

Requests for emails of former Minister

Legislation	Official Information Act 1982, ss 2(1) ' <i>official information</i> ' definition para (f), 2(5)
Agency	Department of Internal Affairs
Ombudsman	Peter Boshier
Case number(s)	363632, 402092
Date	June 2016

Emails of former Ministers held by Parliamentary Services pursuant to contract with DIA deemed to be official information held by DIA

In case 363632, requesters asked the Department of Internal Affairs (DIA) for emails between the former Minister of Revenue and a journalist. They asked DIA because the emails were held by Parliamentary Services, which was contracted by DIA to provide ministerial email services. The request was refused on the basis that DIA did not hold the emails, and the requesters complained to the Ombudsman.

DIA argued that the emails were held solely as an agent, or for the sole purpose of safe custody, on behalf of the former Minister (see paragraph (f) of the definition of '*official information*' in section 2), and, therefore, they were not official information.

The Chief Ombudsman did not accept this. The provision of ministerial services, including email services, is a core function of DIA. Ministerial email services are provided by Parliamentary Services pursuant to an MOU and service level agreement with DIA. Parliamentary Services held the emails pursuant to its contract with DIA. DIA was in turn deemed to hold the emails under section 2(5) of the OIA.

DIA held the emails for its own purposes as part of its core function, and not solely as an agent for the former Minister. There was no evidence to support the assertion that DIA was acting as '*agent*' for the Minister (meaning that the Minister had expressly or impliedly authorised DIA to be able alter his legal relationship with third parties).

Even if DIA held the emails solely as an agent or for the sole purpose of safe custody, this was on behalf of the Minister, and not on behalf of someone else not subject to the OIA. The purpose of the exclusion in paragraph (f) is to ensure that information of a type that should never be covered by the OIA does not come within the Act simply because of a safe keeping arrangement with an agency. That was not the case here. The Minister's subsequent resignation should not convert what was official information, into information that is not official.

In the Chief Ombudsman's view, ministerial emails held by Parliamentary Services would be deemed to be held by DIA. This would not apply to Ministers' personal, constituency or party political emails, because DIA's functions are limited to the provision of **ministerial** email services.

In the end, final determination of this issue was unnecessary because the Minister was reinstated. The Chief Ombudsman determined that, in the circumstances of this particular case, the emails in question related to a position the Minister held solely in his capacity as leader of a political party and not as a Minister of the Crown. Therefore, the emails were not '*official information*'.

In a subsequent series of cases (402092 and others), DIA accepted the Ombudsman's rationale for concluding that it is deemed to hold emails held by Ministers in their official capacity, and that in the case of current Ministers, the appropriate response is to transfer the request to the current Minister on the basis that it is more closely connected with their functions, and in the case of former Ministers, it is appropriate for DIA to deal with the request, which may involve transferring the request, along with any information held, to the most appropriate Minister or agency.

DIA has established a process for dealing with these requests that was agreed with the Speaker and the Chief Ombudsman.

This case note is published under the authority of the [Ombudsmen Rules 1989](#). It sets out an Ombudsman's view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.