

Request for advice to Local Government Commission

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| Legislation | Official Information Act 1982, ss 9(2)(f)(iv), 9(2)(g)(i) |
| Agency | Department of Internal Affairs |
| Ombudsman | Dame Beverley Wakem |
| Case number(s) | 382375 |
| Date | December 2014 |

No ministerial or executive government decision making process would be undermined by release—draft and final versions of the advice were substantially similar and the advice was in the nature of a careful and considered critique—no good reason to withhold

The Local Government Commission was undertaking consultation on a draft proposal for local government reorganisation in Northland and Hawke's Bay.¹ A requester asked the Department of Internal Affairs for information about the reorganisation. The Department withheld one paragraph of a briefing to the Local Government Minister, and an attachment to that briefing containing the Secretary of Local Government's (the Secretary's) response to the Local Government Commission's draft proposal. The requester complained to the Ombudsman.

The Department explained that the Local Government Commission had not yet decided on the draft proposal. It was '*concerned to ensure that the Commission is able to consider and respond to the Secretary's advice on the draft reorganisation proposals*'. Release of the Secretary's advice would '*prejudice the Commission's ability to take the Secretary's views into account when making decisions*'.

The Chief Ombudsman explained to the Department that section 9(2)(f)(iv) applies where confidential advice has been tendered for ministerial or executive government consideration, and premature disclosure of that advice would prejudice the Minister or Cabinet's ability to properly consider that advice and decide what course of action to take. The Secretary's draft

¹ See clause 20, schedule 3, [Local Government Act 2002](#).

response to the Local Government Commission was not advice tendered to Ministers or Cabinet for consideration and decision. It was advice given to an independent statutory body.

The concern expressed—that premature disclosure of the advice would prejudice the ability of that independent statutory body to reach decisions in an effective and orderly manner—was akin to the concern reflected by section 9(2)(f)(iv) in respect of ministerial and executive government decision making, but it was not something that section 9(2)(f)(iv) applied to protect.

In any case, the Chief Ombudsman questioned whether premature disclosure of the advice would prejudice the Local Government Commission’s decision making process. The Secretary’s advice was just one stream of advice that informed the Commission’s decision. Other streams included public submissions, and mandated consultation with other specified bodies, such as the Auditor-General. If public submissions were able to be disclosed without any prejudicial impact, it was difficult to see why the Secretary’s views had to remain confidential.

The Chief Ombudsman noted that section 9(2)(f)(iv) could, in theory, apply to the paragraph in the briefing to the Minister of Local Government, given that it was advice tendered by officials for ministerial consideration. However, that paragraph did not relate to any ministerial or executive government decision making process. The information itself noted that *‘the Minister of Local Government does not have a decision making role in reorganisations proposed by the Commission’*. The withheld information was provided to the Minister for noting and information purposes only. In these circumstances, there appeared to be no basis to conclude that withholding was necessary to enable ministerial or executive government decision making processes to operate in an effective and orderly manner.

A concern was also raised under section 9(2)(g)(i) because the Secretary’s advice had been provided to the Minister in draft form. However, the draft and final versions of the document were substantially similar and the advice was in the nature of a careful and considered critique. The Chief Ombudsman found it difficult to believe a person in such a senior position would be deterred from providing free and frank advice in the future should the advice in this instance be made publicly available. This was particularly so because the Local Government Commission was obliged to seek the Secretary’s advice under the Local Government Act 2002.

After considering the Chief Ombudsman’s comments the Department decided to release the information at issue, and the complaint was resolved.

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