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Official Information Act Review Questions April 2019

Comments from Transparency International New Zealand (TINZ)

Our Expertise on this Topic

Transparency International New Zealand (TINZ) welcomes the opportunity to make a submission on this matter. It fits closely with our objectives, and we are pleased to offer an expert civil society perspective.

We are happy to meet to discuss the submission, if that is useful to you.

In preparing this submission TINZ has relied on the expertise of Liz Brown, a Member with Delegated Authority and lead reviewer of National Systems Integrity Assessment 2018 update. One of our Directors, Ann Webster, has also contributed. Ann is a former Assistant Auditor-General Research and Development at the office of the Auditor-General. Julie Haggie, CEO, has facilitated the submission.

1. In your view, what are the key issues with the OIA?

Transparency International NZ undertook a National Integrity Systems Assessment in 2015, and has been updating this assessment throughout 2018. This will be launched on 22 May 2019.

We are able to share comments made in this assessment, including comments from the 2013 report that are still relevant, as well as subsequent observations.

Key issues with the Official Information Act (OIA) are:

- a. The Law Commission report of 2012 is as relevant now as it was then. The recommendations in the report should be implemented.
- b. The scope of the OIA should be broader, including Officers of Parliament and parliamentary services.
- c. Adherence to the spirit of the OIA is variable, though has improved over the last five years. The practice of 'Hide and Seek' appears to continue in some government agencies.
- d. There remains opaqueness around public funding provided to political parties.
- e. The OIA does not necessarily, and should, apply to all information held by organisations in receipt of public funds.

Other points we wish to make are:

- To further clarify point e. above, there has never been an explicit statement of principles about the sort of organisations that should be subject to the OIA. Organisations have been added to and deleted from the appendices over the years - at first apparently with an eye to ownership. If an entity was publicly owned, then it was usually subject to the OIA. This was fine in the early 1980s, but with the reforms of the 80s came much blurring of the line between public and private entities. It seems obvious that the OIA should cover all use of public funds – i.e if a privately-owned organisation is operating on public funding, then it should be subject to the same transparency regime as a publicly owned one, at least for its publicly funded activities.

- There is a need for an oversight authority with the power to inspect and audit processes for handling information requests and perhaps also to provide education and training. At present this work is fragmented and under resourced.
- There need to be real sanctions for delays caused by inefficient and overly complicated processes for dealing with information requests, and for deliberate delay and obstruction. There is far too much scope for organisations to delay responding to a request until the information is no longer useful. And there should be a time limit on the provision that allows an organisation to withhold information if it will "soon be publicly available". Soon should not mean "in two years' time".
- All organisations should have an initial simple triage process for all information requests - remembering that there are no special rules for "requests under the OIA" - all requests for information are subject to the OIA. Essentially an organisation should ask itself not "is this an OIA request?" but "Do we have any concerns about releasing this information?" If the answer is "no", then the information can be released - if it is "yes" then it should get referred to someone with knowledge of the OIA to decide whether any of the withholding reasons apply.
- The Act review provides an opportunity to give thought as to how to give effect to the OIA efficiently and effectively. This means looking beyond legislation to practices of proactive release and efficient information management, to facilitate public access to information, rather than the Act's principles being reactively met through responses to specific requests. The approach to responding to OIAs needs to move toward a more modern 'information management' approach towards making information available to the public. This could involve the provision for the proactive release of commonly requested information, such as advice provided to Ministers. Such practices are already being advocated and pursued by some Ministers. This is not a legislative change.

2. Do you think these issues relate to the legislation or practice?

Some relate to legislation (ie. Principles, scope, local government, sanctions).

Some relate to its implementation and practice (eg triage, proactive release of commonly requested information).

3. What reforms to the legislation do you think would make the biggest difference?

Clarifying principles of coverage, which should result in extension of the coverage of the Act to include all agencies using public funding; as well as the administration of parliament and officers of parliament, and public money provided to political parties.

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