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FREEDOM OF INFORMATION

ANALYSIS

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A BILL INTITULED

An Act to establish the public's right of access to official information

5 WHEREAS the people of New Zealand have a political right to be informed by their Government concerning the public business so that the people may participate more fully in the democratic process; and whereas open government is necessary for a strong democracy:

10 BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

No. 24—1

Price 20c

1. Short Title—(1) This Act may be cited as the Freedom of Information Act 1977.

(2) This Act shall come into force 6 months from the date on which it received the Royal Assent.

2. Interpretation—In this Act, unless the context otherwise requires: 5

“Agency” means:

(a) Any department or organisation mentioned in the Schedule to this Act, and includes a standing or ad hoc body established by such a department or organisation: 10

(b) Any department or organisation described in paragraph (a) of this definition which is responsible, for the time being, for the performance of the functions and duties of any department or instrument or agent of the Executive Government of New Zealand, or any local or statutory body which, for any reason, has ceased to exist as a separate entity: 15

“Court” means the Administrative Division of the Supreme Court: 20

“Official Information” means:

(a) Material obtained or compiled by, or provided for, an agency in the course of performing its functions and duties which is held by, or is in the control or under the supervision of that agency in any form, and includes a synopsis or analysis of, or extract from, that material; 25

(b) Any manual, instruction book, memorandum, or other document compiled by or issued for the use of an agency’s employees or agents in the performance of their official functions and duties, and includes any directive or administrative practice relating to the collection, treatment, storage, control, use, or disposition of any material described in paragraph (a) of this definition: 30 35

“Personal Record” means any item, collection, or grouping of information about an individual person whether collated in a file or otherwise, which is kept by any agency to which this Act applies.

PART I

ACCESS TO INFORMATION

5 **3. Right of access**—(1) Subject to the provisions of Part II of this Act, any person shall have a right of access to official information.

(2) Such official information shall be provided unexpurgated notwithstanding that official information stored in a particular type of storage and retrieval system may need to be reproduced in a different form so as to comply with the provisions of this section.

10 (3) Official information provided in a non-portable form may be copied by the person requesting that information and such copy shall be certified as being correct and accurate by a responsible officer of the agency supplying the official information at the time at which the copy is made.

4. Information to be indexed—It shall be a continuing obligation for each agency to establish, maintain, and make available for public inspection a register of official information for which it is responsible.

20 (2) The register provided for in subsection (1) of this section shall be set out in such a way as to enable the ready selection, identification, and location of official information.

(3) Copies of any entries contained in an index maintained under this section shall be provided to any person at a cost which shall not exceed the direct cost of reproduction.

30 **5. Officials responsible for records**—An agency to which this Act applies shall appoint within its existing staff number members of its staff or governing body, or other appropriate persons, as the people responsible for ensuring that in respect of each system or collection of records maintained by them the provisions of this Act are complied with and these officials shall prepare an annual report for the Justice Department to enable that department to report to Parliament under section 10 of this Act.

PART II

EXEMPTIONS FROM PART I

- 6. Exemptions**—The following types of official information and no other shall be exempt from the provisions of Part I of this Act: 5
- (a) The record of deliberations of the Executive Council of New Zealand or any document prepared for the Executive Council: 5
 - (b) Any document prepared for, considered by, or issued by the Cabinet or a committee of the Cabinet: 10
 - (c) Any communication between Ministers of the Crown including Parliamentary under-secretaries: 10
 - (d) Any personal record unless:
 - (i) the subject of that record consents to the release thereof; or 15
 - (ii) reasonable efforts to locate the subject of that record having failed, the disclosure thereof is considered necessary in order to protect the life, health, safety, or rights of that person: 15
 - (e) Any document or other record relating to, touching, or concerning the security of New Zealand: 20
 - (f) Information on cryptographic systems and communications intelligence systems, designed to further the purpose of military operations, or the Foreign Affairs Department, or Department of Trade and Industry, or Department of Immigration: 25
 - (g) Any intelligence operations specifically authorised by the Prime Minister or other appropriate Minister in accordance with the New Zealand Security Intelligence Service Act 1969: 30
 - (h) Trade secrets or financial information imparted by a person or organisation in confidence: 30
 - (i) Medical records of a patient; except that such records shall be made available to any qualified medical practitioner nominated by that patient: 35
 - (j) Information, the premature disclosure of which could be reasonably expected to have an adverse effect on the legitimate economic interests of New Zealand: 35
 - (k) Information, the disclosure of which could be reasonably be expected to assist in the escape from custody of a person under lawful detention: 40

(1) Any document or other record relating to an investigation or inquiry in the administration of the law or in the course of obtaining or giving legal advice or in contemplation of a legal proceeding.

5 **7. Exempted information forming part of information sought**—Information shall not be withheld by reason only of the fact that part of that information is exempted pursuant to section 6 (a)–(1) of this Act but in any such case the information sought shall be provided with that exempted
10 expunged.

PART III

APPEALS

8. Appeal to the Administrative Division of the Supreme Court—(1) Where any person is refused access to official
15 information or where access is not provided within 14 working days of the application or where any agency to which this Act applies fails to carry out any of the requirements of this Act, with respect to the disclosure of official information, any person (whether on his own or another's behalf) may com-
20 mence action in the Court.

(2) The Court shall require such a body to fulfill the requirements of this Act, and may make any award as to costs.

9. Procedure in the Administrative Division of the Supreme Court—(1) Unless the Chief Justice otherwise determines in
25 relation to urgent applications for review under some other enactment or other urgent proceedings, appeals under this Act shall take precedence over all other applications for
30 fixture before the Court and shall be assigned for hearing at the earliest practicable date and expedited in every way.

(2) In any action brought under any of the provisions of this Act, the Court may examine the contents of appropriate records of an agency to which this Act applies to determine
35 whether the information contained therein or any portion thereof may be properly withheld under any of the provisions for exemption from disclosure in this Act, and the burden of proof shall remain on the agency concerned to show cause why the information or any portion thereof should not be made available to the applicant.

(3) In any action brought to compel disclosure of information under any of the provisions of this Act, the Court may order production to the applicant of any records of that agency which are requested by the applicant which have been improperly withheld from him.

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PART IV

MISCELLANEOUS

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10. Act administered by Department of Justice—(1) This Act shall be administered by the Department of Justice.

(2) The Department of Justice shall annually lay before Parliament a report which shall contain:

(a) A list of the applications for information under this Act which have been refused: 15

(b) A list of the determinations with respect to the applications to which paragraph (a) refers which have been upheld by the Court:

(c) Any comment on the working of the Act which that Department wishes to make. 20

11. Power to amend Schedule by Order in Council—

(1) Where any department or organisation named or specified in the Schedule to this Act is abolished, or its name is altered, or where any new department of State is created, the Governor-General may, by Order in Council, make such amendments to the said Schedule as may be necessary to give effect to the abolition or alteration, or to include the name of the new department therein. 25

(2) The Governor-General may from time to time, by Order in Council, amend Part II and Part III of the Schedule to this Act by— 30

(a) Including therein the name of any local organisation or other organisation in the description of any class or local organisation or other organisations; or 35

(b) Excluding any organisation that has been abolished.

(3) No agency that is in existence and is included in the Schedule may be omitted from this Act by Order in Council.

SCHEDULES

FIRST SCHEDULE

DEPARTMENTS AND ORGANISATIONS TO WHICH THIS ACT APPLIES

Part I—Government Departments

The Audit Department.
The Crown Law Office.
The Customs Department.
The Department of Education.
The Department of Health.
The Department of Internal Affairs.
The Department of Justice.
The Department of Labour.
The Department of Lands and Survey.
The Department of Scientific and Industrial Research.
The Department of Social Welfare.
The Department of Statistics.
The Department of Trade and Industry.
The Export Guarantee Office.
The Government Life Insurance Office.
The Government Printing Office.
The Housing Corporation of New Zealand.
The Inland Revenue Department.
The Maori and Island Affairs Department.
The Maori Trust Office.
The Mines Department.
The Ministry of Agriculture and Fisheries.
The Ministry of Civil Defence.
The Ministry of Defence.
The Ministry of Energy Resources.
The Ministry of Foreign Affairs.
The Ministry of Recreation and Sport.
The Ministry of Transport.
The Ministry of Works and Development.
The New Zealand Electricity Department.
The New Zealand Forest Service.
The New Zealand Government Railways Department.
The Office of the State Services Commission.
The Parliamentary Counsel Office.
The Police Department.
The Post Office.
The Prime Minister's Department.
The Public Trust Office.
The Rural Banking and Finance Corporation of New Zealand.
The State Insurance Office.
The Tourist and Publicity Department.
The Treasury.
The Valuation Department.

FIRST SCHEDULE—*continued**Part II—Organisations Other than Local Organisations*

The Accident Compensation Commission.
 The Agricultural Chemicals Board.
 The Animal Remedies Board.
 The Board of Maori Affairs.
 The Board of Trustees of the National Art Gallery, the National Museum, and the National War Memorial.
 The Canteen Fund Board.
 The Children's Health Camps Board.
 The Decimal Currency Board.
 The Earthquake and War Damage Commission.
 The Fire Service Commission.
 The Government Stores Board.
 The Government Superannuation Board.
 The Land Settlement Board.
 Management Council and Special Councils under the National Art Gallery, Museum, and War Memorial Act 1972.
 The Maori Education Foundation.
 The Maori Purposes Fund Board.
 The Maori Trustee.
 The Marginal Lands Board.
 The National Civil Defence Committee.
 The National Hydatids Council.
 The National Parks Authority.
 The National Provident Fund Board.
 The National Roads Board.
 The National Water and Soil Conservation Authority.
 The New Zealand Army.
 The New Zealand Council for Recreation and Sport.
 The New Zealand Defence Council.
 The New Zealand Historic Places Trust.
 The New Zealand Maori Arts and Crafts Institute.
 The New Zealand Naval Board.
 The New Zealand Naval Forces.
 The New Zealand Patriotic Fund Board.
 The New Zealand Trades Certification Board.
 The Pacific Islands Polynesian Education Foundation Board.
 The Pest Destruction Council.
 The Poisons Committee.
 The Police.
 The Queen Elizabeth the Second Arts Council of New Zealand.
 The Rehabilitation Board.
 The Royal New Zealand Air Force.
 The Social Security Commission.
 The Soil Conservation and Rivers Control Council.
 The Standards Council.
 The State Insurance Investment Board.
 The State Services Commission.
 The Technicians Certification Authority of New Zealand.
 The Urban Public Passenger Transport Council.
 The Vocational Training Council.
 The Water Resources Council.

FIRST SCHEDULE—*continued*

Part III—Local Organisations

Airport Authorities.
Approved organisations under the Hydatids Act 1968.
Borough Councils.
Camp Committees under the Children's Health Camps Act 1972.
Catchment Boards.
Catchment Commissions.
City Councils.
Committees of Management of Secondary Schools.
County Councils.
District Councils.
District Roads Councils.
Domain Boards.
Drainage Boards.
Education Boards.
Electric Power Boards.
Fire Boards.
Governing bodies of Community Colleges.
Governing bodies of Secondary Schools.
Governing bodies of Teachers' Colleges.
Governing bodies of Technical Institutes.
Harbour Boards.
Hospital Boards.
Irrigation Boards.
Licensing Trusts.
Nassella Tussock Boards.
National Park Board Committees.
National Park Boards.
Pest Destruction Boards.
Provincial Patriotic Councils.
Public reserves special Boards, Trusts, or Trust Boards.
Regional Civil Defence Committees.
Regional Councils.
Regional Planning Authorities.
Regional Water Boards.
River Boards.
Scenic Boards.
Secondary Schools Councils.
Town Councils.
United Councils.
The Auckland Harbour Bridge Authority.
The Auckland Institute and Museum Trust Board.
The Auckland Regional Authority.
The Canterbury Museum Trust Board.
The Christchurch Drainage Board.
The Christchurch-Lyttelton Road Tunnel Authority.
The Christchurch Transport Board.
The Dunedin Drainage and Sewerage Board.
The Hauraki Gulf Maritime Park Board.
The Hawke's Bay Crematorium Board.
The Hutt Valley Drainage Board.

FIRST SCHEDULE—*continued*

The Marlborough Forestry Corporation.
The Masterton Trust Lands Trust.
The North Shore Drainage Board.
The Ohai Railway Board.
The Otago Museum Trust Board.
The Rangitaiki Drainage Board.
The Riccarton Bush Trustees.
The Rotorua Area Electricity Supply Authority.
The Selwyn Plantation Board.
The South Canterbury Wallaby Board.
The Waikato Valley Authority.
The Waimakariri-Ashley Water Supply Board.
The Wairarapa Cadet Training Farm Trust Board.
The Wellington Regional Water Board.