

Requests for information regarding ministerial conflicts of interest

Chief Ombudsman's opinion

Legislation:	Official Information Act, ss 9(2)(f)(ii), 9(2)(f)(iv), 9(2)(g)(i), 18(e), 18(f), 18(g)
Agency:	Department of the Prime Minister and Cabinet
Ombudsman:	Dame Beverley Wakem DNZM, CBE
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Summary

In late 2009 and early 2010 a number of requesters sought a range of information regarding ministerial conflicts of interest. The Cabinet Office, within the Department of the Prime Minister and Cabinet (DPMC), refused the requests in reliance on sections 9(2)(a), 9(2)(ba)(i), 9(2)(f), 9(2)(g)(i), and 18(f) of the Official Information Act (OIA).

Following my investigation and review, I formed the opinion that the “good government” provisions of the OIA (sections 9(2)(f) and (g)) provided good reason to withhold Ministers’ declarations of interest at Cabinet and Cabinet Committees, and correspondence between Ministers and the Cabinet Office about actual or possible conflicts of interest.

However, there was no good reason to withhold some information concerning actions taken to manage identified conflicts of interest, namely key information about the non-receipt of papers by Ministers and transfers of responsibility. There is a strong public interest in transparency of those actions so that the public can be reassured that the integrity of the decision making process of executive government is being protected, and Ministers and the Cabinet Office are identifying and managing conflicts of interest appropriately. The Cabinet Office accepted this view and released to Messrs Harbrow and Burkhart a summary of actions taken to manage Ministers’ interests between June 2009 and July 2010. The Cabinet Office also accepted my suggestion that information of this nature could usefully be released proactively on a regular basis. It advised that the first proactive release will cover actions taken in a twelve-month period between 1 October 2012 and 30 September 2013. The proactive releases will occur every twelve months thereafter. My Office will assist with this process by reviewing information prepared for a proactive release as a means of assurance that the information released is a fair summary of the fuller details recorded by the Cabinet Office.

I noted that should the Cabinet Office receive requests for fuller details than those disclosed in the summary information, it should consider each request on a case by case basis. Decisions by it to refuse such requests, would, of course, be reviewable under the OIA.

In addition, I formed the view that there was no reason to refuse the request for statistics pertaining to actions taken to manage conflicts of interest. I considered that the exercise of compiling the statistics amounted to “collation” rather than “creation” of new information. I also considered that concerns about the completeness of the information did not provide a reason for withholding it, and such concerns may be addressed by disclosure of an accompanying contextual statement explaining the limitations of the information.

Background

Complaint 1

1. On 15 December 2009 the Hon Pete Hodgson made a request to the Office of the Prime Minister for the following information:

“The title and date of Cabinet/Cabinet Committee minutes where a Minister declared a conflict of interest between 19 November 2008 and 15 December 2009 and the details recorded about the conflict of interest.

Copies of all correspondence including emails that were written or received by the Prime Minister, his office staff or his officials in the Department of the Prime Minister and Cabinet regarding conflicts of interest declared by Ministers in the period 19 November 2008 and 15 December 2009.”

2. Mr Hodgson noted that he was not interested in receiving information on conflicts that were declared between portfolios held by the same minister.
3. On 21 January 2010 the request was transferred to the Secretary of the Cabinet.
4. On 4 February 2010 the Deputy Secretary of the Cabinet refused the request. The Deputy Secretary of the Cabinet stated:

“I am refusing these requests in the first instance under section 18(f) of the Official Information Act, as providing the information sought would in each instance require substantial collation and research. ...Additionally, however, I am withholding the information requested...under section 9(2)(a), ... section 9(2)(ba)(i),... section 9(2)(f)(iv), ...and section 9(2)(g)(i) of the Act”

Complaint 2

5. On 3 June 2010 Mr Malcolm Harbrow made a request to the Office of the Prime Minister for the following information:

(1) *“On how many occasions in the last year has the Cabinet Secretary been informed, as required by s2.69 of the Cabinet Manual, of a conflict of interest or potential conflict of interest around a Cabinet decision? In each case, I would like the name of the Minister, the issue the conflict related to, the reason for the conflict, and the letter, email, aide memoire or other documentation informing the Cabinet secretary.*

(2) *On how many occasions in the last year has the Prime Minister been advised in writing, as required by s2.69 of the Cabinet Manual, of a serious conflict of interest or potential conflict of interest of particular concern or that requires ongoing management? In each case, I would like the name of the Minister, the issue the conflict related to, the reason for the conflict, and the written advice in question.*

- (3) *On how many occasions has a Minister declared a conflict of interest under s2.70a of the Cabinet Manual? In each case, I would like the name of the Minister, the issue the conflict related to, the reason for the conflict, and the subsequent action taken.*
 - (4) *On how many occasions has a Minister not received papers on an issue in order to avoid a conflict of interest, as required by s2.70b of the Cabinet Manual? In each case, I would like the name of the Minister, the issue the conflict related to, the reason for the conflict, and the subsequent action taken.*
 - (5) *On how many occasions has a Minister transferred a decision to another Minister in order to avoid a conflict of interest, as required by s2.70c of the Cabinet Manual? In each case, I would like the name of the Minister, the issue the conflict related to, the reason for the conflict, and the subsequent action taken.*
 - (6) *On how many occasions has a Minister transferred a decision to a department in order to avoid a conflict of interest, as required by s2.70d of the Cabinet Manual? In each case, I would like the name of the Minister, the issue the conflict related to, the reason for the conflict, and the subsequent action taken.”*
6. Mr Harbrow was advised by the Office of the Prime Minister that the Secretary of the Cabinet would respond to his request.
 7. On 30 June 2010 the Secretary of the Cabinet refused this request pursuant to section 18(f) of the OIA. The Secretary of the Cabinet noted that Mr Harbrow may wish to consider further particularising his request. However, it was also noted that she would be likely to withhold the information sought under sections 9(2)(a), 9(2)(ba)(i), 9(2)(f)(ii), 9(2)(f)(iv) and 9(2)(g)(i) of the OIA.

Complaint 3

8. On 1 July 2010 Mr Keith Ng made a request to the Cabinet Office for the information in (4) above. On 29 July 2010 the Secretary of the Cabinet advised Mr Ng that:

“No information exists in the form you have requested it. The Official Information Act does not require me to create information. Some of the information relevant to the request does exist, however,...I am withholding the advice under section 9(2)(a)...section 9(2)(ba)(i) ...section 9(2)(f)(ii)...section 9(2)(f)(iv)...section 9(2)(g)(i) of the Act... .”

Complaint 4

9. On 2 July 2010 Mr Harbrow made another request to the Cabinet Office which was restricted to the information in (2) above. On 29 July 2010 he received a similar response to Mr Ng.

Complaint 5

10. On 1 July 2010 Mr Benjamin Burkhart made a request to the Cabinet Office for the information in (5) above. On 29 July 2010 he received a similar response to Mr Ng.
11. I received a complaint from Mr Hodgson on 11 February 2010. On 1 and 29 July 2010, Mr Harbrow asked me to investigate and review the decisions made in respect of his and Mr Ng's requests. A complaint was received from Mr Burkhart on 29 July 2010.

Investigation

12. On 5 March 2010, I notified the Department of the Prime Minister and Cabinet ('DPMC') of Mr Hodgson's complaint. A meeting was sought to discuss the complaint.
13. I met with the Secretary and Deputy Secretary of the Cabinet and a Cabinet Office advisor on 29 April 2010. It was agreed that the Secretary of the Cabinet would respond in writing in respect of the issues which had been discussed at the meeting.
14. On 11 August 2010, I notified DPMC of the complaints from the other requesters.
15. I received a report from the Secretary of the Cabinet on 18 August 2010.
16. In August 2010 I wrote to DPMC and the complainants setting out my view on some general principles which might apply to requests of this nature. I also noted that the investigator assisting me with these investigations would arrange to visit the Cabinet Office to inspect its records.
17. On 21 October 2010 I wrote to DPMC. I noted that, on the basis of the inspection of the records, I did not consider that section 18(f) applied. It took less than 10 hours for the investigator to identify the information on the cabinet meeting and correspondence files which pertained to the complaints. I attached to my letter a list of the information which the investigator had identified and I asked that the Cabinet Office check its records to ensure that the list was a complete record of the information at issue. I asked that the Cabinet Office review the information in light of the general principles which I had espoused.
18. I received a response from the Cabinet Office on 20 June 2011. The Cabinet Office apologised for the delay in responding. I had been advised that to some extent this was due to the disruption to the normal business of government caused by the 22 February earthquake. The Cabinet Office had also been waiting for a report from the Standing

Orders Committee which has reviewed the Standing Orders relating to the pecuniary interests of members of Parliament.

19. On 13 July 2011 I wrote a further letter to DPMC. I expanded on the view I had expressed previously.
20. On 14 September 2011 I met with the Prime Minister, the Secretary and Deputy Secretary of the Cabinet, and senior officials to discuss the complaints. This was followed by a further meeting with the Secretary and Deputy Secretary of the Cabinet.
21. On 28 September 2011 I wrote to the Privacy Commissioner to seek her view on the application of section 9(2)(a) to the information at issue.
22. In October 2011 I wrote to the complainants to confirm the principles which I had concluded should apply to the requests for copies of correspondence between the Cabinet Office and Ministers or the Prime Minister about actual or possible conflicts of interest.
23. On 18 October 2011 the Deputy Ombudsman and the investigator met with the Deputy Secretary of the Cabinet and a Cabinet Office advisor and a further meeting was held on 19 December 2011 to which the Assistant Commissioner, Investigations, Office of the Privacy Commissioner, was invited.
24. On 2 February 2012 I received a letter from the Privacy Commissioner which outlined her view on the privacy interests involved. The Privacy Commissioner made the following general statement:

“Where third party privacy interests are at stake it is appropriate to consult with the third party to understand his or her particular need for privacy. A lack of consultation with third parties often results in speculation about the level of need for privacy. This is not desirable when it is that party’s privacy interests that are at stake.

Privacy is a very contextual matter. For that reason it is very difficult to provide advice about what to do in a general sense about protecting interests. Each case must be looked at on its own merits. Depending on the circumstances a greater withholding of the facts might be warranted than in another like case. The focus ought to be on ensuring that the particular individual and his or her privacy interests are protected effectively in the circumstances.

I don’t perceive that the Ministers (as opposed to third parties), where it is necessary and appropriate to declare interests, can expect privacy. Ministerial positions come with an expectation of accountability and transparency. While this very general comment will apply in most scenarios, my earlier comment about context is equally relevant, and there maybe situations where the circumstances require a greater withholding of the facts to protect a Minister.”

25. On 1 March 2012 the Deputy Ombudsman and the investigator met with the Deputy Secretary of the Cabinet and a Cabinet Office advisor.
26. On 2 March 2012 I wrote to the complainants and noted that a proposed solution to the complaints was being developed but that further consultation with the Cabinet Office was required before I would be in a position to report the outcome of my investigation and review.
27. On 29 March 2012 I set out an updated view to DPMC.
28. On 11 May 2012 I received a letter from the Cabinet Office accepting my view that it should release:
 - the requested statistics; and
 - a summary of the actions taken to manage Ministers' interests between June 2009 and July 2010. (The Cabinet Office advised that it would need time to review its files to ensure the accuracy of the summary and to consult with Ministers before the release occurred.)
29. The Cabinet Office also advised that, with the Prime Minister's agreement, it accepted a suggestion I had made in July 2011 that key information about actions taken to manage Ministers' interests should be released proactively on a regular basis. It also accepted my suggestion that my Office assist with this process by reviewing information prepared for a proactive release as a means of assurance that the information released is a fair summary of the fuller details recorded by the Cabinet Office. The Cabinet Office advised me that the Prime Minister would brief the Cabinet about the system of proactive release.
30. On 5 June 2012 I wrote to the complainants to advise them that in my opinion there was good reason to withhold:
 - details of the declarations of interest made by Ministers at Cabinet and Cabinet committee meetings; and
 - correspondence between the Cabinet Office and Ministers or the Prime Minister about actual or possible conflicts of interest.
31. On 1 October 2012 I received advice from the Cabinet Office that Cabinet had approved the proposal to release proactively information about Ministers' interests on a regular basis. The Cabinet Office advised that the Prime Minister would make final decisions about the start date and the regularity of releases.
32. On 18 December 2012 I received advice that the Prime Minister had agreed that the first proactive release period will cover actions taken in a twelve-month period between 1 October 2012 and 30 September 2013. The Cabinet Office advised that it anticipated that the first proactive release would therefore occur shortly after 30 September 2013. The proactive releases will then occur every twelve months thereafter.

Analysis and findings

33. I shall deal separately with the different types of information at issue in my investigation and review.
- Declarations of interest made by Ministers at Cabinet Committee meetings prior to 1 April 2010
 - Declarations of interest made by Ministers at Cabinet and Cabinet Committee meetings post 1 April 2010
 - Correspondence between the Cabinet Office and Ministers or the Prime Minister about actual or possible conflicts of interest
 - The Statistics pertaining to actions taken to manage conflicts of interest
 - Transfers of responsibility/non receipt of papers

Declarations of interest made by Ministers at Cabinet Committee meetings prior to 1 April 2010

Section 18(e)

34. A request may be refused where the document alleged to contain the information requested does not exist or cannot be found.
35. I established that the requested information relating to Cabinet committee meetings did not exist for the period preceding 1 April 2010. The Secretary of the Cabinet explained this to Mr Hodgson in a letter dated 7 November 2011:

“Before 1 April 2010, and including the time when you were a Minister of the Crown, committee secretaries generally noted any declarations of interest by Ministers at committee meetings in their handwritten notes. These notes, however, were (and are) destroyed after a number of months because they are not the formal record of the meetings. Cabinet and Cabinet committee minutes are the formal record of the meetings, but do not record declarations of interest because the minutes often have a wide distribution and information about Ministers’ interests is often personal and confidential.”

36. However, since 1 April 2010 the Cabinet Office has instituted a new system for recording Ministers’ declarations of interest at Cabinet committee meetings. Committee secretaries now enter the declarations in a confidential register, following a committee meeting where such declarations are made. The register records the following information: the advisor or senior adviser’s name and date of entry; committee name and meeting date; title of paper and reference number; name of Minister declaring a conflict of interest; nature of conflict; and action taken as a result of the conflict.

Declarations of interest made by Ministers at Cabinet and Cabinet Committee meetings post 1 April 2010

Sections 9(2)(f)(ii) and 9(2)(g)(i)

37. Subject to the countervailing public interest test in section 9(1), section 9(2)(f)(ii) of the OIA provides good reason to withhold information if, and only if, the withholding of the information is necessary to maintain the constitutional convention which protects collective and individual ministerial responsibility.
38. Subject to the countervailing public interest test in section 9(1), section 9(2)(g)(i) of the OIA provides good reason to withhold information if, and only if, the withholding of information is necessary to maintain the effective conduct of public affairs through *“the free and frank expression of opinions by or between or to Ministers of the Crown...in the course of their duty”*.
39. In my opinion, it is necessary to withhold the details of the declarations of interest made by Ministers at Cabinet and Cabinet Committee meetings in order to protect the interests specified in sections 9(2)(f)(ii) and 9(2)(g)(i) of the OIA.
40. It is important to the constitutional convention of Cabinet collective responsibility and to the effective conduct of public affairs that Cabinet discussions are confidential. The Ombudsmen have therefore long held the view that Ministerial discussions on Cabinet business are inherently confidential. The Ombudsmen consider that this protection covers not only the deliberations within Cabinet itself or a Cabinet committee meeting, but extends to other discussions between Ministers where the discussion topic is currently the subject of the Cabinet decision-making process. The Ombudsmen are of the view that the protection of such discussions is a core constitutional requirement and is therefore very strong.

The public interest

41. Under section 9(1) of the OIA, the decision-maker and the Ombudsman on review must consider whether the withholding of the information is outweighed by other considerations which render it desirable, in the public interest, to make that information available.
42. In my opinion, there is a public interest in the disclosure of Ministers' declarations of interest. The release of the information would promote the accountability of Ministers of the Crown and officials, and thereby enhance respect for the law and promote the good government of New Zealand (section 4 OIA). Public transparency of the circumstances in which Ministers are making declarations is integral to highlighting instances where declarations have not been made.
43. However, there is also a public interest in Ministers being candid in identifying conflicts and bringing them to the attention of their colleagues. Ministers are encouraged to proactively identify and review possible conflicts of interest and ensure that any

conflicts are promptly addressed. They do so on the understanding that the process is carried out on a confidential basis.

44. The Cabinet Office advised me of the dilemma that Ministers often face when determining whether a conflict exists between a personal interest and their public duty. The Cabinet Office experience is that Ministers over-declare rather than under-declare. The Secretary of the Cabinet Office noted that a relatively small number of actual or apparent conflicts are ever identified out of a relatively large number of queries and disclosures of interest that turn out to be of no concern. She also noted that issues may arise without warning in a Cabinet Committee or Cabinet meeting. The discussion may take an unexpected turn; an issue may be raised as an oral item; or a Cabinet Committee meeting may run late resulting in Ministers for the next meeting taking part in the tail end of the committee's discussions. This means that Ministers are often forced to make decisions about conflicts under time pressure.
45. In all the circumstances, it seems to me that the disclosure of the requested declarations would be likely to result in a diminution in candour and an increased risk that items would not be brought to Cabinet but discussed elsewhere so that the preparation for decisions, discussion at Cabinet and consequently the quality of decision making would be impaired. In my opinion, there is a public interest in Cabinet considering as a whole how to deal with an interested Minister, including whether the interest is of such gravity as to require recusal or not.
46. It seems to me that the competing public interests are finely balanced. However, the test under section 9(1) is not whether there is a public interest in disclosure of the information, but rather, whether the considerations favouring the release of the information outweigh, in the public interest, the interest in withholding the information.
47. In the end, I am of the view that if the information requested were to be released, the harm that would be done to the Cabinet decision-making system in New Zealand would outweigh the benefit.
48. In coming to the view that the countervailing public interest in disclosure does not outweigh the interests that sections 9(2)(f)(ii) and 9(2)(g)(i) are intended to protect, I have taken into account that Ministers are already subject to a range of accountability mechanisms, namely:
 - the Ombudsmen and Auditor-General;
 - the Courts in the form of judicial review;
 - the routine release of Cabinet minutes;
 - the Register of Pecuniary Interests of Members of Parliament;
 - Parliamentary oversight and questioning in the House; and
 - the Prime Minister.

49. That is not to say that in some specific context, the countervailing public interest might not favour release. For example, if the requested information were to indicate a misrepresentation, intentional impropriety, improper use of influence or corruption on the part of a Minister. There is nothing, however, in the material requested, that is of that nature in this particular case.

Correspondence between the Cabinet Office and Ministers or the Prime Minister about actual or possible conflicts of interest

Sections 9(2)(f)(iv) and 9(2)(g)(i)

50. Subject to the countervailing public interest test in section 9(1), section 9(2)(f)(iv) of the OIA provides good reason to withhold information if, and only if, the withholding of the information is necessary to maintain the constitutional convention which protects the confidentiality of advice tendered by Ministers of the Crown and officials.
51. Subject to the countervailing public interest test in section 9(1), section 9(2)(g)(i) of the OIA provides good reason to withhold information if, and only if, the withholding of information is necessary to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown in the course of their duty.
52. The Cabinet Manual sets out the regime by which Ministers' interests are managed. The Manual makes clear that Ministers are personally responsible to the Prime Minister for ensuring that no conflicts of interest exist or appear to exist between their personal interest and their public duty. The Cabinet Office, on behalf of the Prime Minister, supports Ministers in identifying and managing conflicts of interest that may arise in relation to their portfolios, or ministerial responsibilities, or in the context of general decision making at Cabinet and Cabinet Committees.
53. The Ombudsmen have long held the view that Cabinet Office advice to individual Ministers and the Prime Minister concerning ethics and probity affecting Ministers is inherently confidential. We accept that Ministers would be inhibited in placing on the record concerns about potential conflicts if the correspondence collected by the Cabinet Office was systematically and widely disclosed. In our view it is important that Ministers have the confidence to raise concerns about potential conflicts of interest in a free and frank manner so that the Cabinet Office is in a position to support Ministers in identifying and managing conflicts of interest. In these circumstances, the records which the Cabinet Office collects during this process are essential to the effective functioning of the conflict management system, which in turn is necessary to protect the integrity of the decision-making process of executive government. We consider that recognising the confidentiality of this interchange between Ministers and the Cabinet Office (which is subject to override in the public interest if warranted in a particular case) is consistent with the broadly stated objects of the OIA (section 4). It avoids providing a disincentive for Ministers to engage with the Cabinet Office. At the same

time it maintains a right to have access to the information if the public interest impels this.

54. However, I advised the requesters and DPMC during the course of this investigation that if a Minister discloses the content of the advice to an extent that is inconsistent with maintaining its confidentiality, the inherent confidentiality will be lost and so will the grounds to withhold it under the OIA.
55. In applying this principle, there is a partial analogy with legal professional privilege (LPP), but only partial. LPP belongs exclusively to the client. In the case of the Cabinet Office, the reasons for regarding advice to Ministers as inherently confidential also reflect a need to protect institutional values – the neutrality of the Cabinet Office and the public interest in encouraging Ministers to consult it on a confidential basis. I accept that too ready a release on the basis that a Minister is said to have “waived” confidentiality could undermine these important values. The privilege in these cases does not belong exclusively to the “client” Minister
56. In my view, the inherent confidentiality in Cabinet Office advice to Ministers (and the associated correspondence between them) is lost only where there has been sufficiently full disclosure by a Minister or the Prime Minister such that it would be anomalous or futile to withhold the advice in view of what is already on the public record. In this regard, I note that public statements in the House are protected by parliamentary privilege and cannot destroy the inherent confidentiality of the communications.
57. For the avoidance of doubt, I do not see that the inherent confidentiality of the communications is lost where the Prime Minister or Ministers state publicly that they have received advice from the Cabinet Office and, if correct, that such advice concluded that the Minister did not face a conflict of interest. Equally, the Prime Minister or a Minister should not be prevented from explaining in their own words the reasons supporting the conclusion. I would not equate this with the release of the Cabinet Office advice itself, even if the content is essentially the same as the Cabinet Office advice.

It is in the public interest that the Prime Minister and Ministers be able to refer to their consultation with the Cabinet Office when publicly accounting for their actions and decisions in circumstances where questions which have been raised about a possible conflict of interest between a Minister’s personal interests and their public duty. Not being able to do this would provide a disincentive for Ministers to engage with the Cabinet Office. As noted above, this engagement is very important. The Cabinet Secretary is one of our constitutional guardians. Public assurance that Ministers are observing the rules on conflict of interest does not, and cannot, come from Ministers themselves. It can only come from a respected and impartial source. The Cabinet Secretary is this source, and provides the public assurance necessary when questions as to compliance arise. I consider that the issue of access to this correspondence needs to be considered in this light.

58. In accordance with these principles, I am of the opinion that sections 9(2)(f)(iv) and 9(2)(g)(i) apply to the requested correspondence.

The public interest

59. Under section 9(1) of the OIA, the decision-maker and the Ombudsman on review must consider whether *“the withholding of the information is outweighed by other considerations which render it desirable, in the public interest, to make that information available”*.
60. I pointed out to the requesters and DPMC that if a Minister refers to Cabinet Office advice publicly in a way that is misleading or exaggerated, the countervailing public interest in disclosure is likely to outweigh the need for confidentiality.
61. There may also be extraordinary situations (where impropriety or illegality is identified) where disclosure in the public interest is justified even if there has been no or only minimal public reference to the advice.
62. In the circumstances of this case I have not identified a public interest in disclosure which outweighs the interests in withholding.

The statistics pertaining to actions taken to manage conflicts of interest

Sections 18(f) and 18(g)

63. A request may be refused when the information requested cannot be made available without substantial collation or research.
64. A request may also be refused when the information requested *“is not held by the department or Minister... and the person dealing with the request has no grounds for believing that the information is either (i) held by another department or Minister... or (ii) connected more closely with the functions of another department or Minister...”*.
65. The Cabinet Office advised that it would need to compile the statistics which had been requested from the raw data on the files. In its view this amounted to the creation of information and therefore justified a refusal on the basis that the information did not exist. In my view the provision of this information required research and collation but in so doing the Cabinet Office would not be creating new information, it would merely be providing the information in the form requested.
66. Given that similar statistics were provided in answer to parliamentary questions in 2009 and given the time taken by my investigator to review the relevant records, I did not consider that the work involved required substantial collation or research.

67. The Cabinet Office was also concerned that the statistics may not capture all the instances of measures which were taken to manage conflicts. The Secretary of the Cabinet stated:

“They would not identify all instances where Ministers, as a result of their personal circumstances, have declared an interest in relation to a particular issue, and taken action to manage that interest. Such situations arise in a range of contexts covering not just Cabinet and Cabinet committee decision making, but also general Ministerial decision making. The statistics would therefore provide an incomplete and potentially misleading picture.”

68. I suggested that the Cabinet Office provide the statistics which pertained to the information in the Cabinet Office’s files. Any necessary caveats on the completeness of the information could be set out in an accompanying statement.

Transfers of responsibility/non receipt of papers

69. I have not identified any reason for withholding key information about transfers of responsibility to another Minister, the non-receipt of papers by Ministers, or transfers of responsibility to a department.

70. Furthermore, where a potential conflict has been identified and the above actions taken to manage that conflict, I consider that there is a public interest in transparency of those actions so that the public can be reassured that:

- a. the integrity of the decision making processes of executive government is being protected;
- b. Ministers and the Cabinet Office are identifying and managing conflicts of interest appropriately.

71. The Cabinet Manual states:

- Ministers are responsible for ensuring that no conflict exists or appears to exist between their personal interests and their public duty.
- Ministers must conduct themselves at all times in the knowledge that their role is a public one.
- Ministers are expected to act lawfully and to behave in a way that upholds, and is seen to uphold, the highest ethical standards.

72. For these reasons I consider that there is a public interest in the identification of the Minister involved and the release of sufficient information about the issue, reason for the conflict, and the action taken, to satisfy the high expectation of transparency. I recognise that in some instances there may be reasons for withholding information to protect the privacy of Ministers and third parties, and the confidentiality of Cabinet business.

73. I do not consider that a disclosure regime which follows this type of approach will have a negative impact on Ministers' candour in identifying conflicts and seeking guidance from the Cabinet Office. This is because:
- The details of Ministers' communications with the Cabinet Office concerning ethics and probity are protected and the inherent confidentiality will only be lost where a Minister discloses the content of the advice to an extent that is inconsistent with maintaining its confidentiality or there is a public interest override;
 - The incentives on Ministers to be upfront about their personal interests are strong, that is, compliance with the Cabinet Manual and duty to the Prime Minister, the Executive and the public; and
 - Information of this nature has been released proactively in the past as a means of reassuring the public that effective action has been taken in relation to an identified conflict.

Chief Ombudsman's opinion

74. For the reasons set out above, I have formed the opinion that:
- a. Section 18(e) of the OIA provided a reason to refuse the request for information concerning declarations of interest made by Ministers at Cabinet Committee meetings prior to 1 April 2010.
 - b. Sections 9(2)(f)(ii) and 9(2)(g)(i) of the OIA provided good reason to withhold the declarations of interest made by Ministers at Cabinet and Cabinet Committee meetings post 1 April 2010.
 - c. Sections 9(2)(f)(iv) and 9(2)(g)(i) of the OIA provided good reason to withhold the correspondence between the Cabinet Office and Ministers or the Prime Minister about actual or possible conflicts of interest.
 - d. There was no basis to refuse the request for statistics, because these required collation, rather than creation, and the task of collation was not "substantial" in terms of section 18(f) of the OIA.
 - e. There was no basis to withhold some information concerning actions taken to manage identified conflicts of interest, namely key information about the non-receipt of papers by Ministers and transfers of responsibility.
75. As the Cabinet Office accepted my opinion and released the information at d and e above, it was not necessary for me to make any recommendations in this case.

Proactive Disclosure

76. In July 2011 I pointed out to DPMC that the issues raised in these complaints were broadly analogous to those raised in an investigation I conducted in relation to requests for the details of the incidence of serious or sentinel events ('SSE') at the Capital & Coast Health Board ('C&CDHB').
77. C&CDHB withheld the SSE reports for 2003/04 and 2004/05 in reliance on sections 9(2)(a) of the OIA, in order to protect the privacy of patients, their families and medical staff, and 9(2)(ba)(i) of the OIA, in order to protect the continued flow of information which has been supplied subject to an obligation of confidence. In regard to the latter, the C&CDHB stressed that the serious and sentinel event investigation process is governed by an expectation of confidentiality and that expectation is vital in ensuring that that investigative process is thorough and comprehensive.
78. I concluded that the statistics which the C&CDHB had released in response to the request did not address the public interest in accountability for C&CDHB's management of individual cases. Without some degree of oversight external to C&CDHB and the wider health system, the public could not have confidence that C&CDHB had acted on recommendations for change.
79. I formed the view in that case that good reason under the OIA existed for withholding some but not all of the information contained in the reports. In my finding I stated:
- "In summary, there appears to be somewhat of an "information vacuum" at present regarding adverse events generally and SSEs specifically. In the absence of alternative information sources to address the public interest considerations identified above, it seems to me that additional information from C&CDHB's SSE reports must be disclosed. In my provisional opinion, these public interest considerations **outweigh** any need to withhold information that goes toward establishing:*
- *What happened (i.e. causes, findings); and*
 - *What corrective measures (if any) were identified and / or taken (i.e. recommendations)."*
80. C&CDHB accepted my view and disclosed this information to the requester. At the conclusion of the investigation, I suggested that a good outcome from my investigation and review would be for future SSE reports to have a summary of the matter that included as much detail that could be released, while protecting the anonymity of patients, their families and medical staff. I invited C&CDHB to consider a proactive, routine disclosure of such summaries of future SSE reports and there is now a national reporting framework for serious and sentinel events and a report about serious and sentinel events across New Zealand's 21 DHBs is published annually.
81. Accordingly, when DPMC accepted that key information about transfers of responsibility and the non-receipt of papers could be released without harm to a protected interest, I invited DPMC to consider a proactive routine disclosure of a summary of actions taken to manage Ministers' interests. I noted that the ongoing

transparency would foster public trust and confidence in the efficacy of the regime which has been established to manage ministerial conflicts of interest.

82. I suggested to the Cabinet Office that my Office could review the summaries for release against the fuller details recorded by the Cabinet Office as a means of assurance that the information released is a fair summary of the fuller details recorded by the Cabinet Office.
83. I noted that should the Cabinet Office receive requests for fuller details than those disclosed in the summary information, it should consider each request on a case by case basis. Decisions by it to refuse such requests, would, of course, be reviewable under the OIA.