

Request for legal advice provided to the Attorney-General

Legislation	Official Information Act 1982, ss 2(1) and 14
Agency	Minister of Justice
Ombudsman	Sir Brian Elwood
Case number(s)	W41067
Date	February 1999

Request for legal advice provided to the Attorney-General by Ministry of Justice—Attorney-General not subject to Act

Section 7 of the New Zealand Bill of Rights Act 1990 provides that the Attorney-General shall report to Parliament where any Bill appears to be inconsistent with the Bill of Rights. A requester sought legal advice provided to the Attorney-General by the Ministry of Justice in relation to a particular Bill.

This request raised two issues:

- whether the Attorney-General was subject to the OIA; and
- whether the Attorney-General had an obligation to transfer the request pursuant to section 14 of the OIA.

The view has been that *‘where information is held by the Attorney-General in that capacity, it is not official information and cannot be accessed under the Official Information Act’*. That view was based on the constitutional position of the Attorney-General.

Historically, the office of Attorney-General dates back to the 13th century when the King, not able to appear in person in his Courts to plead his causes, appointed an attorney to act on his behalf. The Attorney-General later became entitled to sit in the House of Commons and the practice grew up of the Attorney-General being a member of the Commons.

In New Zealand the Attorney-General’s Act 1866 provided for the Attorney-General to be a permanent Government appointment holding office during good behaviour and being removable upon the address of both Houses of Parliament. That Act provided that the Attorney-General could be appointed whether or not the person was a member of the

Executive Council and whether or not the person was the holder of a seat in either House of the General Assembly. The current legislative provision is the Civil List Act 1979 and there is no longer any express statutory provision regulating the office of the Attorney-General. However, it is generally accepted by legal commentators today that the role of Attorney-General is quite separate from that of a Minister of the Crown and that the office of Attorney-General functions independently. Although the Attorney-General is almost always a member of Cabinet, this need not be so.

Section 2(1) of the OIA defines ‘official information’ as meaning, among other things, information held by a department, Minister of the Crown in his official capacity or organisation. The Attorney-General is not listed in the relevant schedules to either the OIA or the Ombudsmen Act 1975 which define the departments and organisations subject to the OIA. The Attorney-General is not a Minister of the Crown by virtue of holding office as Attorney-General and cannot therefore be brought within the scope of the Act in that capacity.

In this case, the Attorney-General also held office as Minister of Justice. However, it was clear that the information at issue was held by the Attorney-General in that capacity. The information could not be deemed to be held also by the Minister of Justice. It therefore followed that the request was outside the scope of the OIA.

Section 14 of the OIA provides that where a department or Minister of the Crown or organisation subject to the Act receives a request for information, but, in circumstances specified in the Act, it is more appropriate for a different department or Minister of the Crown or organisation to deal with the request, then the request shall be transferred accordingly. As the Attorney-General is not subject to the requirements of the OIA, it was not incumbent upon him to transfer the request to the Ministry of Justice pursuant to section 14.

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