

Open Government Partnership National Action Plan 4th (NAP4)

My name is Graeme Axford and I'm writing this submission from the perspective of having been an advocate for others since 1989 and to date. Therefore, I am specifically focusing on transparency which makes a way for participation is you can't interact with what you don't know is going on. Also, the flow on effect of transparency and participation should lead to a greater level of accountability.

But first must advise you I suffer from a severe case of dyslexia which affects my reading and writing also comprehension and working memory skills, hope you will take that into account in regards to this submission.

I do tend to go wide of the mark and not particularly join the dots very well so I am told by the readers I write to on a regular basis.

It's also hoped you will be mindful that I only found out about the submission process two days ago so would normally take me a week to produce something half decent or of a higher quality that time won't allow me to do now.

Firstly, I want to say that the **Local Democracy Reporter (LDR)** concept works really well and I hope that continues and potentially even strengthened.

The LDR scheme does give a higher level of openness and encourages engagement because it covers issues that otherwise wouldn't be reported.

I've learnt a lot from the local democracy reports that would have otherwise gone unnoticed.

I would like to see them having slots allocated on TV and radio for accessibility reason particularly given a lot of where they are published to often requires payment or subscription.

There doesn't seem to be the range of free community newspapers there once was. Even availing themselves of U-tube or podcast might be a more cost-effective and efficient way to reach the masses beyond print for those reporters willing to avail themselves of other media formats.

One can't participate with act don't know what's going on to partaken and the LDR are a vital tool whereby they in part information for people to potentially engage with.

I need to slightly digress to give some perspective as to where I am coming from and why. As a seeker of information and one who asks pointed questions of organisations and officials have often found the tables turned and I have become a target of them for doing so.

A key to democracy should be protecting the individuals and particularly advocates who help others seek the answers they want from those who hold that information being sought.

I regularly question our decision-makers and ask them how they arrived at a particular decision including the people involved and information used also their processes required at the decision-making level for them to come to a conclusion rightfully or wrongfully.

Those kinds of questions soon get you offside with them to whom you are seeking the answers from.

Any decision-maker who has something to hide is really likely to self-incriminate by willingly handing that over to someone as a mall uses ammunition against them.

Where I am going with this is quite simple in my own mind. There is empirical research which demonstrate that people value fair procedure for its own sake, and are more prepared to accept adverse decisions if they believe they have been treated fairly See for example, *TR Tyler, Why People Obey the Law (Princeton University Press, New Jersey, 2006)*.

Therefore, knowing what information the decision was based upon, the people involved with making a determination and the process they used at arriving to a particular outcome are *all equally important*. To miss any of those key factors is to do a disservice to democracy also transparency which undermines accountability.

Some people appointed to certain positions make decisions that seem to defy logic irrespective of good process. In these cases that has happened through undeclared conflicts of interest based upon nepotism and cronyism.

When one raises questions about some decision makers are accused of getting personal to deflect from a woefully inadequate decision.

People who do a public duty should be open to being questioned about previous employment, friendships or any potential conflict of interest that could have a bearing on their decision-making in certain cases as an when required.

If someone is unwilling to be put to that level of scrutiny, they should be considered unfit from holding such a position. To claim their right of privacy trumps any decision I've made is not transparent and to the detriment of accountability.

There are certain people who you know will agree with others irrespective of the facts and that becomes blatantly obvious when you look at their appointments to particular roles as they know what's expected of them and they most certainly deliver.

At times people are appointed based upon whom they know to get them there and in return protect them from public scrutiny by hiding information that could be embarrassing.

Unfortunately, some of the above might not make a lot of sense but in my second book I shall reveal it all. I'm aware a public submission isn't the place to name people.

Ombudsman's closed shop

Democracy should demand transparency and openness and I think it's ironic in the Ombudsman's case that is not reciprocal.

That's because the Ombudsman can publicly call others to account yet aren't equally held as publicly accountable themselves to their public which I find entirely hypocritical.

What I'm specifically referring to is the survey undertaken by users of their service that is kept secret from the very public the ombudsman is supposedly there to serve.

It is my understanding based on what the ombudsman's office told me that there is a client satisfaction survey done of people who avail themselves of their services

However, the results of that are kept secret and only revealed to the speaker's office and the ombudsman's office themselves. I feel that should not be the case and the results should be published for the public to see so they know how the ombudsman's office is performing on their behalf.

Given the ombudsman is funded and appointed also being an office of parliament themselves that's two in-house and in my view the survey should be open to public scrutiny.

As you would be aware the ombudsman is often called upon to sort out disputes and as such the public should have a right to know how they are performing in that respect from a client satisfaction point of view.

That said in respect to the previous quote given by "TR Tyler, *Why People Obey the Law*"

A lot of people's dissatisfactions over outcomes is the perceived unfairness or lack of information that gives insights upon how decision was arrived at.

Whenever someone questions the process, this is misconstrued as wanting to re-adjudicate the outcome rather than what it really is. Which is gaining an understanding of how a decision was made that lead to the outcome.

The ombudsman's office performance also seems based on throughput like input and output rather than outcomes from a client satisfaction point of view.

Eg, were you treated fairly, did you felt listen to, was the process explained to you... etc...

Comments made at select committees seem to suggest the ombudsman's office performance is also judged on caseloads timeframes and backlogs rather than public perception or client satisfaction survey results.

There is a big difference between agreeing with the decision and being treated fairly and most people get that and on occasions and other processes I know where the decision has not gone in their favour and they understood why that was were more accepting of it.

Privacy Act and Official Information Act's

I also want to point out that these problems with both the Privacy Act and Official Information Act when it comes to seeking information. They seem to be used as a shield to hide behind more than giving impetus to releasing the information being sought.

There seems to be a default position whereby organisations look for reasons not to release information being sought rather than to release it instead. To that end both the privacy and official information acts seem to be written in such a manner that more allows for that do not.

When one has great difficulty finding out information about oneself how can they be assured that what's recorded about them is accurate if one is blinded from seeing it through redactions or claims of professional or legal privilege.

Even worse is when information is gathered on the individual under the promise of confidentiality or anonymity opens the way for gross inaccuracies that are indisputable therefore not correctable because the information is not shared with the person to whom it is based upon.

The best way to test the accuracy of information is to reveal the information to the person it's based on for them to raise questions or concerns about its accuracy when necessary. Logically a person can't seek correction of information held on them if they can't see what it is to start with.

Nor can individuals raise questions about information misuse if they don't know what information is held on the to start with.

The added danger is if information is held by individual for which they denied access to it how can they be assured it is being used for its intended purpose rather than misused.

I called both the office of the privacy Commissioner and office of the ombudsman purported avenues of redress not actual ones. On basic information the ombudsman is relatively good but when it gets to more personal information, they deflect to the office of the privacy Commissioner. Both officers take too long and very difficult to engage with for which the intermediaries most definitely don't help.

Since the ombudsman office has been modernised and also centralise it's become less personable and overly codified particularly for those suffering disabilities who don't do well in that bureaucratic setting of a more academic nature.

Years ago you could speak to an ombudsman person and didn't have to go through anyone else to do that and they also held local clinics in rural areas for that reason. This was far better than what we have going on today and a massive step backwards in my view.

Even when it comes to supposed full disclosure where Crown Law acting on behalf of a government agency it's become obvious that information that should be handed over has not been.

Then as part of settlement Crown Law insist the discovery file cannot be shared with anyone else which is essentially blackmail and covering up for wrongdoing that they are fully aware of.

Crown law should have to bylaw report on those are representing who fail to comply with the law.

On the last part of the submission given the excuses I have been offered when seeking information on myself or with the permission of others about them.

Whistle-blowers:

I would like to see the strengthening of the protected disclosure act to encourage more whistleblowing.

When agencies are up to no good or at the least doing things that ought not to the needs to be an easier path in the name of transparency and democracy for that to be revealed and not to the detriment of the whistle-blower.

I would go a step further and offer whistle-blowers financial incentive where they can prove what the doing is in the public good and potentially to the detriment.

There would need to be strict criteria around this but it would certainly incentivise rather than just incentivize rather than disincentivise people from speaking out when they should.

This also would potentially result in less anonymous public leaking of information where people feel that's the best avenue and they have no other choice but to use that method.

I really hope of drawn this altogether so you can see the links. When the privacy and official information acts are working as they should be this brings about transparency which should result in openness and accountability. I've actually like to see fines for those whereby the privacy Commissioner and ombudsman's office are involved and information is being sought for which they deliberately delay the privacy Commissioner or ombudsman.

You can't talk about openness and transparency when everything is closed off so that you can't see what's being sought to determine from that if things are above-board or not.

Using private contractors:

A government agency admitted to me they use private contractors so to bypass the privacy and official information acts also the standards of integrity and conduct for what was then State servants. They deliberately left all the information in the hands of the private contractor so that if it was sought could say they did not have that to be able to provide it but made no effort to get it either knowing where it was.

We contractors are used all the information they gather should be handed over to the agency who hired them so it does become subjected to the privacy and official information acts also making it easily accessible upon request.

Where private contractors are used to create plausible deniability for the organisation that employed them that should be intolerable by anyone's standards.

No surprises policy:

I'm a little bit lost to understand why the no surprises policy used to brief ministers is one of the hardest things to get revealed. If a minister has a briefing about an individual like myself then I should have a right to know what was said about me.

Individuals should be given a greater right to know what's been said about them by those in officialdom to ensure that information is correct. Sometimes those who have the most high mislead the bosses to discredit the person whom they perceive to have and issues.

Consensus and secrecy in committee.

When it comes to majority decisions were the minority or descending view isn't recorded coupled with secrecy are anti-democratic. I've seen it happen with DHB's and councils where they take a vote and if the yes outnumber the no it's taken as agreement of all members when that is not necessarily so.

While I realise that there are commercial and employment considerations a summary of discussion or at the least knowing what individuals voted which way is helpful.

It's often too easy for boards to go in committee and essentially put a gagging order on its members even if elected to represent the people rather than appointed by the powers that be. I think elected members should have whistleblowing powers that protect them from appointed members coming after them should they feel strong enough to go public on issues the board is seeking to deal with privately where that is not in the public interest to do so.

Dirty politics:

I think if you look at the book dirty politics it becomes clear how those in power can manipulate others to harm individuals and I don't think the state should be in any way a party to that.

Even Winston Peters pension information should never have been made public particularly as it was resolved. There are many examples where public smear campaigns have damaged individuals for which there is little to no recourse and that should never be the case.

The fact it can happen to Winston Peters should be a worry for everybody and goes to show how unsecure people's private information really is.

People who are deemed to be stirrers or a problem for authority should have their privacy protected and not be at a greater risk of attack from those funded by the taxpayer's purse strings.

New Zealand should be called the land of the long white shroud because a lot of things are still hidden or at the very least not reveal when sought.
Secrecy doesn't promote openness and transparency and is most certainly to the detriment of accountability and trust in our public or state services.

Private citizens seeking information on themselves or for others to see how a decision was made or what was said about them. That shouldn't result in the advocate being targeted by those who also equally hold personal information on them as well.

I had a [REDACTED] barrister [REDACTED] who works internationally pointing out that New Zealand is subtly a far more dangerous place for an individual who takes on the power of the state than Russia or China.

If you wish to ask me any questions, please feel free to and if you require my presence in person would be more than happy to oblige.

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Knowledge is power OIA and Privacy Act, issues.

Knowledge is power so to not hand over information being sought is to deny the knowledge that gives the power back to the individual seeking it.

Many organisations treat the information being held on someone else as the own information rather than belonging to the person to whom it is on and is also seeking it from them.

This is how it is so easy to bypass or circumvent both the Privacy and Official Information Acts are far too easily bypassed.

In what capacity information is being sought or passed on and held even being accessed in has implications. If someone only can get information about a person because of their employment that should always be considered official information and neither private and the specific circumstances. Staff being helped access information their employer holds on an individual should be done very sparingly and only for the purposes it was collected or imparted on. Not for personal or private gain and particularly to use it against and damage that individual.

Given my 30 years as an advocate here in summary of the wide-ranging excuses as to why sought information won't be released. More often than not what's to come are deemed to be reasonable by the privacy Commissioner and ombudsman's office making them virtually pointless in such matters.

1. Staff acted in their personal capacity or as a private citizen, not officially!
2. Staff exercised their freedom of expression while giving or imparting information on the individual being sought" (in their personal capacity not official)
3. The organisation didn't specifically give the staff instructions to gather or impart information making it a personal matter not an official one per se"
4. The organisation in question doesn't hold the information being sought on their systems, yet they know their staff does hold that information on their own personal device. The agency just doesn't want to seek it from their staff.
5. The information sharing happened outside of work time (on the staff's personal break time) making it a none work-related event rather than work related.
6. The information is being withheld to protect the privacy of others yet one has to take them at their word about this. Those who have the least again and it's probably to the detriment to release a sort information.
7. OIA, information will be released sometime in the future as a reason not to handed it over now. That sometime in the future might be a long time never coming.

It is virtually impossible to get information from officials about who has access to your information and how often and by whom is viewing the most. One can't be assured their information is secure when even how often is its accessed is not been revealed. Most systems have login files or security measures to supposedly limit unwarranted access to information others shouldn't get. Yet obtaining that is virtually impossible from anyone I have sought from.

If none of us make sense and you want to hear what sits behind it all I wrote a book about called “**differently abled**” www.graemeaxford.nz which detail outlines the issues with all the aforementioned. It’s available in hard copy and audiobook form.