

Chief Ombudsman releases Final Opinion on coalition negotiation document

Date 14 December 2017

The Chief Ombudsman Peter Boshier has confirmed the Prime Minister Jacinda Ardern is entitled to refuse requests for a document relating to coalition negotiations.

He has published his Final Opinion this morning after reviewing the complaints and a full copy of the coalition negotiation document in question.

As part of his investigation, he sought an explanation from the Prime Minister's office about the formation and use of the document and met with her officials about the decision to withhold the information.

“In the past few days, I have also consulted the Deputy Prime Minister Winston Peters' office. “

Mr Boshier says his starting point when considering the complaints was the definition of 'official information' contained in section 2(1) of the Official Information Act, which states that it includes information held by a Minister of the Crown 'in their official capacity.'

“Ministers can also hold information as a result of wearing a number of different hats. They can hold information as private citizens, Members of Parliament or as members of political parties. This only becomes official information as defined by the law if it is later used for official ministerial purposes.”

Mr Boshier says the document was created during the negotiations between the Labour Party and New Zealand First leading up to their coalition agreement and the formation of the government.

“It is quite clear that at this time, Ms Ardern held the information in her capacity as Labour Party Leader. Although it was considered during the coalition negotiations, this document did not form part of the final coalition agreement.”

Mr Boshier says he asked the Prime Minister's Office whether the document has been in use since the formation of the new government, and its contents shared with any Ministers, government departments, or anyone else subject to the OIA.

"Her officials have advised me that the document has not been used by any Minister to carry out their official duties. It has played no part in policy decisions, and it is not available to Ministers as reference material nor does it contain any directives or guidance that Ministers apply when making official decisions."

"After carefully considering those comments and the nature and purpose of the document, I accept that the document is still held solely in Ms Ardern's capacity as Labour Party Leader. I am satisfied she was entitled to refuse to release the document because it was not official information."

"Mr Peters has also confirmed that the information was created during the course of coalition negotiations between his party, New Zealand First and the Labour Party and does not contain any directives or guidance for Ministers nor has it been used by him in his official capacity since he was sworn in as Deputy Prime Minister."

Mr Boshier says he has completed his enquiry in just over a fortnight.

"I wanted my investigation to be both thorough and timely given the considerable public interest in the case."

Ends