
From: Thomas Beagle <thomas@nzcccl.org.nz>
Sent: Monday, 22 November 2021 10:50 PM
To: info@ombudsman.parliament.nz
Subject: REQUEST FOR URGENTLY EXPEDITED INVESTIGATION re refused OIA request concerning Covid vaccination certificates
Attachments: NZCCL email conversation.txt; C19OIA2021033 Thomas Beagle_OIA response.pdf; NZCCL PM and MinCovResp re vaccine certs 9-10-21.pdf

Dear Mr Boshier,

REQUEST FOR URGENTLY EXPEDITED INVESTIGATION

I am writing to request that you urgently investigate an Official Information Act refusal the NZ Council for Civil Liberties has received from the Minister for Covid-19 Response.

Reason for seeking urgency: Parliament will this week be debating the legislation that will create the legal framework for vaccination certificates within Aotearoa New Zealand. The information we have requested - and the Minister has refused - is critical both to MPs being able to effectively scrutinise the legislation and for the Council and the public to participate in the legislative process.

Background

On 5 October 2021, the Prime Minister announced that the government would be making a fundamental change to the country's Covid-19 response framework. We would be shifting from Alert Levels and possible lockdowns to a 'traffic light' system underpinned by both vaccination certificates and vaccination mandates.

The NZCCL wrote to the Prime Minister and Minister for Covid-19 Response (Hon Chris Hipkins) on 9 October 2021, seeking information vital to understanding the new policy and how it will reconcile New Zealanders' civil liberties with the protection of public health. We explicitly requested an urgent response and provided our reasons (as per section 12(3) of the OIA).

No response was received from either Minister within the 20 working day response period, nor was any notice of extension. It was only after we chased both Ministers on 12 November 2021 that the ministers recognised that we had made an OIA request to them, and the Minister for Covid-19 Response told us that he would respond on behalf of the Prime Minister as well. His response was received today at 4:25 pm.

Information sought

In our letter of 9 October 2021, the Council requested that the ministers provide the following information:

- all information that has been provided to the sectors or organisations the government is consulting with on the vaccine certificate;
- all advice from the Privacy Commissioner; and
- all advice from the Ministry of Justice or Crown Law on the NZ Bill of Rights Act and Human Rights Act implications of the proposals.

Minister's response

In his eventual response today (22 November 2021), the Minister has not provided any of the requested information. Nor has he cited a ground for withholding or refusal as required by section 19 of the OIA.

Instead, the Minister has listed several documents that he says will be published on the covid19.govt.nz website "by late January".

The Council infers from this that for the documents listed, the Minister is refusing our request under section 18(d) of the OIA. For the rest of the information sought, we remain in the dark as to what possible reason there can be for not providing it promptly.

Section 4 of the OIA sets out the Act's purposes. The first listed purpose is to enable people to effectively participate in the making and administration of laws and policies. The Minister's response brazenly flouts this purpose. The fact that the Minister is also responsible for the country's membership of the Open Government Partnership only rubs salt into this wound to our democracy.

The Council notes:

- The statement made on page 5 of your guidance on section 18(d) that:
"Whether, on an objective assessment, the requester needs the information before the planned publication date. Where there is a legitimate reason for urgency—for example, because the requester needs the information to be able to participate in a policy or decision making process on an informed basis—it may be unreasonable to delay release until the planned publication date."
- The statement made on page 13 of your 2020-21 Annual Report that:
"In a modern democracy, the public must be able to participate in government decision-making." and that "This is achieved in various ways, including through greater openness, fairness, and transparency of government information" and that "Public participation in government decision-making contributes to higher trust in government and protection of people's rights."

The Council finds it difficult to conceive of stronger public interest in openness in a free democracy than in relation to how the government has considered the issues around limiting people's freedom of movement and association under the New Zealand Bill of Rights Act 1990. We expect the information we have requested to explain how the government believes that there are good reasons for limiting those rights in accordance with section 5 of that Act. We further believe that the public and members of parliament urgently need to be able to read this information.

If the position of Ombudsman is to safeguard the mana of the people by protecting their rights in a meaningful way, we expect you to expedite an urgent investigation of the Minister's refusal of our request, by immediately notifying him of your investigation and drawing this matter to the attention of the Speaker of the House of Representatives.

Please acknowledge receipt of this complaint and advise us of the steps you will be taking. A copy of the request, response and related emails are enclosed with this complaint.

Yours sincerely,

Thomas Beagle