



25 August 2023

Procedural Minute 2: Inquiry Records

Introduction

1. This Minute addresses the status of documents and material supplied to, and generated by the Government Inquiry into the Response to the North Island Weather Events (**Inquiry**). In addition, it makes non-publication orders under section 15(1)(a) of the Inquiries Act 2013 (**the Act**) and orders restricting public access under section 15(1)(b) of the Act.

Progress of the Inquiry and Inquiry records

2. The Inquiry expects to receive and generate a significant amount of information over the course of the Inquiry. Minute 1 outlines the process the Inquiry will follow to gather that information.
3. The Inquiry considers it would be useful for submitters, individuals and entities from whom information is sought and received, and who attend interviews, hui / group discussions, or public forums, to understand the Inquiry's approach to publication and disclosure of the Inquiry records.
4. Under section 32 of the Act, after the Inquiry has presented its final report, the inquiry records will be subject to the Official Information Act 1982 (OIA), with two exceptions:
 - (a) material which is subject to a non-publication order under s 15(1)(a) of the Act; and
 - (b) documents that relate to the internal deliberations of the Inquiry.
5. The Inquiry has considered each of the criteria in 15(2) of the Act in relation to the records it is likely to hold. Those criteria are:
 - (a) the benefits of observing the principle of open justice; and
 - (b) the risk of prejudice to public confidence in the proceedings of the inquiry; and
 - (c) the need for the inquiry to ascertain the facts properly; and
 - (d) the extent to which public proceedings may prejudice the security, defence, or economic interests of New Zealand; and
 - (e) the privacy interests of any individual; and
 - (f) whether it would interfere with the administration of justice, including any person's right to a fair trial, if an order were not made under subsection (1); and
 - (g) any other countervailing interests.



Non-publication orders under section 15(1)(a)

6. The Inquiry is proceeding on the basis that as much information as possible will be made publicly available at the conclusion of the Inquiry and after it has reported. The Inquiry is, however, mindful of privacy, confidentiality and natural justice considerations. Having considered the matters set out in s15(2) of the Act the Inquiry makes orders prohibiting publication of the following material, subject to paragraphs [7] –[10] below, in whatever format, including electronic, digital or hard copy:
- (a) all material in written submissions received from individuals that identifies other individuals or discloses other confidential information or raises natural justice concerns, to ensure privacy protection, confidentiality and observance of natural justice;
 - (b) all written submissions received from individuals where confidentiality has been requested and granted or that have been received under an obligation of confidence (express or implied);
 - (c) notes or minutes taken at interviews and hui/group discussions to ensure that free and frank views are provided to the Inquiry and that confidentiality and the observance of natural justice is maintained;
 - (d) those parts of written submissions or documents received from organisations over which confidentiality has been requested, and that request has been granted by the Inquiry;
 - (e) any other communications or material provided to, sent or created by the Inquiry (including transcripts or videos of public forums or extracts thereof) in respect of which confidentiality has been requested and granted, or which if publicly released, could prejudice the maintenance of the law, or material that the Inquiry considers contains:
 - personal information that is sensitive or private, and restriction is necessary to protect the privacy of natural persons, including deceased natural persons;
 - adverse comments regarding of persons or organisations who have not had the opportunity to provide comment. Principles of natural justice therefore have not been satisfied and public release would be unfair and contrary to the interests of justice; and
 - commercially sensitive information, publication of which could unreasonably prejudice or disadvantage the provider of the material.

Submissions from individuals

7. If an individual submitter wishes their identity or any part of their submission to be kept confidential, the individual must identify the parts of the submission over which confidentiality is requested.



8. Notwithstanding the non-publication orders made in paragraphs 6(a) and (b) above:
- the Inquiry expects to release themes or a summary of themes from individual submissions received by it without the inclusion of any confidential information or the names of other individuals, and may publish unattributed quotes;
 - the Inquiry may also make submissions publicly available where those submissions have been redacted to remove any confidential information or the names of other individuals; and
 - it is open to individuals to publish any written submission that they might have made to the Inquiry. The Inquiry takes no responsibility for any such publication, which will be purely at the option and responsibility of the relevant individual.

Notes of meetings, interview and public forums

9. Notwithstanding the non-publication order made in paragraph 6(c) above, the Inquiry expects that unless confidentiality has been requested and granted, it will publish the names of individuals and organisations who have attended interviews, and identify the groups who have attended hui/group discussions. The Inquiry will only publish names of individuals who have attended hui/group discussions with the relevant individual's consent.
10. The Inquiry may publish summarise and themes from interviews and hui/group discussions along with unattributed quotes (subject to verifying the quote's accuracy and complying with natural justice requirements).

Submissions and material provided by organisations

11. An organisation that wishes part of its written submissions or material or documents to be kept confidential should identify any parts of the submission, material or document that it considers sensitive, and request confidentiality for those parts, identifying the grounds on which confidentiality should be granted as well as providing a redacted version of the submission, material or document. If confidentiality is granted on the grounds identified, an agreed redacted version will form part of the public record (and will not be subject to the non-publication orders in this Minute 2).
12. Notwithstanding the non-publication order made in paragraph 6(d) above, the Inquiry may publish themes arising from written submissions, material or documents received from organisations, and expects to publish the names of organisational submitters.



“Release”, “publication” and “official information”

13. All references above to the release of information or the publication of information by the Inquiry include releases made to, or publication made on the Inquiry website and in the Inquiry’s final report.
14. None of the above s15(1)(a) orders prohibit the Inquiry from discussing the material in its final report. The Inquiry considers that the principles of open justice and the need for public confidence will also be met by the release of its final report, one or more summaries of submissions and open access to group or organisation submissions where they can appropriately be released.
15. For the avoidance of doubt, the Inquiry’s orders attach only to release of the material held in the Inquiry’s own records and do not apply to copies of the same material independently held by individuals or organisations submitting such material.
16. Accordingly, in making the above s15(1)(a) orders, the Inquiry does not intend that any information received by it from an agency subject to the Official Information Act 1982 (“OIA”) or the Local Government Official Information and Meetings Act 1987 (“LGOIMA”) should cease to be “official information” within the meaning of the OIA or LGOIMA in the hands of that agency.

Orders restricting access (Section 15(1)(b) of the Inquiries Act 2013)

17. The material covered by the s15(1)(a) orders above is also subject to orders pursuant to s15(1)(b) of the Act, preventing public access to that material.
18. No public access is permitted at interviews held by the Inquiry.
19. Media will only be entitled to attend hui/group discussions with prior permission of the Inquiry.

Issued under the authority of the Chair of the Inquiry, Sir Jeremiah Mateparae, on 25 August 2023