

### External 3<sup>rd</sup> Party OIA Consultation Tip Sheet

If the in-scope information/documentation includes any information/documentation that:

- Has been provided by a 3<sup>rd</sup> party, such as other government agencies; or
- Refers to or is about a 3<sup>rd</sup> party

you should at a minimum provide that 3<sup>rd</sup> party, on a FYI basis, a copy of that information, you are proposing to release.

Where the information/documentation has been provided by a 3<sup>rd</sup> party either:

- Following a request from LINZ; or
- Proactively by the 3<sup>rd</sup> party to assist LINZ to undertake its departmental functions

you need to seriously consider whether you should consult them on what of their information should be released or withheld.

If you are unsure as to whether you need to formally consult with the 3<sup>rd</sup> party or just provide them on a FYI basis a copy of the information/documentation you are proposing to release contact your friendly MSOC team who will be happy to give you guidance.

Where you provide the 3<sup>rd</sup> party, on a FYI basis, a copy of the information/documentation that you will be releasing it is suggested that you give them a couple of days notice just in case they have serious concerns about what is being released.

Where you are seeking a 3<sup>rd</sup> parties input on what of their information/documentation should be released, you need to do this as early in the process as possible to ensure the consultation process does not jeopardise LINZ's ability to respond to the OIA as soon as possible and no later than 20 working days after the request was received. Depending on the volume of the information/documentation a reasonable consultation period would be 3-5 working days.

**Note,** while a 3<sup>rd</sup> party may believe there is a good reason for refusal under sections 6 or 9 of the Official Information Act, the Ombudsman's office has stated that it is for the Department or Agency to assess whether there is a good reason for withholding the information. Although the 3<sup>rd</sup> party can reasonably expect their concerns to be taken into account, they cannot veto the release of the information. Lack of their consent to disclosure is not in itself a reason for refusal. They do however have a right to complain to the Ombudsman under the Ombudsmen Act 1975 regarding the reasonableness of the decision to release the information. For more information refer to "Quarterly Review Te Arotake", Volume 7, Issue 1. March 2001 (Copy attached).

## Editorial

### Third Party Information and the Official Information Act

From time to time public sector departments and agencies receive requests for official information which has been provided to them by third parties. This 'third party information' can range from submissions or opinions of private citizens and special interest groups to commercial information provided by entities engaged in business with government agencies.

Where requests for such information are received, there will often be a need for consultation with the third party to which the information relates to ascertain whether there are any valid concerns about release of the information under the Act.

On occasion, a third party may believe there is good reason for refusal but the department or agency does not. This scenario arose in a recent case. The third party was advised by the department concerned that, notwithstanding the third party's concerns, it proposed to release certain information. The third party asked for an order that the department not release the information. After consideration by the relevant Ombudsman, the third party was advised that:

- ❖ in the first instance, it is for the department or agency to assess whether there is good reason for withholding. An Ombudsman has no power to direct a department or organisation as to how it should respond to a request for official information;
- ❖ where third parties are consulted as to whether they believe release of certain information would prejudice interests protected under the Official Information Act, the third parties can reasonably expect their concerns to be taken into account but they cannot veto release of the information; and

- ❖ if the department or agency believes, in good faith, that after considering the circumstances of the particular request there is no good reason for refusal under the Act, then it is not open to the department or agency to refuse the request simply because the third party does not consent to disclosure. Lack of such consent is not, in itself, a reason for refusal.

The fundamental questions to be asked in assessing whether there is good reason for refusing a particular request are:

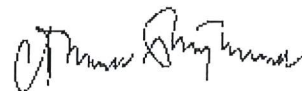
- \* what is the harm that would result if the information were released in response to a request, and
- \* does that predicted harm relate to an interest which is protected by one of the specific withholding provisions set out in the Act?

If a third party believes disclosure of certain information would harm it in some way, it needs to explain to the department or organisation what exactly that harm would be and how it would arise.

Should the department or agency make the information available, it may be open for a third party, which believes it has been adversely affected by such disclosure, to ask an Ombudsman to investigate under the Ombudsmen Act whether, in all the circumstances, the decision to release the information was reasonable.



Sir Brian Elwood  
Chief Ombudsman



Anand Satyanand  
Ombudsman