

The State Sector Ethos - Official Information Act 1982, Privacy Act 1993, Protected Disclosures Act 2000 and Associated Matters

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(State Services Commission, n.d.[b])

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2 Background

- In 1980 the report of the Danks Committee, *Towards Open Government* was published. The subsequent enactment of the Official Information Act 1982 (OIA) reversed the presumption that had previously guided the State sector's approach to information (buttressed by the Official Secrets Act 1951). From the coming into force of the OIA access to official information was governed by the 'Principle of availability (S5), viz., 'that the information shall be made available unless there is good reason for withholding it'. This fundamental change was designed to 'increase progressively the availability of official information to the people of New Zealand' in order to promote *accountability* and enhance *participation*'.
- The result is a system of government marked by quite remarkable openness. While there have been other relevant major changes in public management since 1982 (such as the deregulation of the economy and, of course, the public sector reforms of the late '80s), the OIA has unquestionably had a major influence on the way the New Zealand Government does business.
- In 1993 the passage of the Privacy Act complemented the OIA (in the State sector) by putting in place procedures assuring citizens of rights of access in respect of information held about them and providing remedies for unwarranted disclosure of information by public officials which adversely affect individuals. Subsequently, the Protected Disclosures Act 2000 (which came into force on 1 January 2001) recognised that there may be occasions when employees, in accordance with prescribed procedures, may be justified in 'blowing the whistle' on 'serious wrongdoing' in or by their organisations and fellow employees.
- The Privacy Act and the Protected Disclosures Act (unlike the OIA) apply to both the public and private sectors (although with differing procedural provisions). So far as the State sector is concerned, these three statutes constitute as the Controller and Auditor-General described it to us: "an overarching framework of policy on information and disclosure and protection". (Indeed, one source of difficulty for State servants can be confusion about the applicability of the OIA or the Privacy Act in particular circumstances if the relationship is not clearly understood.)
- In addition to the legislation and the guidance⁴ provided by the Ombudsmen and the Privacy Commissioner, the State Services Commissioner's Code of Conduct (revised 2001) - and no doubt individual agencies' codes - is relevant to these issues as are the *Public Service Principles, Practices and Conventions* (1995). The SSC has also issued the *Policy Framework for Government Held Information* (1997) that is built around the principle that:
 - Government departments should make information available easily, widely and equitably to the people of New Zealand (except where reasons preclude such availability as specified in legislation).
- The right of access to information is not unqualified. The OIA identifies a number of reasons for withholding information, broadly to facilitate the governmental process and to protect individual privacy. But before withholding information for any of these reasons, the question must be asked: are there any other public interest considerations which outweigh the need to withhold? It is also necessary to record that the handling of requests for information is not costless. Resources, particularly of staff time, must be allocated to this aspect of agency management. This point needs to be borne in mind by those who direct substantial and frequent requests to State sector organisations.

⁴ The Ombudsmen publish from time to time a *Compendium of Case Notes* (the 12th Compendium was published in August 2000) and *The Ombudsmen's Quarterly Review*. The Ombudsmen have also published a brochure *Whistleblowing* and a booklet *Protected Disclosures Act Notes* following the passage of the PDA 2000; and conduct regular clinics outside Wellington. The Privacy

Commissioner regularly publishes case notes and during 2000 published a second edition of *On The Record: A Practical Guide to Health Information Privacy*. He also publishes a regular newsletter *Private Word* and conducts a significant number of seminars and workshops (56 in the year ended June 2001). A large amount of information and guidance is contained on the respective websites: www.ombudsmen.govt.nz and www.privacy.org.nz.

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