



COMPLAINT BY COOK ISLANDS NEWS LTD ON HANDLING OF OFFICIAL INFORMATION ACT REQUEST.

THE COMPLAINT *(Submitted on Friday 27 October 2023 by Mr Rashneel Kumar, Editor of the Cook Islands News Ltd on the advice of the Ombudsman.)*

Dear Clerk of Parliament Tangata Vainerere,

I am writing to express my serious concern about the way in which the Parliamentary Services have handled the Official Information Act (OIA) request filed by the Cook Islands News on September 27, 2023, seeking the travel costs of MPs.

The Cook Islands News requested a breakdown of each MP's travel costs, including allowances, accommodation, dates, duration, and reason for travel in the new financial year, from July 1, 2023, to September 30.

The Parliamentary Services initially quoted the publication a fee of \$1047.15 for the information. After the Ombudsman's Office advised that it was "unreasonable" to charge for the cost of retrieving and collating the information, the Parliamentary Services through you reiterated that there was "potential" for charges in relation to the request.

Despite the fact that there was no agreement reached between the newspaper and the Parliament to pay any fee, you then advised the newspaper that your team was close to finalising the figures and asked for payment of \$977.34. When the Cook Islands News protested this, the Parliamentary Services went ahead and published the information on its website without informing the newspaper - the organisation that requested for this information under OIA. We have been made aware that your office tipped off other media organisations about this information which was subsequently made available on the Parliamentary website, while asking for payment from CI News.

We believe that you have breached Section 11 of the Official Information Act by not directly providing the information we requested under the OIA, not informing us of your refusal to provide that information and the reasons, and publishing it on the Parliament website without our knowledge.

We understand that Parliament had the intention to publish this information on its website as a show of transparency. However, we believe requesting the newspaper to pay for information that Parliament intends to publish anyway questions the intention and integrity of the Parliamentary Services.

We are also concerned that the information we had requested was given to other media organisations without our knowledge. This brings into question the fairness and impartiality of the Parliamentary Services.

We kindly call on you to explain your actions to us and to the public by close of business on Friday, November 3, 2023.

Yours sincerely,
Rashneel Kumar
Editor
Cook Islands News
CC: Ombudsman's Office, Speaker of Parliament

CLERK OF PARLIAMENT RESPONSE:

The response by the Clerk of Parliament to the complaint by Mr Kumar was submitted to him by email on 2 November 2023 as follows:

The CINews Official Information Act (OIA) request of 25 September 2023

- I received the initial email request from Al Williams in two parts on Monday 25 September. The first part was a request for the appropriation for MP Travel and Allowances. I responded immediately as this information was readily available... i.e. \$250,000 for the financial year 2023/24. He could have found this himself on our website or MFEMs website. But he was too lazy to do his own work. The request raises the question as to why MPs travels are being targeted by CINews when officials of the whole of Government as well as some Non-Government Organisations travel regularly at the expense of the taxpayer, but they hardly ever get a mention in your paper. They don't get asked by CINews to justify their travels and what benefits their travels bring to the nation.
- For the second part, it appeared that CINews was struggling to fill the paper and therefore was fixated on the MPs comings and goings. So, Mr Williams asked to have travel information for all MPs in the same year, a list of each person, where they have travelled to, and all related costs. Given the nature of the request, I asked Mr Williams to resubmit this as a separate OIA Section 11 request and informed him of the impending charges.
- In this regard, the OIA Section 11 request was received on Wednesday 27 September, and asked that *each MPs travel costs, including allowances, accommodation, dates, duration and reason for travel in the new financial year, July 1, 2023 to now*, be provided. Mr Williams also asked that the information provided be matched to the name of each MP. Now, here lies the real problem. This information did not exist in the exact form outlined in the request hence the need for my staff to spend substantial time on servicing the request and the need for charges to be applied accordingly. The collation also required consultation with other parties that hold some of the information, in particular the Office of the Chief Economist in the Ministry of Finance and Economic Management.
- On this same day, CINews published without our consent, and after some secret manouvers behind our backs with the Ombudsman, our private email exchanges on the charges and the detailed quotation submitted to CINews by our Deputy Clerk on Tuesday 26 September. By this action, you ignored the cautionary warning at the bottom of our email. *This email and any attachments to it may be confidential and are intended*

solely for the use of the individual to whom it is addressed. That in my view is a breach of confidence and brings into question the integrity of CInews as an entity that can't be trusted with private conversations. It also raises the question as to why MPs travels are being targeted by CInews when officials of the whole of Government as well as some Non-Government Organisations travel regularly at the expense of the taxpayer, but they hardly ever get a mention in your paper.

Introduction of charges for OIA requests

- For the record, we introduced charges for OIA requests in January 2022 as allowed under Sections 14 (1) and (2) of the Official Information Act 2008. It is not a new policy as your reporter Mr Al Williams seemed to imply in his communication to me on 25 September. This policy has been in use for almost two years now. On this point, you need to know that media outlets are NOT exempt from such charges. This is the same as in New Zealand or other places where OIA rules apply, even in this day and age of supposedly efficient computers and other information management technology. But in our case we don't charge for small and simple requests. Only those that demand much use of our staff resources. This is the only key criterion for our decision to charge for an OIA request and not the identity of the requester as you have tried to insinuate.
- In NZ, a deposit may be required where the charge is likely to exceed **\$67.56 (GST exclusive)** or where some assurance of payment is required to avoid waste of resources. In the case of the CInews request, the charges we need to apply way exceeds this threshold.

Charges deemed unreasonable by CInews and Ombudsman

- In responding to your complaint, I refer to the charges we quoted that you deemed unreasonable and complained about to the Ombudsman even though the Section 11 request was not formally submitted to me by CInews in its correct form at the time of your dealings with the Ombudsman. The correctly formed request was only formally submitted to me on Wednesday 27 September after you already complained to the Ombudsman and the Ombudsman in turn advised you to lodge a complaint. I myself explained to Mr Williams how to submit a valid request correctly as it seemed to me at the time that he didn't know what he was doing beyond the fact that he was on a 'fishing expedition' on behalf of CInews. From my perspective, I gave Al the most reasonable assistance I could render to assist him in his submission. I didn't have to do that but I did.

Request granted with pro-disclosure attitude

- For the record, contrary to what KATA said about this matter, I have nothing to hide but have a 'pro-disclosure' attitude to the release of Parliamentary information as evidenced by some important trademarks unique to Parliamentary Services including our very informative website and Facebook page, the live-streaming of Parliament Sittings and unrestricted access by media representatives especially CInews to Parliament Sittings and Members of Parliament. You never enjoyed these benefits until I became the Clerk of Parliament and 'took Parliament to the people'.
- So on Monday 25 September, I decided to grant your request in the spirit of transparency and was most contented to positively engage with CInews on your request. However, given the amount of time and staff resources required to process your request, I and my Senior Staff decided (pursuant to Sections 14 (1) and (2) of the OIA 2008) to charge for the time and resources required of my staff in making the requested information available in the form requested and within the 20 working days timeframe allowed by Section 14 (1) of the OIA 2008 – which fell on Thursday 26 October 2023. But since that day was a public holiday, we were supposed to make and communicate our final decision on the CInews OIA request on Friday 27 October. However, on the evening of Thursday 26 October CInews obviously extracted the information from our website and published it. That made our pending communication to you on Friday 27 October, absolutely unnecessary.

Charges for Staff Time

- The charge that was placed on your OIA request was allowed under Sections 14 (1) and (2) of the OIA and you are not the first entity requesting information from us to be charged for OIA requests. It is our right to apply this

charge which is not for the information, as the information is free. The charge is for the staff time that is expended outside of normal hours for search and retrieval, collation, research (reading and reviewing to verify the information), editing, and peer review to ensure that these tasks have been carried out correctly to the specifications of CINews. When that was all done, then I required my staff to format the information into a form that is user-friendly, as you joyfully found out when you published the information on Saturday 28 October 2023 exactly as my Team produced it. As a result of my Team's high quality work you had a wonderful middle page spread which dramatically increased the standard of your paper on that particular day. That is the standard I required of my Team for that task, which you refused to render the required fees for but was very very happy to use the information in your paper and charged the readers for the privilege of reading that high quality information.

A missing comparative benchmark

- You and the Ombudsman decided on 25 September that our charge was unreasonable. I'm interested to know what baseline you two used to make comparisons and to arrive at your uninformed conclusion? As far as I know, the OIA 2008 does NOT have a charging guide attached to it either by Schedule or by Regulation. So in the absence of such a guide, how was that determination made? What formula did you have that allowed you to make such a judgement? I say you had none, so the best you could do is pluck the judgement out of thin air. Unlike you and anyone else, we do have a legitimate formula for such calculations, and we are not afraid to use it because only my staff know what it takes to retrieve the information you requested and customise it to the specifications you wanted. No one else can do that.
- Our standing practice in Parliament has always been to use a relevant and suitable policy template firstly from NZ Cabinet or Parliament procedures to inform our decisions in the absence of a local guide or policy. If we didn't find any suitable policy templates in NZ, our next port of call is the UK House of Commons. If we still didn't find anything there we then look to our Twin Parliament (of Western Australia), or other jurisdictions in the Pacific. In this regard we didn't have to look far for such a guide. We already found one in January 2022 from the NZ Ombudsman. So there was no need for you to play 'hide and seek' with this.
- For the record, we have since January 2022, been using the NZ Ombudsman Charging Guide for our OIA charges and the chargeable rate applicable in that guide is **\$38** per half-hour of staff time spent on pulling together the information required by the requester. This rate is charged by all our NZ governance counterparts even when the retrieval work is done during working hours. We couldn't adopt that rate for our use here though because the charging of staff overtime is governed by PSC salary levels for each staff. But we had that as our baseline figure and we knew that our charges were around 70% less than that benchmark.

\$977.34 vs \$3,192?

- You will recall that our final charge offered to you through Al Williams on 23 October was \$977.34 after we applied the 'first hour free' (a provision of the NZ Ombudsman Guide). So, if we were to strictly apply the rate carried by the NZ Ombudsman Charging Guide, it would have costed CINews the sum of \$3,192. I explained that to Al Williams when we met on this charge. So you do the maths and see which is unreasonable. \$3,192 or 70% less @ \$977? In this regard, I stand by my Team's lawful decision to charge CINews for producing this work, because when we bring our ads to CINews to publish in the paper, you charge the earth for such ads and we never complain. We also pay for our online subscriptions without complaint.

Worked with MFEM FMIS

- Let me state for the record that from the 28 September to 2 October, my Team were over excited to work closely with MFEM Officials who after reading your original story on this matter offered my Team their assistance in digitally generating the information you requested using the MFEM FMIS system. Our joy was shortlived when the FMIS was unable to deliver the information as you wanted it to be presented. So we had to revert back to the manual process which took much more time but eventually produced the required information formatted in accordance with your request.

Breaches of the OIA 2008

- You claim that I breached Section 11 of the OIA 2008 by not directly providing to you the information you requested. I dispute that. Let me state for the record, that it was never our intention to publish the information ourselves before we released it to you in response to your OIA request. However, let me put it to you that when you **refused to pay** both the 25% deposit fee as initially and lawfully requested on 26 September and the final fee quoted to AI on 19 October, you yourself breached Section 14 (4) of the OIA 2008 on 23 October and thereby nullified your claim to that information which my team have competently and meticulously put together ahead of the due date for our response to your request – i.e. 27 October 2023.
- Please note that your breach of the Section 14 (4) of the OIA 2008 basically gave me the clearance to act in accordance with Sections 14 (5) and (6) of the OIA 2008. On that basis, I claimed the right to re-purpose the information my staff have meticulously produced and self-publish it on our own website on Tuesday 24 October for our visitors to read freely.
- Furthermore, my decision to self-publish the information had the full support of all Members of Parliament. In so doing, the information became public ahead of the due date for the official response to your request due to your refusal to pay the required fees and by default I was no longer required to submit it directly to you under the OIA 2008. You need to accept that your own mishandling of the request by not complying with Section 14 (4) of the OIA 2008 equates to self-sabotage, which led to our decision to publish the information on our own website. Clearly, it was information that you requested, but didn't pay the required fees, and therefore forfeited your claim to it.
- Naturally, it didn't make sense that we would waste that lovely information by holding it forever in our computers. So, our voluntary disclosure of that information was in the spirit of avoiding waste and promoting proactive transparency and can hardly be called an offence under any Act. You on the other hand, took that free information from our website, shamelessly published it in your paper several times and then charged our people to read it each time.

Fairness and impartiality

- In your complaint you question the fairness and impartiality of Parliamentary Services. As I already alluded to earlier in this response, you yourselves decided to be uncooperative in the first place regarding the processing of the request thereby squandering your own opportunity to achieve a publishing scoop on the issue at hand. So you as a commercial entity asking for information with no intention of paying the charges can't expect me and my Team to submit to your whims while you give us the runaround by engaging in tango dancing with the Ombudsman.
- I further put it to you that if we were to accept your demands to provide the information at no cost to you, that is not fair to others who have previously paid for acquiring information which also took much time to compile. So you need to understand that we couldn't give you preferential treatment over others. So no need to cry fowl. Oh, by the way, your middle spread in the Saturday 28 October paper was a real beauty, thanks to the wonderful and high quality work of MY TEAM.
- Let me state for the record that I fully understand my legal obligations as a Public Official under the OIA 2008 and am committed to the principle and purposes of that Act. You on the other hand, by your uncooperative attitude and actions don't seem to demonstrate any such understanding.

Explain myself by 3 November 2023?

- You ended your complaint by calling on me to explain my actions to you and to the public by close of business on Friday, November 3, 2023. Let me just clarify that I know my rights as Clerk of Parliament under Parliament's new Standing Orders, (and our governing legislations) and under such Orders, I am not answerable to you and therefore you are in no position to bully me and dictate to me on how and when to do my job.

Recommendation

- How about you take a break from taking pleasure in ridiculing our MPs and accord some time towards more important work like reviving your dysfunctional and long defunct Cook Islands National Media Council so we in Government and the community have somewhere to go to, to complain about your reporting when you lie to and mislead the readers of your paper like you've done in this case? Quote from CINews 27 September 2023, *"Cook Islands News has been quoted a price of \$1047 for the information."*

This is a complete lie and you know it! The charge was NOT for the information. It was for the services of staff in generating and customising the information in accordance with your wishes. Come on kotou!



Tangata Vainerere | Clerk of Parliament

Chambers

Parliament of the Cook Islands

Avarua, Rarotonga, Cook Islands | PO Box 13

phone: [+\(682\) 26 500](tel:+68226500) | mobile: [+\(682\) 79 396](tel:+68279396)

web: www.parliament.gov.ck | email: tangata.vainerere@cookislands.gov.ck

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