



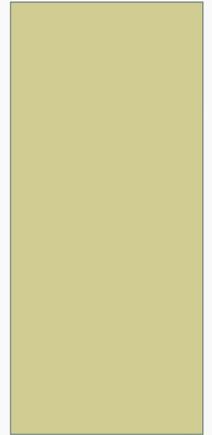
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# *AN INCREASINGLY SECRET PARADISE*

FREEDOM OF INFORMATION IN AOTEAROA-NZ

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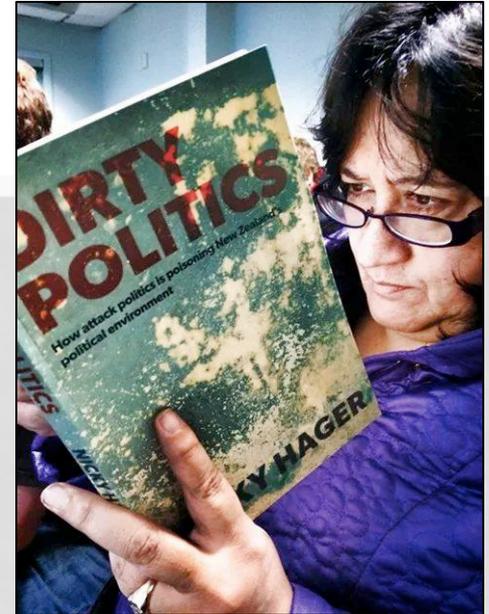
# Freedom of information in Aotearoa-NZ

## Background

- Doctoral research into freedom of information (FOI) in Aotearoa-NZ. Early stages.
- *Dirty Politics* and its implications for FOI in Aotearoa-NZ
- A book marking Britain's first decade of information freedom:

Felle, Tom and Mair, John (2015) (eds) *FOI at 10: Freedom fighting or lazy journalism?* Bury St Edmunds: Abramis

- Shared research interest between myself and James Hollings
- Result: *An increasingly secret paradise*



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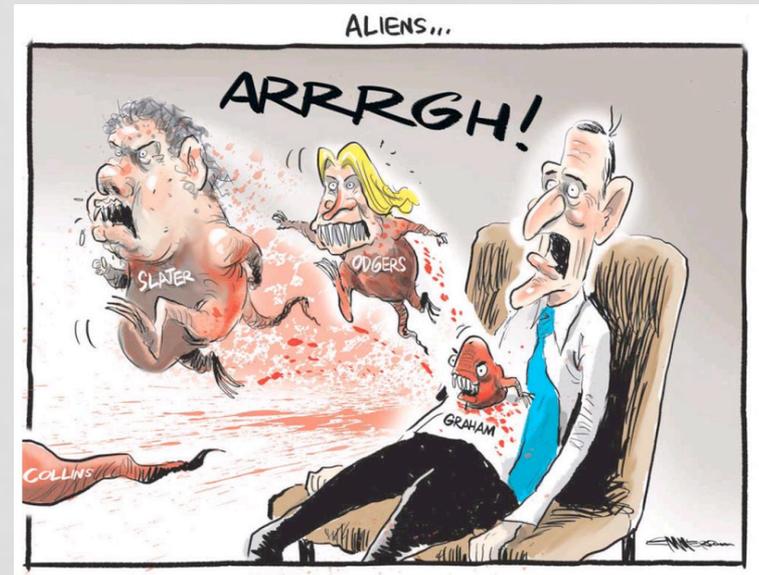
## Our argument

- The long-running and widely held story about the deluxe nature of NZ's FOI regime (reaches places other regimes can't) is overdue for revision; an 'exhausted narrative already rather late for bed' (Treadwell & Hollings, 2014).
  - The OIA 1982 celebrated by legal scholars and policy wonks since 1982; by journalists not so much
  - Missing from the thread is a strand from journalism studies
  - Growing anecdotal and empirical evidence of serial abuse of the OIA since the 1990s
  - Compounded by an ineffectual Protected Disclosures Act (whistleblower legislation)

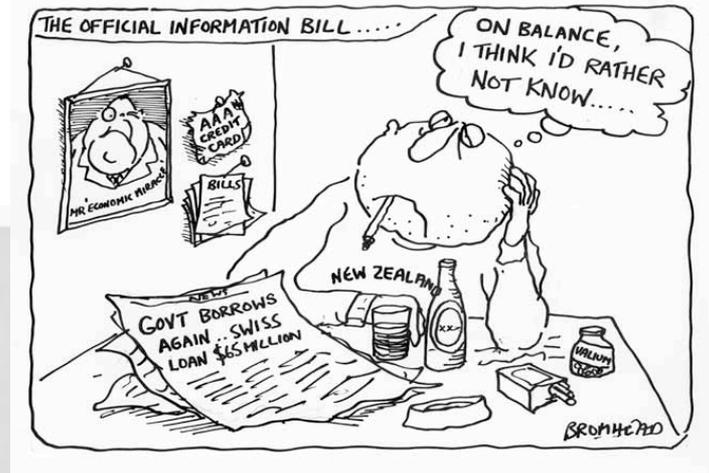
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## Dirty politics

- Recent political events strengthened the argument that we must reconsider the state of our FOI regime
- Hager paints a picture of 'a vindictive culture at ease with its immoral self' (Treadwell & Hollings, 2014)
- 37 minutes – not bad for a pizza delivery, unheard of for an OIA request
- Collins: 'Oh, dear. All this open government thingy.'  
Slater: 'twewwible' (Fisher, 2014).



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## How did we get here?

- OIA was a dramatic step towards open government in 1982 after 'a long period of public concern and criticism about the lengths to which the Government went to preserve secrecy' (Aitken, 1998, p. 4).
  - Danks Committee – made up of officials, not politicians
  - Repealed the Official Secrets Act 1951
- Based on a clear articulation of the principle of availability
  - '[e]ssentially . . . we, the public, own the information that's held by government' (Price, n.d.)
  - comparatively few exclusions, covered anyone in NZ, information not restricted to documents

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## The conventional NZ narrative

NZ has a reputation as one of the freest societies on the planet, supported by one of the most liberal, progressive and successful FOI regimes in existence.

- 1999 Chief Ombudsman Sir Brian Elwood: NZers' right to know was, as far as he knew, 'unmatched'.
- Privacy Commissioner Marie Shroff told the FOI Live conference in the UK in 2005 that she had come from 25 years in the FOI future to reassure Britain 'it works'.

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## An emergent narrative

- **Strong decline in access began under the Labour government in the 1990s**
  - Describes a generally uninterested public which tends to rely on journalists to 'use' the OIA on its behalf
  - Obstructive officials ignorant or dismissive of their legal obligations
  - Increasingly privatised world of state-funded services (eg charter schools, private prisons ... )
  - An Ombudsman's office drowning in complaints
  - A culture of abuse that appears to have taken root (Jason Ede, Judith Collins, Cameron Slater etc)



**CHERYL GWYN: Inspector-General of Security and Intelligence | Her report found the Security Intelligence Service released “incomplete, inaccurate and misleading information” in response to an Official Information Act (OIA) request by right-wing blogger Cameron Slater. She recommends the SIS should review its structures and processes with the OIA and apologise to Phil Goff.**

- [stuff.co.nz](http://stuff.co.nz)

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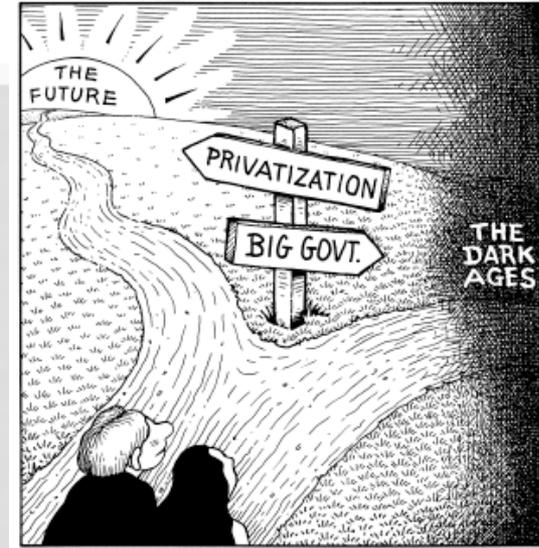
## The decline

Research by Price (n.d.) recorded deep ambivalence on the part of information requesters, some of whom were journalists.

Common stalling tactics:

- *transferring requests between agencies;*
- *seeking clarification of the request, then treating this as a new request with a fresh 20-working day time limit;*
- *insisting they are 'working on it' or 'conducting consultations';*
- *claiming that the person processing the request is away or sick or that it is 'on the minister's desk' awaiting final approval*
- *waiting for weeks and then refusing the request;*
- *losing or simply ignoring requests;*
- *dragging the chain when the Ombudsmen become involved; and*
- *brazenly not releasing information immediately even after agreeing to do so following an Ombudsman's investigation. (n.d.a: 11-12).*

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## Structural pluralism and FOI

'The transformation of the architecture of the public sector over the last two decades has caused confusion about the applicability of disclosure laws, most of which were drafted with the purpose of improving transparency within government agencies staffed by government employees. As work left government departments – to go to contractors, privatised utilities, and nonprofit organizations – the principle of access to government documents began to break down' (Roberts, p. 152).

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## Protected disclosures

Whistleblowers supposedly protected by the Protected Disclosures Act 2000

- Criticised as ineffectual by whistleblowers (Scholtens, 2003)
- Sets a high threshold for protection – ‘serious wrongdoing’
- Employee must have tried internal procedures
- Ombudsman (2013): not clear why the act is not working

Scholten: talked to a number of whistleblowers; found the act was cumbersome, difficult to apply, unlikely to protect the whistleblower against publicity or retaliation.

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## The Ombudsman – ‘arresting reading’

Ombudsman's 2012/13 report:

- 2,374 complaints (up 92% on previous year)
  - Without one complainant who filed 1012 complaints, it was still up 26%
- Office completed' 1913 complaints, 78% increase on the year before
- Increasing tendency for complaints to be about unreasonable delays
  - 18% increase in ‘delays’
  - 34% increase in 2011/12

(Ombudsman 2013)



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## Conclusion

The unique and successful characteristics of the OIA – an open and flexible view of information, a concrete principle of availability and a successful appeal mechanism – have meant it has been lauded by those who appreciate a great piece of law or policy. But a new narrative has emerged now that, over decades, the views of journalists and journalism scholars have been included. While not all policy studies projects are cheerleaders for the efficacy of the regime (eg, White 2007) and not all legal scholars think the OIA is perfect law (eg, Price n.d.a), the perspective of arguably the most influential of all so-called requesters under the Act is only now being woven into the discourse. Journalism's interest in FOI goes to the very heart of both FOI and journalism. Nicky Hager's book *Dirty Politics* has confirmed what many journalists suspected. The reputation the New Zealand government has for transparency is a thin veneer indeed.

# Freedom of information in Aotearoa-NZ

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