



Te Kawa Mataaho

Public Service Commission

6 November 2020

9(2)(a) privacy
9(2)(a) privacy

Dear 9(2)(a) privacy

Official Information Request

Our Ref: OIA 2020-0079

I refer to your official information request received on 15 October 2020 where you have asked:

"I am seeking information about the Royal Commission of Inquiry into Genetic Modification (GM) that was held in 2000.

In particular, I am wanting all information held about discussions from and including 1 December 1999 to 1 March 2000 about a possible inquiry. I am aware, for example, that the then State Services Commissioner, Michael Wintringham, wrote a letter in January 2000 to Ray Salter, saying that such an inquiry was expensive. I would like a copy of that letter and any other communication or discussion or advice about an inquiry into GM within the above dates."

In response to your request, Te Kawa Mataaho Public Service Commission (the Commission) have performed a number of searches of our system for any documents or communications in relation to the scope of your request, for the period of 1 December 1999 and 1 March 2000.

Information being released

Please find enclosed the documents listed in the table below, that were located through these searches.

Item	Date	Document Description	Decision
1.	27 January 2000	Letter to Ray Slater titled independent inquiry into genetic modification	Released in full
2.	8 February 2000	SSC Internal memorandum	Released in full

If you wish to discuss this decision with us, please feel free to contact Ministerial.Services@publicservice.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 Te Kawa Mataaho Public Service Commission's website.

Yours sincerely

Nicky Dirks
Managing Principal – Ministerial Services
Te Kawa Mataaho Public Service Commission

27 January 2000

Ray Salter
Manager, Resource Management Group
Ministry for the Environment
PO Box 10362
WELLINGTON

Dear Ray

INDEPENDENT INQUIRY INTO GENETIC MODIFICATION

1 Thank you for the opportunity to comment on the draft Cabinet paper on the independent inquiry into genetic modification. As discussed on the e-mail comments on the paper will be restricted to the options for an independent inquiry, the associated costs and the outcomes of the inquiry.

2 The State Services Commission considers that the paper does not present a sound argument to support the recommendation for a Royal Commission of Inquiry. In many circumstances the Royal Commission option is expensive, resource intensive and time-consuming. It is not clear that the inquiry into genetic modification justifies such a mechanism. The criteria the paper puts forward of independence, accessibility and effectiveness can all be met by a less formal and more flexible inquiry mechanism.

Criteria for Assessing Options

3 The three criteria put forward appear to be a fair reflection of the meeting that took place between officials on 20 January. However, the supporting comments are not particularly explanatory.

4 In the paragraph on independence (para 18; line 3-4) for example, it is also likely that some members of the public perceive the current Government as being *against* biotechnology. The comment is not informative or helpful. Similarly, the statement about the need for commitment on the part of the Government to deliberate and act on the findings and recommendations of the inquiry is factually incorrect and not related to the issue of independence.

5 Setting up an inquiry *implies* a commitment by Government to act on the resultant findings and recommendations, but the Government is in fact not *required* to give such a commitment, nor to adopt or act on any of the findings of the inquiry. This applies equally to whatever option for inquiry the Government chooses. They are no more required to act on the findings of a Royal Commission than they are to any lesser form of inquiry, although in the former case there may be greater pressure to explain why they failed to act or adopt the recommendations provided.

6 The most important issue relating to the 'independence' criteria is the need to ensure the inquiry is carried out by people who have the capacity to be well-informed about the complexities of the issues involved, but are not seen to be associated with particular interest, lobby or political positions. The text should make this clear.

7 The 'effectiveness' criterion is not so much of one of credibility but rather ensuring that the right inquiry mechanism is used to achieve the outcome required. This requires clarity about the outcomes sought and the scope and nature of the inquiry as a means of evaluating the inquiry model options. This does not come across in the current text.

Types of Inquiry

A Royal Commission or Commission of Inquiry

8 Para 20 would be a good place to point out that the Government can be placed under pressure to provide explanation should they choose not to adopt the recommendations of a Royal Commission or a Commission of Inquiry. It should also be made clear that they are not required to adopt any recommendations made.

9 It is unclear in paras 22 and 23 how the appointments to the Royal Commission and the Commissions of Inquiry are made and by whom. It is argued that independence is achieved by reporting to the Governor General and separation from Government, but it is unclear who appoints the Commission and therefore whether the independence is real, or perceived. This is an important point because para 26 argues that a Ministerial Advisory Committee is somehow less independent because Government appoints the members. In fact, the Governor General appoints on the recommendation of Cabinet in the former case, and in the latter a Minister appoints on the approval of Cabinet. Both processes are therefore dependent on the recommendation of Cabinet and the issue of independence is not a product of the model of inquiry used, but the application of neutrality and integrity associated with the appointments process.

Ministerial Advisory Committee

10 Paras 26 and 27 are somewhat misleading. While an Advisory Committee does report to a Minister the conventions of collective responsibility do ensure that any inquiry on an issue of this level of importance is presented to Parliament, and any decisions made in relation to it are unlikely to be compromised.

11 Para 26 the phrase "...acting to serve the Government's interests" sounds like an assumption of policy bias. If the committee can be seen to be advancing the policy position of a particular political party, then the credibility of the process may be compromised. However, any inquiry is and should be acting to serve the Government's interests, i.e. to identify the scope and nature of the issues involved in genetic modification and advise on the most appropriate way of handling them. Para 26 should be modified to make this point more clearly.

12 The case against using the Parliamentary Commissioner for the Environment is not accurately made or substantiated. The paper states that the functions of the Commissioner are too narrowly defined for it to be an appropriate option. This conclusion does not make sense in respect of the provisions of the Environment Act 1986 s16(e), s(16) (2) or (s16(3)). The provisions for the Commissioner to be directed by Parliament are comprehensive, and the final sentence of para 30 is puzzling.

13 If the Government sees genetically modified organisms as having actual, or the potential for, *a substantial and damaging effect on the environment* then presumably using the PCE to carry out the inquiry is a reasonable option. One has to assume that the Government does have such a view given that they see the need for an inquiry in the first place. The argument the Ministry has put forward in the paper regarding the narrowness of the Commissioner's functions therefore does not hold sway.

14 If however, the Ministry wishes to present the issue as one which is beyond the realm of environment and covers applications to human genetics, foods, medicines and so forth then the case stating the narrowness of the term 'environment' needs to be made more clearly. Again, this is about the scope and nature of the inquiry and this is not covered in the paper before the options are discussed.

15 The argument that the PCE is a part of the overall machinery of government (para 30) is erroneous. The issue of independence relies on the perception of transparency and lack of bias in process. The PCE is as independent as any other body in government such as the Policy Advisory Council, the Commissioner for Children, the Auditor-General or the Ombudsman.

Assessment of Options

16 The assessment presented is inadequate and relies on some incorrect assumptions. A clearer description of how the criteria are applied and the benefits and weaknesses of each model against the criteria could strengthen this section. An analysis of the outcomes sought and the degree of powers and processes needed to achieve those outcomes is required, and this does not come out in the paper as it is currently written.

Financial Costs

17 There is more flexibility in the fees situation than is presented in this section of the paper. While the State Services Commission provides general guidelines, it is up to the Ministers to set the fees as they see as appropriate for the circumstances. The Minister has to get the approval of his/her colleagues to change, but the fees indicated do not bind Cabinet. This point should be made clear to Ministers. If you require further information on this please contact David Cox at the State Services Commission.

18 Para 43, last sentence should read 'legalism of the proceeding' not 'legality'.

Outcomes of the Inquiry

19 It may be more useful and easier to read if this section of the paper comes before the discussion of options, and sets the context for which options can then be assessed.

20 The section on 'current situation and constraints' is largely background work that should be carried out by agencies supporting the inquiry (e.g. the Ministry for the Environment). This does not have to be included in the work of the inquiry, and given the tight timeframes should not be. Perhaps this text could be modified to a contextual explanation suggesting that this type of information could be collated and provided to the inquiry as an input to their deliberations.

Conclusion

21 The State Services Commission does not support the conclusions of this paper with respect to the choice of option for the inquiry into genetic modification. The scope and nature of the inquiry is not clear, and therefore the assessment of the appropriate option to best deliver the outcomes required is not strong. It is the Commission's view that a less formal, and less costly form of inquiry could be used to carry out this inquiry. The arguments put forward for a Royal Commission of Inquiry are not convincing. I am happy to discuss the points made above and can be contacted on 4956689.

Yours sincerely

Rose O'Neill
for State Services Commissioner

RELEASED UNDER THE OFFICIAL INFORMATION ACT

SSC INTERNAL MEMORANDUM

Government Management Branch

File Ref:

To: Michael Wintringham
Ross Tanner
Lyn Provost
Derek Gill

CC: Andrew Hearn and Kevin Kelly

From: Rose O'Neill and Tom Berthold

Date: 8 February 2000

Subject: **ADVICE ON INQUIRY INTO GENETIC MODIFICATION**

Background

1 On Friday 4 February 00, an article appeared on the front page of the Evening Post entitled *Frustrated PM lashes public service*. The article reports the PM as heavily criticising public service officials for providing advice contrary to the policies of the present Government and suggesting bias on the part of officials in favour of policies of the previous Government. A copy of this article is attached.

2 We thought it useful to ensure you are aware of SSC involvement in providing advice to Ministers on options for carrying out an inquiry into genetic modification.

Sequence of events

3 In the Speech from the Throne on 21 December 1999, the Prime Minister said "A Royal Commission into genetic modification will be established". Two days later, in a letter dated December 23 1999, the Prime Minister asked the Minister for the Environment to provide an early February Cabinet paper setting out options for an independent inquiry into genetic modification, including options of a Royal Commission or a less formal ministerial inquiry. The Prime Minister asked that the Cabinet paper included an estimate of costs for the various options, the nature of their inquiry powers, an assessment of their likely effectiveness and draft terms of reference. In the same letter the PM also requested advice on a moratorium on genetically modified organisms.

4 On 20 January 2000 the Chief Executive of MfE, Denise Church, chaired a meeting of officials to discuss the paper to be considered by Cabinet on 14 February 2000. Officials from 14 different departments and agencies attended this meeting including SSC, Treasury,

DPM&C, Commerce, DIA, MORST and ERMA as well as those departments from the environmental sector. Rose O'Neill represented SSC as the Desk Officer for MfE.

5 The discussion at the meeting was wide ranging including:

- debate on the scope and nature of the inquiry
- identifying the range of possible stakeholders and their various interests
- identifying the range of options for the form of inquiry that might be put forward to the Government for consideration, and
- discussing the possible options for a moratorium on the commercial planting of GM crops, which the PM had also foreshadowed.

6 Officials expressed a range of views on the possible options for form of inquiry. Some felt bound by the PM's Speech from the Throne to only discuss the Royal Commission option. Others felt that as the PM's request for advice on options had been made subsequently it was incumbent on us to explore the full range of options available and advise on the relative powers, procedures, administration, effectiveness and costs of each option as requested. SSC supported the latter position.

7 It was agreed that the Ministry for Environment would shape the discussion held at the meeting into two papers for discussion, one on the form of inquiry and the other on the options for a moratorium which would be circulated for consultation. SSC elected to restrict our input to the issue of the form of the inquiry and not comment on the moratorium issue.

8 The first draft of the paper contained an inadequate analysis of the options for inquiry. The draft was discussed amongst Rose O'Neill, Tom Berthold and Shaun Slattery and a full response to the paper was submitted (attached) to MfE. The second draft contained a split recommendation between a Royal Commission (MfE) and a Ministerial Advisory Committee (Tsy and SSC).

9 The new draft was again discussed in-house, and Rose O'Neill spoke to Christina Wells in MfE expressing dissatisfaction with the analysis that had been provided, and explaining that the split recommendation did not adequately represent the SSC's views. It was pointed out that the paper did not distinguish between a Royal Commission and an ordinary Commission of Inquiry and adequately make a case for the former. SSC advised that we could accept a recommendation for a Commission of Inquiry. Christina agreed to address the issues of analysis raised with her and text was e-mailed to her to insert in the consultation section (see attached) in the case that the Ministry opted for the Royal Commission option over all the others.

10 A third draft was submitted by MfE to the Minister for the Environment on Tuesday 2 February without further consultation with officials. In an e-mail on 3 February MfE advised they were not intending to circulate further drafts until after coalition talks had been held and any further changes the Minister requested were finalised.

11 Following the appearance of the Evening Post article on 4 February Rose O'Neill spoke to Ray Salter, Manager, Resource Management Group in the Ministry of Environment and a copy of the third draft was e-mailed to SSC (attached). Ray advised that the third draft contained only one recommendation and that was for a Royal Commission. He also said staff of the Department of the Prime Minister and Cabinet had contacted him concerned to ensure that the letter dated 23 December from the Prime Minister requesting the advice on options was not made public.

12 It should be noted that while the views of SSC and Treasury for a less formal form of inquiry were contained within the paper, they were not contained within the final recommendations to Ministers.

Issues for consideration

13 The following issues appear to require some further consideration:

- The Prime Minister's position as articulated in the Evening Post article represents a challenge to the constitutional obligation of public servants to provide Ministers' with free and frank advice before Ministers' make decisions.
- Given that the Commission will be providing advice across a number of sectors about the use of inquiries in the near future do we need an in-house position on forms of inquiry and when and how they should be?

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