



Issue 3 / Autumn 2013 | Share this email 

2013 is an auspicious year for open government with significant anniversaries for both the Official Information Act (30 years in July) and the Local Government Official Information and Meetings Act (LGOIMA). LGOIMA's 25th anniversary fell in March this year. It is somewhat fitting that Assistant Ombudsman Richard Fisher celebrates his personal quarter century at the Office this year too. He commenced his tenure at the time LGOIMA came into operation in New Zealand and much of his career has been assisting the Ombudsmen investigate complaints arising out of this jurisdiction.

In addition to our significant anniversaries, this OQR is themed by educational and Pacific issues, reflecting the Ombudsmen's current work. In the education area, we summarise the submissions the Chief Ombudsman made to the select committee on Partnership (Charter) schools and announce a major investigation that the Chief Ombudsman has initiated into consultation on school closures.

On the Pacific front, we describe a remedy that has just been announced as a result of the Chief Ombudsman's investigation into New Zealand's application of policies on Pacific residency quotas in 2004 and 2005, as well as recent assistance

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that the Office provided for the Cook Islands Ombudsman and the Tongan Acting Commissioner for Public Relations.

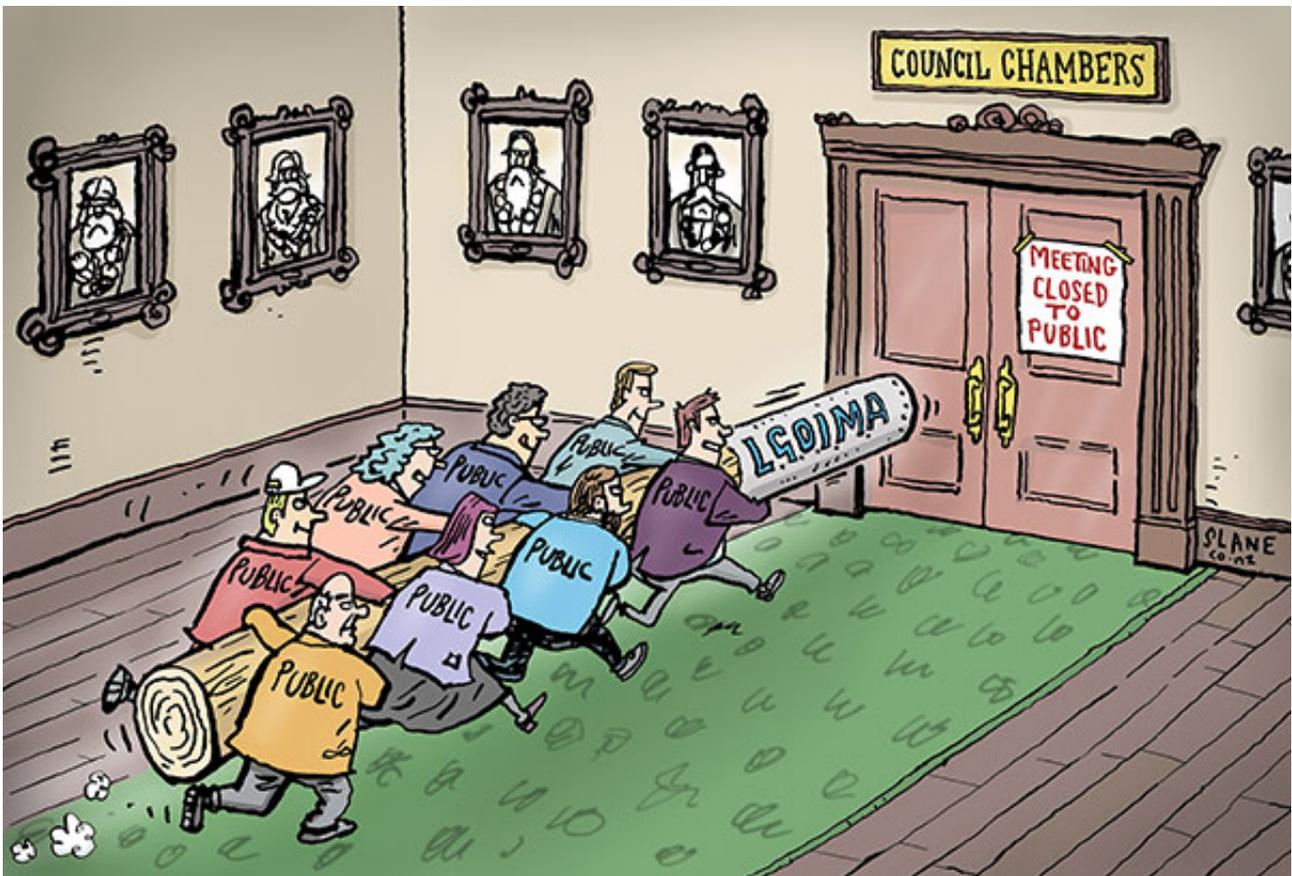
Finally, there are some retirements to mark too. Office taonga Eddie Twist is retiring after 26 years of dedicated service. This will also be the final OQR prior to the retirement of Ombudsman David McGee in May. Dr McGee's exacting yet common sense approach to investigations will be greatly missed. Our next edition of the OQR will feature a close up on Dr McGee's contribution to the office.

Milestones

The Office celebrates two significant anniversaries this month. Eddie Twist began working in the Office in February 1987 and has racked up 26 years of service. Over this long period, Eddie has worked in the areas of Housing, New Zealand Post, and Welfare Agencies. In recent years he has tended to specialise in matters related to the Ministry of Social Development, in particular, children in care. Eddie's work in this area has been marked by a deep sense of justice and compassion and his expertise and experience has made a significant contribution to the success of the Office in this very sensitive area. Eddie will be retiring at Easter and we wish him and his wife Paddy great joy in their coastal home in the Wairarapa.

Richard Fisher, who is Assistant Ombudsman of our Investigations and Resolutions Team in Auckland, recently celebrated 25 years service with the Office of the Ombudsman. As one of his colleagues observed recently, Richard epitomises the very best of what it means to be an Ombudsman both in terms of his management of the Office and, more importantly, the way in which he has sought justice for complainants where warranted, and assisted the agencies that we have oversight to be very best they can be. In his 25 years with the Office, Richard has dealt with all aspects of our jurisdiction under the Ombudsmen Act, official information legislation and Protected Disclosures Act. Latterly, he has tended to work primarily in both the local government area, navigating the complexities of the Auckland Super City, and in the Canterbury earthquake recovery and rebuild portfolio which has been an interesting challenge for Richard.

25 years of LGOIMA in New Zealand



The Local Government Official Information and Meetings Act (LGOIMA) commenced operation in New Zealand 25 years ago on 1 March 1988. The LGOIMA gives everyone the ability to request access to official information from local authorities, so that they can:

- have a say and an opportunity to influence the actions and decisions of local authorities;
- hold local authority members and their officials to account for any decisions or actions they take;
- understand why decisions were made which will enhance both respect for the law and promote good local government in New Zealand.

It also provides for advance public notification of, and public access to, meetings of local authorities and protects official information and the deliberations of local authorities – but **only** to the extent that is consistent with the public interest and the need to protect personal privacy in a particular case. The types of bodies this applies to are District, City and Regional Councils, School Boards of Trustees constituted under Part IX of the Education Act 1989, Health Boards, Licensing Trusts, Fish and Game Councils and Conservation Boards to name a few.

From 1 March 1988, the guiding principle all local authorities must apply when considering requests for access to official information they hold is *“that the information **shall be made available** unless there is a good reason (as defined in LGOIMA) for withholding it”*.

If a requester is not satisfied with a local authority’s response to their request, they are able to ask the Ombudsman to investigate and review what occurred.

In order to celebrate and promote 25 years of this important piece of legislation operating in New Zealand, we have published a guideline about accessing official information under the LGOIMA which is now available on our website. Also available on our website are:

- Our current guidelines on LGOIMA's meeting provisions;
 - Our current practice guidelines on the LGOIMA provisions applying to official information requests; and
 - Information about making a complaint about official information access under the LGOIMA.
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Chief Ombudsman launches investigation into school closure consultation

The Chief Ombudsman has initiated an investigation into the way in which the Ministry of Education conducts consultation on school closures and mergers.

The investigation arose out of an Ombudsman's inquiry last year into how the Ministry handled information requests about proposed closures and mergers in Christchurch. In the course of that inquiry a number of parties voiced dissatisfaction about the consultation process as a whole.

Under sections 154 and 157 of the Education Act, the Minister of Education is obliged to consult prior to closing schools and the Ministry plays a key part in assisting the Minister with those consultations. The investigation will focus on the actions of the Ministry of Education only and not the Minister herself, as the administrative actions of Ministers are not subject to an Ombudsman's oversight.

Dame Beverley will be looking in some detail at a number of closure and merger consultations carried out in recent years, including the process that is currently underway in Christchurch.

The purpose of the investigation is to determine whether there are any gaps or flaws in the consultation processes currently followed by the Ministry, and if so, to recommend better consultation processes for future school closures and mergers.

Dame Beverley is asking anyone who has information relevant to the investigation to contact her office by calling 0800 802 602, by filing an online complaint at www.ombudsman.parliament.nz, or by e-mailing info@ombudsman.parliament.nz (and entering "school closure consultations" in the subject line). It is expected that the investigation will be completed in the second half of this year.

Ombudsman's investigation results in second chance at visas for some Pacific people

In March, the Chief Ombudsman announced the outcome of her investigation into Immigration New Zealand's application of policies on Pacific residency quotas. Dame Beverley Wakem found there were systemic failures in the way these policies were applied between November 15 2004 and March 31 2005. As a result, Immigration New Zealand has agreed to invite people who meet certain requirements to have a second chance at obtaining a visa by submitting a visa request for consideration under s 61 of the Immigration Act 2009 (which has replaced s 35A of the Immigration Act 1987). Whilst these requests will be considered on their merits, it is important to note that the remedy does not include a guarantee that a visa will be granted. Information about the remedy and how to apply for it is available on our website in the following seven languages: Fijian, Fijian Hindi, Tuvaluan, Kiribati, Samoan, Tongan and English. Also available on our website is a case note detailing the Ombudsman's investigation that gave rise to this remedy. The closing date for consideration for inclusion in the remedy is **Monday 10 June 2013 at 5pm.**

New Zealand provides support to new Cook Islands Ombudsman



The Cook Islands Official Information Act celebrated five years of operation in February 2013. The Cook Islands OIA is based on New Zealand's OIA. Deputy Ombudsman Leo

Donnelly and Assistant Ombudsman (Policy and Professional Practice) Bridget Hewson, travelled to the Cook Islands last month to assist the recently appointed Cook Islands Ombudsman, Tearoa John Tini, deliver advice and training on the application of the Cook Islands OIA to its stakeholders. Mr Donnelly and Mrs Hewson were involved in meetings with the Ombudsman and his staff and delivered seminars and workshops to Ministers, Members of Parliament, Heads of Ministries, Chief Executives and the media about utilising the OIA to best effect. A media article on their visit can be viewed [here](#).

New Zealand Ombudsman provides support to Tonga



In March, we hosted the Acting Commissioner for Public Relations of Tonga, Mr Sateki 'Ahio, for three weeks, in order for him to learn about the role, functions and practicalities of being an Ombudsman. The legislation to create a Tongan Ombudsman has just finished public consultation and is due to be considered by Parliament later this year. It is modelled closely on the New Zealand Ombudsmen Act. Key areas covered during Mr 'Ahio's visit included:

- The relationship of the Ombudsman with Parliament
- How to maintaining independence from the Government of the day
- The Ombudsman's role as a information commissioner
- The practicalities of setting up an Ombudsman's office.

Mr Ahio's visit was funded by the Pacific Ombudsman Alliance (POA), a service delivery and mutual support organisation for Ombudsman and allied institutions of countries that are members of the Pacific Islands Forum (including ourselves). You can find out

more about the POA and its activities [here](#).

Partnership (Charter) schools submission

Early in February, the Chief Ombudsman made a written submission to the Education and Science Committee on the Education Amendment Bill, the legislative mechanism for setting up of partnership schools. She then appeared at the Select Committee hearing on 13 February to speak to her submission. Dame Beverley's submission related to clause 158X of the Education Amendment Bill which proposes to exclude charter schools from the jurisdiction of the Ombudsmen Act and the Official Information Act.

Dame Beverley made several key points in her submissions. She said that the nature and functions of partnership schools were such that their exclusion from both Acts created a constitutional anomaly. She expressed concern about the ability of partnership schools to provide a safe physical and emotional environment for students in the absence of transparency of information and independent oversight. She pointed out that the Education (Stand-down, Suspension, Exclusion and Expulsion) Rules 1999, to which partnership schools would be subject, would be difficult to enforce in the absence of a complaints mechanism. She also noted that the decision to exclude partnership schools from the Official Information Act was out of step with comparative international models. She sought to dispel concerns expressed by Ministers that the respective legislative regimes would result in "*costly and vexatious requests*" by explaining the charging mechanism for OIA requests as well as an Ombudsman's (soon to be legally augmented) jurisdiction to decline to investigate complaints. Dame Beverley concluded her submission by urging the Committee to recommend that partnership schools be made subject to both Acts. You can view Dame Beverley's written submission [here](#).

Subsequent to Dame Beverley's appearance to the Select Committee, Ombudsman David McGee released his opinion on the Associate Minister of Education's decision to withhold certain advice he had received relating to the development of partnership schools policy. You can read Dr McGee's opinion and recommendations [here](#).

Submission on the Prisoners' and Victims' Claims Bill

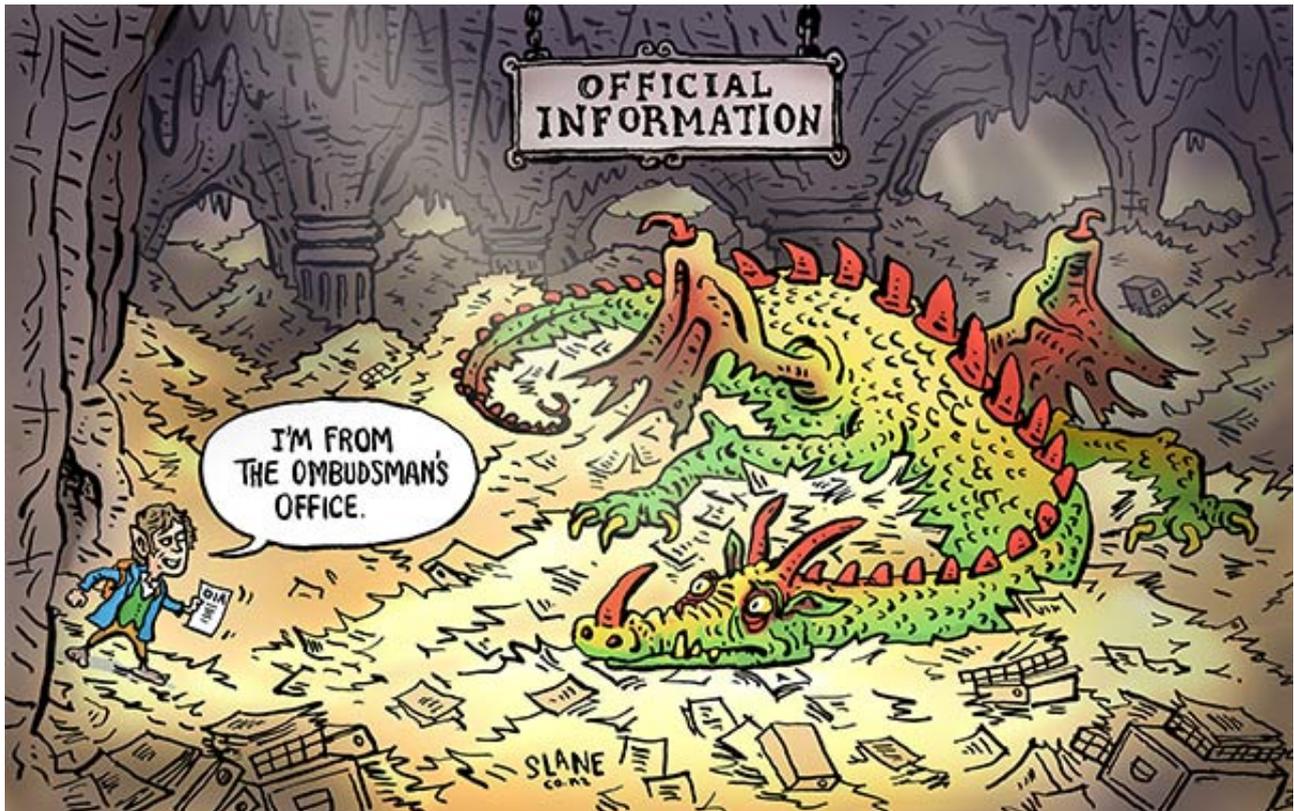
In February, the Chief Ombudsman also made a submission to the Justice and Electoral Reform Committee on the Prisoners' and Victims' Claims (Continuation and Reform) Amendment Bill. This Bill proposes to reform the legal arrangements for awarding compensation to prisoners for wrongs that occur in the corrections system, and for victims in turn to be able to make claims for wrongs done to them by offenders. In her submission, Dame Beverley expressed concern that the Bill provides neither a suitable way to compensate victims of crime nor to prevent abuse or mistreatment of prisoners

in accordance with New Zealand's international obligations. Dame Beverley's submission can be viewed [here](#).

New opinions on our website

The Ombudsmen have released a number of new opinions on our website. They can be found [here](#). These include the following:

Investigation into access to information about the production of "The Hobbit"



Ombudsman David McGee has published his opinion on the decision of the Minister for Economic Development to refuse requesters access to official information regarding the production of *The Hobbit* and film production generally in New Zealand. His key findings were:

- *Section 9(2)(ba) of the Official Information Act 1982 (OIA) did not apply to certain information which was supplied to the Government by the film industry third parties.* This provision was not intended to permit Ministers or departments to erect a barrier to the disclosure of general policy submissions made to them by third parties on the ground that an obligation of confidence thereby arises that is owed to those submitters.
- *Section 9(2)(h) applied to the legal advice obtained by the Government.* The conduct of Ministers was not inconsistent with maintaining the confidentiality of the privileged material. The public interest considerations which favoured disclosure did not outweigh the section 9(2)(h) interest, with the exception of one document, namely a letter which was drafted by Crown Counsel as part of advice to Ministers on

how to respond to submissions made by a film industry third party. Although this draft was never incorporated into a letter sent to, or formally received by, the film industry third party, it was shown to that third party at a meeting. While in its origin it may have been legal advice, it was adopted by Ministers as representing their own position. Ministers cannot expect their correspondence with third party submitters on issues of public policy to remain confidential (with the exception of personal or commercially prejudicial material), especially when matters which have been urged on Ministers are subsequently implemented by policy or legislative changes. The submitter's urgings and the ministerial response become part of the history (which the public has a legitimate interest in knowing) of how policy or legislation was developed.

- *Section 9(2)(g)(i) did not apply to certain submissions and comments that were made to Ministers by the film industry third parties.* While there will be circumstances in which persons may feel inhibited from making submissions by the prospect of those submissions being made public, this was not so in this particular case. The submissions and comments at issue here were made to Ministers by these parties were made in their own direct interests with a view to persuading the Government to a policy stance that advantaged them in their commercial dealings. There is nothing improper in this and it has not been suggested that there was. But it is not accepted that persons who have a commercial interest in making submissions to Ministers would be likely to be deterred from doing so by the prospect of release. They might prefer non-release, but release is a consequence that has to be, and is likely to be, borne with.

As a result, the Ombudsman recommended, pursuant to section 30(1)(a) of the OIA, that the Minister for Economic Development release certain information that had originally been withheld. Under section 32 of the OIA, a public duty to observe the Ombudsman's recommendation would have been imposed from the commencement of the 21st working day after the date of this opinion. This public duty applies unless, before that day, the Governor-General, by Order in Council, otherwise directs. The Minister accepted the Ombudsman's recommendation and released the information. You can read the full opinion of the Ombudsman [here](#).

Access to information about ministerial conflicts of interest

The Chief Ombudsman recently published her opinion on a series of refusals for information about ministerial conflicts of interest ([read the opinion here](#)). Dame Beverley accepted there was a need to protect certain information falling within the scope of these requests, namely:

- declarations of interest at Cabinet or Cabinet Committee meetings; and
- correspondence between Ministers and the Cabinet Office regarding actual or possible conflicts of interest.

However, she identified very strong public interest considerations in favour of disclosing other information about actions taken to address identified conflicts of interest, including the non-receipt of papers by Ministers, and transfers of responsibility to a department. Dame Beverley was of the view that such transparency

is essential to promote public confidence in the integrity of the executive government decision making process, and to ensure that Ministers and Cabinet are identifying and managing conflicts of interest appropriately.

The Cabinet Office agreed to release the information at issue to the requesters. More significantly, the Government has accepted the Chief Ombudsman's suggestion that ongoing availability of this type of information is in the wider public interest. Cabinet has approved a system of regular and proactive publication of measures taken in order to manage identified conflicts of interest. The Ombudsmen will have a role in monitoring and auditing the information that is made available.

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