

The OIA 25 Years On: How has the system matured?

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Introduction

The Official Information Act (OIA) is about to turn 25. It was conceived in 1981, with the publication of the report of the Committee on Official Information (known as the Danks Committee), and was delivered into the world by the Parliament when it was enacted in 1982. It is now unquestionably an adult.

As we are all taught these days, an important part of any policy process is ongoing evaluation of whether the desired outcomes are being achieved. So how has the OIA matured? Is it achieving its goals? Are there any perverse consequences? What have we learned? Are there aspects of the system that could now be finetuned or updated?

Having been working reasonably closely with the Act, through a range of roles, since 1989, these are questions that have increasingly been on my mind. When I left the public service in 2004 to move to the university, my own sense of it was that there was widespread acceptance of the basic concept of open government and that that acceptance had resulted in some fundamental shifts in behaviour across government. But I also had a sense that the daily working reality of the Act's processes too often became mired in unnecessary conflict, and in arguments that vacillated between apparently petty procedural matters and high constitutional questions. These arguments, at their worst, could take a great deal of time and become extraordinarily complex. Every public servant I knew believed deeply in the philosophy of the Act, but most hated processing requests. And every requester I knew believed deeply in the philosophy of the Act, but most complained bitterly about the treatment their requests received.

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And so from the Institute of Policy Studies (the IPS) I began a research project to try and understand what is going on and why, and what steps might be taken to improve the situation. To take a medical analogy, the process is one of systematically documenting symptoms, followed by diagnosis, and then prescribing treatment to address the symptoms, where possible. I have just concluded the investigation stage, having completed a comprehensive literature review over the summer and, in recent months, an intensive programme of interviews with people who regularly deal with the Act, one way or another. I am now beginning work on the task of coming up with some diagnoses, and prescriptions for treatment.

I should also acknowledge the support that the IPS is receiving for this project. Although it is a long-established and independent academic institute, the IPS is dependent on support from interested organisations to carry out its programme of policy related research and seminars. This project is no exception. Four government agencies are contributing funds to the project (the State Services Commission, Treasury, the Ministry of Justice and the Department of the Prime Minister and Cabinet). These agencies, along with the Chief Ombudsman, the Privacy Commissioner and the Crown Law Office, are all participating in a steering group that is providing advice and guidance as the research proceeds.

Although the research is supported by the bureaucracy, and my own background with the issues, in recent years at least, is as a public servant, the project is intended to be as dispassionate as possible and to canvass the views and experience of requesters as much as those of people who respond to requests.

So what is going on with the OIA?

I have already noted that it is too soon in the research for me to be making any definitive statements or proclaiming grand conclusions. But I can give you a flavour of the initial findings from the research. I do this by discussing 7 simple propositions.

Proposition one: This is the age of information

Just in case anybody hasn't noticed, we are living in an age of information. Information is everywhere, in screeds, and is the currency of much daily interaction between people, organisations, and states. It is like water, or air. This is true domestically, and internationally.

It is a phenomenon that is driven not only by advances in technology, but also by increased education levels over the last century, by changes in the structure of work and therefore of people's time, and by changes in the fundamental conceptions of the relationship between citizens and states. In modern democracies, people believe that they have a right to know what government is doing and why, and to have a

say. And they have the time, energy and literacy to pursue that. These deep social changes of the last century or more are part of what drove the development of freedom of information statutes around the world. And statutes such as the OIA have in turn stoked the fires of access, participation and accountability a little bit more.

There are a number of points arising from this proposition that are important for the administration of the OIA:

The sheer volume of information that governments generate and hold, including all the research that government agencies are constantly putting together, all the internal communication across government, and all the successive drafts of documents that circulate, can turn the task of responding to even apparently simple requests into very big and costly exercises.

The difficulty of managing that vast sea of information effectively, both generally for the purposes of agency recordkeeping and effective functioning, and for the purposes of responding to OIA requests. The management of public records, as a subset of the general field of information management, is achieving new prominence as a practically and conceptually difficult challenge.

The increasing sense of those outside government that 'government held information' belongs to the people and therefore that they have a 'right' to that information, on request. Although in strict legal terms, a careful distinction was made when the Act was passed between the enforceable right to personal information, and the general ability to request other government held information, that is a distinction that probably passes by most people these days. In intuitive terms, it is 'our' information and the public servants serve us, as citizens, including by giving us our information when we want it.

These three factors combine to create pressure on the administrative provisions of the Act, which create the tools for managing the scope or bounds of any individual OIA request. They need to be used carefully and well if they are not to be seen as illegitimate restrictions on citizen's 'rights'.

From the interviews, it is clear that few if any agencies think that they have the answer yet to the management of electronic information. Some have fancy new document management systems, but even they encounter problems with people working around them and of over-capture when they try to retrieve data, for example for an OIA request. The example shared with us was of a simple search on a key term for a request producing 7000 hits. The task of even going through the list to work out what was in fact relevant was going to take days. Others worry that the quality of the public record is suffering with erratic document management and filing practice. One elegantly commented that 'the historians of the future are going to be bugged'. Others saw this as the single biggest issue for agencies in relation to the OIA. Few have answers. I note, however, that this is an issue squarely in the

sights of Archives New Zealand, who now have a statutory responsibility to assess record-keeping practice across government each year. Their first report under late last year squarely raised the issue of electronic data management and urged departments to work with them to develop systems to respond to the challenge.

It's also clear from our discussions that there is great pressure on the administrative provisions of the Act. These provisions sound dull — to extend the time, to charge, and so forth — but they are in fact critical in defining the terms on which people are able to access government held information. Yet many people experience their operation as arbitrary or perceive them to be used as tools of obfuscation and political gamesmanship. Most accept that the Act needs to have disciplines in it to constrain large and irresponsible use of the Act, but there is a great deal of dissatisfaction with the way the disciplines operate at present.

Proposition 2: The New Zealand government is quite open now

Many, if not most, commentators agree that the OIA has had a significant role in changing the culture of government in relation to information. The OIA, at the age of 25, is itself now a parent. Its DNA can be found in:

The Public Finance Act, which is underpinned by a strong ethic of disclosing to Parliament and publishing core information on state sector finances, through annual reports and the budget process.

The Fiscal Responsibility Act (now rolled into the Public Finance Act by reforms in 2004), which was directly created as a result of the OIA difficulties that surrounded the 1990 general election in relation to the question of whether information about the dire financial position of the BNZ should be released to the opposition in the last days of the election campaign. That question led to Jim Bolger as Prime Minister criticising the Chief Ombudsman in Parliament, for having upheld that the information not be released. The Chief Ombudsman responded by making report to Parliament on the issues, and proposing that a system for the regular and structured release of fiscal information should be developed and enacted.

The Privacy Act, which took the provisions about the right of access to personal information that were in the original OIA (insofar as they related to natural persons), and expanded them into an overall regime governing the collection, storage, use and disclosure of personal information, as well as individual rights of access. The Act covers all organisations, not just those in the public sector.

The Criminal Procedure Bill, currently before Parliament and awaiting its final parliamentary stages, which includes a codified regime to manage pre-trial disclosure in criminal cases. The entire system of pre-trial disclosure developed as a result of a Court decision that confirmed that defendants were able to use the OIA to access information that the police held about them, before the trial (*Commissioner of Police v Ombudsman* [1988] 1 NZLR 385). The disclosure

regime was built around the right to personal information that was in section 29 of the Act, and which has subsequently been carried into the Privacy Act.

The consultation provisions of statutes like the Local Government Act 2002, which require local authorities to consult with communities as they develop their short and long term plans, and before taking some significant decisions. Those consultation provisions build in the OIA's ethic of participation in decision making, and include requirements on the type and scope of information that must be available to support the consultation.

Other examples of significant changes achieved by the OIA, which are now just commonplace practice, include the routine return of examinations scripts, the easy availability of most departmental manuals and procedures — certainly on request and often just on the website, the practice of departments regularly publishing reports and research papers, including sometimes internal and external think-pieces, and the regular publishing of all background reports, often including Cabinet papers, that accompanies any major government announcement.

For example, the announcements in May 2006 on the first set of government decisions on its approach to the management of water were accompanied on the same day by the posting on the website of a set of questions and answers, the Cabinet paper, a supporting technical paper, five reports covering the key themes raised in the earlier public consultation process (itself supported by a full discussion paper), three earlier technical working papers, and a further six internal and technical reports on sub-projects, including maps. And you are advised on the website that further background information to the original discussion paper is available if you ring up. (See www.maf.govt.nz, or www.mfe.govt.nz, under 'Water Programme of Action'.) Given that this is an interim announcement on the direction that the next stage of work will take, and that it had been preceded by one full consultation process and is to be followed by more consultation, this is an extraordinary illustration of the extent to which New Zealand sometimes achieves the purposes of the OIA, in terms of participation in decision making. And similar releases on topics right across government are made every month, if not every week.

The Danks Committee that proposed the OIA for New Zealand described the essential purpose of the reform as 'to improve communication between the people of New Zealand and their government'. There may still be much argument about the way the processes of the OIA itself work, but there can be little question that the way in which the New Zealand government communicates with its citizens, and how often, has fundamentally changed over the last 25 years.

Again, from the interviews, there was broad endorsement of this as a proposition. Most people accept that many departmental systems have changed and that a great deal is now available automatically or easily. Some people shared stories with us of having mounted repeat requests for information produced each month, until the

agency decided to make it automatic and just release the data itself each month. The OIA requesters move on to the next frontier, having achieved a change. But you start to create converse problems. Some requesters noted that it was too hard now because there was so much available, so they would make a request because it was quicker and easier than finding the material for themselves. Some requesters had also noted this phenomenon, and had tried pointing people in the direction of the library sometimes.

There is also the problem that some people are also naturally suspicious of anything that the government has released voluntarily. We talked to several people who would regularly put in requests to dig behind the release of background and Cabinet papers, to see what the 'real' story was.

And the other problem, that must be noted here, is the cautionary one that there now seems little question that all this openness is having an effect on the way people work inside government. Time and again people spoke with us about being careful about what they committed to paper. Particularly in relation to sensitive material, most people clearly had little comfort that they would be able to withhold it under the Act. There are two sides to this change. One is the positive one, that a tranche of unprofessional or unfounded commentary has been removed from the system. Several people commented that the combination of the OIA and the development of judicial review had combined to drastically improve decision making processes on all sorts of matters across government. But the negative side is that people are clearly writing in guarded terms, sending coded messages, or avoiding paper and email at all on matters where they don't want the communication to be made public. We were given examples of some seemingly sensible initiatives that were not being proceeded with because of the potential information consequences.

Proposition 3: All's fair in love and politics

Politicians and their staff are the second biggest users of the Act, and have been since the 1990s. (That is, according to the statistics on complaints collected by the Ombudsmen, which is the only overall statistical picture that is collected.)

That fact alone must logically drive the context in which governments respond to and manage requests. We live in a democracy, and our government is made up of elected politicians. And politics is more often than not a Darwinian blood sport. Put crudely, the core ambition of any government is to get re-elected. The core goal of the opposition is to undermine trust in the government, to persuade people not to re-elect them. The currency for persuading the public is information, and the construction put on it. It is inevitable that the OIA will be one of a number of weapons deployed by each side in that eternal battle. The Act's provisions, and the systems and protocols that sit underneath it, have to be strong enough to cope with the arena in which they will be used. It is simply not possible to insulate the OIA

from politics. That reality has to be accepted, and managed within a sensible framework of rules that enable an appropriate balance to be struck.

That leads to the obvious question, of course, of what are the appropriate rules and the appropriate balance? That is a key issue for this project, and was the subject of much discussion with the people I interviewed.

One interesting fact that emerged from the literature research is that parliamentary use of the Act (that is, by opposition politicians and research units) was non-existent or negligible in the early years of the OIA's operation. Indeed, the possibility of use of it by parliamentarians was not even mentioned in the Danks reports. It first surfaces in the Ombudsmen's reports in 1989, when they describe 'a sharp increase' in the use of the Act by this group, with complaints from that source rising from 22 the year before to 59 in 1989. By 1996 parliamentary requests were the second largest group making complaints, comprising 15% of the total workload of the office. By 1998 that had risen to 20%, but complaints from this group have since stabilised at a more manageable level. The reform of the electoral system and the composition of Parliament made a difference, and the regular use of very large and broadly defined requests by parliamentarians is also a feature. The 2001 annual report of the Ombudsmen notes that there is now interplay between the OIA and the parliamentary question and select committee processes, as opposition politicians make use of the full range of tools available to them to obtain information from the executive.

What became clear in the interviews was that there was no particular agreement on how this divide should work. Those in politics or close to it, on either side of the fence, tended to accept that political management of releases to political players and the media was inevitable — 'just part of the game'. This was not a universal view though, there were some opposition requesters who did not accept this behaviour and saw it as inappropriate politicisation of a neutral public service. Those more distant from the political world were also more suspicious, and less likely to accept that Ministers would want to be involved in the release of Cabinet papers for example.

We asked people about the spectrum of behaviour they had witnessed, ranging from very clean and straightforward departmental processing of requests, to some tactical behaviour as information was released, such as a general gallery dump of the papers to spoil a scoop, through to downright refusal to comply with responsibilities under the Act. The general view was that there was plenty of behaviour in the mid-range, and that we very occasionally crept towards the extreme end. That extreme behaviour was usually checked pretty quickly by other means.

Proposition 4: People interpret experience to fit their world

At times, it seems as if there are two realities about the OIA. The starkly divided perceptions of how the OIA works come through most clearly in the research that Steven Price conducted, but there are echoes in other writing on the Act.

The essence of what Steven was told by requesters was that the Act was thwarted by a culture of chronic manipulation and resistance. In this reality, time limits are generally ignored, withholding grounds are misused, or stretched to their fullest, consultation and transfer processes are used to tie people in endless procedural knots, and charging is used as a threat to shut people down. The general sense is that if people don't want information to go out, there are endless games that can be played to prevent it.

Officials who must respond to requests, on the other hand, saw a world of efforts to produce a timely result in a world where there is never enough time to do anything as thoroughly or as quickly as you would like. This is a world where requesters make hugely complex requests with little consideration of the demand that is placed on the few staff processing it and a dozen others, and where the normal processes for consultation with colleagues and with other parts of the governmental system take a huge amount of time and effort. And all over a pile of drafts and emails that shed little light on anything of interest, because all of the key substantive documents were put on the website months ago.

These descriptions are something of a caricature of the two positions of course, but they serve to set the scene. What is interesting is what it tells us about the different ways in which people can interpret the same phenomenon. To take just one simple example: many people have reported a pattern that most requests get responded to on about day 20 — i.e. on or near the outside statutory deadline. Does that fact alone, without any further information, mean that people are deliberately holding paper back until the last minute in order to frustrate the requester and/or maximise their own advantage on some matter? Or does it mean that human nature is such that people inevitably and naturally work to bright line rules on timeframes, rather than more nebulous standards, and that all of the internal steps and procedures are accordingly geared to meeting the 20 day limit? Or does it mean — in the world where there is never enough time to do anything as early as you would like — that you work late all week in the last week, and harass colleagues from whom you need a response, in order to meet the outside deadline? Or all of the above, at different times?

Different people, of course, have different views on the answer, usually based on their experience across a range of interactions with the bureaucracy, including interactions on OIA matters. They naturally bring that experience to bear as they interpret and explain their experience of OIA administration. Deriving from that experience, and underpinning that interpretation, is the simple matter of trust.

One of the questions I explored as I talked to people, therefore, is the extent to which trust and relationships matter. To hypothesise, a low trust environment can lead to ever more specified and broadly based requests, which can lead to delay, irritation and artificial or overly strict interpretations of the letter of the request, which is all seen as obstructive, which reduces trust, which means that the next request is even more comprehensively specified... and so it spirals on. Whereas a trusting environment, and effective relationships, can mean that requests are made with an appreciation of the context in which they have to be answered, which means that the person responding feels comfortable in telephoning to discuss any difficulties and to try to resolve them through sensible agreement, which means that the requester is more likely to get a response that meets the need and knows what is going on, which means that their next request will probably be designed to produce a similar response... and so it goes on. Again these are caricatures of course. But both sets of experiences are common. For me, then, the questions are to try and understand what conditions produce each experience and to what extent it is possible to encourage more of the latter and less of the former. At this stage, I simply note that there is likely to be an interplay with proposition 3 here.

From my discussions it is certainly true that people interpret things quite differently. But it also became apparent that different people genuinely did have quite different experiences. That brought home the simple point, that relationships matter. People with a close working relationship with government, or who are otherwise known and trusted, tend to find their requests go well. They are easy to talk to, difficulties get worked through, and the risk management antennae are relaxed. But when, as one person described it, 'the point of the request is to skewer the Minister', then it is a very different beast.

Public servants in general do not get on the phone to chat to opposition politicians about the information they are seeking and what can be done to help — that breaks all sorts of other rules, which still count even in the OIA context! Similarly, requests from people litigating against you are unlikely to produce collaborative behaviour. Similarly journalists. Numerous people had stories of themselves or colleagues having been burned by seemingly simple conversations with journalists about processing a request resulting in quotes in the newspaper, or of discussions with opposition requesters resulting in accusations of 'heavying', or of negotiated agreements on the terms of a request simply being denied later on. People are suspicious of those digging for dirt, and with reason.

Proposition 5: Constitutional conventions are slippery things

When the Danks Committee did its work it concluded that 'protection of "the interests of effective government and administration"' raises some of the most difficult questions in our exercise'. The Committee considered that it was important for the government of the day to be able to take advice and to deliberate on it in private, in order to ensure that blunt advice was still able to be given and that

arguments were still able to be debated freely. They saw the risk of advice being driven off paper, of the quality of government decisions suffering, and of the relationship between Ministers and senior public servants descending into mutual recrimination, possibly in turn leading to undesirable politicisation of the public service. The difficulty of navigating to find just where the right boundary was in this area between release and protection reinforced the Committee's overall belief in the desirability of creating a system that could evolve.

The provisions that Parliament enacted in this area refer to the need to withhold in order to maintain 'the constitutional conventions for the time being that protect' a number of specified points. There is no attempt to define the conventions themselves. Indeed Professor Geoffrey Marshall, a highly regarded constitutional lawyer, has compared the conventions around ministerial responsibility to the procreation of eels — notoriously slippery.

These provisions have remained difficult ever since their enactment. The Law Commission review that reported in 1997 concluded that the provisions were unquestionably difficult, but that that was just the nature of the subject area. They had developed a draft of revised provisions, but after consultation and further consideration they concluded that they were unlikely to achieve significant gains. On balance, the conclusion was that it was better to keep the provisions that were already in place, and to keep working at an administrative level to develop agreed practice underneath them.

The annual reports of the Ombudsmen over the years have also commented on these provisions in either specific or general terms almost every year. They have attempted to assist with their application over the years by producing and revising guidelines. Nonetheless, the provisions continue to cause difficulty and to give rise to case notes every year. Successive academic researchers have also examined the provisions and their operation. Their research gives a picture of a delicate and difficult tension in the system around the giving and protection of advice, of the importance of those working in the system believing that advice will be protected when necessary if the provisions are to be effective in their goal, and of the daunting complexity of the task of applying the protective provisions on a case by case basis, to quantities of information, and in a political environment.

I note also that at a 1997 Legal Research Foundation conference on the Act, the then Secretary for Justice, John Belgrave, commented that he found the constitutional provisions less than clear and hoped that the Law Commission might find a way to rewrite them so that they directly addressed the values at stake and the harm that is to be avoided.

It is worth noting that these are the provisions that are used to protect information related to decision making by governments on current policy matters. Those are the matters that are going to be of most interest to journalists and to opposition politicians. It is inevitable therefore (see proposition 3) that those requesters will be

seeking to reduce the scope of the protection, and to get information out before the government is ready to debate it. Opposition politicians want to create an opportunity to criticise and embarrass, and journalists want to be the first with the new story. These provisions are therefore going to provide the main battleground, in OIA terms, for playing out the battle of modern politics. Given their opacity, and the lack of any definitively settled understandings on their application, there is endless scope for argument — and for suspicion (see proposition 4).

Everything in our discussions confirmed this proposition. People struggle to understand these provisions, or to know when or how to apply them. Officials are uncertain, political players both genuinely differ sometimes in their judgement of what might cause harm, and stretch the interpretations to suit their needs, and requesters get very suspicious and cynical about the whole business. It is definitely the core battleground for playing out the political game, but in system terms it is also a significant breeding ground for confusion and suspicion. The lack of any strong shared understanding of what is currently protected by these provisions, or will be in future, is shown by the amount of risk averse behaviour we were told about in terms of people avoiding putting potentially sensitive material on the record.

Proposition 6: The OIA system has built in tensions

This proposition once again states the obvious, but what may not be so obvious is that there are many different layers of tension built into the system. The question is how well the system is balancing them in an overall sense. Some of those tensions include:

- tensions between the overarching goals of release and protection, which the Danks Committee recognised from the outset were in inherent conflict. The Committee expected that there would always be difficulty in balancing the two goals. Their answer was to design a system that enabled ongoing revisiting of that balance in the context of practical examples — that is, a regime built on the case by case application of principles over time;
- tensions between an Act that imposes decision making responsibility on individual players in government (individual Ministers or chief executives), when the overall system of government is a collective one that constantly strives to coordinate and to standardise. The primary mechanisms in the Act for resolving this tension are the ability to consult and to transfer requests, but these provisions sometimes have to carry a great deal of weight;
- the separation the Act creates between chief executives and Ministers (by locating decision making responsibility with the individual) when in almost all other matters chief executives are responsible to Ministers and directed by them. This is all the more awkward when the subject matter of the decision may have political consequence or attract media headlines and questions. The

powers to transfer requests and to consult are the mechanisms for managing this tension, but again they sometimes have to deal with some difficult issues. Moreover, the power to transfer is used less and less (because it is seen as pointless paperwork and process) and is used inconsistently, and so it becomes vulnerable to suspicion;

- as already noted, a core tension in that the key requesters under the Act — politicians and journalists — are usually interested in information just when it is at its most sensitive (just before or while decisions are being made), which is also just as the constitutional protections wrap around the information to protect it. The debate about the right balance here goes directly back to the Act's purposes and questions about when and how the goal of public participation in decision making should be pursued;
- there is also the tension between the case by case approach, which is fundamental to the core notion of an Ombudsman who intervenes in individual cases on behalf of citizens, and the natural desire for a large bureaucracy to develop rules and standards. Many people think that a precedent system already operates and that decisions by an Ombudsman in one case are binding on all future requesters and responders. Others see everything as being up for grabs every time, and have no hesitation about arguing the same issues endlessly.

Our interviews added weight to these various points. People do struggle with the lack of subsidiary rules, and many people on all sides liked the idea of a more developed body of precedent or default rules emerging, to give them a starting point. And the fact that the Act places responsibility on chief executives for decisions with political impact is also a challenge for many. The practice around consultation and transfer is not sufficiently developed, or well understood, to solve the issue at present.

Proposition 7: It's important to look at the big picture

It is very easy to get caught up in the detail of an argument about the precise bounds of one of the withholding provisions, or in esoteric discussion of the proper ambit of consultation and the line between consulting and deferring to the views of others. But it is important to see the issues as a whole. This means two things for the IPS project.

First, it means that we are attempting to assess the effectiveness of the overall system, not just the individual components. We are interested in the role and responsibility of requesters, agencies, Ministers, the Ombudsmen, and the courts, and the interplay between all of them. One of the key matters we are giving thought to is the extent to which it is a 'learning system' or whether there are steps that might be taken to improve the capacity of the system as a whole to learn and develop. At its extreme, this can take you to a questioning of the case by case approach, which sometimes can feel as if you are doomed to begin afresh each day,

with the same questions and the same arguments. But there may be a middle road that enables working guidelines to be developed and applied with greater effectiveness.

Second, it means that we are also constantly standing back to look at the overall state of communication between the government and citizens. I have already referred to some of the progeny of the OIA, and of the changes in practice that have at least some of their genesis in the Act or in the concepts of participation and accountability that it was promoting. It is no help to focus only on the analysis of the statistics on complaints that the Office of the Ombudsmen deals with: this is only a fragment of the overall picture, and inevitably the fragment that shows the most friction and discontent. That picture will inevitably be skewed towards the difficult and contested issues, as the easy ones either don't even warrant an OIA request because the information is freely available, or are processed reasonably quickly and easily to satisfy the requester. It is the only overview that we have, but we should not make the mistake of thinking that it is the whole picture.

The related point that came through strongly in some interviews was that the vast majority of interactions between government agencies and people or organisations take place as part of ordinary business, with no reference to the OIA at all. I quote one of the interviewees:

98% of work of any government department is done outside the OIA. People don't mention it, people don't ring up quoting it... The ordinary citizen only reverts to it when they have a difficulty of some kind getting the information they want. And then it's not usually their first choice and it's normally if they are having some kind of dispute. I will use the word dispute but it might not be that, but often it is. So they have reached a point where they are not getting what they want from the government department or they are in dispute with it... But their normal interaction would be to walk into the local WINZ office or whatever and just ask and just get the stuff off the huge display cabinets or look on the website or ring the help desk or the call centre or, all these things are designed to provide them with the information they need to transact their business.

The other point on relationships is to be aware of the broader context of the issue in question. It was readily acknowledged by many requesters that there was regular and substantial interplay between the media, opposition politicians, lawyers, lobbyists and sector groups in terms of the tools they use to get information out of the bureaucracy. Government agencies are aware of the most obvious interplay between parliamentary questions and OIA requests, at least where they are from the same requester, but I did not detect any great awareness of the broader collaborative environment. As one NGO requester said to us, 'I have to be quite honest in that if we really want stuff it's much better to get a politician to ask for it'.

Some of those interviewed also acknowledged having witnessed occasionally the practice of using OIA requests and Parliamentary Questions to snow a department

in processing work, in the hope it might 'drop the ball', or at least slow down, on the substantive issue.

Conclusion

I end with some broad comments on trust. Here are three quotes from the interviews:

A commentator:

People are people and when you have got a society around you where standards of integrity are dropping, and where near enough is good enough, and where oh well that's not quite the truth but ... When you can do things on computer now with documents that you couldn't do before... The temptation for somebody to cut a few corners in society is much greater and you live in society and you can't help being affected by that at the margins I suppose.

A requester:

I think it just goes back to what I was saying that... there is a lack of trust. We just don't trust that we are getting the amount of material, and the high quality material, you just feel that you are being fobbed off with the minimum. It's not always the case, but...

A public servant:

There are obviously some people who have no trust of departments in looking for information but I suppose there are others who just want to make a request because they feel that by doing that they can needle a department or needle a minister. They may not even be very interested in the result or the answer. They just want to be able to say that I've lodged a request and that I'm going to get something out of them even if it's only a nil response in the end. At least I've made their life a misery for a few days, something like that.

Most starkly, once person simply said, 'they are all sneaky'.

I compare these remarks with a comment in the original Danks Committee report,

Greater freedom of information cannot be expected to end all differences of opinion within the community, or to resolve major political issues. If applied systematically, however, with due regard for the balance between divergent interests, the changes we propose should help to narrow the differences of opinion, increase the effectiveness of policies adopted, and strengthen public confidence in our system of government.

I don't think we're quite there yet.

