



14 June 2011

Graham A Sperry  
NZ Wildlands Biodiversity Management Society Inc  
C/O ESPC  
PO Box 1700  
Taupo

Dear Mr Sperry

**REQUEST UNDER THE OFFICIAL INFORMATION ACT 1982**

1. Thank you for your request under the Official Information Act 1982 (“**the Official Information Act**”) received by us on **14 June 2011** for answers to questions related to the Commissioner’s investigation into 1080.
2. As you may be aware, in addition to being subject to the Official Information Act, the Parliamentary Commissioner for the Environment is also subject to an obligation of secrecy under section 20(2) of the Environment Act 1986 (“**the Environment Act**”).
3. Section 20(2) requires the Commissioner to **maintain secrecy** in respect of **all** matters that come to her knowledge in the exercise and performance of her powers and functions under the Environment Act.
4. This obligation of secrecy is an essential element of the Parliamentary Commissioner for the Environment’s role, and prevents information from being disclosed except in limited circumstances: when the Parliamentary Commissioner for the Environment considers it is appropriate for her to do so for purposes connected with the administration of, or the carrying out of the provisions of, the Environment Act. Such purposes include to encourage preventive measures and remedial actions for the protection of the environment, and to undertake and encourage the collection and dissemination of information relating to the environment (section 16(1)(f) and (g) of the Environment Act).

5. Section 20(2) therefore imposes a restriction on the availability of official information that takes precedence over the Official Information Act by virtue of section 52(3)(b)(i) of the Official Information Act.
6. We have carefully reviewed your request. In our opinion:
  - (a) The information that you have requested in Questions 1-12 has come to the Commissioner's knowledge in the exercise and performance of her powers and functions under the Environment Act.
  - (b) In the Commissioner's specialist opinion, disclosure of the information in Questions 8-12 would **not** be for purposes connected with the administration of, or the carrying out of the provisions of, the Environment Act. Accordingly, the information you have requested may not be disclosed under section 20(2) of the Environment Act. Please note that while this decision is reviewable by the Ombudsmen under section 28 of the Official Information Act, the Ombudsmen have no power to recommend release of this information due to section 52(3)(b)(i) of that Act, or in any way to derogate from the Commissioner's statutory obligation to maintain secrecy in respect of this information.
  - (c) In the Commissioner's opinion, the information you have requested in Questions 1-7 can be disclosed for purposes connected with the administration of, or the carrying out of the provisions of, the Environment Act. However, it is then necessary to determine whether the information can be released under the Official Information Act.
  - (d) We have considered the provisions of the Official Information Act and consider that we can provide you with the following information in this case:

**Answers to Graham A Sperry's questions 1-7**

1. The Commissioner decides independently which issues to investigate.
2. The Commissioner decided to engage the investigation into 1080

3. The Commissioner made all decisions independently related to the scope of the report

4. The Commissioner made all decisions independently related to the scope of the report

5. The Commissioner determines independently how to source information for her investigations. Very rarely are public submissions invited for her investigations.

6. The Commissioner made all decisions independently related to the scope of the report

7. The investigation into 1080 was an independent review of its effectiveness as a pest control mechanism. Other areas were not covered as these were outside the scope of the investigation.

I have also attached for your information a copy of the Commissioner's functions and powers as listed in the Environment Act 1986.

I hope you find this information useful

If you have any further queries, please send them directly to me at [karl.beckert@pce.parliament.nz](mailto:karl.beckert@pce.parliament.nz)

Yours sincerely



Karl Beckert  
Adviser (strategy and projects)

appointed or seconded under section 11 or section 12 of this Act shall be deemed to be Government service.

*Functions and powers*

**16 Functions of Commissioner**

- (1) The functions of the Commissioner shall be—
- (a) With the objective of maintaining and improving the quality of the environment, to review from time to time the system of agencies and processes established by the Government to manage the allocation, use, and preservation of natural and physical resources, and to report the results of any such review to the House of Representatives and to such other bodies or persons as the Commissioner considers appropriate;
  - (b) Where the Commissioner considers it necessary, to investigate the effectiveness of environmental planning and environmental management carried out by public authorities, and advise them on any remedial action the Commissioner considers desirable;
  - (c) To—
    - (i) Investigate any matter in respect of which, in the Commissioner's opinion, the environment may be or has been adversely affected, whether through natural causes or as a result of the acts or omissions of any person or body, to an extent which the Commissioner considers warrants investigation; and
    - (ii) Advise, where necessary, the appropriate public authority and any other person or body the Commissioner thinks appropriate of the preventive measures or remedial action which the Commissioner considers should be taken; and
    - (iii) Report the results of the investigation to the House of Representatives;
  - (d) At the request of the House of Representatives or any select committee of the House of Representatives, to report to the House or committee on any petition, Bill, or other matter before the House or committee the sub-

ject-matter of which may have a significant effect on the environment:

- (e) On the direction of the House of Representatives, to inquire into any matter that has had or may have a substantial and damaging effect on the environment, and to report the results of the inquiry to the House:
  - (f) To undertake and encourage the collection and dissemination of information relating to the environment:
  - (g) To encourage preventive measures and remedial actions for the protection of the environment.
- (2) For the purposes of any inquiry held under subsection (1)(e) of this section, the Commissioner shall have the same powers as are conferred on Commissions of Inquiry by section 4 and sections 4B to 9 of the Commissions of Inquiry Act 1908; and those sections shall apply to all persons involved in any capacity in any such inquiry as if it were an inquiry conducted by a Commission under that Act.
- (3) The Commissioner shall have, in relation to any such inquiry, and any report on the results of the inquiry, the same immunities and privileges as are possessed by a District Court Judge in the exercise of the Judge's civil jurisdiction.

#### **17 Matters to which regard to be given**

In the performance of the Commissioner's functions the Commissioner, where the Commissioner considers it appropriate, shall have regard, in particular but not exclusively, to—

- (a) The maintenance and restoration of ecosystems of importance, especially those supporting habitats or rare, threatened, or endangered species of flora or fauna:
- (b) Areas, landscapes, and structures of aesthetic, archaeological, cultural, historical, recreational, scenic, and scientific value:
- (c) Any land, water, sites, fishing grounds, or physical or cultural resources, or interests associated with such areas, which are part of the heritage of the tangata whenua and which contribute to their wellbeing:
- (d) The effects on communities of people of—
  - (i) Actual or proposed changes to natural and physical resources:

- (ii) The establishment or proposed establishment of new communities:
- (e) Whether any proposals, policies, or other matters, the consideration of which is within the Commissioner's functions, are likely to—
  - (i) Result in or increase pollution; or
  - (ii) Result in the occurrence, or increase the chances of occurrence, of natural hazards or hazardous substances; or
  - (iii) Result in the introduction of species or genotypes not previously present within New Zealand (including the territorial sea); or
  - (iv) Have features, the environmental effects of which are not certain, and the potential impact of which is such as to warrant further investigation in order to determine the environmental impact of the proposal, policy, or other matter; or
  - (v) Result in the allocation or depletion of any natural and physical resources in a way or at a rate that will prevent the renewal by natural processes of the resources or will not enable an orderly transition to other materials:
- (f) All reasonably foreseeable effects of any such proposal, policy, or other matter on the environment, whether adverse or beneficial, short term or long term, direct or indirect, or cumulative:
- (g) Alternative means or methods of implementing or providing for any such proposal, policy, or matter in all or any of its aspects, including the consideration, where appropriate, of alternative sites.

**18 Powers of Commissioner**

The Commissioner shall have such powers as may be necessary to enable the Commissioner to carry out the Commissioner's functions under this Act.

**19 Power to obtain information**

- (1) The Commissioner may from time to time require any person who in the Commissioner's opinion is able to give any infor-

mation relating to any matter which is being investigated or inquired into by the Commissioner to furnish to the Commissioner any such information and to produce any documents or papers or things which in the Commissioner's opinion relate to any such matter and which may be in the possession or under the control of that person.

- (2) The Commissioner may summon before the Commissioner and examine on oath any person who in the Commissioner's opinion is able to give any such information, and for that purpose may administer an oath. Every such examination by the Commissioner shall be deemed to be a judicial proceeding within the meaning of section 108 of the Crimes Act 1961 (which relates to perjury).
- (3) Any person who is bound by the provisions of any enactment (other than the State Sector Act 1988 and the Official Information Act 1982) to maintain secrecy in relation to any matter or not to disclose any matter shall not be required to—
  - (a) Supply any information to the Commissioner; or
  - (b) Answer any question put by the Commissioner; or
  - (c) Produce any document, paper, or thing to the Commissioner—if compliance with the requirement would be in breach of the obligation of secrecy or non-disclosure.
- (4) Every person shall have the same privileges in relation to the giving of information, the answering of questions, and the production of documents and papers and things in accordance with this section as witnesses have in any Court.
- (5) Except on the trial of any person for perjury within the meaning of the Crimes Act 1961 in respect of his or her sworn testimony, no statement made or answer given by that or any other person in the course of any inquiry by or any proceedings before the Commissioner shall be admissible in evidence against any person in any Court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Commissioner shall be given against any person.
- (6) No person shall be liable to prosecution for an offence against any enactment, other than this Act, by reason of compliance with any requirement of the Commissioner under this section.

- (7) Where any person is required by the Commissioner to attend before the Commissioner for the purposes of this section, that person shall be entitled to the same fees, allowances, and expenses as if he or she were a witness in a Court, and the provision of any regulations in force under the Summary Proceedings Act 1957 shall apply accordingly. For the purposes of this subsection the Commissioner shall have the powers of a Court under any such regulations to fix or disallow, in whole or in part, or increase the amounts payable thereunder.

Subsection (3) was amended, as from 1 April 1988, by section 90(a) State Sector Act 1988 (1988 No 20) by substituting the reference to the "State Services Act 1962" for a reference to the "State Sector Act 1988".

**20 Commissioner and staff to maintain secrecy, etc**

- (1) The Commissioner and every person holding any office or appointment under the Commissioner shall be deemed for the purposes of sections 105 and 105A of the Crimes Act 1961 to be officials.
- (2) Except for purposes connected with the administration of this Act or with the carrying out of the provisions of this Act, the Commissioner and every person holding any office or appointment under the Commissioner shall maintain secrecy in respect of all matters that come to their knowledge in the exercise and performance of their powers and functions under this Act.
- (3) Every person holding any office or appointment under the Commissioner, before beginning to perform any official duty under this Act, shall take an oath, to be administered by the Commissioner, that he or she will not divulge any information received under this Act except for purposes connected with the administration of this Act or with the carrying out of the provisions of this Act.

**21 Commissioner's right to be heard in proceedings**

- (1) In any proceedings in any way relating to or arising from the obtaining of, or any attempt to obtain, any consent, the Commissioner—



- (a) Shall have the right to be present and be heard solely for the purpose of calling evidence on any matter (including evidence in rebuttal) that should be taken in account in determining the proceedings:
  - (b) May examine, cross-examine, and re-examine witnesses:
  - (c) May be represented by counsel or by any duly authorised representative—  
but shall have no greater rights than parties to the proceedings in respect of the calling of evidence or evidence in rebuttal, or in respect of the examination, cross-examination, and re-examination of witnesses.
- (2) Where the Commissioner appears in any proceedings pursuant to any of the provisions of subsection (1) of this section, the Court, Tribunal, or other body before which those proceedings are conducted, where it has power to award costs to or against parties to the proceedings, may make such order as it thinks just—
- (a) As to the payment by any party to the proceedings of the costs incurred by the Commissioner in so doing; or
  - (b) As to the payment by the Commissioner of any costs incurred by any party to the proceedings by reason of the Commissioner's so doing.
- (3) Where any costs are so awarded to the Commissioner, the Commissioner may recover them in the same manner as parties to the proceedings may recover costs awarded to them.

## **22 Delegation of functions and powers**

- (1) The Commissioner may from time to time, either generally or in respect of a specified matter or class of matters and subject to such conditions and restrictions as the Commissioner thinks fit, by writing, delegate any of the Commissioner's functions and powers to an officer or employee of the Commissioner.
- (2) The Commissioner shall keep at the Commissioner's office a copy of every instrument by which a delegation under subsection (1) of this section is effected, and shall permit any person to inspect that instrument.
- (3) Notwithstanding subsection (1) of this section, the Commissioner shall not delegate the following powers or functions:

- (a) The power of delegation conferred by that subsection;  
or
  - (b)
  - (c)
  - (d) The power to act as a Commission of Inquiry under section 16(2) of this Act; or
  - (e) The function of reporting to the House of Representatives.
- (4) Any delegation under this section may be made to—
- (a) A specified person; or
  - (b) A person of a specified class; or
  - (c) The holder for the time being of a specified office or appointment; or
  - (d) The holders for the time being of offices or appointments of a specified class.
- (5) Subject to any general or special directions given or conditions or restrictions imposed by the Commissioner, the person to whom any functions and powers are delegated may perform and exercise them in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.
- (6) Where the Commissioner or any delegate of the Commissioner uses a written document to inform any other person of action taken by a delegate of the Commissioner, that written document—
- (a) Shall state that the action was taken by a delegate of the Commissioner; and
  - (b) Shall give the delegate's name and office; and
  - (c) Shall inform that other person that a copy of the instrument of delegation may be inspected at the office of the Commissioner.
- (7) Every delegation under this section shall be revocable at will, but any such revocation shall not take effect until it has been communicated to the delegate.
- (8) A delegation under this section shall not prevent the performance or exercise of any function or power by the Commissioner.

- (9) Until any such delegation is revoked, it shall continue in force according to its tenor. If the Commissioner by whom it was made ceases to hold office, it shall continue to have effect as if made by the Commissioner's successor.

Subsection (3)(b) and (c) were repealed, as from 1 April 1996, by section 5 Environmental Amendment Act 1996 (1996 No 11).

## **22A Proceedings privileged**

- (1) This section applies to—
- (a) The Commissioner; and
  - (b) Every person engaged or employed in connection with the work of the Commissioner.
- (2) Subject to subsection (3) of this section—
- (a) No proceedings, civil or criminal, shall lie against any person to whom this section applies for anything he or she may do or report or say in the course of the exercise or intended exercise of his or her duties under this Act, unless it is shown that he or she acted in bad faith;
  - (b) No person to whom this section applies shall be required to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything coming to his or her knowledge in the exercise of his or her functions.
- (3) Nothing in subsection (2) of this section applies in respect of proceedings for—
- (a) An offence against section 78 or section 78A(1) or section 105 or section 105A or section 105B of the Crimes Act 1961; or
  - (b) The offence of conspiring to commit an offence against section 78 or section 78A(1) or section 105 or section 105A or section 105B of the Crimes Act 1961; or
  - (c) The offence of attempting to commit an offence against section 78 or section 78A(1) or section 105 or section 105A or section 105B of the Crimes Act 1961.
- (4) Anything said or information supplied or any document or thing produced by any person in the course of any inquiry by or proceedings before the Commissioner under this Act shall be privileged in the same manner as if the inquiry or proceedings were proceedings in a court.

- (5) For the purposes of clause 3 of Part 2 of Schedule 1 to the Defamation Act 1992, any report made under this Act by the Commissioner shall be deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.

This section was inserted, as from 1 April 1996, by section 6 Environmental Amendment Act 1996 (1996 No 11).

**23 Annual report**

Without limiting the right of the Commissioner to report at any other time, the Commissioner shall in each year make a report to the House of Representatives on the performance of the Commissioner's functions under this Act and on any other matter the Commissioner considers appropriate.

**24 Offences**

Every person commits an offence against this Act and is liable on summary conviction to a fine not exceeding \$1,000 who—

- (a) Without lawful justification or excuse, wilfully obstructs, hinders, or resists the Commissioner or any other person in the exercise of his or her powers under this Part of this Act:
- (b) Without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Commissioner or any other person under this Part of this Act:
- (c) Wilfully makes any false statement to or wilfully misleads or attempts to mislead the Commissioner or any other person in the exercise of his or her powers under this Part of this Act:
- (d) Represents directly or indirectly that he or she holds any authority under this Part of this Act when he or she does not hold that authority.

**25 Money to be appropriated by Parliament for purposes of this Part of Act**

Except as otherwise provided in this Part of this Act, all salaries and allowances and other expenditure payable or incurred under or in the administration of this Part of this

Act shall be payable out of money to be appropriated by Parliament for the purpose.

**26 Audit**

(1) The House of Representatives shall appoint an auditor to audit the accounts of the Office of the Parliamentary Commissioner for the Environment.

(2)

(3) In carrying out the functions conferred by this section, the auditor shall have the same functions, duties, and powers as the Audit Office.

Section 26 was substituted, as from 31 March 1996, by section 7 Environment Amendment Act 1996 (1996 No 11).

Subsection (2) was repealed, as from 1 July 2001, by section 53 Public Audit Act 2001 (2001 No 10).

**27 Amending Official Information Act 1982**

*[Repealed]*

This section was repealed, as from 1 April 1987, by section 23(2)(f) Official Information Amendment Act 1987 (1987 No 8).

## Part 2

### Ministry for the Environment

**28 Ministry for the Environment**

(1) There is hereby established a department of State to be called the Ministry for the Environment.

(2) The Ministry shall be under the control of the Minister.

**29 Secretary for the Environment**

There shall from time to time be appointed, under the State Sector Act 1988, a Secretary for the Environment who shall be the administrative head of the Ministry and who shall advise and assist the Minister in the performance of the Minister's functions.

This section was amended, as from 1 April 1988, by section 90(a) State Sector Act 1988 (1988 No 20) by substituting the reference to the "State Services Act 1962" for a reference to the "State Sector Act 1988".