The implications of government departmental organisational structures on fulfilment of OIA obligations

by

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Abstract

A study was conducted into the implications of government departmental organisational structures on the fulfilment of Official Information Act (OIA) obligations. The aim of the study was to investigate the systems and processes used by New Zealand government organisations in relation to OIA requests; in particular, to identify any changes since 2001 and the rationale for such changes.

The study used authority and responsibility mechanisms, as represented by the chain of command and autonomy, to examine the relationship between organisational structures and effective responses to OIA requests.

The research was qualitative and used semi-structured interviews with nine people from three New Zealand government organisations to gather data. The study was not linked to individual OIA requests. Data was analysed using coding of concepts to identify seven main themes, which were: systems and processes; information accessibility; attitude to OIA requests; management of government information; levels of decision-making; timeliness of response, and; managing organisational and political risk.

The study found that a range of systems and process are used for responding to OIA requests and that the rationale for these fall into two categories; those designed to support staff and managers to process requests, and those designed

to manage organisational and political risks. Whilst most systems had been in place for some time, tracking systems were adopted more recently.

The study also found there was an increasing use of pro-disclosure of information to reduce the administrative burden of responding to Official Information Act requests.

Keywords: EDRMS, decision-making, freedom of information, government organisations, Official Information Act, pro-disclosure, process, system.

1. Introduction

Research was conducted into the implications of government departmental organisational structures on the fulfilment of agency obligations under the Official Information Act 1982 (OIA).

The objective of this research was to investigate the systems and processes used by New Zealand government organisations in relation to OIA requests; in particular, to identify any changes since 2001 and the rationale for such changes.

The research is in partial fulfilment of the requirements for the degree of Masters of Information Studies.

2. Problem area

This section includes the problem statement, study objectives, research questions, theoretical framework, and definitions of concepts for this study.

2.1 Problem statement

The development of freedom of information policy is rooted in the key concepts of participatory democracy and government accountability (Bertot, Jaeger, Simons & Grimes 2009, Mutula & Wamukoya 1999). Provision of information to the public is viewed as fundamental to fulfilling western ideas of democratic values whilst

recognising that withholding some information for security or individual privacy concerns is also appropriate (Rowlands 2003, Rubin 2009).

In New Zealand, the OIA sets timeframes for responding to requests for information (OIA, 1982) and is based on the principle of pro-disclosure (Snell, 2000). Complaints to the Office of the Ombudsmen indicate ongoing concerns about the operation of the OIA, relating predominantly to decisions about withholding information and timely responses to requests (Report of the Ombudsmen, 2009 & 2010).

Officials and researchers suggest the following environmental factors are impacting the ability of organisations to fulfil OIA requirements: effectiveness of access systems to manage the number, size, and growing complexity of requests (Belgrave 2006, White 2007) and; a growing trend of pre-emptive disclosure and managed releases of information to mitigate political risks (Belgrave 2006, Roberts 2002, White 2007).

Aligned with a functioning access system is appropriate delegation of authority for decision-making (Access to Information Review Task Force, 2002) and having appropriate skills and knowledge to administer requests (Report of the Ombudsmen, 2009 & 2010). Leadership also influences staff behaviour in the performance of their roles and responsibilities (Henry & Stupak, 1995).

Clemens (2001) identified a lack of information being recorded by agencies on OIA requests and recordkeeping inconsistencies between agencies. Since 2001, a number of government agencies have invested in electronic document records management systems and the creation of centralised units for managing OIA requests as ways to manage the organisational responses to the volume and increasing complexity of OIA requests (White, 2007).

This study seeks to add to the growing body of knowledge regarding the operation of freedom of information policy in New Zealand. The findings from this research are likely to be of interest to freedom of information researchers and advocates, analysts, advisers and makers of policy, and government officials with OIA responsibilities.

2.2 Study objectives

This research is in the form of a follow-up study to the work of Clemens (2001), which identified what type of OIA request data was collected by government organisations.

The objective of this study was to investigate the systems and processes used by New Zealand government organisations in relation to OIA requests; in particular to identify any changes since 2001 and the rationale for such changes.

2.3 Research questions

This research focused on the following research questions:

1. What changes have there been in OIA systems and processes since 2001?
2. What is the rationale for the OIA systems and processes?

2.4 Theoretical Framework

Weber's ideal type of bureaucracy is an appropriate mechanism for considering the role of organisational structure in achieving organisational objectives. Weber identified bureaucracy as a form of organisation characterised by divisions of labour, a clearly defined hierarchy, detailed rules and regulations, and impersonal relationships. Bartels (2009) repositions Weber's theory of management by re-emphasising the role of morality, accountability, reflection and creativity in decision making, i.e. the exercise of individual freedom under an authority structure.

Another approach to improving organisation effectiveness and competitiveness is through organisational leadership, which Henry & Stupak (1995) identify as the force that motivates the group and that through effective articulation of a leader's vision, leaders can exert leadership force through substitutes. In formal bureaucracy this is represented through the chain of command; i.e. the exercise of authority and responsibility within a bureaucracy.

The exercise of individual freedom and the chain of command relate to decision-making; the capacity to make decisions as an individual (autonomy) and delegated responsibility for making decisions (levels of authority).

This study used components of Bartels' revised version of Weber's theory of management to examine the relationship between organisational structures, as embodied in decision-making (authority) and leadership, and effective responses to OIA requests. The two components that were used were the chain of command as an authority mechanism and the exercise of individual freedom under an authority structure.

2.5 Definition of concepts

The following terms and definitions are used in this paper:

Term	**Definition**
freedom of information	the belief that information release and control is fundamental to participatory democracy
pro-disclosure of information	information is released to the public as a matter of course rather than in response to a request for the information
chain of command	the exercise of authority and responsibility within an organisation
autonomy	the capacity to make decisions as an individual

3. Literature review

Introduction

Access to information, or freedom of information, legislation is an aspect of information policy that has received increasing attention in information studies and arises from the belief that information release and control is fundamental to participatory democracy. The focus of studies has been to compare experiences between western democracies to identify the challenges facing information policy to successfully deliver access to official information.

Organisational structure has been the subject of numerous studies over a long period of time, commencing with Max Weber's ideal type of bureaucracy in the 1920s. More recently, there has been a focus on defining and designing organisational structures (Robbins, 2009, p.342), including consideration of authority mechanisms as a fundamental component in how organisations are structured (Robbins, 2009, p.345).

A consideration of the published literature suggests that organisational structure of government departments influences the success of policy and legislation to deliver access to information.

Participative democracy and access to information

Access to information legislation arises from the belief that information release and control is fundamental to participatory democracy. The concept of participative democracy is based on an understanding of the value of an "informed citizenry who actively contribute to their civic obligations" (Bertot, Jaeger, Simmons & Grimes, 2009, p.433) and that, "in a democratic society, each citizen is a major stakeholder. The manner by which information flows in our society has a direct effect on our ability to make informed judgements and to take deliberative action" (Rubin, 2009, p.124). Rowlands (2003, p.133) also noted that "information access and disclosure are critical elements in the working of participative democracies" and that providing access to information and knowledge is a function of democracy, as the power structure between people and government.

Another concept underpinning western democracy is that of accountability of the elected to the voting citizenry. The Rt Hon Lord Falconer, the Lord Chancellor of Great Britain, spoke about freedom of information releases working towards "a more transparent government in which people feel greater confidence" (Smith, 2004, p.6). Mutula & Wamukoya (1999) also argue that governments have a responsibility to make information available and accessible so as to be held accountable and to enable citizen engagement.

The Bonn Ministerial Declaration of July 1997 notes that “the public sector is the biggest single collector and producer of information content in all areas of public life, including government, administration, law, business and professional activities, employment, health, social welfare, scientific research, transport, education and culture” (Hadi & McBride, 2000, p.552). Official information therefore covers a range subjects on personal to local to national concerns (Chandler, 1998).

Freedom of information policy seeks to establish a balance between the desire to obtain access to official information with the needs of national security and the privacy rights of citizens (Rowlands 2003, Rubin 2009).

New Zealand Official Information Act

Sir Geoffrey Palmer noted that the development of the New Zealand Official Information Act 1982 was “based on the theory that information is power and in a democracy it should be shared” (Snell, 2000, p.576). The purpose of the OIA is to increase access to information to enable effective participation, to promote accountability and enhance respect for the law; also to protect official information to the extent consistent with public interest and preservation of personal privacy (OIA, 1982). Under the OIA, official information is taken to mean information held by Ministers in their official capacity, by departments and organisations, including documentation and such information that may reside in the memory of those covered by the OIA (Access to Information Review Task Force, 2002).

The OIA operates alongside a range of legislation that relates, to a greater or lesser degree, to providing or controlling access to information. Some examples of the range of legislation are the:

- Local Government Official Information and Meetings Act 1987
- Public Finance Act 1989
- Privacy Act 1993
- Fiscal Responsibility Act 1994.

Challenges to securing access to official information

Reviews of freedom of information legislation in Canada, Australia, and New Zealand identify similar challenges to the success of the legislation in securing access to official information. The key challenges are: timeliness of response and effectiveness (and cost) of access systems, (Swartz 2008, Access to Information Review Task Force 2002, Review of the OIA 1997, Snell 2000, Roberts 1999); a shift to commodification of information (Duff 2004, Rubin 2004, Hadi & McBride 2000); a shift from pro-disclosure to managing releases of information (Roberts 2002, Belgrave 2006), and; organisational restructuring (Bunker 1998, Roberts 1999, Roberts 2001, Prophet 1999).

The review of the Australian FOI identified the need for an effective, inexpensive, and timely access mechanism to support a successful freedom of information culture (Snell, 2000). The Canadian government's efforts to implement more

efficient and effective access practices saw budget cuts for offices handling requests and increased fees for processing requests (Roberts, 1999). Monty identified the following trends as key threats to public access to information: privatisation, decentralisation, electronic publishing, and cost recovery (Prophet 1999).

Rubin (2004) and Duff (2004) highlight a shift in the concept of information from something that improves understanding or as a public good to something that is viewed as a commodity. That is, that information has commercial value beyond its role in administration and policy-making and publication of this information takes a commercial perspective (Hadi & McBride, 2000).

Belgrave (2006) links the increasing sophistication of requests with growing distrust of managed communications and also identifies a greater use of the OIA in a parliamentary context to support the need for meaningful consultation between political parties under the Mixed Member Proportional electoral system.

Issues in relation to public sector structuring relate to: contracting public services to organisations not covered by freedom of information law (Roberts, 1999); the effects of structural pluralism (Roberts, 2001), or; full privatisation of some commercial functions. According to Roberts (2001), the Canadian government has resisted attempts to broaden freedom on information law to all federal corporations, the Australian FOI does not articulate rules for government

business enterprises, the United States included government-controlled corporations within its 1974 FOIA, and; the New Zealand OIA includes state-owned enterprises (Roberts, 2001).

Alasdair Roberts has studied the challenges to freedom of information legislation and policy that arise from organisational structures adopting a structural pluralism approach. This is an experimental and pragmatic approach to delivering public services which has taken the form of splitting up large government departments into quasi-government and privatised organisations, and is undermining the effectiveness of freedom of information law (Roberts, 2001, p.243). One aspect of structural pluralism in action is contracting out of major government functions to businesses. This may lead to a lack of willingness of government to assume responsibility for maladministration by independent agencies or contractors. The establishment of new agencies that are wholly owned by the government and which are expected to operate as commercial enterprises, creates a tension between the commercial culture with no openness requirements and the public service culture which is expected to comply with freedom of information legislation. In addition, private entities may escape constitutional safeguards and other legislative or regulatory rules of good administration.

The attempts of United States legislation to support decisions in relation to information access where private enterprises perform government functions, suggests that private enterprises performing public services do not necessarily

see themselves bound by the FOIA and that the reduced involvement of government agencies in management decisions will result in the likely growth of "lack of coherent judicial doctrine concerning privatized governmental records" (Bunker, 1998, p.468).

New Zealand context

The OIA is based on a principle of pro-disclosure (Snell 2000). Decisions of the Office of Ombudsmen, which deals with complaints about denials of access and concerns with administration of requests, have limited many of the categories of exemption (i.e. the circumstances under which a request can legitimately be denied), requiring agencies to justify their decision in terms of the possible consequences of disclosure (www.freedominfo.org).

In New Zealand, delays in OIA responses are an ongoing concern (Review of the OIA 1997, Access to Information Review Task Force 2002, Ombudsmen Reports 2009/10 & 2010/11, White 2007), as is the burden of large, broadly defined requests (Review of the OIA 1997, Access to Information Review Task Force 2002, White 2007).

Belgrave (2006) raised concerns with the inability of public sector agencies to make available information without substantial collation and research and with the challenges of managing increasing volumes of information capable of being requested as a result of the shift from paper to electronic records. According to

White (2007), the New Zealand-based investigative journalist Nicky Hager identified that recordkeeping capabilities have not kept pace with the growth in the number and size of requests.

Appropriate delegation of authority is critical to a well-functioning access system and to timely decision-making (Access to Information Review Task Force, 2002). In New Zealand, the trend has been to devolve responsibility for responding to a request to the individual who holds the information, whilst decisions rest with programme or unit managers (White, 2007).

Training has been an ongoing area of concern of Ombudsmen reports (White, 2007) from the perspective of a coordinated approach to policy advice and education regarding the OIA (Access to Information Review Task Force, 2002) and the need for training on OIA mechanisms and the application of judgement to ensure continuity of decision-making expertise when agencies are reorganised (Belgrave 2006).

Over time, the focus of releasing information has shifted from whether to release to when and how to release (Belgrave 2006, White 2007). The role of administrative discretion is crucial to shaping a statutory right to access information (Roberts, 2002). Equal treatment of requests is subject to environmental pressures, such as concerns with disruptions to policy processes or political controversy (Roberts 2002, White 2007).

Unforeseen at the time of its development, was the extent to which the OIA is used by parliamentarians (White, 2007) to support the need for meaningful consultation between political parties under the Mixed Member Proportional electoral system (Belgrave 2006).

Organisational structures and making them work

Organisational structure is the formal arrangement of roles and responsibilities within an organisation (Robbins, 2009, p.342) that enables organisations to fulfil their functions. Informing the arrangement of roles and responsibilities and how they operate effectively are the two interlinked concepts of authority and leadership (Robbins, 2009, p.345).

The chain of command is the line of authority from the upper organisational levels through to all other levels. It is the means by which someone in a managerial position has certain rights to tell people what to do and to expect them to do it, (authority) and staff members are obliged to carry out assigned duties (responsibility) (Robbins et al, 2009).

In the 1920s Max Weber developed a management theory in which he identified bureaucracy as a form of organisation characterised by divisions of labour, a clearly defined hierarchy, detailed rules and regulations and impersonal

relationships. Weber saw the need for efficiency, effectiveness, and loyalty to authority as typical of government organisations (Zurmond et al, 2007).

The shift to centralisation, or the commander structure, in the 20th century showed the benefits that could be reaped from economies of scale (Zurmond et al, 2007). Another trend is the reduction of hierarchical levels through decentralising internal responsibilities and increasing decision-making authorities at the local level to develop customer-focussed services (Kunin,1995).

The exercise of individual freedom within bureaucracy can be interpreted as understanding roles and responsibilities in terms of understanding capacity for creativity, decision-making, and personal accountability (Bartels, 2009).

Henry & Stupak (1995) identify leadership as the force that motivates the group and that effective articulation of a leader's vision, enables leaders to exert leadership force through substitutes. In formal bureaucracy this is represented through the chain of command, i.e. the exercise of authority and responsibility within a bureaucracy.

Conclusion

Research into connections between government organisational structures and access to information legislation is sparse. The main concerns identified in the literature focus on the extent to which access to official information applies when

governments contract out public functions and services to private or quasi-government organisations. This does not apply in New Zealand as the OIA was drafted to cover information held by public bodies, state-owned enterprises, and bodies which carry out public functions.

This literature review does suggest that authority and leadership mechanisms (as concepts underpinning organisational structure) may have an impact on responses to OIA requests.

4. Research design

In this section, the procedures used in gathering and analysing data for this research are outlined.

4.1 Methodology

The research paradigm of interpretivism focuses on “understanding of the social world through an examination of the interpretation of that world by its participants” (Bryman, 2008, p.366). Interpretivism lends itself to a qualitative research approach.

Through the collection and analysis of qualitative data, this study endeavoured to develop theories in relation to the systems and processes used in the population sample.

4.2 Data collection techniques

As this study adopted a qualitative research approach, interviews were considered the best means of gathering information as they allow for checking understanding of questions and concepts with respondents.

This study involved semi-structured interviews with three staff at three government agencies. The main risks associated with interviews were the

concern for anonymity in a small population sample and misrepresentation of interviewees' responses in research findings.

To mitigate these risks, neither individuals nor organisations are identified in the final research report. Interviews were taped with the permission of participants and transcripts provided to participants for agreement on content.

4.3 Population sample

This research only included organisations which had adopted an electronic document records management system (EDRMS) and/or a centralised unit for management of OIA requests. This was to provide a higher degree of comparability between the selected types of organisations.

Population sampling for this study was purposive at two levels; by context, as in the type of organisation, and by participants' roles and their different levels of decision-making responsibilities for OIA requests. The types of roles targeted for interview were:

- a manager of a unit with responsibility for OIA requests
- a manager with signatory rights for release of information under the OIA
- non-management staff with OIA administration responsibilities.

As identifying who to interview was based on the guidance of the agencies, the role types that were interviewed were as follows:

- unit manager with responsibility for OIA requests
- manager with signatory rights for release of information under the OIA
- non-management staff with OIA administration responsibilities
- legal adviser.

4.4 Pilot study

A pilot study was used to test the appropriateness of the interview questions to achieve their aims. The pilot consisted of interviews with three people from one organisation.

The questions resulted in interviewees discussing the subjects about which this study sought to hear views. Although one interviewee asked for clarification on "pro-disclosure" and "context of managing govt information", the interview questions were not changed. This was because the aim of using interviews was to hear interviewees' interpretation or view of ideas, rather than their response to the researcher's interpretation.

The pilot also demonstrated the challenge of transcribing speech into text and capturing tone and pausing through grammar. For example, interviews had a lot of extraneous words, such as speech fillers, half sentences, rhetorical questions and asides, which when read could obscure what the interviewee was trying to

communicate. The decision was made to use commas to represent pauses in speech.

4.5 The interviews

Three government agencies were sent an introductory email that:

- outlined the purpose of the study
- requested permission to approach staff for an interview, and
- requested advice on the most appropriate staff to interview, including whether it was possible to identify a range of staff with different levels of responsibility.

In two agencies, names were provided to be approached directly. In one agency the name of a contact person was provided.

Six interviewees were emailed directly, inviting them to participate in an interview and providing them with the following documents:

- Interview Guide (refer Appendix A)
- Participant Information Sheet for a Study of OIA Systems and Processes (refer Appendix B)
- Sample Consent Form (refer Appendix C).

The third organisation set up its three interviews, providing the interviewees with the same three documents as above.

Interviews were conducted in a range of locations: offices of the participants, meeting rooms within the participating organisations, and a café.

The interviews were taped and the audio tapes transcribed into word documents. The transcripts were then copied into an excel spreadsheet to enable the coding results to be recorded and to enable searching results by topic, theme, organisation, and by interviewee.

4.6 Data analysis

As the data was collected it was coded to identify and record the concepts revealed by the data. Coding occurred in two phases;

- initial coding; this was detailed and provided the opportunity to identify as many ideas or concepts as possible that were present in the data
- focussed coding; this identified the most frequently occurring codes and formed the main themes.

Appendix D shows the codes used in the initial and focused coding phases.

Underpinning these coding phases was the understanding that coding is “a movement from generating codes that stay close to the data to more selective

and abstract ways of conceptualising the phenomenon of interest" (Bryman, 2008, p. 543).

4.7 Limitations of the study

The main limitations to this study were that:

- it did not link to individual cases of OIA requests. This would have required more resources and time than were available for this study.
- the resources and time available for this study limited the size of the population sample which in turn limited the:
    - degree to which findings could be applied at a general level; for example, to a wider range of government organisations
    - potential to achieve theoretical saturation for all concepts and categories. Theoretical saturation refers to "once a concept or category has been developed, […] to continue collecting data to determine its nature and operation but then reach a point where new data are no longer illuminating the concept" (Bryman, 2008, p.542).

5.0 Findings

This section presents the findings from the data analysis, starting with an explanation of the roles of the interviewees and their decision-making responsibilities.

5.1 Roles and responsibilities

The first interview question, designed to give interviewees a chance to relax into the interview, identified the level of involvement of individuals and their decision-making responsibilities in relation to OIA requests. The roles and responsibilities of interviewees were identified as:

- two interviewees were from legal divisions
- two interviewees were members of the units with responsibility for OIA requests being responded to on time and to due process
- three interviewees were responsible for processing requests once they had been allocated to their teams; for example, collating and providing a recommended response to OIA requests. One of these individuals also had responsibility for sign-out of responses.
- one interviewee was a manager with responsibility for overseeing that requests allocated to their teams were responded to and signed out for senior management approval, and

- one interviewee was a senior manager with final sign-out responsibility for responses.

5.2 Presentation of the findings by theme

In the analysis of the interviews seven main themes were identified, one of which had three sub-themes grouped under it.

There is a degree of inter-relation between themes; for example, many themes have some consideration of timeliness of responses which is also a main theme, so some comments have been aligned with more than one theme.

The findings are then presented by theme with conclusions for each theme.

5.3 Systems and processes

The following systems and processes were discussed by respondents.

Time systems been in place

Interviewees were unsure how long existing systems had been in place.

In one organisation, one interviewee estimated that systems had been embedded since 1996 and revised five years ago. A second interviewee felt that the tracking

system had been in place since approximately 2002. The third interviewee reiterated that the systems had been revised recently.

In the second organisation, one interviewee identified the processes as dating from 1995 and the automated tracking system as dating from 2008. A second interviewee believed the policy and guidelines were revised about five years ago.

In the third organisation, one interviewee identified a revision to the system a year ago, one interviewee felt the systems had been in place for about five years, and the third interviewee was unable to give a specific timeframe but felt they had been in place for some time.

Tools to support staff to respond to requests

A range of tools were mentioned, such as, process flowcharts, guidelines, manuals, and templates. The use of templates was common to all three organisations and templates ranged from acting as guidance on what to do, to providing document formats, such as letters of receipt or letters of notification of extension reply date.

Tools were available on two organisations' intranets. For the third organisation, one interviewee felt the tools were not well-communicated.

One organisation identified that variations on the guidelines existed in some teams, rationalising this variation as needed to make the OIA request process more relevant to specific work areas.

Training was also available in all three organisations and appeared to be provided on a regular basis to new and existing staff. For two organisations, the training was overseen and delivered by the legal divisions.

Having the range of tools available to staff was seen as supporting staff to know what to do and how to do it, although one interviewee made the point that whilst these tools supported staff to a point, they saw the real skill was in being able to apply the OIA to the information.

Tracking systems

Interviewees commented on the registration, allocation and on-going tracking of delivery of OIA requests.

Two organisations had centralised units that provided an automated registration, allocation and tracking service, and provided advice and support to staff and managers. Both these units also registered and tracked other ministerial information, such as ministerials and parliamentary questions.

An automated tracking system was described as an electronic record that shows each step of the process; for example, with whom the request resides at any given point in time, who is doing which steps of the process, whether the step has been done and by whom. Steps include drafting material, peer reviewing, proof reading, and sign-out. This was seen to be a useful system for those experienced in using it, but less so for newcomers to the process.

The third organisation had two systems in place, a non-automated, central logging and allocation system, after which there was no further tracking of the progress of OIAs until they were complete and ready for release to the minister, and a unit within the agency that had an automated registration and tracking system for OIA requests allocated to it. This unit's system was imported wholesale from a previous organisation when government functions were transferred between crown agencies. The tracking "vacuum" between logging and release for the rest of the ministry was seen as a risk.

Tracking was seen as valuable for a number of reasons:

- to ensure consistency of responses to similar OIA requests; for example, so that information previously released is not subsequently withheld
- to support quicker decision-making about what to release by knowing what the situation and environment was when a similar request was made in the past, and thereby supporting assessment of whether what influenced the decisions in the past still have relevance

- to help monitor progress against requests and thereby identifying potential or actual delays.

The value of a tracking system was perceived to increase when linked to the electronic filing system as this helped improve reliability of identifying all the appropriate information.

Conclusions

There was a sense that systems for responding to OIA requests had been around for some time and have been subject to revision. Automated tracking systems appear to have been adopted more recently.

A range of tools were available to help staff know what to do and how to do it, although it was recognised experience was also important in responding to OIA requests. Tools were generally in the form of guidance, which some teams tailored to their situation, and training, which sometimes involved legal teams. Whilst there was variation in the types of systems being used, an automated tracking system was valued by those accustomed to working with such a system as it was seen to improve consistency and speed of decision-making and to help monitor progress.

5.4 Information accessibility

Some interviewees mentioned the importance of an appropriate filing system so staff could access information correctly. Linked to being able to access information, were concerns with identifying who was responsible for information so as to be able to appropriately allocate an OIA request to a team or individual.

Two of the organisations had paper-based systems for their official records. This created a similar challenge for identifying information when document creation is electronic and official records are paper-based. One interviewee linked this challenge to the OIA pre-dating the ubiquitous use of email.

One interviewee saw an EDRMS with searchable metadata of electronic documents as a way to improve access to information. For the agency that had an EDRMS, one interviewee felt that having the EDRMS linked to the tracking system improved reliability of identifying all information.

Conclusions

Information accessibility was seen as a key part of being able to execute OIA requests effectively and quickly and was identified as being reliant on effective electronic data management systems.

5.5 Attitude to OIA requests

Three interviewees felt that people conducted their work in the knowledge that it was subject to the OIA.

Three interviewees talked about the care with which staff and management responded to OIA requests, one interviewee using detailed processes with various built-in controls, the level of managerial involvement and ministerial interest as evidence of the importance that staff, agencies, and ministers gave to the OIA and OIA requests.

One interviewee identified that the legislative mandate of the OIA created staff anxiety about responding incorrectly. Another interviewee talked about the support systems and interest of managers as supporting staff to feel that they were not carrying all the responsibility.

Two interviewees, both responsible for collating and developing OIA responses, mentioned that OIA requests are difficult to process and time-consuming and, therefore, not exactly welcomed by staff. Both interviewees also stated that people had a right to information and one interviewee noted that responding to OIA requests was unproductive for staff.

Four interviewees took the approach that everything is for release unless there is good reason for withholding it. Three felt this attitude was not yet shared

universally and two mentioned that this approach conflicted with the approach of ministers whose preferred approach was perceived as being to withhold everything unless it has to be released.

One interviewee noted that ministers are interested in who makes requests. Another interviewee identified the political environment in which the OIA operates as having an impact on how requests are treated.

Two interviewees felt that sometimes an OIA request is only recognised as such when the requester quotes the OIA, rather than that any requests for information are under the OIA and the OIA does not need to be quoted.

Conclusions

OIA requests appear to be viewed as important by organisations and ministers because they have a legislative mandate and operate in a political arena. Processing OIA requests was seen to be difficult and time-consuming and there was some concern for supporting staff in an environment of legal accountability.

There was a general acceptance of the philosophy on freedom of information by agency staff and that staff work in an environment subject to the OIA, although there were perceived variations in understanding the application of the OIA. There was also a sense that ministers do not share the same philosophy on freedom of information.

5.6 Management of government information

The following points were discussed by respondents in relation to the OIA sitting within the wider context of managing government information:

- the OIA allows release of information whilst still protecting individuals' personal information and business interests
- the philosophy behind the OIA being about building an enlightened public, but the way in which it works is through requests by journalists and opposition party researchers, rather than individual members of the public
- OIA requests working as a snapshot in time of the business of agencies to provide free and frank advice to governments. As such, they support government accountability as a sort of organisational self-assessment on whether the right information was gathered, whether it was gathered in the appropriate way, and whether the advice that was provided accurately reflected the information that was gathered.

One interviewee felt OIA requests worked quite separately from the overall management of government information.

There was a sense organisations were increasingly using pro-disclosure of information although there were mixed views within agencies on whether this was done well. Each agency had developed some routine practices of pro-disclosure on regular reports. One interviewee felt their agency was good at media-type

releases but less likely to publish information that underpinned the media release, such as cabinet papers.

The benefits of pro-disclosure were identified as reducing future workload by pre-empting requests on subjects expected to elicit a lot of requests and encouraging decision-making about what to release and what to withhold in advance of an OIA request.

Web publishing was identified as a way to proactively reduce the administrative burden and increase public access to information whilst also encouraging a culture of self-searching by the public; although, as one interviewee noted, their agency had no evidence on whether pro-disclosure had an effect on OIA requests.

The challenges to increasing pro-disclosure were identified as being able to identify the level of interest, if any, that there was in information and the prohibitive costs of building closer links between agency internet and intranet sites.

Conclusions

There was a philosophical appreciation on how OIA requests contribute to empowering, and also protecting, the public and being an audit of organisational work.

There was a sense that organisations had increased their use of pro-disclosure and that this was linked to reducing the administrative burden of OIA requests. Web-publishing was seen as a useful tool for increasing pro-disclosure.

5.7 Levels of decision-making

One organisation identified three levels of sign-out responsibility although these levels increased or decreased depending on the depth of the hierarchy in the team. Another organisation identified the following levels of sign-off: drafter, peer reviewer, legal team, sign-out of response.

All organisations recognised variation in their decision-making processes, noting a range of factors:

- how many decision-making levels exist in a team
- the complexity and scope of a request
- the degree of delegated authority to, and within, individual teams
- the level of organisational or political risk associated with a request.

One interviewee noted the frustration of having multiple decision-makers who make changes and another interviewee noted that having a number of sign-off levels made it difficult to respond to the OIA request within 20 days.

Interviewees mentioned the involvement of legal teams in the sign-off process; in particular, where information might be withheld. One organisation noted it had no requirement for legal sign-off.

Two interviewees noted that when responding to OIA requests to the minister (rather than to the organisation), this created a further layer in the review and sign-off process; one interviewee observed that this took five days out of the 20 day process. One interviewee noted that the minister's office wanted to know what was being released, in advance of the release date, as a sort of heads-up. A further challenge noted by one interviewee, was responding on behalf of the minister when the agency may not hold minister's information, potentially leading to an incomplete response.

The interviewee, who was a senior manager with final sign-out responsibility, felt there was a high level of autonomy for staff to respond to OIA requests, as all the collation, assessment, and advice on what to release or withhold sat with staff.

Two interviewees noted the need to apply personal judgement; one as part of recognising that guidelines will only help to a certain extent, and one discussed the need to apply intuitive judgement in relation to the tone of the response (for example, defensive, positive, pro-active) and to be able to apply judgement based on awareness of the political environment.

One interviewee noted there could be an over-reliance on individual staff experience rather than having institutional memory on how previous requests, on a similar topic, were responded to.

Two interviewees emphasised the value of clarifying with the requester what their request was about in order to understand the request and its scope.

The challenges for individuals to make decisions on whether to release, withhold, or partly-release (i.e. with deletions) information was discussed in a number of ways:

- fear of legislative responsibility was seen to impede timely decision-making
- lack of confidence for staff new to OIA requests
- one interviewee felt their organisation's system discouraged individual autonomy where there is ambiguity in the request
- reliance on legal advice on decisions about withholding information, whilst legal teams relied on staff to understand the context of information and thereby make decisions about it
- differing views between departments on what to withhold with the administrator being caught in the middle
- one interviewee noted that OIA responses often fell to administrative staff and so the chain of command was needed to make decisions.

Conclusions

Within organisations, there was variation in the levels of sign-off and decision-making about release of information. This was seen to be in response to the complexity of requests and responses, internal hierarchies, and managing organisational or political risks. Legal teams and ministers' offices may also be included in decision-making or sign-off levels.

The degree to which individuals could make decisions (autonomy) seemed to be linked to staff experience, confidence, and the ability to apply personal judgement.

Decision-making systems were seen to reduce risk around individual autonomy, although multiple decision-making levels were also recognised as contributing to delaying responses to OIA requests.

5.8 Timeliness of response

Eight respondents identified 20 days as the timeframe to respond to OIA requests. Some felt that colleagues viewed this as a target. Others felt that colleagues viewed this as the time within which the response should occur, but that the amount of work and level of sign-offs meant it often took all or most of the 20 days. One interviewee commented on 20 days being the time in which a decision should happen on whether to release information or not.

One interviewee felt the majority of requests were responded to in time and another interviewee noted that OIA request response times were included in senior managers' performance assessments.

There were a number of comments about the challenges to successfully meeting the 20 day timeframe, such as:

- consultation with third parties, such as ministers, other government departments, or private business, which one interviewee estimated took 10 days
- coordination with other agencies that have received the same request
- being able to estimate the scale of the request in time to advise the requester that the response will take longer than 20 days
- allocation of requests to staff; one interviewee noted this took five days in their organisation
- time needed for the minister's office to review a response when responding to an OIA request to a minister (estimated at five days)
- prioritising the volume of requests and size of individual requests
- managing competing work priorities

Conclusions

There was a sense that 20 days was not the target but that it was the time needed to manage various steps in the process (sign-offs, consultation, minister's office review for ministers' OIA requests and managing other work).

5.9 Managing organisational and political risks

One interviewee felt that their agency viewed OIA requests through the lens of risk and that a legal assessment was always sought before releasing a response where information was withheld. The same agency conducted regular risk assessment of OIA requests to monitor progress, identify requests that had been made previously, trends of requests, and whether other agencies have the same request.

One interviewee felt management were overly concerned with who makes requests and what they will do with the released information. Another interviewee felt that the OIA is used by political opponents to overwhelm and stall the work of the government by submitting requests for vast volumes of information.

Respondents identified the following approaches to managing risk:

- informing ministers of what is being released where there may be some political risk
- advising external bodies that information about them has been released
- providing contextual information with the response
- regular updates to organisations on government decisions that may relate to their business
- liaising with the Ombudsman.

Another risk identified was that staff might release more information than appropriate because of time constraints and the effort needed to make deletions.

Conclusions

The political environment in which the OIA operates seems to have resulted in a risk management culture around OIA requests and a range of techniques to manage political risks.

The OIA was also perceived as being used as a political tool by opposition political parties.

6. Conclusions

A range of systems and processes are used for responding to OIA requests in government organisations. These vary between and within organisations. The rationale for adopting systems and processes falls into two categories, that is, those designed to support staff and managers to process requests, such as guidance, templates, and training, and those intended to manage organisational and political risks, such as automated tracking and filing systems and authorisation controls.

As respondents were unsure how long systems had been in place, it was not possible to identify, in this research, what changes to systems and processes had happened since 2001. There was, however, a sense that existing systems and processes were, in general, well-established and that tracking systems had been adopted more recently to improve consistency, speed of decision-making, and responding to the OIA requests within OIA timelines.

OIA requests are viewed as important government business because they have a legislative mandate to operate in the political arena as the legislation applies to public information which is the remit of government and its agencies. This has contributed to a risk management approach in the adoption and development of the systems and processes being used in government organisations.

An EDRMS is valued as a quick and easy means of identifying all relevant material and for its potential to support consistency of decision-making across OIA requests. However, the adoption of an EDRMS is not universal to government organisations. Because government organisations work in the environment of electronic document creation, such as, email, word-processing software, and electronic datasets, the lack of an EDRMS is seen as a significant barrier to meeting OIA timescales and to reducing the administrative burden of responding to requests.

The establishment of units with responsibility for OIA requests is part of the wider need to manage ministerial correspondence, such as, ministerials and parliamentary questions. Such units act as an administrative control point for the receipt, allocation, and ongoing tracking of delivery of OIA requests. They are intended to ensure OIA requests are processed and managed consistently, appropriately and in a timely manner.

Varying levels of control, in the form of decision-making hierarchies, have been introduced to manage organisational and political risks. This reflects that OIA requests operate in a legal, (agencies being governed by a legislative requirement), and political environment.

Decision-making hierarchies endeavour to find a balance between autonomous staff decisions (in the form of recommendations) and consistent management

decisions (in the form of sign-off authorities). At each decision-making level, managers use the advice, experience, and application of personal judgement of staff as well as their own experience and personal judgement to inform their decisions on responses to OIA requests. Decision-making hierarchies recognise and respond to the differing levels of staff experience and confidence with OIA requests, the need for consistency across OIA decisions, and the need for application of political risk assessment which is often aligned with management responsibilities.

The steps needed to manage risks, and to process requests, all take time, so that 20 days can be a challenging deadline for complex or large requests. Whilst staff endeavour to respond to OIA requests as soon as possible within the legislated 20-day response time, the full 20 days were often needed to action the various process and risk management steps, from identifying, collating, and anonymising material, to sign-off hierarchies, consultation, and fore-warning ministers.

Increased pro-disclosure of information is being used to increase access to information and to reduce the administrative (and bureaucratic functions) of responding to OIA requests. Whilst this supports a culture of building regular release of high volume and/or repeat requests, it also shifts the administrative burden from having an EDRMS and staff skilled in searching an EDRMS, to having web-publishing controls and staff skilled in web-publishing.

Organisational structures, in terms of authority mechanisms, can have an impact on fulfilment of OIA requests. The higher the organisational and political risks associated with a request are, the more complex the decision-making system is likely to be to manage those risks. The more complex the decision-making system is, the higher the risk is of not meeting the legislated 20 day response time, or failing to advise requesters, in a timely fashion, that the response to their request will be delayed.

7. Unexpected findings and suggestions for further research

An unexpected finding of this research was the degree to which:

- the freedom of information philosophy underpinning the OIA is embedded in government organisations' principles of working, although there are variations to interpreting how to apply the OIA
- government organisations felt that ministers did not share the philosophy of freedom of information, even though this is government legislation.

This seems to be creating a tension for organisations between meeting legislative requirements and managing the expectations of ministers.

As only one organisation in this study had an automated tracking system and an EDRMS, and the tracking system was not organisation-wide, there is the

potential for further research to test what benefits there could be when an organisation has both systems and they are linked.

A further potential research area, which was identified by an interviewee, would be to look at what the impact of pro-disclosure is on OIA requests.

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Appendix A: Interview Guide

Interview Guide

Topics to be explored, as appropriate

Standard Questions

1. Please tell me about your role and responsibilities, in relation to fulfilling Official Information Act obligations?

These two questions will always be asked, and used to provide relevant areas for exploration.

The following questions will be used if necessary:

2. What systems and processes are in place at your organisation for managing responses to OIA requests?

3. When were these systems and processes introduced? And where do you think they sit in the bigger context of managing government information?

4. Describe the decision-making structure of the organisation and how this relates to OIA systems and processes.

5. In your view, what, about these systems and processes, does work well for staff and management to respond to OIA requests?

6. In your view, what, about these systems and processes, does not work well for staff and management to respond to OIA requests?

7. What is your organisation's approach to pro-disclosure of information?

8. What do you think is understood, in your organisation, by "timely" responses?

9. Are there other aspects of responding to, or managing, OIA requests that we haven't already discussed that are of concern/relevance to you?

Appendix B: Participant Information Sheet for a Study of OIA Systems and Processes

Participant Information Sheet for a Study of OIA Systems and Processes

Researcher: Paula Wise: School of Information Management,
Victoria University of Wellington

I am a Masters student in Information Studies at the Victoria University of Wellington. As part of this degree I am undertaking a research project leading to a report. The project I am undertaking is investigating the systems and processes used by New Zealand government organisations in relation to Official Information Act (OIA) requests. The University has given ethics approval for research involving human participants.

I am inviting managers and staff in three New Zealand government organisations to participate in this study. Participants will be asked to participate in a face-to-face interview with me. Interviews are anticipated to take 30 minutes.

Should any participants feel the need to withdraw from the project, they may do so without question at any time before 18 April 2011, when the data will be analysed. Just let me know at the time. Any information provided up to the time of withdrawal will be excluded from the study and destroyed.

Information obtained in interviews will form the basis of my research project and will be used in a written report. It will not be possible for you, or your organisation, to be identified. Information will be non-attributable. All material collected will be kept confidential. Only I and my supervisor, Dr Gillian Oliver, will see interview transcripts. The thesis will be submitted for marking to the School of Information Management and deposited in the University Library. Interview transcripts and recordings will be destroyed two years after completion of the project.

If you have any questions or would like to receive further information about the project, please contact me at wisepaul@myvuw.ac.nz.

Or my supervisor, Dr Gillian Oliver, at the School of Information Management at Victoria University, PO Box 600, Wellington, phone 04 463 7437

Paula Wise Signed:

Appendix C: Sample Consent Form

Consent to Participation in Research

Title of project: The implications of government departmental organisational structures on fulfilment of OIA obligations

I have been given and have understood an explanation of this research project.
I have had an opportunity to ask questions and have them answered to my satisfaction.
I understand that I may withdraw myself, or any information I have provided, from this project at any time before 18 April 2011 without providing reasons.
I understand that if I withdraw from the project, any data I have provided up to the time of withdrawal will be excluded from the study and destroyed.
I understand that any information or opinions I provide will be kept confidential to the researcher and the researcher's supervisor, and reported only in a non-attributable form.
I understand that the information I have provided will be used only for this research project and that any further use will require my written consent.
I understand that, two years after this research is completed, taped recordings of interviews and transcripts will be destroyed.
I understand that I will have an opportunity to check, for a fair and accurate record of the interview, the interview transcripts before publication.
I would like to receive a summary of the results of this research when it is completed. Please indicate: Yes/ No
I agree to take part in this research.

Signed: Date:
Print Name:

Appendix D: Coding of themes

Initial coding of themes	Focussed coding of themes
attitude to OIA requests	attitude to OIA requests
autonomy (lack of) experience / judgement institutional knowledge judgements on with-holding info roles understand request experience	autonomy
accessibility of info EDRMS electronic file creation filing system official records	information accessibility
decision-making levels minister processes sign-off levels decision-making consistency legal involvement minister's office involvement	levels of decision-making
govt info mgmt pre-empting requests pro-disclosure	management of govt information
briefing reports to ministers paper/electronic systems as audit trail reporting risk assessment second-guessing requester / risk assessment trends of requests political game-playing	managing political & organisational risks
time systems been in place	time systems been in place*
minister's office consultation prioritising workloads third party consultation time management timeliness timely exemptions volume	timeliness of response
flowcharts guidelines manual supporting staff templates training	tools to support staff to respond to requests*

Appendix D – Coding of themes - con't

Initial coding of themes	**Focussed coding of themes**
ministerial unit allocation registration system tracking system rationale for tracking system	tracking systems*

* three themes were identified as being sub-groups of the over-arching theme of systems and processes.

Paula Wise
Word count: 8517 (excluding references and appendices)