

Request for CAB 100 forms

Legislation	Official Information Act 1982, s 9(2)(f)(iv)
Agency	Prime Minister
Ombudsman	John Belgrave
Case number(s)	174448, 176590
Date	June 2007

Request for all CAB 100 forms since the 2005 general election—convention of confidentiality surrounding the Government’s political consultation processes—public interest in disclosure not sufficiently compelling to outweigh the need to withhold under s 9(2)(f)(iv)—need for confidentiality extended beyond the resolution of the particular issues—at least as long as the particular governmental arrangement endured

All Cabinet and Cabinet Committee submissions must be accompanied by a CAB 100 form. The form records the departmental and political consultation that has occurred or is needed on the submission. The particular concern of the requester in cases 174448 and 176590 was the information about political consultation recorded on the CAB 100 forms.

In case 174448, the requester asked the Prime Minister for all CAB 100 forms since the 2005 general election, and complained to the Ombudsman when that request was refused.

The Prime Minister explained that the process of obtaining political support has always been confidential. Under first past the post, it occurred behind the closed doors of caucus. With the advent of coalition and minority governments under MMP, the process has become more complex to manage. To aid the smooth management of that process, consultation is recorded on the CAB 100 form. Nonetheless, the confidentiality of advice about that process remains a very important constitutional convention. This confidentiality ensures that government policies can be advanced and promotes stable and effective government.

The Chief Ombudsman accepted that there was a convention of confidentiality surrounding the Government’s political consultation processes. The need for such confidentiality is

heightened in the MMP / coalition and minority government environment, in which the Government of the day is reliant on negotiating sufficient political support in order to further its initiatives.

It will not always be necessary to withhold particular CAB 100 forms in order to maintain the convention of confidentiality surrounding the Government's political consultation processes. The Chief Ombudsman noted that these forms had been disclosed on an ad hoc basis previously. In addition, the Government or the parties it chooses to consult on a particular initiative may disclose the fact or timing of that consultation publicly.

However, the request for all CAB 100 forms would have effectively opened up the entire political consultation process. Disclosure, in such a systematic and wide-ranging fashion, of who the government had chosen to talk to, about what, and when, was likely to have a negative effect on its relationships with the various support parties, and therefore undermine stable and effective government. In the Chief Ombudsman's opinion, section 9(2)(f)(iv) applied.

In relation to the public interest in disclosure, the Chief Ombudsman noted that the forms were likely to be instructive about the way the coalition minority government was working. However, that consideration was not sufficiently compelling to outweigh the need to withhold the forms. While leaving open the possibility of a strong public interest arising in disclosure of information about a particular initiative, the Chief Ombudsman was not convinced that, in a global sense, there was a strong public interest in disclosure of all CAB 100 forms.

In case 176590, the same requester sought CAB 100 forms associated with papers to the Cabinet Legislation Committee seeking approval for introduction of various pieces of legislation. By so doing, he sought to distinguish between CAB 100 forms in respect of a policy proposal or piece of legislation that had yet to be determined, and ones over issues that had effectively been resolved (through approval of the relevant legislative proposals).

The Prime Minister submitted that the need for confidentiality extended beyond the resolution of particular issues. Confidentiality of the political consultation process was '*essential to the maintenance of trusting relationships between political parties*'. Undermining that confidentiality would have '*potential consequences for the continuing relationships that support government durability and stability*'.

The Chief Ombudsman accepted that the need for confidentiality extended beyond the resolution of particular issues. It would not last '*in perpetuity*', but:

Given that it applies to inter-party consultations as part of particular governmental arrangements, it does not seem unreasonable to regard it as applying for at least as long as those arrangements endure.

For the reasons outlined in the previous case, the Chief Ombudsman again formed the opinion that section 9(2)(f)(iv) applied to the CAB 100 forms at issue, and was not outweighed by the countervailing public interest in disclosure.

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