

Media Release

**Professor John Burrows QC
Commissioner
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THE PUBLIC'S RIGHT TO KNOW

“The Official Information Act is one of the best things that has happened in government in the past 50 years”, says Law Commissioner John Burrows. “It has led to much more openness and made it much easier for people to find out what is going on in Government.”

However the digital revolution has transformed the whole landscape in which the Official Information Act and related local government legislation¹ operate, raising a raft of problems and possibilities that were unimaginable when these laws were first drafted.

The impact of new technology on the meaning of open government is one of the issues discussed in the Law Commission's latest Issues Paper, “The Public's Right to Know” - published today on the Commission's website, www.lawcom.govt.nz.

“In the past, official information consisted mainly of hard copy documents. Today it can take many new forms such as email, tweets, text messages, blogs and digital video.”

Professor Burrows says technological change has also helped to drive social and cultural change. Partly because of it, there is now a much stronger expectation of openness and availability of information than in the past:

“People have generally become more suspicious of any government activity that takes place in secret. Citizens expect to be able to find out how, why, and by whom government decisions are made”.

While the fundamental principles of the Acts remain sound, a preliminary user survey identified a number of problems with how they are currently operating.

On the one side the survey revealed frustration from some users who felt government departments did not always take sufficient note of the public interest when declining requests for information. Some also felt officials resorted too readily to the protection of “commercial interests” as a ground for refusal.

On the other side, the Commission received feedback from some government departments that were sometimes overwhelmed by the sheer volume and scope of some requests.

“It is not uncommon for staff to be diverted from their work for days, or even weeks, on end to satisfy requests. This may be justifiable in the case of some requests, but the preliminary evidence suggests it may not be justifiable in all cases.

“We have to try to find solutions to these sorts of problems without upsetting the balance”, says Professor Burrows.

The Issues Paper also notes the trend in other jurisdictions, particularly the UK and Australia, towards a more proactive approach within governments towards the release of information - rather than waiting for it to be asked for under the Acts.

“Proactive disclosure is an important and live issue. Modern technology facilitates this in a way that was never possible before, and many agencies now in fact publish important information and documents on their websites.”

In a similar vein, the Commission asks whether the principles of open government that are enshrined in the Act need to be more actively promoted:

“There is currently no body responsible for championing open government or acting as a watch dog of the underlying principles. We wonder whether the time has come to formally charge a body with such a role.”

The Law Commission's Issues Paper puts forward a number of proposals, and seeks submissions on them. "We really want to hear from agencies that apply the Acts, and the public in general", said Professor Burrows. "This law is for everyone."

The closing date for submissions is 10 December 2010.

The Issues Paper is available at www.lawcom.govt.nz.

The results of the preliminary survey can also be found on the website.

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ⁱ The equivalent legislation which applies to local government are the official information provisions of the Local Government Information & Meetings Act (LGOIMA). This Act is also covered in the Issues Paper.