

## Request for communications between Minister of SOEs and other parties in respect of policy announcement about TVNZ

<b>Legislation</b>	Official Information Act 1982, s 9(2)(f)(ii)
<b>Agency</b>	Minister of State Owned Enterprises
<b>Ombudsman</b>	Sir Brian Elwood
<b>Case number(s)</b>	W41571
<b>Date</b>	November 1999

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*Request for communications between Minister of SOEs and other parties in respect of policy announcement about TVNZ—information at issue comprised oral communications with Cabinet colleagues preceding policy announcement—withholding necessary to protect constitutional convention protecting collective and individual ministerial responsibility*

In this case the requester was a journalist seeking information in relation to a specific policy announcement about TVNZ. In the policy announcement the Minister stated that the government's policy was that TVNZ would not be sold. The requester wrote to the Minister requesting the 'advice, communications, information etc' involved in forming the policy announced of not selling TVNZ, and 'advice, communications, information etc' that the Minister obtained from sources other than the Treasury.

The Minister released two Treasury reports, with certain deletions, and confirmed that he had received no further advice or communications in relation to the policy announced. The requester was dissatisfied with the response because he believed there must be further information other than the two Treasury reports released, relevant to his request. He wrote again to the Minister clarifying that, since the option of retaining TVNZ in Crown ownership was one of three options set out in the Treasury reports, he was seeking all information relevant to the decision to adopt that option. Initially, the Minister responded by advising that he made the particular policy announcement after 'carefully considering the options and weighing the pros and cons'. The requester was not satisfied with the response because it did not clarify the nature of any communications between the Minister and other parties, or the

identity of those parties, relevant to the process of adopting the particular policy option announced. In this regard the requester noted that there was a 2½-month period between the Treasury reports and the policy announcement during which time there was a change in Cabinet and indeed the Government. The Minister responded, acknowledging the requester's comments and confirming that no further advice had been received from officials involved in forming the policy announced, but there had been full and frank discussions with ministerial colleagues, of which no written records were kept, preceding the policy announcement.

The fact that such ministerial discussions took place was no surprise and was to be expected before the Government policy announcements. Communications to the Minister by Cabinet colleagues about whether the Crown should retain or sell TVNZ, are technically '*official information*' for the purposes of the Official Information Act, even though not recorded in writing. To that extent, it was necessary to consider whether there was good reason under the Act to withhold the content of these communications. The Minister argued that disclosure of free and frank discussions between Cabinet colleagues as they formulate policy would undermine the convention of collective and individual ministerial responsibility, and that the information at issue should properly be withheld under section 9(2)(f)(ii) of the OIA to '*maintain the constitutional conventions for the time being which protect collective and individual ministerial responsibility*'.

The convention of collective and individual ministerial responsibility is a cornerstone of New Zealand's system of Cabinet Government. It requires that once Cabinet has made a decision, that decision is to be supported collectively by all Ministers, regardless of their personal views. If a Minister wishes to disassociate him or herself publicly from a Cabinet decision, then normally that Minister would be expected to resign from the Cabinet. In the context of Cabinet discussion about the formulation of Government policy, it was accepted that if Ministers are to be bound by collective responsibility once a Cabinet decision is made, then they must be able to communicate their views freely and frankly within Cabinet as the final shape of the policy is discussed and debated. This has been a feature of Cabinet Government in New Zealand regardless of which party or parties are in power. It was further accepted that only an atmosphere of complete confidentiality would enable the degree of frankness in cabinet discussion required for good government to be achieved. If free and frank communications between Cabinet colleagues, as they consider advice in the process of coming to a policy decision, were released then clearly the convention would be undermined. On this basis section 9(2)(f)(ii) was found to apply.

However, an assessment had then to be made in terms of section 9(1) of the OIA as to whether the interest in withholding the information was outweighed by countervailing public interest considerations favouring disclosure. In the present case, it was noted that the Minister had released (subject to certain deletions) the advice which was tendered to him and the actual policy decision had been announced. In these circumstances, it was difficult to identify a strong countervailing public interest in disclosure of the free and frank ministerial discussions the Minister referred to. While no doubt members of the public might well be interested in the content of such discussions, it did not outweigh the interest in maintaining the convention of collective and individual ministerial responsibility.

It was concluded that the communications at issue could properly be withheld under section 9(2)(f)(ii).

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