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Responding to the call for more timely access to Official Information

New Zealand's official information legislation intended that official information would become more freely available whilst protecting it to the extent consistent with the public interest and the preservation of personal privacy.

There are within the legislation two key objectives affecting official information briefly summarised as availability and protection. Between these objectives and their correct application in any given instance lies the opportunity for disagreement which can translate into delay in accessing information requested.

There developed an early expectation of prompt availability and there has been an often expressed concern that it is taking longer than necessary to get the requested information, rendering it less useful.

The intention of the legislation is that the holder should respond to requests for information "*as soon as reasonably practicable*" and in any case nor later than twenty working days after the request is received.

With a view to making the review process relating to requests for information work more effectively to achieve the intent of the legislation, the Ombudsmen's Office has instituted a number of practical programmes as follows.

- Introduced a new case management system to minimise delays in the review process, so that information which should be released is released earlier.

- Published a series of Practice Guidelines to assist holders and requesters of information understand the principles behind the legislation and how the Ombudsmen approach chose principles. This means that there can be more certainty in the outcome expected from an Ombudsman's review encouraging earlier release where release is likely to follow any review.

- Introduced further flexibility into its review procedures designed to focus on the need for responses to be provided "*as soon as reasonably practicable*" in the review process.

My colleague and I hope that our efforts will result in a more timely release of information by organisations subject to the Official Information legislation and less demands upon their limited resources in responding to requests for information or an Ombudsman's review. It is to everyone's advantage to minimise delay and costs in the implementation of the legislation and thereby to help achieve the purposes for which the legislation was enacted.

Sir Brian Elwood
Chief Ombudsman

Ombudsmen to be seen more frequently in prisons

Arising from the Logan Report on incidents at Mangaroa Prison and at the request of the Minister of Justice and with the support of the Officers of Parliament Committee, the Ombudsmen are to increase the frequency of their presence in New Zealand prisons. The Logan Report recommended the establishment of an independent prison complaints authority. The increased presence of the Ombudsmen is an alternative and less costly approach to that recommendation.

The Ombudsmen's increased involvement, which is an extension of their current jurisdiction, will be subject to a review in 1997 but will provide increased access for prison inmates and staff to the services of the Ombudsmen in the investigation of complaints.

The Secretary for Justice, Mr John Belgrave, and the Chief Ombudsman, Sir Brian Elwood, recently signed a protocol to facilitate the increased involvement which will emphasise that the Department will strive to settle every complaint concerning prison administration directly with the complainant and at the lowest possible level of the organisation. The Ombudsmen will generally require a complainant to utilise the internal prison complaints process before becoming involved thus reinforcing the traditional approach that intervention by an Ombudsman is to be a last resort.

The Chief Ombudsman has appointed three staff to be specifically designated for the investigation of complaints from inmates and staff in New Zealand Prisons. They are:

* Philip Hooper for the northern North Island

* Lani Tupu for the southern North Island

* Robin Wilson for the South Island.

Is Building Consent Information private?

People wanting to build a new house or to make significant alterations to their existing house must in most cases apply for a building consent from their local authority. Building consents contain information such as the applicant's name, address, and the type of building work being undertaken.

In a particular case, a council refused to release building consent information on privacy grounds. The Chief Ombudsman noted that:

- In general, privacy grounds may be a reason for withholding under section 7(2)(a) of the Local Government Official Information and Meetings Act 1987 (LGOIMA);

- Section 44A of LGOIMA does not allow the withholding of information relating to building consents;

- The Building Act 1991 gives a statutory right to inspect and photocopy building consents and LGOIMA cannot be used to derogate from that right.

The Chief Ombudsman's view was therefore that under LGOIMA and the Building Act, the information had to be made available. The issue was left open as to whether this outcome was inconsistent with the Privacy Act, but the Chief Ombudsman noted that, in any case, the Privacy Act principles were subject to other legislation if they were inconsistent.

The Council accepted the Chief Ombudsman's analysis and agreed to release the information, other than the names of the applicants. As the requester was satisfied with this outcome, a formal recommendation was not necessary.

Correspondence with elected officials

Should members of the public be able to correspond with members of an elected body?

The Chief Ombudsman's view in a recent case was that while "private" addresses should nor be made available without the consent of the individuals concerned, there was a public interest in members of the public being able to correspond directly with persons elected to public positions. He suggested that a reliable "contact" address should be provided to satisfy that public interest.

Should rates be assessed on a userpays basis?

Many complaints made to the Ombudsmen's Office about local authorities relate to rating issues, with complainants often alleging that they do not receive adequate services in return for their rating dollar. Some complainants have gone so far as to suggest that a strict user pays philosophy should be applied to rating regimes, particularly where the rate is a special purpose one. However, one case that the Chief Ombudsman recently concluded illustrates that while rates must bear some relation to the level of services provided, local authorities are not obliged to adopt a narrow user pays approach.

The complaint at issue was made by a rural land owner whose property fell within the boundaries of a 'pumping scheme''. This scheme was established to alleviate flooding on productive land and the rates for it were set on a flat per hectare basis. The complainant argued that as part of his land was on a hillside, and therefore nor as prone to flooding, he should pay a lesser rate than the majority of the other property owners within the scheme. He had unsuccessfully asked the Council to reclassify the land in the scheme with a view to adjusting rating liabilities.

In concluding that the Council's decision was nor unreasonable, the Chief Ombudsman first considered the cost of reclassification, some $3500. This cost exceeded the annual budget for the scheme and its expenditure would, at the most, have saved the complainant $90 per annum. Secondly, he noted that it was impractical for all ratepayers to expect that the level of services or benefits received from their local authorities should be reflected precisely in the rates paid.

In making this point he referred co judicial comments on the subject, particularly in the case *Mackenzie District Council v Electricorp [*1992) 3 NZLR 41. In that case the Court held that while a local authority must have regard to the level of services when setting races it was not "obliged to adopt a narrow user pays approach".

To conclude, as the complaint involved a relatively minor anomaly and the landowner did receive some benefit in return for his pumping scheme races, the complaint was not upheld.

Accident report released

The Maritime Safety Authority was asked for a copy of an investigation report on a boating accident in which two men had died. The Authority consulted the widows on the question of release and both expressed a desire for the Information not to be made public.

The Ombudsman acknowledged the families' interest in not having what they considered to be a very personal matter highlighted again in the media. He agreed that there was a privacy interest which should be protected.

However, he formed the view that there was also a public interest in release of the information, in that release of the information would play a part in the prevention of boating accidents in the future. In this case, the Ombudsman decided that the public interest in release was stronger than the privacy interest in withholding.

Questions & Answers

Q: What is the situation if a person makes a request for information to a Government department or organisation that doesn't hold it?

A: If the Department or organisation does not hold the information, then it has an obligation to transfer the request to the Department or organisation believed to hold the information within 10 working days. If no other Department or organisation is believed to hold the information, then the request can be refused.

Q: Can a Department or organisation refuse a request on the basis that it is a "fishing expedition"?

A: No. Requests have to be specified with "due particularity", but this does not automatically exclude requests for a broad range of information. A request will meet the rest of "due particularity" if the information covered by the request can be identified by the Department or organisation.

Q: What if the Department or organisation cannot identify the information?

A: Holders of official information have a duty to give reasonable assistance to a person making a request. Therefore, in this situation the Department or organisation should discuss the matter with the person making the request.

Q: How long does a Department or organisation have to respond to a request?

A: Holders of official information must respond to a request "as soon as reasonably practicable". The maximum time for a response is 20 working days. A Department or organisation can advise the requester of an extension of time to reply to the request if it needs more time either to search for the information or to consult other persons on the request but must do so within 20 working days of receipt of the request.

For more information on the above issues and other administrative matters relating to the official information legislation please phone the Wellington Office of the Ombudsmen on (04) 473-9533.

Three new Practice Guidelines Issued

Three new Practice Guidelines have been issued and distributed to those who have received or purchased sets of Practice Guidelines.

Practice Guidelines No.8 deals with handling urgent requests.

Practice Guidelines No.9 deals with- frivolous and vexatious requests.

Practice Guidelines No. 10 deals with the Ombudsmen's approach to s.9(2)(g)(2) [s.7(2)(ii) LGOIMA] - the protection of officials from improper pressure or harassment.

The Ombudsmen as Officers of Parliament

Traditionally, in New Zealand, redressing citizens' grievances against the state was one of the roles of Parliament. This was carried our through MPs and their close involvement with their constituents. Since the introduction of the Ombudsmen concept to New Zealand, the Ombudsmen have shared some of these responsibilities. Hence, when the legislation establishing the Ombudsmen in New Zealand was adopted, the Ombudsmen were designated as Officers of Parliament.