

Department of the Prime Minister and Cabinet

Inquiry into the Earthquake Commission Proactive Release

January 2021

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Public Inquiry into the Earthquake Commission

Minute 2:

Inquiry Records

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Introduction

1. This Minute addresses the status of documents and material supplied to, and generated by, the Public Inquiry into the Earthquake Commission (“**Inquiry records**”). It also 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. During the course of the Inquiry, it is expected that the Inquiry will receive and generate a significant amount of information. The Inquiry has already issued Minute 1 which outlines the expected process the Inquiry will follow to gather that information.

3. The Inquiry now considers that it would be useful for submitters, and others from whom information is sought or received, or who attend public forums, or meetings or interviews that are requested or required, to understand the Inquiry’s expected approach to publication and disclosure of the Inquiry records.

4. After the Inquiry has reported, under s32 of the Act the Inquiry records will be subject to the Official Information Act 1982 (OIA), with two exceptions:

- (a) material over which the Inquiry has made non-publication orders under s15(1)(a) of the Act; and
- (b) documents that relate to the internal deliberations of the Inquiry.

5. The Inquiry has considered the nature of the Inquiry records it is likely to hold and has also taken into account the criteria contained in s15(2) of the Act, which are:

- (c) the benefits of observing the principle of open justice;
- (d) the risk of prejudice to public confidence in the proceedings of the Inquiry;
- (e) the need for the Inquiry to ascertain facts properly;
- (f) the extent to which public proceedings may prejudice the security, defence, or economic interests of New Zealand;
- (g) the privacy interests of any individual;
- (h) 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 s15(1) of the Act; and
- (i) any other countervailing interests.

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

6. The Inquiry is proceeding on the presumption that as much information as possible will be made publicly available at the conclusion of the Inquiry and after it has reported. However, the Inquiry is 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 individuals or discloses other confidential information or raises natural justice concerns, to ensure maximum 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 meetings, interviews and public forums 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 where the organisation requested confidentiality for those parts, and that request was granted by the Chair;
- (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 requests for confidentiality have been made and promised, 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;
 - criticisms 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. 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 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 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, interviews and public forums

8. Notwithstanding the non-publication order made in paragraph 6(c) above the Inquiry may publish generic information about those with whom the Inquiry has met, or themes from those meetings, interviews or public forums along with unattributed quotes (subject to verifying their accuracy and complying with natural justice requirements). The Inquiry expects that unless confidentiality has been requested and granted, it will publish the names of those with whom the Inquiry has met. However, it does not expect to publish names of individuals who have attended public forums.

Submissions from organisations

9. An organisation that wishes part of its written submissions or material or documents to be kept confidential should identify the 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 basis of 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).

10. 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”

11. 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.

12. 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.

13. 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.¹

14. 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.¹

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

15. For the avoidance of doubt, the material covered by the s15(1)(a) orders is also subject to orders pursuant to s15(1)(b) of the Act, restricting public access to that material.

16. In addition, for the avoidance of doubt, other than public forums, the procedure for which will be outlined on the Inquiry website or in a further Minute in due course, the Inquiry restricts public access to any other meetings or interviews to be convened or held by the Inquiry Chair for the purposes of the Inquiry.

Public Inquiry into the Earthquake Commission

First issued under the authority of the Inquiry Chair, Dame Silvia Cartwright, on 4/03/2019.

¹ These paragraphs were deleted by paragraph 18 of Minute 3 and then reinstated and amended by paragraph 5 of Minute 5.

Re-issued under the authority of the Inquiry Chair, Dame Silvia Cartwright, on 16/05/2019 to delete paragraphs 13 and 14 and update links.

Re-issued under the authority of the Inquiry Chair, Dame Silvia Cartwright, on 19/02/2020 to reinstate and amend paragraphs 13 and 14.