



Request for paper written by Minister at home

Legislation	Official Information Act 1982, s 9(2)(g)(i)
Agency	Minister of Revenue
Ombudsman	Sir Brian Elwood
Case number(s)	W35001
Date	March 1996

Request for paper written by Minister of Revenue—request declined because not considered to be official information—when does private document become ‘official information’—good reason under s 9(2)(g)(i) to withhold the paper

This request by a political party researcher was for a copy of a paper written by the Minister of Revenue on alternative macro-economic policy and macro-economic targets. The Hon Ruth Richardson referred to the paper in her book, *‘Making a Difference’*. She said it was called *‘A New Programme for New Zealand’*. The Minister declined the request on the grounds that it was not official information. He said he had prepared the paper at home and it had not been referred to either a Department or to Cabinet: it merely set down his thoughts on certain issues that were relevant at the time. He said he had received legal advice confirming that the information was not official information for the purposes of the OIA.

To enable an assessment to be made of whether or not the information constituted official information, the Minister was asked to clarify the purpose for which he wrote the paper, to whom it had been provided, whether any attempt had been made to discuss it at Cabinet or at a Cabinet Committee, and whether he used or intended to use it for purposes such as writing speeches or for use in developing policy. He was also asked if he would provide a copy of the legal advice he had received on the matter.

It was clear from the Minister’s response that the paper had been written as a record of his own thoughts. Had that been the end of the matter, the information would not be deemed to be held by him in his official capacity and therefore not subject to the OIA. However, the fact

was that it had been shown to the Prime Minister and to selected Ministerial colleagues and this changed the character of the paper. This was an action taken by him as a Minister of the Crown and not as a private individual or even a member of caucus. In this respect, the legal advice to the Minister noted that the status of information held by a Minister as a private individual may later change and become information held by the Minister in his or her official capacity.

In the particular circumstances, the view was formed that the paper was held by the Minister of Revenue in his capacity as a Minister of the Crown and that it was therefore subject to the OIA.

Having viewed the information at issue and after discussions with the Minister, it was clear that the paper recorded freely and frankly his own personal views and ideas on a wide range of issues. The likely effect of release of such information was that Ministers would be constrained in future from freely recording their own ideas and views. It was also accepted that papers of this nature are beneficial to the effective conduct of public affairs. In the long term interest of the effective conduct of public affairs, Ministers should have the ability to freely and frankly exchange views with each other. It is from such exchanges of views that new ideas and thinking are developed and tested before they enter the realm of policy making or policy options, or are taken no further. Accordingly, section 9(2)(g)(i) of the OIA applied to the information.

There appeared to be little public interest in the information at issue being released. There was no evidence that the paper had any other role than recording the personal views of one Minister which he freely and frankly shared with a small number of ministerial colleagues. The paper did not set out current Government policy nor, given that it had not been seen or sanctioned by Cabinet, could it be taken to represent the Government's future policy direction. The final conclusion was that there was good reason to withhold the paper under section 9(2)(g)(i).

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