

Day 3 – Wednesday, 28 November 2007
Plenary Session 1.30pm-3.30pm

Speaker: John Belgrave

Position: Chief Ombudsman

Organisation: Office of the Ombudsman, New Zealand

Presentation Title: Access to policy advice held by government agencies using FOI legislation. (What New Zealand has learned from its 25 years experience)

Access to policy advice held by government agencies, in particular information relating to current policy matters, is always going to be a contentious area. That should not surprise anyone. However, nor should it frighten anyone.

The inherent tension between the competing public interest considerations that arise with requests for policy advice is reflected in the purposes set out in section 4 of New Zealand's Official Information Act. Section 4(a) recognises the public interest in making information available:

- to enable more effective participation by the public in the making and administration of laws and policies;
- to promote the accountability of Ministers of the Crown and officials; and
- to enhance respect for the law and to promote the good government of New Zealand.

However, section 4(c) recognises the competing public interest in protecting information "consistent with the public interest and the preservation of personal privacy".

The New Zealand legislation favours a case by case approach over rigid rules. What New Zealand has learned from its 25 years experience is that things do change and the flexible case by case approach can handle this. Our methodology for assessing likely harm in particular cases is tested and modified as necessary on the basis of actual cases over time.

The paper examines the New Zealand's Ombudsmen's experience in several pivotal cases. In these cases, the arguments for and against access to policy advice were tested and the outcomes have provided guidance for future similar cases. The initial starting point that "all advice is free and frank and therefore must be kept confidential" gave way to an acceptance that policy advice does not always need to be withheld.

On the basis of the Ombudsmen's experience in these pivotal cases, the paper will address the question of whether the case by case approach is resilient enough to meet the continual evolution of governance and policy-making.