

Regulatory Impact Statement: Strengthening the Local Government Official Information and Meetings Act 1987 Coversheet

Purpose of Document	
Decision sought:	<i>This regulatory impact analysis was produced to inform final Cabinet decisions regarding amending the Local Government Official Information and Meetings Act 1987 to provide for Local authorities to conclusively withhold information that, if disclosed, could prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand.</i>
Advising agencies:	<i>Department of Internal Affairs</i>
Proposing Ministers:	<i>Minister of Local Government</i>
Date finalised:	<i>16/06/2022</i>
Problem Definition	
<p>The Local Government Official Information and Meetings Act 1987 does not currently allow local authorities to conclusively withhold information that, if disclosed, could prejudice the security or defence of New Zealand or international relations of the Government of New Zealand. This limits the intelligence agencies' ability to proactively provide security advice to local authorities, and for local authorities to seek out advice on security threats from the intelligence agencies.</p>	
Executive Summary	
<p>The risk of foreign interference in local government is increasing. As the risks increase, it is becoming more necessary for information to flow freely between central and local government to help manage the risk.</p> <p>The Local Government Official Information and Meetings Act 1987 (the Act) does not currently provide conclusive withholding grounds for information that would likely prejudice the security or defence of New Zealand or the international relations of the government of New Zealand.</p> <p>The New Zealand intelligence agencies (the New Zealand Security Intelligence Service and the Government Communications Security Bureau) identified this gap when they started to proactively talk with local authorities about the risks of foreign interference in local government.</p> <p>The gap increases the risk of information being disclosed that could prejudice New Zealand's security or defence or the international relations of the Government of New Zealand. The gap also limits the scope of the intelligence agencies' engagement with local authorities and their ability to advise on specific foreign interference risks.</p>	

In November 2021, Cabinet invited the Minister of Local Government to consider how the Act can be strengthened so that local authorities can receive and protect this type of information.

The primary option considered, and the Department's preferred option, is amending the Act to provide conclusive withholding grounds for information that would likely prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand. The Department of Prime Minister and Cabinet, Ministry of Foreign Affairs and Trade, the New Zealand Security Intelligence Service, and the Government Communications Security Bureau were all consulted and support this option.

The preferred option will allow the intelligence agencies to expand their outreach and share detailed information with local authorities regarding specific sources of risk. It will also allow local authorities to pro-actively seek assistance regarding security issues without the risk that the information could be released.

The preferred option will also address the objective of reducing the risk of sensitive information being disclosed that could damage New Zealand's security, defence, or the international relations of the Government of New Zealand.

The preferred option does not meet the maintaining the availability of official information criteria, however this is a trade off in the Government protecting New Zealanders from risks to their safety, personal information, and local democracy. Non-regulatory options were not considered feasible as it would not strengthen the Act or prevent this type of information from being released.

Limitations and Constraints on Analysis

The scope of options is narrow due to Cabinet direction

In November 2021, the Cabinet External Relations and Security Committee OIA s6(a)
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The Committee invited the Minister of Local Government to consider how to strengthen the Act so that local authorities can receive and protect information that, if released, would prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand [ERS-21-MIN-0042 refers]. The Minister of Local Government has subsequently approved a proposal that will amend the Act to protect information of this type.

This direction constrains this analysis to either amending the Act or maintaining the status quo.

The evidence the Department holds on the extent of the problem is limited

The Department's evidence regarding the size of the problem caused by the gap in the Act is limited. OIA s6(a)

OIA s6(a)

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There is an assumption underpinning the analysis that the risks of foreign interference will increase with time.

The Department has not yet consulted local authorities

The Department is yet to engage with local authorities or speak to local government sector organisations about the problem due to time constraints. The problem was identified by the intelligence agencies during their prior engagement with local authorities.

Lack of engagement with local authorities limits the Department's knowledge of how big of a problem it is and **OIA s6(a)**. It does not limit the analysis of the intelligence agencies' engagement with local authorities.

Responsible Manager(s) (completed by relevant manager)

Richard Ward
General Manager
Policy and Operations – Local Government Branch
Department of Internal Affairs

Richard Ward
30/6/22

Quality Assurance (completed by QA panel)

Reviewing Agency: Department of Internal Affairs

Panel Assessment & Comment:

The panel considers that the information and analysis summarised in the RIA received on 14 June 2022 meets the quality assurance criteria.

The Treasury has informed the Department that a very short RIS, potentially without the multi-criteria analysis table and the cost benefit tables would be appropriate. These reduced requirements have been factored into the Panel's assessment of the RIS.

The RIS makes a case to amend the Local Government Official Information and Meetings Act 1987 (LGOIMA) to provide for local authorities to conclusively withhold information that, if disclosed, could prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand.

The RIS is well structured and clearly written, containing the required information. The RIS identifies a narrow scope focused on strengthening the Act, due to Cabinet decisions. Limitations are identified due to limited evidence (**OIA s6(a)**) and because local authorities have not yet been consulted. However relevant central agencies have been consulted, including the NZSIS and GCSB.

A clear problem statement is given. An example illustrates the potential for foreign interference to have real impacts on the wellbeing of people. The proposed option is analysed against criteria. Implementation is considered to the extent possible, given that local authorities are yet to be consulted. The conclusion is convincing, making the case that a trade-off in the availability of official information is worthwhile to better mitigate the risk of foreign interference in local government.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

Foreign interference in local government

1. Under the local government regulatory framework, local authorities have responsibility for significant governmental processes and decision-making. These include planning decisions, natural resource management, and extensive infrastructure investment involving assets of significant value. The role of local government makes it a target for foreign interference. OIA s6(a) [redacted].
2. Foreign interference is currently the subject of a cross government work programme. In November 2021, OIA s6(a) [redacted]. The Minister of Local Government was invited to consider how to strengthen the Act to protect information they hold that, if released, could prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand.
3. OIA s6(a) [redacted].
4. The intelligence agencies have been engaging with local authorities to improve awareness of foreign interference risks, including risks to elected members and cyber security. This involves the agencies sharing generic information regarding foreign interference risks, not information regarding specific sources of risk, with staff and elected members at local authorities.
5. As the risk of foreign interference rises, it becomes more important for central and local government to share information and mitigate risks.

The Local Government Official Information and Meetings Act 1987 (the Act)

6. Information held by local authorities, including information with security, defence, or diplomatic considerations, is subject to the Act.
7. One of the Act's primary purposes is to increase the availability of information held by local authorities to the public to:
 - enable more effective participation by the public in the actions and decisions of local authorities; and
 - promote the accountability of local authority members and officials.
8. Another purpose of the Act is to protect official information and the deliberations of local authorities to the extent consistent with the public interest and the preservation of personal privacy.
9. Provisions in the Act protect certain types of information that would have negative effects if they were disclosed. These reasons for withholding information are divided into conclusive reasons and reasons that must be balanced with public interest in the information being released.
10. Currently, the conclusive reasons for withholding information under the Act include withholding information if it would be likely to:
 - prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial; or
 - endanger the safety of any person.

What is the policy problem or opportunity?

11. The Act does not currently allow local authorities to conclusively withhold information that, if disclosed, could prejudice the security or defence of New Zealand or international relations of the Government of New Zealand. This limits the ability of local authorities to withhold this type of information as well as precludes central government agencies from sharing it with them.
12. In central government, information that is shared between the intelligence agencies and departments regarding foreign interference risks can be protected by the Official Information Act 1982 (the OIA). The OIA provides conclusive withholding grounds for information which, if released, would be likely to prejudice the security defence or international relations of the Government of New Zealand. Under the Act, local authorities would have to disclose this information when it is requested.
13. The original draft of the Act was the product of a working group established to investigate the application of the principles of the OIA to information held by local authorities. The working group considered that similar legislation was appropriate for local authorities but did not consider the OIA withholding grounds related to security, defence, or diplomacy to be relevant to local authorities at that time.
14. There are other withholding ground sections in the Act that may be able to be used to protect certain types of relevant information. This includes s12 (transferring information requests to an appropriate agency) and s7 (withholding grounds for information given in confidence).
15. However, the Department does not consider these withholding grounds to be sufficient to protect the range of information shared between the intelligence agencies and local authorities. For example, these provisions do not protect information from local authorities' when they make proactive requests for security advice from the intelligence agencies. The Act also does not enable free and frank conversations to be had between parties (including in-person conversations) as the information could still be released.
16. The lack of protection for information with security, defence, or diplomatic considerations was identified by the intelligence agencies during their outreach to local authorities in early 2021. The agencies consider that this gap could:
 - preclude them from providing advice to local authorities about sources of risk or vectors;
 - deter local authorities from seeking advice or support; and
 - increase the risk of information being released that damages New Zealand's national security or international relations.
17. Foreign interference in local government is not a theoretical risk. In their joint submission to the Justice Committee Inquiry into the 2017 General Election and 2016 Local Elections, the Director-Generals of the NZSIS and GCSB stated "Motivated state actors will work assiduously over many years, including in New Zealand, to covertly garner influence, access and leverage." The intelligence agencies have also "seen relationship building and donation activity by state actors and their proxies" at the local government level.¹
18. In 2021, the Waikato DHB's IT centre was a target of a major cyber security attack. While the identity of the hackers are unknown, cyber-attacks on the systems itself and the disclosure of private information can have tangible impacts on the security and the

¹ *Unclassified submission by Director-General of Security, NZSIS and Director General of GCSB on the Justice Committee Inquiry into the 2017 General Election and 2016 Local Elections:* https://www.parliament.nz/resource/en-NZ/52SCJU_EVI_78888_JU67631/22077e896220070072fc5f00958ea098d1169056

safety of New Zealanders.² The DHB cyber-attack illustrated how these risks can affect large numbers of people through loss of access to health services.

19. OIA s6(a) [REDACTED].
20. It is critical that central and local government can exchange information and work together to mitigate not only foreign interference risks but also other risks and threats that may arise from time to time. The gap in the Act limits this exchange of information.
21. The assumption is that the risk to local government from foreign interference is expected to increase. OIA s6(a) [REDACTED].
22. As key stakeholders, the Department has consulted the Department of the Prime Minister and Cabinet, the Ombudsman, the Ministry of Foreign Affairs and Trade, the Ministry of Justice and the NZSIS and GCSB on the issue analysed in this paper. DPMC and MFAT were consulted on the problem definition in mid-2021 when the problem was brought to the Department's attention

What objectives are sought in relation to the policy problem?

23. The objectives sought are to:
 - allow the intelligence agencies to expand their engagement with local authorities and provide them with more information about sources of foreign interference risk;
 - give local authorities confidence in their ability to actively seek out advice about foreign interference from the intelligence agencies; and
 - reduce the risk of sensitive information being disclosed that could damage New Zealand's security, defence, or the international relations of the Government of New Zealand.
24. Meeting these objectives will improve New Zealand's resilience to foreign interference risks.

² Waikato DHB cyber-attack: Hospital bosses fearful of copycat attacks and tipping hackers off: <https://www.nzherald.co.nz/nz/waikato-dhb-cyber-attack-hospital-bosses-fearful-of-copycat-attacks-and-tipping-hackers-off/3PNEJZRRSL4YQFV4YNOTXGIRKE/>

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

25. **Information sharing:** Allows the intelligence agencies to share more information with local authorities about vectors of foreign interference risk. If this criterion is met, agencies can expand their engagement with local authorities without the information being potentially disclosed due to an information request under the Act.
26. **Information gathering:** Allows local authorities to seek advice from the intelligence agencies regarding security and foreign interference risks. If this criterion is met, local authorities can reach out to the agencies without risking the information being disclosed due to an information request under the Act.
27. **Maintain the availability of official information:** Continues to provide for access to official information held by local authorities.

What scope will options be considered within?

28. The scope of options is limited due to Cabinet's invitation for the Minister of Local Government to consider how the Act could be strengthened so that local government can receive and protect information that, if released, would prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand.
29. The scope of options is also limited to those that will allow the intelligence agencies and local authorities to engage with each other about foreign interference risks and diplomatic concerns without the information being disclosed due to the limitations in the Act.
30. Non-regulatory options were not considered feasible as it would not strengthen the Act or prevent this type of information from being released.

What options are being considered?

Option One – Status Quo

Description

31. This option would not amend the Act, maintaining the current conclusive withholding grounds.

Analysis

32. Under the status quo, information the intelligence agencies and local authorities exchange could be released if it is requested and is not covered by the other withholding grounds currently in the Act. Sensitive information that could prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand could be released.
33. While the status quo may maintain the availability of official information, the trade-off is that information could be released that prejudices the security or defence of New Zealand or the international relations of the Government of New Zealand. This could have wide implications for the safety and security for New Zealanders and its international relations.
34. This option would not meet the information sharing criteria as it limits the amount of information the intelligence agencies can share with local authorities on risks to foreign interference in local government. It can also prevent local authorities seeking

assistance from the intelligence community for security concerns or how to proactively prevent foreign interference in local government.

35. As noted above, while there may be some provisions in the Act that could be used by local authorities to prevent sensitive information being released, these provisions are very limited. Under section 12 of the Act, a request can be transferred if it is believed the request is more closely connected with the functions of a government department.
36. This provision in the Act would protect best-practice guidance prepared by the intelligence agencies but would not protect back and forth communications between them and local authorities. For example, a request for assistance from a local authority to an intelligence agency regarding a specific security incident with detailed information about the circumstances would not be able to be transferred under section 12. The local authority would have to disclose the information when requested and therefore does not meet the information gathering criteria.
37. Transfer of requests under the status quo requires local authorities to know when they can and cannot transfer requests. Transferring requests requires more thought and consideration compared to a conclusive withholding ground for information that would likely to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand.
38. The Act provides other withholding reasons that may allow for information that could prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand to be withheld. This includes s7(2)(c) that provides withholding grounds for information given in confidence.
39. However, information given in confidence must be subject to an obligation of confidence and must still be balanced with public interest in disclosure of the information. With this balance in mind, the intelligence agencies and local authorities could be unwilling to share sensitive information because of the potential that it could be released, stopping the free flow of information and proactive actions to improve security. It would also prevent free and frank conversations between central and local government officials.
40. While there are some other withholding grounds in the Act, the Department does not consider them sufficient to meet the information sharing and information gathering criteria. Amending the other withholding grounds is not considered a viable option as they work well on their own, it just does not cover all the situations we have noted above where information could be released.

Option Two – Amending the Act to provide a conclusive withholding reason

Description

41. This option would amend the Act to provide a conclusive withholding ground for local authorities to withhold information that, if released, would be likely to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand.

Analysis

42. This option meets the information sharing and information gathering criteria. With a conclusive reason to withhold information with security, defence or diplomatic considerations, the intelligence agencies will be able to expand their engagement with local authorities about foreign interference risks without concern for local authorities' ability to withhold any sensitive information that is shared if an information request is made.
43. Local authorities would be able to use the new provision in the Act to protect information relating to any request for security advice or sensitive details regarding

security incidents. This will support local authorities to improve their capability to manage foreign interference risks.

44. This option wouldn't maintain the availability of official information and may affect a small segment of the population, including academics, journalists, and any member of the public with an interest in accessing the information. The trade off with not maintaining the availability of official information is the need to protect local democracy and protect citizens from foreign interference. This trade off is already recognised in the Act under section 6 where conclusive withholding grounds exist, as well as in the OIA.³
45. On balance, the benefits of amending the Act to provide a conclusive reason for withholding information if the information would be likely to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand outweighs the impacts on the availability of information.
46. Protecting information would improve local government's resilience to foreign interference risks, where increased resilience is also in the public interest.
47. This option will not impose additional costs on local authorities. Local authorities already have staff with the responsibility for managing information requests under the Act and the Department does not anticipate that this amendment would increase their workload **OIA s6(a)** .
48. This option is also consistent with the OIA and the way information is considered for release in central government. The Office of the Ombudsman has previously noted that there is one general area for which it is generally accepted that protection of information is needed, which can be collectively described under a 'national interests' heading. It includes such fields as security, defence, or international relations.⁴

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

49. Option Two (amending the Act to provide a conclusive reason for withholding official information) will best address the problem and meet all the policy objectives. It provides certainty to the intelligence community and local authorities.
50. The amendment will allow the intelligence agencies to expand their outreach and share detailed information with local authorities regarding specific sources of risk and allow local authorities to pro-actively seek assistance regarding security issues without fear that the information could be released.
51. There is a trade-off however with the preferred option in that it may impact on the availability of official information and the ability for local authorities to provide access to official information they hold.
52. This amendment is the only feasible regulatory option that meets the criteria. Other provisions in the Act for protecting sensitive information, including section 12, are working as intended and do not need to be amended as part of this option.
53. While this is the Department's preferred option, this preferred option is also shared by the Minister of Local Government, the intelligence agencies, and the national security function of the Department of the Prime Minister and Cabinet.

³ Section 6, Local Government Official Information and Meetings Act 1987, and Official information Act 1982.

⁴ [Conclusive reasons for refusing requests - A guide to the conclusive withholding grounds in section 6 of the OIA and LGOIMA.pdf](#)

Section 3: Delivering an option

How will the new arrangements be implemented?

54. The Act will be amended to provide conclusive withholding grounds for information that, if released, would be likely to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand.
55. The amendment would come into effect in 2023, alongside changes to the Land Information Memorandum (LIM) system that also require amendments to the Act. In November 2021, Cabinet approved changes to the LIM system to improve natural hazard information disclosure in land information memoranda. This amendment will provide local authorities with legislative grounds for withholding information they receive from the intelligence agencies regarding foreign interference risks. Local authorities will remain responsible for withholding information they create and receive, including information with security, defence, or diplomatic considerations.
56. Local authorities have limited experience with handling information with security, defence, or diplomatic considerations and may require advice on what needs to be withheld. In general, local authorities have extensive experience in withholding information for reasons that are currently provided for in the Act but this ability is more limited in smaller local authorities. Much of this experience will be transferrable.
57. Local authorities will still need to transfer information requests for one-way communications from the intelligence agencies to those agencies. The intelligence agencies will be responsible for deciding whether this information should be withheld under the OIA.
58. The Department does not see any implementation risks for this amendment.
59. The Department will work with the Office of the Ombudsman to provide advice that will inform local authorities about the sensitivity of information they may hold and information that could be withheld under the new conclusive withholding grounds following the amendment to the Act.
60. The Ombudsman will continue to be available to respond to complaints about how a request for information from a local authority under the Act has been managed.
61. The Department will also work with Taituarā – Local Government Professionals Aotearoa and Local Government New Zealand to create communications to inform local authorities of the amendment to the Act and the steps they need to take.

How will the new arrangements be monitored, evaluated, and reviewed?

62. The Department will receive direct feedback from local authorities and through the peak sector bodies, Taituarā – Local Government Professionals Aotearoa and Local Government New Zealand, on the effectiveness of the amendment.
63. The Department will also maintain contact with the intelligence agencies to evaluate the impacts on the agencies' work and their ability to share information without it being disclosed. This will include media monitoring to see if information is being released that should not be, or if there are complaints about information not being released.