



## Chief Ombudsman’s opinion under the Official Information Act

<b>Legislation</b>	Official Information Act 1982
<b>Requester</b>	Environmental Law Initiative
<b>Agency</b>	Prime Minister Rt Hon. Christopher Luxon
<b>Request for</b>	Information relating to <i>Smith v Fonterra</i> proceedings
<b>Ombudsman</b>	John Allen
<b>Case number(s)</b>	CASE-041755
<b>Date</b>	1 July 2026

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### Ombudsman’s role

1. I am authorised to investigate and review, on complaint, a decision by the Prime Minister on a request made under the Official Information Act 1982 (OIA).

2. My role in investigating a complaint under the OIA is to form an independent opinion as to whether the Prime Minister was entitled to make the decision on the request. I may also find that the decision complained about was unreasonable, wrong, or appears to have been contrary to law.<sup>1</sup>
3. I am not authorised to investigate a complaint about the administrative actions of the Prime Minister or his Office under my more general jurisdiction in the Ombudsmen Act 1975. This means that I must focus on the decision-making on the OIA request in this case.

## Timeline

### Briefing note provided to Prime Minister's Office

4. In mid-2024, a briefing note prepared by Fonterra and Z Energy ('the briefing note') was hand delivered on separate occasions by the respective companies to the then Chief Policy Advisor in the Prime Minister's Office. A hard copy addendum document was also provided by Z Energy, alongside the briefing note ('the Z Energy Addendum document').
5. On 25 June 2024, the same briefing note was emailed to the personal email address of the Chief Policy Advisor from Fonterra. The emailed briefing note consisted of two documents that were emailed, titled:
  - *240624 – Smith – legislative amendment one pager*
  - *240624 – Smith – Note on Legislative Resolution<sup>2</sup>*
6. The Z Energy Addendum document was not emailed to the Chief Policy Advisor.

### Environmental Law Initiative's request for official information

7. On 26 March 2025, the Environmental Law Initiative requested a variety of information relating to the *Smith v Fonterra* legal proceedings. This included requesting:
  1. *Any documents concerning the Smith v Fonterra litigation.*
  2. *Any documents (including, without limitation, emails, reports, text messages, file notes) concerning:*
    - a. *[...]*
    - b. *Correspondence with industry representatives or constituents concerning the Smith v Fonterra litigation*

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<sup>1</sup> Under section 30(1)(b) of the OIA and section 22(1) and (2) of the Ombudsmen Act 1975. These sections detail the full range of findings that I can make.

<sup>2</sup> Both of these documents are now publicly available.

3. *Information as to any discussions, meetings or conversations concerning any responses or proposals to respond to the Smith v Fonterra litigation. Such information should include:*
  - a. *The parties to the discussion/meeting/conversation.*
  - b. *The date of the discussion/meeting/conversation.*
  - c. *A summary of the content of the discussion/meeting/conversation*
8. On 21 May 2025, the Prime Minister's Chief of Staff communicated a decision on the request to the Environmental Law Initiative. The Chief of Staff made the decision on behalf of the Prime Minister ('the decision-maker'). The response was confined to information held by the Prime Minister's Office as requests had been made to a variety of agencies for the same information.
9. The response provided a table of nine documents that were being released in whole or part. Other emails and texts were withheld under three sections of the OIA.

## **Complaint from Environmental Law Initiative**

10. In mid-May 2026, as part of the High Court proceedings *Smith v Fonterra*, it was revealed publicly that the briefing note had been provided to the Prime Minister's Office in 2024. The briefing note was also made publicly available at that time.
11. On 25 May 2026, I received a complaint from the Environmental Law Initiative about the Prime Minister's Office's 21 May 2025 decision under the OIA. The Environmental Law Initiative complained that the briefing note had not been disclosed as part of the request and that meetings with Fonterra and Z Energy had not been disclosed.
12. On 26 May 2026, I notified the Prime Minister's Office of my investigation under the OIA.
13. As part of the investigation, I was advised of the existence of the hard copy Z Energy addendum document that had also been provided to the then Chief Policy Advisor alongside the briefing note. This document has not been released publicly and it would appear no decision has therefore been made under the OIA whether to make it available to the requester.

## **Analysis and findings**

### **Was the briefing note official information when received?**

14. '*Official information*' is defined as meaning any information held by:
  - a. a public service agency; or
  - b. a Minister of the Crown in his official capacity; or

- c. an organisation
15. Information can be official information regardless of where it is stored. If information is created or received in the Prime Minister's official capacity, then it is official information. This means that official information sent to personal email addresses, personal phone numbers or mobile applications is still considered '*official information*'.
  16. Ministerial staff are employed on events-based agreements by the Department of Internal Affairs but work directly to a Minister.<sup>3</sup> Successive Ombudsmen have considered that a request for information held by a Minister would include information held by that Minister's staff. Ministerial staff are acting on behalf of the Minister and the Cabinet Manual makes Ministers personally responsible for ensuring staff in their offices are familiar with the OIA and have access to appropriate guidance.<sup>4</sup>
  17. In this case, the briefing note and associated documents were clearly provided to the then Chief Policy Advisor as part of their role in the Prime Minister's Office. It related to government policy matters within the scope of the Prime Minister's role. It was clearly not provided to the staff member in a personal capacity.
  18. The Prime Minister's Office agrees that if the briefing note was held at the time of the request, it would be official information.
  19. I consider that the briefing note was '*official information*' when:
    - a. it was provided as a hard copy to the then Chief Policy Advisor
    - b. it was emailed to the then Chief Policy Advisor's personal email address
  20. I note that the briefing note was also a '*public record*' under the Public Records Act 2005.

### **Did the decision on the OIA request meet the requirements of the OIA?**

21. The briefing note clearly fits within the scope of the Environmental Law Initiative's request. It was both a document relating to the *Smith v Fonterra* proceedings and a '*communication with industry representatives*'. The Prime Minister's Office agrees.
22. Relating to the briefing note, I also consider that the following should be included in the scope of the OIA request:
  - a. the covering email sent to the then Chief Policy Advisor's personal email address
  - b. the Z Energy addendum document
  - c. details of the meetings held between the then Chief Policy Advisor and Fonterra and Z Energy, even if this just noted that meeting consisted of the briefing note

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<sup>3</sup> Section 5 of the Public Services Act 2020.

<sup>4</sup> Paragraph 8.32 of the Cabinet Manual.

being handed over. This was specifically requested in part 3 of the Environmental Law Initiative's request.

23. A key question in this case is whether, at the time of the Prime Minister's Office's decision on the OIA request, the briefing note and related information was 'held' by the Prime Minister's Office.
24. The Prime Minister's Office advises that it was not aware of the hardcopy briefing note until contacted by a media outlet on 22 May 2026. The Prime Minister's Office subsequently became aware that the document had also been emailed. The briefing note was not identified or considered as part of the response to the OIA request.
25. It appears neither the hard copy briefing note or addendum document provided to the then Chief Policy Advisor were saved into the Prime Minister's Office's IT systems. It was not known by the Prime Minister's Office whether the hard copies were retained, and if so, where they were stored. This meant that staff managing the OIA request would not be able to locate the documents through conducting reasonable searches for information in scope of the request.
26. The briefing note was also emailed to the Chief Policy Advisor and therefore an electronic version was held by the Chief Policy Advisor in their personal email records. As it related to official activities, it should still have been considered official information in scope of the request. However, for the decision-maker on the request to know the briefing note was in scope, the then Chief Policy Advisor would have had to identify the document was held in his personal email inbox.
27. The Chief Policy Advisor was consulted during the preparation of the original response on the OIA request by the Prime Minister's Office and had provided a variety of documents which were in scope of the request. Neither the briefing note nor the Z Energy addendum document were identified or provided, nor were the meetings with Fonterra and Z Energy noted to answer part 3 of the request.
28. This consultation process should have identified the existence of the briefing note and associated information, and that these were within the scope of the request. As a result of this not occurring, the documents were not considered by the decision-maker<sup>5</sup> for the request and the information was effectively withheld from the requester without meeting the requirements of the OIA for withholding information. My Office made inquiries on this with the Prime Minister's Chief of Staff and was advised that as the decision-maker on the request, he was not aware of the documents' existence himself when making the decision on the request.
29. It is my opinion that the briefing note was held at the date of the request and its omission from the response sent on 21 May 2025 failed to comply with the requirements of the OIA. The handling of the request should have identified the briefing and associated documents and the failure to do so was unreasonable.

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<sup>5</sup> The Prime Minister's Chief of Staff, on behalf of the Prime Minister.

30. The Prime Minister's Office has noted:

*Like in every organisation in the public sector, this office depends on individual staff members who receive documents, to ensure that they are filed and retained appropriately as part of the public record. The handling of the briefing note does not meet the standards expected of staff in this or any ministerial office and we are treating it with the seriousness it deserves.*

31. I agree there will always be an element of reliance on staff members making and keeping records to ensure that OIA requests are responded to appropriately. However, this case identifies the importance of agencies and ministers ensuring that staff are kept aware of their obligations, have the appropriate training, keep records that are compliant with the Public Records Act, and undertake thorough searches on OIA requests that go beyond reliance on the recollections of staff. Failing to do so, as occurred here, undermines public confidence in the Official Information Act.

32. While not strictly necessary as the note is now in the public domain, if the briefing note had been identified as part of the decision-making on the request, my view is that it should have been provided to the requester. While an argument may have been made that it was provided in confidence<sup>6</sup>, there is a significant public interest in the release of the briefing note which would have outweighed any such interest.

33. The Z Energy addendum document has not been released publicly and appears to contain commercially sensitive and confidential information. There may have been grounds to withhold some of it, following consultation with affected parties, after considering whether these interests were outweighed by the strong public interest in release. Following my advice, the Prime Minister's Office has taken steps to obtain the document and has confirmed that it will review the information contained in this document to make a decision on whether to make it available, in whole or in part, in accordance with the OIA.

## Comments received on my provisional findings

34. My Office consulted the former Chief Policy Advisor as part of this investigation and he advised that the Chief Policy Advisor role is a high-workload and high-pressure environment that involves managing very large volumes of information, received in written and oral form, and in both hard and soft copy. He advised that his recollection is limited due to the events in question occurring between 13 and 24 months prior to the date of this opinion. Taking this into account, he advised:

a. he was not aware of the Z Energy addendum document until I advised him of it

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<sup>6</sup> Section 9(2)(ba)(i) of the OIA.

- b. he does not recall what he did with the hard-copy briefings but advised that he did not knowingly retain or destroy any document that may be a public record
  - c. he does not recall the meetings with Fonterra or Z Energy in 2024 and noted that it was not practice for notes to be taken of every meeting or interaction
  - d. he does not recall the OIA request but as far as he can recall, he engaged with the request in good faith and provided the documents he was able to locate. He advises that there was no deliberate decision to exclude the documents at issue from the OIA request
35. While I did not find any evidence that contradicts this advice and I appreciate that the Chief Policy Advisor role has a high-workload, I do find it surprising that that the former Chief Policy Advisor had no recollection of what was done with the information in the briefings, given they related to a prominent issue, were provided by high profile companies, and the wording for the suggested legislative change in the briefing note was ultimately reflected in the proposed changes to the Climate Change Response Act 2002. These appear to have been documents of significance to informing the legislative process that followed. Identifying what happened with the hardcopy briefings goes beyond the mandate of my investigation under the OIA, but these are points that I will be raising as part of a referral to the Chief Archivist.
36. The former Chief Policy Advisor also advised my Office that it is *'well documented'* that the Department of Internal Affairs' IT systems are inadequate to deal with many files, and this has contributed to the use of personal email for government business across government. He advised me that at times had to use his personal email to manage these limitations.
37. The possibility of widespread use of personal email addresses to receive official information is particularly concerning to me. Receiving official information in this way significantly raises the risk of it not being identified in response to OIA requests, as was the case here. While my investigation under the OIA does not consider the adequacy of the Department of Internal Affairs' systems, this is something which I will engage with the Department about. I also note that I can't see why emails sent to personal emails could not be forwarded to official email addresses, which would better enable discovery.
38. The former Chief Policy Advisor also noted that he did not recall any training, guidance or support from the Department of Internal Affairs on how files must be managed.
39. The Department advised my Office that it provides a range of advice, written guidance and training to staff on their responsibilities, and this includes specific guidance on how to manage emails and physical records. It also provides training on the OIA through an external provider to ministerial staff.

## Ombudsman's opinion

40. For the reasons set out above, I consider that the decision on the original OIA request provided to the Environmental Law Institute by the Prime Minister's Office was unreasonable.<sup>7</sup>
41. I recommend:
- a. The Prime Minister reviews and makes a decision on whether to make available the information contained in the Z Energy addendum document to the requester as a priority.
  - b. The Prime Minister provides this opinion to all ministerial staffers to remind them of their obligations to keep records and ensure that all relevant records in scope of an OIA request are identified.
  - c. Ministerial staffers in the Prime Minister's Office review their personal records to ensure all official information has been transferred to appropriate systems.
42. I note this acknowledgement from the Prime Minister's Office's in response to my investigation:
- [...] we fully acknowledge that any document such as the briefing note from Fonterra and Z Energy should have been retained as part of this office's record. In addition to the work being undertaken by DIA to identify any information held by the former staff member, this office has asked Ministerial Services to make sure that staff fully understand their obligations to retain public records going forward.*
43. The Prime Minister's Office has accepted my opinion and recommendations and has apologised for the failure to retain and include all relevant information in the original response to the OIA. The Office advised that it had already asked staff to review their personal records, accounts and devices to ensure all records are saved in the appropriate systems to be part of the official record.

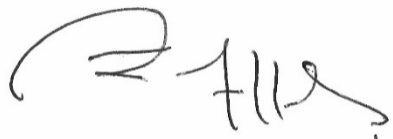
### Further steps I intend to take

44. The Department of Internal Affairs is currently undertaking a review of the former Chief Policy Advisor's IT account and engaging with him about any official information that may be held in personal accounts. I intend to engage with the Department to understand the steps that it will be taking to prevent this type of event from occurring in the future. I will consider what further action I may take following this engagement. I have also provided the Department with a copy of this opinion.

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<sup>7</sup> Section 30(2) of the OIA.

45. In accordance with section s28(6) of the OIA, I have notified the Chief Archivist of this matter, in accordance with their role under the Public Records Act.
46. I also intend to provide this opinion to the Public Service Commissioner, given the Commissioner's role in issuing the Code of Conduct for ministerial staff and the Commission's responsibilities for the wider public sector.

A handwritten signature in black ink, appearing to read 'John Allen', with a stylized flourish at the end.

John Allen  
Chief Ombudsman