

Request for policy advice behind merger of Archives and National Library

Legislation	Official Information Act 1982, s 9(2)(g)(i)
Agency	Minister of State Services
Ombudsman	Beverley Wakem
Case number(s)	288708
Date	September 2010

Release of formal advice to Ministers about abandoned options after decisions had been made would not inhibit the free and frank expression of opinions by officials—s 9(2)(g)(i) does not apply

In 2011, Archives New Zealand and the National Library were merged into the Department of Internal Affairs. A requester sought the policy advice behind the merger, and complained when the Minister of State Services withheld options that were not included in the final proposals on the basis that it would prejudice the free and frank expression of opinions by Ministers and officials (section 9(2)(g)(i)).

The Chief Ombudsman noted that the options at issue were discussed in a carefully prepared document which was submitted by officials for the Minister's consideration and feedback. Some of the options were more developed than others and some appeared in later advice for further consideration by Ministers.

Given that the request post-dated Cabinet's decision on the merger, the Chief Ombudsman was not convinced that the interest protected by section 9(2)(g)(i) would be harmed by the release of the advice which the Minister received on the abandoned options. Section 9(2)(g)(i) can provide protection from release for informal exchanges among officials where early or creative work is being generated so as to give encouragement to uninhibited thinking. However, the same concern does not arise in relation to advice which is tendered in a formal fashion to Ministers, unless there is something particularly free and frank about it. The Chief

Ombudsman did not consider that officials would refrain from tendering advice on alternative options except with an assurance of long-term confidentiality for their contributions.

After considering the Chief Ombudsman's comments, the Minister decided to release the information and the complaint was resolved.

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