by the Act, including Public Service departments, State-owned enterprises and Education and Health boards. They represent what the Government regards as reasonable charges for the purposes of the Official Information Act. Organisations covered by the Act who wish to develop their own charging regimes should be aware that charges are liable to review by the Ombudsman.

EXISTING CHARGES TO REMAIN

There are currently areas where access to official information is given free of charge or pursuant to an existing charging arrangement. Section 52 of the Official Information Act 1982 does not derogate from such access; those arrangements are not changed by these guidelines.

FIXING THE AMOUNT OF CHARGE

The amount of charge should be determined by:

- (a) establishing whether or not the request is made by an identifiable natural person seeking access to any *personal information* about that person (Section 24).

Such requests are NOT subject to any charge.

- (b) the aggregate amount of staff time *exceeding one hour* spent in actioning the request.

This will include search and retrieval of information, the provision of transcripts and the supervision of access.

- (c) the number of pages A4 sized or foolscap photocopy to be provided *exceeding 20*.

Non standard sized photocopy such as that used for maps and plans will be charged on an actual and reasonable basis.

- (d) for *any other cost*, the amount actually incurred in responding to the request.

This will cover the provision of copies of video, audio and film tapes, computer time or other situations where a direct charge is incurred.

Where repeated requests are made in respect of a common subject over intervals of up to eight weeks, requests after the first should be aggregated for charging purposes.

The charge should represent a reasonable fee for access given. It may include time spent:

- in searching an index to establish the location of the information;

• locating (physically) and extracting the information from the place where it is held;

- in reading or reviewing the information; and
- in supervising the access to the information.

The charge should *not* include any allowance for:

- locating and retrieving information which is not where it ought to be; or
- time spent deciding whether or not access should be allowed and in what form.

Where the free threshold is only exceeded by a small margin it is a matter of discretion whether any fee should be paid and if so, how much.

STAFF TIME

Time spent by staff searching for relevant material, abstracting and collating, copying, transcribing and supervising access where the total time involved is *in excess of one hour* should be charged out as follows:

- an initial charge of \$20 for the first chargeable half hour or part thereof; and
- then \$20 for each additional half hour or part thereof.

The rate of charge applies irrespective of the seniority or grading of the officer who deals with the request.

Time spent in deciding whether or not to approve access and in what form should *not* be charged.

PHOTOCOPYING

Photocopying on standard A4 or foolscap paper where the total number of pages is *in excess of 20 pages* should be charged out as follows:

- 15c for each page after the first 20 pages.

ACTUAL COSTS

All other charges incurred should be fixed at an amount which recovers the actual costs involved. This would include:

- producing a document by the use of a computer or other like equipment;
- reproducing a film, video or audio recording;
- arranging for the applicant to hear or view an audio or visual recording; and
- providing a copy of any map, plan or other document larger than A4 or foolscap size.

REMISSION OF CHARGES

The liability to pay any charge may be modified or waived at the discretion of the department or organisation receiving the request. Such decisions should have regard to the circumstances of each request. However, it would be appropriate to consider *inter alia*:

- whether payment might cause the applicant financial hardship; and
- whether remission or reduction of the charge would facilitate good relations with the public or assist the department or organisation in its work.

Members of Parliament may be exempted from charges for official information provided for their own use. In exercising this discretion it would be appropriate to consider whether remission of charges would be consistent with the need to provide more open access to official information for Members of Parliament in terms of the *reasonable* exercise of their democratic responsibilities.

DEPOSITS

A deposit may be required where the charge is likely to exceed \$40 or where some assurance of payment is required to avoid waste of resources. A deposit may only be requested after a decision has been made to make the information available.

The applicant should be notified of the amount of deposit required, the method of calculating the charge and the likely final amount to be paid. Work on the request may be suspended pending receipt of the deposit.

The unused portion of any deposit should be refunded forthwith to the applicant together with a statement detailing how the balance was expended.

REVIEW OF DECISIONS ON CHARGES

Section 28 (1) (b) of the Official Information Act 1982 provides that the Ombudsman may investigate and review any decision on the charge to be paid in respect of a request for access to official information. When informing

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Office of the

STATE SERVICES COMMISSION

16 NOV 1987

File reference SSC 21/5/3

Officer for enquiries

Tim McIvor, Extn 8783

11 November 1987

Circular Memorandum 1987/122

General Distribution

Permanent Heads

CHARGING FOR SERVICES PROVIDED UNDER THE OFFICIAL INFORMATION ACT 1982 : GUIDELINES

On 3 November 1987 the Government approved the following revised guidelines for charging for official information.

The guidelines replace those issued by Cabinet in June 1983 (CO (83) 13). They are provided for all organisations covered by the Act, including Public Service departments, State-owned enterprises and Education and Health boards. They represent what the Government regards as reasonable charges for the purposes of the Official Information Act. Organisations covered by the Act who wish to develop their own charging regimes should be aware that charges are liable to review by the Ombudsman.

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1.1 There are currently areas where access to official information is given free of charge or pursuant to an existing charging arrangement. Section 52 of the Official Information Act 1982 does not derogate from such access; those arrangements are not changed by these guidelines.

2 FIXING THE AMOUNT OF CHARGE

2.1 The amount of charge should be determined by:

- (a) establishing whether or not the request is made by an identifiable natural person seeking access to any personal information about that person (Section 24).

Such requests are NOT subject to any charge.

- (b) the aggregate amount of staff time exceeding one hour spent in actioning the request.

This will include search and retrieval of information, the provision of transcripts and the supervision of access.

- (c) the number of pages A4 sized or foolscap photocopy to be provided exceeding 20.

Non standard sized photocopy such as that used for maps and plans will be charged on an actual and reasonable basis.

- (d) for any other cost, the amount actually incurred in responding to the request.

This will cover the provision of copies of video, audio and film tapes, computer time or other situations where a direct charge is incurred.

2.2 Where repeated requests are made in respect of a common subject over intervals of up to eight weeks, requests after the first should be aggregated for charging purposes.

2.3 The charge should represent a reasonable fee for access given. It may include time spent:

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- . in locating (physically) and extracting the information from the place where it is held;
- . in reading or reviewing the information; and
- . in supervising the access to the information.

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- . locating and retrieving information which is not where it ought to be; or
- . time spent deciding whether or not access should be allowed and in what form.

2.4 Where the free threshold is only exceeded by a small margin it is a matter of discretion whether any fee should be paid and if so, how much.

3 STAFF TIME

3.1 Time spent by staff searching for relevant material, abstracting and collating, copying, transcribing and

supervising access where the total time involved is in excess of one hour should be charged out as follows:

- . an initial charge of \$20 for the first chargeable half hour or part thereof; and
- . then \$20 for each additional half hour or part thereof.

3.2 The rate of charge applies irrespective of the seniority or grading of the officer who deals with the request.

3.3 Time spent in deciding whether or not to approve access and in what form should not be charged.

4 PHOTOCOPYING

4.1 Photocopying on standard A4 or foolscap paper where the total number of pages is in excess of 20 pages should be charged out as follows:

- . 15¢ for each page after the first 20 pages.

5 ACTUAL COSTS

5.1 All other charges incurred should be fixed at an amount which recovers the actual costs involved. This would include:

- . producing a document by the use of a computer or other like equipment;
- . reproducing a film, video or audio recording;
- . arranging for the applicant to hear or view an audio or visual recording; and
- . providing a copy of any map, plan or other document larger than A4 or foolscap size.

6 REMISSION OF CHARGES

6.1 The liability to pay any charge may be modified or waived at the discretion of the department or organisation receiving the request. Such decisions should have regard to the circumstances of each request. However, it would be appropriate to consider inter alia:

- . whether payment might cause the applicant financial hardship; and
- . whether remission or reduction of the charge would facilitate good relations with the public or assist the department or organisation in its work.

- 6.2 Members of Parliament may be exempted from charges for official information provided for their own use. In exercising this discretion it would be appropriate to consider whether remission of charges would be consistent with the need to provide more open access to official information for Members of Parliament in terms of the reasonable exercise of their democratic responsibilities.

7 DEPOSITS

- 7.1 A deposit may be required where the charge is likely to exceed \$40 or where some assurance of payment is required to avoid waste of resources. A deposit may only be requested after a decision has been made to make the information available.
- 7.2 The applicant should be notified of the amount of deposit required, the method of calculating the charge and the likely final amount to be paid. Work on the request may be suspended pending receipt of the deposit.
- 7.3 The unused portion of any deposit should be refunded forthwith to the applicant together with a statement detailing how the balance was expended.

8 REVIEW OF DECISIONS ON CHARGES

- 8.1 Section 28(1)(b) of the Official Information Act 1982 provides that the Ombudsman may investigate and review any decision on the charge to be paid in respect of a request for access to official information. When informing applicants of charges to be paid, organisations should point out this right of appeal to the Ombudsman.
- 8.2 A record should be kept of all costs incurred. Wherever a liability to pay is incurred the applicant should be notified of the method of calculating the charge and this fact noted on the record.

9 G.S.T.

- 9.1 The charges given in these guidelines are inclusive of GST.

- 10 A notice will appear in the Public Service Official Circular.



E M Middlemass
Secretary

21/5/0.

- 5 JUN 1987

NOTE TO STAFF

OFFICIAL INFORMATION AMENDMENT ACT 1987

An amendment to the Official Information Act 1982 (OIA) came into effect on 1 April 1987. Below is a summary of the main provisions of the Amendment Act. Please note, in particular, the time limits now imposed on responding to official information requests.

- 1 Exclusion from the definition of official information of correspondence between organisations and the Ombudsman relating to an Ombudsman's investigation.
- 2 Addition of information that would "endanger the safety of the person" to the list of reasons for withholding information.
- 3 Narrowing of the reasons for withholding information on the grounds of protecting specific economic interests.
- 4 New grounds for withholding sensitive commercial information.
- 5 Introduction of time limits for responding to requests:
 - (a) organisations covered by the Act must now respond to requests within 20 working days;
 - (b) a maximum of 10 days is allowed for the transfer of requests; and
 - (c) organisations must also respond within 20 working days to requests for information made by the Ombudsman in the course of an investigation under the Official Information Act.
- 6 A new section to the OIA making it clear that the particular department must respond to requests directed to that department.
- 7 Requesters of personal information must be advised of their right to seek correction of personal information.
- 8 A Ministerial veto of the Ombudsman's decision on the release of information must be by Order in Council.

Further details may be obtained from Tim McIvor, SSC Official Information Liaison Officer, extn 8798.

E M Middlemass
 E M Middlemass
 Secretary

21/5/0

14 FEB 1986 TV



16 December 1985

SSC 21/5/5

Circular Memorandum : 1985/165 (GD)

Officer for Enquiries : I H Miller - Director Information & Support Services
Phone 725-639 Ext 8702

Permanent Heads
Chief Executive Officers of Organisations

OFFICIAL INFORMATION ACT : CHARGING FOR SERVICES

On 25 November the Cabinet approved an amendment to the *Cabinet Guidelines on Charges for the Purposes of the Official Information Act 1982* (CO (83) 13, 8 June 1983) and revised the scale of charge to reflect price level changes over the past two years.

STAFF TIME SHALL NOW BE CHARGED OUT AS FOLLOWS :

- . AN INITIAL CHARGE OF \$15 FOR THE FIRST CHARGEABLE HALF HOURS OR PART THEREOF
- . THEN \$15 FOR EACH ADDITIONAL HALF HOUR.

All other costs, ie computer operating, document reproduction, reproducing films etc but with the exception of photocopy charges, are set by the department or organisation and calculations should be reviewed to ensure that the rates reflect the charge in price level which has occurred. Photocopy charges will remain at :

- . 10 CENTS FOR EACH PAGE AFTER THE FIRST 50 PAGES.

Please ensure this decision is brought to the immediate attention of all staff and that the charging guidelines and any office guides to handling official information requests are revised forthwith.

This circular will not be published in the Public Service Official Circular.

[Signature]
for E M Middlemass
Secretary

21/5/83 (ED)
Mr Delaney
21/5/83
1983



CABINET OFFICE

Prime Minister's Department,
Parliament Buildings,
Wellington.

CO (83) 13

8 June 1983

All Ministers
All Permanent Heads

[Copies to all Chief Executive
Officers of Organisations via
Information Unit, SSC]

CABINET GUIDELINES ON CHARGES FOR THE PURPOSES OF THE OFFICIAL INFORMATION ACT 1982

PREAMBLE

- 1 EXISTING CHARGES TO REMAIN
- 2 FIXING THE AMOUNT OF CHARGE
- 3 STAFF TIME
- 4 PHOTOCOPYING
- 5 ACTUAL COSTS
- 6 REMISSION OF CHARGES
- 7 DEPOSITS
- 8 REVIEW OF DECISIONS ON CHARGES
- 9 COMMENCEMENT

Parliament has decided to make official information more freely available to the people of New Zealand. Responding to requests for information will involve additional costs. In some circumstances the resources needed to answer a request for information will justify charging for them.

Cabinet has authorised (CM 83/21/25 of 7 June 1983) a uniform charging system which is to be observed by all departments and organisations, wherever access is not already provided free or pursuant to an existing charging arrangement.

The system of charges incorporates a "threshold" approach whereby inquirers will generally receive an amount of free access but in respect of requests involving substantial time or materials, charges approximating actual costs shall apply. No charges shall be made for personal information about a natural person given to that person.

1 EXISTING CHARGES TO REMAIN

1.1 There are currently areas where access to official information is given free of charge or pursuant to an

existing charging arrangement. Section 52 of the Official Information Act 1982 does not derogate from such access; those arrangements are not changed by these guidelines.

2

FIXING THE AMOUNT OF CHARGE

2.1

The amount of charge will be determined by:

- a establishing whether or not the request is made by an identifiable natural person seeking access to any personal information about that person (Section 24).

Such requests are NOT subject to any charge.

- b the aggregate amount of staff time exceeding one hour spent in actioning the request.

This will include search and retrieval of information, the provision of transcripts and the supervision of access.

- c the number of pages of A4 sized or foolscap photocopy to be provided exceeding 50.

Non standard sized photocopy such as that used for maps and plans will be charged on an actual and reasonable basis.

- d for any other cost, the amount actually incurred in responding to the request.

This will cover the provision of copies of video, audio and film tapes, computer time or other situations where a direct charge is incurred.

2.2

Where repeated requests are made in respect of a common subject in any four week period, requests after the first shall be aggregated for charging purposes.

2.3

The charge shall represent a reasonable fee for access given. It may include time spent:

- in searching an index to establish the location of the information
- in locating (physically) and extracting the information from the place where it is held
- in reading or reviewing the information
- in supervising the access to the information.

The charge may not include any allowance for:

- locating and retrieving information which is not where it ought to be

time spent deciding whether or not access should be allowed and in what form.

- 2.4 Where the free threshold is only exceeded by a small margin it is a matter of discretion whether any fee should be paid and if so, how much.

3 STAFF TIME

- 3.1 Time spent by staff searching for relevant material, abstracting and collating, copying, transcribing and supervising access where the total time involved is in excess of one hour shall be charged out as follows:

- an initial charge of \$10 for the first chargeable half hour or part thereof
- then \$10 for each additional half hour.

- 3.2 The rate of charge applies irrespective of the seniority or grading of the officer who deals with the request.

- 3.3 Time spent in deciding whether or not to approve access and in what form shall not be charged.

4 PHOTOCOPYING

- 4.1 Photocopying on standard A4 or foolscap paper where the total number of pages is in excess of 50 pages shall be charged out as follows:

- 10c for each page after the first 50 pages.

5 ACTUAL COSTS

- 5.1 All other charges incurred shall be fixed at an amount which recovers the actual costs involved. This will include:

- producing a document by the use of a computer or other like equipment
- reproducing a film, video or audio recording
- arranging for the applicant to hear or view an audio or visual recording
- providing a copy of any map, plan or other document larger than A4 or foolscap size.

6 REMISSION OF CHARGES

- 6.1 The liability to pay any charge may be modified or waived at the discretion of the department or organisation receiving the request. Such decisions shall have regard to the circumstances of each request. However, it would be appropriate to consider inter alia:

- whether payment might cause the applicant financial hardship

whether remission or reduction of the charge would facilitate good relations with the public or assist the department or organisation in its work.

7 DEPOSITS

7.1 A deposit may be required where the charge is likely to exceed \$20 or where some assurance of payment is required to avoid waste of resources.

7.2 The applicant is to be notified of the amount of deposit required, the method of calculating the charge and the likely final amount to be paid. Work on the request may be suspended pending receipt of the deposit.

7.3 The unused portion of any deposit shall be refunded forthwith to the applicant together with a statement detailing how the balance was expended.

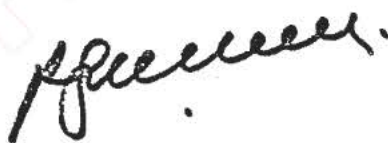
8 REVIEW OF DECISIONS ON CHARGES

8.1 Section 28(1)(b) of the Official Information Act 1982 provides that the Ombudsman may investigate and review any decision on the charge to be paid in respect of a request for access to official information.

8.2 A record shall be kept of any costs incurred. Wherever a liability to pay is incurred the applicant is to be notified of the method of calculating the charge and this fact noted on the record.

9 COMMENCEMENT

9.1 These guidelines are to be implemented on and from 1 July 1983.



Secretary of the Cabinet

29 FEB 1988

Availability of Submissions on Government Exercises

Submissions are frequently received from the public by Departments and organisations on Government related exercises (such as the New Birth Technologies or School Curriculum or Environmental Reviews) and there are sometimes requests from other interested parties to see the submissions.

The question then arises - What is the procedure when a request is made for a copy of a submission?

The Information Authority was asked to advise on this because it appears that some agencies, when requests are made for copies of such submissions, have felt it necessary to consult with the authors on whether or not they agree with release.

This concern is commendable. The Authority believes, however, that such submissions should be regarded as 'public submissions' and therefore automatically available without the need to consult the authors.

Making such submissions available would be consistent with the OIA and would also be in line with the arrangements for public submissions to Parliamentary Select Committees. Even prior to the recent changes to allow for public hearings, these submissions were available after the committee had reported back to Parliament unless some restriction was proposed by the committee and agreed by Parliament.

The Danks Committee in its General Report (at para 123) set out the importance of material such as submissions on government-related exercises being made available publicly: "Where policy changes of a non-recurring and substantive nature are in prospect and these may embrace significant non-commercial values or criteria, the case for open argument of options, alternative listings and the like is strong." Under the Official Information Act regime there is no requirement that the maker of the submission be informed that the submission has been publicly released. But, when requesting submissions from the public it would be proper for the enquiring body to inform them that as such submissions will be official information, they will be

publicly available unless there is good reason to withhold certain information under the OIA. Sensitive information is given protection under the OIA, e.g. confidential commercial information or personal privacy in relation to the contents of a submission, as distinct from authorship or the views expressed. A process of consultation should take place when such circumstances apply.

The same principles should also apply to submissions to local authorities on matters of local concern.

Ratepayers to Hear of LGOIMA

Ratepayers will shortly receive a copy of a leaflet telling them of the Local Government Official Information and Meetings Act. It advises, in general terms, how to make requests, rights of attendance at meetings, and procedures for asking the Ombudsmen to review a decision not to release information.

Copies of the leaflet, which has been produced by the Department of Internal Affairs, have been sent to every territorial local authority to go out with the next rating notices. The Ombudsmen's Office advised on the content.

Mr Peter Boag, Secretary of Local Government, said a special effort was being made to inform ratepayers of the LGOIMA. They were the largest group to be affected by the legislation. It would, he said, also demonstrate to the public the commitment of local government to making the legislation work. One and a quarter million copies of the leaflet have been printed and it will also be available at local authority offices, public libraries and citizen advice bureau.

PSOC Access Case Resolved

In 1984 the Evening Post requested the State Services Commission for access to the Public Service Official Circular. The SSC refused on grounds of privacy of the persons listed in the Circular. On reviewing that decision the Ombudsman said access was already so extensive within and without the public sector that the reason of privacy could not be used and PSOC should be released. The PSA then obtained a court injunction to prevent access by third parties, again on the grounds of privacy of public servants.

After considerable consultation between all parties to the original court proceedings, including the PSA, the injunction has now been rescinded by consent. As part of the process leading to that agreement the Commission agreed to amend the PSOC to show only the grading and maximum salary step for both a person's current position and the new position to which he or she has been appointed.

With the lifting of the injunction, applications by third parties for access to the PSOC are now able to be determined in accordance with the Official Information Act 1982. Given the amendments that have been made to the form of the PSOC the Commission would anticipate that most if not all such requests could be treated favourably. If Departments are unsure as to whether an applicant should be given access to the PSOC in any particular case then clarification should be sought from the Commission.

Transfer of Request:

If a request is received that is better dealt with by another department or organisation or local authority, the request should be transferred immediately to that agency and the requester advised of the action taken. It is not acceptable to write to the requester and advise him or her to write to the other agency. (See s.14, OIA and s.12 LGOIMA). Both Acts require the agency that received the request to initiate the transfer. These actions should be able to be taken well within a week.

1 IC 16
2 File

Reen

The Act says a max of 10 working days is allowed

The Information Authority

The Authority is an independent statutory body established by the Official Information Act 1982 and it reports directly to Parliament. Its primary functions are the systematic enlargement of access to official information, the monitoring of the operation of the Act and the review of powers of government agencies to collect and use personal information.

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The Bulletin aims to provide items of interest on the operation of the Official Information Act 1982. The Editor is happy to have appropriate contributions from departments and the public.

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Quote:

Inger Hansen, Federal Information Commissioner, Canada, in Transnational Data Report, September 1986.

"Release of a controversial record may cause someone to feel embarrassed, betrayed or insecure. Conversely, when someone is denied access to a particular record, there is frequently suspicion of sinister motives on the part of the government. Thus, government must take an active part in explaining these realities and dispel these fears by fostering greater understanding of the delicate balance of the competing interests that make freedom of information work".

"Trade Secrets"

This is the second contribution to Bulletin by Elizabeth Longworth, a commercial lawyer working for the firm, Rudd Watts and Stone, Wellington (see Bulletin 3, "Obligation of Confidence"). In 1986, Elizabeth completed a LL.M degree from Osgoode Hall Law School, Canada. As part of the degree requirements she produced a thesis in which she studied the impact of the Canadian Access to Information Act 1982 on the commercial private sector.

There are many usages of the phrase "trade secrets" which may cause confusion and uncertainty when attempting to define it for the purposes of s.9(2)(b) of the OIA and s.7(2)(b) of the Local Government Official Information and Meetings Act (LGOIMA). A common approach has been to treat 'trade secrets' as a generic term for certain items (e.g., formulae) which are historically recognised as deserving protection.

Defining Using Breach of Confidence Doctrine

Some of the confusion is due to "trade secrets" being treated as synonymous with "confidential information". Accordingly, the case law often relies on the elements of a breach of confidence action to define the ambit of a trade secret. This is a cause of action based on the principle of equity that a person who has received information in confidence should not take unfair advantage of it.

There are three elements which are consistently identified in the common law as prerequisites to sustain an action for breach of confidence, namely:

- (1) The information must be confidential (the focus is on the nature of information);
- (2) It must be communicated in circumstances importing an obligation of confidence (the relationship requirement); and
- (3) There must be unauthorised use of the information to the detriment of the person communicating it.

For reasons outlined in the article on obligation of confidence in Bulletin 3, the underlying economic objectives of the breach of confidence doctrine are incompatible with Freedom Of Information (FOI) policy objectives, rendering it unwise to rely exclusively on these three elements as tests to establish a trade secret.

Factors which identify a Trade Secret

The following synthesis of trade secret law in the USA and Commonwealth jurisdictions identifies the controlling elements of a trade secret as:

- ◆ In the USA - the information must be maintained in secrecy; used in one's business; and commercially valuable. Some would limit it by stating that it must relate to the productive process and must be the product of innovation or substantial effort;
- ◆ In the Commonwealth - whether or not information is of the protectible kind depends upon the circumstances; it must have been kept confidential; it is the result of effort which cannot be duplicated unless one goes through the same process; its protection is subject to the reasonableness of the restraint being applied for; the information was communicated in a relationship of confidence; and disclosure was unauthorised and detrimental.

NZ Commerce Commission on "Confidential Information"

The New Zealand Commerce Commission has taken an amalgam of the above factors when it set down in the Visionhire/Sanyo decision, (No. 81, (1984), 4 NZAR 292) that confidential information must have a substantial degree of secrecy in the sense that it is known only in the particular business by which it is used and must not be public property or knowledge even though perhaps others could get the same information by their own efforts. The information will have value so that its use by others will cause or be likely to cause detriment or loss to the owner. It is likely to include information whereby a competitor, if he knew it, would be able to obtain or redress a competitive advantage.

Influence of Economic Forces on Interpretation

In attempting to define "trade secrets", it is important to recognise that it is impossible to formulate one all-encompassing definition. The law on trade secrets is a product of economic forces, which is illustrated by the three principal themes recurring in the cases:

- (1) The Courts are intent on enforcing minimum standards of good faith and fair commercial dealings;
- (2) The protection of trade secrets plays a significant economic role in that (by preventing unnecessary fragmentation of knowledge) the spread of technology, cost efficiency and investment is enhanced; and

Continued on p.4

State Owned Enterprises

The corporatisation of a number of Government Departments raised the question of whether the OIA should continue to apply to the new bodies. The Information Authority submitted its views to the Select Committee studying the SOE Act, and the following covers some of the issues raised.

A State Owned Enterprise (SOE), can be described as an institution operating a service of a commercial character on behalf of the Government, through an independent legal entity, to some degree autonomous in its management and financing, but responsible to government. Assets of the SOEs, in essence, are held by the Minister on behalf of the taxpayer.

Perception of the need for accountability of all branches of NZ government to its people was acknowledged by the Danks Committee Report which stated (p14 General Report, Committee on Official Information):

"The case for more openness in government is compelling. It rests on the democratic principles of encouraging participation in public affairs and ensuring the accountability of those in office; it also derives from concern for the interests of individuals. A no less important consideration is that the Government requires public understanding and support to get its policies carried out. This can come only from an informed public.New Zealand is a small country. The Government has a pervasive involvement in our every day national life. This involvement is not only felt, but is also sought, by New Zealanders, who have tended to view successive governments as their agents, and have expected them to act as such.History and circumstances give New Zealanders special reasons for wanting to know what their government is doing and why".

The Danks Committee did not see that "commercial information" should be outside the bounds of the OIA. They saw the OIA, with appropriate protection for sensitive information, quite properly covering the commercial operations of Government, whether within a state owned corporation or within a government department. This was supported by the Select Committee studying the Bill, which confirmed the inclusion of enterprises such as Air New Zealand under the Act. The need for accountability has not lessened in the current competitive climate.

The State Owned Enterprises Act 1986 sets out a new accountability regime seen to be appropriate to the enlarged corporate responsibilities. The accountability will have to cope with situations where the necessary discernment of the public interest increases in complexity and importance.

The role of the OIA in establishing credibility to what is being done in the name of reform is important. To opt

out of the OIA responsibilities on the grounds of level-pegging with the private sector fails to recognise the need for the massive changes foreshadowed by the SOEs to be responsibly answerable to the general or interested public.

There is a public interest, however, in such an enterprise not being disadvantaged, through information requirements, in relation to the private sector. The Authority believes that the amended sections 9(2)(i) and (j) in the Official Information Act should provide any needed protection while also taking into account the countervailing public interest.

Sandra Davies, Director, Select Committee Office, Parliament, has highlighted limitations of the SOE Act to impose adequate accountability on SOEs. In a recent article called 'State Owned Enterprises Act: Accountability of State Enterprises and Responsibility of Ministers' in Public Sector, Vol. 10, No 2, she says (P.5):

"Parliament does not have effective means to call the managers and boards of State enterprises to account on a regular day to day basis. It can do so with Ministers, given commitment and adequate resources. The State-Owned Enterprises Act effectively denies Parliament this opportunity."

The Official Information Act may, therefore, give another avenue for some accountability to the taxpayer.

Appeal Court Hears OIA Case

A full bench of five Appeal Court Judges, presided over by Sir Robin Cooke, President of the Court, recently heard an appeal against the High Court decision in Commissioner of Police v Ombudsman. This case concerned access by a defendant to the Police briefs of evidence on his case, prior to his appearance in the District Court on summary trial. Mr Justice Jefferies, in the High Court, held that Police briefs of evidence, could as a class of information, be withheld and it was this decision that was being appealed. As well as the main issue of access, interpretation of certain parts of the OIA have been contested. These include "would be likely" in section 6 of the Act, what the "burden of proof" is when refusing a request, whether the purpose of the Act in s.4(a) should be given a wide interpretation and the provisions for withholding information a narrow interpretation. The case took 2 1/2 days to be heard and the courts decision was reserved. It is not known when it will be delivered.

Time Limits on Answering Requests

The Authority is concerned to hear that the new time limit provisions in the OIA are being regarded by some as a minimum not a maximum time in which to answer a request. It is not the intention of the provisions to set a minimum time - they are there to set a maximum time and ensure there are no undue delays in answers.

When the OIA first came into operation it was recommended that replies be made within 7 days. This should still be the aim for responding unless to do so would clearly place an unreasonable strain on resources.

In that case an interim reply should immediately be sent to the requester:

- ◆ Explaining the delay and reasons for this;
- ◆ Advising when a reply might be expected, within 20 working days of receipt of the request, or if sections 15A, (OIA) or 14, (LGOIMA) are to be invoked, the procedures required;
- ◆ Estimated costs (if any) and any deposit, and an explanation of how the costs are made up.

Remember the OIA (s.13), and LGOIMA (s.11), require agencies to be helpful and give reasonable assistance to a person requesting information. This may include helping redefine a request (where the information does not appear to be "specified with due particularity", [s.12(2) OIA and 10(2) LGOIMA]) when the cost of responding is prohibitive to a requester, or perhaps the requester is not sure of what information the agency holds.

Release of Information of Joint Committees

Both Central and Local Government frequently set up joint inter-agency committees which get information from a variety of sources. There are times when requests for information from the work of such a committee is made to one of the constituent agencies. Who then has responsibility for deciding on access?

- ◆ If the request is for information which has been supplied to the Committee by the agency then that agency makes the decision.
- ◆ If the request is for information generated by the committee then the decision should probably be made by the Convenor of the committee. This should ensure requests are dealt with in a consistent manner having regard to the subject matter. It is presumed that the Convenor will be in the best position to make such decisions.

(3) It also complements the existing law of patents.

For these reasons, many commentators have noted that the most appropriate way to interpret "trade secrets" is to rely on adopting a functional approach. The recommendation by the Information Authority in the Departmental report to the Select Committee on the OIA Amendment can be described as pragmatic in that it is against defining trade secrets in the OIA. This was seen as consistent with the general, evolutionary approach of the OIA.

In the Context of the OIA

While the common law interpretation of trade secrets may be seen as serving the functions and policies of furthering a model competitive market, in the context of the OIA and LGOIMA, it is possible to limit the definition of trade secrets in one significant aspect.

In the United States, there are two streams of cases interpreting trade secrets, yet it is significant that the line of cases which have interpreted the phrase in the context of their FOI Act have been constrained by its underlying policy objectives (in facilitating legitimate disclosure) and its structure. This has resulted in a narrower interpretation of "trade secrets" than one might normally expect, as it was feared that a broad interpretation might result in information being withheld contrary to the spirit of that act.

This result could also be expected in New Zealand where the trade secret exemption is immediately followed by a somewhat broader exemption designed to catch circumstantially relevant business information, namely, s.9(2)(b)(ii) in respect of information that might prejudice the commercial position of the supplier.

In interpreting "trade secrets" in the OIA and LGOIMA, the Court would be obliged to consider the intent of the Act and the principle of availability, as well as its structure whereby Parliament has seen fit to distinguish between trade secrets and other kinds of commercial information. This mitigates in favour of a narrow or "hard" interpretation of "trade secrets" in the OIA and might result in distinctions between secrets relating directly to the mode of production as opposed to secrets collateral to the productive process (e.g., profit figures and various lists, which would fall within the second prong of section 9(2)(b) OIA or 7(2)(b) LGOIMA.

Quote:

D F Wall,
The Provision of Government Information.
"... to be well-governed is to be well-informed".

Notes from the Office of the Ombudsmen

Victims of Offences

The Victims of Offences Act 1987 came into force on 1 November 1987. It provides, inter alia, that the prosecuting authority or officers of the Court, as the case may require, should make available to a victim information about:

- the progress of the investigation of the offence;
- the charges laid or the reasons for not laying charges;
- the role of the victim as a witness in the prosecution of the offence;
- the date and place of the hearing of the proceedings; and
- the outcome of the proceedings, including any proceedings on appeal.

It is interesting to note that some months prior to that Act coming into force the Chief Ombudsman conducted an investigation into a refusal by the Police to give information, including the identity of the alleged offender, to a person claiming to be the victim of an offence. The Police had explained to the requestor that no charges would be laid because there was insufficient evidence that an offence had been committed. In the course of the investigation the possible application of s.9(2)(a) of the Official Information Act was discussed, as were the countervailing public interest considerations (s.9(1)). The complaint was resolved to the requestor's satisfaction when the Police agreed to release the name of the alleged offender. Other information about the alleged offender was not made available.

Balancing Privacy Interests

Recently an issue arose as to whether a defendant in a drug related prosecution could obtain access to toll-call schedules, held by the Telecom Corporation, which he believed would assist him in the preparation of his defence. The defendant believed the drugs in question had been planted as a result of a conspiracy. The Corporation refused the request under the privacy ground, s.9(2)(a). The Ombudsman readily accepted that s.9(2)(a) applied, since an expectation exists that telephone communications are private. However, the balancing test under s.9(1) required this interest to be balanced against the public interest that justice should be done in the prosecution. After examination of the information in question the Ombudsman concluded that the privacy interest should prevail in this instance. Nevertheless, the case illustrates the kinds of difficulties which can be involved in the balancing of competing interests under the Act.

Deletions to be Advised

A number of recent complaints highlight the need for care in the observance of the requirements of the Official Information Act when responding to requests. In one case the requestor guessed that deletions had been made to material which had been supplied. His concern was that the deletions were not visible from the documents that had been made available and neither the fact of deletion nor the statutory reason had been referred to in the department's response (as is required by s.17(2) of the Act). Accordingly, there was a risk that he might not have been alerted to the fact that information had been withheld. It is particularly misleading if the requested document is amended on a word processor to remove the withheld material, and reproduced in a form which does not indicate the location or extent of the deletion.

Appointment Information

When, because of a falling roll, a school is over-staffed, several teachers at that school may have to apply for the position(s) available. The unsuccessful applicants are accorded 'protected teacher' status (i.e., they receive priority in applying for other vacancies). The Ombudsman recently investigated the decision of an Education Board not to make available to a requestor who had become a 'protected teacher' (and who intended to appeal) a copy of the successful appointee's application form and a statement of the reasons for her own selection as protected teacher. The Ombudsman asked the Board on what basis it could be said that an appeal on a protected teacher decision was different from an appeal against non-appointment. In particular, it was asked whether information about the successful applicant, and/or the reasons for the decision concerning the unsuccessful applicant, would be of assistance to the later applicant in deciding whether to pursue his or her appeal and/or in formulating that appeal. The Education Board reviewed its decision and released the information, resolving the complaint.

17 SEP 1984



SSC 21/5/5

10 September 1984

Circular Memorandum 1984/86 (General Distribution)

Officer for Enquiries: I H Miller, Director, Information and
Support Services
Telephone 737-687 Ext 852

Permanent Heads
Chief Executive of Organisations

Official Information Act : Information Report No. 5

Introduction

1 This newsletter provides an overview of the first year of operations, summarises the June 1984 quarterly return, advises the new arrangements for future quarterly returns, outlines the proposed timetable of events for the revision of the "Directory of Official Information", and reports on recent Freedom of Information developments in Australia.

The Year In Retrospect

2 From the perspective of the State Services Commission, the first year of operation has proven the worth of the training and implementation programme followed in 1982-83. There have been very few problems reported and all the indications are that this significant new legislation has largely been accepted and acted upon in both the spirit and letter of the law. It is notable that with very few exceptions staff are willingly accepting their duty to assist with inquiries and the indications are that this approach invariably produces acceptable results. However, there is no room for complacency and further opportunities to improve performance should be taken.

1
2
3
DH
TE
return to GIC

3 The area which has attracted the most criticism has been the delay in acknowledging or deciding requests for access. Although the Act has no specific time limits to meet, the policy recommendation of the State Services Commission was that requests should be met within seven days OR an interim reply sent advising when a final decision could be expected. It was further recommended that where the delay was likely to be a number of weeks further interim replies would be appropriate.

4 As a matter of common courtesy alone, any person doing business with a government department or organisation should know that their request has been received and is under consideration. Even this small effort would go along way to avoiding unnecessary criticism, and the approach would certainly be a positive demonstration of a caring and committed public service.

5 A related concern has been with the lack of detail supplied when a request is declined. On occasions when the reason for the refusal has been given in terms of Section 19(a) only bare details of the section relied upon have been cited. Such a brief statement does little to explain what may be a perfectly valid decision. It is suggested that some attempt to relate the facts of the request to the reasons for withholding could make it easier for the applicant to understand the decision and may well forestall further inquiries or a request for the grounds to be provided pursuant to Section 19(b).

Quarterly Return of Reviewable Decisions

6. Reviewable decisions are those which may be taken on review to the Ombudsman. They include outright refusal of access, modified approvals and conditional approvals. (Implementation Newsletter No. 5 of 19 May 1983 refers.) Requests to correct personal information or record notations are also included.

7 Returns were received for the June 1984 quarter from all 174 departments and organisations. Of these 135 had not made any reviewable decisions at all. This has been a consistent trend throughout the year with the majority of subject agencies not having made any reviewable decisions at all. It is notable that organisations, rather than departments, feature most prominently in this category.

8 For the June quarter the total responses under the required categories were as follows (annual figures are shown in brackets).

	Official Information	Personal Information
Number of refusals	145 (714)	79 (419)
Number of modified approvals pursuant to ss 16 and 17	85 (386)	52 (342)

	Official Information	Personal Information
Number of conditional approvals	6 (52)	16 (65)
Number of corrections pursuant to S.26 (Personal Information only)		6 (26)
Number of notations pursuant to S.26 (Personal Information only)		6 (42)

9. The number of outright refusals (58% of all reviewable decisions) suggests there is still room for reviewing internal procedures with the view to encouraging the maximum use of Sections 16 and 17. The returns indicate that 61% of reviewable decisions relate to requests for access to official information.

10. Ten departments were responsible for 67% of all reviewable decisions. These were Customs, Education, Energy, Forest Service, Justice, Labour, Social Welfare, Trade and Industry, Transport and Police.

Monitoring the Act : New Arrangements

11. Starting with the quarter ended 30 September 1984 all future returns are to be sent direct to the :

Chief Executive Officer
Information Authority
PO Box 10-351
WELLINGTON

The Authority has indicated that the frequency and content of the quarterly returns will be reviewed prior to 30 June 1985 and any decisions taken implemented later in that year. In the meantime your full co-operation in providing accurate and timely returns would be appreciated.

Directory of Official Information : 1985 Revision Timetable

12. The timetable for producing the 1985 edition of the Directory is geared towards a June release date. Although this may seem a long way ahead, the production of the 1983 edition proved that constant effort was required to ensure progress was being made.

13. In order to maintain the regular contact necessary to keep this project to timetable every contributor is requested to nominate an officer, who will act as liaison officer, to the State Services Commission. The name, designation and telephone number of that person should be sent to the State Services Commission, Private Bag, Wellington, Attention : Director of Information and Support Services, by 30 September 1984.

14 It is intended that the 1985 revision will involve a re-editing of the 1983 text with alterations and amendments as necessary to bring the contents up-to-date. Further efforts will be made to bring greater consistency to the format of contributions and the level of detail included, and contributors will be requested to compare their section with examples which will be identified when galley proofs are distributed.

15 Departments and organisations may forthwith commence revising the text as shown in the 1983 Directory. Galley proofs for marking up changes will be forwarded in the week ending 12 October and are required back by 24 November 1984. Revised page proofs will be distributed for checking in the week ended 16 February 1985 and are required back by 9 March. Thereafter printing and binding will be completed by the Government Printer to meet a June delivery date.

16 Once the full extent of the proposed text changes are known a decision will be taken on the format and method of presentation of the Directory from 1986 onwards. However, the 1985 version will remain in the same page size and binding, and be distributed on the same basis as the 1983 edition.

Recent Freedom of Information (FOI) Developments In Australia

17 A survey to assess levels of public awareness and understanding of FOI rights indicated low general levels of awareness and, in particular, understanding of rights.

18 The Attorney-General has subsequently requested the implementation of a public information programme involving:-

- "* the intensification of publicity efforts of individual agencies;
- * the undertaking of a centralised publicity programme; and
- * the monitoring by the Attorney-General's department of the effectiveness of the programme."

19 Examples of the initiatives taken to assist in raising public awareness and understanding include

- * printing of FOI message on standard application or notification forms;
- * inclusion of a similar message in correspondence notifying persons of decisions that may affect them adversely; and
- * inclusion of articles explaining the operation of the Freedom of Information Act in newsletters and bulletins circulated amongst members of the public.

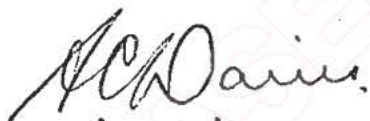
20 The recommended form of the FOI message is as follows:

Freedom of Information

Under the Freedom of Information Act you can ask to see government records such as your (type specified) file. You can also ask to see rules and guidelines used by the Department of (name specified) when assessing your (specify nature of business). Further information on the Freedom of Information Act may be obtained from any office of the Department of (name specified).

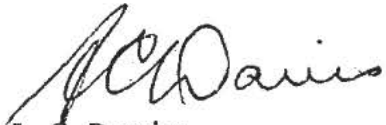
Action Required by this Newsletter

- 21 * Amend instructions regarding despatch of quarterly returns to direct them to the Information Authority starting with the return for the quarter ending September 1984 (paragraph 12).
- * Advise name of "Directory" revision liaison officer to State Services Commission (paragraph 14)



A C Davis
Secretary

This circular will not be published in the Public Service Official Circular.



A C Davis
Secretary

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

INTRODUCTION

1 The specific proposals of the Information Authority (along with comment by the Authority and by the Commission) are set out on the following pages. The Authority recommends additions to Part IV of the Official Information Act (OIA), which currently deals with the right of access to personal information. The Authority's intention is that new sections be added to cover the collection and use of personal information - thus filling a considerable gap in the existing legislation.

GENERAL COMMENTS

DEFINITION OF TERMS

2.1 'Personal information' as defined by the OIA means any official information held about an identifiable person. 'Person' includes a corporation sole and also a body of persons, whether corporate or unincorporate. 'Official information' is defined to mean any information held by a government department, Minister of the Crown in his official capacity or listed organisation.

THE SSC AND PERSONAL INFORMATION

2.2 In the course of its activities the Commission collects, holds and uses a considerable amount of personal information on Public Service employees. As the central personnel authority for the Public Service the Commission also has broad responsibility for guiding departments in their handling of personal information. Finally, like any other department the Commission holds information on its own employees. The type of information held on personal files is listed in annex 1.

2.3 Much personal information is collected from departments on the Commission's behalf by the Personnel Information and Payroll Service (see annex 2). Some of this is published in the Public Service Official Circular (for example, appointments, salary, grading, location, retirement, death) and the Classification List (name, gender, date of birth, date of appointment, salary, qualifications).

- 2.4 The Commission sometimes collects or receives information about Public Service employees in addition to that indicated above. This information often originates with a third party and is deemed necessary for the purposes of the appointment process or disciplinary cases.

THE AUTHORITY'S PROPOSALS

- 3.1 The Commission is currently reviewing the guidelines for departments on information to be held on personal files. It is anticipated that the new guidelines will be finalised well before any consideration of the Authority's proposals by Parliament. However, in drawing up the new guidelines the Commission will take account of the proposed new legislation.
- 3.2 Procedures on personal information set out in the Public Service Manual (for example section A, appendix 1: data required for decision-making; section R: information available for appeals; and section V: staff records) would have to be reviewed and amended, if necessary, if the Authority's proposals become law. Many of the Public Service forms on which personal information is collected would have to be rewritten.
- 3.2 It is proposed that the Commission indicate its broad agreement with the recommendations of the Information Authority, but in doing so indicate the following areas of concern:
- (a) that the need to obtain information on employees from third parties be recognised; such information may be necessary for appointments and in disciplinary cases, and the confidentiality of the third party's comments may need to be respected;
 - (b) that the proposed legislation should not be retrospective in that existing personal information would not be subject to clauses 23A, 23B and 23C; and
 - (c) that the implementation of the proposals would not necessitate substantial new bureaucratic mechanisms and procedures nor involve substantial additional costs.

COLLECTION AND USE OF PERSONAL INFORMATION:

SUGGESTED NEW SECTIONS TO PART IV OF THE

OFFICIAL INFORMATION ACT 1982

23A NEED FOR COLLECTION - A department or Minister of the Crown or organisation may collect personal information only if the need for it arises from the due exercise of the duties and responsibilities of the department or Minister of the Crown or organisation.

Comment by the Information Authority

This is the fundamental question - is collection necessary to the activity of the agency? It brings into focus the competing interests of the State in the effective carrying out of the public interest, balanced against the privacy/confidentiality interest of the person concerned. This should be the starting point for consideration of whether the collection is justified or not. Any collection of personal information should have to clearly outweigh the privacy/confidentiality interests and the agency should be able to show the need for its collection. Collection is on a 'need to know' not a 'nice to know' basis. Information which is merely 'incidental to' or 'connected with' the purpose has no basis for collection.

A requirement that the information should be collected by lawful means has not been included - this goes without saying. No agency has the right to break the law.

Comment by the State Services Commission

Agree.

23B MEANS OF COLLECTION - (1) A department or Minister of the Crown or organisation shall collect personal information directly from the person to whom it relates except -

- (a) where the information is already publicly available; or
- (b) where the person authorises another method of collection; or
- (c) where such collection would prejudice the purpose of the collection; or
- (d) where it would be of benefit to the person.

Comment by the Information Authority

Whenever possible in the interests of fairness and accuracy, information should be collected from the subject, particularly when the information may be used in decisions affecting that person.

Only when the information is:

- * already publicly available; or
- * the subject has authorised otherwise; or
- * it would defeat the purpose of the collection; or
- * it is to the benefit of the subject;

should the collection be from third parties.

Comment by the State Services Commission

Much of the personal information held by the Commission is collected from the person concerned. The Commission also, however, collects personal information from third parties. This takes the form of testimonials or references sought, or enquiries about a person made, in the context of job applications. It also includes information gathered in the course of disciplinary cases. The Commission would not wish this information gathering to be hindered by new legislation. In fact the means of collection in these instances would likely be covered by the proposed clauses 23B(b)-(c).

23C PERSON TO BE TOLD - The person from whom the information is collected shall be told, except where it would prejudice the purpose of the collection -

- (a) the purpose for which the information is being collected; and
- (b) whether the collection of the information is required or is authorised by or under law, and whether disclosure by that person of such information is mandatory or voluntary; and
- (c) the effects on the person, if any, of not providing all or any part of the requested information; and
- (d) the categories of persons who will have access to the information; and
- (e) the rights of access to and correction of personal information provided by this Act.

Comment by the Information Authority

The requirement to advise the above to the person the information is requested from, while primarily concerned with the Informing Principle (IA/3), will also contribute to -

IA/1 necessity for the information through having to clarify the purpose for which it is used;
IA/2 fair collection as there is the need to justify the collection to the supplier and make known the powers to collect;
IA/7 objective reasons, because having to clearly state why the information is needed and justify collection should make the ground for collection more objective;
IA/8 relevance of purpose is also more likely to be achieved.

An exception to the need to advise the person can only be given where it can be clearly shown that the purpose of the collection would be frustrated if the person providing the information was advised of the reasons for collection. While clause 23A still requires justification for the collection of this information, the matter of collection of what might be called 'intelligence records' raises a number of issues. A chief characteristic of such records is that they are usually gathered for the purpose of taking adverse action against the subject of the information. The ones causing most difficulty within this context are the criminal and the security intelligence systems which probably have no controls other than those developed within the organisation itself, and only internal auditing systems. While one can assume that such systems will primarily be held by law enforcement agencies, this may not necessarily be so because the function of such systems does not lead to public announcement.

While we realise that requiring the application of the collection and use of safeguards to such information would be to weaken its effectiveness, and therefore the functions of the agency collecting the information, we are also aware of the risk of abuse of the records, and the potential for considerable harm to the individual. We have at this stage provided for an exemption of the need to collect information from the subject or to advise the person from whom the information is collected where these would frustrate the purpose of the collection. We will be very interested in the response to these provisions.

Comment by the State Services Commission

Basic personal information on Public Service employees (eg age, gender, qualifications, work experience) is collected on form 17A - the standard application for appointment form. When a person is appointed to a position some of this information is transferred to the Personal Information and Payroll system. This information is necessary for two purposes: for aggregation as key statistic data on Public Service employment and to enable individual employees to be paid. The consequences for an employee in not surrendering the bulk of this

information, for example, proof of educational qualifications or a bank account number into which a salary can be paid, are painfully obvious. Essentially a person's appointment cannot be effected until basic personal information is made available.

The Commission perceives no difficulty in amending the PS17A and other forms on which personal information is collected so that persons are advised of the matters in sections (a)-(e) of clause 23C. However, the Commission would stress that for practical reasons this could not be done retrospectively; information to be collected but not that already held would be covered by clause 23C.

23D HOLDERS AND USERS TO ENSURE INFORMATION SECURITY - A department or Minister of the Crown or organisation which holds or uses personal information shall take all reasonable steps to ensure the information is safeguarded against unauthorised access, alteration, use, disclosure or destruction.

Comment by the Information Authority

There may be occasions when the holder of the information is not the user, hence the requirement that both are responsible for information security.

Comment by the State Services Commission

The Public Service Regulations and Public Service Manual Instructions contain directions concerning information security. They were amended to reflect the provisions of the Official Information Act of 1982. This clause would not necessitate further change; although it would perhaps be appropriate that the Commission remind departments of their obligations in this area when the Official Information Act is further amended.

23E USERS TO ENSURE INFORMATION QUALITY - A department or Minister of the Crown or organisation which uses personal information shall take all reasonable steps to ensure, when the information is to be used, that it is accurate, up-to-date, complete and not misleading for the purpose for which it is to be used.

Comment by the Information Authority

The onus to ensure information quality falls on the user, not the holder or collector, although this will often be the same person. If the information is being used by someone other than

the holder and collector, it should be the users responsibility to check that the information is suitable for the purpose. When information has been collected for a purpose other than that for which it is being used, (see Clause 23F), it is quite likely not to be complete or up-to-date for that use. If there is a time gap between collection and use, even where the collector and user are the same person, there is need to check to ensure information quality. The ultimate responsibility for the quality of any personal information used, whether for the purpose collected or not, must be that of the user.

Comment by the State Services Commission

The Commission receives much of the personal information that is required from government departments. The Commission would generally assume that that information is correct and would consider that no additional steps were necessary to confirm its accuracy. It would seem reasonable that the quality of the information be confirmed with the originating department only when and if the user's suspicions about the accuracy of the information were aroused.

- 23F USE FOR OTHER PURPOSES - (1) A department or Minister of the Crown or organisation may use or allow the use of personal information, the use of which is not prohibited or regulated by any other enactment, for a purpose other than the purpose for which it was collected only if -**
- (a) the subject of the information has consented to the use; or
 - (b) the purpose is consistent with the purpose for which the information was obtained; or
 - (c) the information is available in accordance with Parts I and II of this Act; or
 - (d) the department or Minister of the Crown or organisation believes on reasonable grounds that the use of the information is necessary to prevent or lessen a serious and imminent threat to the life or health of the person or some other person; or
 - (e) the use of the information for that other purpose is required or authorised by law; or
 - (f) the request, in writing, is made by an investigative body listed in the Schedule of this Act, where the information is required for the maintenance of the law, including the prevention, investigation and detection of offences, and the request specifies the purpose and describes the information to be disclosed; or

(g) the information is to be used in aggregate form or for statistical or research purposes and will not be published in a manner that will identify any person.

(2) A record shall be kept by holders of personal information of any use made of that information for a purpose other than the purpose for which it was collected.

(3) Nothing in this section affects any power of a Court or other body acting judicially to require the production of evidence.

Comment by the Information Authority

This provision is probably the one most likely to raise difficult issues for holders, potential users, suppliers and subjects of information. While the purposes for which information is collected should be specified at the time of collection there may be justifiable reasons for use for other purposes which are in the interests of the subject, or where the public interest in that use outweighs privacy or confidentiality interests listed in the suggested clause 9A.

Wherever possible, other uses should only be allowed with the consent of the subject. There will be occasions, however, when there is no scope for that consent and where exceptions are justified. It is also important that the 'uses for other purposes' is in line with the reasons under the OIA for withholding personal information on third parties, whether they be natural or legal persons. Clause 23F therefore must be compatible with the suggested new clause 9A, as well as sections 9(2)(b) and (ba) enacted by the Official Information Amendment Act 1987. Clause 9A is concerned with reasons for refusing to release information on natural persons to third parties, whereas Clause 23F accepts that there can be occasions when there should be access to the information and states when and how these could occur.

The use of information for other purposes, and when the consent of the subject has not been obtained, is suggested as reasonable only when the information -

- * is needed for health or safety reasons (eg communicable diseases, certain industrial safety matters); or
- * use will be consistent with the purpose of the original collection and may not have been known at the time of that collection (eg the use of animal ownership figures in an exotic disease outbreak to trace likely suspect properties); or
- * is required by other laws (eg taxation), although these should be rare as all such purposes should have been advised at the time of collection. Collectors should

know of any other laws that may require access to the information and take these laws into account when deciding on the justification for collection; these should therefore be advised to the person supplying the information; or

- * is required for specific investigative purposes, primarily by the police.

To ensure it is possible to trace uses of the information a record should be kept of those uses other than the ones for which the information was collected.

The prevention of computer matching, without sufficient justification, such as on fishing expeditions, is one of the main reasons for constraints on collection and use. When Parliament believes that such a matching programme is necessary, it should be provided for in primary legislation, which then allows the public to have a contribution to the debate through the Select Committee hearings on the Bill. Subclause (e) aims at preventing 'matching' unless it is specifically provided for by law.

Striking the right balance between the public and private interests in access to information for the 'maintenance of the law' is not easy. Should we allow any agency that may have a concern that there has been a possible infringement of the law, however minor, to have access to personal information to check that suspicion, or do we restrict it purely to investigatory bodies and set out rules by which they might request information? Do we make the release mandatory, or should it be at the discretion of the head of the agency concerned?

The Authority has taken the view that there should be a restriction on access to personal information, and that this type of 'fishing expedition' should not be permitted. Access for investigative purposes should be permitted only when there is reasonable cause to believe that the requested information is material to the investigation. We have used as a model for subclause (f), the Canadian Privacy Act that has a discretionary provision which does not grant federal investigatory bodies any right of access to personal information. Rather, the provision leaves to the discretion of the head of the agency from which the information is requested the ultimate decision on disclosure, pursuant to a written request, which must specify the information being requested and the reason why it is wanted. Those investigatory bodies which may make requests are listed in a Schedule to the Privacy Act and information cannot be released in response to a vague and indeterminate inquiry. It would appear that to date there have been no major problems arising from the Canadian provision.

Comment by the State Services Commission

Certain of the basic personal information that the Commission collects on all employees may be relevant to other purposes - for example to the consideration of disciplinary cases.

Some of the basic personal information collected by PIPS is published by the Commission in the form of the "Classification List". The list gives details of each employee's sex; date of birth and appointment; designation; grade; salary; location; date of increment and qualifications. It is available only within the Public Service; yet clearly there exists the possibility of the information in this publication being used for other purposes - both by public servants and by members of the public who manage to gain access to it. The Commission would accept that it be obliged to take 'reasonable' steps to ensure that this and other personal information is not used for other purposes, and that when it is those other purposes be recorded. Ultimately, however, the Commission could not be held responsible for the misuse of personal information it has collected.

23G PUBLICATION SETTING OUT PERSONAL INFORMATION HELD - A department or Minister of the Crown or organisation holding personal information shall make available, in all its public offices, by the 31 March of each year an up-to-date publication that includes in respect of each department or Minister of the Crown or organisation -

- (1) the categories of files of personal information maintained; and
- (2) the nature of the information contained in those files; and
- (3) the purposes for which the information was obtained or compiled and is used; and
- (4) the name or names of any other department or Minister of the Crown or organisation or person to whom the information is disclosed and the purpose of such disclosure; and
- (5) the steps that the person should take if he wishes to obtain access to personal information.

Comment by the Information Authority

There is already a limited duty to provide some of this information in the Directory of Official Information (s.20 of the OIA) and this extends that duty in relation to personal

files, whether on manual or electronic systems. It is not intended this more detailed publication be included in the Directory but that it be available at all public offices of an agency for perusal. Such a publication reinforces the collection and use requirements and should assist both the public and the agency with specification of requests.

Comment by the State Services Commission

The Commission currently has responsibility for producing the Directory of Official Information once every two years. The Commission agrees that the Directory and the proposed new publications be kept distinct. The arguments in favour of a composite publication covering official information held by all organisations subject to the Act do not, largely, apply to the personal information held by these organisations. Personal information is by definition much more specific than official information. The information that it is proposed each organisation produce in individual publications would be in such detail as would make a single composite volume impracticable.

23H APPLICATION PROVISION - (1) Any provisions in any enactment in relation to the collection and use of personal information by a department or Minister of the Crown or organisation shall be read subject to the provisions in ss.23A to 23G of this Act unless -

- (a) the latter Act states it applies notwithstanding this Act; or
- (b) the provision is specified in the Schedule to this Act.

Comment by the Information Authority

There are, as we have already indicated, a large number of statutes giving powers to collect and use personal information and these may raise a number of issues that will have to be considered by departments and organisations and brought to the attention of the Authority. The intention of this proposed legislation, however, is to ensure that where such statutes do not measure up to the Principles for collection and use and it is agreed that they should do so, the deficiencies are provided for in the OIA. To require the amendment of a large number of statutes to bring them into line with the Principles would be a time consuming and frustrating exercise.

There may also be some present legislation (eg to do with maintenance of the law) which departments and organisations believe should be retained and stand outside the ambit of clauses 23A to 23G. If agencies believe they have a case for

exempting their particular powers from the proposed legislation they should advise the Authority giving detailed reasons for such exemption. The Authority will discuss these with the agency. Clause 23H ensures that clauses 23A to 23F prevail over any present or future provisions regarding collection or use unless the provision is specified in a Fourth Schedule to the OIA, or in future legislation it is specifically stated that "notwithstanding the Official Information Act" the provision would apply.

Comment by the State Services Commission

The Commission would not seek exemption of any provisions in this Act from the proposed legislation.

OFF OF THE

**STATE
SERVICES
COMMISSION**

PRIVATE BAG · WELLINGTON · NEW ZEALAND

Reference

SSC 21/5/5

Telephone 725 639

Reserve Bank Building

2 July 1984

Circular Memorandum 1984/ 69 (General Distribution)

Officer for Enquiries: I H Miller, Director, Information and
Support ServicesPermanent Heads
Chief Executives of OrganisationsOfficial Information Act : Information Unit Report No. 4Introduction

1 This newsletter summarises the March quarterly return, comments on problems with the returns, gives preliminary advice on the 1985 revision of the Directory of Official Information, refers to a recent judgement of the Court of Appeal, comments on Ombudsman reviews, and advises of organisational changes affecting the administration of the Official Information Act in the Office of the State Services Commission.

Third Quarterly Return of Reviewable Decisions (to 31 March 1984)

2 Reviewable decisions are those which may be taken on review to the Ombudsman. They include outright refusal of access, modified approvals and conditional approvals (Implementation Newsletter No 5 of 19 May 1983 refers). Requests to correct personal information or record notations are also included.

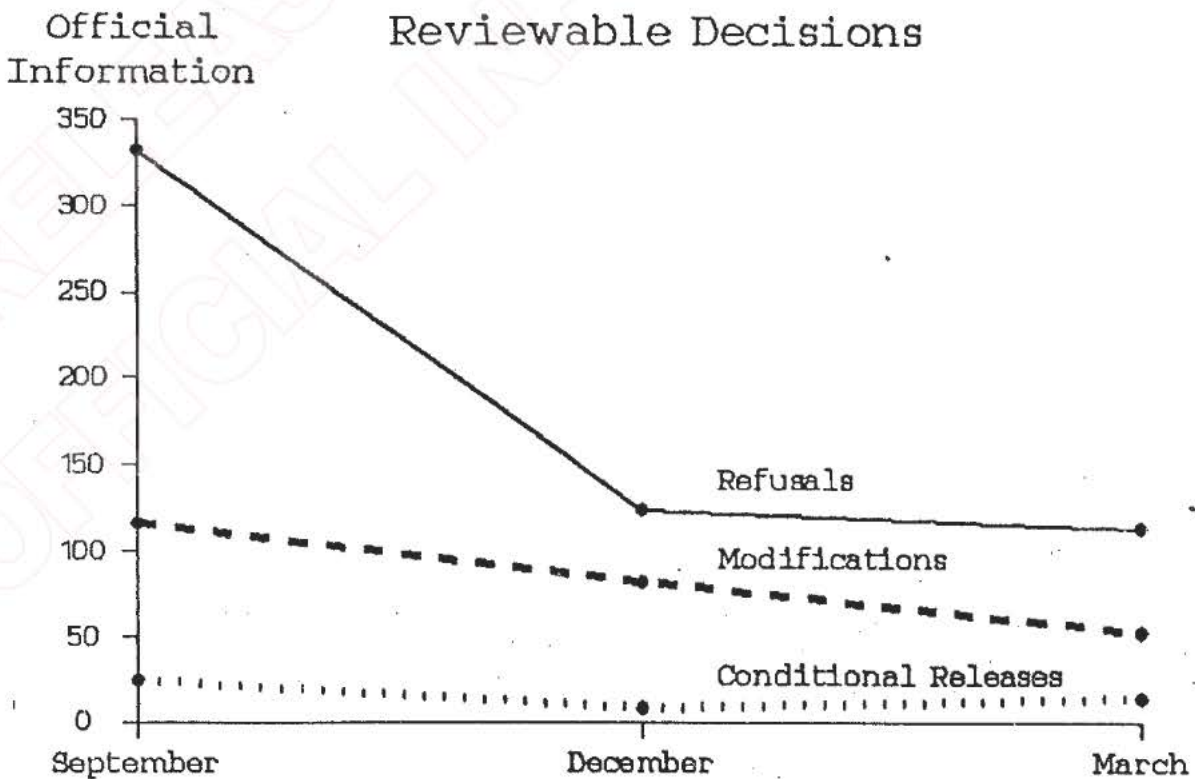
3 Returns were received from all 174 departments and organisations. Of these 131 had not made any reviewable decisions (December 1983 132, September 1983 126).

4 The total figures under the reported categories were as follows:

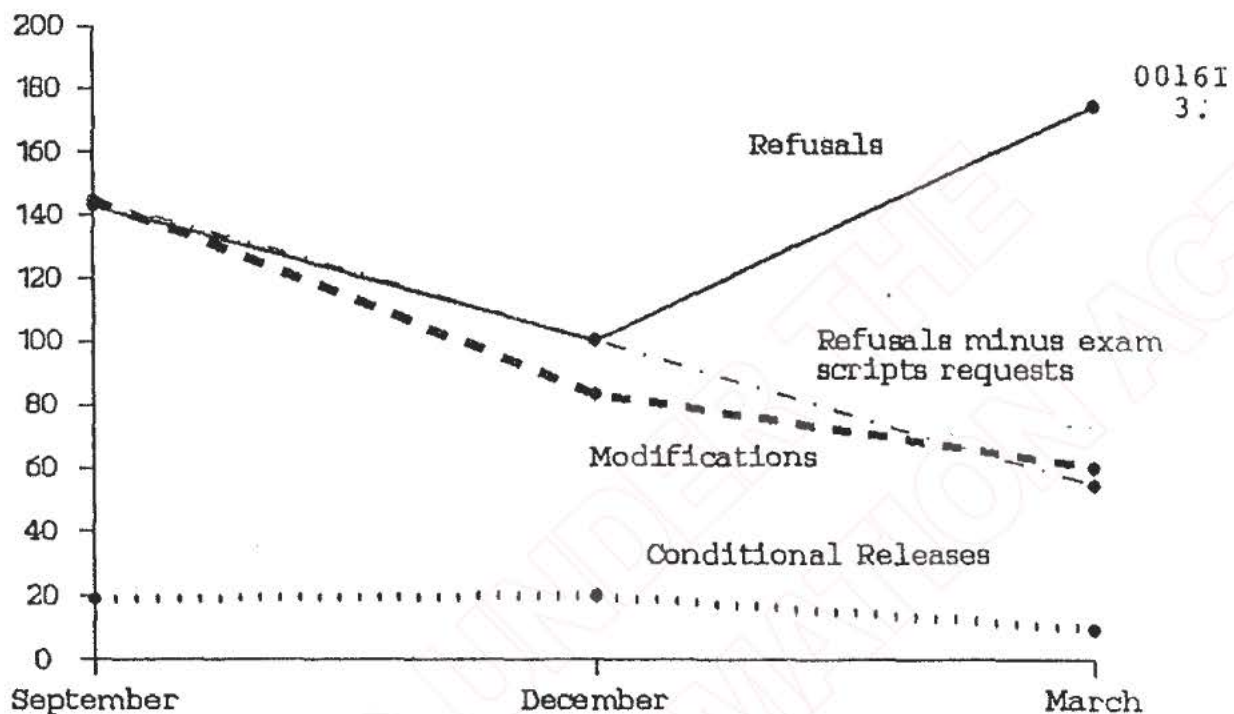
	Official Information	Personal Information
Number of refusals	113	175*
Number of modified approvals pursuant to ss 16 and 17	53	61
Number of conditional approvals	14	10
Number of corrections pursuant to S.26	-	9
Number of notations pursuant to S.26	-	14

* Includes 120 examination script requests

5 The returns show the trend towards fewer reviewable decisions continuing (exam scripts excepted).



Personal Information



6 Applications for personal information pursuant to S.24 of the Act involve the exercise of a legal right which is subject to very few constraints. It is to be expected that in processing such requests every effort would be made to facilitate access and where grounds for withholding some information are present, the provisions of ss 16 and 17 would be used to protect that information only. If the examination script requests are treated as a non-recurring anomaly, the trend towards non-refusals of personal information requests is a very positive sign of the commitment given to the spirit of the legislation.

7 Nine departments and one organisation were responsible for 66% of all reviewable decisions. These were Customs, Education, Energy, Housing Corporation, Justice, Labour, Social Welfare, Trade and Industry, Treasury and the University Entrance Board.

Problems with the Quarterly Return

8 The value of any information return is dependent on the co-operation of those supplying the raw data. Timeliness and accuracy are essential. From the outset a conscious effort has been made to keep the content of this return to the bare minimum. However, despite this, some have considerable difficulty providing the details within a reasonable time. For the March period two large departments were over two months late in providing the information.

9 By far the majority of contributors manage to make the return within a short time of the end of the quarter and with effective management there seems to be no valid reason why the same cannot be achieved in every case.

10 Departments and organisations are again requested to review the manner whereby this information is gathered and forwarded to the Information Unit (see paragraph 18) and make whatever improvements are considered necessary to meet the 21 day target suggested in the Second Report.

11 In addition, there are still some coding problems in distinguishing between personal and official information which call the accuracy of returns into question.

- * A request to have access to personal information about someone other than the applicant is an official information request.
- * A request for access to establishment charts and similar information is an official information request.
- * A modified release is where some part of the information is withheld or the form of release is not in the manner requested by the applicant.
- * a conditional release is where the information could be withheld in terms of the Act but there are special reasons why it should be released subject to appropriate controls eg. a speech released under embargo, a researcher granted access to personal information on condition information identifying individuals is not published.

Directory of Official Information

12 The first comprehensive revision of the directory is scheduled to be completed in 1985. Instructions regarding the programme of activity will be released later this year. For next year it is intended to completely reprint the directory, incorporating necessary additions and amendments. However, consideration will be given to other forms of presentation in subsequent years, including loose leaf subscription.

13 Providing there is sufficient demand (a minimum of 100 orders) the full text of the 1983 Directory can be provided on microfiche. This option has been offered to all public libraries. Departments, organisations or other interested parties should contact the Information Unit (but see paragraph 18) if they wish to purchase copies. The price is expected to be about \$4 per copy although this will be influenced by the level of demand.

Fletcher Timber Limited vs The Attorney General (CA120/83)

14 This judgement of the Court of Appeal released on 18 April 1984 includes some interesting observations on the effect of the Official Information Act on the issue of public interest immunity (crown privilege). In summary, these amount to judicial recognition of the evolving public attitudes towards making information more freely available, which has in turn led to increased restrictions on the circumstances in which information can be withheld.

15 The decision would be of particular interest to those considering requests for access to information on policy matters or in the form of advice to Government.

Reviews by the Ombudsman

16 The Chief Ombudsman, in discharging his responsibilities under the Official Information Act, must form an opinion as to whether the Minister of the Crown or department or organisation concerned has correctly interpreted the Act as it applies to the particular information requested. His opinion will be reached in conformity with the purposes of the Act and the principle in s.5 that information shall be made available unless there is good reason for withholding it. The onus is on the Minister of the Crown or department or organisation concerned to satisfy him that the decision was correct. Reports should therefore cover in full the reasons and grounds under the Act on which the decision to withhold the information requested was based. If full and careful consideration has been given to the original request, those reasons and grounds should be evident from the file.

17 While in the early stages of the Act's operation the Chief Ombudsman was prepared to consider, in the course of his review, new arguments or justifications for the original decision, particularly when a decision on a request was made at a relatively low level, he has advised that is no longer justifiable. The Act has now been in force for a year and procedures for considering requests should by now be well established. The Chief Ombudsman will therefore regard the first report as the full and final submission on the matter unless it becomes apparent that further clarification from the department or organisation concerned is called for. If the report and relevant files do not satisfy the Chief Ombudsman that the decision to withhold the information is correct, he will be obliged to form an opinion accordingly and to recommend that the information be released.

Organisational Arrangements for Advice and Assistance from the State Services Commission

18 The State Services Commission has reassigned responsibility for official information matters to its Information and Support Services Branch and will close the Information Unit with effect from 6 July. After that date inquiries concerning the operation of the Act should be made in the first instance to Mr I H Miller, Director, Information and Support Services.



D K Hunn
Commissioner

Information Regime for Local Authorities

The Local Government Official Information and Meetings Act (LGOIMA), was given Royal Assent on 17 July 1987 and comes into operation on 1st March 1988. The purpose of this legislation is to apply the access to information principles of the Official Information Act to local government.

Access and Public Meetings

The Act has two main sections. Parts I to VI relate to access to information held by the local authorities listed in the First Schedule. Part VII will replace the present Public Bodies Meetings Act.

Applies To

The access to information parts of the Act will apply to all local authorities, including airport authorities, city, borough and county councils, licensing trusts, and harbour, hospital and electric power boards.

Commences 1 March 1988

This allows for extensive training programmes to be run by the Local Government Training Board to equip local authority officials and staff to effectively respond to requests for official information. Any request to a local authority for information is a request that must be dealt with under the LGOIMA. As under the OIA, there is no such thing as a formal 'official information request' and the Act does not need to be mentioned when the request is made.

Parallels OIA

Except for some fine-tuning to suit the local government situation, the procedure for requests and the requirements for withholding information are very similar to the OIA, and include the recent amendments made to the OIA in relation to time limits on responding to requests. To assist the public in making requests, and to provide details of the information held by each local authority, they are required to produce a publication, updated annually, containing information about the various committees and their functions, management structures and activities carried out.

Veto and Appeal

Under LGOIMA, a decision to veto an Ombudsman's recommendation must

be made at a full meeting of the elected local authority. (Under the OIA it is made by the Governor-General by Order in Council). If such a decision is made, it must be published in the New Zealand Gazette and publicly notified within the district of the local authority. The notification is to set out the reasons for the decision, grounds in support of it and advice on which the decision is based. The person denied the information may apply to the High Court for a review of the Council's decision on the ground it was wrong in law. There is a further right of appeal to the Court of Appeal. Costs must be paid by the local authority involved.

Accountability

The Government believes that accountability and openness in local government should be enhanced by making local authorities responsible for their actions. Central government involvement (ie Cabinet veto or individual ministerial Veto) is seen to hinder local authority/Ombudsmen relations and the relationship between central and local government.

Local Government Information Training

Local Authorities will be assisted in their operation of procedures in the Local Government Official Information and Meetings Act by a special training programme to be conducted before the Act comes into force on the 1st day of March 1988. The training programme is being developed and co-ordinated by Mr M J McGill, the former deputy Town Clerk of Rotorua District Council.

Public Bodies Meetings Act to be replaced

On 1 March 1988, Part VII of the Local Government Official Information and Meetings Act 1987 (LGOIMA), will replace the Public Bodies Meetings Act 1962 (PBMA). It will apply to all those bodies presently covered by the PBMA, regardless of whether they are under the OIA or LGOIMA in relation to access for information.

Meetings, as defined in the Act, are to be open to the public, and must be publicly notified in advance, stating dates and venues. The grounds on which the public can be excluded from a meeting have been defined in s.48 and in summary are:

- ✦ If matters would be disclosed for which good reason for withholding would exist under sections 6 or 7 (except s.7(2)(f)(i)) of the LGOIMA or, if the body comes under the OIA, under ss.6, 7 or 9 of that Act (and excluding s.9(2)(g)(i)).
- ✦ Considering an Ombudsman's recommendation.
- ✦ Where the body is deliberating on certain proceedings (essentially of a 'judicial' nature).
- ✦ Where disclosure would be contrary to the provisions of an Act or would constitute contempt of Court.

The right of the public to inspect or receive copies of minutes of a meeting has been retained. Any requests for minutes of closed sessions of meetings must be dealt with as a request for official information and can only be refused under the relevant provisions of the LGOIMA or OIA, as appropriate. Members of the public can also obtain copies of agendas for meetings.

As in the Public Bodies Meetings Act, LGOIMA gives the person presiding at a meeting the authority to require a member of the public to leave a meeting if the orderly conduct of the meeting is being prejudiced. Such an eviction must be based on reasonable grounds.

The Information Authority

The Authority is an independent statutory body established by the Official Information Act 1982 and it reports directly to Parliament. Its primary functions are the systematic enlargement of access to official information, the monitoring of the operation of the Act and the review of powers of government agencies to collect and use personal information.

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University Grants Committee.

Ms Shirley Maddock
Writer and Broadcaster.

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The Bulletin aims to provide items of interest on the operation of the Official Information Act 1982. The Editor is happy to have appropriate contributions from departments and the public.

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New Act available now

The Local Government Official Information and Meetings Act is available now from all Government Bookshops, cost \$3.85 (includes GST).

Extension of the OIA to Other Organisations

The 1987 OIA Amendment Act included a large number of new bodies under the OIA, particularly in the education and hospital fields. As discussed elsewhere in this bulletin, the 1987 LGOIMA extends the Act to all local bodies from 1 March 1988.

This still leaves a large number of statutory boards and committees whose inclusion should be considered. The Cabinet Office Register of Statutory and Allied Organisations lists over 400 such bodies, of which a number are already set out on the 1st Schedule to the OIA. A second group, of mainly unincorporated advisory bodies, appears to be covered by s.2(2) of the OIA, while a third group appears to be excluded, either because their only function is judicial, or they have the powers of a Commission of Inquiry under the 1908 Act, or are regarded as a Court. (Section 2(6) of the OIA)

There is no definite pattern across departments for the legislation that establishes a particular body and there are a variety of procedures, powers, functions, and funding for apparently similar bodies.

Questions that the Authority believes should be asked when deciding whether or not the OIA should apply to statutory bodies include:

- ◆ whether members are appointed by the Governor-General, Minister or Department, or not;
- ◆ whether it must take direction from the Minister or Department in policy and in carrying out functions;
- ◆ whether it advises the Minister and recommends on matters within its jurisdiction;

- ◆ whether it is carrying out public interest functions on behalf of Government;
- ◆ whether it is funded from central government and whether there are constraints on its spending;
- ◆ whether it must comply with the Fees and Travelling Allowances Act;
- ◆ whether it is serviced by a Department and whether it has its own staff.

It should not be necessary that all of the suggested criteria be met. Some bodies, for instance, do not advise the Minister but carry out a task on Government's behalf; in some instances not all members are appointed by the Governor-General or Minister; in some cases funding is partially from the Department; in others registration fees or levies may contribute the complete funding. Where, however, a substantial degree of relevance is revealed by the criteria, the Authority believes that body should be included.

The Authority is presently working with Departments to establish which statutory bodies responsible to their Minister(s) are covered by s.2(2) of the OIA (and therefore don't need to be listed on the First Schedule of the OIA), and which ought to be listed. With 542 bodies and 37 Ministries involved it is a time consuming task.

Local Government Accountability

In his speech at the time of the second reading of the Local Government Official Information Meetings Bill, the Minister, Dr Michael Bassett, commented on the impact this legislation would have on local authorities. The following are extracts from that speech:

"I believe that the Bill will make major changes to the way in which local authorities operate. If local authorities are to cope with the demands placed upon them by the Bill, they will need to ensure that all their manual record systems are in proper order. In particular, the Bill will have a major impact on the territorial authority land information records.

...Some territorial authorities already provide land information records specific to individual properties on request. However, the effect of the Bill will be to require all territorial authorities to do likewise.

...The other area in which the Bill will have major impact is in the provision of meaningful and timely accounting information. Local authorities are major financial enterprises. Some local electors will not be satisfied with out of date financial accounts that fail to show the current financial position of the local authority.

...I hope the Bill will spur local authorities on to become more efficient and effective managers of the resources that are entrusted to their care. The overall objective of the Bill is to promote the greater accountability and efficiency of local government".

OIA Operating Well

The Information Authority's 1987 Annual Report discusses the operation of the OIA and ~~states~~ it is generally being well implemented. The following is taken from the Report.

"In its 1986 Annual Report the Authority said it believed that reviewable decisions i.e. those which the Ombudsmen can be asked to review, appeared to have reached an established level. This year's total supports that view with a small 1.9% drop (21 decisions) from the 1986 year.

It is always a matter of some surprise that the working activities arising from an act designed, as is the OIA, to making official information available as the general and desirable state of affairs, should be so much involved in questions of whether to release information or not. But, within the nature of things, establishing the need to protect information, against the general case, for matters of public interest or personal privacy must attract detailed considerations as this section demonstrates.

Refusals In Public Interest

The OIA in sections 6, 9 and 27, sets out conditions where, it is believed, the public interest may be better served by withholding information than by releasing it. Individual privacy and commercial confidentiality are two of these conditions most commonly giving rise to consideration, and this is reflected in the reviewable decisions made by the seven departments most concerned. These departments made nearly 71% of all reviewable decisions in 1986/87 and most were concerned with personal information requested by the subject or other parties. They will continue to be involved in comparatively high levels of reviewable decisions because requests to them are usually for information about individuals or businesses.

Decisions Complained Of

It is useful to compare the total number of reviewable decisions with the number of complaints made to the Ombudsmen and with those that are finally sustained. In 1985, 1986 and 1987, about thirty percent of the decisions to withhold in whole or part appear to have been complained of to the Ombudsmen's office (requesters must be told, when a reviewable decision is made, that they may ask the Ombudsman to review that decision). While there may be some who might have had cause to complain but did not, the majority evidently felt that the initial decision made by the agency was acceptable in the circumstances.

Complaints Not Sustained

Of the complaints moving on to the Ombudsmen, about 47% in 1985 and 1986, and 52% in 1987, have not been sustained or further investigation has been discontinued or seen as not warranted. This leaves around half judged to have some justification. Of these cases, 165 in 1985, 177 in 1986 and 181 in 1987, were resolved on further inquiry by the department or organisation concerned, and did not require a formal recommendation from the Ombudsmen.

Dispersed Decisions

These figures may seem high, but they should be judged in the circumstances which apply within the departments and organisations where decisions to release or not release are first made. Matters are dealt with in the first place by the exercise of dispersed responsibilities which are generally informal, quick to respond, and not bureaucratically elaborate. A more highly structured decision process would work more slowly and, perhaps, more defensively. The Authority believes that an open philosophy of government can be made to work best, as at present, with the review system operating through the Ombudsmen and back to the departments and organisations themselves as a 'second stage' operation.

Recommendations By Ombudsmen

After due processing, some 64 calls for release were sustained by the Ombudsmen in 1985 and this relatively small number was followed by a significant drop to 15 in 1986 and 12 in 1987. Compared to the total number of complaints for the year (or the total number of reviewable decisions) this indicates to the Authority that departments and agencies have demonstrably improved their competence and understanding in their operation of the Act. There will always be difficult decisions to be made at its cutting edge and it is a function of the Ombudsmen's office to assist in making them. The Committee on Official Information that originally proposed the legislation knew that inherently difficult questions lay within any access regime, hence their recommended inclusion of the veto process. The fact that during 1986 only 15 and in 1987 only 12 recommendations for release were made by the Ombudsmen, and the veto was used only once, speaks well for the skills and judgements that have been brought to bear".

The Discretion to withhold Personal Information

(as explained by the Chief Ombudsman in the Annual Report of the Ombudsmen for the year ended 31 March 1987 para 7 pp 20-21)

"Section 27(1) of the Act, which allows personal information to be withheld for a number of reasons, is phrased in discretionary terms. It states that a department or Minister of the Crown or organisation "may refuse to disclose....". There is no obligation to rely on any of the reasons for refusal set out in paragraphs (a) to (h). The question has arisen in several cases whether this discretion has been exercised reasonably. As a matter of law such a discretion may not be exercised in an arbitrary or capricious manner. It must be exercised for the purposes of the Act by which it is conferred, and fairly. In particular the decision-maker must give genuine consideration to the facts of each individual case.

One factor I have needed to consider in relation to the exercise of this discretion is that section 26 allows individuals to seek correction of personal information which they consider to be inaccurate or incomplete and misleading. Part of the scheme of the Act relating to personal information is to enable individuals to seek out and, if necessary, to have corrected information which is held about them which, if not corrected, could prejudice their future dealings with the department or organisation concerned. However, in order to challenge the accuracy of such information a person must first gain access to that information under section 24(1). It may therefore be highly relevant to the exercise of the discretion in section 27(1) that a requester's right to challenge the accuracy and completeness of certain information would be denied if access to that information were refused. This factor would be particularly cogent if the information was clearly inaccurate or incomplete and gave a misleading impression".

Quote:

Dr Les Cleveland, Victoria University, in a lecture on Citedels of Secrecy and Freedom of Information, 1981.

"From a traditional humanist point of view, the debate over freedom of information is a mere exercise in constitutional rhetoric, unless it recognises that the object of reform is not to make things more comfortable for government planners, pressure groups and the middle classes, but to bring about a more just society."

Computer Security

The use of computers for the storage and retrieval of Official Information and of word-processors and other forms of office automation, can pose a threat to security, especially when such information is classified or is of a sensitive or personal nature' (p 13 Handbook on 'Security in Government Departments and Organisations').

A government agency working with the operational aspects of government computer security is the Government Communications Security Bureau. The Bureau produces guidelines for protection of official information stored in electronic data systems. It also assists government organisations in determining their security needs, and gives advice on the means of the system.

The guidelines do not override the Official Information Act, but see that all reasonable steps are taken to ensure information is safeguarded against unauthorised access, alteration, use, disclosure or destruction.

If you want to discuss information security ring:

Mr D G Hilling, Government Communications Security Bureau, Tel: 726-881

Quote:

David Baragwanath Q.C., in a paper titled "Legal Aspects of Freedom of Information".

"What is sought is recognition that freedom of information, like freedom of speech, is a high interest to be given effect to unless there are overwhelming good reasons to the contrary. This is indeed a self-evident concept: I have yet to meet anyone who does not at least give lip service to it."

Quangocide

The Minister of Justice's quangocide exercise will wind up a number of organisations at present covered by the OIA. It will, therefore, be necessary to have their names deleted from the Ombudsmen or Official Information Acts' Schedules. If repealing legislation is required to wind up a particular body, then that Act should also ensure its name is taken off the OA or OIA schedules. If legislation is not required, an Order-in-Council can make the necessary deletion.

The Authority is gathering the details needed for the Orders-in-Council and would appreciate Departments advising it of any body that is being wound up and needs to be removed from the OA and OIA schedules.

Notes from the Office of the Ombudsmen

OIA Case Appealed

The Court of Appeal is likely to hear the requester's appeal from the decision of Mr Justice Jeffries in Commissioner of Police v Ombudsman (1985) 1 NZLR 578 during November. The Court's decision is expected to provide clarification on a number of issues, including the interpretation of s.6(c) of the Official Information Act in the context of requests for access to briefs of evidence before summary trial, the meaning of the test "would be likely", and the extent of the Ombudsman's review function.

Tender Information

The Chief Ombudsman recently recommended the release of successful tender prices for a Government Stores Board supply contract for disposable tableware. After a protracted investigation, in which the provisions of the Official Information Act before and after 1 April were considered, it was concluded that the predicted effects of disclosure (such as prejudice to the ability of the Government Stores Board to attract the lowest possible prices) were not so likely to occur that it was "necessary" to withhold the information. The recommendation was accepted.

Electoral Information

Complaints have been received from time to time about the refusal of the Chief Registrar of Electors to provide access to electoral information except in the manner prescribed by the Electoral Act 1956 (in reliance on ss.18(c)(i) and 52(3)(b) of the Official Information Act). Such a request was investigated by Sir George Laking and resulted in a recommendation which was vetoed (case no. 28, Fifth Compendium of Case Notes). The late Lester Castle declined to investigate the small number of complaints he received after he was told that the question of the supply of electoral data was under consideration by the Select Committee on Electoral Law. It is understood that the Committee's Fifth Interim Report addresses this issue in some detail.

Charging

A recent charging complaint highlighted the desirability of notifying a requester if his request is likely to involve a substantial charge, before chargeable work is undertaken. The particular request was made under s.23 of the Act and entailed obtaining and collating information from a number of different sources within the organisation. The requestor had been informed for the first time that a charge would be made when the information was supplied. The charge was around \$660. The widespread practice of providing an estimate of charges involved in meeting a request and the potential for seeking whole or part payment in advance were noted in the course of the investigation, which was resolved when the organisation decided to waive the charge.

Local Government Information

On a number of occasions the Ombudsmen have been asked to investigate refusals by local authorities to supply information. Local authorities do not become subject to official information legislation until 1st March 1988, but their decisions can be investigated under the Ombudsmen Act. In a recent case the requester was the owner of two barking dogs about which a complaint had been made to the local council. A request for the identity of the complainant was declined. The approach to the Chief Ombudsman followed similar reasoning to that in case no. 327 (Sixth Compendium of Case Notes, page 127). While it was noted that many complaints to local authorities may be of a minor or trivial nature some relate to law enforcement functions of a type which may lead directly to prosecution in the ordinary Courts. As there is a public interest in the free flow of information to organisations with law enforcement functions, and the public may not be in a position to distinguish between information about offences and other information, it was accepted that the identity of the complainant should be withheld. However, the interests of the requester were recognised by providing as much information as possible about the complaint without identifying the source.

Quote:

F. Thayer, "Participation and Liberal Democratic Government", a working paper prepared for the Ontario Committee on Government Productivity.

"The inclusion of individuals in the decision processes which affect them forces them to take into account the interests of others. Individuals gradually expand their perspectives, first beyond the boundaries of these individual interests, then beyond the interests of their organisations. This offers the hope that everyone could develop the notion of community interest."

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✓ 21/5/0

4 APR 1984

OFFICE OF THE

STATE SERVICES COMMISSION

PRIVATE BAG · WELLINGTON · NEW ZEALAND

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SSC 21/5/5

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Reserve Bank Building

26 March 1984

Circular Memorandum : 1983/35 (General Distribution)
Officer for Enquiries: I H Miller, Assistant Director
Information Unit

Permanent Heads
Chief Executive Officers of Organisations

OFFICIAL INFORMATION ACT : INFORMATION UNIT REPORT NO.3

Introduction

1 This newsletter summarises the most recent quarterly return and includes information on decisions taken on review to the Ombudsman and extracts from the Australian Freedom of Information Annual Report for the period ended 30 June 1983.

Access to Information relating to investigations conducted by the Ombudsman under the Ombudsmen Act 1975 or the Official Information Act 1982

2 Implementation Newsletter No.8 on 23 June 1983 included a request from the Chief Ombudsman that all departments and organisations subject to the Official Information Act transfer to him, on an informal basis, all requests received after 1 July 1983 for access to information which relate to investigations being conducted or which have been conducted by an Ombudsman under the Ombudsmen Act 1975 or the Official Information Act 1982. This request was made to ensure compliance with the requirements of the Ombudsmen Act 1975 regarding confidentiality. The Chief Ombudsman considered that it was appropriate that the Ombudsmen advise those making such a request what information can be made available under the two Acts.

3 The Secretary for Justice obtained an opinion from the Crown Law Office which concluded that departments and organisations should decline to make information relating to Ombudsmen's investigations available under the Official Information Act and should refer all requests to the Ombudsman's Office. It appears that after some confusion about the appropriate procedure, most departments and organisations are now referring these requests to the Ombudsman's Office. The Chief Ombudsman asks that departments and organisations continue to follow this course.

4 Departments and organisations may be assured that in no circumstances will the official or personal information originally requested by a complainant, and which is the subject of an Ombudsman's investigation and review under the Official Information Act, be made available directly or indirectly to the complainant by an Ombudsman. The release of such information is the responsibility of the relevant department or organisation.

5 There have been instances recently where the person who has requested an investigation either under the Ombudsmen Act or the Official Information Act has made a request to the relevant department/organisation under the latter Act for information relating to that investigation while it was still in progress. An Ombudsman will not agree in those circumstances to the release of any information and would expect the enquirer to be told that while the matter is under investigation by an Ombudsman, the parties should remain at arm's length.

6 When a request is received from a former complainant for further information about a completed investigation, an Ombudsman will consider the request in accordance with the provisions of the Ombudsmen Act 1975 and with due regard to safeguarding personal privacy.

Second Quarterly Return of Reviewable Decisions

7 Reviewable decisions are those which may be taken on review to the Ombudsmen. They include outright refusal of access, modified approvals and conditional approvals (Implementation Newsletter No.5 of 19 May 1983 refers). Requests to correct personal information or record notations are also included.

8 Returns for the second quarter (October-December 1983) were received from all 174 departments and organisations. 132 had not made any reviewable decisions at all.

9 The total figures under the required categories were as follows (first quarter shown in brackets for comparison):

	Official Information	Personal Information
Number of refusals	123 (253)	93 (223)
Number of modified approvals pursuant to ss 16 & 17	74 (163)	70 (135)
Number of conditional approvals	16 (28)	34 (36)
Number of corrections pursuant to S.26		5 (6)
Number of notations pursuant to S.26		11 (11)
Section 10 (Neither confirm nor deny)	1	8

10 As can be seen from the figures, the total number of reviewable decisions showed a significant reduction (50%) by comparison with the September 1983 return. The only categories in which this was not the case were s.26 notations and the invoking of s.10 both of which involved only small numbers. The split between official and personal information remains virtually constant with requests for official information being 51% of the total (53% in September).

11 Ten departments were responsible for 65% of all reviewable decisions. These were Customs, Energy, Forest Service, Housing, Inland Revenue, Justice, Labour, Police, Social Welfare and Trade and Industry.

Decisions taken on Review to the Ombudsman

12 The following figures were received from the Ombudsman's Office.

Requests for investigation and review received in six months ended 31 December 1983.

July	17
August	39
September	48
October	29
November	28
December	27

Nature of decisions subject to review

Refusals	151
Delays	22
Corrections	8
Deletions	4
Fees and charges	3

Location of original decision

Departments	147
Organisations	18
Ministers	15
Non scheduled	8 (Refers to decisions made by organisations or departments not subject to Act.)

Outcome of completed investigations

No jurisdiction	8
Declined or discontinued	38
Sustained - no recommendation made	1
- recommendation made	38
Not sustained	7
Not pursued by requester	12

Extract from Press Statement Released 16 January 1984 By
Mr G R Laking, Chief Ombudsman

13 " One hundred and five requests have come from individuals, 23 from companies and incorporated societies, 16 from press, radio and television, 14 from special interest groups and four from Members of Parliament.

The section most commonly relied upon by departments, organisations or Ministers for withholding official information is S.9(2)(g)(i) ie. withholding the information is necessary to maintain the effective conduct of public affairs through the free and frank expression of opinions. The section most commonly relied upon for withholding personal information is S.27(1)(c), ie. the disclosure of the information would breach a promise made to the person who supplied the information (being evaluative material) and which was that the information or the identity of the person who supplied it or both would be held in confidence.

An encouraging aspect of the situation so far is that I have been able to discontinue my investigations in approximately 25% of the cases involved because the requests which were originally declined were met by the relevant Minister, department or organisation during the course of my investigation."

Australian Freedom of Information Act : Annual Report

14 The report for the period ended 30 June 1983 was released on 5 December 1983. The contents reveal that during that period 5669 requests were received. Of these 90.1% were received by 20 agencies.

15 Of the 4159 requests determined, decisions were taken as follows:

Granted in full	2577 (62%)
Granted in part	1034 (25%)
Refused	548 (13%)

The average response time to requests was 25.4 days with 42.2% being actioned within 15 days.

16 4740 separate decisions to refuse access (in whole or in part) were made. The reasons for the difference between the number of requests refused and the number of decisions to refuse access are:


". more than one decision may be made in relation to a request particularly where the request is for more than one document

. a request may be refused on more than one ground."

17 The report notes that the number of requests received has been significantly less than some of the predictions made. To that extent costs have not been as substantial as feared but many agencies found handling requests more complex and expensive than anticipated. A particular feature was the seniority of officers involved in the more difficult requests.

Returns to the Information Unit

18 It is with regret we have to report that, despite the request made in the last newsletter, many returns - both quarterly and of charges levied - are still not being forwarded without some further reminder from the Information Unit. This is very time consuming and, frankly considering the small amount of detail required, should not be necessary. You are again requested to make a special effort to provide the returns with the minimum of delay. This will be especially important for the March quarter as we are required to provide statistical information for the Information Authority Annual Report after that date and to make a report to Cabinet on operation of the charging guidelines.


D. K. Hunn
Commissioner



Office of the

STATE SERVICES COMMISSION

-9 APR 1987

21/5/07

File reference SSC 21/5/5

Officer for enquiries
Tim McIvor Extn 8798

8 April 1987

Circular Memorandum 1987/37 (Head Office Distribution)

Permanent Heads

OFFICIAL INFORMATION AND THE OFFICE OF THE OMBUDSMAN

1 Departmental Correspondence with the Ombudsman's Office: Official Information Amendment Act, 1987

(a) Hitherto under the Official Information Act, correspondence and communications between Ministers, departments and organisations and the Ombudsman's Office were technically "official information". In view of the possibility that release of this information by its holder to a requester might thereby infringe the confidentiality of an Ombudsman's investigation (required by the Ombudsman Act), guidelines were circulated by the State Services Commission in 1983 and early 1984 suggesting that requests of this nature be dealt with by informal transfer to the Ombudsman's office. In cases where the investigation was proceeding the requester could be told to renew their request to the Ombudsman at the conclusion of the investigation if the information was still required.

(b) Under the Official Information Amendment Act, which came into force on 1 April 1987, the definition of "official information" held by organisations subject to the Act specifically excludes:

"... information contained in any correspondence or communication which has taken place between the Office of the Ombudsman and any Department or Minister of the Crown or organisation and which relates to an investigation conducted by an Ombudsman under this Act or under the Ombudsmen Act 1975, other than information that came into existence before the commencement of that investigation."

Renew info

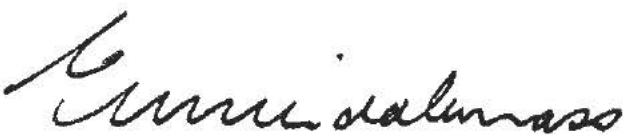
1 I.C.T.
2 File

- (c) A refusal of such information may therefore be given in relation to the Official Information Act. Nevertheless, the Ombudsman will continue to consider requests for access to information held on their files in accordance with the access policy reproduced below. In order that requesters who seek information which is covered by the exclusion quoted above are not disadvantaged by the Amendment in comparison with the previous practice, the Ombudsman wishes that officers of organisations subject to the Act continue to refer requests to the Ombudsman's Office for consideration in accordance with the access policy. Referral may be done as now, either by the relevant officer telephoning a member of the official information investigating staff in Wellington, or in writing. As with the previous practice, where the request is made in the course of an investigation the requester should be told to make the request at the conclusion of the investigation, if dissatisfied with its outcome.

2 General Policy of the Chief Ombudsman on access to information held in the Ombudsman's Office

- (a) The governing principle on access to information held in the Ombudsman's Office is that the personal privacy of complainants must be fully safeguarded. This principle is fundamental to the proper exercise of the investigatory responsibilities of Ombudsmen under both the Ombudsman and Official Information Acts. One of those responsibilities is to ensure that anyone who has a complaint is not discouraged from approaching the Office and that, in doing so, he or she can be assured that the investigation of it will be carried out in private.
- (b) Consistent with that principle, the Office of the Ombudsman is not subject to the Official Information Act 1982. However, the Chief Ombudsman is willing, in the spirit of that legislation, to allow access to information held in the Office of the Ombudsman to the fullest extent compatible with the principle referred to above and with the provisions of the Ombudsman Act 1975.

3 A notice will also appear in the Public Service Official Circular.



E M Middlemass
Secretary

OFFICE OF THE

STATE
SERVICES
COMMISSION

PRIVATE BAG - WELLINGTON - NEW ZEALAND

Reference SSC 21/5/5

Telephone 725 639
Reserve Bank Building

22 September 1983

Circular memorandum 1983/81 (General Distribution)

Officer for Enquiries : I H Miller, Assistant Director
Information Unit

PERMANENT HEADS

CHIEF EXECUTIVE OFFICERS OF ORGANISATIONS

OFFICIAL INFORMATION ACT : INFORMATION UNIT REPORT NO. 1Introduction

1 In the last of our Implementation Newsletters we indicated that further newsletters would be issued after 1 July as information of interest came to hand. This is the first of these ad hoc reports. The contents review the first two months of operation and offer some suggestions for improving performance.

Volume of Requests

2 It is not possible to give more than an estimate of the increased activity generated by this Act since no distinction is made between information previously released and official information as defined in the Act. However that qualification aside, it appears that there has been a relatively low level of inquiry. Telephone surveys of departments indicate few requests could be attributed to the Act. The inquiries fall approximately 50/50 between official information and personal information requests.

3 The low level of interest was not entirely unexpected; Implementation Newsletter No. 7 showed a similar reaction in Australia. It is worthy of note though that overseas experience has been that public awareness of access rights increases slowly but that after a transitional period of about a year, public use of the new law begins to rise.

Response Time

4 In Implementation Newsletter No. 3 departments and organisations were recommended to aim for, "at the maximum, a seven day turn around period in giving information, or alternatively in sending an explanatory letter indicating the likely response time."

5 From public reports and comments received in this office it appears that a concerted effort is being made to meet this target. There have been instances, however, where an acknowledgement was not sent to the applicant for over a month and other cases where the acknowledgement was followed by a long and unexplained period of delay. The purpose of an acknowledgement is to explain that there will be some delay for a stated reason and to indicate the likely response time. If it subsequently proves impossible to reply by that date, a further explanatory letter should be sent.

Transfer of Requests

6 Section 14 of the Act requires the receiver to transfer the request and inform the applicant accordingly where the request relates to information

- which is not held by the recipient but believed to be held by another department, Minister of the Crown or organisation; or
- which is believed to relate more closely to the functions of another department, Minister of the Crown or organisation.

In at least one instance, an applicant was advised in writing that they should make the request to another named department. Internal instructions should make it clear this is not acceptable. In terms of the requirements of the Act, the recipient must initiate the transfer.

Release of Information prepared for Joint Committees

7 Information is often contributed to joint interdepartmental/organisation committees from a number of sources. Permanent heads have agreed that the convenor of the committee concerned should co-ordinate responses to access requests, and either make the access decision or organise the response. This procedure is not intended to act as a barrier to requests for access, but rather to ensure that any request is dealt with in a manner consistent with the legislation, having regard to the subject at issue. It is presumed that the convenor will be in the best position to make such decisions.

Official Information Handbook : A guide for state servants

8 Drafting is well advanced on this booklet. The contents will comprise detailed guidance on how to process requests in terms of the Act and will incorporate the advice given in the Implementation Newsletters. At this stage there is no firm publication date but the target is towards the end of the year.

The Directory of Official Information

9 Many departments and organisations will have received and considered the galley proof of their contribution. The remainder will do so shortly. While we do not yet have a firm date for publication, we are aiming for some time before the end of the year. Prior notice will be given of release including advice on the outlets for public reference copies.

Security in Government Departments and Organisations : A handbook for staff

10 The Interdepartmental Committee on Security has drafted a handbook on principles and general practice which is intended to ensure that the proper degree of protection is given to information that needs to be safeguarded.

This handbook, issued under Cabinet direction, will be circulated widely in the State Services and will be available to the public. Printing arrangements are in hand and distribution will be made next month. Departments will receive the same number as their Public Service Official Circular quota and organisations an assessed requirement. Further copies will be available from the Government Bookshop.



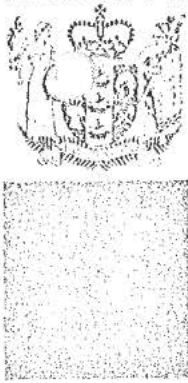
D K Hunn
Commissioner

RELEASED UNDER
OFFICIAL INFORMATION ACT

MT. JZ S.S.C. CH. CK.
9/10

26 SEP 1983

21 September 1983, No. 38



THE PUBLIC SERVICE OFFICIAL CIRCULAR

Information of General Interest

1. OFFICIAL INFORMATION ACT: REQUESTS FROM MEMBERS OF PARLIAMENT

A Member of Parliament can make a request for access to official information in a number of ways:

- through the Parliamentary question process;
- direct to the responsible Minister;
- direct to the department or organisation concerned.

The advent of the Official Information Act does not affect procedures that have been used in the past in respect of the first two of these avenues of access to information; but it does have an effect on the third (namely: direct approaches to a department or organisation).

In the past, where an inquiry related to a constituents' affairs or localised issues, it has often been the practice to send a direct reply, and there is no reason why this should not continue. In the case of other types of inquiry it has been the practice to reply to the Member of Parliament through the Minister so that the Minister would be kept informed about issues relating to portfolio responsibilities and could decide whether the information should be released and in what form.

In the new situation, if a Member of Parliament chooses to apply directly to the responsible department using the provisions of the Official Information Act, the decision to release or not must be based on the criteria stipulated in the legislation. However, in marginal or sensitive cases where it is considered that the Minister would wish to be involved, or where the information sought involves the release of advice given to the Minister by his department or organisation, the matter should be referred for decision by the Minister. Even so a recommendation must be made by the department and that recommendation must be made in terms of the Act.

The Official Information Act does not distinguish between Members of Parliament and other citizens, so that, if the Member wishes the information to be returned directly, and not through the Minister, this must be done (subject of course to the Minister being consulted on sensitive issues, as has been outlined above).

Where a Member of Parliament makes a request directly to a department any charges that are incurred must be paid unless the amount is waived. The decision to waive the charge must be dealt with on its merits and in accordance with the Cabinet guidelines.

(SSC 14/0/0)

—For the information of employees of the Public Service.

Published weekly by the State Services Commission, Private Bag, Wellington, New Zealand.

S.S.C. ChCh.

-1 SEP 1983

WFE
A.M.C. J
J

OFFICE OF THE

**STATE
SERVICES
COMMISSION**

PRIVATE BAG · WELLINGTON · NEW ZEALAND

Reference
SSC 14/0/0

Telephone 725 639
Reserve Bank Building

Circular Memorandum 1983/71 (G)

Officer for Enquiries: Mr I H Miller
Assistant Director, Information Unit
Extn 569

TO PERMANENT HEADS

**OFFICIAL INFORMATION ACT: REQUESTS FROM MEMBERS OF
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A C Davis
Secretary

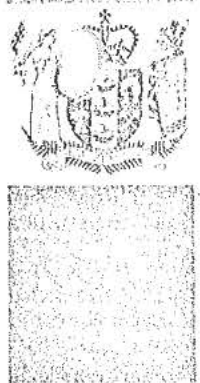
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JR
A.M.C.
[Signature]

31 August 1983, No. 35



THE PUBLIC SERVICE OFFICIAL CIRCULAR

Information of General Interest

1. OFFICIAL INFORMATION ACT 1982—INFORMATION AUTHORITY

REVIEW OF POWERS OF GOVERNMENT DEPARTMENTS AND ORGANISATIONS TO REQUIRE THE SUPPLY OF PERSONAL INFORMATION

(Sections 39 (b) and (c) of the Official Information Act 1982 require the Authority:

- To examine any existing or proposed powers of a department or organisation to require persons to supply information about themselves or any other person and to express its view on whether those powers are fair and reasonable;
- To inquire whether personal information held by any department or organisation is being used for purposes other than those for which it was acquired and, if it considers that any such information is being so used, to express its view on whether such use of the information is proper.

The authority has already asked Government departments and other organisations to itemise their collections of personal information and the use or uses made of such information.

The authority now invites written submissions from interested bodies and members of the public. Submissions should cover:

- (1) The name of the department or organisation that required and/or used the personal information;
- (2) The nature of the information required;
- (3) The reasons given for requiring the information or the situation where the information was sought;
- (4) The reasons the writer has for comment or concern;
- (5) The name and address of the writer.

Note that the Official Information Act defines "person" as including as well as individuals, a corporation sole and also a body of persons, whether corporate or incorporate.

Submissions should be mailed to:

The Chief Executive Officer,
Information Authority,
P.O. Box 10 351,
Wellington.

Date for final receipt is 16 December 1983.

(SSC 21/5/10)

PRESS RELEASE

21/5/0

RELEASE OF THE PUBLIC SERVICE CLASSIFICATION LIST

The Chairman of the State Services Commission, Dr Mervyn Probine, said today that the Commission had considered the Ombudsman's recommendation that the Public Service Classification List should be made available to Mr Schouten of the 'Evening Post', pursuant to Section 30(1) of the Official Information Act. Mr Schouten had earlier requested this document and the Commission had refused to release it.

"The Commission will be discussing the Ombudsman's recommendation with the Public Service Association and it will then decide whether it will make a further submission to the Ombudsman," said Dr Probine.

Dr Probine said that in refusing to release the Classification List, the Commission was concerned to preserve the personal privacy of its employees. The list contains the name, sex, date of birth, date of appointment, designation, location and educational qualifications of every officer in the Public Service together with that officer's salary, the date that salary was effective and the present maximum salary available to that officer. It also lists the department, occupational class and grade in which that officer is employed.

Dr Probine said there was no dispute that this information related to natural persons (to use the terminology of the Act); and, while there were many public servants who probably would have no objection to that information being

made available, Dr Probine was certain that, from letters he had had and from talking with individual public servants, many regarded this kind of information as private and they would object to it being freely available.

The Public Service Association had earlier indicated that it would object to this information being available and the Ombudsman had been told of the PSA's objection.

"So far as the Commission is concerned we refused to release the information to Mr Schouten when he first applied for it as a matter of principle; namely, that we did not consider ourselves to be free to release information which, if released, many public servants would regard as an invasion of their personal privacy" said Dr Probine.

"Personally, I still hold to that view, and I am surprised that the Ombudsman feels that he can make a decision to release this kind of information on behalf of so many of our staff. Indeed, if the Ombudsman's view prevails, I would find it difficult to draw the line between releasing this payroll information and other types of payroll information. I find that a disturbing prospect", said Dr Probine.

Dr Probine went on to say that the Classification List was available to public servants in order that they could conveniently exercise appeal rights, make applications for regrading, and make career decisions. In other words, it was available on a "need to know" basis; but that was a different matter to making it freely available to 'all and sundry'.

In making his recommendation the Ombudsman had drawn attention to the fact that, as well as being available to public servants, the Classification List was made available to the PSA and to other State Service Employing Authorities (Post Office, Railways, Broadcasting Corporation, Education Department, etc). It is made available to the PSA (a voluntary union) to assist them in membership drives and to aid them in representing members. It was made available to sister employing authorities because under the chairmanship of the SSC Chairman, they made up the State Services Co-ordinating Committee which co-ordinated salary scales and conditions of employment for all State servants. In other words these bodies received it on a "need to know" basis.

"I should make it clear that the public at large is not being denied information of the salaries paid in each occupational class and for each grade in the class. This information is already available as is the Public Service Manual", said Dr Probine.

"In addition to requesting the Classification List Mr Schouten had also requested access to the Public Service Official Circular which is issued weekly and is available to all public servants. We are rather more relaxed about releasing this information, but we may delete the salary information, and, in future, list only the grade of advertised positions. We may discuss this compromise with the Ombudsman", said Dr Probine.

As well as meeting with the Public Service Association to discuss the Ombudsman's recommendation, Dr Probine will also be talking to other state Service employing authorities in order to obtain their views before the Commission decides whether to release the Classification List or take the matter up again with the Ombudsman.

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

OFFICE OF THE

**STATE
SERVICES
COMMISSION**

PRIVATE BAG · WELLINGTON · NEW ZEALAND

Reference

SSC 21/5/8

Telephone 725 639

Reserve Bank Building

30 June 1983

NOTICE TO ALL SSC STAFF

GUIDELINES FOR THE IMPLEMENTATION OF THE OFFICIAL INFORMATION ACT 1982 WITHIN THE OFFICE OF SSC

The Official Information Act 1982 comes into force on 1 July 1983. Although the new legislation requires a dramatic reorientation of outlook, our practices need change comparatively little. If, in the course of carrying out your present duties, you have made certain information available, you may continue to do so within your area of competence and experience.

In the interests of opening up official information to the public and users, all staff may, upon receiving a request, release information of an already published nature, e.g. the Public Service Manual, SSC Circular Memoranda, Public Service Official Circular notices, occupational class determinations. On the other hand, some information is sensitive, and caution should be exercised in considering its release. Examples include requests for personal information, Cabinet or Cabinet Committee papers, and reports for Ministers of the Crown. Decisions on the release or withholding of information in the form of formal Commission reviews and advice or reports to or for Ministers and Cabinet Committees are reserved to the Chairman or full Commission.

If you receive a request for the kind of information that previously you would not have made available, or if you are unsure whether it is proper to release it, you are entirely within your rights to tell the inquirer that you cannot give an immediate answer. The correct course is then to seek the advice of your controlling officer - as you would probably have done before the Official Information Act was passed.

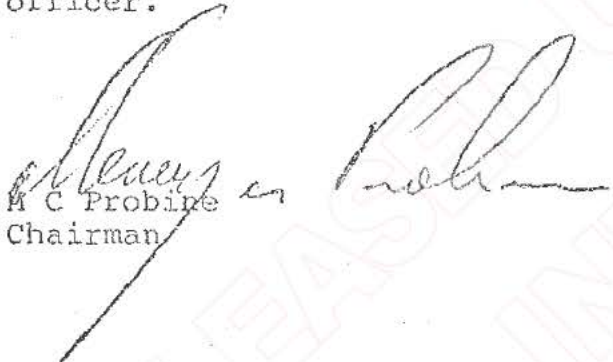
The limitations of the former Official Secrets Act no longer apply, and employees may now use or disclose information in the course of their duties, on behalf of the Commission in accordance with the Official Information Act. You should therefore make yourself familiar with the Official Information Act, particularly those parts that relate to the withholding or release of information. A Public Servant is still precluded from using official information for his or her benefit, e.g. for financial gain or to promote a personal or political viewpoint. Penalties for use or disclosure other than in the course of official duties are provided for under the State Services Act 1962.

One of the critical areas in the new legislation concerns decisions not to release official information. A decision to withhold information must be made in accordance with the provisions of the Act, and must, if necessary, be capable of being defended first to the inquirer, then to the Chief Ombudsman (if there is an appeal), and ultimately to the general public. This particular responsibility will require careful monitoring, especially in the early period of the operation of the new Act.

The authority to decline to release official information has, therefore, been set initially at a fairly high level; and officers so designated are set out in the attached appendix. A system of quite rapid referral to these officers will be needed when it appears likely that certain requests for information should be refused. The precise method of referral is left to the divisions and/or branches to elaborate on.

I would expect that during the staff training sessions for the various sectors of this Office (including CSD), the application of these general points to your particular area of work will be developed. This detail will later be included in job specifications.

In the meantime, I reiterate that the broad approach to working with the new legislation is to continue to carry out your duties much as you have done prior to 1 July 1983. When in doubt consult your controlling officer.


H. C. Probine
Chairman

COMMISSION OFFICERS DESIGNATED AS AUTHORISED UNDER REGULATION 64E OF THE PUBLIC SERVICE REGULATIONS 1964

The following officers of the Office of the State Services Commission are designated to make decisions about:

- (a) withholding official information; and
- (b) the disclosure of the existence or non-existence of official information, as follows:

<u>OFFICE</u>	<u>CLASS OF OFFICIAL INFORMATION</u>
Commissioners	Any matters pertaining to the division or divisions for which they have responsibility, except that decisions on the release or withholding of formal Commission reviews are reserved to the full Commission.
Assistant Commissioners:	
- Accommodation	
- Overseas & General Services	
- Industrial Relations	
- Management Development	
- Auckland Office	
- Christchurch Office	
Secretary	
Directors:	
- Accommodation	
- Industrial Relations	
- National Research Advisory Council (NRAC)	
- Personnel	
- Policy Development Unit	
- Management Development	
District Inspector, Hamilton	
Assistant Director, Information Unit	
General Manager, Computer Services Division	
Assistant General Managers, Computer Services Division	
.....	
Assistant Secretary	Any matters pertaining to the unit for which they have responsibility.
SAO, SAU	
SEO, WAU	
SEO, PIPS	
Office Solicitor	
Computer Services Division	
(i) Head Office: Manager (Input Centres) Directors	
(ii) Computer Centres: Centre Manager Managers; System, Production Operations, Applications Development	
(iii) Input Centres: Supervisor.	

29 June 1983, No. 26



THE PUBLIC SERVICE OFFICIAL CIRCULAR

Information of General Interest

1. OFFICIAL INFORMATION ACT: DECLARATION BY EMPLOYEES

As a result of the Official Information Act, which comes into force on 1 July 1983, a new form of declaration is to be signed by new appointees which will replace the present green form (known as the Declaration of Secrecy). This new form will be known as the Declaration on Conduct and will be completed by all new appointees taking up duties on and after 1 July 1983.

The text of the new declaration is set out on p. 519 of the Public Service Official Circular.

Employees who have signed the declaration on PS Form 117 prior to 1 July 1983 (the old "Declaration of Secrecy") will NOT be required to sign the new declaration. They are, nevertheless regarded by the Commission as bound by the requirements and force of the revised Declaration on Conduct.

This Code of Conduct is made up of four elements, namely:

- (a) Sections 53 to 60 of the State Services Act 1962;
- (b) Part VII of the Public Service Regulations 1964;
- (c) The Public Service Manual; and in particular, Section L;
- (d) Departmental manuals or handbooks setting out specific instructions to employees of a given department during their employment in that department.

All employees currently in the Public Service should therefore familiarise themselves with their responsibilities as set out in this code, if they have not already done so.

(SSC 21/5/8)

3. OFFICIAL INFORMATION—ACCESS BY PUBLIC SERVICE EMPLOYEES TO PERSONAL INFORMATION

From 1 July 1983 all Public Service employees will have a right of access to any personal information about themselves, including their own personal files, held by their employers, in accordance with the provisions of the Official Information Act 1982, (in particular Part IV).

Employees will also be entitled to access to:

(i) the internal rules by which decisions or recommendations are made; and

(ii) reasons for decisions or recommendations affecting themselves.

One of the purposes of the Act is "to provide for proper access by each person to official information relating to that person." The Commission expects departments to apply the Act's provisions liberally to employees' requests for personal information, in keeping with the spirit of the legislation.

All these rights of access are subject to certain limitations set out in the Act. Thus, some information on personal files and elsewhere may fall into a category which may not be released. All documents on a file should be perused by a responsible officer before access is given.

Protection of Privacy

Access to personal information will be readily granted to the person who is the subject of the information. At the same time it will be strongly protected from release to anyone not entitled to have access to it. Personal information will only be released after the applicant has been satisfactorily identified as the subject of information, or to a properly authorised agent.

An agent must have written authority from the person who is the subject of the information. It will still be necessary to prove that the application is in fact from the person who is the subject of the information.

PS Manual Insts U1-U7 set out existing procedures for employees to obtain personal information. Present employees should continue to use these, as they provide adequate means of verification of identity and protection of the information.

However, requests may also be made direct to any officer authorised to handle such enquiries.

Enquiries do not have to be made in writing. Requests by telephone, for example, will require proof of identity.

Amendments to the Public Service Manual

Some of the policy and procedures arising from the Official Information Act above require amendment to the Public Service Manual.

There are also changes arising from amendments to Public Service Regulations (Reg. 42 in particular) and the form of declaration signed by employees of the Public Service, so that they conform with the requirements of the Official Information Act 1982, which also repeals the Official Secrets Act 1951. These changes are published in the first amendment to the reprinted Manual (July 1983). They include access to the Manual itself (which will no longer be confidential), parts of Section L (conduct of employees), Instruction R35-R38 (material for appeals) and Instructions V5-V9 (access to personal files).

Procedure for Requests

Employees wishing to exercise their rights of access to personal information should, in the first instance, direct their requests to their own department.

Enquiries and requests for personal information held by the State Services Commission, and related Commission policies and decisions, should be directed to the Contact Officer for the Personnel branch of the SSC, who will provide the information, if readily available, or will refer the enquiry to the correct quarter in the SSC.

The Commission's Regional Offices and representatives are also authorised to respond to enquiries, and, as appropriate, provide information, or redirect or transfer the enquiry.



OFFICE OF THE

STATE SERVICES COMMISSION

PRIVATE BAG · WELLINGTON · NEW ZEALAND

Reference SSC 21/5/5

Telephone 725 639
Reserve Bank Building

23 June 1983

Circular Memorandum 1983/48 (G)

Officer for Enquiries : I H Miller, Assistant Director Information Unit

Permanent Heads

Chief Executive Officers of Organisations

OFFICIAL INFORMATION ACT : IMPLEMENTATION NEWSLETTER NO. 8

1 Introduction

This is the final newsletter prior to implementation date, 1 July 1983. The contents include comments by the Chairman of the State Services Commission, advice on how to handle requests for access to information which relates to present or past Ombudsman investigations and, as an appendix, a copy of the State Services Commission instruction on handling requests to access employee records.

Further newsletters will be issued after 1 July to keep you informed of implementation issues including any required changes in procedure. These will be released on an ad hoc basis as suitable items, including case notes, come to hand.

2 Access to information relating to investigations conducted under the Ombudsmen Act 1975 or the Official Information Act 1982

In order to ensure compliance with the requirements of the Ombudsmen Act 1975 regarding confidentiality, the Chief Ombudsman asks all departments and organisations subject to the Official Information Act to transfer to him, on an informal basis, all requests received after 1 July 1983 for access to information which relate to investigations being conducted or which have been conducted by an Ombudsman under the Ombudsmen Act 1975 or the Official Information Act 1982. He considers it is appropriate that the Ombudsmen advise those making such requests what information can be made available under the two Acts.

Originals of Ombudmen's letters received by a department or organisation and copies of the department's or organisation's letters to the Ombudsmen and any internal memoranda relating to such investigations will be 'official information'

under the Official Information Act. As the Ombudsmen are not subject to the Official Information Act, departments and organisations will not be able to transfer requests for information relating to investigations by the Ombudsmen under section 14 of the Official Information Act, as this section assumes that the transferee is within jurisdiction.

Accordingly, if a person seeking access to information about an Ombudsman's investigation is reluctant to accept the informal transfer of the request to the Ombudsman's Office, the department or organisation will need to inform that person that the release of the information requested would be contrary to the provisions of a specified enactment, ie the Ombudsmen Act 1975.

3 Implementation and operation of the Official Information Act 1982: Comments by M C Probine, Chairman of the State Services Commission

The Official Information Act 1982 is intended to extend the right of New Zealanders to access to official information held by government departments and organisations. It does this from a principle of availability, the effect of which is that information shall be released unless good reason for withholding can be established. There is no longer any requirement that an applicant establish any special interest before access can be approved.

The Act recognises that some information must be protected and states the reasons for withholding which may be used to achieve confidentiality where that is necessary. It is important to recognise that these reasons amount to a minimum standard and do not provide a blanket exemption. Each individual request must be dealt with according to its individual merits and with regard to the substance of the information sought. It is fundamental to the Act that these are the only reasons for withholding.

You will all be aware of the effort which has gone into ensuring that we are ready and willing to implement this Act both in the letter and in the spirit of the law. I have been very impressed with the sincerity with which you have approached this exercise, especially since any process of change contains elements of the unknown, and despite our best efforts this is true of the Official Information Act. We simply do not know what the likely demand for access will be. You have accepted that degree of uncertainty and applied yourselves to the task with true dedication.

The Terms of Reference of the Committee on Official Information (the Danks Committee) stated that the basic task was 'to contribute to the larger aim of freedom of information by considering the extent to which official information can be made readily available to the public'. On the strength of the performance to date I am confident that you are ready to make your contribution to that larger aim and I thank you for your efforts.

4 Access to Employee Records


The full text of the State Services Commission Circular memorandum on access to employee records is attached for your information as an Appendix. Organisations may find the procedures helpful when considering their own situation. If you wish to discuss any matter raised in the memorandum feel free to contact the Director, Personnel Division of the State Services Commission.

5 The Use of Security Classification

You are reminded that the Cabinet Directive on Security Classification (C0(82)14 of 17 December 1982) comes into force on 1 July 1983. From that date the security classifications: Top Secret; Secret and Confidential can only be used in accordance with the terms of the Cabinet Directive. Copies of the Directive can be obtained from the Information Unit.

6 General Information : Document on Security Vetting

The Cabinet has approved an unclassified document on security vetting for general release which sets out the reasons for and procedures involved in gaining a security clearance. Copies of the document are available from the Information Unit.



M.C. Probyn
Chairman

RELEASED UNDER THE OFFICIAL INFORMATION ACT

8. / J.R. A.M. 24 JUN 83
22 June 1983, No. 25



THE PUBLIC SERVICE OFFICIAL CIRCULAR

Information of General Interest

I. OFFICIAL INFORMATION ACT

The Fourth in the Series of General Notices is published below:—

PROTECTION OF THE CABINET PROCESS

The Cabinet process depends on a free and frank exchange of opinion between Ministers. Hitherto that process and the documents in the Cabinet system have been protected by the Official Secrets Act 1951. With the repeal of that Act and the coming into force of the Official Information Act 1982, Cabinet documents will lose their automatic protection against disclosure. That does not mean that they will become available to anyone on request. Far from it: depending on the content, they will continue to receive ample protection in terms of Sections 6–10 of the Official Information Act which set out all the reasons for the withholding of information.

From 1 July 1983 all Cabinet documents will bear a warning notice intended to alert even the casual reader to the need to take special care. If a document is also marked with a security classification or an informal endorsement it should be handled in accordance with the rules applying to such marks*. The fact that a document is not classified or endorsed will not mean in the future, any more than it does now, that it can be released. In every instance it will be necessary for any officer handling such papers to assess their sensitivity and avoid a mechanical approach.

Authority to release Cabinet documents within a department or to another department will continue to be confined to very senior officers under delegation from the Minister. Release to any other person or body will in the absence of specific delegations be solely a ministerial prerogative. *The principle of ministerial control will in no way be breached by the new information arrangements.*

Cabinet documents are important State papers. They should be treated with respect because the information they contain may require protection—at least for a while—against premature disclosure; otherwise the legitimate interests of the State could be prejudiced.

[Detailed guidance on this subject may be found in Cabinet Office Circular CO (83) 10 of 4 May 1983.]

*See General Notice in PSOC 1983/23 [The Cabinet Directive on Security Classification.]

(SSC 21/5/0)

OFFICE OF THE

STATE SERVICES COMMISSION

PRIVATE BAG · WELLINGTON · NEW ZEALAND

Reference 21/5/8

Telephone 725 639
Reserve Bank Building

21 June 1983

SSC CIRCULAR MEMORANDUM 1983/49 (G)

Officer for Enquiries: Nicky Hill (ext 853)

Permanent Heads

OFFICIAL INFORMATION: GUIDELINES ON PUBLIC SERVICE EMPLOYEES'
RIGHTS OF ACCESS TO PERSONAL INFORMATION HELD BY DEPARTMENTS

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INTRODUCTION

1 From 1 July 1983, people have a right of access to information about themselves held by Government departments and organisations covered by the Official Information Act 1982.

2 This memorandum provides guidelines for handling requests for personal information from individuals who are or have been employees of the Public Service. It applies to all material held on, and any decisions made affecting, such employees and should be read in conjunction with the Official Information Act 1982 (in particular Part IV Right of Access to Personal Information) and Implementation Newsletters issued by the Information Unit in the State Services Commission (SSC). Relevant sections of the Act and other material are noted in this memorandum.

3 All officers handling personal information about employees must be familiar with all this material. This particularly applies to officers in staff and personnel sections, so that they can handle papers and data appropriately, whether or not they are authorised to determine the release or withholding of information.

4 Organisations not part of the Public Service may find the guidelines useful to adapt for their own employees.

5 The guidelines do not cover requests for other forms of official information covered by the Act, for example for personal information about clients (rather than employees) or corporate or unincorporate bodies (rather than "natural persons", the term used by the Official Information Act for individual human beings). For these, refer to the Information Unit's Implementation Newsletters.

POLICY

RIGHTS OF ACCESS

6 From 1 July 1983 all Public Service employees will have a right of access to any personal information about themselves, including their own personal file, held by their employer, in accordance with the provisions of the Official Information Act (in particular Part IV).

7 Employees will also be entitled to access to:

- (1) the internal rules by which decisions or recommendations are made (s.22)

- (ii) reasons for decisions or recommendations affecting themselves (s.23)

8 One of the purposes of the Act is "to provide proper access by each person to official information relating to that person" (s.4). The SSC expects departments to apply the Act's provisions liberally to employees' requests for personal information, in keeping with the spirit of the legislation.

9 All these rights of access are subject to certain limitations set out in the Act (for example, ss.10, 24(2), 24(5), 27 and 52). Thus, some information on personal files and elsewhere may fall into a category which may not be released. All documents on a file should therefore be perused by a responsible officer before access is given. (See paragraphs 23, 26 and 30 below)

PROTECTION OF PRIVACY

10 Access to personal information will be readily granted to the person who is the subject of the information. At the same time it will be strongly protected from release to anyone not entitled to have access to it. Personal information will only be released after the applicant has been satisfactorily identified as the subject of information, or to a properly authorised agent. (See paragraphs 17-20 below). Current practices protecting personal information from unauthorised persons should continue.

APPLICATION OF THE ACT

PERSONAL INFORMATION ON EMPLOYEES

What is Personal Information?

11 Personal information means "any information held about an identifiable person" (s.2).

As the Act defines "official information" and "document" very widely, "personal information" held about employees covers all personal information, whether held on individual personal files or elsewhere.

12 References to an individual may be contained in files on, for example, applications for vacancies, appeals, regradings, inspection reports, reviews of departmental organisation or accounts (payment vouchers, claims). In addition, the control agencies, such as the SSC and the Treasury may have information about individual employees arising from their involvement in, say, personal cases, inspections or reviews of classification and grading.

13 This range is not exhaustive; personal information in relation to past and present employees can be held in a variety of areas. The storage medium can also vary from written material to audio or computer tapes, or any other form of record.

Contents of personal files

14 Unlike requests for other official information, requests for personal information do not have to be specified "with due particularity". Employees are entitled to any information held about them by a department provided that it "can be readily retrieved" (s.24(1)(b)).

15 Filing procedures should assist speedy and comprehensive access. In future all reasonable efforts should be made to put papers containing significant references to an employee on the personal file or at least to cross-reference them. (This need not extend to incidental references to an employee.) Care must be taken if it is a question of any matter which might require protection under the Official Information Act, especially the privacy of others.

IDENTIFICATION OF THE APPLICANT

16 To ensure the protection of personal privacy, the Act requires that a department must satisfy itself

- * about the identity of the person requesting access; and
- * that the information is given only to the subject of the information, or a properly authorised agent (s. 25).

Present Employees

17 PS Manual Insts U1-U7 set out existing procedures for employees for communications with the SSC and departments. It would be appropriate to encourage present employees to continue to use these to obtain personal information, as they provide adequate means of verification of identity and protection of the information. However requests may also be made direct to any officer authorised to handle such enquiries (see new PSM Inst 131).

18 Enquiries do not have to be made in writing. Such requests from present employees (for example, by telephone) and any requests from past employees, will require proof of identity.

Means of Identification

19 The means of identification is at the discretion of the department, and the standard of proof may vary according to the need to protect the information. Some suggested forms of proof of identity are:

- (a) personal knowledge (the applicant is known either to the officer handling the request, or can be vouched for by a third party known to the officer);
- (b) specimen of handwriting;

5.

- (c) statutory declaration;
- (d) production of evidentiary proof of identity (preferably some document issued on formal request, such as a passport, or one which contains a photo, for example an employee identity card). A birth certificate on its own is not sufficient proof.

Requests made through an agent

20 An agent must have written authority from the person who is the subject of the information. It will still be necessary to prove that the application is in fact from the person who is the subject of the information (see paragraph 19 above).

Safe Transmission

21 Each department must adopt appropriate procedures to ensure that any information intended for a person is received only by that person or agent (s.25). The applicant should be encouraged to go to the office where the original file is held and where adequate supervision can be provided. Original material should not be given out unless proper supervision is provided.

22 If the response requires sending documents to the applicant, the following methods may be used, according to circumstances:

- 1 Forwarding the original material, with all necessary care, to another office where access can be supervised.

- 2 Registered Letter:

This approach only ensures delivery to the address. There is no guarantee of delivery to the addressee alone and this method should not be used where sensitive information is involved.

- 3 Double Envelope:

Nominate a pick-up point at which the applicant must call to collect or view the information on presentation of proof of identity. The information is to be held in a double envelope, the outer addressed to a responsible officer at the pick-up point and the inner to the applicant, to protect privacy.

- 4 Personal Delivery:

Using courier service, staff or contracted agency to hand-deliver on proof of identity.

PROCESSING OF REQUESTS

23 Many requests will be routine and no different from those currently received from employees. No new or additional mechanisms will be needed to deal with them. Only where doubt

exists over whether a person should be allowed access to certain information should the matter be dealt with by an officer authorised by the Permanent Head under Reg 64E of the Public Service Regulations 1964 to decide on the release or withholding of information.

24 Sections 12(3), 13-17, 19 and 26 (correction of information), and s35 (Review by an Ombudsman) also relate to requests for personal information. (Refer to the Implementation Newsletters on these points.)

REFUSAL TO RELEASE INFORMATION

25 The reasons for which personal information may be withheld from an applicant who is the subject of the information are narrowly defined (s.27). The majority of enquiries from employees are unlikely to involve such issues.

26 A request may be refused only by an officer specifically authorised to do so. These officers must document the grounds for refusal, to allow for a review of the decision should that be necessary.

27 An applicant must always be given the reason for a decision to withhold information (Implementation Newsletter No 2). This must be more than just a restatement of the relevant section. The explanation should relate the circumstances of the refusal decision to the appropriate section of the Act. Upon further request the applicant must be supplied with the grounds in support of the refusal.

28 Two of the possible reasons for refusing access to personal information on oneself are "unwarranted disclosure of the affairs of another person" and "evaluative material" (s. 27(1)(b) and c)), but it should be noted that there is not an absolute requirement to withhold such information.

"Unwarranted disclosure of the affairs of another"

29 While it is an important principle of the Act that personal privacy should be protected as far as possible, a file or other information cannot be withheld solely because it contains incidental material on another person. There may be circumstances where it is proper to supply information about another person (for appeals, for example). The protection in s.27 is against the unwarranted disclosure of the affairs of another.

30 A properly authorised officer must examine information carefully prior to release. If the material contains references to others which should be protected, the material to which the individual is entitled should be provided in such a form that references to others are deleted (s.16).

31 If the request is for information about another person for appeal purposes, PS Manual Insts R35-R38 are to be followed. Generally, if the request is for information about another person, it is outside the scope of Part IV of this Act, and must be dealt with under the procedures for official information generally (i.e. reasons set out in ss.6-9 must be considered).

"Evaluative material"

32 "Evaluative material" may be withheld if and only if there was a promise, express or implied, that it was provided in confidence (s.27(1)(c) and (2)).

Personal files and interview notes for vacancies, etc, may contain material which is evaluative or the opinion of others. This may be the key material the applicant seeks and it should not be withheld without good reason.

33 The SSC view of good personnel management implies that employees should be aware of how their employer regards them and that there should be nothing unknown on personal files. But this does not mean that comments, evaluations and opinions on employees should be any less honest or accurate than before. On the contrary, comments on personnel (for example in personal assessments, reports or regrading applications), should continue to be honest, constructively prepared and capable of full justification, in the knowledge that such judgements may be open to scrutiny and possible correction. The Act will therefore have a positive effect in this area.

34 Departments are not to attempt to evade the spirit of the Act because they consider that some information on file may be embarrassing, by failing to record evaluations or opinions, destroying or purging existing files (except in accordance with standard instructions) or setting up parallel records.

OTHER RIGHTS OF ACCESS

35 Employees are also entitled to have access to

- (a) the internal rules by which decisions are made (s.22); and
- (b) a written statement of the reasons for decisions made on or after 1 July 1983 (s.23).

Internal Rules

36 The Directory of Information (when available) will assist applicants to identify where to find the rules, policy decisions and guidelines whereby decisions are made. Departments and organisations should have those for which they are responsible readily accessible for reference and be prepared to supply copies (at least of the relevant sections) to employees, and to members of the public.

37 The Public Service Manual will be the most significant source of employee-related material. Copies of the Public Service Manual will in future be available for purchase from the Government Printing Office. The SSC holds other material containing rulings and precedents on which decisions and recommendations affecting employees are made, and departments will need to refer enquiries about these on to the SSC (refer paragraphs 47-50 below).

38 This provision of the Act does not imply that rules, etc, should be devised where there are none. If, for instance certain administrative decisions about personnel are made solely on the circumstances of each case, and no policies, rules, interpretations, practices or precedents exist, a statement to that effect could satisfy the requirements of this section.

Reasons for decisions

39 Employees also will have the right to a written statement of the reasons for a decision or recommendation affecting themselves if it was made on or after 1 July 1983 (s. 23).

40 If reasons are sought for decisions or recommendations made before that date, the request should be considered under the provisions and conditions applying to any request for personal information. (Part IV)

Appeals

41 Section 23 does not therefore limit the already existing access by officers to information, including reasons for decisions, sought for appeal purposes. (Refer PSM Section R - "Appeals")

GENERAL

CHARGES FOR PROVIDING INFORMATION

42 No charge can be made for supplying personal information to employees. Access to the internal rules or decisions affecting employees would also generally be supplied by departments free of charge. Refer for details to Cabinet guidelines CO(83)13.

MONITORING

43 The SSC Information Unit will require information on requests for official information, including personal information on a quarterly basis (see Implementation Newsletter No 5).

ADVISING EMPLOYEES OF CHANGES TO POLICY

44 Some of the policy and procedures set out above require amendment to the Public Service Manual.

45 There are also changes arising from amendments to the Public Service Regulations (Reg 42 in particular) and the form of declaration signed by employees of the Public Service, so that they conform with the requirements of the Official Information Act 1982, which also repeals the Official Secrets Act 1951. These changes are published in the first amendment to the reprinted Manual (July 1983). They include access to the Manual itself (which will no longer be confidential), parts of Section L (conduct of employees), Insts R35-R38 (material for appeals) and Insts V5-V9 (access to personal files).

46 Departments should take all possible steps to ensure that their staff are aware of the changes and their implications, including the rights of access to personal information on themselves, which will arise when the Official Information Act comes into effect on 1 July 1983.

CONTACT WITH THE STATE SERVICES COMMISSION

47 The Personnel Branch of the SSC will be responsible for handling most personnel-related matters previously handled by Management Support Groups, the Industrial Relations Division and the former Personnel Section.

48 Enquiries and requests for personal information, and related policies and decisions, should be directed in the first instance to the Contact Officer for the branch, (725639, ext 837) who will provide the information, if readily available, or will refer the enquiry to the correct quarter in the SSC.

49 Enquiries for other types of official information can be made to the Contact Officers of the particular division holding the information (if known) or to the Executive Officer (Administration) who will assist where an enquirer requires guidance on whom to contact.

50 The SSC Regional Offices and representatives are also authorised to respond to enquiries, and, as appropriate, provide information, redirect or transfer the enquiry.

51 Extracts from this memorandum will appear in the PSOC.



A C Davis
Secretary

OFFICE OF THE

**STATE
SERVICES
COMMISSION**

PRIVATE BAG · WELLINGTON · NEW ZEALAND

Reference

SSC 21/5/0
SSC 14/0/0
SSC 25/4/3
Telephone 725 639
Reserve Bank Building

21 June 1983

Circular Memorandum 1983/47 (G)

Officer for Enquiries: Adrienne O'Sullivan (Ext. 890)

Permanent Heads

OFFICIAL INFORMATION AND THE CODE OF CONDUCT

CHANGES TO THE INDUCTION PROGRAMME FOR NEW APPOINTEES

1 All new appointees are required by the Public Service Regulations 1964 to complete a declaration on PS Form 117 immediately upon taking up duty.

2 As a result of the Official Information Act a new form of declaration will, from 1 July 1983, replace the present one (known as the "Declaration of Secrecy"). This new form will be known as the Declaration on Conduct and will still be completed on a revised Form PS117 - declaration to be made by persons employed in the Public Service. This will be issued as a yellow form instead of the present green one.

3 A copy of the new declaration to be signed from 1 July 1983 is attached.

4 This new form will omit any reference to the Official Secrets Act (which is repealed by the Official Information Act 1982) and will refer instead to the wider range of public servants' responsibilities as set out in the Code of Conduct for public servants.

5 This code of conduct is made up of four elements, namely:

- (a) Sections 53 to 60 of the State Services Act 1962;
- (b) Part VII of the Public Service Regulations 1964;
- (c) The Public Service Manual; and in particular, Section L;
- (d) Departmental manuals or handbooks.

6 All appointing officers should make sure that new appointees are familiar with and have been given an opportunity to study all the elements of the code of conduct, and to discuss its significance,

before the Declaration on the Code of Conduct is signed. New appointees are to be informed of the location of the Public Service Manual and departmental manuals or handbooks.

7 A booklet explaining this code of conduct to public service employees will be available shortly. A copy should be given to all new appointees at the time of taking up appointment before they sign the declaration. This booklet contains the relevant sections of the Act and Regulations, and also lists the main headings of Section L of the Public Service Manual.

8 Departments should also ensure that copies of the documents that comprise the Code of Conduct are readily accessible and that the new appointee is advised of their location.

9 A copy of the signed declaration should be given to the new appointee to keep.

PRESENT EMPLOYEES

10 Employees who have signed the Declaration on Form PS 117 prior to 1 July 1983 (the old "Declaration of Secrecy") will not need to complete a new form.

ORDERS FOR FORMS


11 The new Form PS 117 is to be ordered by Head Offices through the Government Printer in the normal way. As this form is to be used for new appointees to the Service, departments should order moderate quantities only.

12 Departments are to ensure that from 1 July 1983, all copies of the old green version of Form PS 117 are destroyed.

13 If supplies of the new PS 117 are not available in time, it is recommended that the attached copy be reproduced.

14 Form PS 168, the induction sheet for new appointees, should continue to be used with a suitable amendment. The reference to secrecy will be altered at the new reprint of this form. Departments should also continue to use the booklet, "Welcome to the Public Service".

15 Extracts of this Circular Memorandum will be published in the PSOC.


A C Davis
Secretary

* The elements of the Code of Conduct for public servants are contained in:

- (a) The State Services Act 1962:
- (b) The Public Service Regulations 1964:
- (c) The Public Service Manual:
- (d) Departmental manuals or handbooks, setting out specific instructions to employees of a given department during their employment in that department.

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

OFFICE OF THE

STATE SERVICES COMMISSION

PRIVATE BAG · WELLINGTON · NEW ZEALAND

Reference

SSC 21/5/5

Telephone 725 639

Reserve Bank Building

Circular Memorandum : 1983/41 (G)

Officer for Enquiries : I H Miller, Assistant Director,
Information Unit, Extension 826

Permanent Heads
Chief Executive Officers of Organisations

OFFICIAL INFORMATION ACT : IMPLEMENTATION NEWSLETTER NO 6

1 INTRODUCTION

The Official Information Act provides for the review of decisions by the Ombudsman. This extends not only to refusals on substantive grounds but also to refusals on procedural grounds, complaints of undue delay or relating to the manner of response, or the imposition of a charge or any other condition.

The Ombudsman's jurisdiction enables him to review decisions of Ministers of the Crown and of all departments and organisations, subject to the provisions of the Act.

The following information has been prepared in consultation with the Ombudsman's Office.

2 OMBUDSMAN'S REVIEW OF DECISIONS

Mr G R Laking, Chief Ombudsman, will be the Ombudsman responsible for investigations and reviews conducted under the Official Information Act 1982. Mr Alasdair Finnie, Senior Investigating Officer, will be the contact person in the Ombudsman's Office for matters concerning official information.

(A) Documentation Required

Where Chief Ombudsman receives a request to review any decision taken under the Official Information Act, an Investigating Officer of the Official Information Section of the Ombudsman's office will ascertain from the

2.

department, organisation or Minister that a request for information has in fact been made by the complainant. Details of the complaint will be forwarded as soon as possible to the department, organisation or Minister concerned.

The relevant decision should be identified and the following information supplied to the Ombudsman:

- the reason and grounds for the decisions as recorded at the time by the delegated officer responsible for the decision;
- such supplementary explanation for the decision as the department or organisation considers necessary;
- the relevant file(s) and other information used to reach the decision or, where the volume of material is considered to be such that it would be difficult to forward, then a complete schedule of that material including reference to its location.

Action Required

Every department and organisation is requested to advise the Ombudsman's office of the name and telephone number of the officer to whom inquiries about complaints received are to be directed (the contact officer). This advice is required in writing before 1 July 1983 and should be marked "Attention : Mr A Finnie" and sent to the Chief Ombudsman, PO Box 10152, The Terrace, Wellington. (Where the request is in respect of a decision by a Minister of the Crown the Ombudsman's office will contact the Private Secretary.)

(B) Security of Classified Material

Where the subject matter of the review includes information endorsed with a security classification the prescribed procedures for handling that level of classification will be observed at all times both within departments and organisations and within the Official Information Section of the Office of the Ombudsman.

(C) Communication of Opinions

The Ombudsman is required to report his opinion, the reasons therefore and the recommendation (if any) made to the appropriate department, organisation or Minister concerned.

Subject to any direction or decision taken by a Minister the report supplied by the Ombudsman is to be brought to the attention of the officer who took the decision in

question and, where appropriate, to all other officers who might be required to consider similar requests in order that they might take note of any points made when considering similar requests in the future.

(D) Implementation of Ombudsman's Recommendations

(i) Review of decisions made under Part II and Section 10 of the Act

Where the Ombudsman makes a recommendation in respect of a complaint in this category, a public duty to observe that recommendation is imposed on the department, organisation or Minister from the commencement of the twenty-second day after it was made, unless the Minister concerned or the Minister responsible for the department or organisation directs in writing to the contrary.

As soon as practicable after such a direction the Minister is required to give to the Ombudsman, and publish in the Gazette and lay before Parliament a copy of the direction or decision, the grounds for the direction or decision and, except where the direction or decision is made on the grounds of the security of New Zealand, the source and purport of any advice on which it is based.

The public duty to observe the Ombudsman's recommendation extends to every officer, employee, and body within the department or organisation, and every statutory officer, and Minister to whom that recommendation is applicable.

(ii) Review of decisions made under Part III and IV of the Act

Where the Ombudsman makes a recommendation in respect of a complaint in this category, he will request notification, in a specified time, of the steps to be taken to give effect to any of his recommendations. If within the time requested in the Ombudsman's report no action is taken which seems to him to be adequate and appropriate, he may, in his discretion, after considering the comments (if any) made by the department, organisation or Minister affected, send a copy of the report and recommendations to the Prime Minister, and may thereafter make such report to Parliament on the matter as he thinks fit.

(E) Case Notes

The Chief Ombudsman will prepare case notes whenever an opinion is formed after an investigation and review which is of general importance. These notes will be circulated

regularly to all departments and organisations by the Information Unit of the State Services Commission. The Ombudsman may issue and publish more comprehensive reports from time to time. In either case departments and organisations must ensure that officers with authority to release or withhold information are made aware of and understand the effect of the opinions which are contained in the case notes.



D K Hunn
Commissioner

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

OFF OF THE

STATE SERVICES COMMISSION

PRIVATE BAG · WELLINGTON · NEW ZEALAND

Reference

SSC 21/5/5

17 JUN 1983

Telephone 725 639

Reserve Bank Building

Circular Memorandum 1983/46(G)

Officer for Enquiries: I H Miller, Assistant Director,
Information Unit, Extension 826Permanent Heads
Chief Executive Officers of Organisations

OFFICIAL INFORMATION ACT: IMPLEMENTATION NEWSLETTER NO 7

1 INTRODUCTION

This newsletter provides a simple checklist for handling requests for access to Official Information. The intention is to highlight the issues that should be considered and to draw attention to certain legislative requirements.

There is also comment on the Cabinet guidelines on charging and on the question of "agency" requests including the effect of Sections 13 and 14 of the Act. The most recent statistics on the operation of the Freedom of Information Act in Australia are also given.

2 APPLICATION CHECKLIST

The following points may serve as a useful checklist when responding to requests for official information:

1 Spirit of the Act

The principle, central to the Act, is that official information shall be made available unless there is a good reason for withholding it. This should always be kept in mind. The Act requires that all requests for information be assessed in terms of the purposes of the Act (Section 4), and the principle of availability (Section 5). It follows that all information routinely released before 1 July 1983 should continue to be. All other requests must be assessed with the spirit of the Act in mind.

2 Right of Access to Personal Information

Does the applicant have right of access to the information requested? It is essential that this is ensured where requests for access to personal information are concerned. In particular, where the request is made by an agent, the agent must have the written authority of the person or be otherwise properly authorised by the person to obtain the information. (Section 25).

3 Assistance

The Act requires that every reasonable assistance be given to applicants to ensure requests for information are clearly specified and are directed to the appropriate department or organisation. This includes the responsibility of transferring requests where necessary. (Section 13 and 14).

4 Charges

If charges will be incurred in processing the request, these should be assessed and the applicant advised of the likely cost before the matter proceeds. This will enable the applicant to decide what he wants to do. Where applicable a deposit should be obtained before proceeding. Cases for modifying or waiving charges should be directed to the officer with the appropriate delegated authority. Remember there is no charge for access to personal information by an identifiable natural person (CO(83)13).

5 Response Time

The Act requires that requests for information be responded to as promptly as possible, and treated with urgency where this is requested. The general aim should be to furnish either the information or indicate the likely response time within seven days of a request. Undue delay in response can be deemed a refusal to release the information. (Section 28).

6 Form of Response

The Act requires access be provided in the form requested by the applicant where possible. If this is not possible the applicant must be given the reasons for the different form of response.

7 Withholding Information

Where it appears there are good reasons for withholding the information requested, either in full or in part, the request should be directed to the officer with the appropriate level of delegated authority for declining access. The reasons for withholding must be weighed against the public interest in disclosure where this is specified in the Act.

8 Release of Personal Information

When personal information is released, safeguards must be followed to ensure it is only received by the individual concerned or by the person's authorised agent. Newsletter No 4 provides guidelines to follow in such cases.

9 Right of Review

Where information is not made available in the manner preferred by the applicant, or access is only given in part, the applicant must be given the reason and, if requested, the grounds in support of that reason. Where a request for information is refused, the applicant must be given the reason for the refusal and information concerning the right to seek an investigation and review of the refusal by an Ombudsman. On further request they may also obtain the grounds in support of the reason to decline access.

10 Record of Declines

When a request for information is declined a record should be kept of the request, including the reasons for declining and the advice given to the applicant.

3 CHARGING FOR SERVICES

The Cabinet Committee on Expenditure, in approving the terms of the guidelines on charges for the purposes of the Official Information Act, noted that the authority to waive charges is only to be delegated to those officers in departments and organisations who have the authority to withhold information.

The Cabinet Committee also agreed that the guidelines on charging should be reviewed after 9 months of operation, and officials have been asked to report back to the Committee at that stage, that is in April 1984. With this in view, departments and organisations are asked to provide the Information Unit with monthly returns of revenue received through the providing of official information. The first return will be required for the month ending 31 July 1983, with returns thereafter up until the period ending 31 March 1984. It is suggested that departments allocate a specific code for official information revenue receipts to facilitate this exercise.

It is requested that the final return be forwarded to the Information Unit as soon as possible in April 1984 to enable an early report to be made back to the Expenditure Committee. Further returns after 31 March 1984 will not be required unless the Committee should direct otherwise.

4 AGENCY REQUESTS

The following guidelines are provided to clarify the different obligations imposed by Sections 13 and 14 of the Act, for the handling of what could be termed "Agency Requests".

Section 14 provides that where a request for information is made to any department or organisation, and the information is believed to be held by another department or organisation, the request must be transferred promptly.

Section 13 imposes a duty on a department to assist persons to direct their request to the appropriate department.

Where the approach from a member of the public is over the counter or by telephone, the officer dealing with it should normally apply Section 13. Having determined, as far as practicable, just what the inquirer is seeking, the officer should advise the inquirer (in so far as is possible) what department or what office appears the most appropriate one to deal with the request.

If the inquirer (being knowledgeable about Section 14) insists that the office transfer the request, the inquirer could be asked to put the request in writing in order to avoid error or confusion in the process of transfer.

Where a request is first received in writing, it should simply be forwarded to the appropriate department or organisation and the requester informed accordingly. (Section 14).

The Act does not authorise the charging of a fee for transferring a request for information.

Should departments and organisations eventually find that they are receiving a large volume of "agency requests", they should advise the Information Unit. Consideration could then be given, if warranted, to reviewing the practice of transferring requests.

5 AUSTRALIAN FREEDOM OF INFORMATION ACT

1 In the period 1 December 1982 (i.e. since the Australian FOI Act came into operation) - 31 March 1983, there have been 2,778 requests for information under the new legislation directed to less than 25 percent of all government departments and agencies. In December, 716 requests were received by 87 agencies; in January, 593 by 77 agencies; in February 699 by 78 agencies; and in March, 780 by 85 agencies.


2 Two-thirds of the requests were directed to the following departments/agencies:

<u>Department</u>	<u>Dec 82</u>	<u>Jan 83</u>	<u>Feb 83</u>	<u>Mar 83</u>	<u>Total</u>
Social Security	174	124	165	168	621
Taxation	103	104	152	186	545
Veteran's Affairs	62	63	82	109	316
Immigration	65	42	72	103	282
Defence	51	28	46	52	177
Australian Federal Police	20	29	24	19	92

Home Affairs & Environment	16	18	17	10	61
PSB	14	13	7	8	42
Attorney General's	12	7	9	10	40
Health	14	8	9	8	39

3 Another eight agencies received 20 or more requests in the same period:

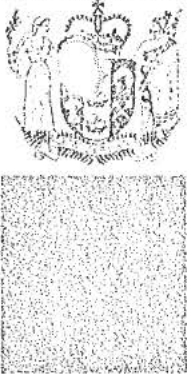
Employment and Industrial Relations	29
Telecom	28
Capital Territory	27
Commissioner for Superannuation	26
Industry and Commerce	23
Foreign Affairs	22
Aviation	20
Australian Post	20



Dr. M. C. Probine
Chairman

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

15 June 1983, No. 24



THE PUBLIC SERVICE OFFICIAL CIRCULAR

Information of General Interest

1. OFFICIAL INFORMATION ACT

The Third in the Series of General Notices is published below:—

UNCLASSIFIED DOCUMENT ON VETTING PROCEDURES

Preamble

Vetting is the term used to describe the inquiries undertaken by the New Zealand Security Intelligence Service as to the trustworthiness of persons employed or whom it is proposed to employ in Government Departments.

The Report of Sir Guy Powles' inquiry into the New Zealand Security Intelligence Service 1975-76 recommended that an unclassified document be made available generally to give as full an account as possible of these vetting procedures.

The Cabinet has accepted that recommendation (CM 83/13/8 of 11 April 1983) and approved the general release of this document which describes the practice of vetting and the manner in which vetting is undertaken.

THE PRACTICE OF VETTING

1. It is common practice in both the private and public sectors for employers, when hiring staff, to check on the trustworthiness of applicants, as well as on their qualifications and experience; the degree of checking may range from personal inquiries and the perusal of references to a more detailed review by a person acting on behalf of the employer.

2. The State has a legitimate interest in taking steps to safeguard certain kinds of information against improper release. No system of protection will work unless those concerned are themselves trustworthy. Thus the hiring of a person to be employed by the State on sensitive work involves initially the production of references and testimonials. However, where the information to which the person will have access bears a security classification of "Confidential" or a higher grade a more formal screening is required. To assist Government Departments or Organisations to assess the trustworthiness of employees required to work with such information, the Security Intelligence Service carries out vetting inquiries on request.

3. In 1976, in reporting on his inquiries into the New Zealand Security Intelligence Service, Sir Guy Powles, then Chief Ombudsman, found vetting to be a prime function of the Service that should be continued. He also recommended that an unclassified document be issued within the State Services setting out as far as practicable the manner in which vetting is undertaken.

4. The subsequent proposals of the Danks Committee on Official Information and the Cabinet Directive on Security Classification issued on 17 December 1982

(CO(82)14 refers) are derived partly from the related recommendation by Sir Guy Powles—that consideration be given to an examination of the principles and practice of classification of information for security purposes within Government Departments.

5. The Directive states that Cabinet has agreed that a uniform system of security classification be instituted throughout the government service and for that purpose directs that the principles and criteria in the Directive be observed in applying classifications to national security information and certain other official information. It provides for three grades of classification with prescriptions as follows:

TOP SECRET: Information or material the unauthorised disclosure of which is likely to damage national interests in an *exceptionally grave* manner.

SECRET: Information or material the unauthorised disclosure of which is likely to damage national interests in a *serious* manner.

CONFIDENTIAL: Information or material the unauthorised disclosure of which is likely to damage national interests in a *significant* manner.

6. The security classification system prescribed by the Directive is to be regarded as an administrative device:

- to underpin the protection in law against unauthorised disclosure of information or material likely to damage national security or certain other interests of New Zealand;
- to assist the internal administration of departments or organisations in applying appropriate protective security procedures for the safeguarding of such information or material held by them;
- to indicate to all persons handling such information or material that it must be treated in accordance with certain procedures designed to prevent the unauthorised disclosure of such information or material.

7. Classification markings will therefore act as reminders that criminal sanctions or disciplinary provisions in the relevant statutory amendments arising from the passage of the Official Information Act 1982 (that replaced in part the Official Secrets Act 1951) could be applicable to the improper disclosure of specified types of information. They also indicate that special precautions are necessary to protect certain information—special handling and storage procedures are to be observed and the type of information in question is normally to be available only to designated people, i.e. people whose trustworthiness has been checked.

8. Accordingly, all who have access to information protected by the security classification system have a responsibility to prevent the improper disclosure of such information so that it can not be used to the detriment of New Zealand. This applies not only to such information generated within New Zealand but also to classified information supplied to New Zealand by friendly countries under arrangements and understandings that it is given similar protection in New Zealand as in the country of origin.

9. Apart from other protective security arrangements within a department or organisation, it is necessary to ensure that every person having access to classified information is trustworthy. An aid toward ensuring this is the security vetting system—any person employed or being considered for employment on work involving access to material classified CONFIDENTIAL or higher must first be granted a security clearance to the appropriate level by the departmental Head.

The Manner in which Vetting is Undertaken

10. Vetting is the term used to describe the checks and inquiries undertaken by the New Zealand Security Intelligence Service (NZSIS) to determine, in relation to established relevant criteria, the trustworthiness of persons who are employed or are being considered for employment that involves access to classified information or material. Such vetting is conducted with the knowledge of the candidate and at the request of the Government Department or Organisation concerned. The replies assist Permanent Heads with their determination of a person's fitness to be granted a security clearance. Vetting is not initiated by the NZSIS but by the Permanent Head of the vetting candidate's department, who has to decide whether that person is given a security clearance or not.

11. Several matters are given attention by the department before a vetting request is forwarded to the NZSIS. The first is the determination of the candidate's need to have access to classified material and of the classification level (TOP SECRET, SECRET or CONFIDENTIAL), or the special nature of the

information to be handled by that candidate. The department's advice to the NZSIS as to the level of classification involved determines which vetting process is relevant—a TOP SECRET, a SECRET or a CONFIDENTIAL vetting.

12. The department also undertakes a check of its personnel record of the candidate to ensure that the personal particulars (such as full name, date and place of birth, and nationality) provided by the candidate are accurate, and to determine whether there is any impediment of character or background already known or available to the department which might make the candidate unsuitable for access to classified information. In cases where a vetting candidate is not a New Zealand citizen or has a non-New Zealand spouse or close relationships or associations outside New Zealand, the department or organisation may need to consider whether a conflict of personal or national loyalty could arise from the work envisaged for the candidate.

13. Upon receipt of a vetting request from a Government Department, the NZSIS conducts its inquiries according to the level of vetting requested. There are three main types of vetting inquiry. These are conducted in order of increasing intensity commensurate with the Cabinet Directive prescriptions for the three classifications of CONFIDENTIAL, SECRET and TOP SECRET:—

CONFIDENTIAL Vetting

Personal details are provided by the candidate and forwarded by the department to the NZSIS. The names of the candidate and his or her spouse and parents are checked against NZSIS records and the candidate against Police records. Further inquiries may be made if a need to do so becomes apparent.

SECRET Vetting

Personal details of the candidate and his or her spouse, parents, brothers and sisters, and relatives living overseas are provided by the candidate and checked against Police (candidate only) and NZSIS records. The candidate also provides additional information such as details of education, residential addresses and particulars of previous employment, overseas countries visited or resided in, and is asked to indicate whether he or she has ever been associated in any way with a communist or fascist movement. The names of four persons resident in New Zealand who can act as referees are also given. Inquiries are not always made in relation to the additional information given or of all the persons nominated as referees unless a need to do so is indicated.

TOP SECRET Vetting

The same information is given by the employee as for a SECRET vetting. In addition to checking against Police (candidate only) and NZSIS records, checks are made in relation to the additional information given. Inquiries are made of the referees named by the candidate and of such others as may be able to assist, including the candidate, if any factors arising from the routine inquiries indicate a need to do so.

Vetting Reviews

14. Reviews of secret and top secret security clearances are conducted regularly, normally at five year intervals but also in the event of a change in circumstance.

Adverse or Qualified Replies

15. If vetting inquiries disclose that a candidate may not be fit to be entrusted with classified information, the NZSIS advises the candidate's department accordingly in the form of an adverse or qualified reply. This reply would usually give the reasons for the NZSIS raising the presumption of unfitness and the Permanent Head can then consider the relevance of those reasons in relation to the job content of the particular position envisaged for the candidate. Should the reasons given by the NZSIS be the deciding factor in the Permanent Head giving less than a full clearance and unless exceptional security reasons exist, the vetting candidate is notified by the department together with advice regarding his or her rights of appeal or complaint. An appeal can be made under Section 38 of the State Services Act 1962 should a transfer on security grounds be involved, or a complaint can be made to the Commissioner of the Security Appeals under the NZSIS Act 1969.

(SSC 21/5/0)

8 June 1983, No 23

PUBLIC SERVICE OFFICIAL

CIRCULAR

Information of General Interest

I. OFFICIAL INFORMATION ACT

The Second in the Series of General Notices is published below:—

CABINET DIRECTIVE ON SECURITY CLASSIFICATION*Preamble*

Parliament has decided to make official information, ie information generated or held by the various organs of government, more freely available to the people of New Zealand. Bearing in mind the responsibility that Parliament has also placed upon the Executive Government to protect official information to the extent required by the national interest, there is a need to enhance and clarify the means by which such information should be safeguarded against improper release.

To that end Cabinet (CB 82/52/24 of 13 December 1982) has agreed that a uniform system of security classification be instituted throughout the government service and for that purpose has directed that the principles and criteria in this Circular are to be observed in applying classifications to national security information and certain other official information.

The system of security classification is to be regarded as an administrative device:

- to underpin the protection in law against unauthorised disclosure of information or material likely to damage national security or certain other interests of New Zealand;
- to assist the internal administration of departments or organisations in applying appropriate protective security procedures for the safeguarding of such information or material held by them;
- to indicate to all persons handling such information or material that it must be treated in accordance with certain procedures designed to prevent the unauthorised disclosure of such information or material.

1 Security Classifications

1.1 The fact that any information or material has been assigned a security classification will not of itself prohibit or prevent its release provided that release is properly authorised; nor will the absence of a classification necessarily mean that it may be freely released. Classification is a guide to procedures for handling, storage, transmission of, or access to information or material which must be protected.

1.2 Security classifications in themselves are not evidence at law that the content of the information or material necessarily warrants the protection of the law from unauthorised disclosure. Depending on the case this can only be established by a competent executive authority, or an Ombudsman, or a court testing the content of the information or material to discover whether its unauthorised disclosure is likely to damage national interests in any degree.

2 *Prescriptions for Classification Grades*

2.1 Prescriptions for applying the three grades of security classifications are:

TOP SECRET: Information or material the unauthorised disclosure of which is likely to damage national interests in an *exceptionally grave* manner.

SECRET: Information or material the unauthorised disclosure of which is likely to damage national interests in a *serious* manner.

CONFIDENTIAL: Information or material the unauthorised disclosure of which is likely to damage national interests in a *significant* manner.

2.2 The classifications in sub-paragraph 2.1 above *shall* be applied in accordance with the damage that is likely to result from the unauthorised disclosure of information or material relating to:

the security, defence or international relations of New Zealand.

2.3 The classifications in sub-paragraph 2.1 above *may* be applied also in accordance with the damage that is likely to result from the unauthorised disclosure of information or material of special sensitivity relating to the following interests of the State:

- a the maintenance of the law; or
- b the economy of New Zealand.

2.4 A handbook for applying security classifications in practice shall be issued by the Interdepartmental Committee on Security—see paragraph 9 below.

3 *Classifications Originating Overseas*

3.1 The Government of New Zealand has international obligations as well as a statutory responsibility to maintain for classified information or material received from New Zealand's allies or from international organisations a level of protective security not less than that in force in those overseas countries or organisations. There must therefore be reasonable compatibility with the security classification procedures of New Zealand's allies, or of international organisations.

3.2 When the classified information or material of the government of another country, or of an international organisation, is entrusted to the Government of New Zealand and utilised in creating other information or material, that information or material must be safeguarded so as to provide protection not less than that applying to the original information or material.

4 *Protective Security Measures to be First Instituted*

4.1 Before any classified information or material is accepted or created by a department or organisation, the permanent head, or in the case of an organisation, the head of that organisation, has a duty to ensure the head of that organisation, has a duty to ensure that protective security measures have first been instituted adequate for the levels of classification to be applied.

5 *Authority to Classify*

5.1 Permanent heads of departments or heads of organisations, are hereby vested with authority to classify in accordance with the prescriptions in this directive. The permanent head of a department or head of organisation may delegate authority to classify to officers of appropriate seniority of that department or organisation.

5.2 A security classification is to be applied only after the officer responsible is satisfied that the information or material warrants that classification in terms of one of the prescriptions in this directive.

6 *Avoidance of Overclassification*

6.1 Overclassification must always be avoided. It is objectionable on grounds of managerial efficiency and economy; it adds considerably to the expenditure on protective security procedures and the manpower to carry them out; and, it is liable to undermine the effectiveness of the procedures themselves and to bring them into disrepute.

7 *Duration of Classification*

7.1 Where practicable a finite duration on the application of a classification grade may be indicated on a document or other material, at the end of which time the classification shall lapse.

8 *Downgrading and Declassification*

8.1 Departments or organisations shall institute a systematic review of all classified information or material and provide for the sequential downgrading or declassification of that information or material. This review shall be applied to classified information or material originating from 1977 onwards. The aim shall be to conduct the first review of classifications 10 years after they are first applied, i.e. in 1987.

8.2 Wherever there is opportunity in the course of ordinary business for an officer with the necessary authority to declassify or downgrade immediately, he or she shall do so.

8.3 Most information or material becomes divested of some or all of the reasons for classification simply by the passage of time. The Interdepartmental Committee on Security shall devise criteria to assist permanent heads of departments and heads of organisations in achieving—in the shortest practicable time—a maximum downgrading of, or removal of classification grades from, information or material consistent with national security as well as the requirements of economical management.

9 *Interdepartmental Committee on Security*

9.1 The Interdepartmental Committee on Security shall provide departments and organisations with detailed guidance on policies and administrative procedures necessary to implement in a consistent manner the system of security classifications prescribed in this directive.

9.2 The Committee shall also provide guidance on the use of other endorsement marks to assist in the handling of other information or material of special sensitivity (*not* being national security information or material as prescribed in this directive). There should be a reasonable consistency in the use of such endorsements, the aim being to ensure that they are not used in substitution of security classification grades.

The Chairman of the Interdepartmental Committee on Security shall report at least annually, through the Minister of State Services, to the Prime Minister on the implementation of this directive and make recommendations which will advance the purpose stated in the preamble.

10 *Commencement*

This directive is deemed to have been promulgated on 17 December 1982. It is to be implemented on and from 1 July 1983.

(SSC 21/5/0)

21/5/83 (EO)
Mr Delaney 1983



CABINET OFFICE

Prime Minister's Department,
Parliament Buildings,
Wellington.

CO (83) 13

8 June 1983

All Ministers
All Permanent Heads

[Copies to all Chief Executive
Officers of Organisations via
Information Unit, SSC]

CABINET GUIDELINES ON CHARGES FOR THE PURPOSES OF THE OFFICIAL INFORMATION ACT 1982

PREAMBLE

- 1 EXISTING CHARGES TO REMAIN
- 2 FIXING THE AMOUNT OF CHARGE
- 3 STAFF TIME
- 4 PHOTOCOPYING
- 5 ACTUAL COSTS
- 6 REMISSION OF CHARGES
- 7 DEPOSITS
- 8 REVIEW OF DECISIONS ON CHARGES
- 9 COMMENCEMENT

Parliament has decided to make official information more freely available to the people of New Zealand. Responding to requests for information will involve additional costs. In some circumstances the resources needed to answer a request for information will justify charging for them.

Cabinet has authorised (CM 83/21/25 of 7 June 1983) a uniform charging system which is to be observed by all departments and organisations, wherever access is not already provided free or pursuant to an existing charging arrangement.

The system of charges incorporates a "threshold" approach whereby inquirers will generally receive an amount of free access but in respect of requests involving substantial time or materials, charges approximating actual costs shall apply. No charges shall be made for personal information about a natural person given to that person.

1 EXISTING CHARGES TO REMAIN

- 1.1 There are currently areas where access to official information is given free of charge or pursuant to an

existing charging arrangement. Section 52 of the Official Information Act 1982 does not derogate from such access; those arrangements are not changed by these guidelines.

2 FIXING THE AMOUNT OF CHARGE

2.1 The amount of charge will be determined by:

- a establishing whether or not the request is made by an identifiable natural person seeking access to any personal information about that person (Section 24).

Such requests are NOT subject to any charge.

- b the aggregate amount of staff time exceeding one hour spent in actioning the request.

This will include search and retrieval of information, the provision of transcripts and the supervision of access.

- c the number of pages of A4 sized or foolscap photocopy to be provided exceeding 50.

Non standard sized photocopy such as that used for maps and plans will be charged on an actual and reasonable basis.

- d for any other cost, the amount actually incurred in responding to the request.

This will cover the provision of copies of video, audio and film tapes, computer time or other situations where a direct charge is incurred.

2.2 Where repeated requests are made in respect of a common subject in any four week period, requests after the first shall be aggregated for charging purposes.

2.3 The charge shall represent a reasonable fee for access given. It may include time spent:

- in searching an index to establish the location of the information
- in locating (physically) and extracting the information from the place where it is held
- in reading or reviewing the information
- in supervising the access to the information.

The charge may not include any allowance for:

- locating and retrieving information which is not where it ought to be

time spent deciding whether or not access should be allowed and in what form.

- 2.4 Where the free threshold is only exceeded by a small margin it is a matter of discretion whether any fee should be paid and if so, how much.

3 STAFF TIME

- 3.1 Time spent by staff searching for relevant material, abstracting and collating, copying, transcribing and supervising access where the total time involved is in excess of one hour shall be charged out as follows:

- an initial charge of \$10 for the first chargeable half hour or part thereof
- then \$10 for each additional half hour.

- 3.2 The rate of charge applies irrespective of the seniority or grading of the officer who deals with the request.

- 3.3 Time spent in deciding whether or not to approve access and in what form shall not be charged.

4 PHOTOCOPYING

- 4.1 Photocopying on standard A4 or foolscap paper where the total number of pages is in excess of 50 pages shall be charged out as follows:

- 10c for each page after the first 50 pages.

5 ACTUAL COSTS

- 5.1 All other charges incurred shall be fixed at an amount which recovers the actual costs involved. This will include:

- producing a document by the use of a computer or other like equipment
- reproducing a film, video or audio recording
- arranging for the applicant to hear or view an audio or visual recording
- providing a copy of any map, plan or other document larger than A4 or foolscap size.

6 REMISSION OF CHARGES

- 6.1 The liability to pay any charge may be modified or waived at the discretion of the department or organisation receiving the request. Such decisions shall have regard to the circumstances of each request. However, it would be appropriate to consider inter alia:

- whether payment might cause the applicant financial hardship

whether remission or reduction of the charge would facilitate good relations with the public or assist the department or organisation in its work.

7 DEPOSITS

7.1 A deposit may be required where the charge is likely to exceed \$20 or where some assurance of payment is required to avoid waste of resources.

7.2 The applicant is to be notified of the amount of deposit required, the method of calculating the charge and the likely final amount to be paid. Work on the request may be suspended pending receipt of the deposit.

7.3 The unused portion of any deposit shall be refunded forthwith to the applicant together with a statement detailing how the balance was expended.

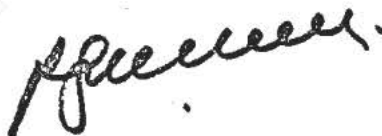
8 REVIEW OF DECISIONS ON CHARGES

8.1 Section 28(1)(b) of the Official Information Act 1982 provides that the Ombudsman may investigate and review any decision on the charge to be paid in respect of a request for access to official information.

8.2 A record shall be kept of any costs incurred. Wherever a liability to pay is incurred the applicant is to be notified of the method of calculating the charge and this fact noted on the record.

9 COMMENCEMENT

9.1 These guidelines are to be implemented on and from 1 July 1983.



Secretary of the Cabinet

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THE PUBLIC SERVICE OFFICIAL CIRCULAR

Information of General Interest

1. OFFICIAL INFORMATION ACT

With the pending implementation of the Official Information Act it is timely to remind all public servants of the responsibilities entrusted in us when handling official information. It is also appropriate to advise you of policy decisions taken in relation to the handling and release of official information that come into effect on and from 1 July 1983.

Commencing with this issue of the *Public Service Official Circular* a series of four general notices will be issued. The topics will be:

- Official Information and the obligations of public servants;
- The Cabinet Directive on Security Classification;
- The Unclassified Document on Security Vetting;
- The Protection of the Cabinet Process.

These notices are for general information and you are urged to read them carefully. If you are in any doubt about the issues covered discuss them with your supervisor or controlling officer who may ask your Head Office or the State Services Commission for clarification.

(SSC 21/5/0)

2. OFFICIAL INFORMATION AND THE OBLIGATIONS OF PUBLIC SERVANTS

It is generally accepted that there are areas of official information which must be protected. These include such fields as security, defence, international relations, the maintenance of law and order and the economy of New Zealand. In every instance the level of protection afforded reflects the sensitivity of the information or material concerned. That sensitivity is determined through an assessment of the likely damage to national interests in the event of an unauthorised disclosure and denoted by a security classification.

Many public servants will complete their careers without ever encountering security classified material. However at times we all are privy to information which may be sensitive, be it personal or official. For this reason every officer should recognise and accept the need to maintain the confidences entrusted in them as public servants; there is no place for the unreliable or indiscreet.

From 1 July 1983 the burden of responsibility will be increased as the Official Information Act comes into force. As you will be aware the Act has as one purpose, "increasing progressively the availability of official information to the people of New Zealand". This purpose is to be balanced against "the protection of official information to the extent consistent with the public interest and the preservation of personal privacy". It is for these reasons that the release of official information must be an *authorised* action reserved to those officers with the

necessary knowledge and judgment to make the right decision. Each officer will be advised in writing before 1 July 1983 of the level of authority, (if any) which they have to release official information. If you are in any doubt about this ask your controlling officer to clarify the matter.

(SSC 21/5/0)

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

2/15/80 (EO) Mr Delaney



CABINET OFFICE

Prime Minister's Department,
Parliament Buildings,
Wellington.

CO (83) 12

1 June 1983

All Ministers
All Permanent Heads

OFFICIAL INFORMATION ACT 1982 : DEPARTMENTAL BACKGROUND NOTES ON ESTIMATES

Cabinet at its meeting on 30 May 1983 instructed me to draw attention to the form in which background notes supplementing the notes in the printed Estimates are prepared by a department for their Minister's and internal use. If these are drafted in their traditional form after 1 July 1983 they could, as a result of a legitimate request pursuant to the Official Information Act 1982, disclose information which ought to be protected, ie withheld in terms of one or more of the provisions in Sections 6 - 10 of the Act.

Henceforth it is the substance rather than the form of information which may be protected. A volume of notes, whatever its classification (or endorsement)¹, is not protected as such. Protection can be afforded only to specific information which may be included within its covers; this may comprise all or part of the contents.

In the case of departmental background notes on Estimates, the broad position is as follows:

- a Notwithstanding the general shift away from blanket protection², access to departmental background notes as a whole can be refused *until the Estimates are tabled*. This refusal is justified by the need to avoid premature disclosure of the Government's budgetary policies [see especially Sections 6(d), 9(2)(f)(ii-iv) and (g) of the Act]. In effect, there is blanket protection up until Budget night for all departmental background notes on Estimates.

[Depending on the content of the background notes, their arrangement and the nature of a department's functions, one could conceive of a need - and this would be a rare case - for blanket protection to be extended *until the Estimates are passed* if disclosure during this stage is likely to prejudice an interest of the State in Sections 6, 7, (possibly 8) and 10 of the Act. In such a rare

1 See CO (82) 14

2 See CO (83) 10

SSC

case, until the Estimates are actually passed the departmental background notes as a whole may therefore continue to constitute "confidentiality of advice tendered by officials" (Section 9(2)(f)(iv) of the Act) but that ground for protection cannot be sustained beyond this point.]

- b After the Estimates are tabled, selected parts could still be withheld provided that any withholding of official information is related strictly to the protection afforded by Sections 6 - 10 of the Act. If challenged the Minister or department would have to justify the withholding on a specific ground as provided in Section 18 of the Act, and be ready to give reasons for refusing (Section 19).

In drafting background notes on their Estimates for internal use, each department may wish to do so in a form which easily identifies matters which should properly be protected after the Estimates are tabled or passed by placing such matters in an annex which can if necessary be separated from the rest of the departmental notes.



(P G Millen)
Secretary of the Cabinet

OFFICE OF THE

STATE SERVICES COMMISSION

PRIVATE BAG · WELLINGTON · NEW ZEALAND

Reference
SSC 21/5/5

Telephone 725 639
Reserve Bank Building

19 May 1983

Circular Memorandum : 1983/ 39(G)
Officer for Enquiries : I H Miller, Assistant Director,
Information Unit, Extension 713

Permanent Heads
Chief Executive Officers of Organisations

OFFICIAL INFORMATION ACT : IMPLEMENTATION NEWSLETTER NO. 5

1 Introduction

Those persons wishing to gain access to official information will sometimes require advice and assistance from staff and it is a requirement of the Act that reasonable assistance be given on how to make a request and where to direct requests.

Quite apart from the public duty to provide such assistance it is administratively more efficient to help ensure a request is made in proper form rather than attempt to second guess the applicant or engage in subsequent prolonged discussions about what either party meant to do.

To assist applicants the Information Unit has produced two leaflets which briefly explain the purpose of the Act and outline how to go about gaining access to personal information and official information. This newsletter gives further detail on the text and method of distribution of the leaflets.

The newsletter also advises the requirements for monitoring the implementation of the legislation and provides a sample of the return which will be made quarterly to the Unit and from there to the Information Authority.

2 Information Leaflets for the Public

It is intended to release two leaflets coincidental with the publication of the directory of Official Information, one concerned with access to official information and the other to personal information. These will be available to the public from the outlets for the directory and it is envisaged they will be used only where it is not possible to contact an officer of the department or organisation direct.

The text of the leaflets is very brief but serves to highlight the purposes of the Act and principle of availability and to provide basic assistance in how to make a request, e.g., it points out the various methods of access available in order that one might be specified in any request. The full text of each leaflet is set out in Appendices "A" and "B".

The production of these leaflets does not mean that applicants must apply in writing. The option to elect either an oral or a written request remains unchanged. Rather these leaflets are intended to provide reasonable assistance in making any form of request.

3 Monitoring the Implementation of the Legislation

Some minimal information on the operation of the legislation will be required by both the Information Unit and the Information Authority to allow review of administrative procedures, assessment of costs and staff time and review of the legislation. Departments and organisations may want to supplement this requirement for management information purposes such as the review of delegations.

The information requested is very basic. If further detail is required it will be sought on an ad hoc basis. The Officials Committee on Official Information has decided that returns will be required on a quarterly basis with the first due on 1 October 1983. The content and frequency of the return will be reviewed regularly thereafter by the Information Unit and Information Authority.

It is not intended to print a standard return form but departments and organisations are recommended to use the following format :

 OFFICIAL INFORMATION : QUARTERLY RETURN

Department/Organisation	Period ended	
	<u>Official Information</u>	<u>Personal Information</u>
Number of refusals
Number of modified approvals pursuant to S.16 & 17
Number of conditional approvals
Number of corrections pursuant to S.26 (Personal information only)	
Number of notations pursuant to S.26 (Personal Information only)	

Completed returns are to be forwarded to :

The Information Unit
 State Services Commission
 Private Bag
 WELLINGTON

The actual procedure for collecting the information is left to the discretion of each department and organisation. However, you may wish to adopt the following approach :

Information Collection

Officers authorised to consider non-routine requests for access to advise a central reference point for the department or organisation whenever a decision covered by the quarterly return is made. This advice should include the applicant's name and a file reference. Private Secretary to advise of decisions taken by the Minister.

Information Collation

The central reference point should hold all returns and forward the quarterly composite return to the Information Unit as required. The reference point should also act as the contact for the office of the Ombudsman when verification is required that a request has been refused or conditions imposed.

The significance of the use of a collation point as the reference for Ombudsmans' inquiries is that this will allow prompt confirmation that a reviewable decision has been made.

4 Modified Requests

In Newsletter No. 2, paragraph 3(c)(ii) gave an example of a "good reason for withholding" which included reference to a Cabinet document.

That reference was incomplete and could be read to mean Cabinet documents are protected as a class. That is NOT correct; the principle of availability applies equally to Cabinet documents as to others. The reference should read :

- a document containing non exempt matter and an extract from an embargoed Cabinet document.



D/K Hunn
Commissioner

I am:

- a New Zealand citizen
- a permanent resident of New Zealand
- a body corporate incorporated in New Zealand

(Strike out those which do not apply)

I understand that if my application is approved I may have to pay a charge. I further understand that if this is so, I will be contacted before any action is taken.

To the:.....
(contact officer)

.....
(full address of organisation)

Date of Request:.....

What if you are denied access?

There may be cases where the information cannot be made available and these are set out in the Act. Where this happens you will be told the reason. You may ask an Ombudsman to review any decision made regarding your request.

However, if you wish you can ask the department or organisation to have the decision reviewed by another officer. In either event you will always be advised of your rights of review when informed of the decision on your request.

Contact Officers

If you want help in making a request get in touch with a contact officer from the department or organisations concerned. You can find out who to contact by consulting the Directory of Official Information.

LOOKING AT OFFICIAL INFORMATION

A separate leaflet deals with access to personal information.

A Guide to the Official Information Act

Prepared by
The Information Unit
State Services Commission

July 1983
Information Series O.I. 1

APPENDIX A

The purpose of the Official Information Act is to:

- make official information more freely available
- provide proper access to personal information by the individual concerned
- protect official information to the extent required by the public interest.

The Official Information Act Can Help You

- find out the background to and reasons for government decisions.
- get access to information held by Government departments and organisations.

The Act sets out the procedures for obtaining official information held by Government departments and organisations. Some organisations are exempt from the provisions of the Act.

A full list of the organisations covered by the Act and their contact officers can be found in the Official Information Directory available at all post offices and public libraries.

The Directory sets out:

- The structure and function of every department and organisation.
- A general description of all kinds of documents held.
- A list of all manuals, and similar types of documents which contain policies, principles, rules or guidelines, in accordance with which decisions are made.
- How to obtain access to information including details of contact officers.

Obtaining Access to Official Information Who qualifies?

You can apply if you are a New Zealand citizen or permanent resident or a body corporate which is incorporated in New Zealand.

You may have to pay a fee for the work involved in providing access. However this would be notified to you before any action is taken.

How to apply

- You simply post or deliver the tear off portion of this pamphlet to the department or organisation concerned.
- You may if you wish write a letter, telephone or call personally to make your request.
- Make sure you include as much detail as possible about your request. (For example give a reference number or attach a newspaper clipping.) This will aid speedy processing of your request.

Processing Your Application

The receiving organisation is required to handle your request as quickly as possible. If you have not had a reply or an acknowledgement within 14 days of your request you should send a reminder or ring the contact officer.

How will you be given access?

You can ask for a copy of the information or to inspect it. You may listen to a tape recording or see a film or videotape and you can ask for a transcript if you wish. Where information is stored in a computer you may ask for a print out of that information. If you prefer a particular form of access you should state this in your request.

Request for Access to Official Information

I
(full name)

of
(Postal address) (Contact Phone Number)

- Request a copy of/access to the following official information.

I attach/refer to the following information to assist in processing my request. (Continue on separate page if necessary.)

I would prefer to have the information supplied in the following manner.

I am:

- a New Zealand citizen
- a permanent resident of New Zealand
- a person in New Zealand
- a body corporate incorporated in New Zealand
- a body corporate having a place of business in New Zealand

(Strike out those which do not apply)

Charges

I understand that there are no charges payable in respect of access to personal information (unless by a body corporate). However if I have applied to see or copy any document (including a manual) which is used in making decisions affecting me I may have to pay a fee in which case I will be contacted before any action is taken.

To the:.....
(contact officer)

.....
(full address of organisation)

.....
Date of Request

What if you are denied access?

There may be cases where the information cannot be made available and these are set out in the Act.

Where this happens you will be told the reason. You may ask an Ombudsman to review any decision made regarding your request.

However, if you wish you can ask the department or organisation to have the decision reviewed by another officer. In either event you will always be advised of your rights of review when informed of the decision on your request.

Correcting Information about your Personal Affairs

If you are given information about your personal affairs that is inaccurate, incomplete or gives a misleading impression you may ask to have it amended.

You must do this *in writing* to the agency which gave you the information. You should set out the information you wish to have amended, the reason why it is incomplete or misleading and the amendments you wish to have made.

Where the information is not amended you can require that it be noted indicating the nature of any correction requested but not made.

You will be informed of the decision on your request you may complain to an Ombudsman if you are not satisfied.

Contact Officers

If you want help in making a request get in touch with a contact officer from the department or organisation concerned. You can find out who to contact by consulting the Directory of Official Information.

LOOKING AT PERSONAL INFORMATION

A separate leaflet deals with access to Official Information.

A Guide to the Official Information Act

Prepared by
The Information Unit
State Services Commission

July 1983
Information Series O.I. 2

The purpose of the Official Information Act is to:

- make official information more freely available
- provide proper access to personal information by the individual concerned
- protect official information to the extent required by the public interest.

The Official Information Act can help you to

- find out what guidelines are used in decisions or recommendations about any person.
- get access to information about you held by Government departments and organisations.
- to correct information relating to your personal affairs held by departments or organisations.

The Act provides new avenues for obtaining information about yourself held by Government departments and organisations. Some agencies are exempt from the provisions of the Act.

A full list of the organisations covered by the Act and their contact officers can be found in the Official Information Directory available at all post offices and public libraries. The Directory sets out:

- The structure and functions of all departments and organisations.
- A general description of the kinds of documents held.
- A list of all manuals and similar guides which contain policies, principles, rules and guidelines in accordance with which decisions are made.
- How to obtain access to information including details of contact officers.

Obtaining Access to Personal Information

Who qualifies?

You have a right to ask for personal information which may be in the possession of any department or organisation listed in the directory.

To qualify you must be a New Zealand citizen, permanent resident or person in New Zealand or a body corporate incorporated or carrying on business in New Zealand.

Proof of identity will be required before access is approved.

There is no charge for personal information except where it is supplied to a body corporate there are no fees payable.

Internal Rules Affecting Decisions About Any Person

You also have the right of access to, and if you wish, may buy or copy any manual or guideline which is used in making decisions affecting a person.

Reasons for decisions or recommendations made about you after 1 July 1983

You have the right to a written statement of the reasons for a decision or recommendation made about you, and to know the information which was used in making that decision.

How to apply

- You simply post or deliver the tear off portion of this pamphlet to the agency concerned.
- You may if you wish write a letter, telephone or call personally to make your request.
- It would help if you include as much detail as possible about your request. (For example give a reference number, or describe the matter in which you are interested.) This will aid speedy processing of your request.

Processing Your Application

The agency is required to handle your request as quickly as possible. If you have not had a reply or an acknowledgement within 14 days of your request you should send a reminder or ring the contact officer.

How will you be given Access?

You can ask for a copy of the information or to inspect it. You may listen to a tape recording or see a film or videotape and you can ask for a transcript if you wish. Where information is stored in a computer you may ask for a printout of that information.

If you have a preference for the form in which you are to be given access you should state this in your request.

Request for Personal Information

I
(full name)

of
(Postal address) (Contact phone number)

- Request a copy of/access to the following information about.

- I attach/refer to the following information to assist in processing my request.

- I would prefer to have the information supplied in the following manner.

12 MAY 1983

OFFICE OF THE

STATE SERVICES COMMISSION

PRIVATE BAG · WELLINGTON · NEW ZEALAND

Reference SSC 21/5/5

Telephone 725 639
Reserve Bank Building

Circular Memorandum 1983/36 (G)

Officer for Enquiries : I H Miller, Assistant Director
Information Unit, Extn 713

Permanent Heads

Chief Executive Officers of Organisations

OFFICIAL INFORMATION ACT : IMPLEMENTATION NEWSLETTER NO. 4

1 Introduction

Certain key words or phrases used in the Official Information Act have specific meanings which are defined in S.2 of the Act. This newsletter highlights five of those words or phrases which are considered to be especially relevant to the implementation phase.

The newsletter also looks at the procedures for considering requests for access to personal information. Here, a distinction can be made between 'employee' generated requests and other requests for personal information. This is not to suggest there are different rules involved - there are not - everyone has the same rights, be they private citizen or employee. However, employee records are more likely to be centralised on a single file or assembled in a form which allows standardised processing arrangements to be made than is otherwise the case. The State Services Commission, as principal employing authority for the public service, will be issuing more detailed instructions relating to employee personal records before 1 July 1983.

2

FIVE KEY WORDS AND PHRASES

Section 2 of the Official Information Act 1982 provides interpretation of a number of words and phrases used in that Act. Five have been selected as having particular relevance to the implementation phase:

- . official information
- . document

- department
- organisation
- person/personal information.

2(a) Official Information

The word 'information' is not defined in the Act but it is clear the intention is that the term be given the widest possible meaning. The Danks Committee stated that for the purposes of the draft Bill incorporated in the Supplementary Report

'... information includes not merely recorded data but knowledge of a fact or state of affairs by officers of the agency in their official capacity, eg when a particular report is to be presented. Note however that to constitute "official information" it must be "held" by the agency, or vicariously by one of its officers or employees'

'Official Information' is however defined as follows. It means any information held by:

- (i) A department; or
- (ii) A Minister of the Crown in his official capacity; or
- (iii) An organisation,

including information held outside New Zealand by branches or posts of those departments or organisations.

The Act also specifies certain types of information which are not included as official information being exempt from the Act. Most significant are:

- library or museum material made or acquired and preserved solely for reference or exhibition purposes;
- material placed in the National Library of New Zealand by or on behalf of persons other than Ministers of the Crown in their official capacity or departments;
- information held by a Minister, department or organisation, solely as an agent or for safe custody;
- evidence given or submissions made to a Royal Commission, Commission of Inquiry appointed by Order in Council made under the Commissions of Inquiry Act 1908 or Commission, board, Court or Committee of inquiry appointed, pursuant to, and not by, any provision of an Act, to inquire into a specified matter.

2(b) Document

This word has been given the widest possible meaning, and the Act makes it clear that it is intended to cover all forms of information retention including:

- any writing on any material;
- any information recorded or stored by means of any tape-recorder, computer or other device, and any material subsequently derived from information so recorded or stored;
- any label, marking, or other writing that identifies or describes anything of which it forms part or to which it is attached by any means;
- any book, map, plan, graph or drawing;
- any photograph, film, negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced.

Similar comprehensive definitions are used in other legislation, for example S.48G of the Evidence Amendment Act 1908.

2(c) Department

For the purposes of this Act 'department' means a Government Department named in Part 1 of the First Schedule to the Ombudsman Act 1975, with the exception of the Legislative Department and the Parliamentary Counsel Office.

2(d) Organisation

These are defined as those organisations named in Part II of the First Schedule to the Ombudsman Act 1975 and the First Schedule to the Official Information Act:

Note

The Act makes it quite clear that the terms 'Department' and 'Organisation' do not include:

- A Court;
- In relation to its judicial functions, a Tribunal;
- A Royal Commission;
- A Commission of Inquiry appointed by an Order in Council made under the Commissions of Inquiry Act 1908;
- A Commission, board, Court or committee of inquiry appointed, pursuant to, and not by, any provision of an Act, to inquire into a specified matter.

2(e) Person/Personal Information

'Personal Information' means any official information held about an identifiable person. A 'person' is defined as including a corporation sole and also a body of persons, whether corporate or unincorporate. Where it is necessary to make a distinction between an identifiable individual human being, and those other entities legally described as 'persons', the former is referred to as a 'natural person'.

According to the circumstances a 'person' may be:

- . a 'natural person', that is, an identifiable human individual;
- . a group of such individuals, such as a family;
- . a business partnership such as a firm of accountants;
- . an incorporated society or club or group, such as a social, sporting or recreational society;
- . a similar group to above, but which does not have legal articles of incorporation;
- . a business firm, such as a limited liability company;
- . a "corporation sole", that is, a legal entity such as the Public Trustee

3

ACCESS TO PERSONAL INFORMATION

A formal directive prescribing how identity is to be established may ultimately be required to ensure the maximum level of protection is given to personal information. However, the following guidelines have been developed to assist departments and organisations deal with the immediate requirement to train staff prior to 1 July.

3(a) Application of the Section

Personal Information is a form of 'official information' to which every person has a right of access subject only to:

- Section 10: which provides for declining to disclose the existence or non-existence of information which is likely to prejudice an interest protected by Section 6, 7 or 8(1) of the Act.
- Section 52: which retains in force any provision contained in any other Act or regulations that imposes a prohibition or restriction in relation to the availability of official information or regulates the manner of obtaining or making available.
- Section 24(2): which limits the application of the right to persons within New Zealand or having a place of business here.
- Section 24(5): which protects personal information held by the Public Trustee or the Maori Trustee in their capacity as a trustee within the meaning of the Trustee Act 1956 or in any other fiduciary capacity.

3(b) Level of Particularity Required

Personal information will be available from a variety of sources; associated with applications for services or benefits, retained in connection with licences or business transactions and kept as part of personal histories eg medical records, etc.

Some of the information will have been supplied by the person concerned and some by other persons which means that the applicant will not always be sure of the form and extent of the information. However, unlike requests for official information, applicants do not have to know or identify the particular information sought; one purpose of the Act is to enable them to ascertain whether any information is held and, if so, what.

3(c) Retrieval of Information

Because of the lack of detailed knowledge about information which may be held, it is possible that some inquiries will be general in nature. Inevitably these will involve more effort to answer than a request which allows ready identification of the information sought. Whilst the Act qualifies the right of access by requiring that the information be 'held in such a way that it can readily be retrieved' this does not mean that a request involving substantial

collation or research may be refused. Rather, Section 24(1)(b) is intended to make it clear that the scope of the section does not extend to incidental reference to an individual contained in a general file.

3(d) Eligibility provision

Access to personal information extends to include all the variants of 'person' identified in the Act, provided they are from, in, or have a place of business in New Zealand.

- . New Zealand citizens
- . Permanent residents of New Zealand
- . Persons in New Zealand
- . Body's corporate incorporate in New Zealand
- . Body's corporate with a place of business in New Zealand.

There are no age limits prescribed although in practice applications from children would probably be made by a parent or guardian acting as agent.

Note, that in the case of a natural person applicant under 16 years of age, disclosure may be withheld on the grounds the information would be contrary to that person's interests.

3(e) Identification

The Act places an onus of responsibility on the supplier of information to satisfy themselves concerning the identity of the applicant, and to ensure that information is only received by the person concerned or their authorised agent.

Identification by reference to the subject of interest

Proof of identity may be established by an invoice, billing notice, request or other document which indicates the applicant can be reasonably assumed to be one and the same person as the subject of interest relates to.

This is current practice where inquiries are received following the despatch of an account or some other communication which might involve the receiver calling at an office.

Identification by production of evidentiary proof of identity

Whilst any documentary proof is not an absolute guarantee of the bona fides of an inquirer, the level of proof may be advanced by requiring proof from more than one source as the sensitivity of the subject matter increases.

Proof should involve production of a document which is only issued on formal request, preferably following the making of

a declaration or assuming some form of liability. Thus a birth certificate would not constitute proof of identity since these are available on requests without any attempt to relate applicant and subject person. However the following documents or a combination could be used:

- Driver's licence,
- Passport
- Employee identity card (especially if it includes a photograph)
- Credit card

Other forms of identification

Certified Record of Association or Incorporation

Since 'person' includes bodies corporate or unincorporate provision must be made for identification by production of information that establishes the applicant's right of access. This could range from the use of letterhead stationery to a document under seal of the company. Officers of a company or members of an unincorporated body must establish their relationship to the applicant by proving their authority to seek access.

Specimen of Handwriting

In some situations the requestee will have signed a letter of request or they could provide a signature that can be compared with existing records. Whilst this approach should be used with discretion, in some circumstances it could constitute adequate proof of identity.

Personal Knowledge

An applicant might be known personally or vouched for personally by a third person known to the officer handling the request. Obviously in either case the application would have to be in a person and with the third party present where necessary.

Statutory Declaration

An applicant may complete a formal declaration to the effect that they are the person named and are thus entitled to the information requested.

3(f) Requests Through an Agent

Where a request is made by an agent, that person must have the written authority of the subject person or some other authorisation. (This latter provision is relevant to parent or guardian requests.) In either event it will still be necessary to prove that subject person and applicant are one and the same as set out in 3(e) above.

3(g) Release of Personal Information

The importance of protecting personal privacy cannot be over-emphasised. In every case the department or organisation must be satisfied that the applicant is entitled access to the information. The level of proof will depend upon the nature and sensitivity of the information to be released. Any attempt to gain unlawful access to personal information must be viewed seriously and ordinarily would involve consultation with a legal officer of the department or organisation to see whether or not an offence has been committed.

Where personal information cannot be made available immediately to the applicant or has to be sent to some other place it will be necessary to ensure that only the applicant or their authorised agent takes delivery. Options include:

Registered Letter:

This approach only ensures delivery to the address. There is no guarantee of delivery to the addressee alone and this method should not be used where sensitive information is involved.

Double Envelope:

Nominate a pick-up point at which the applicant must call to uplift or view the information on presentation of proof of identity. The information to be held in double envelope, outer addressed to a responsible officer at the pick-up point and the inner to the applicant so as to protect privacy.

Personal Delivery:

Using courier service, staff or contracted agency to hand deliver on proof of identity.

3(h) Processing of Requests

All requests are to be handled promptly; a 7 day response or acknowledgement deadline should be the objective. Departments and organisation must give applicants all reasonable assistance in making a request including directing them to the correct department or organisation for inquiries.

Wherever possible the form of access given should be that requested. If this cannot be arranged then the applicant is to be told the reasons why (S.16).

The grounds on which information may be withheld are set out in S.27. In keeping with one of the stated purposes of the Act:-

... "To provide for proper access by each person to official information relating to that person".

The provisions are narrowly defined and it is expected would only affect the bare minority of requests. An applicant must always be given the reason for a decision, and as suggested in Newsletter No. 2 this should be more than just a restatement of the section or

subsection relied on but should relate the circumstances of the decision to the section. Upon further request the applicant must be supplied with the grounds in support of the refusal.

The applicant is to be advised of the right to seek an investigation and review of the refusal by an Ombudsman and, except where the subject of interest protected by section 6(a) to (c), 7 or 8(1) of the Act, the applicant may request the grounds in support of that reason.

The recommendations made in Newsletter No. 2 on the level of documentation and form of response apply also to personal information.

3(i) Correction of Personal Information


Any information held about a person must be true. Where it can be established such information is inaccurate or incomplete and misleading there is provision to seek correction (S.26). This may involve correcting, deleting or adding information. Such changes must only be made after satisfactory proof of the error or omission is established. The level of proof will depend on the nature of the information at issue and should usually involve a statement of the reasons for the desired change as well as any documentary evidence there might be.

In some situations it may not be practical to complete the investigation required to obtain the true facts; records may have been legitimately destroyed, supporting witnesses unavailable etc. Here the applicant has the right to require the record be noted to the effect that the individual has challenged its correctness and the nature of any correction requested but not made. (S.26(1)(b)).

Any such notation should be made in such a manner that it forms part of the formal record and indicate:

- (i) the date of the request to make the notation;
- (ii) the correction requested but not made;
- (iii) the location of the relevant papers;
- (iv) the name and designation of the officer who directed the notation be made.

The applicant is to be advised in writing of any decision taken and, since there is provision for the Ombudsman to investigate and review such decisions (S.35(i)), of the right to seek such a review.



D K Hunn
Commissioner



THE PUBLIC SERVICE OFFICIAL CIRCULAR

Information of General Interest

1. THE INFORMATION AUTHORITY

The Information Authority was established by Part VI of the Official Information Act 1982. It is an independent statutory authority concerned with the operation of the law, including its compatibility with other laws relating to the handling of information, and will report on its possible extension to other bodies. It also has important functions in relation to personal information including the purposes for which it is held, levels of accessibility, and the prevention of improper use. The authority will not handle individual cases concerning access to information. This will be the function of the Ombudsmen.

Members of the authority were appointed by the Governor-General. They are:

Sir Alan Danks (formerly chairman of the Committee on Official Information which reported on the issues of open government and proposed a draft Bill which is the basis of the present Act).

Mrs Shirley Maddock (journalist and author).

Mr Ian Lythgoe (former chairman of the State Services Commission).

(SSC 24/2/35/19)

Out of Scope

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OFFICE OF THE

STATE SERVICES COMMISSION

PRIVATE BAG · WELLINGTON · NEW ZEALAND

Reference

SSC 21/5/5

Telephone 725 639
Reserve Bank Building

18 April 1983

Circular Memorandum : 1983/ 34 (G)
Officer for Inquiries : I H Miller, Assistant Director,
Information Unit, Extension 713

Permanent Heads
Chief Executive Officers of Organisations

OFFICIAL INFORMATION ACT : IMPLEMENTATION NEWSLETTER NO.3

INTRODUCTION

Every decision taken in response to a request for access to information must be duly authorised. It will be for heads of departments and organisations to decide upon the administrative arrangements best suited to their needs; the basic requirement is that staff know what they can and cannot do in response to requests.

This newsletter provides guidelines for determining responsibility and delegating authority to release information. It also updates information concerning the Information Unit and Information Authority.

INFORMATION UNIT

Following an internal reorganisation at the Commission Mr Don Hunn, Commissioner, has taken over the role of Director of the Unit. Also two advisory officers, Mr Syd Holm and Ms Carol Hunter have been appointed and will take up their duties shortly.

INFORMATION AUTHORITY

The Authority has identified three priority activities for consideration in the next few months :

- . A review of the protection given to official information by other Acts to see whether it is both reasonable and compatible with the Official Information Act [S.38(1)(a)].
- . The definition and review of categories of official information with the view to enlarging the categories to which access is given as a matter of right [S.38(1)(b)].
- . The examination of existing or proposed powers of a department or organisation to require persons to supply information about themselves or any other person and to express the view as whether those powers are fair and reasonable [S.39(b)].

Departments and organisations will be contacted individually as their assistance or participation in these reviews is required.

AUTHORITY TO DETERMINE REQUESTS

The new form of Regulation 42 of the Public Service Regulations 1964 as proposed by the Danks Committee makes it quite clear that decisions relating to access to official information can be made only by an authorised officer.

It is presumed that organisations not subject to the Public Service Regulations will be adopting a similar policy for their own staff.

In SSC Circular Memoranda 1982/96(G) and 1983/21(G) departments and organisations were advised that :

- . Levels of authority to release information would have to be determined and promulgated before 1 July 1983, and that
- . in reaching these decisions current arrangements for the routine release of information should be left intact (but these should be confirmed and documented).

This newsletter provides further advice on establishing levels of decision making.

PRINCIPLES

In determining levels of decision making departments and organisations should adhere to the following principles :

- . the arrangements must not make it more difficult to gain access than was the case prior to 1 July 1983
- . access decisions should be made at the lowest level possible

- staff must be in no doubt whatsoever as to their authority to deal with a request for access
- staff must know the designation or name of the officer to whom requests outside their level of approval are to be referred.

GUIDELINES FOR DETERMINING LEVELS OF AUTHORITY

In practical terms official information could be characterised into two types :

Routine Information

- information of the kind normally made available on request or produced for general public useage - pamphlets, newsletters, booklets, annual reports, public notices
- information of a predominantly factual character having no significant policy or administrative sensitivity - accounting records, statistical data, studies, surveys or other factual reports
- information relating to an identifiable individual concerning their own personal affairs - statements of indebtedness, leave records, personal reports.

Potentially Sensitive Information

- information having security, defence or international relations significance - especially where marked with a security classification
- information entrusted by another government or international organisation
- information concerning the maintenance of the law
- information about the economy of New Zealand
- information which constitutes opinion or the interpretation of issues or facts
- information provided in confidence
- information about an identifiable natural person

- information subject to constitutional or legal professional privilege
- information relating to competitive commercial interests.

Neither list is intended to be exhaustive or authoritative.

Using such an approach should enable a department or organisation to see where either routine, or more formal arrangements are called for and to issue authorities to release accordingly.

NATURE OF THE AUTHORISATION

Access to information of a routine nature

A response to a request of this nature should come from the lowest level possible, preferably the point of first contact. The authority to release such information should be set out in job specifications and desk files. The authorisation statement must contain sufficient detail to fully inform officers what they may or may not do. This example is taken from an instruction to reception staff at a hospital :

RELEASE OF INFORMATION TO POLICE :

*Admission and discharge dates, address, telephone number, place of employment, next of kin may be given.
No medical information to be given, but refer to the Medical Director's office to be dealt with, should it be required.*

The authority provides a good example in that it :

- is in writing
- spells out what can be released
- identifies the officer to whom further inquiries are to be referred.

Departments and organisations should aim for a similar level of detail.

Access to potentially sensitive information

Here the level of authority will be determined by the nature of the information and the ability of staff to make a decision in full knowledge of the relevant background and detail. The aim should be to approve release at the lowest level possible consistent with the decision making ability of the staff. Again the authority must be in writing, either contained in a job specification or by way of written delegation. The level of detail in instructions should be sufficient to fully inform officers of what they may or may not do.

Thus a series of approvals at ascending levels of authority might look something like this :

Building Section:

Access to Information Instructions

<u>Routine Release</u>	<u>Clerk</u>	May release factual information on code of conditions for physical working area, tender specifications, inventory of accommodation and equipment.
<u>Other Release</u>	<u>Executive Officer</u>	Progress reports on renovations, explanations of any written statement referred to above, advice on numbers of tenders received without identifying tenderer, timetable for review of accommodation requirements, expenditure forecasts and out turn.
	<u>Chief Executive Officer</u>	Progress reports from contractors, commissioning reports, reports to Management Committee or Minister.

Again the list is not intended to be either exhaustive or authoritative.

The special needs of a department or organisation may shift the focus of the approval up or down, e.g. tender specifications in respect of defence installations might themselves carry a level of sensitivity which requires their release be a considered rather than routine response. However the basic requirements remain constant. The authority must be :

- in writing
- comprehensive, and
- should refer to the officer holding the next highest level of authority.

IMPLEMENTING THE AUTHORITIES

Some departments and organisations may have already determined the levels of authority for their staff and issued written advice to individual officers. It is imperative that every department and organisation will have issued appropriate instructions by 1 July 1983 and highly desirable that this takes place earlier to enable the arrangements to be tested in operation. The Information Unit will be contacting individual departments and organisations from time to time over the next three months to review progress in this regard.


REVIEW OF AUTHORITIES

Over the past few years much official information once regarded as sensitive has been downgraded in importance to the extent that its release is now regarded as routine. It is probable that this trend would have continued even without the release of the Danks Committee reports and later enactment of the Official Information Act 1982.

It is important therefore, that departments and organisations continue to review levels of authority to see whether they should be reduced. 1 July 1983 marks the beginning of an era when the availability of official information is to be progressively increased; policy in place on that date is not the final word on the release of official information. We will all be expected to examine ways and means of improving the level of access in order to promote the purposes of the Act. Performance in this regard will be monitored by the Information Unit, the Information Authority, and, without doubt, the public of New Zealand.

SUMMARY

- . The release of information must be by an authorised officer.
- . Wherever possible release should be handled as a routine function.
- . All officers must know what their authority to release information is in specific terms and that approval must be recorded in writing, either in a job specification or desk file or by way of a delegation.



D K Hunn
Commissioner

SSC MANAGEMENT MEETING

PROPOSAL FOR FAMILIARISATION TRAINING ON OFFICIAL INFORMATION
FOR SSC STAFF

Proposal

1. There is a need to provide training for staff of the Commission's Office on the Official Information Act 1982 and its implications. It is proposed that this should be organised in two parts:

Phase I - an initial familiarisation for all staff, including waged workers and those who will not necessarily be involved in handling requests under the Act;

Phase II - more specific training for officers and units likely to handle requests for official information.

2. Phase I - this initial level of training could be aimed at acquainting all staff with some understanding of the significance of the legislation for the Public Service generally, including for instance, changes in access to personal information held by the Public Service as their employer.

3. It is suggested that a series of sessions be arranged, for groups of 10-15 (see attached list), using the video tape prepared by Training & Development, in the context of a generalised discussion session, to include:

- introduction and brief history;
- overview of the Act;
- administrative implications, and practical application of the Act in the Public Service.

Time taken would be approximately 1 hour. 17 sessions would be needed to cover all Commission Office Staff in Wellington.

4. Each session should be led by an informed senior Commission officer, from a roster of Mr Boag, Mr Hunn, Mr Selwyn Wilson, Mr A Davis, Mr Miller and Mr Brooks, according to their availability, with Nicky Hill, Commission legal adviser, and/or a Training and Development officer present if desired. Each group should provide a rapporteur to record any issues which will require more detailed treatment under Phase II.

5. Warren Thompson (T&D) has offered to arrange a model session to assist the presenters and/or administer to the presenters the CRI course on the Act prepared by T&D for training trainers in departments. He also suggests that each division/branch/unit produce one or more case studies to be used in the discussions in phase II.

General background material available includes:

- . the Act & related amendments (eg. to the State Services Act 1962);
- . T&D's background package to the Video;
- . SSC Circular memoranda & Information Unit Implementation Circulars;
- . Speech notes by Mr Boag for the Department of Labour.

These are available.

The CRI modules on the content of the Act (mentioned above) also provide readable additional background on the Act and administrative procedures.

7. Sessions should start as soon as possible after Easter (5 April onwards) with Phase II to be completed well before 1 July, 1983, the day the Act comes into effect.

8. Similar sessions should also be arranged as soon as feasible for the Commission's District Offices, preferably on their home ground. These sessions might include officers from other departments, to make up numbers.

9. CSD has begun its own series of familiarisation sessions, using the T&D Video and background pack age, and aims to complete this before 1 July. The first session in Blenheim is reported to have been well received.

Phase II

10. The more detailed training for divisions and officers will follow, to take advantage of any specific needs and issues which are thrown up by Phase I, and also take into account, expected Commission decisions and guidelines on, for example, procedures and levels of authority for making decisions involving possible refusals; access to personal information; changes to Public Service Regulations, the Declaration and the Manual; and making charges, etc. Contact officers and telephonists will need guidelines for handling and receiving enquiries from the public, and MSG officers involved in advising departments must also be fully informed on standard and desirable practices. Case studies will be particularly useful in this phase.

11. Assistant Commissioners should be the presenters for Phase II sessions in their respective areas of responsibility, and should also undertake the CRI training course (including both the modules on the content of the Act, and also those on training methods).

12. Development of this specific training is the responsibility of Mr Yates (T&D) as Commission training officer, and he will work in conjunction with the Information Unit and Nicky Hill (SAO Official Information in the Administration Division), and report to the Management Meeting. Phase II should commence as soon as possible after

Phase I, but may be dependant on decisions outlined in para 10 above. However, the sessions may also identify other issues for decision by the Commission and/or the Management meeting, and for further training.

Recommendation

13. The Management meeting is recommended to approve the proposal for the training of Commission office staff for the Official Information Act, as outlined above.

Nicky Hill
Nicky Hill
SAO

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

PROPOSED GROUPINGS FOR
OI FAMILIARISATION SESSIONS

	<u>No. in Group</u>	<u>No. of Sessions</u>
Accounts & Finance Overseas staff	5] 10]	15 1
Admin Branch	15]	1
PIPS	20]	2
Records	9]	1
Tea Ladies	2]	
SAU	4]	
PDU	4]	11
Secretary's Branch (Shroff, Beard, Wallace)	3]	1
Typists (+ Bly, Watkins)	12	1
Industrial Relations Division	33]	44
Personnel Branch	11]	3
Management Review]	
Management Services]	45
Management Support]	3
Recruitment & Training	31	2
General Section - NRAC	6]	
WAU	4]	12
Info Unit	2]	1
Accommodation - 12 + 2 wageworkers	14	1
		<hr/>
No. of Sessions		17
+ District Commission Offices		3
TOTAL		<u>20</u>

OFFICE OF THE

STATE SERVICES COMMISSION

PRIVATE BAG WELLINGTON NEW ZEALAND

Reference

SSC 21/5/5

Telephone 725 639

Reserve Bank Building

28 March 1983

Circular Memorandum 1983/21(G)

Officer for Enquiries : I H Miller, Assistant Director,
Information Unit

Permanent Heads

Chief Executive Officers of Organisations

OFFICIAL INFORMATION ACT : IMPLEMENTATION NEWSLETTER NO 2

1 Introduction

Effective communication will be a major factor in ensuring the success of this Act. It will not help to have highly developed systems for release if applicants cannot direct their requests to the right place or fail to understand our replies. The first part of this newsletter highlights some aspects of communication which should be reviewed before 1 July.

The newsletter then goes on to provide guidelines for processing requests. The emphasis throughout is on achieving the purpose of the Act whilst maintaining an administratively uncomplicated approach. We do not attempt to explain how the withholding sections might apply which is a matter of judgement having regard to the facts of each individual request. Detail on the level of record to be maintained in relation to requests will be included in a forthcoming newsletter item on monitoring returns.

2. IMPROVING COMMUNICATIONS

Under the Official Information Act 1982, departments and organisations have a responsibility to improve communications with the public, in order to comply with the 'open' spirit of the legislation. It is not possible to know in advance what degree of additional pressure may arise in the way of requests

4

Only where doubt exists over whether a person should be allowed access to certain information, should the matter should be referred to an officer with delegated powers to deal with information requests.

(ii) Method of Release

Information should preferably be released in the form in which the applicant requested it, unless it would impair the efficient running of daily operations or be to the detriment of the preservation of the information (e.g. inspection of a document might be refused because of search facility limitations, but a copy provided). Information not provided in the form requested must be accompanied by an explanation giving the reason for furnishing it in an alternative form and advising of the right to have the decision reviewed by the Ombudsman. If the applicant so requests, the grounds for that reason must be supplied, unless this would prejudice the interests protected under Sections 6, 7, 8 and 9 of the Act and there is no countervailing public interest.

(iii) Response Time

The Act requires that a decision be taken "as soon as reasonably practicable", whether a request is to be granted, in what manner and what charge (if any) is to be made. It is recommended that departments and organisations aim for, at the maximum, a seven day turn around period in giving information, or alternatively, in sending an explanatory letter indicating the likely response time.

Where appropriate, applicants, should be made aware of the possibility of incurring charges for information from the outset, and where possible, an estimated cost should be given. The question of prepayment and/or deposits will be dealt with in a later newsletter.

(c) REFUSALS, MODIFICATIONS, DELETIONS, CONDITIONAL RELEASE

(i) Refusals

A request may be refused only by an officer holding delegated authority. These officers must document the grounds for refusal to allow for the review of the decision should that be necessary. At least as an interim measure, it is suggested that some form of internal review system be adopted through which any 'refusal' decisions can be reconsidered before they are released. This type of back-up mechanism would also assist achieving a consistency of approach across a department or organisation.

The applicant must be given the reason for the refusal of the request, and upon further request, the grounds in support of that reason. Reasons should not just be a bare statement of the section or subsection of the act relied on as authority for the protection of the information, but should expand on this,

placed, inserted more frequently and/or more widely, using larger type etc, or they may benefit from text revision, especially where the standard form of words used has been unchanged for years.

(f) Publications and Records

It is important that staff have every assistance for handling requests. Questions which should be answered include:

- whether lists and descriptions of published material are available up-to-date and readily obtainable (giving information on prices, where the publications are obtainable from etc).
- Whether the department/organisation has a more comprehensive list of records than that in the Directory of Official Information available for public perusal and for use by staff.

3. PROCESSING REQUESTS

(a) FORM OF REQUEST FOR INFORMATION

Requests for information can be made orally by telephone or personal application or in writing. There will not be a prescribed form of request for information. However it is likely that an information leaflet will be issued that contains in part a guide to making requests. More detail on this aspect will be advised in a forth coming newsletter.

A request should contain sufficient detail to identify the information sought, but departments and organisations should be prepared to re-formulate or clarify requests, in order to provide more adequate information if necessary. It should be recognised that many applicants may be unsure of which department or organisation to approach, or may not be able to provide a specific identification of the document in which they are interested. It may, for example, be sufficient to make a request by reference to a newspaper report on the subject matter.

Requests should be promptly transferred to the appropriate department or organisation if they have been incorrectly directed, and the person making the request informed accordingly.

(b) APPROVALS

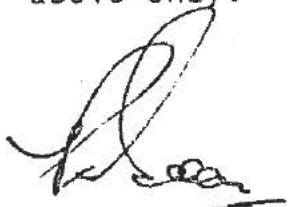
(i) Routine Requests

Many requests will be of the routine variety previously received and handled by departments and organisations, and no new or additional mechanisms will be needed to deal with them: the new legislation should in no way make it more complicated or difficult to gain access to information.

Again an internal review system would help make policy consistent across the department.

(iv) Section 10: Refusals to Confirm or Deny the Existence of a Document

Where a request is made for access to a document or information where confirmation or denial of its existence would in itself be reasonably expected to cause damage to those interests protected by Sections 6, 7 and 8 of the Act, a department or organisation is not required to give any information as to whether the document exists or not. In such a case, the applicant must be informed in writing that the department or Minister will neither confirm nor deny the existence of the document and of their right to appeal the decision to the Ombudsman. A decision of this kind should only be taken at the highest level; we would recommend deputy permanent head or above only.



P W Boag
Deputy Chairman

RELEASED UNDER OFFICIAL INFORMATION ACT

explaining the reasons in laymans language (eg a refusal under Section 18(d): "This information will be released publicly in the form of a pamphlet, published by the Government Printer and available from Government Bookshops from the 1st September.")

The applicant must be advised of the right of investigation and review by the Ombudsman whenever a refusal is notified.

(iii) Modifications/Deletions

Under Section 17 of the Act, "where the information requested is comprised in a document, and there is a good reason for withholding some of the information contained in that document, the other information may be made available with such delegations or alterations as are necessary."

A "good reason for withholding information" would be if the document contained some material exempt under Sections 6, 7, 8 or 9 of the Act, e.g.

- a document containing non-exempt matter and an extract from a Cabinet document
- a document containing non-exempt matter and information relating to the personal affairs of a person.

Any modification or deletions must be made by an officer holding delegated authority. The grounds for making the changes must be documented so that a review may be undertaken if necessary. As with refusals, an internal back-up system reviewing the decision is suggested.

The applicant must be given the reason for withholding the information, and, if the applicant so requests, the grounds in support of that reason.

The applicant must also be informed of the right to a review of the decision by the Ombudsman.

Copies of documents should not be simplified on the grounds that a lay person may not be conversant with the terminology used in the document. However, it would be acceptable to also provide an applicant with a separate amplification or explanation of the document.

(iii) Conditions on Release

Implicit in the provisions of the Act is the release of otherwise restricted information for special purposes where this is considered to be in the public interest, for example to bona fide researchers.

Such cases should only be decided by officers with delegated authority and there must be sufficient documentation of the decision taken and grounds relevant to it for review purposes.

for information, but the following factors should be considered now in order to make the lines of communication as open as possible.

(a) Telephone Techniques

As probably the first contact point with the public, it is important that telephonists are aware of the new legislation and able to provide as direct a line of access as possible to the information requested. This may involve directing the call to the contact officer designated to deal with information requests, or to the specific officer in charge of the area the request relates to. Responsibilities within the department must therefore be clearly defined so that inquiries may be "directed on" efficiently.

(b) Reception Area and Counter Attendance

Departments and organisations should review the procedures and techniques used in reception and consider the likely impact of a possible influx of requests on that system. Front-line staff need to be able to channel requests further up the department or to another department, to help applicants identify the information they seek, and to know what internal rules there are with regard to material protected from disclosure.

Reception areas and offices of importance to the public (eg information/public relations offices) should be easily accessible (to disabled people etc) and well signposted. Officers who have frequent contact with the public should have name-plates or other forms of identification.

(c) Current mechanisms for distributing information

The procedures for routine distribution of information may need improvement: are they efficient, flexible and capable of expansion? The distribution of pamphlets, brochures and other publications to the public (e.g. through libraries, information centres) should be monitored to ensure they are kept updated and the intended audience is reached.

(d) Location and Use of Noticeboards

Public noticeboards are sometimes used as a means of releasing information. They should be obviously placed and easily accessible. Information posted on them should be readily understood kept up-to-date and relevant. When using a noticeboard it is important to appreciate the limitations of the approach and supplement with other methods of communication as appropriate.

(e) Form and Layout of Newspaper Notices

Departments and organisations should re-examine their use of newspaper notices and advertisements. They may need a "higher profile" to gain more public attention, eg by being better



THE PUBLIC SERVICE OFFICIAL CIRCULAR

Information of General Interest

1. OFFICIAL INFORMATION ACT 1982

This Act comes into force on two dates; that part which established the Information Authority took effect from 17 December 1982 and the remainder will apply from 1 July 1983.

The purposes of the legislation are stated in the Act. They are:

- To increase progressively the availability of official information to enable people to participate more effectively in the making of laws and policies;
- To increase progressively the availability of official information to promote the accountability of Ministers and officials;
- To provide proper access by individuals to information about themselves;
- To protect official information to the extent consistent with the public interest and the preservation of the privacy of the individual.

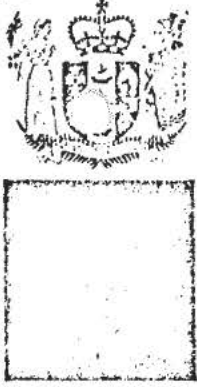
In achieving these purposes the principle of availability will be:

- That information *shall* be made available unless there is good reason for withholding it.

As at present, official information may only be released by authorised officers. Undoubtedly there will continue to be a substantial volume of information released on a routine basis as part of an officer's normal duties; indeed such practices are to be encouraged. However, there will be information, the release of which can only be approved by an officer holding delegated authority from the permanent head. These officers will be familiar with the provisions of the Act and trained to take such decisions. Before 1 July 1983 all staff must familiarise themselves with the departmental policy on handling routine requests for information and know where to refer other requests for decision. Appropriate instructions will be available from your department.

To a large extent the effectiveness of this legislation will be determined by the attitude of those to whom requests are made. Decisions must be prompt, reasonable, and at all times reflect the purpose of the Act and principle of availability. All staff, but especially those who will hold delegated authority to make decisions, should ensure that they understand the implications of the legislation before it comes into force.

(SSC 21/5/5)



THE PUBLIC SERVICE OFFICIAL CIRCULAR

Information of General Interest

1. OFFICIAL INFORMATION ACT

A video programme entitled "A Whole New Act" has been prepared by the State Services Commission as a training/information aid in respect of the incoming Official Information Act. The tape is of approximately 14 minutes duration and covers the basic principles contained in the legislation.

The State Services Commission Video Unit will provide copies of the programme to departments on the following basis:

1. Departments must provide their own blank (new) tapes with minimum length of 15 minutes.
2. The blanks are to be delivered to the Video Unit Sydney Street East; if that is not possible the Training and Development Division 6th Floor Reserve Bank Building will accept tapes on behalf of the Unit.
3. Each tape must be clearly identified as to department and contact person.
4. The Video Unit is equipped to copy in the following formats:
 - (a) VHS ½" Cassette—all makes
 - (b) U-system ¾" Cassette—all makes
 - (c) EIAJ ½" Cartridge—Hitachi model SV630 (*See note)
 - (d) SONY ½" Reel to Reel CV 2100 series
 - (e) IVC 1" Reel to Reel

Users with other formats may have to supply a recorder for their copy work. Those in doubt should ring 725-639 Extension 803 and talk with either Trevor Brown or Gordon Cooper. (*Note because of a compatibility problem between different makers, users of National EIAJ ½" cartridge will have to supply a machine.)

(SSC 26/4/112)

22 FEB 1983

OFFICE OF THE

STATE SERVICES COMMISSION

PRIVATE BAG · WELLINGTON · NEW ZEALAND

Reference

SSC 21/5/5

Telephone 725 639

Reserve Bank Building

Circular Memorandum 1983/12 (G)

Officer for Enquiries: I H Miller, Assistant Director Information Unit

Permanent Heads
Chief Executive Officers of Organisations

OFFICIAL INFORMATION ACT: IMPLEMENTATION NEWSLETTER NO 1

1 Introduction

This is the first of a series of newsletters which will be issued during the period leading up to 1 July 1983, the day on which the Official Information Act 1982 comes into force. Procedures, policy, definitions and general guidelines will be promulgated to assist all departments and organisations achieve as smooth a transition to the new era of access to official information as possible. Much of the material will later be incorporated into a handbook for staff but in the meantime these memoranda should be given as wide a circulation as possible and retained as reference material.

2 Commencement Date

The Act comes into force on two dates; that part which set up the Information Authority took effect from 17 December 1982, the remainder comes into force on 1 July 1983. From that day forward requests for information will be processed on the principle that access is a right unless one of the specified grounds for withholding applies.

3 The Information Authority

Sir Alan Danks, who headed the committee which prepared the first draft of the bill has been appointed the Chairman of the Authority. The members are Mr I G Lythgoe, a former chairman of the State Services Commission, and Mrs Shirley Maddock, a writer.

The Information Authority will not handle individual cases concerning access to information. This will be the function of the Ombudsman. The Authority will be concerned with the operation of the law, including its compatibility with other laws relating to the handling of information, and will report on its possible extension to other bodies. It also has important functions in relation to personal information, looking at the powers to request and hold such information, the purposes for which it is held, levels of accessibility, and the prevention of improper use.

4 The Information Unit

Mr Peter Boag, Deputy Chairman of the Commission is acting as the Director of the Unit and Ian Miller has been appointed Assistant Director. An advisory officer will be appointed shortly.

The Unit was established to assist any department or organisation meet the requirements of the Act. Its functions include stimulating changes in attitudes and practices, helping to set administrative changes in motion, and overcoming the practical problems of responding to information needs. The current major task is coordinating the preparation of the Directory of Official Information.

A more detailed description of the functions and responsibilities is contained in the Supplementary Report of the Danks Committee in paragraphs 4.03 - 4.22.

5 Arrangements for Decision Makers

A series of training seminars have already been conducted by the State Services Commission for senior Head Office personnel, and during the next few months departments and organisations should be making a concerted effort to extend this training to all staff. The objective will be to have all staff familiar with the aim of the legislation and to equip those who have been given decision making authority with the necessary skills with which to make the correct decision.

In order to promote the effective implementation of the legislation, only specified officers holding a delegated authority will be authorised to decline a request for information. It is anticipated that this approach will allow previous practices for releasing information to remain in place. Indeed every effort must be made to avoid the implementation of this legislation adversely affecting existing arrangements for the prompt release of information.

6 Liaison between Departments

It is important that there be consistency of practice between departments sharing responsibility for any matter of public concern. The Commission is aware that discussions have already taken place between some departments with the aim of securing agreement on the processing of requests for information. However all Permanent Heads of Departments and Chief Executives of organisations are asked to

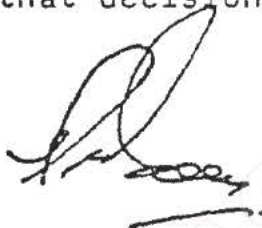
now review their functions and responsibilities and identify those areas where a joint interest and/or responsibility exists. Where these occur, arrangements for the handling of requests for official information are to be made between the departments/organisations concerned before 1 July 1983.

7 The Official Information Directory

The Commission was aiming to have the directory published as near to 1 July 1983 as possible. However, due to the delays in supplying contributions from departments and organisations, we will not be able to meet that date. A revised production schedule will be released shortly.

8 Enquiries about the Official Information Act

Every effort will be made to anticipate possible issues of concern or interpretation and deal with them by way of this newsletter or directions. Departments are invited to forward inquiries which may have across the board implications to the Information Unit in order that decisions may be shared as widely as possible.



P W Boag
Deputy Chairman,
Protem Director Information Unit

OFFICE OF THE

**STATE
SERVICES
COMMISSION**

PRIVATE BAG WELLINGTON NEW ZEALAND

Reference SSC 21/5/5

Telephone 725 639
Reserve Bank Building

2 February 1983

Circular Memorandum 1983/6 (G)

Officer for Enquiries : I H Miller, Extension 713

Chief Executive Officer

Permanent Heads (for information only)

OFFICIAL INFORMATION ACT : THE DIRECTORY OF INFORMATIONINTRODUCTION

As you are aware you are one of the organisations subject to the provisions of this Act.

Section 20 of the Official Information Act 1982 requires the State Services Commission to publish a directory of information including a contribution from every department and organisation which is subject to the provisions of the Act. The Act also specifies the broad categories of information to be included and requires contributors to assist by supplying the State Services Commission with such information as is required.

PURPOSE OF THE DIRECTORY

One of the major purposes of the legislation is:

"... to enhance respect for the law and to promote the good government of New Zealand".

This is a general objective, the beneficiaries of which would be New Zealanders as a whole and not the individuals or organisations which make requests. To facilitate the attainment of this objective a directory is to be produced which will allow a better understanding of the way departments and organisations are structured, what their functions and responsibilities are, what information is available and where to obtain it. The directory is to be widely available through libraries, post offices etc.

CONTRIBUTION REQUIRED

You are requested to supply the following information set out in the following format:

- (a) A description of the organisation (how is it structured, what are its functions and responsibilities including those of any statutory officers or advisory committees. In short, a 'word' picture of the organisation. Historical information is not required since we are concerned only with the here and now in this publication).
- (b) A general description of the categories of documents held. (This Act gives a wide definition of the word 'document' - section 2 refers). It is useful to include a brief explanatory statement following a specific heading viz
- computer tapes: these contain the monthly and cumulative expenditure and revenue returns for sub offices.
- personal files: brief details of employment history for each employees.
- (c) A description of all manuals and like documents. (The Act limits the application of this requirement to information on which decisions affecting any person or body of persons in his or its personal capacity are made. Purely technical manuals - how to operate a piece of machinery etc - are excluded. In practice it is sometimes difficult to categorise manuals and like documents and where this happens we advise you to include reference. The only ground for not disclosing the existence of a manual or like document is where this would itself constitute a breach of either section 6, 7 or 8 of the Act. Please refer such cases to the Commission for confirmation before making a decision to exclude.)
- (d) A guide to obtaining information including the designation of those to contact. (Where should an information seeker call or address their request and to whom?)
- (e) An index of key words and/or phrases in the draft.

Over 180 departments and organisations will be contributing to the directory and you are asked to bear this in mind when considering the page length of your contribution. We are looking for draft copy which is informative, succinct and helpful. Many contributors will be preparing more detailed publications for 'in-house' use including an archival listing of files and other documents. We would encourage this approach as a further aid to information accessibility.

TIMETABLE

The Commission is anxious to release the directory as close to 1 July 1983 as possible. To this end we would like your contribution by 11 March 1983. Later we will forward galley and page proofs to you as they are received from the Government Printer and also contact you if any changes/additional information is required. In every case we seek your co-operation in meeting specified deadlines.

FORM OF THE PUBLICATION

It is intended to produce the directory on A5 size paper with a glued and sewn cover. At this stage we cannot state the number of pages with any degree of certainty as this will depend on the length of drafts submitted. However we would envisage something in the order of 3-400 leaves. The cost per directory will be announced once the unit volume of production is known. Copies will be on sale at Government Bookshops.

A new directory or updated supplements are to be produced each year. To this end the Government Printer will maintain a computer file of contributions and future amendments will simply involve altering that record. The directory will also be available on microfiche and the possibility of having computer compatible storage media, including word processor floppy discs, available in future years is under examination.

LIAISON AND CONSULTATION

If you have any queries regarding the directory or any other aspect of the legislation feel free to contact Mr Ian Miller, Assistant Director of the Information Unit, State Services Commission either by writing or phoning the address given on the letterhead. Further memoranda issued from this office will be distributed to you for your information as released.



A C Davis
Secretary

OFFICE OF THE

**STATE
SERVICES
COMMISSION**

PRIVATE BAG · WELLINGTON · NEW ZEALAND

S.S.C. CH. CH.
21/5/82 (ED)

Handwritten initials/signature

Reference

SSC 21/5/5

Telephone 725 639

Reserve Bank Building

23 December 1982

Circular Memorandum 1982/134 (G)

Officer for Enquiries: I H Miller, Extension 844

Permanent Heads and Chief Executive
Officers of Contributing Organisations

OFFICIAL INFORMATION ACT: PREPARATION OF THE DIRECTORY (S.20 REFERS)

1 Circular memoranda 1982/56 (G) of 25 May and 1982/89 (G) of 23 August 1982 refer.

2 Now that the Act has been passed we can confirm our earlier advice on the form and content of the directory. In particular, the amendment to S.20 (1) (b) has clarified the issue as to how much detail is required in the description of records by specifying that a general description of the categories of documents held is required. From the early drafts received from contributors it appears most have opted to give a brief outline of the material held under activity or category heads viz Staff, Stores and Equipment, Inspections etc. This approach is in line with the directory objective of allowing inquiries to be focussed on the correct part of the organisation.

3 As indicated earlier, the draft material should be in the following format:

- (i) A description of the department/organisation;
- (ii) A general description of the categories of documents held;
- (iii) A description of all manuals and like documents;
- (iv) A guide to obtaining information including the name and designation of those to contact.

Drafts must follow this order and will be returned for revision if they do not.

4 The Commission aims to have the directory available for release in early June 1983, although this is subject to Government approval. Needless to say there is considerable work to be done

before then and we will require the utmost co-operation from contributors. To this end Permanent Heads will be asked personally to accept responsibility for ensuring that any deadlines are met.

5 The tentative production timetable will be as follows:

- . Drafts returned to contributors if necessary with suggested amendments by 31 January 1983.
- . Drafts sent to Government Printer progressively up to the end of February 1983.
- . Galley proofs to contributors for checking mid-March 1983.
- . Page proofs to contributors for checking by end April 1983.

Directory available for distribution from 1 June 1983.

6 It is intended to produce the directory on A5 size paper with a glued and sewn cover. At this stage we cannot state the number of pages with any degree of certainty as this will depend on the size of the drafts submitted. However, we would envisage something in the order of 300-400 leaves. The cost per directory will be announced once the volume of production is known.

7 A new directory is to be produced each year. To this end the Government Printer will maintain a computer file and future amendments will be by way of updating names or dates etc and adding/deleting sections as the need arises. The directory will also be available on microfiche. The possibility of having computer compatible storage media including word processor flexible disc available in future years is under examination.

8 Details of distribution arrangements and policy on charges for copies are yet to be determined and will be announced later.

9 One matter which has not been mentioned earlier is the incorporation of a subject index into the directory. To facilitate this each department is asked to mark up a copy of their draft material for indexing purposes by highlighting key words or phrases in yellow highlighter and to submit that additional draft by 11 February 1983.

10 Further details on the production, timetable and directory costs etc will be released in the New Year.

11 This circular will not be published in the Public Service Official Circular.



A C Davis
Secretary