

## Chief Ombudsman releases findings on Nash emails

**Date** 20 June 2023

The Chief Ombudsman has found former Minister Stuart Nash was wrong in refusing to release the majority of his email correspondence with political donors requested under the Official Information Act.

Mr Boshier has published his findings today after re-opening his investigation into an OIA complaint from journalist, Pete McKenzie.

“All of the emails have since been made public, with some redactions. However, I continued my investigation, which concerned Mr Nash’s decision-making at the time of the request.”

In August 2021, Mr Nash refused the journalist’s request for information about his communications with 19 individuals who were political donors.

Mr Nash identified 14 emails and attachments relevant to Mr McKenzie’s request but did not release the information because he considered it out of scope.

“Mr Nash withheld the information under the OIA on the grounds he was not communicating with the donors as a Minister, but as an MP.”

“I considered carefully whether the information in question was held in his capacity as a Minister, which is subject to the OIA.”

Mr Boshier found Mr Nash was justified to withhold three emails because they were held solely in his capacity as the local Labour MP for Napier.

“While most of the contents are now in the public arena, this case highlights the potential for the roles of an MP and a Minister to overlap and for information to be held in both capacities. The Official Information Act is an important constitutional safeguard. It is based on the principle of making information available.

“In my view the OIA should apply where there is a Ministerial overlap of any kind.”

He found 11 of the emails were relevant to Mr Nash’s role as a Minister (as well as in some cases as an MP) and should have been treated as official information.

“However, I believe there were grounds under the OIA to withhold all of one email and parts of two emails because confidential Cabinet decisions were discussed.”

“There is a strong public interest in release to promote accountability and transparency where a Minister appears to have disregarded the confidentiality of Cabinet discussions. However, I consider the public interest in releasing them would not have outweighed the need to withhold the emails to protect collective and individual ministerial responsibility.”

Mr Boshier says he would have recommended at the time that Mr Nash provide a broad summary of the content of the emails to the journalist.

“A summary would have informed the public of the apparent breach of the Minister’s responsibilities without undermining the confidentiality of Cabinet discussions by the further release of the improperly disclosed material.”

Mr Boshier would have also recommended referring the matter to the Cabinet Secretary.

“However, subsequent events made these recommendations unnecessary. Most of the email content was already in the public arena and the Cabinet Secretary did her own investigation.”

Mr Boshier also looked into the role of the office of the then Prime Minister Jacinda Ardern, which was consulted by staff from Mr Nash’s office about the OIA request.

Mr Boshier found the Prime Minister’s office did not support Mr Nash’s position on refusal.

“Decision-making on the request rested at all times with Mr Nash, who it appeared did not agree with the advice provided by the Prime Minister’s Senior Advisor, and proceeded to make the decision now at issue.”

Mr Boshier says Mr McKenzie has confirmed he is seeking un-redacted copies of the remaining 8 emails, as well as the attachments to the emails that have not been released.

“I intend to seek comments from parties potentially involved and provide a further opinion at a later date.”