

Closer scrutiny of government agencies prompted by OIA review

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The Office of the Ombudsman is putting government agencies under closer scrutiny following an in-depth review of their compliance with the Official Information Act.

The Chief Ombudsman, Dame Beverley Wakem, released a report today on her investigation into the practices adopted by central government agencies for complying with the OIA.

“This is the most in-depth review of the Act’s operation ever undertaken by my Office. More than 2,500 submissions and survey responses were considered, 300 officials and requesters interviewed, 37 visits to agencies conducted and thousands of documents reviewed. Domestic and international freedom of information experts and information commissioners were also consulted. I considered it necessary to take a more comprehensive look under the bonnet than can be done when investigating individual complaints, to see just how things are working,” says Dame Beverley.

“The principle and purposes of the OIA remain sound, but there is more work to do”, she says.

“A programme of proactively reviewing agencies’ practices against the requirements of the OIA will begin next year. The outcome of these reviews will be publicly reported to ensure the public has continuing trust and confidence in this cornerstone of New Zealand’s democracy.”

In addition, the Office of the Ombudsman will be issuing new comprehensive guidance and resources for all agencies, to help them achieve excellence in their OIA policies, procedures, systems, organisation and decision-making. This will include a model protocol for agencies and offices around consultation with and briefing of Ministers’ offices on OIA requests, making clear what is acceptable and what is not.

Dame Beverley says that while she found no direct evidence of political censorship in OIA responses, she identified a number of occasions where ministerial officials did try to limit the scope of information within a request, or try to change an agency’s decision about what was to be released. However she also found that ministerial officials often encouraged greater release of information under a request, to provide greater context to the information sought.

“Where ministerial officials pressured agencies to alter their responses, agencies rejected these political demands in the final response, unless they considered them valid under the OIA to incorporate into their final decision. Agency chief executives are keenly aware that under the Act, they are accountable for decisions taken on requests made to their agency.”

“It is something we will be keeping a close eye on as part of our increased scrutiny of agencies’ practices – both through our ongoing proactive audits and investigations.”

One of the key findings is the level of suspicion and distrust amongst those working with the Act, both inside and outside government.

“We found both government agencies and requesters of information have developed assumptions about the motivations of each other based on poor past experiences, which has had an impact on how the Act operates in practice and we want to see that changed.”

“I found that requesters found it difficult to articulate their request as they didn’t understand how the information was held and would over compensate by sending vague, broad or multiple requests. Agencies were reluctant to engage with requesters directly due to a lack of confidence so would extend the time limit and try to interpret the requests themselves.”

“Many requesters assumed that an agency’s non-compliance or lack of engagement was deliberate and intentional gaming, which then created a cycle of distrust and suspicion. This has led to increased concern and criticism about how the OIA is operating. This situation is compounded by mixed messages from Ministers and Chief Executives, and in many cases the absence of high quality training on the Act.”

Dame Beverley is satisfied that overall, agencies are compliant with the OIA and government officials working within agencies have a genuine desire to ensure they are compliant. However, for requesters seeking information about contested policies or activities, many agencies’ processes render them vulnerable to not complying with the law – in terms of the content of the responses, and the time taken to respond.

Whilst the review has uncovered practices in agencies making them vulnerable to non-compliance, all have expressed willingness to address this to rebuild public trust and confidence in the operation of the OIA.

The Chief Ombudsman says her office will continue to work with the 12 selected agencies to assist them towards achieving excellence in their practices and develop tools for them and other agencies to assist them identify areas where they are vulnerable and ought to address themselves.

She says it is clear that the OIA has encouraged greater openness and transparency about the work of government than existed before its introduction, and had increased the ability of people to participate in the making and administration of New Zealand’s laws and policies.

However, the report makes 48 recommendations for improvement under five broad themes of:

- Leadership and culture

- Organisation structure, staffing and capability
- Internal policies, procedures and resources
- Current practices
- Performance monitoring and learning

Dame Beverley says she expects greater leadership, with clear public statements from the Prime Minister, Ministers and Chief Executives about their expectations of compliance with the OIA, and more generally on the promotion of openness and accountability, and enhanced public engagement.

“The public needs to know their requests for access to official information will be treated appropriately and in accordance with the law by Ministers and their agencies.”

She says government agencies need to better train their staff in the operation of the law, and ensure that there are sufficient staff and adequate systems to deal with requests for information which they monitor and track. This should enable faster OIA responses which are, in some cases, slowed down unnecessarily and more occasions where information is made available proactively.

“We would also like to see the agencies being smarter and more proactive in the release of information, and to review their websites to make it easier for people to find information and make requests. This needs to be supported through more effective information management systems and training for staff.”

“Information delayed is information denied. The OIA should not be a game of hide and seek.”

The report can be viewed at www.ombudsman.parliament.nz

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