

Access to Official Information Bill

Member's Bill

Explanatory note

General policy statement

The purpose of this bill is to enhance the proper access by people to official information, including personal information, that relates to them, particularly information held by the Inland Revenue Department.

In large measure, this bill is designed to facilitate implementation of the recommendations contained in the report of the Ombudsmen on Case W42893. This was an own motion investigation in terms of section 13 of the Ombudsmen Act 1975 to inquire into the policy and procedure adopted by the Inland Revenue Department to hold and use its official information and process requests for official information held by it.

The report was presented to the House of Representatives on 22 December 1999 pursuant to section 29 of the Ombudsmen Act 1975 and published as parliamentary paper A3 (A99).

The Ombudsmen's investigation was prompted by my complaint made to them that the Inland Revenue Department's Special Audit Unit had issued a memorandum instructing its new staff to deliberately frustrate the purposes of the Official Information Act 1982. I had earlier raised my concerns in the course of the inquiry by the Finance and Expenditure Committee into the Inland Revenue Department during 1999.

In particular, the bill aims to clarify the interaction of the Official Information Act 1982 and the Privacy Act 1993 with the secrecy provisions of the Tax Administration Act 1994.

The Ombudsmen, in their report, noted that the correct application of section 81 of the Tax Administration Act and its impact upon the

Official Information Act and the Privacy Act has been the subject of differing views by the Inland Revenue Department, the Privacy Commissioner and the Ombudsmen themselves. While the Ombudsmen were satisfied that their report set out the proper approach to be adopted, they observed that nevertheless Parliament may wish to make more clear its intention regarding the secrecy provision of the Tax Administration Act and its relationship with the Official Information Act and the Privacy Act. The intention of this bill is to put an end to any uncertainty.

The bill is guided by the Ombudsmen's recommendations which they summarise as being:

aimed at balancing the [Inland Revenue] Department's need to comply with the Official Information Act, while allowing for the proper application of the appropriate secrecy provisions of the Tax Administration Act. The recommendations include a departmental commitment to a culture which encourages the provision of information to taxpayers about their own tax affairs, records being kept about requests refused, better provision of advice to the public, an emphasis on advice being given to taxpayers about their rights of access to information, removal of outdated memoranda and circulars, and the publication of a new and comprehensive Standard Practice Statement available for both internal and external use.

It is evident that access to advice, including legal advice, that has been taken into account in making a particular decision by a department is a significant component in access to official information.

Clause by clause analysis

Clause 1 relates to the Title.

Clause 2 provides that the date of commencement of the Act is the day after the date on which it receives the Royal assent.

Clause 3 set out the purpose of the bill, as outlined above.

Clause 5 amends section 81 of the Tax Administration Act 1994 in several respects:

- an official's duty to maintain the secrecy of matters relating to the Inland Revenue Acts and associated Acts is made subject to the official's duty under particular provisions of the Official Information Act 1982 about making information available,

recommendations made by an Ombudsman under section 22 of the Ombudsmen Act 1975 (which relates to inappropriate decisions or actions), and principle 6 in section 6 of the Privacy Act 1993 (which relates to access to personal information).

- the proviso to subsection (4), which gives the Commissioner of Inland Revenue administrative justifications for not making information available, is repealed.
 - it is made clear that, despite the secrecy provisions, official information and personal information is to be made available when requested by the correct person.
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Rodney Hide

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Access to Official Information Act **2000**.
- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent. 5
- 3 Purpose**
The purpose of this Act is to ensure proper access by persons to official information (including personal information that relates to them, particularly information held by the Inland Revenue Department). 10
- 4 Officer to maintain secrecy**
- (1) Section 81(1) of the Tax Administration Act 1994 (the principal Act) is amended by replacing the word "Every" with the words "Subject to the official's duty pursuant to sections 5, 12 to 19, 21 to 30, and 32 to 34 of the Official Information Act 1982, to any recommendations made by an Ombudsman pursuant to section 22 of the Ombudsmen Act 1975, and to principle 6 set out in section 6 of the Privacy Act 1993, every". 15
- (2) Section 81(4)(b) of the principal Act is amended by repealing the proviso to that paragraph. 20
- (3) Section 81(4) is amended by adding the following paragraphs:

- “(p) communicating any official information to any person entitled to it pursuant to any request for official information made under the Official Information Act 1982:
- “(q) communicating any personal information to any individual entitled to it pursuant to the Privacy Act 1993.”

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