

Day 2 – Tuesday, 27 November 2007
Plenary Session 4.00pm-5.30pm

Speaker: Sir Geoffrey Palmer

Position: President

Organisation: New Zealand Law Commission

New Zealand Presentation

Title: A Hard Look at the New Zealand Experience with the Official Information Act after 25 Years

The Official Information Act (OIA) aims to facilitate open government by ensuring that official information is freely available. This paper considers some recent perspectives on the how effective the OIA has been in practice. The key test applied in the paper is transparency – how transparent have matters of official information and government become under the Act?

There is no doubt that transparency has increased under the OIA. This has been facilitated by the Act's design, which is open-textured, rather than comprised of rigid rules. A great deal of official information is now routinely published in New Zealand as a matter of course – for instance, even cabinet papers are often later published on departmental websites. Furthermore, the bulk of OIA requests for information are processed well within the 20-day time limit, without imposing charges or withholding any or much information. The Ombudsmen have also played a critical role in promoting the Act and helping to develop this more open and transparent culture.

However, there are areas in which transparency is less complete. Recent commentators have suggested that while the OIA operates well in relation to straightforward information that is unlikely to be embarrassing, transparency with regard to difficult or potentially politically embarrassing requests is more dubious. These "difficult" requests are much more likely to encounter delays, have some information withheld, or be refused outright. In anticipation of OIA requests, officials may also change the way they provide sensitive information.

The term "open government" encompasses two concepts: first, openness, or transparency; but also, of course, government – the complex process of governing and making decisions. The aim of the OIA is to promote openness. But it needs to do this in a way that gives the government enough space in which to operate and make decisions. This need for space and the aim of openness and transparency are each important, but there can be tension between them. They need to be balanced carefully in accordance with the spirit and text of the Act.

Officials and frequent requesters of information, such as journalists, are often enthusiastic about the OIA's objectives, but also ambivalent about its operation in practice. Officials find that the Act imposes a heavy administrative burden and can frustrate free and frank policy development. Frequent requesters often encounter adversarial or obstructive

tive tactics from officials in response to requests concerning potentially sensitive material.

It is inevitable that there is some operational tension between requesters of information and the officials whose role it is to service such requests. However, it is far from the spirit of the Act that the dynamic between the two groups should be adversarial. An adversarial dynamic gives rise to competitive tactics, whereby requesters and officials each seek to get the better of the other. This leads to a vicious circle, conducive neither to the efficient administration of the Act, nor to the timely release of the greatest reasonably possible volume of official information. Is this already happening? If so, it is a circle that must be broken.

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