



# Cabinet Office Circular

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**Enquiries:**

*Sarah Kennedy-Good, Cabinet Office, Ph: 471 9741*

*Jeremy Cauchi, Archives New Zealand, Ph: 495 6231*

All Ministers  
Parliamentary Under-Secretary  
All Senior Private Secretaries  
All Chief Executives

## Deposit of Ministers' Papers with Archives New Zealand

### Introduction

- 1 The Cabinet Manual provides guidance on depositing Ministers' papers with Archives New Zealand (see paragraphs 6.70 to 6.93, attached). Earlier this year, the Public Records Act 2005 came into force, replacing the access regime set out in the Archives Act 1957. This circular updates and supplements the Cabinet Manual guidance, so that it is consistent with the Public Records Act 2005. The guidance distinguishes between official and non-official information.

### Key points

- 2 The key points are:
  - 2.1 The most appropriate route for the public to seek access to official information associated with the current administration, or a former administration not currently in government, is to make a request under the Official Information Act 1982 to the relevant current Minister or department.
  - 2.2 Where a formal request is made for access to Ministers' papers deposited with Archives New Zealand, access will be granted in accordance with the conditions agreed by the Minister concerned and the Chief Archivist. When agreeing conditions of access:
    - 2.2.1 In respect of official documentation included in Ministers' papers deposited with Archives New Zealand, it is important for Ministers to ensure that the conditions of access to that documentation are no less robust than the conditions of access for official information held under

the Official Information Act 1982. For that reason, when depositing official documentation at Archives New Zealand, Ministers should agree conditions of access that mirror the principles and provisions set out in the Official Information Act 1982.

2.2.2 In respect of non-official information included in Ministers' papers deposited with Archives New Zealand, there are no special access arrangements that should be taken into account by Ministers when agreeing conditions of access to that documentation.

2.3 The process for granting access to documents deposited by Ministers with Archives New Zealand is set out in paragraphs 9 to 13.<sup>1</sup>

## **The Public Records Act 2005**

3 Ministers may deposit their papers with Archives New Zealand under the Public Records Act 2005. At the time of deposit, the Minister depositing the papers with Archives New Zealand and the Chief Archivist agree on the conditions of access to the papers. The obligations on the Chief Archivist when agreeing conditions of access will vary, depending on whether or not the documentation deposited by a Minister is official or unofficial documentation.

### ***Setting conditions of access for official documents***

4 Ministers are not encouraged to deposit official documents (e.g. Cabinet documents, ministerial papers or department papers) with Archives New Zealand, because copies of these documents are already deposited with Archives New Zealand as part of the official record. There may, however, be certain circumstances where it is appropriate for Ministers to deposit official documents with Archives New Zealand (e.g. where those documents have extensive handwritten annotations that may be of historical significance).

5 Official documents deposited at Archives New Zealand by current Ministers are subject to the Official Information Act 1982 (see paragraph 9 below). Access to official documents deposited at Archives New Zealand by former Ministers, however, is subject only to the access conditions agreed by the former Minister and the Chief Archivist, and is not governed by the Official Information Act 1982. This can lead to problems where a Minister's access conditions are insufficient to protect official documents against inappropriate release.

6 To promote good government, when setting conditions of access to official documentation deposited with Archives New Zealand, Ministers should:

6.1 ensure that the conditions of access reflect the sensitivity of the information and are no less robust than those conditions that would otherwise govern access to that documentation if it were held by another entity that is subject to the Official Information Act 1982; and

6.2 note that the Chief Archivist is subject to the Ombudsmen Act 1975 and is therefore obliged to ensure that the conditions of access to official documentation are reasonable.

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<sup>1</sup> These procedures were updated in March 2006.

- 7 These factors will be adequately addressed if the access conditions agreed by Ministers and the Chief Archivist reflect the kinds of principles and procedures that are set out in the Official Information Act 1982.

***Setting conditions of access to non-official documents***

- 8 Ministers may wish to deposit non-official documentation (e.g. private or personal papers) with Archives New Zealand. There are no special factors that Ministers need to take into account when agreeing conditions of access to non-official documentation with the Chief Archivist.

**Process for granting access to documents deposited with Archives New Zealand**

***Official information associated with current Ministers***

- 9 The most appropriate route for the public to seek access to official information is to make a request under the Official Information Act 1982 to the relevant Minister or department. For that reason, where a request is received for access to official documentation deposited at Archives New Zealand by a current Minister, the request will be transferred to the relevant Minister for a decision, on the basis that the information is more closely connected to that Minister (refer to section 14(b)(ii) of the Official Information Act 1982).

***Official documentation associated with former Ministers***

- 10 The most appropriate route for the public to seek access to official documentation associated with a former administration not currently in government is to make a request under the Official Information Act 1982 to the relevant current Minister or department.
- 11 Where a formal request is received for access to a former Ministers' papers deposited at Archives New Zealand, and those papers contain official documentation, access should (as agreed between the former Minister and the Chief Archivist) be subject to a process that mirrors the process set out in the Official Information Act 1982. When a request is received for access to official documentation deposited by a former Minister, the following process will apply:
- 11.1 Archives New Zealand will liaise with the former Minister (if required by the former Minister's access conditions), so that the relevant papers can be identified;
  - 11.2 Archives New Zealand will liaise with the relevant current Minister and/or department about granting access to papers containing official documentation. The relevant current Minister and/or the department will assess the documentation, applying the principles set out in the Official Information Act 1982;
  - 11.3 the Chief Archivist will liaise with the Secretary of the Cabinet about the outcome of the assessment of the documentation;
  - 11.4 the Cabinet Office will advise the Prime Minister of the request and, where access is sought to documents of a previous administration not currently in government, the Leader of the Opposition;

- 11.5 the Chief Archivist will advise the former Minister as to whether or not there appears to be good reason for withholding access to any of the documents;
- 11.6 the final decision as to whether or not access will be granted to the official documentation will rest with the former Minister concerned.
- 12 With the agreement of the former Minister, special arrangements may be entered into from time to time to provide bona fide researchers with access to official documentation deposited with Archives New Zealand in a timely manner. The Chief Archivist will liaise with the Secretary of the Cabinet, the relevant current Minister(s) and/or department(s), the Prime Minister, and the Leader of the Opposition (if required) about appropriate access arrangements for bona fide researchers.

***Non-official information associated with current and former Ministers***

- 13 Access to non-official documentation deposited by current or former Ministers is subject to the conditions agreed by the Minister and Chief Archivist. As indicated above, no special requirements need to be taken into account. If these conditions are met, access will be granted.

**Existing access arrangements**

- 14 Archives New Zealand will be approaching current and former Ministers who have already deposited papers with Archives New Zealand and asking them to review their access conditions, in light of this supplementary guidance.

**Papers deposited with other institutions**

- 15 If Ministers choose to deposit their papers with an institution other than Archives New Zealand, they are requested to ensure that the access conditions concerning their papers are similar to those set out in this circular.
- 16 Archives New Zealand and the Cabinet Office are available to provide further guidance on the deposit of Ministers' papers with Archives New Zealand. Archives New Zealand is working with the Cabinet Office, to ensure that any specific guidance developed by Archives New Zealand on this issue reflects the guidance set out in this circular.

Diane Morcom  
Secretary of the Cabinet

## **FORMER MINISTERS: RETENTION OF PAPERS**

### **GUIDELINES FOR HANDLING PAPERS ON LEAVING MINISTERIAL OFFICE**

6.70 On leaving or resigning office, Ministers are faced with the question of how to store or dispose of their papers. The Secretary of the Cabinet and Archives New Zealand provide guidance on this issue. The key points follow.

### **CABINET AND CABINET COMMITTEE PAPERS**

#### **Disposal or storage**

6.71 By convention, Ministers are permitted to retain personal copies of Cabinet records on leaving office. However, the documents are not their personal property. The licence to retain Cabinet papers continues only for a Minister's lifetime, after which they should be returned to the Cabinet Office.

6.72 As Ministers' right of access to Cabinet documents continues after leaving office (see paragraph 6.73), they may not wish to retain personal copies of Cabinet papers. Instead, they may:

- arrange for their personal copies of Cabinet papers to be destroyed, through a secure document destruction process (note: Archives New Zealand does not archive Ministers' copies of Cabinet papers and minutes – unless they have, for example, extensive handwritten notes that may be of historical interest); or
- contact Archives New Zealand to make arrangements for the disposition of any Cabinet papers with extensive annotations that may be of historical significance (Archives New Zealand already has an official set of Cabinet papers). See paragraphs 6.83 – 6.88 for more details.

#### **Access**

6.73 Ministers should bear in mind that there is no need to take copies of Cabinet records with them when they leave office. The convention on access to documents of a former administration gives all former Ministers ongoing access to all Cabinet and Cabinet committee papers and minutes to which they had access while in office. Ministers should contact the Cabinet Office if they wish to obtain copies of Cabinet records after leaving office. The Cabinet Office will endeavour to respond promptly to requests from former Ministers, subject to the demands of Cabinet business, which must take precedence. The Cabinet Office is required to inform the Prime Minister's office and the relevant Minister's office when it provides Cabinet documents to former Ministers.

## **MINISTERIAL PAPERS AND FILES**

#### **Disposal or storage**

6.74 As with Cabinet documents, official ministerial papers and files (correspondence, briefing notes, speeches, and so on) are not the personal property of the Minister, but may

be retained on leaving office. The licence to retain these documents under the convention continues only for the lifetime of the Minister, and after that the documents must be returned to the Cabinet Office or to Archives New Zealand.

- 6.75 Archives New Zealand has a role in preserving any official papers that have long-term historical value, and many ministerial papers and files may fall into this category. Archives New Zealand provides guidance on the protocols and procedures for lodging papers with Archives New Zealand (see paragraphs 6.83 – 6.88).
- 6.76 Papers that Ministers do not wish to retain and that are of no interest to Archives New Zealand should be destroyed through a secure document destruction process. Archives New Zealand is available to discuss which documents are appropriate for destruction.
- 6.77 For guidance on the disposal of personal papers, see paragraph 6.82.

### **Access**

- 6.78 The convention on access to documents of a previous administration does not apply to departmental briefing papers or other documents provided to Ministers outside the formal Cabinet process. If former Ministers wish to have access to departmental briefing papers or reports after they leave office, they should request them under the Official Information Act. It is expected that those handling requests by former Ministers will handle them expeditiously.

## **DEPARTMENTAL PAPERS AND FILES**

### **Disposal or storage**

- 6.79 All files and papers that are internal departmental material should be returned to the originating department when Ministers leave office. No copies should be taken. Departmental files that concern or comment on individuals should be treated with particular care, and must be returned promptly to the department concerned.

### **Access**

- 6.80 The convention on access to documents of a previous administration does not apply to departments' files and papers, and former Ministers who wish to have access to such documents should request them under the Official Information Act.

## **CORRESPONDENCE FROM CONSTITUENTS**

- 6.81 Ministers hold constituency material in their personal capacity as Members of Parliament, rather than as Ministers. Archives New Zealand does not generally accept constituent correspondence.

## **PRIVATE OR PERSONAL PAPERS**

- 6.82 It is not always easy to separate the public and private correspondence of a Minister. If former Ministers wish to deposit their non-official papers of a personal nature with Archives New Zealand, and these papers are accepted for transfer, appropriate safeguards regarding access should be negotiated at the time of deposit. Ministers intending to

transfer private papers should contact Archives New Zealand to discuss conditions of access (see paragraph 6.86).

## **ARCHIVES NEW ZEALAND AND APPROVED REPOSITORIES**

- 6.83 Generally speaking, official papers of 25 years and over are open to public access. Cabinet records are presently deposited with Archives New Zealand under special arrangements defined in an exchange of letters between the Chief Archivist and the Secretary of the Cabinet.
- 6.84 Ministers are encouraged to initiate with Archives New Zealand arrangements for the disposition of their official papers, while they are still in office. (Guidance is available from Archives New Zealand.) Depositing papers with Archives New Zealand ensures secure storage, the monitoring of agreed access arrangements and provision of research facilities.
- 6.85 Although most public archives are lodged with Archives New Zealand, Ministers (with the agreement of Archives New Zealand) may choose to lodge their papers with another institution that is authorised as an approved repository to hold official papers under the Archives Act. Although there is currently no centralised record of the location of all such public archives, the National Register of Archives and Manuscripts records the location and content of archives held in many institutions in New Zealand.
- 6.86 The Chief Archivist (or his or her representative) will discuss with Ministers issues such as security, access and control, and help to draw up and implement a formal agreement. Archives New Zealand is also able to provide a set of standard restrictions from which Ministers may select. If a restriction is placed upon records transferred to Archives New Zealand, the question of whether or not access is granted to individual researchers will be at the discretion of the Minister. Ministers may wish to note that the Ombudsman has said that if a Minister deposits papers under the Archives Act on condition that they not be accessible by the public, that condition will override the rights of requesters under the Official Information Act.
- 6.87 Records approved for transfer will be boxed and listed by the Minister's office under the guidance of Archives New Zealand. When the archival deposit is complete, the Minister will be provided with a copy of the record list. While the documents themselves may have restricted access, it is standard practice to make a copy of the record list available to researchers at Archives New Zealand.
- 6.88 If a Minister dies without having made arrangements for the disposition of his or her official papers, Archives New Zealand will discuss with the family the lodging of and access to the papers.

## **DISCLOSURE AND USE OF DOCUMENTS BY FORMER MINISTERS**

- 6.89 Former Ministers who retain documents in their possession must take care to ensure that those papers are stored securely. The documents are official government records and must be treated appropriately.
- 6.90 Former Ministers should not disclose official information dating from their time in office. If they wish to do so, the best course is to contact the Cabinet Office, which will arrange for the relevant Minister/department to assess the material in terms of the Official

Information Act, so that appropriate considerations can be taken into account before a decision is made on the release of the information.

- 6.91 The Ombudsman has ruled that information held by former Ministers is not subject to the Official Information Act. Former Ministers are therefore not obliged to respond to requests for information that remains in their possession after leaving office.

## WRITING MEMOIRS

- 6.92 The free flow of advice and comment among Ministers and between Ministers and officials, as well as the concept of collective responsibility, justifies the following of certain standards by former Ministers who are contemplating the publication of memoirs, or of other material arising from their experience as Ministers.

- 6.93 These standards – in the form of the following guidelines – are designed to provide and preserve a confidential working environment for Ministers, and the officials who advise them. Such an environment enables diverse opinions to be freely canvassed and expressed without the restraint that would accompany the expectation of disclosure:

- Any Cabinet records drawn on for possible publication must be used with care, unless the information they contain has already been made public. Disclosure should preferably be checked with the relevant department (through the Cabinet Office) so that the material can be assessed in terms of the Official Information Act.
- The views expressed by other Ministers or the process by which a decision has been arrived at should not be disclosed. It is impossible to lay down precise rules, but the closer the publication date would be to the actual event recorded, the more sensitivity must be applied. A Minister may account for his or her own views, but should not reveal the attitudes or opinions of colleagues as to the government business with which they have been concerned without first consulting those colleagues.
- Comment from officials or others whose duty it has been to tender their advice or opinions should not be released without prior consultation. Any reference should be made only in general terms, without attribution to identifiable persons.
- Former Ministers should consider carefully, before making public assessments or criticisms of those who have served them or of whose competence or suitability they have had to make judgements, the fact that in most cases, the individuals concerned will not be in a position to respond.
- Former Ministers should not disclose the content of any discussion held during an Executive Council meeting. On appointment to office, all Ministers swear on oath under the Oaths and Declarations Act 1957 that they “will not directly or indirectly reveal such matters as shall be debated in Council and committed to [their] secrecy”.