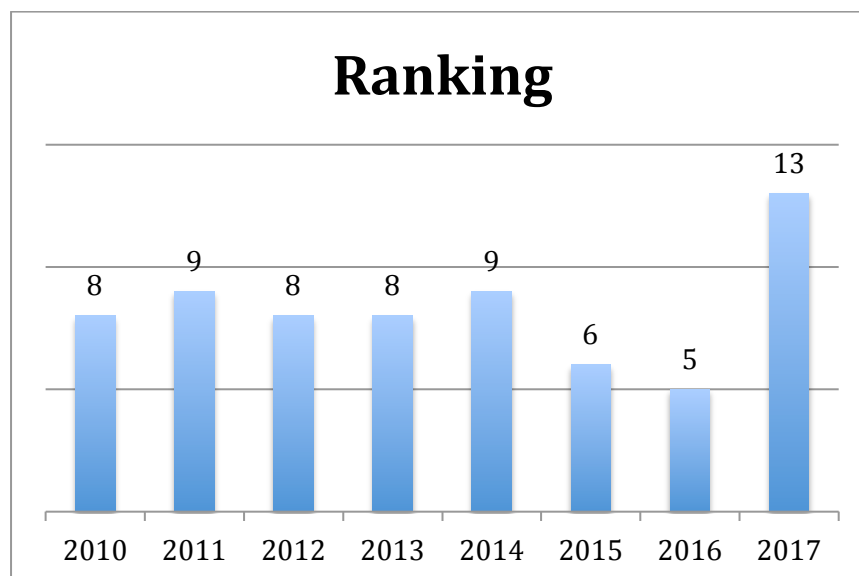


## Growing Local Authority Secrecy Intolerable

By Catherine Strong, Massey University

New Zealand's reputation as a beacon of open democracy and free media is getting tarnished, and this paper outlines what journalism students can do to help safeguard it. For the first time in many years NZ has slipped out of the top-10 countries for free media in the global Reporters Without Borders index. Compared to many of the other 180 countries monitored, 13th position is still laudable, but this research shows that the situation is getting worse. One threat to media freedom is government departments thwarting the Official Information Act, and the local authorities insisting on working within a culture of secrecy. This research outlines the work the Ombudsman's Office is doing to reverse this trend, and the tactics local councils are using to work without public scrutiny.



The media freedom ranking for New Zealand is getting worse. This year the international monitoring body Reporters Without Borders ranked it 13<sup>th</sup> in the world, the first time in several years it has slipped out of the top-ten countries globally for freedom of media. Compared to many of the other 180 countries monitored this still shows strong support for media freedom here, but the downward trend is alarming.

Reporters Without Borders gave one reason for the drop in ranking to the increasing number of complaints that government bodies are trying to skirt around our laws that instil openness in public-funded activities. In particular the Official Information Act and the Open Meeting Act are in focus.

<https://rsf.org/en/new-zealand>

The Ombudsman's Office is charged with the role of ensuring government departments act responsibly, and they have been inundated with complaints. Last year the office received 12,590 complaints about government departments, which is 44% higher than five years ago. The complaints have grown so much that the Office now is publicising each case on its website. Starting in 2017, every six months it uploads a list of each complaint, the department involved, the outcome, and if it was made by an individual or the media.

This list also includes more than a thousand complaints that agencies are withholding public information, violating the Official Information Act or the Local Authorities Meeting and Official Information Act.

<http://www.ombudsman.parliament.nz/resources-and-publications/oia-complaints-data>

In some ways this increase in complaints about government agencies not providing information is proof of our open and democratic system. More and more people realise their rights to have public information, and even take the extra step of making a complaint if they think they have been illegally denied. This shows a public understanding and appreciation of democracy. There has to be a good reason not to share with the public, as much information held by departments is collected on behalf of the public, and is funded by income from public taxes.

It is important to note that the Ombudsman's Office deals only with the information requests that are not satisfactory. There are tens of thousands of requests each year that are successfully provided to the public from government departments. As an example, NZ Police had 75 complaints, but last year had more than 11,000 OIA requests.

At this stage there is no real register of how many times a department is asked for information and it simply provides it. The State Services Commission is starting a collection of this information to include an empirical tally. They are only gathering information from 110 agencies, but last year that included 40,000 OIA requests, and they summarise that 91% of the information was provided to the media or public on time, which is within four weeks. They are particularly looking at central government agencies <http://www.ssc.govt.nz/official-information-act-statistics>

There are obvious problems for journalists who want a simple answer to a question (how many dogs were impounded by xx council last year) which is fobbed off by the council requiring it to be asked as an OIA, which means council has at least 20 working days, or about four weeks, to provide the information.

The arena that affects the greatest number of journalists is local government, since there are 78 city, district, and regional councils dotted around the country, as well as health boards. Complaints to the Ombudsman about local authorities is also on the rise. Of the 1100 complaints about violation of the OIA, 13% were local authorities; and in addition there were 240 complaints of the Local Government Official Information and Meetings Act.

But this may be the tip of the iceberg as far as a culture of secrecy within local authorities.

One concern is how some are using their *elected members code of conduct* to quell public criticism in the media. There is a growing trend for councils to slip in wording that would prevent elected members criticising council, its policies or practices. Each time I monitor the councils, there are more who have adopted this anti-criticism terminology, which is alarming for democracy and open decision making.

BACKGROUND: There is a legislative requirement that every council adopt a code of conduct for its elected members, but there are no specifications of what is included in the code. That is up to each council to decide, although the councils' umbrella group, Local Government New Zealand, provides a recommended code that is about 4000 words long and includes about 250 words under "contact with media". This template was originally written in 2002, and updated in late 2016. The template clearly acknowledges elected members have the the right to talk freely to the media, and criticise council. The limitations it suggests is that elected members make it clear their criticism is from themselves personally and they are not talking on behalf of the whole council. The other proviso is that elected members not name specific staff to criticise, as this would violate employment and privacy laws.

There is also a legislative requirement for the councils to approve the code at least once every three years, usually after the triennium elections when there are new councillors. There needs to be a 75% approval to change anything from the previous *elected members code of conduct*. This doesn't give a new council a clean slate and is a preventative for councils to adequately update and refresh their codes. It also means if the code restricts elected members talking openly to the media it is more difficult to change it.

FINDINGS: Observers feel councils do not often give sufficient attention to the code. It turns out that many councils approve the code after only a few minutes of discussion at a council meeting, remembering it is usually 4000 words and the *media contact* section is only 250 words in the middle of the document. Also the code is usually brought to the council table within a few months of a new council, at a time when the members are still getting to grips with the huge amount of reading and critical assessment they need to bring to the job.

In the mid-2016 analysis of the codes we found 15 council (22% of city and district councils) introduced wording into the codes that would prevent elected members talking to the media and criticising council.

## **Council tally**

## Code of conduct wording

<b>Council Tally</b>	<b>Code of Conduct wording</b>
Four councils used wording to prevent elected members talking to the media about anything that might hurt their council's image.	<p><i>Do not undermine Council policy or bring the Council into disrepute (Tauranga)</i></p> <p><i>Should not undermine Council...or existing policies or decisions (Buller)</i></p> <p><i>Must not criticise...Council decisions (Matamata-Piako)</i></p> <p><i>Should not belittle that decision (Hastings)</i></p>
Five councils went further to prevent criticism of council, its decisions, and policies	<i>No such statements should criticise the conduct of the Council, other elected members or officers of the Council nor should it undermine any existing policy or decision of Council (Gisborne, Central Otago, Kaikoura, Queenstown-Lakes, South Wairarapa)</i>
Four councils prevent elected members criticising the conduct of council.	<i>Elected members public statements expressing their opinion on matters before the Council shall not criticise the conduct of Council.... (Whakatane, Waitomo, Kapiti Coast, Nelson)</i>
One council inserted the word "personal" to clarify the type of criticism that is prohibited.	<i>No such statements should make personal criticism of the proper conduct of the Council...(Napier)</i>
One council directed elected members to support decisions in the media, as well prevent them criticising decision and policy.	<i>Elected members must show support for decisions once they re made and not make statements that are contrary to a Council decision or a Council policy (Thames-Coromandel)</i>

**RESULTS:** The journalistic question of "so what" is a fair response to these findings, in terms of what does some words in the middle of a council policy document mean to the community. To answer this we went back to the 15 councils that included these anti-criticism words and asked them to elaborate. Responses were received from 13 councils. We went to both the mayor and CEO of each council, but received responses from one from each council (4 mayors and 9 CEOs). The questions were open-ended, so the responses came in a variety of narrative styles. The majority defended their style of code of conduct. Some said they wanted to quell public controversy and specifically aimed to "speak with one voice". Most, however, said that the code had no affect on the level of public debate and criticism from councilors. A few specifically said they ignored the policy wording, others said their councilors were very robust in their criticisms.

This was in stark contrast to the viewpoint of journalists covering these same councils, also in stark contrast to the residents associations that responded.

Only three residents associations responded, but they were critical of the “culture of secrecy” at their respective councils. Most had been vocal previously to their council about secret meetings, trying to “gag” councilors, and generally trying to work without public exposure.

Journalists at newspapers covering the 15 councils were approached, 12 responded, and coincidentally none overlapped on coverage of the 15 councils. The journalists were able to give specific examples of their area’s council being much more subdued than other councils in the same area (councils without the anti-criticism codes). The journalists also confirmed their council had little public debate compared to other councils, there were few instances of individual councilors speaking out in defense of their region, rather than a council decision, these were the same councils that had a “culture of secrecy” with closed meetings and difficulty for the journalist to get information from. Although some journalists were not aware of the exact wording of their council’s code of conduct, others were well aware of it stopping open debate on issues. At two different councils it was confirmed councilors had quit because they were being prevented from talking out on issues they felt important to the community. In other instances councilors told journalists they wanted to talk out about an issue but had been severely reminded that the code prevented them from doing so. Other councilors had been formally accused of breaches the code when they tried to talk through the media about issues they thought needed to be addressed.

## So what?

Council CEO/mayors (N13)

Doesn’t dampen debate (77%)

Councilors still criticise (77%)

Ignore anyway (54%)

But want councilors to speak with one voice (23%)

Newspaper response (n12)

- Little public debate (92%)

- Culture of secrecy (92%)

- Code used to stop debate (33%)

- Councilors quit over gagging (n=2)

One editor called the trend to try to silence criticism as “sanitised democracy”, and Journalists commented that pressure from the code was “alarming”. They were also “not surprised” that it was these particular councils that had altered the code from the recommended template as these were the ones that “under the radar”.

Several journalists said the code of conduct was just one aspect that these particular councils style and were adamant that elected members are supposed to represent residents, not be “spin doctors for corporate council.”

CONCLUSION: Journalists and politicians are often on different sides of the fence in the type of publicity they want, and why; however both are products of wanting engagement in their arena. The politician wants more people to vote and be involved in council whereas journalists want more people to read/view their articles and be involved in the news media. The emotional engagement theories fit both these agendas, which posits that when news arouses emotion in people they become more engaged. In the digital news area this is well

It is well know that journalist are an important pillar in ensuring democracy in a community. Putting the spotlight on issues – whether positive or negative – is a safeguard that the public knows what is going on in their government (note *their* government) and thereby helps ensure democracy is in action. In covering local authorities it is always a challenge for new journalists to get through various filters to ensure the public knows what is going on with their rate money and their representative bodies. It is the journalist’s responsibility, however, to avoid simply depending on media releases, and to find the news and issues that affect the community.

Here are some tips in covering local authorities in the current environment.

## New Journalists Covering Local Authorities

**Reporting local authority requires digging.** Not all important information is going to come by way of media release or the council website.

**Quietness doesn't mean agreement.** Councillors may have opposing opinions by not able to step up to tell the media.

**Sources may receive threats for speaking out.** Some councillors know if they criticise council when talking to you they may be penalised.

**Ratepayers must be alerted to anti-criticism policies.** Voters should be aware why their elected representative is now different than before the election.

### Know Your Council's Policy

1. Search on the council website for "*elected members code of conduct*"
2. Scroll down to the section called something like "*contact with media*"
3. Look for words like "*not criticise*" or "*not blemish*"

Publicise when the code is discussed in council

Publicise the anti-criticism segment of their code

Publicise when a code is changed and improved

Pay attention to the residents association, as they may be the only group not pressured to remain silent