
From: Sarah Murphy
Sent: Monday, 4 February 2019 1:13 pm
To: Ryan McLean
Subject: FW: OIA exemption - OT and ombudsman

Dear Ryan

Thanks for passing this on and there is no problem at all with your confirming the position with respect to the TORs being part of the formal resolution process with OT. Great to hear that Justice is broadly on board, and we agree that at this stage it would best be included in the Cabinet paper at a high level with the details to be nailed down in the drafting stage.

Cheers

Sarah

From: Ryan McLean <s9(2)(a) OIA [REDACTED]@msd.govt.nz>
Sent: Monday, 4 February 2019 10:29 AM
To: Sarah Murphy <s9(2)(a) OIA [REDACTED]@ombudsman.parliament.nz>
Subject: RE: OIA exemption - OT and ombudsman

Hi Sarah



It occurred to me (all too late obviously) that I should have confirmed with you before I sent that last email to Justice, hopefully it hasn't caused a headache in suggesting that the same advising and TOR process would apply here?


Regards

Ryan McLean

Principal Advisor (contractor)

Strengthening Independent Oversight for the Oranga Tamariki System and Children's Issues

 s9(2)(a) OIA [REDACTED] |  s9(2)(a) OIA [REDACTED] [@msd.govt.nz](mailto:s9(2)(a) OIA [REDACTED]@msd.govt.nz)

 The Aurora Centre | Level 9 | 56 The Terrace | P O Box 1556 | Wellington | New Zealand



From: Ryan McLean
Sent: Monday, 4 February 2019 10:20 a.m.
To: 'Denoual, Hayley'
Cc: Megan Beecroft; Hubscher, Chris; Johnston, Anna; Kerr, Chris; Kerpen, Ursula; Crooke, David; 'Sarah Murphy'; Emma Leach
Subject: RE: OIA exemption - OT and ombudsman

Hi Hayley

Yes, I would envisage the same process regarding advising the CE and TOR would apply. The detail would be set out in operational agreements between the agencies.

We will need to give some thought to how the exception to the OIA is drafted into the leg, I'm reluctant to rush to nail down the detail in the time we have available before Cabinet consideration. I suggest we are clear in the Cabinet paper regarding the intent and that we will ensure during drafting that we get the wording/level of prescription right.



We can engage with you on that aspect of the drafting as it evolves and there will be opportunities to comment on a draft Bill before it goes to Leg, how does that sound?

Regards

Ryan McLean

Principal Advisor (contractor)

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 s9(2)(a) OIA |  s9(2)(a) OIA [@msd.govt.nz](mailto:s9(2)(a) OIA@msd.govt.nz)

 The Aurora Centre | Level 9 | 56 The Terrace | P O Box 1556 | Wellington | New Zealand



From: Denoual, Hayley [[mailto:s9\(2\)\(a\) OIA@justice.govt.nz](mailto:s9(2)(a) OIA@justice.govt.nz)]

Sent: Monday, 4 February 2019 10:05 a.m.

To: Ryan McLean

Cc: Megan Beecroft; Hubscher, Chris; Johnston, Anna; Kerr, Chris; Kerpen, Ursula; Crooke, David

Subject: FW: OIA exemption - OT and ombudsman

Morena Ryan

Thanks for forwarding this information; the attached diagrams was very useful in understanding the different stages of work.

If I have understood correctly, the ombudsman is suggesting the OIA exemption apply from the formal resolution stage - the second attachment describes this as a process that is initiated by the Chief Ombudsman

contacting the Chief Executive of the agency concerned to discuss a process for formal resolution of the systemic issue, and a proposed terms of reference for the intervention is also provided.

Is this also the intention with the Oranga Tamariki process, i.e. that there will be some sort of official notification and TOR initiated at a senior level (CE?) and that OT and the Ombudsman would then work together to resolve the issue?

If so, this would likely address most of our concerns about the scope of the proposed OIA exemption.

How much of the 'formal resolution' process will be set out in the legislation, and how much will be just be operational protocols? Any OIA exemption will need to be carefully drafted to prevent scope creep and we would be interested in reviewing any drafting in due course.

If you have any further questions/concerns about this, or any of our other feedback on the Cabinet paper, please feel free to give me a call. I'm working out of the office until Thursday but my phone is on divert .

Hayley



Hayley Denoual

Senior Advisor | Electoral and Constitutional
Civil and Constitutional Policy
Ministry of Justice | Tāhū o te Ture
P +s9(2)(a) OIA | Ext s9(2)(a)
Justice Centre | 19 Aitken Street
s9(2)(a) OIA | [@justice.govt.nz](mailto:s9(2)(a) OIA@justice.govt.nz) | justice.govt.nz

Please note I do not work Tuesdays

From: Ryan McLean [mailto:s9(2)(a) OIA@msd.govt.nz]
Sent: Monday, 4 February 2019 8:07 a.m.
To: Denoual, Hayley <s9(2)(a) OIA@justice.govt.nz>
Cc: Megan Beecroft <s9(2)(a) OIA@msd.govt.nz>
Subject: FW: OIA exemption

Hi Hayley

As I mentioned on Friday, we had a conversation with the Ombudsman's Office and following consideration they have come back with the below proposal. If you refer to the first attachment, they are proposing that the OIA exception cover the bottom three process steps (indicated in the arrows on the left of the diagram) but not the top two.

If you'd like to discuss this if we could organise a meeting (with the Ombudsman's Office) today or tomorrow to discuss further.

Regards

Ryan McLean

Principal Advisor (contractor)

Strengthening Independent Oversight for the Oranga Tamariki System and Children's Issues

s9(2)(a) OIA | s9(2)(a) OIA | [@msd.govt.nz](mailto:s9(2)(a) OIA@msd.govt.nz)

The Aurora Centre | Level 9 | 56 The Terrace | P O Box 1556 | Wellington | New Zealand



From: Sarah Murphy [mailto:[s9\(2\)\(a\) OIA @ombudsman.parliament.nz](mailto:s9(2)(a) OIA @ombudsman.parliament.nz)]

Sent: Friday, 1 February 2019 4:59 p.m.

To: Ryan McLean

Cc: Emma Leach

Subject: OIA exemption

Hi Ryan

Many thanks for giving us the opportunity to provide further input on Justice's concerns about the OIA exemption for preliminary inquiries with respect to own motion investigations. It was really helpful to get a greater understanding of their views both in our meeting and through their written comments that you sent to us subsequently.

We have done some further thinking and believe there is a way forward that would ring fence the OIA exemption in a way that addresses Justice's concerns – which in their essence appear to be that the net could be cast too widely were the exemption to cover preliminary inquiries in general in the own motion space - but would enable timely formal resolutions to be pursued where specific serious or systemic issues have been identified.

By way of background, as we noted in the meeting, the situation we are trying to avoid is where:

- we have clearly identified a serious or systemic issue that warrants a formal investigation,
- wish to enter into formal discussions with the agency to see whether the matter can be resolved expeditiously without the need for an investigation,
- but the agency either:
 - o does not wish to enter into resolution discussions as they would be discoverable under the OIA; or
 - o feels constrained in resolution discussions as they would be discoverable under the OIA, resulting in a sub optimal, or no resolution.

There is a clear precedent for this situation - several years ago we identified a serious and systemic issue affecting hundreds of parties in an agency, advised the agency concerned that we were intending to investigate the matter of our own motion, and before we notified the investigation the agency devised a comprehensive resolution package within a week, obviating the need to expend agency and Ombudsman time and resources on undertaking an investigation. However the related correspondence with the Ombudsman was subsequently requested under the OIA, causing the agency to request that all future such discussions only occur under cloak of a notified investigation.

As we have noted, engaging at an investigation level is much more involved and resource intensive for both the agency and the Ombudsman than addressing an issue by way of resolution, and should be reserved for those matters which the agency is unable or unwilling to resolve itself. We are very clear about the distinction between a resolution and investigation in our internal processes and with agencies, and would not use the formal investigation process unless it was necessary. I have attached again the information about our systemic improvement intervention process that hopefully explains the distinctions we draw and the different approaches we take between formal resolution and notified investigation in the own motion space.

We are however mindful of Justice's concerns that extending the exemption to any preliminary inquiries for an own motion matter could potentially cast the net too wide.

We are of the view that this issue would not manifest if the exemption in the own motion area was limited to preliminary inquiries where a formal resolution was initiated with the agency concerned. In other words, it would not apply to the more general scanning and scoping activities that we undertake to identify serious and systemic issues of concern.

We would be grateful if you would discuss this with the Ministry of Justice to see whether they are comfortable with the proposed modification of the exemption. Please feel free to pass on to them the attached material regarding our processes in this area.

Hope this is useful, happy to discuss.

Kind regards

Sarah Murphy

Manager Strategic Advice (Special Projects)
Office of the Ombudsman | Tari o te Kaitiaki Mana Tangata

DDI s9(2)(a) OIA | Phone s9(2)(a) OIA | Fax s9(2)(a) OIA
Email s9(2)(a) OIA [@ombudsman.parliament.nz](mailto:s9(2)(a) OIA@ombudsman.parliament.nz) | www.ombudsman.parliament.nz
PO Box 1960, Level 10, 55 Shortland Street, Auckland



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