

Request for draft documents, internal emails, handwritten notes regarding Government response to Law Commission discussion paper

Legislation	Official Information Act 1982, s 9(2)(g)(i)
Agency	Minister of Veterans' Affairs'
Ombudsman	David McGee
Case number(s)	312348, 313008
Date	November 2011

Disclosure of draft documents would inhibit future expression of free and frank opinions by officials—s 9(2)(g)(i) applies

These cases concerned the Minister of Veterans' Affairs' decision to withhold information relating to the development of the Government's response to a Law Commission discussion paper on a review of the War Pensions Act 1954. The information at issue comprised draft documents and emails between Veterans' Affairs New Zealand (VANZ) and the Treasury, and handwritten notes in respect of a meeting between the Minister and the RSA.

The Ombudsman formed the provisional opinion that section 9(2)(g)(i) applied. Release of VANZ's drafts and early working papers would affect the future willingness and ability of officials to canvass and test the full range of options and ideas that are crucial to ensuring that the best and most considered advice is ultimately tendered to Cabinet.

The Ombudsman described the handwritten meeting notes as *'the informal jottings of a VANZ official'* regarding matters to be followed up as a result of the meeting. Disclosure of these notes would have an inhibitory impact on the future exchange of opinions between the Minister and the RSA or the recording of such discussions. Any reduction in the frankness of discussion between the parties or the recording of the discussion would adversely impact on the ability of the Government to meet its obligations to veterans.

The Ombudsman commented that in assessing the countervailing public interest in disclosure, it must be remembered that decision makers are accountable for the advice that is tendered to them and that they act upon. Early drafts generated in preparation of that advice will often not

have been seen by them. Usually, it would only be in circumstances where disclosure of such papers would reveal some impropriety in process or practice that the public interest in release would outweigh valid interests in protecting information under the OIA. The Ombudsman could not identify any impropriety in this case.

The Ombudsman noted:

...the policy process relating to the Law Commission Review is still underway and in my view exploratory discussions warrant a higher degree of protection than discussions involving proposals which are at a more advanced stage. The interest protected by section 9(2)(g)(i) creates the space for measured decision making to take place.

In response to the Ombudsman's provisional opinion, the requester noted that it had been 18 months since the Law Commission reported, and the public was entitled to have some information about the progress of the Government's response.

The Ombudsman agreed that the public interest in disclosure of information pertaining to a policy process increases as time goes by without a decision being made. He commented that if the information at issue had been Cabinet papers relating to the progress of the review or to decisions taken on it, then the public interest in the disclosure of some information would likely be strong. However, the information was not of this nature. The Ombudsman formed the final opinion that section 9(2)(g)(i) of the OIA provided good reason to withhold the draft documents at issue.

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