



ANALYSIS

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1993, No. 37

An Act to amend the Local Government Official Information and Meetings Act 1987 [17 May 1993]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Local Government Official Information and Meetings Amendment Act 1993, and shall be read together with and deemed part of the Local Government Official Information and Meetings Act 1987 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of July 1993.

2. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by adding to paragraph (b) of the definition of the term “official information” the expression “; and”.

(2) Section 2 (1) of the principal Act is hereby amended by adding to the definition of the term “official information” the following paragraph:

“(c) Does not include information contained in any correspondence or communication that has taken place between the office of the Privacy Commissioner and any local authority and that relates to any investigation conducted by the Privacy Commissioner under the Privacy Act 1993, other than information

that came into existence before the commencement of that investigation.”.

(3) Section 2 of the principal Act is hereby amended by repealing subsection (4), and substituting the following subsection:

“(4) Nothing in subsection (3) of this section applies in respect of any information that any officer or employee or member of a local authority would not hold but for that person’s membership of, or connection with, a body other than a local authority, except where that membership or connection is in that person’s capacity as such an officer or employee or member of that local authority or as a statutory officer.”

3. Requests—Section 10 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) Notwithstanding subsection (1) of this section, a request made, on or after the date of commencement of this subsection, by or on behalf of a natural person for access to any personal information which is about that person shall be deemed to be a request made pursuant to subclause (1)(b) of principle 6 of the Privacy Act 1993, and shall be dealt with accordingly, and nothing in this Part or in Part V of this Act shall apply in relation to any such request.”

4. Right of access by person to reasons for decisions affecting that person—(1) Section 22 (1)(b) of the principal Act is hereby amended by omitting the expression “section 26 (1)(c) to (f) of this Act”, and substituting the expression “subsection (1A) of this section”.

(2) Section 22 of the principal Act is hereby amended by inserting, after subsection (1), the following subsections:

“(1A) A reference to the information on which any findings were based need not be given under subsection (1)(b) of this section if—

“(a) The disclosure of the information or of information identifying the person who supplied it, being evaluative material, would breach an express or implied promise—

“(i) Which was made to the person who supplied the information; and

“(ii) Which was to the effect that the information or the identity of the person who supplied it or both would be held in confidence; or

“(b) After consultation undertaken (where practicable) by or on behalf of the local authority with a natural person’s medical practitioner, the local authority is satisfied that—

“(i) The information relates to that person; and

“(ii) The disclosure of the information (being information that relates to the physical or mental health of the person making the request under this section) would be likely to prejudice the physical or mental health of that person; or

“(c) In the case of a natural person under the age of 16, the disclosure of that information would be contrary to that person’s interests; or

“(d) The disclosure of that information (being information in respect of a person who has been convicted of an offence or is or has been detained in custody) would be likely to prejudice the safe custody or the rehabilitation of that person.

“(1B) For the purposes of subsection (1A) of this section, the term ‘evaluative material’ means evaluative or opinion material compiled solely—

“(a) For the purpose of determining the suitability, eligibility, or qualifications of the person to whom the material relates—

“(i) For employment or for appointment to office; or

“(ii) For promotion in employment or office or for continuation in employment or office; or

“(iii) For removal from employment or office; or

“(iv) For the awarding of contracts, awards, scholarships, honours, or other benefits; or

“(b) For the purpose of determining whether any contract, award, scholarship, honour, or benefit should be continued, modified, or cancelled.”

5. Right of access to personal information—(1) Section 23 (1) of the principal Act is hereby amended by omitting the words “(in the case of a natural person, without charge)”.

(2) Section 23 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) The right conferred by subsection (1) of this section may be exercised only by a person who is not a natural person.”

6. Reasons for refusal of requests for personal information—(1) Section 26 (1) of the principal Act is hereby amended by repealing paragraphs (d) to (f).

(2) Section 26 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsection:

“(3) For the purposes of subsection (1) (c) of this section, the term ‘evaluative material’ means evaluative or opinion material compiled solely—

“(a) For the purpose of determining the suitability, eligibility, or qualifications of the person to whom the material relates for the awarding of contracts, awards, or other benefits; or

“(b) For the purpose of determining whether any contract, award, or benefit should be continued, modified, or cancelled.”

7. Consultation with Privacy Commissioner—The principal Act is hereby amended by inserting, after section 29, the following section:

“29A. Where an Ombudsman investigates a complaint made under section 27 of this Act in relation to a refusal to make official information available in reliance on section 7 (2) (a) of this Act, the Ombudsman shall, before forming a final opinion under section 30 of this Act in relation to the merits of refusing that request on that ground, consult with the Privacy Commissioner under the Privacy Act 1993.”

8. Transitional provisions—(1) Where—

(a) Before the commencement of this section, a request has been made under section 23 of the principal Act by or on behalf of a natural person; and

(b) The request has not been finally dealt with under the principal Act at the commencement of this section,—that request shall be dealt with as if sections 3 to 7 of this Act had not been passed, and section 38 of the principal Act shall apply in respect of any decision made (whether before or after the commencement of this section) under Part IV of the principal Act in relation to the request.

(2) Any complaint which, before the commencement of this section, has been made to an Ombudsman pursuant to section 38 of the principal Act in relation to a decision made under Part IV of the principal Act (being a decision made in respect of a request made by or on behalf of a natural person under section

23 of the principal Act) shall, where that complaint has not been finally dealt with before the commencement of this section, be dealt with as if sections 3 to 7 of this Act had not been passed.

(3) Where, at the commencement of this section, any proceedings in relation to a request made by or on behalf of a natural person under section 23 of the principal Act are before any Court, those proceedings shall continue as if sections 3 to 7 of this Act had not been passed.

This Act is administered in the Department of Internal Affairs.
