

Ombudsman urges adoption of protocol between ministers and agencies in the wake of KiwiRail investigation

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Chief Ombudsman Peter Boshier is calling for Ministers and state agencies to adopt a formal protocol over the way Official Information Act (OIA) requests are processed to avoid any perceptions of impropriety.

Mr Boshier's call comes in the wake of an investigation he initiated under the Ombudsmen Act of KiwiRail's processing of an OIA request for a business case on Auckland's proposed Third Main railway line.

Mr Boshier says KiwiRail can make improvements.

"I have formed the opinion that while KiwiRail did not act in a manner that was wrong, unreasonable or contrary to law, some aspects during the processing of this OIA request could be subject to a level of criticism."

Mr Boshier found no evidence of improper ministerial involvement.

"There is a line between ministerial input into an agency's OIA decision and ministerial interference, but that line was not crossed in this case."

"KiwiRail was entitled to notify the Minister of the OIA request, and to consult the Minister before reaching a decision on that request. The Minister was also entitled to his view on the request, and for his office to raise the matter with KiwiRail's senior management when agreement could not be reached."

It would have been much better if KiwiRail had a clear understanding about the nature of its engagement with the Minister over this OIA request.

Mr Boshier says the company appeared to have been ready to concede its original position to release the business case, without properly understanding the Minister's concerns and whether they warranted withholding under the OIA.

"I expect agencies to critically evaluate such concerns".

Mr Boshier says KiwiRail should review its OIA processes and offer training to staff.

He says this should include a protocol developed in consultation with the Minister around the handling of OIA requests in which he needs to be involved. This agreement should also be published, and he had spoken to the Minister about this.

“I think this would protect against the perception of impropriety in the processing of OIA requests, which can be just as damaging as the reality of it.”

Mr Boshier says his office is releasing today a model protocol which individual agencies and their Ministers may use or adapt for the handling of OIA requests.

“The clauses in this model agreement include a provision that the agency will consider the views of the Minister in good faith and with an open mind before making a decision on a request. It also makes clear that the office of a Minister will not provide inappropriate input like asking or instructing the agency to act in a way contrary to the requirements of the OIA.”

Mr Boshier has provided copies of the model protocol to both KiwiRail and the Minister.

The final opinion and the model protocol are both available at www.ombudsman.parliament.nz.

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