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13th December 2017

Dear Minister,

Review of the Official Information Act 1982

The New Zealand Council of Civil Liberties warmly welcomes your speech last month to the Nethui event in Auckland. You said there that

All New Zealanders deserve a transparent, open democracy that is free from corruption and abuse of power. New Zealanders also need to have confidence that there is sound democratic process in law-making and the parliamentary process.

You also said that is 'extremely important' to 'build more trust between citizens and their government'.¹

In that regard, the NZCCL welcomes your commitment, reported by *Newsroom* on 12 December 2017, to review the Official Information Act 1982 in conjunction with Justice Minister Andrew Little.² We agree that changes to the Act are needed to improve how it functions, and thereby to ensure it meets its statutory purpose of progressively increasing the availability of official information in order to enable the people of New Zealand to participate effectively in the 'making and administration of laws and policies', and to 'promote the accountability of Ministers of the Crown and officials'.³

¹ Address to Nethui 2017, Aotea Centre, Auckland, Beehive, 9 November 2017.

<https://www.beehive.govt.nz/speech/address-nethui-2017-aotea-centre-auckland>

² *Clare Curran is planning a few shake-ups*, Newsroom, 12 December 2017.

<https://www.newsroom.co.nz/2017/12/11/67225/clare-curran-is-planning-a-few-shake-ups>

³ Official Information Act 1982, section 4

Open Government Partnership

We also welcome your commitment at Nethui to ‘pay more than lip service’ to New Zealand’s membership of the Open Government Partnership. The OGP is built, like the OIA, on the premise that good government and high quality public administration derives from Governments and agencies working to enable public participation in policy development and service design. When joining the OGP in October 2014, New Zealand endorsed the *Open Government Declaration*, which articulates these values at greater length:⁴

We value public participation of all people, equally and without discrimination, in decision making and policy formulation. Public engagement, including the full participation of women, increases the effectiveness of governments, which benefit from people’s knowledge, ideas and ability to provide oversight. We commit to making policy formulation and decision making more transparent, creating and using channels to solicit public feedback, and deepening public participation in developing, monitoring and evaluating government activities. We commit to protecting the ability of not-for-profit and civil society organizations to operate in ways consistent with our commitment to freedom of expression, association, and opinion. We commit to creating mechanisms to enable greater collaboration between governments and civil society organizations and businesses.

Your intended review of the OIA provides an early opportunity to ‘pay more than lip service’ to the OGP and give practical effect to the importance both it, and the OIA, place on public participation in the development of policy.

New Zealand must shortly begin the work to develop its third *OGP National Action Plan* of commitments to deliver improvements to government through greater openness. Already the State Services Commission has begun consulting people on the process for developing this Action Plan, which the rules of the OGP require to be co-created by government, citizens and civil society.⁵

Official Information Act Review

The Official Information Act is legislation that provides essential rights to New Zealanders, and is a key part of our constitutional framework. It is too important to us all for its reform to be limited to a review of ‘previous recommendations from the Law Commission and the Ombudsman’ as the Newsroom article suggests is your intended course of action.

The NZCCL calls on you, and the Government, to commit to an OIA review that puts public participation in the policy development process at its heart. We can think of no better way

⁴ *Open Government Declaration*, Open Government Partnership, September 2011.
<https://www.opengovpartnership.org/open-government-declaration>

⁵ *Articles of Governance, Addendum C: Guidelines for Public Consultation on Country Commitments*, Open Government Partnership, June 2012, updated April 2015.
https://www.opengovpartnership.org/sites/default/files/attachments/OGP_Articles-Gov_Apr-21-2015.pdf

for the Government to signal its commitment to the values of the OIA and OGP, than to announce that it will work with the public and civil society to develop New Zealand's next OGP National Action Plan, and to articulate a commitment in the plan that will guarantee an open, inclusive, participatory process for developing the proposals that will be taken to Cabinet and Parliament for amendment and improvement of the OIA.

This process for developing improvements to our legislation on open government may take longer than an inward-facing department-dominated review of the OIA. But it is one that will command greater public confidence, and deliver better results, both for the public, Government, and agencies. New Zealand has benefitted from very stable legislation on access to official information, particularly since the reforms introduced by Sir Geoffrey Palmer in 1987. The NZCCL believes that is due both to the high quality analysis and legislative design produced by the Danks Committee, and to the all-party support the OIA has enjoyed throughout numerous changes of Government in the last 35 years. By locating reform of the OIA in the context of New Zealand's OGP Action Plan, the Government will send a strong signal, internationally and domestically, that it is committed to similarly high quality analysis, informed by requesters of official information as well as agencies, academics and others with an interest in public administration in New Zealand.

Conversely, a failure to develop proposals for reform in an open and inclusive manner is likely both to result in lower quality analysis, less well-designed amendments, and potential restriction of people's rights, as agencies with a vested interest are given a privileged position in the process. Proposals are more likely to face resistance outside and inside the legislature, and an opportunity to significantly lift the ranking of New Zealand's freedom of information legislation in the international RTI Rating of such laws will be missed.⁶

As New Zealand's first Minister to be explicitly responsible for Open Government, we sincerely hope you will act to ensure that the review of the OIA is conducted in a manner that is consistent with the legislation's purposes, the country's commitment to the Open Government Partnership, and your own statements concerning the need to build confidence and trust in the process of law making.

We look forward to hearing from you, and the Justice Minister, about the Government's proposals for public participation in the review of the OIA in the near future.

Yours sincerely,

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⁶ *Global Right to Information Rating*, Centre for Law and Democracy and Access Info Europe, 2017. <http://www.rti-rating.org>