Colin James on Official Information Act matters for inclusion in the Open Government Partnership action plan.

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Open government implies a high degree of access to government information. That was the purpose of the Official Information Act 1982 (OIA) which replaced the Official Secrets Act. Since its passing a great deal of information that used to be inaccessible has become accessible. But there is increasing criticism of the process and of the propensity to withhold or delay the release of information. In a sense, the OIA has become, in the eyes of its critics, a sort of new Official Secrets Act.

The Ombudsman's report on the OIA issued in December, titled "Not a game of hide and seek", makes disturbing reading. Among some of its findings were:

• "mixed messages from ministers" on openness and accountability; and consequently

• deference to ministerial political advisers – no just informing them as required under the cabinet manual no-surprises policy but consulting them – on whether to release information and its timing and a lack of State Services Commission and Justice Department leadership; which has contributed to

• a lack of a clear "pro-disclosure" culture in 78% of agencies; plus, in "most agencies", a view that "providing information to the public is still seen mostly as a reactive, operational task rather than a planned strategic intention that will benefit other areas of the agency's work";

• inconsistent treatment of media and other OIA requests which risk non-compliance with the act;

• inadequate storage and retrieval systems; and

• inadequate record-keeping of requests and responses.

The Ombudsman made 48 recommendations. These should be relatively straightforward to implement, assuming the government and officials are committed to the thrust of the Open Government Partnership, which is to make more, not less, information available and make it more, not less, readily available.

I recommend that the action programme state a clear intention by ministers, chief executives and agencies to, by end-2017, fully implement, and operate in accordance with, **all the Ombudsman's recommendations** and demonstrate that compliance in clear strategies and in practice.

I had thought of identifying priorities but, since the recommendations in essence seek to ensure the act is operating according its original intention and are all eminently do-able, focusing on only some of the recommendations would be inappropriate, to use a polite word.

That said, there is **other work to do**. I consulted with three journalists: Dr Gavin Ellis, former editor in chief of the New Zealand Herald and now a part-time lecturer at Auckland University who has written a book, due to be published next month, which includes a chapter on the OIA and the Ombudsman's report; Brent Edwards, former political editor and now editor of newsgathering for Radio New Zealand and an indefatigable user of the OIA process; and John Gerritsen, Radio New Zealand's excellent education reporter. None of what follows should be attributed to any one, or any, of them but their comments have informed what follows.

1. The fact that agencies routinely "consult" (the Ombudsman's word) ministerial offices when in plain language "no-surprises" means "inform" is not consistent with the intention of the OIA. Political advisers, whose interest is only the minister's political interests, not the public's interest, are precisely the wrong people to be involved at any point in the disclosure process.

In effect, those advisers subject each request to a political risk assessment. That is logically inconsistent with the principles of the Open Government Partnership.

The public service has a duty not just to the minister but to the public as a whole. This is clearly implied in the Open Government Partnership.

2. Worse, ministerial offices put pressure on agencies (on "advice" via an "opinion") to characterise a no-release decision as their own. This is clearly not open government when the real objector is obscured from public view.

3. The routine consumption of the full 20 days legal time before release is clearly inconsistent with the intention of the OIA. Information delayed can, like justice, be in effect information denied. In fact, in journalists' experience, the 20 days can often just be a start, delaying information by months and in some cases years, in effect sucking out the news value.

4. There are now 56 grounds for refusing a request. This suggests than in practice over time the Official Information Act has become a sort of modern-day Official Secrets Act – that is, presuming information should be withheld rather than released.

5. In addition, there is now a tendency to draft new law that take material out of the ambit of the OIA. The Open Government Partnership would logically count that as regressive, not progressive.

This warrants a more serious and searching inquiry than the Ombudsman has done.

Consequently, **I recommend** that the OGP action plan also include a **request to the Law Commission** to do an exhaustive review of the Official Information Act and processes of compliance, including charging policies, plus the powers of review decisions to delay or deny publication, to ensure timely and full access to information, subject only to a tight list of exceptions, to be decided by a new independent agency, not cabinet ministers.

I recommend also that this note be available immediately to any person making a request under the Official Information Act.