
From: Sarah Murphy
Sent: Monday, 2 December 2019 11:15 am
To: Pam McLean
Cc: Emma Leach ; Aimee Bryant ; Richard Ngatai
Subject: FW: instructions on OIA exemption

Dear Pam

Apologies for the delay in responding to your email. Please find attached an interchange that we had with Ryan about this matter, which was discussed with Justice. The intention was that the OIA exemption related to communications prior to a formal investigation to support formal systemic resolution and early resolution of individual complaints.

This would involve an expansion of the existing section 2(1)(i) of the OIA, which provides that official information

“does not include information contained in any correspondence or communication which has taken place between the office of the Ombudsmen and any department or Minister of the Crown or organisation and which relates to an investigation conducted by an Ombudsman under this Act or under the Ombudsmen Act 1975, other than information that came into existence before the commencement of that investigation;”

We suggest that this could be effected with the following proposed amendment to section 2(1)(i) of the Official Information Act, linking back to the proposed function sections in the OTSCC Act. I note that the exclusion of material that came into existence prior to the relevant communication with the Ombudsman excludes information about scanning and scoping. It is noted with respect to the last subsection that linking back to the general functions implicitly excludes the process of “identif[ication]” of the serious issue (i.e. communications relating to scanning and scoping).

Official information:

“does not include information contained in any correspondence or communication which has taken place between the office of the Ombudsmen and any department or Minister of the Crown or organisation and which relates to:

- an investigation conducted by an Ombudsman under this Act or under the Ombudsmen Act 1975, other than information that came into existence before the commencement of that investigation;
- preliminary inquiries conducted by an Ombudsman in respect of a complaint pursuant to *[reference relevant subsection General functions section of the OTSCC Bill that states “the conduct of preliminary inquiries for the purposes of determining whether a matter needs to be investigated, or can be otherwise resolved]*, other than information that came into existence before the commencement of those preliminary inquiries;
- resolution of a serious and significant issue pursuant to *[reference relevant subsection of General Functions section of the OTSCC Bill “identify, resolve and investigate serious and systemic issues”]*

other than information that came into existence before the commencement of the resolution process.”

I hope that this is of assistance.

Kind regards

Sarah

From: Pam McLean <s9(2)(a) OIA @msd.govt.nz>
Sent: Tuesday, 26 November 2019 4:23 PM
To: Sarah Murphy <s9(2)(a) OIA @ombudsman.parliament.nz>
Subject: instructions on OIA exemption

Hi Sarah, I'm preparing some more instructions for PCO and need to do the one on the OIA exemption. I expect the Oversight Act will need a section on this

Table 3 in the March 2019 cabinet paper says:

Supporting earliest resolution of matters	An exception from the Official Information Act 1982 (OIA) for information relating to communications between the Ombudsman and Oranga Tamariki and/or other relevant agencies prior to the commencement of a formal investigation, for the purposes of supporting systemic and early resolution of individual complaints. The exception will not apply to the 'scanning' for or 'scoping' of systemic investigations and will apply to communications, not to the raw information that informed those communications. Such information can already be withheld by the Ombudsman (who is subject to an oath of confidentiality and not covered by the OIA), but not by the entity providing it. This can make agencies reluctant to share information in full, or discuss matters frankly before a formal investigation is started. The exceptions to the OIA I propose already exist for formal investigations.
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Can you please give me some guidance on how this could be drafted in the bill.

Thanks

Pam

**Pam McLean | Senior Lawyer
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We empower informed decision-making

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