

Request for information relating to industrial relations section of coalition agreement

Legislation	Official Information Act 1982, s 9(2)(f)(iv)
Agency	Minister of Labour
Ombudsman	Sir Brian Elwood
Case number(s)	W38406
Date	March 1998

Request for information relating to the implementation of clauses in the industrial relations section of the coalition agreement—information withheld to protect confidentiality of advice and free and frank opinion—account taken of changed political environment with the advent of MMP and formation of coalition—release of early papers prior to consultation with coalition partner could undermine constitutional convention

In the early months of the National/New Zealand First coalition Government, an opposition Member of Parliament made a request to the Minister of Labour for papers relating to the implementation of particular clauses relevant to industrial relations contained in the coalition agreement. Some information was provided in response to the request but the majority of the information identified as relevant to the request was withheld in reliance upon sections 9(2)(f)(iv) and 9(2)(g)(i) of the OIA.

Examination of the information revealed that four of the papers withheld detailed priority and timetabling issues for coalition agreement initiatives. It was argued that the work on the coalition agreement initiatives was at a very preliminary stage and that release of the information could prejudice the process of policy development.

Section 9(2)(f)(iv) reflects Parliament's acceptance that in certain circumstances it may be necessary to protect the confidentiality of advice tendered by Ministers of the Crown and officials to enable the process of Government to operate in an effective and orderly manner. Factors such as the content of the advice, the context in which it was generated, and the stage reached in the decision making process can all be relevant in assessing whether disclosure would undermine the constitutional convention protecting that advice.

In the new political environment of MMP which led to the formation of the coalition, it was recognised that there were sensitivities in the relationship between the parties making up the

coalition, particularly in the early stages of the coalition when agreement was still to be reached on policy development to implement the provisions of the coalition agreement. Against that background the following factors were found to be relevant to the consideration of the application of section 9(2)(f)(iv):

- At the date of the request there was no agreement on the issues to be considered for development in terms of the coalition agreement.
- The only material relevant to the request consisted of preliminary ideas prepared for the Minister to consider as possible directions for further development.
- No feedback had been received from the Minister and no discussion or negotiation had taken place with the coalition partner to establish which of the possible areas identified were to be advanced.
- Until agreement was reached with the coalition partner on the policy areas to be developed and their timetabling, release of such early papers could undermine the relationship between the coalition partners.

It was accepted that the requirements of section 9(2)(f)(iv) were made out in the circumstances of this case, particularly given the preliminary nature of the work that had been done and the very real possibility that the policy development process could be prejudiced by the premature release of possible policy areas prior to discussion and agreement within the coalition. However, it was noted that at a later stage, when uncertainties on policy development had been clarified and agreement reached within the coalition Government on policy direction, different considerations would likely apply to another request for the same information.

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