

23 June 2004

Attorney-General

**LEGAL ADVICE
PUBLIC RECORDS BILL:
CONSISTENCY WITH NEW ZEALAND BILL OF RIGHTS ACT 1990**

1. We have considered the Public Records Bill (PCO version 5269/4) for consistency with the New Zealand Bill of Rights Act 1990 (the "Bill of Rights Act"). We understand that this Bill is to be considered by the Cabinet Legislation Committee at its meeting on 1 July 2004.
2. The Bill repeals the Archives Act 1957 and the document and archive provisions of the Local Government Act 1974. This Bill reflects developments in technology, legislation and recordkeeping practices that have occurred in the preceding years.
3. The Explanatory note accompanying the Bill describes the overriding purpose of the Bill as being to "improve the accountability of government organisations, enhance democratic participation in government and contribute to New Zealand's national identity."
4. The Bill:
 - establishes a framework under which public records can be managed;
 - ensures that the recordkeeping requirements of the Bill extend to as broad a range of government activities as practicable; and
 - provides for the preservation and accessibility of public archives.
5. In order to achieve these objectives, the Bill provides a legal framework under which public records are created, stored, preserved, disposed of and made accessible.
6. This legislative framework raises issues of consistency with section 14 of the Bill of Rights Act (the right to freedom of expression) ¹ where it restricts public access to certain records and requires organisations and individuals to maintain, preserve, or deal with particular documents and records in particular ways.

¹ Section 14 provides that:

*Everyone has the right to freedom of expression, including the freedom **to seek, receive, and impart information of any kind in any form.***

7. However, we consider that the limits on the right to freedom of expression are reasonable and are justifiable in terms of section 5 of the Bill of Rights Act. The restrictions are related to the overriding purpose of the Bill as set out in paragraph 3 above. We also consider that the restrictions on the use of or access to records are no broader than what is considered necessary to achieve the purposes of the Bill.

Conclusion

8. We have considered whether provisions of the Public Records Bill raise issues of inconsistency with section 14 of the Bill of Rights Act. We have come to the conclusion that while the Bill raises *prima facie* issues of inconsistency with the right to freedom of expression, the limitations appear to be reasonable in terms of section 5.
9. The Bill therefore appears to be consistent with the Bill of Rights Act.
10. In accordance with your instructions, we attach a copy of this opinion for referral to the Minister of Justice. A copy is also attached for referral to the Minister Responsible for Archives if you agree.

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Office of Legal Counsel

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cc Minister of Justice
Minister Responsible for Archives

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