



## Request for list of buildings requiring structural review

**Legislation:** Official Information Act 1982, s 9(2)(b)(ii) (see appendix for full text)  
**Requester:** Ms Jessica Williams  
**Agency:** Ministry of Business, Innovation and Employment  
**Ombudsman:** Dame Beverley Wakem DNZM, CBE  
**Reference number:** 341821  
**Date:** August 2014

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## Summary

Following the Canterbury earthquake tragedy, and noting the ongoing work of the *Canterbury Earthquakes Royal Commission* (the Royal Commission), the Ministry of Business, Innovation, and Employment (the Ministry) decided to carry out a review of 1659 buildings that had some features in common with the defective CTV building.

The purpose of the review was to assess the buildings' earthquake risk and resilience profile according to modern-day standards. This was because, although such an assessment was part of the buildings' construction, nothing required this assessment to be updated when building requirements were later updated.

After inspecting local authority records, the Ministry compiled a list of 1659 buildings requiring review and advised each local authority of the buildings identified in its area, so the local authority could liaise with owners to commence the assessment process.

Ms Williams requested the Ministry to provide information about the listed buildings, particularly "[t]he list of 158 buildings mostly in Auckland and Wellington with columns similar to the CTV building". The Ministry relied on section 9(2)(b)(ii) of the OIA (the commercial prejudice ground) to withhold the information.

Based on my investigation, which included providing Ms Williams with the opportunity receive and comment on my preliminary findings, I have formed the opinion that section 9(2)(b)(ii) provided good reason to withhold the information and refuse the request, and that the public interest did not outweigh the withholding. Therefore, the information is not required to be released.

## My role

1. As an Ombudsman, I am authorised to investigate and review, on complaint, any decision by which a Minister or agency subject to the OIA refuses to make official information available on request.
2. My role in undertaking an investigation is to form an independent opinion as to whether the request was properly refused.

## Background

3. Ms Williams wrote to the Ministry on 20 August 2012, requesting a range of information, including "[t]he list of 158 buildings mostly in Auckland and Wellington with columns similar to the CTV building".
4. On 24 September 2012, Adrian Regnault (Acting Deputy Chief Executive Building Quality) responded advising Ms Williams that the Ministry relied on section 9(2)(b)(ii) of the OIA to withhold the information.

## Investigation

5. I notified the Ministry of the complaint in December 2013 and subsequently received a report explaining its reasons for withholding.

### Scope of request

6. I note that in discussions with the Ministry, it has advised that it held a list of 1659 buildings that initially fell within the criteria of the Ministry's review, being:
  - a. more than three floors; and
  - b. reinforced concrete construction with non-ductile columns; and
  - c. which are not adequately offset by seismic balancing features; and
  - d. were consented between 1982 and 1995.
7. That list was then subdivided into territorial authority regions for further assessment and in August 2012 the Ministry released information noting 158 buildings with non-ductile columns nationwide needed assessment.
8. However, as the review progressed, that number changed rapidly as further information was received and considered. Thus the Ministry has advised that it no longer has the information described as "*158 buildings mostly in Auckland and Wellington with columns similar to the CTV building*" as it no longer exists.
9. Even if it were to be re-created, it also advised that due to the preliminary nature of the information on which the initial list was based, not all buildings included were later confirmed to have non-ductile columns. Thus it could not accurately identify individual buildings solely according to this criterion without seeking more information.
10. Therefore, the Ministry and I have proceeded on the basis that the information sought was the list of all buildings that were under review. As that number has altered in the course of the review, the investigation has considered the list of 1659, as originally created, and the subsequent updates to that list.
11. I note that since the time of the request, approximately 350 buildings nationwide remain under review.

## Comments received during investigation

12. The comments provided to me by the Ministry are appended. I summarise the key points as being:
  - a. Releasing the list creates the presumption that all the buildings on the list are unsafe until shown otherwise. This presumption will not be based on any factual

- analysis of the building's safety but solely on the review criteria which placed the buildings on the list. These criteria do not demonstrate that a building is unsafe, but the Ministry considers that the distinction will be overlooked or buildings will be inaccurately presumed to possess the defects of the CTV building.
- b. The public perception that a building is presumed unsafe or 'CTV-like' (which I take to mean defective and unsafe) will jeopardise the building owner's commercial position by:
    - i. customers avoiding retail or service premises in a listed building, causing tenants to lose business and consider vacating the premises or seek a lower rental;
    - ii. loss of future tenants who may avoid the building if it is presumed unsafe; and
    - iii. an associated decrease in valuation and insurance cover.
  - c. These events would be caused by the release of the information and the prejudice caused by release cannot be adequately mitigated. This is because at the time the list was created it was early in the review process and no evaluations had yet occurred. Thus information on the buildings' risk was not known and not available to counter the presumption created by the release of the list.
  - d. The Ministry argues it was (and remains) unreasonable to release the information as owners could not verify the position themselves, and take steps to inform the public of the true position, thus leaving the public with only the perception that the buildings are not safe when there is no information to support or deny the perception. The Ministry considers that the list should not be partially released, until all owners have had the opportunity to obtain reports.

## Analysis and findings

### Section 9(2)(b)(ii) of the OIA

13. This section of the OIA provides the test for considering this matter. It states:

**9 Other reasons for withholding official information**

(2) ... this section applies if, and only if, the withholding of the information is necessary to —

(b) protect information where the making available of the information —

(ii) would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information.

14. Accordingly, I approach the matter as follows:
  - a. Is there a prejudice to the commercial position of the owners of the buildings?
  - b. If so, then is that prejudice unreasonable?

Is there a prejudice to the commercial position of the owners of the buildings?

### **Background to the creation of the list – the Ministry’s review**

15. In the aftermath of the Christchurch earthquake tragedy, awareness was raised that while a building may be rated as being of acceptable strength for earthquake situations when first constructed, there is no requirement on owners to redo this evaluation and it remains as the rating for the building unless a fresh evaluation is later undertaken.
16. However, building requirements and regulations change over time. They are reviewed and updated in light of further experience, and thus the ‘New Building Standard’ (NBS) that is required to be met in, say, 2014, will be more comprehensive than the historical NBS that applied to past construction.<sup>1</sup>
17. The then Department of Building and Housing (now incorporated within the Ministry) determined that buildings that met the criteria above (at paragraph 6) ought to be re-evaluated to determine the *current* seismic risk of the buildings, and began this review in January 2012.

### **Creation and purpose of the list**

18. Accordingly, the Ministry commenced an initial paper-based review of local authority records, and identified 1659 buildings that met all criteria.
19. It should be noted that while all buildings on the list were selected according to the same criteria, all buildings on the list are not the same. A multiplicity of factors, including a variety of construction methods, materials, and ground location will cause the buildings to respond to an earthquake in differing ways.
20. For all buildings, the purpose of their inclusion on the list was to determine what (if any) updated information was required as a starting point for a contemporary evaluation of earthquake performance.

### **Effect of release of the list**

21. The list itself could not (and cannot) give, and was not expected to be relied on as, an indication of the safety, or otherwise of a building. However, if the list were to be

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<sup>1</sup> The NBS rating is used to assess to what degree a building is compliant with the modern-day building regulations (ie. the standards that would apply if the building were to be built new as at the current date, rather than the date when the building was constructed). See the Building Act 2004, section 122.

released, and representing as it does the initial starting point of the review, then without the further information of the building's current assessment, the public has no basis to differentiate between the buildings and exercise an informed choice about the use of those buildings. The public can only view all 1659 buildings as the same – as posing potential risk in some unknown manner.

22. The perception will be coloured by the knowledge that the Ministry's listing of these buildings is, in part, a response to the *Canterbury Earthquakes Royal Commission* review. In the public mind this links the 1659 buildings to the defective CTV building, and the 1659 buildings are considered unsafe until shown otherwise, regardless of whether any such factual basis for that concern exists or not.
23. The Ministry is of the view that this broad perception which will brand buildings as 'CTV-like' is not only inaccurate, but prejudicial to the building owners' commercial interests.
24. Release of the information will likely cause the owners to suffer financial harm due to:
  - a. loss of current tenants whose business is adversely affected by association with the building; and/or
  - b. loss of future tenants who avoid the building; and/or
  - c. adverse valuation or insurance effects.
25. I accept that the Ministry has sufficiently demonstrated that release of the information will prejudice the owners' commercial position. I now turn to the unreasonableness of that prejudice.

### Is that prejudice unreasonable?

26. As above, the Ministry argues that it is unreasonable to release the list from the earliest stage of the review process as the list will not show, and was not created for the purpose of advising, the level of seismic risk or resilience of the buildings.
27. I have accepted that this would cause a prejudice. But it could be argued that this prejudice is part and parcel of the commercial landscape. Investments frequently lose value through an unexpected turn of events. In this case, ought not the owners bear the burden of lost value, from being placed on the list, as the cost of doing business?
28. For the reasons below, I consider it would be unreasonable for the owners to be placed in this position.

### Unverified status of buildings

29. If the argument supporting release of the locations of the buildings is that the list is to be relied on as a warning to the public, the question is, about what is the public being warned?
30. It is already known that 1659 buildings were included in the review. If the addresses or locations were provided, what additional information is being provided about the level of

public safety in those 1659 buildings? I consider the answer is none – because at the time of the request, no additional information about safety existed (other than that already recorded on the property file).

31. This is because the list was not designed with the purpose of warning the public. It would have been impossible for the Ministry to use the list to do so, as it had insufficient information to form any evaluation of safety, as detailed information about building risk was not available when the list was made. It was for this very purpose it created the list, so that the detailed engineering evaluations to assess safety could be sought, where required.
32. Therefore, as the list is not one of dangerous buildings, it should not be used to prematurely identify buildings as being a risk to the public. Otherwise the owners suffer the consequences of the 'guilty until proven innocent' approach for a period of time that only comes to an end when they can provide engineering reports or other information to confirm their building's status.
33. I am persuaded that it is unreasonable for adverse suspicion to fall on the buildings, with ensuing adverse commercial consequences, and regardless of the condition and circumstances of the individual buildings, without any sure foundation for this suspicion.
34. I note that the likely outcomes for the buildings on the list were expected to differ. In the course of the review, some were expected to be (or have been) immediately cleared if further review of their records put them outside the scope of the review. Others were expected to be (or have been) cleared when an initial assessment showed no present cause for concern. Others (but not all) were expected to undergo an extensive engineering evaluation to provide the building's modern NBS rating demonstrating the seismic resilience and risk of that building alone.
35. In addition, as the review has progressed, the Ministry has advised me that in the course of the review those various outcomes above have led to the numbers dropping sharply. The review initially encompassed 1659 buildings, but over a short period of time, some 1200 buildings were excluded as updated information showed that buildings either did not fit the criteria of the review (and had been inaccurately included due to insufficient information being available to exclude the building outright) or had sufficient information provided about them to determine there was no further inquiry warranted.
36. I consider this quick decrease in numbers further underscores that using the list would not result in any accurate evaluation of safety, as the vast majority of the buildings on the list were soon removed from the list and were not the subject of any further inquiry.

37. Approximately 350 buildings have remained within the scope of the review.<sup>2</sup> The question might then be asked, why not progressively identify the buildings that have been removed from the list or have completed the review process?

### **Owner co-operation**

38. This leads me to a further point regarding unreasonableness – the reliance on owner co-operation.
39. Throughout the review, the Ministry (and local authorities) have advised owners that they will apply a consistent approach to all buildings in order to accurately evaluate seismic risk and resilience. This is done by working through a process of obtaining an engineering assessment; subsequent evaluation of this assessment by the local authority; and, where appropriate, application of the provisions of the Building Act 2004.
40. At the time the OIA request was made, the owners of the buildings on the list had all agreed to obtain an engineering assessment. That is, the completion of the review relies on the agreement of owners to voluntarily obtain, pay for and provide fresh engineering reports.
41. However, owners are not able to obtain building reports at the same time. Many building owners were (and may still be) facing delays of several months for an engineer to be available to review their building.
42. Release of the list would identify those buildings with up-to-date evaluations, and those without. Those who have not yet had an assessment would be prejudiced by public speculation over those who have, despite providing their agreement and co-operation to participate in the review at their own cost.
43. On the face of it, it appears to me to be unreasonable for owners who do not yet have an assessment to face a prejudice if the reason for the delay is outside their control. Further, if the release of some of the information affects some owners, and not others, it seems that this will adversely affect continuing owner co-operation in this review, which currently depends on the goodwill of those owners.
44. I also note that the public does not have to wait until all 1659 buildings have been reviewed. Any person with a specific inquiry about a building can access the local authority's property file and thus inform themselves of the building's current earthquake status.

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<sup>2</sup> The Minister for Building and Construction's comments on the progress of the review are available at <http://www.beehive.govt.nz/release/half-buildings-review-cleared-or-excluded>.

## Summary of unreasonable prejudice

45. The Ministry argues that to release the information is to inaccurately brand buildings as 'CTV-like' and will prejudice the building owners' commercial interests, likely causing financial loss by loss of tenants, business, or other adverse commercial effects.
46. It is unreasonable for owners to be prejudiced by an inaccurate and potentially damaging presumption, as:
  - a. a building's seismic risk was unknown when it was placed on the list; and
  - b. owners are co-operating with the review by paying for and providing engineering reports to determine the level of seismic risk on the expectation that the review process will be completed prior to release of information and it is important to the review progress that this goodwill be maintained; and
  - c. not all owners can obtain this information promptly.
47. In summary, I consider that it would be unreasonable in the circumstances to release unverified information into the public domain, when doing so has adverse commercial implications for the owners who are funding the voluntary reviews, and at the risk of thwarting the process in place to supply accurate and verified information to both the review, and to the public (via the local authority property files).

## Public interest

48. My consideration of the matter requires an evaluation of section 9(1) of the OIA, being whether *"the withholding of the information is outweighed by other considerations which render it desirable, in the public interest, to make that information available."*
49. The issue under section 9(1) is not simply whether there is *"a public interest"* in making the information available, but rather whether that public interest **outweighs** the interest that would be protected by withholding the information requested.

## Public safety

50. The public interest in favour of release is that the public have a right to know if buildings are unsafe prior to entry.
51. But as I have already noted, the withheld list is **not** a list of buildings that are unsafe. It is a list of a type of buildings, identified by the Ministry, that may have the specified characteristics listed by the review, including non-ductile columns, which are not adequately offset by seismic balancing features.<sup>3</sup>

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<sup>3</sup> At this point I would note that when non-ductile columns are present in a building (as they were in the CTV building), the presence or absence of "balancing features" is a critical factor in assessing earthquake tolerance. Thus, the Ministry advised me it had some further difficulty with the request, which sought buildings with "CTV-like columns" when the buildings in the review were not being assessed solely on the presence or absence of

52. Buildings which are confirmed, by the review, to have those characteristics (and many on the list have been shown to be otherwise), are likely to be the subject of further evaluation by the local authority to determine what the current earthquake performance rating is. (I again note that this is in comparison with the rating they were issued with when constructed.)
53. If the assessment identifies significant seismic risk, then the local authority is tasked to further evaluate safety.
54. If the review of the characteristics leads to a sufficient concern for the safety of the public, then the local authority responsible for the building can then rely on existing powers or policy to have the building further reviewed and evaluated. If the building is confirmed as earthquake-prone, and does pose a risk to public safety, the local authority can take immediate steps to inform the public by placing a notice on the building, and updating the Land Information Memorandum (LIM).
55. Thus, as the review of each specific building is conducted, the information about earthquake risk and resilience will be made available and allow the public to be accurately informed so that it may judge the known risk and act accordingly.
56. Therefore, I see only a small public interest in disclosing the preliminary list of buildings, as many will not be considered as earthquake-prone and not pose a risk to public safety, and any that are confirmed to be earthquake-prone will be publicly notified by the local authority.

### The review process

57. Further, I see the public interest in disclosure as mitigated by the public interest in ensuring the protection of the process of review that the Ministry has embarked on.
58. The Ministry is not relying on any legislative or regulatory authority to compel the owners to obtain and provide these reports, as there are currently no such provisions in place.
59. Therefore, for the current (and possibly future) reviews, the Ministry is ultimately reliant on owners' goodwill to co-operate with the review process. As this review process is concerned with ensuring public safety, I consider that there is a public interest in withholding the information at this point in time, so that the owners are assured that the process they have voluntarily participated in is concluded on the terms given.
60. To therefore require the Ministry to release this information would, in my opinion, be unreasonable to the Ministry itself, as it would inevitably create a likelihood that owners would be frustrated if their voluntary co-operation has caused them commercial harm.

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columns, but on the overall structural tolerance of the building when all construction factors were considered. On this basis it considered the list, as requested, could not be accurately compiled, and considered the request to be for all buildings included in the review.

61. I further add that there is some public concern that the withheld list of buildings means the Ministry is exposing the public to the risk of a 'CTV-like' building collapse. I have not overlooked this concern. The Ministry advise:

*"It is important to note that this exercise was not about identification of earthquake risk or earthquake-prone buildings. CTV was not earthquake-prone as it was well over the threshold necessary to be classified as earthquake-prone."*

62. I also consider it is important to look to the future. The Ministry has indicated there is a possibility it will continue to carry out more evaluation work of this manner. It may commission further reviews after further consideration of the findings of the Royal Commission.
63. Owners who consider they were unreasonably treated by the Ministry in releasing this information may consider withdrawing their co-operation in future reviews. Perhaps the Ministry could explore ways to compel co-operation, or find alternative paths to obtain information. However, the current system has been able to be relied on by the Ministry to provide a basis for assessing public safety and I consider that if the information were released, and as a result owner frustration caused co-operation to diminish, then the Ministry would be required to seek alternatives and the progress of future reviews would be impeded.
64. As the purpose and process of this review has been to assess and improve the level of public safety, I do not consider it would be in the public interest to potentially thwart future reviews seeking to increase public safety.

## Summary of public interest

65. I observe that:
- a. Following the Royal Commission, the Ministry set up its review for the purpose of checking that any building that remotely resembles the CTV building in its construction has an up-to-date review of seismic risk and resilience.
  - b. It instructed local authorities to persuade owners to provide the relevant information. Accordingly, owners were requested (but could not be required) to provide a fresh assessment to enable a local authority to record the building's current ability to tolerate an earthquake. Local authorities could then assess if further action was required if the buildings showed a risk to public safety and apply their "*earthquake-prone buildings*" policy and process.
  - c. The Ministry is maintaining the list of numbers of the buildings which are involved in the review, and the Minister is publicly commenting on the progress of the review, which initially encompassed 1659 buildings, but is now restricted to approximately 350.

- d. The public interest supports the Ministry being able to carry out this process, one which, at the present time, relies completely on the volunteering of information by owners.
- e. The review progressing in the manner agreed will progressively provide the public with accurate information in a timely manner, and will inform future reviews, building requirements, and legislative developments.

## Ombudsman's opinion

66. For the reasons set out above, I have formed the opinion that the Ministry had a valid basis to refuse Ms Williams' request for the list of buildings compiled requiring structural evaluation, by relying on section 9(2)(b)(ii) of the OIA to do so.

## Appendix 1. Excerpts from the Ministry's response

"The former Department of Building and Housing commissioned an exercise to identify those buildings in New Zealand which had:

- reinforced concrete and non-ductile columns;
- were three or more storeys high; and
- were consented in the period 1982 to 1995.

This exercise commenced as we prepared to release the investigation report into the failure of the CTV Building. The CTV Building had many issues which resulted in the catastrophic collapse of the building in the 22 February 2011 earthquake. One of the issues with CTV was the non-ductile columns and while these were allowed at the time the building was constructed they needed to have seismic balancing features. In the case of CTV, the columns were not constructed to the standards of the day either. By way of context for the selection of the timer [sic] period referred to above, in 1994 the Northridge Earthquake in California gave the engineering world first hand data on the performance of non-ductile columns in multi storey buildings which was simply not satisfactory and as a consequence the NZ Standards changed in 1995.

...

The Department undertook a preliminary review to see how many buildings were potentially caught by the review. This exercise was conducted with the major metropolitan Territorial Authorities and resulted in a total of 158 buildings being identified as possibly having non-ductile columns. We then commenced the New Zealand wide review which resulted in more buildings being identified both within Auckland and Wellington and across New Zealand. In undertaking this review it was determined that it was in the public interest to undertake the review as a matter of public safety.

Having identified all the possible buildings in scope through our consultants Aurecon, we supplied that data to the Territorial Authorities (TAs) and asked them to approach building owners in order that they be requested to obtain an engineering assessment of their building. This was so building owners could establish if the building actually had non-ductile columns and if the building did, whether there were appropriate balancing seismic factors. Territorial Authorities were asked to provide aggregate information to the Ministry of Business, [I]nnovation and Employment (MBIE) on their progress (...).

In the course of this exercise there were refusals to co-operate with this voluntary exercise by building owners. All building owners who refused were approached by the TA with further explanation of the rationale or in some cases building owners approached MBIE and further explanation was provided. Many owners were confused as they thought the original building consent should be enough. They considered that if it was OK when the building was

constructed, then there could be no problem now. Others thought that it was an exercise in carrying out earthquake-prone building assessments by another route, and others simply saw no need to spend money on what was in their view a satisfactory building. The TAs worked with these owners, and all owners eventually committed to getting an engineering assessment.

342 building owners committed to obtaining an engineering assessment and as at 19 December 2013 all except 14 have booked or obtained an assessment. 221 buildings have been cleared.

Cleared in this context means:

- they do not have non-ductile columns;
- they do have non-ductile columns but there are other balancing seismic features; or
- they have been established to be out of scope for other reasons, such as date of consent.

This exercise has been achieved through the voluntary co-operation of the TAs and the building owners, all of whom have committed to obtaining an assessment.

Two buildings so far have been vacated. One has been vacated due to issues identified following assessment. In that building's case, the media in the area in which the building is located, have referred to the building as 'CTV like'. The second building has been vacated due to earthquake damage sustained in the July/August 2013 Seddon earthquake events. In that case, while the building has non-ductile columns, that is not the reason for its non-occupation.

...

#### Commercial prejudice or harm

The specific commercial prejudice or harm that would arise to affected buildings owners is the perception that the building is in some way unsafe. This has the potential to lead to tenants vacating premises for ones they perceive to be safer. Building owners will lose rent and may not be able to secure further tenants. The intrinsic value of the building may be compromised. The labelling of a building as having CTV like features could bring into question the insurance costs and access to ongoing insurance.

The media have persisted with calling these buildings CTV like. 115 people died in the CTV failure. There were many other reasons that the CTV Building failed but in the broader scheme of things this message has not been picked up despite our efforts.

Asserting that these buildings may have had CTV like features will likely lead to commercial prejudice. The distinctions between CTV and the non-ductile column review and the earthquake-prone buildings work are not well understood and the list of 158 buildings may include

- buildings that have non ductile columns and appropriate balancing seismic features

- buildings that had non ductile columns which have been remediated
- buildings that were out of scope and did not ever have non ductile columns.

We continue to rely on section 9 (2) (b) (ii) to withhold the list of the 158 buildings.

As the review has progressed MBIE has received information in aggregate. MBIE has not received address information from the Territorial Authorities and therefore we do not hold the information necessary to determine which of the 158 buildings may have columns similar to the CTV Building. As outlined above, we know that two buildings are now vacant. While both had non ductile columns, one is vacant due to a range of issues, and the other is vacant due to damage sustained in the Seddon earthquake event but not directly due to having non-ductile columns.

The Minister for Building and Construction has and will continue to supply information publicly on the progress of the review.

[At present] MBIE cannot identify which of the 158 have been confirmed as having non ductile columns and lack the balancing seismic features as the review is not yet complete.

...

#### Consideration and application of section 9(1) of the OIA

We sought Crown Law advice on the approach to the work and have carefully considered that advice (a copy of that advice was provided as part of the Chris Cooke report). Our consideration of the application of section 9(1) of the OIA has been significant as we have progressed this process. In commencing this exercise we had the public interest in mind, specifically public safety. The only way in which we could accomplish this was by seeking the co-operation of TAs and building owners. We did advise that any OIA requests would have to be considered on their merits.

These buildings by having non ductile columns, would not of themselves become classified as earthquake-prone, or dangerous buildings. While the Wellington building has been classified as earthquake-prone it is not for the reason of the building having non-ductile columns. In classifying the building as earthquake prone, it has been publicly notified through the yellow placards and a public register (which is consistent with the law and the policy of Wellington City Council). The process also provides an opportunity for owners to get their own assessment and also submit remediation plans.

In carrying out the review of buildings with non-ductile columns, there is no policy or legislative base, simply negotiated voluntary effort. Disclosure at this juncture will likely see the co-operation cease and public safety potentially compromised. The public interest is better served by keeping on doing what we are doing and not disclosing addresses. We also need to have regard to the possibility that before we get a change to the legal framework that we may need to review buildings for another critical structural weakness on a voluntary basis.

This review has highlighted a gap in the law. The Minister for Building and Construction has publicly committed to securing a change in the law. While critical structural weaknesses in buildings can be identified by events like the Northridge earthquake, there are few powers available to require the upgrading of buildings with those features, unless it is deemed to be earthquake-prone or dangerous or insanitary.

MBIE officials are working on closing this gap to enable TAs to act when a critical structural weakness is identified that has previously been compliant with the Building Code and therefore in wide use. There are two opportunities to make amendments to the law coming up in 2014. Firstly the earthquake-prone building legislation and secondly the post disaster building management legislation both of which amend the Building Act 2004.”

## Appendix 2. Relevant statutory provisions

### Official Information Act 1982

#### 4. Purposes

The purposes of this Act are, consistently with the principle of the Executive Government's responsibility to Parliament,—

- (a) to increase progressively the availability of official information to the people of New Zealand in order—
  - (i) to enable their more effective participation in the making and administration of laws and policies; and
  - (ii) to promote the accountability of Ministers of the Crown and officials,—  
and thereby to enhance respect for the law and to promote the good government of New Zealand:
- (b) to provide for proper access by each person to official information relating to that person:
- (c) to protect official information to the extent consistent with the public interest and the preservation of personal privacy.

#### 5. Principle of availability

The question whether any official information is to be made available, where that question arises under this Act, shall be determined, except where this Act otherwise expressly requires, in accordance with the purposes of this Act and the principle that the information shall be made available unless there is good reason for withholding it.

#### 9. Other reasons for withholding official information

- (1) Where this section applies, good reason for withholding official information exists, for the purpose of section 5, unless, in the circumstances of the particular case, the withholding of that information is outweighed by other considerations which render it desirable, in the public interest, to make that information available.
- (2) Subject to sections 6, 7, 10, and 18, this section applies if, and only if, the withholding of the information is necessary to—
  - (b) protect information where the making available of the information—
    - (ii) would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information.