



Rt. Hon. Sir Geoffrey Palmer, SC
Law Commission
PO Box 2590
Wellington 6140

Thursday, 9 December 2010

Dear Sir

RE: Submission on review of the OIA and LGOIMA

I respectfully attach the Draco Foundation's submission to the current review of the Official Information Act and the Local Government Official Information and Meetings Act.

The Draco Foundation operates – among other projects – the Council Watch website. Through Council Watch a number of volunteers undertake research projects and case studies that seek to demystify processes and functions of local government, creating a more accessible sector for the public.

Whilst in the past we have been accused (ungraciously and without merit) of being political in our activities, I would like to assure the Commission that we act with the best interest of the public at heart. Our guiding principle is to promote and protect democracy and natural justice in New Zealand.

Thus it is an honour to be able to put to paper our knowledge and experience gained through working alongside local authorities over the past years.

We applaud the Commission for the work undertaken on this review to-date, and hope the final product is a robust reminder to Government that openness and transparency is essential to gain the public's confidence.

Kind regards,

Jarrod Coburn
On behalf of the Board of Trustees

Chapter/ Paragraph	Comment
1 1.2	<p>Opening note: It is disappointing that this review excludes Part 7 of LGOIMA, as there is - in our opinion - abuse of the provisions to exclude public from Council and committee meetings.</p> <p>In addition, it has become apparent to us that Councils are not held accountable in many cases to some sections in Part 7 that require fair notification of meetings and publication of agendas, reports, etc.</p> <p>We hope that there is an opportunity for a review of Part 7 sooner rather than later.</p>
1 1.44	<p>We concur that the OIA and LGOIMA are very important pieces of legislation and central to the system of democracy in this country, and that in general they work well.</p> <p>Some of the problems we have faced have not been with the legislation per se, rather with the application of the law by (especially) local authorities and the enforcement of the law by central government and the judiciary.</p>
2 (Q1)	<p>We concur that - for the purpose of clarity - all agencies (or types of agencies) should be scheduled within the pertaining Act.</p>
2 2.14	<p>We concur with a note of caution that before any agency is removed there is a suitable period of public consultation and a genuine effort to make widely known that the agency is being removed - the OIA and LGOIMA are both keystone parts of our nation's democratic system and should be diluted only with the full knowledge and understanding of the public.</p>
2 2.15	<p>We believe that serious consideration needs to be given to including the Office of the Controller and Auditor General (OCAG) in the scope of the OIA.</p> <p>There is a compelling reason to open the OCAG up to public scrutiny as this agency is a key check-and-balance to the powers of other government agencies (in keeping with the maxim "who shall watch the watchers?").</p>
2 2.19	<p>The Judiciary is a body independent of Government, but whom has the oversight of government agencies. We do not see a need to change how the OIA deals with this branch of the Executive.</p>
2 2.23	<p>We concur that SOEs should continue to be subject to the OIA, for the reasons given.</p>
2 2.24	<p>We also concur that CCOs should be subject to LGOIMA - especially considering the reduced accountability and transparency in the local government sector.</p>
2 (Q2)	<p>We agree.</p>
2 (Q3)	<p>We agree.</p>
2 (Q4)	<p>We agree.</p>
2 (Q5)	<p>No opinion.</p>
2 (Q6)	<p>We disagree.</p>

2	2.28	<p>We disagree with any move to inhibit access to "ephemeral" or "informal" information.</p> <p>The knowledge that a member of the public may rightfully request an email trail, or the previous version of a document, or any number of other types of information is an important barrier to corruption. Furthermore, sometimes it is in the public's interest to know the process of decision-making that can be highlighted by viewing various iterations of a document as it works its way toward an official version.</p> <p>Should a member of the public question the validity of a decision, it is helpful for them to have the right to examine the manner in which that decision was made - this often can be achieved through viewing iterations of a final document.</p>
2	2.31	<p>We believe if public money is involved then there should be <u>no right</u> of an agency under OIA or LGOIMA to refuse to provide information based on the reason of "commercial sensitivity" (unless for specific reasons outlined later in our submission). Thus, a ban on provision of third-party information would be against the public interest.</p>
2	2.33	<p>With respect we disagree. The behaviour of many local authorities in terms of how they use the LGOIMA to 'get around' providing information would lead us to believe that providing yet another reason to refuse to grant information would be more harmful than creating an exemption.</p>
2	(Q7)	<p>Yes, if the alternative is giving agencies more powers to refuse an information request. Ambiguity works against the public's ability to access information. It is our experience that it can take up to 9 months for the Office of the Ombudsmen (OOO) to order the release of information - this makes a farce of the LGOIMA and OIA.</p>
3	(Q8)	<p>Yes, we do think it must continue on a case-by-case basis. It should not be the role of legislation to correct the incompetency's of agencies in applying the OIA or LGOIMA to requests made to them for information - this is a responsibility of government to manage its own agencies. Government also should invest more resources in the OOO and OCAG to ensure the Acts are administered properly.</p> <p>We believe that only in the past few years have members of the public started to become aware of the powers they have under these Acts and others to interrogate agencies of the State, and we think more time should be allowed for the system to be embraced by the wider public.</p>
3	(Q9)	<p>We agree, and in addition we firmly believe that the OOO has done an outstanding job in promoting the use of the OIA and LGOIMA. However it is apparent that this Office is under-resourced. It would be a positive move to officially grant the OOO sanction over OIA and LGOIMA along with the resources required to promote and investigate appropriately.</p>
3	(Q10)	<p>We agree.</p>
3	(Q11)	<p>We agree, on the condition that the Ombudsmen have the responsibility to make decisions based upon the <u>current context</u>. This will ensure anachronisms do not affect the rights of future generations to access information.</p>
3	(Q12)	<p>We agree.</p>

3 (Q13) We agree. With regards to the increased demand for official information coupled with the improvement in technology: one thing that could reduce the burden on agencies is if there was a requirement in the Acts that all information be published online, unless good cause existed not to.

There could be a suitable period of time (perhaps 5 years) to allow agencies to complete this task. The outcome of this would see the OIA and LGOIMA being used to request only that information that was already considered not in the public's interest to publish by the respective agency.

This would also considerably reduce the workload of the OOO. It seems to us to be a logical progression from Official Secrets to Official Information and on to Publicly Available Information.

4 4.2 We agree. It is in our experience that Council Officers do not understand the 'bigger picture' of provision of official information... many seem still to be in the "Official Secrets" mindset.

It is our experience that there is a lack of formal training in LGOIMA. Perhaps more education needs to be undertaken by the OOO so the onus of responsibility is taken off the local authorities. This would result in a more efficient and consistent training regime, and would provide officers with no excuses for breaching the provisions of the Act.

4 4.29 We considered the basics of this section of the Act carefully and have concluded that there are three key facts to take into account:

- 1) Decisions are made
- 2) Those decisions involve public money, and
- 3) The consequences of those decisions affect a large number of people.

It is therefore unquestionably in the public's interest to know who made the decision, what were the facts considered, and how was it reached. This is one of the main reasons we have the Public Records Act 2005.

Whilst it is important for officers or others to provide free and frank advice, without fear of ridicule or legal challenge, the public interest in the decision-making process is far more important.

The test in this instance should be high, otherwise the temptation by Council officers to withhold information to cover up poorly-informed decisions, or to exclude members of the public or Fourth Estate from hearing that advice, is too great a risk.

If the underlying principle of the LGOIMA is to enhance trust in local bodies then it should reflect the Local Government Act 2002 S.14: "a local authority should ... conduct its business in an open, transparent, and democratically accountable manner."

Officers and others should have no fear to provide free and frank advice. Rather than protect them through the withholding of information, it may be better to allow them some form of protection akin to that of Parliamentary privilege, such as protects those who speak at a Select Committee hearing.

4	4.3	<p>Whilst we appreciate the comments from the Danks Committee regarding negative consequences we feel that the starting point should be that "information shall be made available unless there is good reason for withholding it" (LGOIMA S.5).</p> <p>The Act should serve the people, not the Local Authority.</p>
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4	4.42	<p>This certainly would be a good start, as it raises the bar significantly for the reasons to withhold. It comes down to definition: whilst advice should be something given in a formal manner that can be backed-up with factual evidence, opinion is something subjective and may not be able to be substantiated.</p> <p>By removing 'opinion' from the test for withholding information it is possible (depending upon the definitions within the legislation) that <u>more</u> information will become available.</p> <p>After all, who would want any local- or central government decisions being made on unsubstantiated, subjective opinion?</p>
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5	5.10	<p>What is the <u>motivation</u> for either party to want to keep a transaction with a local body confidential? True, there is a fair motivation from the perspective of the commercial body, as it is a competitive advantage to withhold as much information from their competitors as possible. But there is no clear advantage to the public for that information to be withheld – in fact the opposite applies when considering the leverage held by the local body.</p> <p>From a LGOIMA perspective we take a point of view that the public interest is paramount. It is important to consider the following points:</p> <ol style="list-style-type: none"> 1) The Act should only protect the commercial interests of the local body... not that of businesses. This is because the Act serves the people of New Zealand, not domestic or international company shareholders. 2) A local authority represents a monopoly: there is no alternative point of funding for road repair, building construction, cleaning, etc. If a company wants to repair the roads in Christchurch City, it cannot put a tender into the Wellington City Council for the work. Thus, there is no negative consequence from a public- or local body perspective for removing the commercial sensitivity clause in LGOIMA. 3) On the other hand, if a local authority was competing against a <u>similar</u> body (such as Wellington City Council competing with Auckland and Hamilton for the hosting rights to the Rugby Sevens) then there <u>are</u> grounds to withhold information for reasons of commercial sensitivity; the commercial interests of the <u>local authority</u> and therefore the community are being protected. <p>To hide the transactional cost of public money from the people who provide that money is wrong, and against the spirit of open government.</p> <p>Removing the ability for Council officers to withhold information about activities between their local authority and commercial interests would improve transparency in how public money is spent and would further level the playing field for tenderers and suppliers, possibly resulting in cost savings (e.g. market theory dictates that the Invisible Hand will create the most efficiencies when perfect information is available).</p> <p>This would also have a huge impact on the trust that individuals would have for their local authority.</p>

5	(Q17)	<p>The interpretation (in LGOIMA) should be narrowed to include only situations where the withholding of information is permitted on the grounds of commercial sensitivity when the local authority is competing with like agencies.</p> <p>Every other commercial transaction should be discoverable as of right.</p>
5	(Q18)	No we do not.
5	5.38	We feel the current provisions are appropriate.
5	(Q21)	We feel they are very important but the legislation should not become more rigid - they should be included in guidelines and efforts be given to education of agencies.
5	(Q22)	<p>This section of LGOIMA goes to the heart of the publics' trust in local government. There is no greater potential for corruption than in dealings between public and private entities that involve public money.</p> <p>The LGOIMA first and foremost serves the public interest, not that of commercial enterprises.</p> <p>Therefore only where there is a clear benefit to the public good should the excuse of commercial withholding grounds be used - they should <u>never</u> be allowed to be used to protect the interest of a non-public organisation.</p> <p>Note that this is in keeping with many decisions of the Ombudsmen, and should be reflected in the legislation to remove any doubt or temptation.</p>
6	(Q23)	Option 3 - so as it backed up by clear guidance and education to prevent misuse by officers.
7	(Q28)	<p>We absolutely agree with including the phrase "and readily" to the current clause. However, we would like to see this go further and <u>compel</u> the agency (rather than put faith in "hoping") to provide the location of the information to the requester, as obviously they will already know themselves where it can be sourced, else how would they justify the decision to withhold in the first place?</p> <p>However, it does the public interest no good to provide such an ambiguity as "within a short time" because that still does not guarantee the information will be available within the time required by the requester. The key principle to remember is that information shall be made available unless there is good reason for withholding it.</p> <p>An example of this would where a government agency intends to release a report after an election or by-election, but the information in that report could have a bearing on decisions made by the public at the ballot box.</p> <p>To allow officials to make such a decision (whether or not it is made for nefarious means) would not only introduce a taint to the concept of open government, but would also erode trust in the process.</p>

8	8.1	<p>Whilst the Public Interest Test is a crucial part of the checks and balances in many parts of our legislative framework, when it comes to local government it is very poorly - if ever - applied. We feel this is because of the following reasons:</p> <ol style="list-style-type: none"> 1) Officers make decision to withhold information without oversight of a publically-accountable body (such as a committee). 2) In many cases the recommendations to withhold information is not done on a case-by-case basis, rather on a "that's the way it's always been done" basis. 3) Elected officials do not exercise their prerogative to apply the Public Interest Test in cases of public exclusion at meetings. Public exclusion is voted on by Councillors, the final test lies in the hands of these people. However it is our experience that Councillors are poorly informed and have very little understanding or knowledge of what they are voting for. This could be simply addressed by better education. 4) There seems to be a reliance on the right of individuals to appeal the reasons for withholding to the OOO without any negative consequence to the Council officer or Council organisation if they get things wrong. This causes a greater workload for the OOO and huge delays for the requester - it serves no other purpose than to slow down the provision of information to the public. Legislation needs to address this lazy and/or deliberately obstructive attitude of officials and introduce punitive measures for not applying the Public Interest Test appropriately.
8	(Q31)	<p>This is a highly loaded question. The reasons of public interest are so vast that to limit them in legislation would be unreasonable.</p>
8	(Q32)	<p>The public interest is served by a single member of public seeking information. That should be the basis of any test of public interest... the motivations of that person should not need to factor in any decision; that a citizen or resident of this country demands information from their government is all it should take to be "in the public interest".</p>
8	(Q34)	<p>Yes, so long as the Act does not include any "public interest factors" as per Q31. This means that officers would be required to carefully weigh up every case on its merits, rather than use a form letter or template to respond to requests.</p>
8	8.22	<p>We concur.</p>
9	9.3	<p>We note that one of our operations - Council Watch - sends email requests for information to all local authorities in New Zealand. The basis for this is to undertake research across the sector and to gain an understanding of how one Council compares to another - for example in how much they pay their senior management. As all requests for information are considered 'Official' information requests, we make it clear to the Council that our request falls under the provision of LGOIMA. This has provided the wider public with a useful tool to measure the capability and competence of individual local authorities in processing (or even understanding) LGOIMA requests. We hope the Law Commission does not out-of-hand dismiss <u>all</u> requests made across multiple organisations for the same information as frivolous or vexatious, as in our case the results (robust research published on the Council Watch website and provided back to Councils) are definitely in the public interest, and have enhanced some Council's understanding of what their obligations are under LGOIMA.</p>

9	9.6	We agree, however it is our experience that - similar to when we started making LGOIMA requests and publishing the result - there is very little understanding of the Public Records Act 2005 within the local government sector. We encourage guidelines that bring together and promote consistency between the LGOIMA/OIA and the Public Records Act.
9	9.16	<p>The law as it stands provides for the opportunity for officers to assist the public in their search for information.</p> <p>In our experience, once local authorities knew what the underlying purpose of our requests were, they became more comfortable in calling or emailing us to clarify our request. In a number of instances we were able to change our request to assist them in providing only the information we were seeking, thus making things easier on everyone.</p> <p>We do not feel the LGOIMA needs to have any further changes to it in this regards, rather this is a cultural change that must occur organically within local authorities.</p>
9	(Q35)	No. The terms is very clear, especially if anyone bothers to look at the OOO's website.
9	(Q36)	No. It is in their best interest to do so. If they don't choose to, then that is their problem.
9	(Q37)	<p>The 20 working day limit does not provide a time limit on when the information must be provided, only on when the decision must be made to provide the information. In some cases the decision to either provide or not could be made in a matter of hours, yet our experience is that some local authorities will purposefully delay decision-making until the absolute maximum time has passed whilst others will respond as soon as they receive the request.</p> <p>We do not, therefore, feel that there is a problem with the time limit as it stands, but believe a formal receipt of notification should be a requirement of the Act, and that receipt must be made within one working day of the request being received, and the day that receipt is <u>sent</u> is when the clock starts ticking.</p>
9	9.24	In our dealings with local government - and note that we are a high-end user of LGOIMA-requested information - we have never experienced local authorities misusing the charging provisions of S.13 of the Act. We would therefore be nervous of any regulation being placed upon local government, as they seem to be treating requests with due care and responsibility.
9	9.26	<p>As per our answer in Q13, we feel that more effort should be made in proactively providing information: in turn this would reduce the burden of providing that information when requested by the public.</p> <p>With tongue-in-cheek we point the Commission to WikiLeaks - an organisation that is putting out of work several thousand personnel who work to keep secrets from the public, therefore in the long term saving the public a lot of money.</p>
9	(Q41)	No. Each request must be treated on its merits.
9	(Q42)	Yes, so long as there is an independent and objective test to confirm "bad faith" and the evidence as such is made public.

9	(Q43)	Yes, because the requested always has the opportunity to take the decision not to grant the information to the OOO.
9	(Q44)	No, you cannot declare a requester "vexatious" if each case is treated on its merits. Labelling a requester as officially vexatious would be tantamount to declaring them <i>persona non grata</i> with respect to their ability to seek public information - this would open up all sorts of human rights and constitutional issues. We refer the Commission to S.88B of the Judicature Act 1908 and S.32 of the Harassment Act 1997 and think these pieces of legislation could be used as guidance.
9	(Q45)	The requester's motivation for requiring information from an agency should not be a reason for releasing that information, and as such it is not a necessary factor for the agency to know. However, we do believe that it is reasonable to expect a requester to use their real name - whether that be a natural person or on behalf of an organisation.
9	(Q46)	We agree.
9	(Q47)	We agree, on the proviso that the State does not have a monopoly of providing such information. The power of LGOIMA and OIA should firmly rest in the hands of the public, thus control of the information provided must be also in the hands of the public. Community organisations (such as the Draco Foundation for example) should be encouraged - at least in principle - by government agencies should they desire to provide advice to the public on the use of the OIA/LGOIMA.
10	(Q48)	We agree.
10	(Q49)	We agree.
10	(Q50)	<p>Unfortunately our experience is that 'best practice' differs wildly between local authorities. If the perspective is taken that "all requests for information are considered requests under the LGOIMA" then a requirement that Councils to provide a receipt (or acknowledgment) of that request would be cumbersome.</p> <p>HOWEVER, it stands to reason that any request for information should immediately start a process to satisfy that request, no matter how it was made, for this is the fairest way to deal with information requests.</p> <p>In weighing up those two points it seems to us a formal acknowledgment of the LGOIMA process is a logical first stage and serves two important purposes:</p> <ol style="list-style-type: none"> 1) It commits the local authority to undertake the LGOIMA process, and 2) It provides the requester with clarity that their request is an "official" request, no matter how formal or informal the request was made. <p>This ensures that officers always treat each request with the same degree of formality and avoids situations such as the officer who treated the information requests of journalists with differing degrees of attention based upon the method by which they were made.</p>
10	(Q53)	Yes, so long as there is always recourse to complain to the OOO.

10	(Q54)	The concept of what is urgent is subjective. It would be very contentious to try and address that in the legislation and we feel that it is better dealt with through guidelines.
10	(Q62)	<p>We feel this should not change. This gives some leeway to compromise between the agency and the requester should the requester seek large amounts of information in hardcopy form.</p> <p>Currently the agency is able to negotiate with the requester to provide the information electronically, therefore reducing or removing any cost.</p> <p>We feel this ability to be flexible in negotiation is an important part of the Acts.</p>
10	(Q64)	They already are, so no change to the legislation is necessary.
10	(Q65)	We do not: the current provisions are sufficient in our view.
10	(Q66)	Any charging that restricts the reasonable access of the public to information should be avoided.
10	(Q68)	<p>The point of charging for this information is to recover costs. However, the process of government - particularly our Westminster-style system - dictates the need for open access to information of all political parties represented in the House.</p> <p>To restrict access to that information by placing the barrier of cost is to restrict democracy itself.</p> <p>Furthermore, in many instances it would one Government department charging another. Therefore we propose that the status quo is maintained.</p>
11	(Q75)	We agree.
11	(Q77)	We agree. We think that the Commission in this instance has got it exactly right.
11	(Q79)	We agree.
11	(Q80)	<p>The practicalities of the Solicitor-General enforcing the public duty to comply are uncertain, unless it is specified that a particular person will be punished as a result.</p> <p>As we said earlier it is not practicable to impose financial penalties on agencies or authorities, because the taxpayer or ratepayer are the ones who eventually bear the cost.</p> <p>However, if there was a mechanism to compel the head of the offending agency/authority to comply – else they be removed from their position or have some other personal punitive measure applied – then this would give some teeth to both the OOO and the Solicitor-General.</p> <p>If the measure was harsh enough then it would unlikely that it would ever need to be used.</p>
11	(Q82)	Yes, see answer to Q83 below.

11	(Q83)	<p>The only two sanctions and/or penalties available are financial or incarceratory. As the latter is impractical, and the former would just penalise the ratepayer or taxpayer, we have concluded that neither of these are an appropriate mechanism for encouraging compliance.</p> <p>We would suggest that a mechanism be developed akin to a credit rating - where each agency is rated by the OOO or some other independent body based on complaints against the organisation and remedies undertaken.</p> <p>This 'Information Management Rating' could be a useful tool for Ministers or Councils when considering performance bonuses for their Chief Executives, or for the Remuneration Authority when setting Mayoral salaries.</p> <p>The same Information Management Rating could be used by the OOO, State Services Commission (SSC) or Department of Internal Affairs (DIA) to keep a closer eye on a particular agency or authority, and could justify that agency or authority being put under a mandatory period of investigation or probation, much the same way the Education Review Office might pay close attention to a school that was failing to come up to standard.</p> <p>As a result it would be easier for the responsible department or office to identify which agencies or authorities most needed education and remedial work.</p>
13	(Q92)	We agree.
13	(Q93)	We agree.
13	(Q94)	We agree.
13	(Q95)	We agree.
13	(Q96)	We disagree with regards to local government and LGOIMA. An independent audit of LGOIMA should be carried out annually, perhaps as part of the wider audit by the OCAG. Local government have not matured to the stage where they can be trusted to fulfil their commitments to the Act and to the public when it comes to properly managing the release of information.
13	(Q97)	We agree.
13	(Q98)	We agree.
13	(Q99)	We agree. It makes sense to retain this function as the OOO is the ultimate authority/decision-maker on these two Acts. However, Government must recognise this as an important office and resource it accordingly.
13	13.119	Local Government New Zealand is a private organisation and should play no officially sanctioned role in the maintenance, administration or promotion of either Act. They are an industry body and should receive no favouritism from legislation or government as they act primarily in the interest of local government agencies not the public at large.
13	(Q100)	We feel that – subject to proper resourcing – the OOO should perform this function, perhaps supported by the Department of Justice (DoJ) in terms of the OIA and the DIA for LGOIMA.

13	(Q101)	As it is currently - DoJ for OIA and DIA for LGOIMA.
13	(Q102)	No. The OOO does an excellent job and has a good reputation with the public as a champion for freedom of information. Don't change that.
13	(Q103)	If such a Commissioner <u>must</u> be established then it should be a part of the OOO.
14	14.7	<p>We feel strongly that the LGOIMA must change the way it treats the power of veto. As we have stated previously, we do not believe the local government sector has shown a level of responsibility in the past that would justify allowing it to veto information requests.</p> <p>However in some instances (such as that of national security, for example documents held by Marlborough District Council relating to the Waihopai Satellite Base) there may be good reason to veto an Ombudsmen's recommendation. In this case the local body should be allowed to pass on the request to a more responsible agency (such as the Department of Prime Minister and Cabinet) to take the veto request to Cabinet for a decision.</p> <p>Such safeguards would protect the integrity of the local body, protect the integrity of critical information, and protect the reputation of the OOO.</p>
14	14.8	As we have suggested elsewhere, to impose financial or custodial sanctions for breaching this duty are untenable. A solution could be to create a register of breaches and link this by statute to the deliberations of the Remuneration Authority when considering Mayoral salaries. Similarly, an annual audit of information management performance could also be linked to Mayoral salaries.
14	14.9	We have found the existing situation - with Local Governance Statements - to be acceptable, and would not recommend any change.
14	14.10	One of the biggest issues we have faced when using the LGOIMA is the inconsistencies amongst the various local bodies. A single agency to provide advice and assistance to the local government sector (such as the DIA or OOO) would - in our opinion - significantly improve the current situation, and would be welcomed by the sector.
14	(Q104)	We most definitely agree.
14	(Q105)	As public money is involved when contractors are appointed, and the OOO already have produced guidelines to this effect, we feel there is no justification for a difference and that the provisions of OIA should be applied to the LGOIMA.
15	(Q107)	There has been no reason given to support a unified piece of legislation combining the OIA and LGOIMA. The two Acts deal with separate branches of government and should remain independent. To do otherwise would dangerously blur the very important constitutional separation between local and central government.

15 15.27 We would like to note that in our experience there is still a widespread mentality within the local government sector of keeping 'secrets'. We often have to fight to extract information that should be made automatically available. An example is an instance when we asked all local bodies for a copy of their Local Governance Statement and Standing Orders.

The local governance statements weren't an issue (although around a third of local bodies ignored our requests outright). However, in total only 31% of councils provided a copy of their standing orders. Many refused on the grounds that the standing orders were "copyrighted by Standards New Zealand".

To withhold such information - critical to any person's interaction with local government - was a shocking reflection on the attitude of council Chief Executives to provision of information in the public interest.

http://www.civilsociety.org.nz/cowa/public/pub_documents/Research_Paper_09-001-final.pdf

15 (Q108) The unlawful destruction of a public record should be a criminal offence akin to the most serious charge of corruption. Public records are often the only recourse for an individual or organisation when seeking redress through an Ombudsmen's investigation, prosecution or judicial review.

The sanctity of these documents should be beyond question, and strict liability for their unlawful destruction is the only way to prevent nefarious or malignant disposal of documentation.

Yes, it is a harsh solution... however the alternative – which would either allow wanton destruction of documentation to cover up a crime or corrupt act, or the degradation of trust in government – is unacceptable.

That concludes our submission. Thank you for this opportunity.

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