

Request for draft public discussion document regarding auditor regulation

Legislation	Official Information Act 1982, s 9(2)(g)(i)
Agency	Ministry of Economic Development
Ombudsman	David McGee
Case number(s)	176296
Date	March 2008

Close-to-final draft containing limited evidence of opinion material—risk of public misunderstanding of the status of this draft document did not justify withholding and could be addressed by disclosure of contextual information—strong public interest in transparency of the policy development process given full-scale public consultation no longer intended

After consulting a range of public and private agencies, the Ministry of Economic Development (MED) prepared a discussion document on the subject of auditor regulation. However, auditor regulation was deemed a priority in the wake of the financial crisis. The Minister therefore opted to pursue targeted consultation of key stakeholders based on a ‘*think piece*’, rather than full-scale public consultation based on the discussion document. As a result, the discussion document was never finalised.

In this context, a requester sought a copy of the discussion document, in the understanding that it was ‘*an historical document of only academic interest*’. He complained to the Ombudsman when MED refused his request under section 9(2)(g)(i) of the OIA.

MED described the discussion document as a draft containing the preliminary views, ideas and opinions of officials on the issue of auditor regulation and liability. It said that officials were unconstrained in developing the document and that it was important that ideas and proposals could be developed without fear that such an unfinished draft would be released before stakeholder engagement occurred.

The Ombudsman formed the provisional opinion that section 9(2)(g)(i) of the OIA did not provide good reason to withhold the discussion document.

While he accepted it was a draft, it was one in close-to-final form: *'it ... has the hallmarks of a carefully-prepared document with only limited evidence of free and frank expressions of opinion, in textual or contextual terms'*. The draft was developed in consultation with a range of agencies, including some that were subject to the OIA. Given this content and context, the Ombudsman struggled to accept that release would be likely to inhibit the future expression of free and frank opinions by officials.

The Ombudsman also identified a strong public interest in *'as much transparency as possible [being] given to policy on auditor regulation, including the processes by which that policy is developed, particularly as full-scale public consultation is no longer intended'*.

In response to the Ombudsman's provisional opinion, MED argued that it would be contrary to the public interest to release the draft discussion document before a document summarising the final package. There were inconsistencies between the original draft discussion document and the final package being developed, with some of the options in the original document having been dropped or modified. MED was concerned that the requester might waste time in absorbing and commenting on an incomplete document.

The Ombudsman was not persuaded to change his opinion. The requester was clearly aware that the draft discussion document was of *'academic interest'* only. Any risk of public misunderstanding of the status of the draft discussion document could be addressed by disclosure of contextual information. The Ombudsman recommended that MED release the draft discussion document, with an appropriate contextual statement.

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