

Hobbling the News

*A study of loss of freedom of information as a presumptive right
for public-interest journalists in Aotearoa New Zealand*

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Abstract

Public-interest journalism is widely acknowledged as critical in any attempt at sustaining actually-existing democracy and is reliant on access to State-held information for its effectiveness. The success of Aotearoa New Zealand's Official Information Act 1982 contributed to domestic and international constructions of the nation as among the most politically transparent on Earth. Early narratives, partially heroic in character and woven primarily by policy and legal scholars, helped sophisticate early understanding of the notably liberal disclosure law. However, they came to stand in stark contrast to the powerful stories of norm-based newsroom culture, in which public-interest journalists making freedom-of-information (FOI) requests bemoaned an impenetrable wall of officialdom. Set against a literature that validates its context, inquiry and method, this thesis explores those practice-based accounts of FOI failures and their implications for public-interest journalism, and ultimately political transparency, in Aotearoa New Zealand. It reconstructs FOI as a human right, defines its role in democracy theory and traverses the distance between theory and actually-existing FOI. The research employs field theory in its approach to FOI as a site of inter-field contestation, revealing that beyond the constitutional niceties of disclosure principles, agents of the omnipotent field of political power maintain their status through, in part, the suppression of those principles. Those agents of the previously autonomous public administrative field, in relative terms, are subsumed into the field of power to act in its principal agents' interests. The instruments of power that allow the agency of State officials to become dominant over the agency of skilled and experienced public-interest journalists become visible through the investigation. A thematic analysis of rich data generated from transcripts of 18 semi-structured interviews lies at the heart of the empirical and phenomenological research. This analysis is triangulated with historical document analysis to establish the political thinking behind the establishment of one of the world's first and most celebrated FOI regimes, and supported through the deep understanding offered by a case study of FOI failure. Through this approach, this doctoral research considers the struggles of accountability journalism and acts of State secrecy against the background of neoliberalisation of economic and social structures that began two years after the establishment of the nation's FOI regime in 1982. The corrective mechanism of disclosure laws operates to some extent but the publicising of information politically harmful to the Government is significantly restricted and FOI failures are, over time, normalised. The research also uses theories of neoliberal hegemony to reveal an opacity growing over State expenditure through the

corporatisation and privatisation of State services and finds public-interest journalism in Aotearoa New Zealand, without significant legislative change, has few options beyond its dysfunctional relationship with the agents of a reluctant State.

Dedication

Ka whakaihi ahau tēnei tohu tākuta ki tōku pāpara – he tānekaha, haere rā, haere rā, haere rā. This thesis is dedicated to my father, Paul Treadwell, an exceptional barrister and advocate, who sparked my enduring interest in freedom of information when he gave me David Leigh’s book *The Frontiers of Secrecy* in 1981. He died during the production of this doctorate but wherever he might be now, I know he is still trying to keep the bastards honest. Leigh’s book still sits on my desk.

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Attestation of Authorship

I hereby declare that this submission is my own work and that, to the best of my knowledge and belief, it contains no material previously published or written by another person (except where explicitly defined in the acknowledgements), nor material which to a substantial extent has been submitted for the award of any other degree or diploma of a university or other institution of higher learning.

Signature:

Date: 3.2.2019

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1. Journalism and the Public Right to Know

“The right to know is the right to live.”

– Aruna Roy (1946-), Indian social activist

On August 12, 2015, Auckland’s daily newspaper, the *New Zealand Herald*, published an article that was highly embarrassing for the New Zealand Transport Agency (NZTA), the State wing responsible for road safety in Aotearoa New Zealand. The newspaper reported that agency staff had exceeded the legal speed limit while driving government vehicles thousands of times over a period of nine months, often for sustained periods and sometimes at very high speeds (Fisher, 2015). The story’s claims were backed up with myriad details of the offences, including the speeds reached and the location of each vehicle at the time. Aotearoa New Zealand’s open-road speed limit is 100km/h, but over nine months NZTA cars were driven 8,500 times at speeds greater than 110km/h and 900 times at speeds greater than 120km/h. There were 130 instances of speeds more than 130km/h. Eight of those were more than 140km/h and twice agency staff hit 145km/h. One of the culprits turned out to be a member of the agency’s senior management team and a handful of other managers, albeit lesser ones, were among the others. These, the newspaper pointed out, were the people charged with improving the safety of citizens who travel on Aotearoa New Zealand’s roads. The NZTA had for some years run a public-safety campaign spearheaded by the slogan “Speed kills” and included in reporter David Fisher’s story were hand-wringing responses from authorities about the speed-limit breaches. Transport minister Simon Bridges said it was embarrassing and he was very disappointed. The chief executive of NZTA called the driving “unacceptable”. While none of the offending staff would be prosecuted, they would receive a verbal warning, he said. The offenders may have faced no tough sanctions but readers were now at least aware of the risks they had been taking with public safety. The *Herald* created an interactive map on its website so readers could determine if there had been instances of NZTA staff speeding in their neighbourhood.

How had the newspaper managed to supply its readers with the fine details of these offences? Technically, it was able to do this thanks to the global-positioning system (GPS) and advances in computational journalism in recent decades (Parasie & Dagiral, 2012). The information from which Mr Fisher drew his conclusions about the driving was numerical, in digital form and readable as a comprehensive data set. It had been collected after the installation of GPS readers in agency vehicles as part of a

health-and-safety initiative. He was able to directly analyse that data to back up his story before the data was then used to build the interactive online map.

There was, however, a process prerequisite to that data analysis, without which the publishing possibilities of the digital age would be virtually irrelevant. First of all, Mr Fisher had to get his hands on the data, which was held by an arm of the State, and that arm was the very entity which he was investigating. The ease with which digital data is parsed today has little to do with public access to the information in the first place. As Vincent Mosco noted in 1988 in the introduction to *The Political Economy of Information*, “technology itself, even such seemingly powerful forces as the computer, does not determine or even shape social relations . . . ” (p. 3). In the example here, the balance of power relations were certainly not in Mr Fisher’s favour – the NZTA, which he intended to hold to account publicly with his story, had the information he required and he needed the agency to release its grasp on it. To achieve that, he relied on freedom of information (FOI), a 250-year-old principle with political, legal and ethical dimensions that has found a place at the centres of the theory and practice of modern democracy over the past half century. Without FOI, the public right to know about the affairs of government – a notion central to modern democracy and constitutive of the notion of publics – cannot be actualised; informed publics become impossible. Having been told by a source that the agency’s cars had been fitted with GPS technology and that the results were causing headaches for the agency, Mr Fisher asked the NZTA to provide him with that data set. Under the terms of the Official Information Act (OIA) 1982, Aotearoa New Zealand’s foundational disclosure law, all he had to do was ask for it. The State, purposefully constrained by the law, was obliged to supply them in a timely fashion. The angle the *Herald* story would take became clear once Mr Fisher examined the data in detail. The speeding had clearly been dangerous, excessive and sustained. It was now clear why data from the agency’s vehicles had been giving NZTA executives headaches behind closed doors, which is where, without the OIA 1982, it would most likely have remained.

This anecdote opens this research report because it is an example of the news media publicising information that is inconvenient for the government of the day but important to the voting public. This tension between political power and public-interest journalism (PIJ) is a constant dynamic in liberal democracies, as journalists attempt to hold the State, society’s central agency of power, to account for its actions. The news media’s right to seek and receive information from the State creates the potential for

transparency, and sometimes the State is indeed held to account, as in the case of the speeding officials. The *Herald* story was an example of political transparency in the digital age enabled by pre-digital laws, and of journalism, as the credo of the newsroom would have it, still “keeping the bastards honest”. The successful functioning of the fourth-estate role (Carlyle, 1840, p. 392), prescribed for and accepted by, the news media in Western democracies is key to any success those democracies might claim in achieving self-government by their peoples. Critical scholarship (e.g., Chomsky & Herman, 1988; Starkman, 2013; Phelan, as cited in Dawes, 2016) reveals an alignment of many of the interests of the mainstream media in the West with the interests of those, including the politically and economically powerful, whom it is supposedly monitoring in the interests of democracy. Such research questions the authenticity of PIJ’s quest to hold global capitalism to account. Among it is the idea of journalism’s “structural dependency on the market” (Phelan, 2014, p. 138). Nevertheless, within the bounds of democracy theory, at least, if journalists *can* easily access information held by the State, there is hope of some sort for a contribution from journalism to the accountability of the State to its publics, something sought by multiple social agencies across today’s “monitory democracy” (Keane, 2011). For the purposes of this study, the *Herald* story exemplifies the transparency and so accountability of some sort that can result from PIJ initiating FOI processes which are then managed in good faith by the State.

Indeed, without more context, the comparative ease with which Mr Fisher was able to access the information he needed might easily reinforce widely held views that Aotearoa New Zealand is among the most transparent societies on Earth. How relatively simple it must be for journalists there to identify and share examples of malfeasance and impropriety by the State and its agents with their audiences. Mr Fisher’s FOI success story is, in fact, presented here for different, if apposite, purposes. It is cited here to show how things *can be* in the world of FOI in Aotearoa New Zealand. It is included to emphasise the sort of accountability news story that is possible when FOI processes are conducted well. As such, it provides a functional benchmark against which accounts of journalistic practice today might be considered. The day-to-day FOI realities of public-interest journalists in Aotearoa New Zealand, which are at the heart of this study, might be considered against it. Mr Fisher’s story is clearly evidence that the State is, at least sometimes, held to account by journalists in Aotearoa New Zealand and, furthermore, because the nation’s FOI regime has functioned as the nation’s lawmakers intended. Indeed, news stories about powerful entities often cite information that has been obtained by news organisations under FOI laws. Journalists are quick to include their

use of the law in their stories, though this contributes in no real way to the state of FOI. The FOI requests that are rejected by the State rarely make the news.

In the hands of bureaucrats who know their responsibilities under the law, a request for information under the OIA 1982 is a powerful enabler of State accountability. Mr Fisher's success is an example of media-induced transparency considered by scholars (e.g., Paterson, 2008) to be concomitant with democracy. Governments "have a natural inclination towards secrecy" (p. 3) but access to information is essential for the debate and dissent that is required before any democratic body politic can make informed and well-reasoned decisions. "Access to information about government activities also has a major role to play in engendering trust in government, an important issue given that many Western democracies are experiencing a rising cynicism regarding elected officials and governments as a whole" (p. 3).

This chapter will introduce FOI as both a cornerstone of the theoretical orthodoxies of democracy and a concrete, prerequisite constituent of any actually-existing democracy. It will argue that FOI failure has potentially significant consequences for citizens of Aotearoa New Zealand, given the status of FOI as a human right and an enabler of other human rights, such as the right to free speech and the right to vote. The chapter will introduce Aotearoa New Zealand's FOI regime within the conventional narratives that have emerged, principally through legal studies (eg, Banisar, 2006; Price, 2005; New Zealand Law Commission, 1998 & 2012, Elwood, 1999) and policy studies (eg, Poot, 1992; White, 2007), each of which has distinct reasons for its interest in the legislation. Together, they have woven a narrative that presents Aotearoa New Zealand as an example of good, if not best, practice to the rest of the FOI world (Elwood, 1999; Hazell, 1989; Hazell & Worthy, 2010; Nam, 2012; Price, n.d.). Aotearoa New Zealand was indeed among the democratically more-reputable first of three waves of nations to adopt FOI regimes (Roberts, 2006) and a relatively early international exponent of FOI, along with like-minded Westminster-based democracies Australia and Canada (Hazell, 1989). And its law, once enacted, became an oft-cited exemplar for others. The chapter will also look at the reasons for this endorsement of the Aotearoa New Zealand regime by researchers and policy analysts and offer emergent counter-narratives to such heroic portrayals of the OIA 1982. The chapter extends the discussion above about narratives that became conventional in nature and outlines the nature and direction of the research. It presents the research problem and its derivative research questions and introduces the theoretical

and methodological approaches taken in the research. It also offers a summary of the approach taken in each subsequent chapter of this report.

1.1 What is FOI and What Does It Do?

When the Grand Duchy of Luxembourg passed a right-to-information (RTI) law in 2018, it became the 119th country (Freedominfo.org, n.d.) to legislate for the transparency of its State. Much like those before it, its new law required its government to supply, if requested, any information which it holds on behalf of its 600,000 citizens. Such RTI statutes, or disclosure laws as they are also known, are aligned with political science's notions of transparency, an open society, a civil sphere and communitarian solidarity (Alexander, 2006). They play a core structural role in the political infrastructures of liberal, representative and monitory democracies (Keane, 2009). Theoretically, any meaningful level of self-rule through political representation is impossible if the body politic doesn't know what the State is doing or what information it holds. FOI is essential to a citizen's understanding of, and meaningful participation in, self-government. It promotes accountability of those with power and empowers those who actively seek such accountability. It is accorded a pivotal role in limiting the State's ability to repress any part of or all of the citizenry because it forcefully limits State secrecy. As Birkinshaw puts it, secrecy "protects corruption and brutality" (2006, p. 39). "Transparency, openness and access to government-held information are widely applauded as remedies for the deficiencies and operations of government when government claims to be democratic but falls short of its rhetoric" (p. 38).

The world's first FOI law was passed in 1766 by Sweden but other than an opening up of some government records in Colombia in 1888 (Banisar, 2006, p. 57), the next such law was not passed until 1966 by the United States of America (USA). However, by 2006 there were almost 70 countries with disclosure laws or statutory decrees to similar effect (Banisar, 2006) and by October, 2018, 119 of the world's 195 countries had such laws in place. There has clearly been vigorous growth in FOI laws around the world during the last two decades of the 20th century and the first two decades of the 21st. Cyprus also joined the international FOI community in 2018 and when Luxembourg joined it some months later (freedominfo.org, n.d.), every member country of the European Union had such rights embedded in law. At first glance, the world might appear to be experiencing a tidal wave of openness and, by extension, a significant increase in the accountability of States as societies everywhere strive to build open governments. As will become clear in this research report, such a groundswell of

support for FOI legislation is not concomitant with the levels of transparency on the realpolitik frontline of information freedoms. Each nation that has created FOI laws has its own reasons for doing so and, unsurprisingly, a unique brand of openness. But, numerically at least, these laws represent a worldwide explosion of freedom of information laws that has been widely acknowledged, if not well researched (Ackerman & Sandoval-Ballesteros, 2006, p. 85), by scholars.

1.1.1 A rights approach. FOI is considered so important to the ambitions a democracy might have of popular self-rule that it is regularly included in lists of fundamental human rights by both States and non-governmental organisations (NGOs) that promote the principles of democratic rule. The United Nations' instrumental declaration of the rights of all humans in 1948 included FOI as a right immanent to the right of freedom of speech, demonstrating the interconnectedness of such rights. Other rights embedded in laws or constitutions – freedom of speech, the right to privacy and the right to vote are straightforward examples – rely on FOI for their success and protection, and have become inevitably entwined with it, since it helps gives them form. In a paper marking the 40th anniversary of the enactment of the USA's Freedom of Information Act (FOIA), Professor Patrick Birkinshaw, director of the Institute of European Public Law at the University of Hull, wrote:

FOI is a human right; it enables us to fulfill our potential as humans. Without such rights, we are little more than subjects. Perhaps we are content, but we are still subjects who are denied the right to make integrity and individual responsibility a reality. FOI is both intrinsically and instrumentally important. (2006, p. 41)

Since John Milton demanded the “liberty to know, to utter, and to argue freely according to conscience, above all liberties” (1644), such liberty has been linked to meaningful participation in society, which in turn is dependent on the free passage of information to and among citizens. David Banisar, whose research into the global spread of FOI laws is widely acknowledged, says FOI is “an essential right for every person. It allows individuals and groups to protect their rights. It is an important guard against abuses, mismanagement and corruption” (2006, p. 6).

Such a rights-based approach emphasises an individual's right to access State-held information and the justice inherent in that access being granted. An important part of FOI is its role in affirming the rights of the individual faced with a monolithic, seemingly all-powerful State. But that right to State-held information has a collective application during attempts by societies at self-rule. The prescient statement that

“information is the currency of democracy” has been perhaps unreliably attributed to the architect of the American Declaration of Independence, Thomas K Jefferson (Carnaby, P. & Rao, S., 2003). But whoever said it began a train of thought that has endured the peripatetic journeys that liberal democracies have taken since. In 1970, almost 200 years later, Ralph Nader opened an influential essay with:

A well-informed citizenry is the lifeblood of democracy; and in all arenas of government, information, particularly timely information, is the currency of power. The critical role of information is illustrated by the reply of the Washington lawyer who was asked how he prevailed on behalf of his clients: “I get my information a few hours ahead of the rest.” (p. 1)

1.1.2 A journalist’s rights. Under most disclosure laws, as FOI laws are also known, journalists and media organisations have no or very little special status and their requests for information have no higher or lower priority than those made by anyone else (e.g., Official Information Act 1982, s. 12). Perhaps this is one of the reasons their interest in FOI is not considered particularly distinct from anyone else’s by researchers who therefore find no pressing need to investigate it. However, the impact of a failure of FOI when information is sought by journalists is potentially greater than when the information is sought by an individual, given that the journalist’s intention is most likely to pass the information on to greater numbers, often far greater numbers, of people. Journalists can be separated from the other principal users of the legislation and have their own significance as requesters of information even if the law deliberately conflates them with members of the public. They are not unique in that they seek information in the public interest but they are still the key information requesters in the process of informing a voting public. Certainly a journalist’s FOI request is potentially very different in its impact on the public to the information requests from individuals for information of very little interest to many others – the records of a local cemetery, perhaps, or the file held by a government ministry about the requester. Their OIA requests can also be clearly separated from those by the numerable employees and ex-employees of the State who ask for their files. Journalists can be separated, too, from those with commercial interests seeking a competitive edge from the information they get from the government. Their requests can also be separated from those numerable requests from members of the legislature which tend to seek information to strengthen a political position of some sort. However, they are a little harder to separate from those requests for information by social activists and bloggers who also seek to expose wrong-doing or political failures on the part of elected representatives or their administrations. What journalists share with activists and agitators is a belief in their

motivation on behalf of the public interest. However, even here, the sphere of a journalist's interests tends to be much wider than that of one-issue activists or NGOs and pressure groups and their broader use of the disclosure regime is significant. Their role in disseminating a wide variety of information to the citizen body and electorate means they can have far wider influence with the information they gather. This alone is good reason for a focus from journalism researchers on FOI laws and their impact on journalistic practice.

1.2 FOI in Aotearoa New Zealand

Other than derivative legislation like that in the Cook Islands (Cook Islands Official Information Act 2008), New Zealand's is the only RTI law to be called an "official information act". Most statutes employ the word "freedom", with an influential precedent, in titular terms, being the USA's Freedom of Information Act 1966 (FOIA 1966). The idiosyncratic name of the Aotearoa New Zealand chose for its law may not be significant in itself but it is reflective of a different approach taken to freedom-of-information (FOI) in Aotearoa New Zealand from many, if not most, other countries. Indeed, Australian freedom-of-information specialists, coming across New Zealand's Official Information Act 1982, "tend to scratch their heads about this quaint and quixotic variant of access legislation" (Snell, 2000 p. 575). Its direct articulation of principle of availability that underpins the legislation (Official Information Act 1982, s 5) is just one of a number of things that have contributed to strongly positive narratives around the quality of FOI in New Zealand (Liddell, as cited in Snell, 2000, p. 577). Others arguably include its blanket approach to information (whatever information it is, the people of Aotearoa New Zealand own it and, in the absence of any good reason to withhold it, can have it). A legal-studies comparison by Snell (2000) between the OIA 1982 and Australia's Freedom of Information Act 1982 considers the nature of the target of disclosure in Australia (documents) against that in New Zealand (information):

In making information (as opposed to documents) the subject matter of access, the New Zealand designers set in place an important differential from other freedom-of-information regimes. The Official Information Act contains no precise definition of official information but has allowed a very wide interpretation to be adopted by the review bodies and courts. (Snell, 2000, p. 584)

In theory, any information held by officials of the New Zealand government – for example, even information in their memory banks – is subject to disclosure. Information does not have to be written down in a document of any sort to be both official information and to be available. Renowned Aotearoa New Zealand investigative

journalist Nicky Hager applauds this as one of the Act's strengths. As a New Zealand requester of information "you request 'information', not documents: answers to questions, lists of data and so on, whether or not they are contained in a document" (Hager, 2002, p. 1).

Snell (2000, p. 578), notes that while Australia's FOI regime was born of a bitter struggle between advocates of FOI and a resistant and entrenched bureaucracy, New Zealand's was effectively developed by a committee heavily populated by insiders – senior administrators and the very people who handled sensitive information on behalf of the Government. The law was developed in many ways by the people it targeted, a sure way to eliminate complaints of unworkable results. The committee eschewed a structure of categories for official information and created a principle-based law that heavily favoured disclosure and was interested in the consequences of releasing any specific information, and not the type of information it was.

In addition, in Aotearoa New Zealand the FOI appeal process available to those who have been refused information is external, informal, relatively fast and affordable, by comparison to Australia's court appeal system. The Office of the Ombudsman rules on FOI disputes in Aotearoa New Zealand and its rulings are generally binding on State agencies (as noted above, it would take a unanimous vote of Cabinet to override the Ombudsman). In Australia, provisions for withholding information from the public are centred on categories of information (Snell, 2000, p. 577), while in Aotearoa New Zealand the system is consequential in nature. In Aotearoa New Zealand the law is "pro-disclosure", while in Australia the interpretation of availability is narrower. In Aotearoa New Zealand public interest is treated in broad terms and openness is always the objective, while in Australia the 1988 Senate Standing Committee noted "the confusing and piecemeal public interest test arrangement meant that many agencies were not considering the countervailing public interest in releasing information" (p. 603). The divergence in design between the two regimes brought about these differences, which amount to significantly different levels of openness, Snell argues. Despite early scepticism over the strong liberalism embedded in Aotearoa New Zealand's act and the accompanying view that the stricter Australian model had it right, he found some 18 years later that the "the Official Information Act has achieved a significantly higher level of openness in government than Australian FOI legislation" (p. 576). It is not necessary here to go into the reasons for this here but suffice to note

that such legal-studies applause for the OIA 1982 helped cement the narrative of success in place. Despite his glass-half-empty opening, Grant Liddell's praise is typical:

New Zealand's Official Information Act suffers from fewer deficiencies than most if not all other freedom of information statutes. It is an Act concerned with information, not documents; it creates rights of process rather than rights of access to official information; its dispute resolution and enforcement mechanisms are relatively inexpensive, accessible and speedy; it requires decisions on access to be made on a time- and information-specific basis; and, most importantly, it states a guiding principle of availability, informed by the purposes of accountability and participation, as the foundation on which the Act is built. Unlike other freedom of information statutes, it does not categorise certain classes or categories of information, eg Cabinet papers, as beyond its reach. Its coverage is defined and, in most instances, easily ascertained. Thus, disputes are principally disputes over matters of judgment: is information, properly subject to the Act, properly withheld or not? There are very few disputes about boundary issues, such as what is information?; is the body holding the information subject to the Act? And the cases that have progressed to the regular courts have emphasised the role of the decision-maker's judgment in determining access to information issues, thus emphasising that they have been genuinely difficult cases (Liddell, as cited in Snell, 2000, p. 577).

Much early thinking about FOI in Aotearoa New Zealand reflected views such as these, emphasising the innovative nature of the Act. As will become shown in Chapter 2, however, counter-narratives have since emerged that are focused not on the technical side of the law but on whether it had created actual transparency. Anecdotally, the FOI woes of public-interest journalism (PIJ) have continued to grow since the 1980s when, as noted by investigator Nicky Hager (2002, p. 2), the nation's FOI regime started to malfunction. By 1992 law professor, constitutional expert and former Prime Minister Geoffrey Palmer acknowledged the powerful decision-makers in society were eschewing the transparency that the regime was intended to evoke (pp. 31).

1.2.1 Threading another strand. This shift in the reputation of the regime was an initial trigger for this research project. The gap between the promise and the practice of FOI in Aotearoa New Zealand itself seemed like something that should be researched. However, the research has uncovered further shifts in both the scholarly and practice-based narratives about FOI. This research will contend, then, that this narrative of operational inadequacy, in which the OIA is much less heroic in nature than in the years after its enactment, is itself due for renovation. Things have moved on again. As Chapter 2 will also show, international research on FOI (e.g. Roberts, 2006) has found new loci of interest for researchers. One such approach, which is central to this research project, is to consider how far society has shifted and to ask if FOI has kept pace with those changes. Among other things, this research asks in what ways, if any, the

neoliberal restructuring of Aotearoa New Zealand's political economy (Phelan, 2014) at the end of the 20th century has restricted PIJ in its public roles. Aotearoa New Zealand's now-long-running agenda of neo-liberal economics, which began with the Lange-led Labour government elected in 1984 and was given direction and impetus by its so-called Rogernomics programme, has significantly changed Aotearoa New Zealand society.

Elected at a time of economic crisis, Labour embarked on a radical response, a programme of social and economic reform that reached deep into New Zealanders' lives (Walker, 1989). The country's famous farming subsidies were the first to go. Markets and the finance sector were deregulated, conditions were created for increased competition in the markets, overseas trade policies were relaxed, and a goods and services tax introduced, along with other rapid reforms of the marketplace. Critical to the programme of reform was the idea of smaller government and over the past two decades many of the services once provided by government – from passport photos to banking services – have been moved to the private sector for provision.

The transformation of the architecture of the public sector over the last two decades have caused confusion about the applicability of disclosure laws, most of which were drafted with the purpose of improving transparency within government agencies staffed by government employees. As work left government departments – to go to contractors, privatised utilities, and non-profit organizations – the principle of access to government documents began to break down. (Roberts, 2006, p. 152)

Roberts is writing about the liberalisation of economic practice in Western democracies generally. But it is a movement Aotearoa New Zealand was famous for leading and here as much as anywhere the socio-political context of 2014 is very different to that in 1982 when the OIA was drafted. A high proportion of government services are now funded by the public but provided by the private sector, and this structurally pluralist approach is moving the spending of public money beyond the reach of FOI laws and out of sight of the public.

Overlooked in the rush to privatization is the threat posed to public access to governmental records. Records long open to public inspection now are being created, maintained, and controlled by private businesses often at odds with the very purpose of public records laws. (Bunker & Davis, 1998, p. 464)

This is increasingly acknowledged as a serious problem in parts of the world, but Aotearoa New Zealand scholars have yet to approach it in detail. Some of these services – private prisons, for example – provide services the public has a right and need to know about over and beyond just its financial contributions. It has a deep interest in

how corrections are run on its behalf but with the shifting of the service to private providers, there is concern over increasingly less access to information about it. The lists of agencies to which the OIA applies, according to the New Zealand Law Commission, defies explanation, including, as it does, what appear to be “discrepancies and anomalies”, such as the inclusion of the Plumbers, Gasfitters and Drainlayers Board and the Building Practitioners Board but the exclusion of the Electrical Workers Registration Board (New Zealand Law Commission, 2012 June, p. 336). Similarly, the New Zealand Security Intelligence Service and the Government Communications Security Bureau are both subject to the OIA 1982, but the Inspector General of Intelligence and Security and the Independent Police Conduct Authority are not (p. 336). Since the commission’s review, further forms of privatised and quasi-privatised organisations have emerged requiring public funding, including council-controlled organisations (CCOs), private prisons and charter schools. The commercial-sensitivity exemptions in FOI laws apply increasingly to information surrounding such provision of public services because those services have been actively moved into a corporate or pseudo-corporate and competitive world. It is hard to ask contractors to provide their best price to the taxpayer if they cannot be sure the reason for any competitive advantage they might have is to be kept secret.

...while the liberal State was legitimated by press freedom and the individual within the market, the neoliberal State is legitimated by the ability of the State to ensure the spread of the market across the whole of civil society, tempering market ubiquity with compensations for market excess. (Elwood, 1999)

A strong focus of this research, then, will be on this shifting socio-political and economic ground which New Zealand’s foundational disclosure act, the Official Information Act 1982 (OIA 1982), is still expected to regulate successfully more than 30 years after its introduction. Central to this research is the idea that FOI has been knocked off its course by some of the exigencies of the neoliberal turn. When alterations to advanced democracies are complete (Roberts, 2006, p.160), where will FOI be then?

1.3 Research Problem

This research project explores the place of FOI in Aotearoa New Zealand society and its role in empowering accountability journalism (Starkman, 2013). It examines how journalists relate their experiences of working at the coalface of public inquiry today, 36 years after right-to-know laws were passed. It contextualises those narratives against both the intentions of the lawmakers and the political-economic

changes in Aotearoa New Zealand since the passing of the OIA in 1982. Hence its research problem can be found at the meeting of constitutional idealism and real-politik journalism, where an FOI regime facilitates, to some extent, a synthesis of the two. As a mechanism, its success is judged on its results, which are determined by the extent to which it achieves its objectives.

The research problem is thus conceptualised as a contradiction between the promise and the practice (Lidberg, 2006) of FOI and is approached here through social field theory, which provides an explanation for the failures of the apparatus. Boosted by the presence of a statute, the normative aspirations of the newsroom around State transparency are not dissuaded. The political field (Bourdieu, 2005) maintains a public commitment to FOI but, despite the absolute nature of the law, still deals with journalists' requests for information in non-absolute terms. To understand the issues facing PIJ, a first step is to analyse its reports from the battlefield, as FOI is so readily characterised today.

1.3.1 Research Questions. Derivative of the research problem, a primary and two sub-questions are formulated. The three questions are intended to be interlocked in that answering the sub-question puts the research conclusions in a place to answer the primary question. This is not, however, intended to be over-deterministic in nature and the research remains open to unexpected results from the combination of three research questions (RQs) on related matters.

1.3.1.1 Primary research question. In what ways, if any, do practice-derived representations of FOI by public-interest journalists relate to conventional transparency narratives in Aotearoa New Zealand?

1.3.1.2. Research sub-questions. Sub-question 1: What was the political thinking behind the introduction of the Official Information Act in 1982 in Aotearoa New Zealand? Sub-question 2: How do public-interest journalists experience Aotearoa New Zealand's FOI regime today?

1.4 Research Approach

This doctoral project was begun after many years during which the researcher conceptualised FOI in largely normative, practice-derived terms. The concealment tactics of the State are legendary in the journalistic circles of Aotearoa New Zealand, even if the official story was until recently that the nation's fourth estate was among the freest, if not the freest, in the world (Elwood, 1999, p. 8). This paradox is a catalyst for

the research. However, the research lens here is more wide-angled than either of those opposing views, which fail, in dialectic terms, to create a new and subsequent position, and simply remain diametrically and unhelpfully opposed. This research engages substantively with the lived and mediated experiences of journalists within a theoretical framework derived from the multidisciplinary field of journalism studies to advance this stalemate. It contextualises those experiences with a triangulation of field theory (Bourdieu, 1990 & 1993), democracy theory (Keane, 2009), and neoliberal theory (Kelsey, 1993). It argues there is a still-existing need for democracy theory in scholarly approaches to journalism, and engages field theory to throw into relief the relations of domination that exist between agents and agencies both within the two fields of journalism and political power, and across the boundary between them. It uses neoliberal theory to help understand the impact of radical political and economic reforms in the 1980s and 1990s on the then-nascent FOI regime of Aotearoa New Zealand and on the world of FOI today.

To answer the RQs, which are qualitative in nature, triangulated conclusions are drawn through analysis of qualitative data from three sites. Firstly, the research considers data generated through analysis of parliamentary archives as it seeks to establish the thinking behind the introduction of the OIA 1982. Secondly, and at the heart of the project, it generates rich data through the analysis of transcriptions of 18 semi-structured interviews with elite respondents. Thirdly, it presents a reflective, autoethnographic case study of an FOI failure.

The project is qualitative and interpretive in nature. Its inductive approach emerges through a traditional thesis format. Chapter 2 reviews the literature relevant to the research purposes, initially taking a broad purview of the landscape of FOI scholarship, including disclosure's central role in democracy, before narrowing to topographies of public-interest journalism and the power relations it finds itself embroiled in with the State. Social field theory is introduced as a theoretical lens and key contributor to the project's empirical conclusions.

In Chapter 3, the project's ontological and epistemological underpinnings are presented, along with its theoretical and methodological framework and research methods. Field theory is expanded on, and political science scholarship used as a theoretical background for the inquiry into the nature of the relationship between PIJ and the State. Democracy theory is relied on to explore the role of journalism as a public watchdog. In methodological terms, the political-economic impacts of

neoliberalism on the flow of important information from State to PIJ is explored through document analysis, semi-structured interviews with elite respondents and an autoethnographic case study.

The political-economic environment in Aotearoa New Zealand at the time FOI was created is examined in Chapter 4, through an analysis of parliamentary debates from the time, exploring how lawmakers were trying to influence the future of Aotearoa New Zealand society. This establishes the thinking of the time, privileging the democratic ambitions of the nation and its lawmakers as it set out to distinguish itself as a keenly transparent society against the background of the Cold War between the USA and its allies and the Soviet Union.

Against that background, Chapter 5 looks in detail at the impacts of neoliberalism on FOI in Aotearoa New Zealand, as identified through the narratives of public-interest journalists.

In Chapter 6, a broader data set provides a conceptual analysis of the FOI situation PIJ finds itself in in the second decade the 21st century. Chapter 7 presents the study's conclusions around the FOI struggles journalists face as they attempt to hold the State to account. The final chapter also outlines the project's limitations and discusses avenues for further research.

1.5 Summary

FOI is a right belonging to citizens of a democratic society and enables both democracy theory, which, without it, is unfeasible, and the practice of actually-existing democracy. Without FOI, the self-preserving interests of power may easily prevail and the interests of the general citizenry become secondary or worse. However, among the 119 nations in the world with some form of disclosure law, there exists vastly varying levels of transparency and actually-existing democracy. FOI laws themselves are no guarantee of transparency – it is the level of commitment of the State to its own disclosure laws that creates an environment of accountability. Examples of governments abusing their citizens' rights to information abound. In Aotearoa New Zealand, though, a narrative of success emerged around the Official Information Act 1982 from the assembled contributions of bureaucrats, policy experts and legal scholars. The successful characteristics of the Act – an open and flexible view of information, a concrete principle of availability and a successful and equitable appeal mechanism – have seen it lauded by those who appreciate a great piece of law or policy. But this chapter has argued there is a need for a third strand to the narrative – research

addressing serious questions about freedom of information by scholars in journalism studies. While not all policy studies projects are cheerleaders for the efficacy of the regime (eg, White, 2007) and not all legal scholars think the OIA 1982 is perfect law (eg, Price, 2005), the perspective of arguably the most influential of all so-called requesters under the Act is missing. Journalism's interest in FOI goes to the very heart of both FOI and journalism. For a rounded view of FOI in Aotearoa New Zealand, that third strand is required.

Aotearoa New Zealand was a front-runner in the FOI movement that spread across liberal democracies seeking an actually-existing transparency from their governments. Its early effort was one of several "extended campaigns led by the media with some government support and many took decades to succeed" (Banisar, 2006, p. 19). Aotearoa New Zealand's legislative architecture in the immediate post-World War II years supported State secrecy before transparency. During the liberalisation of information flows that took place in advance of the establishment of its foundational RTI law in the early 1980s, the information-rights legislative framework under which New Zealanders lived was still based on a presumption of State secrecy, both in strict legal terms and in the general practice of civil servants who handled the State's information. Despite increasing openness in government in realpolitik terms, the default legal setting of the State and the courts was that unless the status of information was altered by an authorised official, that status was that the information was secret. That much information flowed relatively benignly from the State to the citizenry without much or any reference to the OSA 1951 should not be allowed obscure the secrecy that remained. But by the time the National government in power passed the OIA 1982, the notion of open government was in common parlance. The bill was challenged and scrutinised in Parliament far more than the OSA 1951 had been but it was still broadly supported across the debating chamber. As well as its practical and democratic applications, the OIA 1982 reflected the ongoing ambitions of the citizenry to be self-determining and to be an example of that self-determination. As such, it was a statutory reversal of power relations, in terms of information, between the State and the body politic. It was time for a law that would set in place a framework which was the obverse of top-down notions of government, and affirm Aotearoa New Zealand as a society delivered ultimately by its people. The OIA 1982 was clear in its purposes and emphasised the availability of State-held information as its underlying principle.

Experts, not politicians, built an FOI regime that was imperfect but soon the envy of democracy advocates across the world. A narrative of success developed around it and Aotearoa New Zealand came to be regarded as an example of transparency in action. As recently as a 2005 conference in London, Privacy Commissioner Marie Shroff declared: “For FOI we are the future and it works.” Aotearoa New Zealand continues to define its democracy in terms of an exceptionalism based on transparency almost a quarter of a century after its lawmakers moved decisively to introduce FOI to the list of the rights of their citizens. Since then, however, the country’s political economy has been remodelled and one of the key interests of this research is just how much that has affected, directly or indirectly, the news media’s right to State-held information.

2. Literature: A Precarious Human Right

“Press releases tell us when federal agencies do something right, but the Freedom of Information Act lets us know when they do not.”

– Patrick Leahy (1940-), US Senator.

Aotearoa New Zealand journalists who set out to hold the State to account in one way or another – whether reporting from the halls of Parliament, a meeting of city councillors or the agenda of a high school board of trustees – rely on the nation’s freedom-of-information (FOI) regime to be able to conscientiously attempt to realise their occupational ideals as public-affairs reporters. Whatever information the State may willingly release, there will be information it does not proactively provide and in which citizens and public-interest journalists may have a keen and legitimate interest. FOI is intended to facilitate the transfer of information to them despite any unwillingness to share it from those holding it. The focus of this research is on this interface between the political world of the powerful and those public-interest journalists who would monitor them on behalf of the public. While there have been numerous studies worldwide on FOI as a constituent of democracy (e.g., Hazell, 1989; Banisar, 2002 & 2006; Birkinshaw, 2006; Roberts, 2006), its relationship to such press freedoms is rarely included, despite the news media’s reliance on disclosure laws for authenticity in the execution of its fourth-estate role. According to Nam (2012), there is a “paucity of systematic empirical investigation that tackles the larger effects of [FOI laws] in the comprehensive, sociopolitical context of press freedom” (p. 521). This research is situated within this gap in the literature. This review finds that literature on New Zealand’s FOI regime has indeed largely been produced within legal studies and policy studies frames, to the detriment of a complete picture of FOI in Aotearoa New Zealand. A dominant narrative has emerged, at least partially, through the framings of administrative science, which Pierre Bourdieu sceptically calls “the discourse that agents of the State produce about the State, a veritable ideology of public service and public good” (2012a, p. 5). This research contributes to an alternative discourse, framed by the public’s need for information and the role of PIJ in providing it.

This literature review will first consider international scholarship that explores FOI’s role in democratic governance (eg, Dunn, 1999; Birkinshaw, 2006; Lidberg, 2006; Lamble, 2002) and then literature that situates access to State-held information among fundamental human rights (eg, Hazell & Worthy, 2010). However, it will also explore the real doubt among practitioners and scholars alike (eg, Nader, 1970; Hager, 2001; Lidberg, 2006 & Roberts, 2006) about the realpolitik success of FOI regimes.

Such legislative mechanisms have increased in number exponentially in recent decades but less clear has been their effectiveness in creating ongoing openness, even, in recent times, in the liberal democracies that first championed such legislation. Scholars (eg, Roberts, 2006) have recorded retrogressive tendencies on the part of Western governments to increasing secrecy and withdrawal, in different ways and to various distances, from their erstwhile commitments to transparency, particularly since the declaration of the so-called war on terror by the USA and its allies after attacks on New York's World Trade Center in 2001. Added to this increasingly complex FOI puzzle, we find in contemporary scholarship a small but growing interest in the effects on transparency of structural pluralism (Roberts, 2001), which in such a context refers to the harnessing by neoliberal governments of private enterprise and free-market principles wherever possible in the provision of essential services more traditionally provided directly by the State. This pluralistic approach – the State provides what private enterprise cannot or will not but no more than that, and private enterprise provides what it can be encouraged or contracted to provide. This literature review explores this idea in the context of the neoliberalisation of Aotearoa New Zealand and the potential impact of that on FOI. The neoliberalisation of Aotearoa New Zealand has seen the unfettering of multitudinous markets which has been central to the political-economic ambitions of successive governments since the turning point that was the Labour Party's electoral success in 1984. This chapter finds in the literature implications of connections between the “rolling back” (Kelsey, 1993) of the State in Aotearoa New Zealand and the degradation of FOI that public-interest journalists – and others – report having experienced. This is an idea explored Chapter 5 through the analysis of data and has become a central theme of the research.

This chapter will also outline what research does exist within journalism studies but will contend that a lack of more significant contributions from that discipline has restricted the breadth of understanding of the FOI regime. It will demonstrate a need for further scholarship on FOI on Aotearoa New Zealand, in light of both local and global trends, including increasing governmental secrecy among nations once committed to increasing transparency, ongoing structural changes to the provision of State-funded services and increasing evidence that the heroic narrative surrounding FOI in Aotearoa New Zealand needs revising. With the State's transparency often taken for granted, journalism-studies scholars have a role in that revision, moving the FOI issues that are gnawing at the heart of public-interest journalism from the anecdotal to the analytic.

2.1 Why Does Democracy Need FOI?

FOI regimes are legislative assemblages for ensuring a society's citizens have unfettered access to information held by their government as a "presumptive right" (Birkinshaw, 2006, p. 188). Scholars widely accept that any success in applying the principle of government-by-the-people is dependent on the people's access to the government. They agree (e.g., Lidberg, 2006; Birkinshaw, 2006; Danks, 1980) the world's 115-plus FOI regimes largely have three widely established purposes in common. Firstly, they are there to provide access for each citizen to information the State holds on them, which is a check on the power of the State and an affirmation of individuality and a citizen's relative autonomy. Secondly, FOI is to improve accountability of the Government through improved transparency. Both citizens and the media can only take effective part in the accountability processes that help constitute the idea of democracy if they can access, expeditiously, the information they need to do so. Thirdly, FOI legislation is intended to improve and increase citizen participation in government, a political ideal in monitory and participatory democracies. In its report to New Zealand Prime Minister Robert Muldoon, the Committee on Official Information, which was charged with developing FOI in Aotearoa New Zealand and whose reports formed the basis of the OIA 1982, summed up the three widely-accepted objectives of FOI regimes. The committee said the case for more openness rested on "the democratic principles of encouraging participation in public affairs and ensuring the accountability of those in office; it also derives from concern for the interests of individuals" (Danks, 1980, p. 13). These three purposes become fundamental to the ambitions of the democracy into which they are introduced but FOI did not grow as and when representative democracy did. When the first legislation that enshrined the right of ordinary people to access government-held information was passed in Sweden in 1766, it was because of an opportunistic intervention. Radical opposition politicians, led by Anders Chydenius (1729-1803), cunningly (Lidberg, 2006, p. 44) took advantage of a lethargic Parliament and pressed the Freedom of the Press and the Right of Access to Public Records Act into law. Chydenius was inspired not just by contemporary political and philosophical thinkers from the Age of Enlightenment like John Locke (1632-1704) but also by the thinking of the Tang Dynasty, which ruled China from the 7th Century to the 10th Century. During that time China established an Imperial Censorate, a body of officials close to the Emperor, whose job it was to "tell the leader when things were right or wrong, when he was being led astray, and when plans or actions were likely to have deleterious effects or be contrary to moral or established principles" (Steinberg,

1997). Given that it could only operate in the Emperor's interests if it had adequate and accurate information, the censorate was effectively constitutive of a state of transparency and so a distant progenitor of today's FOI regimes (Lidberg, 2006, pp 25-26; Lamble, 2002, p. 3; Steinberg, 1997). Lidberg finds it "interesting to note that Chydenius translated the more than 1000-year-old Chinese experiences into his contemporary political climate by choosing the press as the key 'accountability agency'" (2006, p. 26). But, of course, even if the idea of the powerful being transparent through disclosure of information pre-dates liberal democracy and theories of the press, the theory of FOI is inseparable from today's manifestations of representative and monitory democracy (Keane, 2011, p. 212), premised as they normatively are "on a right to discourse on public affairs which is dependent for its quality on access to government information" (Paterson, 2008, p. 3).

2.1.1 Democracy in theoretical terms. As Held says, from "ancient Greece to the contemporary world, there have . . . been fundamentally different opinions expressed about the general conditions or prerequisites of successful 'rule by the people'" (2006, p. 2). Nevertheless, he produces a convincing taxonomy of democratic modelling, and is typical of the scholarship in this area. Held includes in his theoretical account of democracy (2006) both classic and post-classic models. He groups four classic models: ancient Athenian democracy, a republican self-governing model (with "protective" and "developmental" variants), liberal democracy (again, with "protective" and "developmental" variants), and a direct democracy that is essentially Marxist in nature. He then groups five more recent models: competitive elitist democracy, pluralism, legal democracy, participatory democracy and deliberative democracy (p. 3). With this project's focus on FOI amid the political and the social power relations of today, it is these five, more recent framings of democracy that are relevant to consider in relation to information freedoms. Firstly, *competitive elitist democracy*, the idea of democracy as a competition for power between elites was articulated by Max Weber (1864-1920) and then Joseph Schumpeter (1883-1950) and came to be seen as a modern system in counterpoint to "classical" democracy. Powerful forces competed for the right to govern and the will of the people, who were not seen as well-informed, was restricted to electing those forces. In essence, it was a model based on market-style competition for power. Secondly, *pluralism* was a post-Schumpeter view of democracy that included the accountability effect of social organisations, including unions and other organised interest groups. Governance was seen as an inclusive process and those advocating a pluralist outlook "did not think a concentration of power in the hands of the competing

political elites was inevitable” (Held, 2006, p. 158). Thirdly and based on a constitutionalism and a clear separation of powers, *legal democracy* asserts that to remain just, majority rule must always be circumscribed by the rule of law. Held identifies (p. 207) key characteristics that include, in an echo of today’s neoliberalism (Harvey, 2005), an opposition to collectivism, an emphasis on liberty and free markets, and a preference for international free trade. Fourth in Held’s list is *participatory democracy*, a model that “fosters a sense of political efficacy, nurtures a concern for collective problems and contributes to the formation of a knowledgeable citizenry capable of taking a sustained interest in the governing process” (2006, p. 215). Participatory democracy is uniquely identified as having citizens directly participating in shaping key social institutions. Political parties are accountable to their memberships. Conditions for its success include an accountable bureaucracy and FOI. Finally, Held includes *deliberative democracy*, a radical model of direct decision-making by a reflective, participating citizenry. Deliberation is seen as spreading knowledge, revealing hidden interests, and testing reasoned, impartial arguments. “Political decisions that meet the standards of impartiality are those that would be defensible in relation to all significantly affected groups and parties if they had participated as equal partners in public debate” (p. 239). Deliberative democrats view digital technologies as potentially empowering the model. Each of the models that make up Held’s structural analysis of phases of democracy needs an informed public, that need increasing as the involvement of citizens beyond a simple vote (even then information was critical) increased.

Also of key interest here is John Keane’s thesis (2011) that, from roughly the middle of the 20th century, there was a transformation in liberal democracy. Pluralist in nature, this new form was characterised by the growth of numerable accountability agencies, regional, national and supranational in nature, including a more critical press and numerable governmental and non-governmental watchdogs. It might be thought of a deepening and widening of the notion of pluralism developed in post-Schumpeter times.

The strange-sounding term *monitory democracy* is the most exact for describing the big transformation that is taking hold in regions like Europe and South Asia and in countries otherwise as different as the United States, Japan, Argentina and New Zealand. Monitory democracy is a new historical form of democracy, a variety of “post-parliamentary” politics defined by the rapid growth of many different kinds of extra-parliamentary, power-scrutinising mechanisms. These monitory bodies take root within the domestic fields of government and civil society, as well as in cross-border settings once controlled by empires, states and

business organisations. In consequence, the whole architecture of self-government is changing. The central grip of elections, political parties and parliaments on citizens' lives is weakening. Democracy is coming to mean much more than free and fair elections, although nothing less. Within and outside states, independent monitors of power begin to have tangible effects. By putting politicians, parties and elected governments permanently on their toes, these monitors complicate their lives, question their authority and force them to change their agendas – and sometimes smother them in disgrace. (Keane, 2011, pp. 212–213)

If the monitoring of power during terms of government, and not even primarily at election time, is a keystone in the new architecture of democracy, as Keane claims, then FOI must be imperative to its success. If FOI fails, such monitoring will fail as well.

While it may have not been a clause in a blueprint for democracy, and Schudson makes a case that much of the pressure for a change towards openness on the part of the State was actually from cultural shifts during the 20th century (Treadwell, 2015), democracy as it is now variously constituted relies heavily on FOI for its authenticity. As Lidberg (2006) argues, the reverse is also true. FOI relies on three “pillars” of democracy theory – political representation, political accountability and the role of the media as a “fourth estate” (p. 15). Thus, these three elements of democracy both support and require FOI for any attempt at actual-democracy.

2.1.1.1. Representation. Lidberg defines the first “pillar”, political representation, as having four theoretical and historical “strands” (p. 17). Under the first strand, defined by Edmund Burke (1729-1797) and known widely as the *trustee model*, political representatives serve their constituents through acting independently and according to their own judgement. The second strand was the *delegate model*, developed in response to accusations that the trustee model bred an “elitist political class” (p. 17). As delegates, representatives are “conduits” (p. 17) for their constituents and do not act on their own beliefs. Thirdly, he cites a *mandate model* of democratic political representation, under which representatives should not carry out any policies not supported by voters in an election. Under the fourth strand, representatives are a mixed cross-section of voters, a *microcosm model* (p. 17) of the wider community.

2.1.1.2 Accountability. A “retrospective mechanism” (Lidberg, 2006, p. 18) and Lidberg’s second of three theoretical pillars on which FOI sits, political accountability requires a clear line of connection between the political principal and their agent or representative. What’s more, it needs to be ongoing and the principal needs some way of making the representative listen – even by force, if necessary. Other than elections,

Dunn (1999, p. 24) lists criminal law proceedings (relatively infrequently) and freedom-of-information regimes as key mechanisms for ensuring the accountability of political representatives. Mulgan (2003) describes as political mechanisms for government accountability: elections, legislative scrutiny (accounts and reports, ministerial responsibility, committee investigation and constituency representation), policy dialogue and the media.

2.1.1.3 A fourth estate. Last in Lidberg's (2006) trio of theoretical pillars is the media's role as a "fourth estate" of a society, a term (usually) attributed (e.g. Schultz, 1998, p. 49) to British politician Edmund Burke (1739-1797), whom Scottish philosopher Thomas Carlyle (1795-1881) would later quote as saying that there were "three Estates in Parliament, but in the Reporters' Gallery yonder, there sat a fourth Estate more important far than them all".

The success of this so-called "watchdog" role on behalf of the citizen body is dependent, as Lidberg notes, on "the media delivering on its side of the bargain" (p. 34). To what degree, if any, the news media does deliver depends, of course, on the framework through which press freedom is being viewed. Celebrated cases of FOI empowering a journalist's work are numerous, and those stories positively affect the lives of their audience and those of other citizens. Within the vernacular discourses of practice, journalists who are not claiming their rights under FOI laws on a regular basis are simply not doing their job (Tucker, 1992, p. 111). The *quid pro quo* of this must then be that those who are regularly firing off challenging FOI requests are doing their job. Indeed, FOI requests are commonly involved when journalists bring the light of publicity on malpractice and malfeasance.

Within a broader framework, however, there is increasing clarity in arguments that the inherent interests of the media itself have distorted the function of that role and as a result the theory of press freedom is open to charges from critical theorists (eg, Habermas, 1992) of fallacious accountability. Dawes finds the origins of the decline of real press freedom as far back as the end of the 19th century when the rise of the press barons cast doubt upon the press's "democratic potential and its legitimacy as a form of public opinion" (2014, p. 21). He notes theorists who include John Keane and Jürgen Habermas have pointed out the theory of press freedom, at the heart of which we find the media's relation to FOI, makes "a series of unconvincing assumptions" (p. 21).

The idea of the press itself as a form of public opinion assumes that a market democracy is representative of the will of the people. This ignores the distorting effects of capital in the marketplace, and the politically charged

publishing environment in the United Kingdom (UK) that, despite the rhetorical independence from politics, has tended to produce newspapers that are biased and partisan and more susceptible to influence from both politicians and political pressure groups than they are objective or neutral. The idea of the press as an agency of information highlights the numerous successes in holding political authority to account, but ignores the reality of the full range of newspaper content and the role of the press as an entertainment industry, not to mention the increasing blurring of the boundaries between information, entertainment and advertising. And the view of the press as an independent watchdog assumes, on one hand, that it is independent of economic interests, ignoring the size of the multinational corporations that own them and the fact that newspapers are often a subsidiary of a much larger network of multimedia and other industries, so can rarely be said to be free of vested interests. And it assumes, on the other hand, a political independence, ignoring the mutual advantage and lack of transparency in the relation between the press and political parties, the role of opaque lobbying and the influence of the media on government policy and on electoral results, which threatens not only the media's independence from government, but government's independence from the media. (2014, pp. 2–3)

The analysis of such assumptions is one of the roles of critical media studies, but the effects of such assumptions are very much the business of journalism studies as well, as are all influences on or disruptions to anything that might be called normative journalism practice. Journalism scholarship must accept the criticisms of political philosophers that through their complicity in a propaganda model of mass media, Western media do “manufacture consent” (Chomsky & Herman, 1988) for socio-political systems. It is a consent that effectively supports the status quo and rarely challenges it in meaningful ways. Journalism scholars, however, might still judge media practice against an account of press freedom and democratic obligation that the news media itself relies on for legitimacy within the public sphere. As the nature of news metamorphoses in response to the numerous significant influences of the digital revolution and the crisis of the business model for journalism, it becomes increasingly obvious the success of the media's watchdog role has been heavily challenged by newsroom cuts, the growth of celebrity news and other news used to compete with the softer, more sensation-based stories that get traction on social media. In these circumstances, despite a broader need for changes to media structures, a focus is still needed on the legislative mechanisms that enable watchdog journalism.

2.2 Truths at the FOI Coalface

As noted in Chapter 1, researchers (eg, Banisar, 2006; Roberts, 2006) have described a worldwide and exponential explosion of FOI regimes in recent decades. If one was to view this situation from above the stratosphere, perhaps like Chomsky's journalist from Mars (2002), one might assume there was a virulent spread of openness

and disclosure underway on Planet Earth. One does not need to dig far to find, of course, that the reality of even liberal Western democracies is some distance from the stated aims of lawmakers who created such regimes. In one of the ironies of democracy, FOI laws are dependent for their success on the very officials and politicians whose behaviour they are intended to control. Despite the legislation's function in correcting asymmetrical power relations (the State has the information, the citizen does not have it, and information is power), the operation of that function lies in the hands of those for whom it can create extra workload and repercussions from above.

In the USA, which enacted its Freedom of Information Act (FOIA) in 1966, nearly two decades before Aotearoa New Zealand's Official Information Act 1982 (OIA), Ralph Nader (1970, p. 1) wrote that despite the introduction of the FOIA, government agencies were still "baronies beyond the law".

It is important to remember that the FOIA is a unique statute, since its spirit encourages government officials to display an "obedience to the unenforceable." Insofar as the statute is enforceable, the duty devolves to the citizen; yet few citizens are able to engage an agency in court, the only recourse afforded by the Act. Those who can afford judicial recourse are special interest groups who need the protection of the FOIA least of all. Consequently, as a practical matter, the attitude of agency officials toward the rights of the citizenry overwhelmingly determines whether the FOIA is to be a pathway or a roadblock (Nader, 1970, p.2).

While the US did go on to strengthen its FOIA 1966 with significant amendments in following years, it is widely acknowledged FOI regimes create the potential for openness but the real level of public scrutiny of a government relies as much on the administration of the law as its creation.

. . . there is much work to be done to reach truly transparent government. The culture of secrecy remains strong in many countries. Many of the laws are not adequate and promote access in name only. In some countries, the laws lie dormant due to a failure to implement them properly or a lack of demand. In others, the exemptions and fees are abused by governments (Banisar, 2006, p. 6).

Banisar notes the passing of a right-to-information law (RTI) law is just the start. For it to be of any real use, it must be implemented. Governments must change their internal cultures. Civil society must test it and demand information. Governments resist releasing information, causing long delays, courts undercut legal requirements and users give up hope and stop making requests (2006, p. 26).

2.2.1 The undermining of FOI. FOI can be undermined in any number of ways and because a country has legislated for openness does not necessarily make it open.

Some laws are inconvenient but effectively mandatory prerequisites to trade or international finance deals, with many intergovernmental organisations pressuring “poorer and more fragile states” (Roberts, 2006, p. 109) into adopting disclosure laws. In the worst of these situations, little or no will to openness existed prior to the legislation being passed and not much has changed afterwards.

Despite FOI laws’ virtues and the current zeal for transparency, various dilemmas are threatening to consign these laws to the irrelevant status of window dressing – good-looking from a distance, perhaps, but ill-suited to any useful end and even dysfunctional in practice. Some of these window-dressing dilemmas have to do with the technical and legal characteristics of FOI laws. Others have to do with the bureaucratic capacity of governments to implement good laws, much less enforce them. Still others can be traced to the origin of so many open-government statutes, which often begin as items pushed onto the policy agendas of developing countries by international or regional organizations without much if any prior grassroots demand (Michener, 2011, p. 146).

Other flawed FOI regimes have democratic-sounding names but are in fact legislative tools of oppression. Banisar says the most egregious in this category is the “baldly misnamed” (2006, p. 27) Zimbabwean Access to Information and Protection of Privacy Act.

It sets strict regulations on journalists and has been used to shut down nearly all newspapers that do not unconditionally support the government and imprison or expel all non-cooperative journalists. Its access provisions are all but unused probably for fear of any person brave enough to ask for information will be beaten by government supporters. “Freedom of information” Acts have also been adopted in Uzbekistan and Tajikistan with predictable difficulties of having freedom of information in countries that have serious problems with human rights and freedom of expression (Banisar, 2006, p. 27).

Elsewhere, the legislation itself may appear sound in terms of the legislative principles of FOI, but governments simply ignore it. In the Cook Islands, for example, where the nation’s Official Information Act, passed in 2009, was based closely on Aotearoa New Zealand’s celebrated OIA 1982, there is little sign of transparent governance as a result. Newspaper editor John Woods wrote in the *Pacific Journalism Review*:

Despite our Official Information Act, the Cook Islands is being denied its right to know at the highest level. The most powerful entity of government, Cabinet, is still a stronghold of secrecy and non-disclosure. We believe, and argue, that the public has every right to know what Cabinet decides, what deals it does and what funds it spends. For the past five years we have pleaded for weekly cabinet media briefings, and for release of cabinet minutes and documents, but we are continually denied information. Nowadays we rely on leaks (when it suits an individual) and on papers falling off the back of a truck. (2010, p. 18)

Other failures of, and threats to, FOI are being increasingly recorded by researchers. In a five-country comparison of the promise and the practice of FOI, Lidberg (2006, p. 10) stated that while FOI laws were potentially one of the most potent accountability tools going, his doctoral research showed that in some cases they were “little more than a toothless paper construct and democratic ‘showcase’ rather than the effective scrutinising tool they were intended to be”.

2.2.2 A retraction from openness. Roberts (2006) and others have studied 21st-century influences on FOI that frustrate its success, including a reduction in openness since the New York attacks on September 11, 2001, increased secrecy around security services, powerful networks that are “opaque” and operate at levels removed from public access, and the secrecy of corporations whose operations are arguably in the public interest but who have few or no disclosure obligations. Within weeks of the 9/11 attacks, large amounts of government information, previously open to all, were withdrawn from public scrutiny, despite the US FOIA.

In the three years following the September 11th attacks, complaints about the erosion of these [access] rights were common, although the evidence was still inchoate. In one prominent case, a Utah-based environmental group, Living Rivers, challenged the Interior Department’s refusal to provide maps that showed the likely impact of a failure of the Glen Canyon Dam on the Colorado River, the second highest concrete-arch dam in the United States (Roberts, 2006, p. 39).

Critics of President Barack Obama have been quick to point out that despite the president campaigning on openness, Mr Obama’s administration has, in fact, a higher rate of FOIA refusals than his predecessor’s (e.g., Moos, 2012).

But it was not just the United States that began to recoil at the effects of an open government. British prime minister Tony Blair took power in 1997 on the back of a promise to sweep aside Britain’s culture of governmental secrecy only to bemoan his stupidity famously in his memoirs years later (Blair, 2010). He told the Associated Press: “What happens in the end is that you make politicians very nervous of actually debating things honestly, because they’re worried about what’s going to happen when there’s a FOI request” (Stringer, 2011). In Aotearoa New Zealand, Prime Minister John Key admitted his government sometimes delayed the release of information if that was politically helpful, despite the law requiring the release is done as soon as reasonably possible (McCulloch, 2014).

2.2.3. Administrative discretion. Another challenge facing FOI and its advocates is what Roberts calls “administrative discretion” (2006) – that is, the

willingness of officials to discharge their duties under the FOI regime. Echoing Nader (1972), he wrote:

Whether a freedom of information law succeeds in securing the right to information depends heavily on the predispositions of the political executives and officials who are required to administer it. Statutory entitlements could be undermined if government institutions refuse to commit adequate resources for implementation or consistently exercise discretionary powers granted by the law in ways that are inimical to aims of the legislation. In fact, critics in many jurisdictions argue that FOI laws have been weakened by the emergence of internal practices designed to ensure that governments are not embarrassed or surprised by the release of certain kinds of politically sensitive information (p. 176).

Similarly, in Aotearoa New Zealand, Price (2005) found it disturbing to see how often officials and ministers withheld information in apparent contravention of the well-established OIA 1982.

Examining about 1000 OIA requests . . . revealed that when information was withheld, it was usually unclear whether the law was being applied correctly. Not infrequently, responses included references to wrong sections. Officials often made simple assertions that information was “confidential” or “commercially sensitive” without appearing to understand that these are not, in themselves, reasons for withholding information. Although officials are not required to refer to the public interest in their responses, they are required to consider it and there was usually no evidence that they had done so. Alarmingly often they issued refusals that appeared unlawful. One agency developed its own standard rule about the release of information, attempting to justify it on six different grounds (including the “principles of the Privacy Act”) in different cases. It admitted in a covering letter that its “approach to answering OIA requests is in need of a thorough review” (p. 32).

When seen from the perspective of hopeful information requesters, the FOI regime in Aotearoa New Zealand seems more nuanced than the one that somewhat heroic narratives accompanied onto the world stage and then assessed as a global exemplar. Hazell and Worthy (2010) note that “FOI laws can be launched with initial enthusiasm, but then undergo revisions to restrict the operation of the Act when politicians start to feel the pain, or simply suffer from bureaucratic neglect when starved of resources” (p. 353). They cite Zifcak and Snell’s four-stage typology characterising the life of an FOI regime: there is initial “optimism,” then increasing “pessimism,” which becomes “revisionism” of the FOI law, normally to limit its scope or performance, and then later a return to the “fundamentals” of FOI (Snell, 2001, p. 343). In each case, in line with the literature outlined above, the performance of FOI has been influenced by external events in the political environment, in particular the government’s attitude towards the costs and benefits of FOI (p. 353).

2.3 Scholarship of FOI in Aotearoa New Zealand

Aotearoa New Zealand has long been framed as an innovative nation in terms of FOI (e.g., Hazel, 1989; Snell, 2000), and, indeed, in many other walks of life. With its history of colonisation, it is adept at accommodating such pioneer narratives, which, while they might be the convenient self-appraisals of the coloniser, reinforce well-trod ideas of a national and naïve inventiveness, and so a cultural individuality. In 2005, as Britain's civil service readied itself for a storm of information demands ahead of the enactment of the nation's new FOI law, the New Zealand Privacy Commissioner assured its members that New Zealand was some 23 years ahead and she had come from the FOI future, to assure them "it works" (Shroff, 2005, p. 1). She quoted French political commentator André Siegfried from his 1904 book *Democracy in New Zealand*, in which he described New Zealanders as having "mingled strength with simplicity" and thus become unconscious of political obstacles and proposed "simple solutions for the most complex problems with astonishing audacity", accomplishing the reforms of which Europe was so afraid (p. 1). Shroff went on to say that with a Prime Minister who was a strong believer in the battler, the "little man", and a committee made up of the best minds in government and the law, the OIA 1982 was the result of "widely divergent forces" (p. 1). The OIA 1982 was born out of a spirit of co-operation in the best of pioneering traditions. In the years following its enactment, despite serious misgivings by the public service (Shroff, 2005, p. 2), it functioned effectively and officials, policy analysts and legal scholars were soon happy to claim the nation's citizens were now among the best informed on the planet (e.g. Elwood, 1999). By implication, they were also among the most free. The pioneers had been successful and freedom of information, with all its positive implications for press freedoms, could now be taken as read.

2.3.1 Counter-narratives from the frontline. While such narratives perpetuated in official and academic circles for many years, public-interest journalists, including Nicky Hager (2001) have argued they began to experience a steadily increasing disregard for the RTI law among officials after about a decade of its operation. A situation apparently obverse to the one described by policy and legal researchers began to emerge, primarily through anecdote. By the middle of the 1990s, officials, in fact, were regularly accused of routinely abusing the letter and spirit of the Act when requests from journalists were received. In 1992 law professor, constitutional expert and former Prime Minister Geoffrey Palmer wrote that the OIA 1982 was

unpopular with decision makers “because many of them do not like to share information” (pp. 31). The Official Information Act was based on the theory that information was power, and in a democracy, ought to be shared. While the Act had changed the culture profoundly it was much less closely observed than it ought to be (pp. 31-33). During this time, anecdotes from reporters fuelled newsroom legends about FOI failures. Sometimes, the length of the wait for information or the official resistance to its release underscored the importance of a reporter’s work, but sometimes it was quite the opposite, that the wait had been ridiculous given the insignificance of the information that had been requested. Newsrooms soon framed themselves for their readers and viewers as pitted against an intransigent and inefficient State that was monolithic and secretive in nature. It was this discrepancy – between the official narratives of FOI in Aotearoa New Zealand and the tales of public-interest journalists – that drew the researcher’s attention to those narratives and their implications. The research’s approaches to narratives from the working worlds of journalists are explored further in Chapter 4.

2.4 Journalism Studies

So far, the contributions of journalism studies to the discourse over FOI in Aotearoa New Zealand are relatively minor. Practitioners with special interest in the legislation have written about their experiences using the Official Information Act 1982 (eg, Hager, 2002) or published work intended to underscore the importance and function of FOI (eg, du Fresne, 2005). But there is a paucity of academic research with the lived experience of journalists attempting to perform their all-important role of monitoring the State at its centre. While Price (2005) included journalists in a section on the views of information “requesters”, there is no singular study that researches the media’s interface with legislation that was intended to help build a more open society in Aotearoa New Zealand and which was intended, in part, to help PIJ be part of that building process. Much transparency research tends to focus on whether the passing of right-to-information (RTI) legislation to protect freedom of information has achieved its goals of, for example, access, transparency and openness (e.g., Lidberg, 2006). The object of other research is the political economy of information freedom. Is one system better or more democratic than others? Who in any given society is more likely to benefit from the law? How long do officials usually take to respond? What proportion of information requests are rejected and why? How do we assess the success of an FOI regime? The news media, despite being a key user of FOI legislation and an

acknowledged mechanism in the accountability of officials and politicians in liberal democracies, tends to be beyond the horizons of such scholarship.

. . . only a small amount of research discusses the influence of [freedom of information legislation (FOIL)] on press freedom, even though the effects of FOIL are felt most among the press. There is a paucity of systematic empirical investigation that tackles the larger effects of FOIL in the comprehensive, sociopolitical context of press freedom (Nam, 2012).

The news media is very much at the centre of this empirical investigation, which is intended to build on the literature with a journalism-centred contribution. Aside from the dominant narrative that Aotearoa New Zealand has effective FOI laws that create transparency around government processes, there are other narratives, still emerging, that argue there is still some way to go to actual openness and that, in fact, there is now decreasing openness. This other view of the transparency of Aotearoa New Zealand society is more interested, like news itself, in day-to-day events and less in grand theories of democracy. This still-emerging narrative has it that there is a general lack of interest from the public in FOI and the information it makes available. Despite a general disregard for journalists, the public still tend to rely on them to “use” the OIA on their behalf. And that despite legislative guarantees, the coalface of OIA involves innumerable moments when human discretion, not legal principle, determines much about the experience of exercising a fundamental right that is clear as crystal in law. Price (2005) found deep ambivalence on the part of information-requesters, some of whom were journalists, about the OIA. While none would want to return to the days before the Act, those interviewed for the project were “sceptical of officials’ and ministers’ motives and knowledge of the OIA” (p. 11). Respondents found officials were often mistaken about their obligations under the OIA 1982. They found they often faced stalling tactics that included transferring requests between agencies, restarting 20-working day time limit without good reason, waiting weeks before then refusing to release information and dragging the chain during appeals (pp. 11-12). If this is a general theme throughout government, journalists’ anecdotes about FOI begin to take on new significance. A key purpose of the Act, Hager notes (2001, p. 1), is to “increase progressively the availability of official information to the people of New Zealand” (Official Information Act, s 6) but he notes, too, that the success of the Act in this regard has never been assessed (p. 1). While Hager acknowledges the OIA 1982 as a powerful tool, he regularly finds himself “held up or blocked” (p. 1) by officials as he attempts to access State-held information. He notes that a list of the ways in which he is obstructed in bona fide newsgathering amounts to a “sort of how-to guide” (p. 1) for

unhelpful government officials wanting to breach the terms of the OIA 1982. At least half his requests end in appeals to the Office of the Ombudsman (OotO) and he almost always gets more information after its intervention

Consider what this means. It means that, at least with my requests, officials are – regularly and routinely – being considerably more restrictive with official information than they should be if they followed the Act properly. It should not be necessary to complain to the Ombudsman to get information.

There are two possible reasons for this restrictiveness. The first is the growth of information controllers in government and state agencies: professional “communications” or PR people whose job it is to manage and restrict the information that reaches the public. There is plenty of scope for deliberate bending of Official Information Act requirements for tactical political reasons. Sometimes it is blatant. I recently waited seven months through an Ombudsman’s investigation to get some information from the Ministry of Economic Development (I had initially had a blanket refusal). Yet two weeks before the Minister, Paul Swain, released the information to me, he had his staff drop a bundle of the key papers I had requested to every parliamentary journalist. Why? This is a trick used by Beehive staff to stop the requester, who has done the work of obtaining the information, from being able to write an exclusive story. After waiting seven months and then being scooped by the Press Gallery, there was no point in using the information I finally received. The Ombudsman should be able to impose sanctions for uncooperative and obstructive behaviour (2002, p. 2).

Among other dissatisfactions, Hager lists a culture of secrecy around Aotearoa New Zealand security and intelligence services incommensurate with the intentions of the OIA and the excessive dependence of officials on the Act’s section 9(f) and (g) exclusions, which allow for “free and frank” advice from officials to ministers of the Crown to be withheld. As well, poor record-keeping by the state administration and the use of charging as a disincentive to requesters continue to dog the real levels of information freedom in Aotearoa New Zealand.

This narrative – one of a less effective FOI regime than the legal studies scholars would have it – is not particularly new in newsroom culture. Journalists have complained about the gatekeepers of information in government for many years and most journalism textbooks contain warnings to young reporters about recalcitrant civil servants and their unhelpful ways. Remind them, one Aotearoa New Zealand textbook said, that it’s all about enhancing good government and respect for the law (Tucker, 1990). But journalists are always in conflict with someone over something, are they not? You can’t entirely blame the officials who are already overworked and are then harangued by OIA requesters. Perhaps, but this is a dangerous path to go down – any reputation journalism may have for a rough-and-tumble existence, or indeed poor

behaviour, has nothing to do with the legal obligations of those who work for the government. What journalists deserve, in the eyes of a disaffected public or intransigent bureaucrat, has nothing to do with FOI. “FOI laws will always be unpopular with governments and some of the officials who serve them. That is probably the true test of their importance” (Birkinshaw, 2006, p. 216).

But it is not just irascible public servants that lead to FOI being less than ideal for journalists in Aotearoa New Zealand. A lack of understanding of the law among civil servants and a diminished culture of training around responses to requests for information (Hager, 2002, p. 2) mean the FOI system is not running at optimum efficiency. It might be argued it is sluggish as a result.

The 1981 Danks Committee Report, which provided the basis for the Official Information Act, argued sensibly that no law would work unless there was co-operation from the agencies; in other words, a culture of freedom of information. In the first years of the OIA there was an Information Authority that actively trained departmental OIA staff. This training was effective at enhancing the culture and practice of freedom of information. Today there is no such training and my impression is that many officials do not understand the Act. It often looks as though the officials decide what they would rather not release and then idly thumb through the Act looking for a few clauses to cite in justification. These decisions frequently do not stand up to Ombudsman review. The Ombudsman regularly calls for more OIA training. (Hager, 2002, p. 3)

Radical cuts to newsroom numbers over the past two decades (Ellis, 2005) have also not helped the media utilise access provisions to their fullest. Much is made of the so-called disappearance of investigative journalism in the early part of the 21st century but according to professional expectations on news reporters, well-targeted OIA requests should be de rigueur for both specialists and generalists in mainstream newsrooms.

Studies exist into aspects of freedom-of information (FOI) regimes around the world (Nader, 1970; Banisar, 2006; Martin, c2008; Nam, 2012), but there is a shortage of academic work that has New Zealand’s FOI laws as its centre of interest and, in particular, the media’s success or failure in making a meaningful success of the legislation on behalf of its audiences. Much of the literature on New Zealand’s FOI regime is comparative in nature (eg, Hazel & Worthy, 2010) and not focused on unravelling local and specific complexities. New Zealand is considered a benchmark in a number of overseas studies (Hazell, 1991; Hazell & Worthy, 2010; Nam, 2012) but direct, local research is sparse. Among it are policy research projects that seek to understand how potential scrutiny of official information affects the workings of the state bureaucracy (e.g. Poot, 1997). Also among it is White’s argument (2007) that New

Zealand's official-information system is resulting in less trust in the state sector, rather the increased levels of trust that are meant to result. In an important study, from which emerged her book *Free and frank: Making the Official Information Act 1982 Work Better*, White acknowledges the fundamental openness that was embedded in New Zealand society by the OIA. However, her research highlights significant issues with both the principles and the operation of the Act. She lists 10 "themes" (2007, pp. 90–92) that emerged from her study, which might be summarised as:

- New Zealand government is much more open because of the Act
- many requests for information are unproblematic
- real uncertainty exists about the public's right to information
- the ombudsman's role has been a success
- processing delays have long been a problem and have not improved
- large requests are problematic
- officials need more training
- the protection of officials' advice from disclosure is still contentious
- the digital age brings its challenges
- it may be time (2007) to introduce a pre-emptive, push-model of information release.

Price (2005) conducted a study of users of the OIA to explore how it was working in practice and concluded that while there was much to be pleased about in terms of transparency in Aotearoa New Zealand, there were significant problems as well, with state officials frequently flouting the Act's guidelines on the release of information (Price, 2005, p. 50). Investigative journalist Nicky Hager, a regular requester for state-held information, has praised (2002) the readiness of officials to release information in the early days but says it was significantly different under the Labour Government in the late 1980s and 1990s. "Ministers and officials developed ways of routinely subverting the provisions of the Official Information Act, including delaying information releases and misusing exclusion clauses" (p. 1). The New Zealand Law Commission, charged with two reviews of Aotearoa New Zealand's FOI regime since it was introduced, declared in 2012 that the "basic pillars of the legislation remain fundamentally sound" (New Zealand Law Commission, 2012) but also recommended more than 100 changes to the legislation, including some fundamental ones that included extending the reach of the Act to parts of the Government's parliamentary services. The commission argued because of the significance of the changes and the importance of the legislation, it should be redrafted from afresh. The Government

disagreed, however, declining both the suggestions that OIA needed a fresh start and that it should be extended to cover the business of Parliament (Davison, 2013). Without any response from the State, a mood of dissatisfaction grew and criticism from academics (eg, Price, 2005) and constitutional experts (eg, Palmer, 1992 & 2007) began to sway the narrative. By 2015 the Chief Ombudsman Beverley Wakem felt compelled to investigate the “practices adopted by central government agencies for the purpose of compliance with the Official Information Act 1982” (2015, November). She found, like White, that the Act had made the Government more open and accountable. “The principle [sic] and purposes of the OIA remain sound. I found that most of the time, agencies were compliant in the way they operated the OIA on a daily basis” (p. 3). However, there were five key areas of “increasing risks and vulnerabilities in the way the OIA was being administered” (p. 3): leadership and culture; organisation structure, staffing and capability; internal policies, procedures and systems; current practices; and performance monitoring and learning. She had found no evidence of deliberate obstruction on the part of officials (p. 141) but when agencies were “vulnerable to non-compliance” (p. 141) it had been because of constrained resources and staffing, the use of ad-hoc and mistaken OIA guidelines, political pressure, an unforgiving political environment within officialdom, and growing volumes of official information.

Palmer (2007) attempts a plurality of perspectives by reviewing key work of four researchers. Firstly he discusses the 1997 New Zealand Law Commission’s review of the OIA, in which it concluded that because of its open-textured nature, the Act had weathered societal changes well and was still achieving its purposes.

... the Commission also identified a number of problems with the Act and its operation. The major problems identified were:

- the burden caused by large and broadly defined requests
- tardiness in responding to requests
- resistance by agencies outside the core state sector
- the absence of a co-ordinated approach to supervision, compliance, policy advice and education regarding the Act and other information issues (Palmer, 2007, p. 11)

Next Palmer examines Price’s 2006 study *The Official Information Act 1982: A window on government or curtains drawn?*, which is discussed above. Palmer notes (2007, p. 14) Price’s conclusion that Aotearoa New Zealand effectively has two FOI systems – one for requesters wanting non-sensitive information who have their requests processed efficiently and without fuss and another for requesters of sensitive material, which is characterised by a disregard for the spirit of the law.

They are more likely to be transferred to the minister's office, often with questionable or no justification. Many are refused outright. Information is withheld, either wholesale, or in larger than necessary chunks. Price noted, with more than a little sense of irony, that his own OIA requests for the purpose of this research apparently fell under this second, much less user-friendly OIA. It is this second class of requests about which Price considers there is cause for real concern (Palmer, 2007, p. 14).

Palmer includes White's 2007 research in his round-up of perspectives on the OIA 1982. She found "the overall information context in New Zealand today is that the Executive is, on the whole, more constrained, accountable, open and participatory than before. There is greater dissemination of government information to citizens, and consultation with citizens by government" (p. 14). However, she also found the "political-administrative interface" was problematic, large requests face administrative issues which can breed distrust, officials often granted themselves time extensions when dealing with requests, government systems were at times at odds with electronic data, officials are reluctant to commit their advice to documents, administration of the Act is a burden and a balance of respect from both sides is missing.

The system as it works now is eroding trust in the state sector rather than building it.... [I]n essence, the ambiguity of the rules leaves people free to judge behaviour against different standards, or to infer motives and conduct from their own perspective. Often that means that people see political manipulation and game-playing where in reality there may be careful administrative process and ordinary interplay with the political level of government. But because the rules are unclear, suspicion breeds. As suspicion and distrust grow, people engage in ever more behaviour based on low trust, like specifying OIA request in more and more detail. That in turn creates "black letter responses" that may miss the point or appear overly formalistic and/or obstructive, which then fuels more distrust. And so the spiral goes. Overall, behaviour moves further away from the ideal of reasonable and balanced discussion and cooperation that the Danks Committee hoped for, and that the ombudsmen exhort people to adopt. (White, 2007, pp. 22–23)

While Price (2006) included journalists in a section on the views of information "requesters", there is no singular study that assesses in any way the media's success in utilising the legislation to build a more open society in Aotearoa New Zealand. Even elsewhere in the world the focus of researchers tends to be on whether the passing of legislation to protect freedom of information has achieved its goals of, for example, access, transparency and openness. The media, despite being a key user of FOI legislation and an acknowledged mechanism in the accountability of officials and politicians, is often excluded.

Indeed, FOI in Aotearoa New Zealand was for many years considered within a conventional discourse that emerged through, principally, legal studies (eg, Banisar, 2006; Elwood, 1999; Hazell, 1989; New Zealand Law Commission, 1998 & 2012; Price, n.d.a) and policy studies (eg, Poot, 1992; White, 2007), each of which has its distinct reasons for an interest in the legislation. Together they weaved a two-strand, dominant narrative that had Aotearoa New Zealand's regime as a best-practice example of FOI (Elwood, 1999; Hazell, 1991; Hazell & Worthy, 2010; Nam, 2012; Price, n.d.b). The small nation was a relatively early exponent of FOI (more than 20 years ahead of the UK), along with like-minded Westminster-based democracies Australia and Canada, who were also poised to legislate for access to government information (Hazell, 1989) at the same time. Its tendencies were towards a strongly liberal regime, which made it a standout when the OIA was enacted in 1982 and became widely regarded as a "model of how progressive access to an information regime should work" (Hazell & Worthy, 2010, p. 353). This endorsement of the FOI regime in Aotearoa New Zealand by researchers and policy analysts and offer emergent counter-narratives to the virtual inviolability of the OIA presented in much literature by legal scholars. So far, the contributions of journalism studies to this discourse are relatively minor. Practitioners with special interest in the legislation have written about their experiences using the Official Information Act 1982 (eg, Hager, 2002) or published work intended to celebrate and underscore the importance of such freedoms (eg, du Fresne, 2005). But there is a paucity of academic research with the lived experience of journalists attempting to perform their role of monitoring state transparency its centre, even in conventional-narrative terms. There is no singular study that researches the media's interface with legislation that was intended to build a more open society in Aotearoa New Zealand and that the general public expect the media to use on its behalf in pursuit of that openness. Elsewhere in the world, the focus of researchers, even those formerly journalists, tends to be on whether legislation protecting freedom of information has achieved its goals of, for example, access, transparency and openness (eg, Lidberg, 2006). The object of much research is the political economy of information freedom: is one system fairer or more democratic than others? (eg, Snell, 2006). Who, in any given society, is more likely to benefit from the law? How long do officials take to respond? (e.g., Lidberg, 2006) What proportion of information requests are rejected and why? How do we assess the success of an FOI regime (eg, Hazell & Worthy, 2010)? These are valid and interesting questions, and there must be many more to be asked from a legal-studies or political-science perspective. The media, however, despite being a key

user of FOI legislation and an acknowledged mechanism in the accountability of officials and politicians in liberal, monitory democracies, tend to be excluded from the horizons of such scholarship (Nam, 2012). Under most disclosure laws, journalists and media organisations have no special status and their requests for information are treated no differently from those made by anyone else. Perhaps this is one of the reasons that their interest in FOI is not considered by researchers as particularly distinct from anyone else's and that there is no real need to conduct much research into it. Of course, their requests are different from individual citizens' requests for files, often ex-employees of the State, and those seeking economic or political advantage because they are made, at least ostensibly, in the public interest. In this way, the requests by journalists are more like those by activists and citizen journalists.

Despite there being very little, if any, extra allowance made for bona fide journalists under FOI regimes, they are arguably the key participants in the regulation. Their role in disseminating a wide variety of information to the public means they can have wider influence with the information they gather than any other requester. This alone is an argument for an increased focus from journalism researchers on FOI laws and their impact on journalistic practice. The full story of FOI – which after all is meant in normative terms to give life to democracy – is not being told if legal scholars and policy analysts tell their part but journalism scholars fail to provide their side of the story. If journalists are not joining in the applause for the transparency of the Aotearoa New Zealand's state, we might ask then, what is the *actual* level of success of its FOI regime? How much better, if at all, could information flow to journalists for the purposes of public discussion? To what extent are the news media making the most of the FOI regime bequeathed to them and all members of the public by the socio-political advances of the 1980s? Two reviews of the OIA 1982 have been carried out by the New Zealand Law Commission, in 1998 and 2012. In the second, the commission recommended that while it was still fundamentally sound, there should be some major changes – for example, expanding the reach of the OIA to the business of Parliament and many other, minor changes. It advised the Government that it would be best rewritten from scratch (New Zealand Law Commission, 2012, June). The Government declined to take up the idea (Davison, 2013, February 26). Little has changed about the Official Information Act since the 1980s. Aotearoa New Zealand society, however, has changed dramatically since then in ways that affect PIJ. Under the neoliberal economic policies of successive governments since the late 1980s, the State has withdrawn from the provision of many public services that it could encourage the private sector to take

over. Now significant amounts of public money are spent outside the watchful eyes of those who use FOI legislation to monitor state behaviour, arguably a damaging constraint on press freedom. Some of these services have high levels of public interest attached to them, private prisons for example. As these services shift to the private sector, the public loses sight of their operation to varying degrees, despite often being the funders of the service. According to Roberts, around the world the story is much the same.

In the United States, one company, Edison Schools, boasts that it operates so many elementary and secondary schools that it could be counted as one of the largest school systems in the United States. Around the world, the business of providing water and sewer systems is now dominated by three French and German firms – Odeo, Veolia, and RWE Thames Water. A Danish firm, Group 4 Falck, operates a network of prisons and detention centers spanning four continents. An Australian business, Macquarie Infrastructure, has developed a lucrative business in building and operating toll highways and bridges around the world. Britain's Labour government, once the main proponent of an expansive state sector, now has a policy of encouraging private businesses to build hospitals and schools on its behalf. (Roberts, 2006, p. 131)

The transparency intended to be created by FOI regimes becomes murky when public money is spent by companies that presume a right to confidentiality around their commercial activities, even when they are contracted to the public purse. Researchers should not have to go far down that road before asking if today's world simply isn't the governance structure for which the OIA was envisioned.

2.4.1 Neoliberalism in Aotearoa New Zealand. This research is focused on FOI as it is experienced by public-interest journalists and cannot scope the neoliberal revolution in Aotearoa New Zealand much beyond its impact on information freedoms. However, to help understand that impact, it would be helpful to first consider the socio-political scenery against which those access failures are now recorded. To understand a power imbalance, it is helpful to understand how power was apportioned.

Neoliberalism, a term ascribed to the political-economic ideology dominant in the West since Ronald Reagan was the USA president, is associated, within critical political-economic theory, with concentrations of power and wealth among elite networks. Its origins in economic and political philosophy have been traced to the Mont Pelerin Society, an exclusive group of academics and philosophers which had gathered around the Austrian political philosopher Friedrich von Hayek and which included radical economist Milton Friedman. Founded in 1947, the group believed the central values of civilisation were in danger (Harvey, 2005, p. 20) and that capitalism needed to be rescued from socialist impulses and economic interventions promoted by Keynesian

economics. A fundamental commitment to a notion of personal liberty irrevocably connected to capital, property and economic freedom lies at the heart of the theory, even if its critics highlight the contradiction between that philosophical *laisse faire* and the need for a forceful state to protect and promote those liberties (p. 79). The rise of neoliberalism was ultimately a “momentous shift towards greater social inequality and the restoration of economic power to the upper class” (p. 26). In Aotearoa New Zealand, a process of socio-political transformation constituted an abandonment of the socialist project, which, while twisted out of shape under the virtual autocracy of Muldoon, had dominated political objectives since the Social Security Act 1937.

To use neoliberal theory to examine Aotearoa New Zealand society is to no longer to sit in the outer fringes of social or political discourse. Neoliberalism in Aotearoa New Zealand appeared to have constructed consent for its restructuring of society (Harvey, 2005, pp. 39–63), while remaining relatively invisible as an ideology. To use the term neoliberalism was until recently restricted to critical challenges within the academy of the common-sense view of the world. However, by 2017, Dame Anne Salmond, a distinguished professor in anthropology at the University of Auckland and 2013 New Zealander of the Year, was able to publish an opinion piece on the online news website *Newsroom* (www.newsroom.co.nz) in which she summarised the damage to collectivist society experienced under successive neoliberal regimes and the situation in which New Zealand communities now find themselves. In it she brought into the mainstream media ideas previously restricted to discourse between critical theorists.

Since the 1980s, New Zealanders have been gripped by neoliberal doctrines. Here, life is understood as a competitive struggle among individuals. In this Darwinian contest, each seeks to minimise their costs and maximise their benefits, with individual success as the ultimate goal. In this kind of philosophy, ideas of the “fair go” and caring for others and the land we live in are replaced by an idea of society as a market, and the land as a “resource” to be exploited for short-term profit. The rights of others, including those of future generations, are set aside. (Salmond, 2017a)

Neoliberalism, emergent from the confines of theory, is construed here as a national philosophy. If such neoliberalism characterises today’s society, it is not the world for which lawmakers drafted the OIA 1982. The disclosure law was intended to be direction-setting for the relationship between citizen and state in Aotearoa New Zealand and seemed to have concrete purpose and place in nation-building. Those behind it did not envisage access by the nation’s citizens to state-held information would do anything but increase and improve after and because of the introduction of the Act. However, neither did they envisage the radical and transformative centralisation of market

principles within the socio-economic spheres of Aotearoa New Zealand that would begin just two years after the FOI regime was enacted and which would change FOI. Neoliberal revolutionary impulses spread globally but unevenly (Harvey, 2005, p. 13) from “several epicentres” (p. 1) – Britain under Margaret Thatcher, the USA under Ronald Regan and China under Deng Xiaoping – to many parts of the world in the late 1970s and 1980s. Aotearoa New Zealand has been cited (eg, Kelsey, 1995) as something of an experiment in the global neoliberal laboratory, given there seemed no limits to the lengths its governments would go in their liberalisation project or to the collectively owned assets they were prepared to sell into private hands. The Aotearoa New Zealand transformation, which began after the Labour Party, under Prime Minister David Lange, took power in 1984. Labour inherited a stagnant economy from the autocratic and interventionist National government of Robert Muldoon, who was both Prime Minister and Minister of Finance. Labour ministers, led by finance minister Roger Douglas, set out to “roll back the State” (Kelsey, 1993) and comprehensively centralise the role of the market in Aotearoa New Zealand life. The following decades saw the creation of state-owned enterprises, the widespread privatisation of other state services, the metamorphosis of the civil service into an “entrepreneurial public service” (Kelsey, 1993, p. 60), the deconstruction of the welfare state, the deregulation of labour markets, and the fusion of the local economy with the global one. Such radical economic reforms threw Aotearoa New Zealand democracy into crisis (p. 127) as significant amounts power moved into private hands. Economic power came to dominate political power, transforming elections into uncertain races (p. 155). Once in power, governments from both the left and right pressed through legislation enabling the neoliberal turn with urgency and often bypassing due process (pp. 133–136). To make such radical change easier, says Kelsey, it was necessary to reduce the powers of various watchdogs, including the Office of the OotO, the Auditor General, the Parliamentary Commissioner and the Privacy Commissioner (pp. 174-188). Hager (2002) records a growing resistance to journalists’ OIA requests by officials from the late 1980s and by 1991, Chief Ombudsman John Robertson had “disclosed serious problems of non-cooperation from officials [dealing with OIA requests], who had used maximum time periods under the Act to avoid releasing politically sensitive information prior to the [1990] election” (Kelsey, p. 182). It is against this background of turmoil that this thesis, in particular Chapter 5, considers the failures of FOI and their impact on PIJ.

2.4.1.1 Neoliberalism under the light of field theory. This research uses social field theory (Bourdieu, 2005) to ask if there is a connection between the neoliberal project and failures in FOI. Field theory, whose principal theorist remains French philosopher Pierre Bourdieu, will be discussed in detail in Chapter 3. Examining FOI failures through field theory reveals a hegemonic takeover by the economic and political fields of the journalistic field, which is been rendered heteronomous to them. Neoliberalism, originally a radical and theoretical imposition, is increasingly normalised by this hegemony, an idea discussed further in this chapter. The disposition of the journalist, already aligned helpfully through professional norms of detachment, is further encouraged by the realist mode in which neoliberalism presents itself. “The journalistic habitus enacts an analogous mix of the realist and the pragmatic . . . inclined to eschew the zeal and inflationary claims of others” (Phelan, 2014, p. 100). As Carpentier and Cammaerts (2006) note in an article following an interview with political philosopher Chantal Mouffe, journalism “does not operate outside ideology and hegemony, but it is deeply embedded within them. Successful hegemonic projects create a social imaginary, or a horizon of taken-for-grantedness, that is very difficult to overcome” (p. 996). According to Salmond (2017a), neoliberalism’s “politics of greed” has damaged the lives of generations of New Zealanders, created “radical inequalities” that see increasing numbers of people living on the streets and in cars, caused many children to go school hungry and others to die of third-world diseases, and, top of all that, poisoned Aotearoa New Zealand’s waterways. The naming of the ideology is an attempt against that taken-for-grantedness. For Mouffe, an advocate of radical democracy, neoliberalism has successfully stalled democracy by ending “the very idea of the socialist project” (Carpentier & Cammaerts, 2006, p. 970). “Today, the main task is no longer to radicalise democracy, but to protect the democratic institutions – which we have taken for granted – from being dismantled and demolished” (p. 970). Neoliberalism has infiltrated those institutions and threatens not only to prevent the radicalisation of democracy but to de-democratise existing socio-political infrastructure. This thesis explores the idea that FOI is one of those building blocks of Aotearoa New Zealand democracy that is in danger.

2.4.2 Structural pluralism and journalism. Central to the themes of this research is the idea of structural pluralism, a term used by Giddens (2000) in his analysis of the doctrines of so-called third-way economics, an approach that was promoted by both Tony Blair and Bill Clinton during their times in power. Manifested in the provision of important services to the public, structural pluralism describes a state

in which services deemed essential are provided by both the State (eg, most education and public health) and the private sector (eg, telephone services and passport photos). Large, multi-function government departments have been broken into many special purpose agencies that have a quasi-contractual relationship with political executives. Commercial functions within government have been transferred to government-owned corporations, which have later been privatised in some instances. Other activities have been given to private for-profit or non-profit contractors, or specially built hybrid organizations that consider themselves to be "public" in some circumstances but "private" in others. In a few cases, governments have relinquished all responsibility for production of services, opting instead to create markets populated by private producers who have no structural or contractual links to government at all. The civil service that remains is itself corporatised in nature (Boston, 2012) and required to take a business, rather than public-service, attitude to life. The philosophy that undergirds this restructuring is pragmatic and open to experimentation. (Roberts, 2001, p. 2). Roberts (2006, pp. 150–152) notes that in the United States a private education company claims to run one of the country's largest school systems and that even the defence sector, which he says must surely be the most basic state function, has been "laid open for business" (p. 151).

It is estimated that the private military industry earned \$100 billion in global revenue in 2003. So many contractor employees were at work in occupied Iraq in 2004 – by some estimates 20,000 or more – that analysts suggested it was the private military industry, and not the United Kingdom (with only 10,000 troops in the field), that should be counted and the second-largest contributor to the war effort. (pp. 151–152)

These multiple forms of privatisation – from entire divestment of a state service to any one of a variety of types of state-owned or controlled enterprise – have created a place in the economy that might be thought of as the "privatised sector", in counterpoint to the public and private sectors. This sector has characteristics of both state service and private enterprise but is actually neither. The public interest in the provision of the service – be it roading or television news – is clear but so too is the requirement that the quasi-private organisation providing the service subjects itself to market forces. Not yet clear but increasingly demanding attention is a corresponding increase in its perceived confidentiality requirements. Roberts (2011) argues that rights to access state-held information are based on "physical and economic security, privacy, and political enfranchisement" and that these are the reasons for a free flow of information from any organisation that holds information the public needs. This approach "rejects the

classical liberal insistence on differential treatment of the public and private spheres, recognizes that harm to fundamental interests could as easily arise from either sector, and establishes information rights where these seem likely to avert such harm” (p. 3).

Aotearoa New Zealand’s ongoing privatisation of once-public services and organisations is a key part of the country’s brand of economic liberalism, unleashed with dramatic effect in the mid-1980s. From state-owned coal companies to passport photos, successive governments have sought to privatise, to varying degrees and for some variance in reason, enterprises under its control. The accompanying market liberalisations and other economic reforms in the package dubbed Rogernomics (Easton, 1993; Kelsey, 1993 & 1995) have never been seriously studied in Aotearoa New Zealand for their impact on FOI. To what extent, if any, do Aotearoa New Zealand journalists say they face opaqueness, not transparency, when dealing with private or quasi-private organisations that provide important public services?

For more than two decades after the OIA 1982 was enacted, state officials (eg, Aitken, 1998; Elwood, 1999, September; Shroff, 2005) publicly celebrated its success. Former prime minister and constitutional expert Sir Geoffrey Palmer would say in 2007 it was “hard to resist the conclusion that the development of the OIA was the biggest policy game in town at the time. It was a significant constitutional change”. Yet only two years after it was introduced, first radical-political, then radical-economic reforms began undermining FOI in Aotearoa New Zealand. In the early days of the economically fundamentalist “Rogernomics” programme, the introduction of the State-Owned Enterprises Act in 1986 began a process that created grey areas around the very certainties of transparency that had seemed with the OIA 1982 just four years earlier. Since then, successive governments have privatised, part-privatised or contracted out virtually every service to the public which it is responsible for providing, until it has made an almost entire separation of the State’s commercial and non-commercial functions.

2.4.2.1 *Smaller government is better government.* A tenet fundamental to neoliberalism is that taxpayers are better off with a smaller government. This idea is easily sold to an electorate disillusioned by media stories on the excesses of the state bureaucracy. In the 1970s and the early 1980s in Aotearoa New Zealand, the oversized nature of the state bureaucracy and the apparent lethargy of its inhabitants became the stuff of legend and mirth with the production of popular playwright Roger Hall’s show *Glide Time*, a comedy about the job-for-lifers in a meaningless government office who

could spend a morning ordering paper clips. The play would later be the inspiration for *Gliding On*, a television series along the same themes in the early 1980s. According to a preview of a 2015 version of the play, *Glide Time* has “coloured people’s views of the public service ever since” (Fensome, 2015). In real-life politics, it was a theme underscored by both left and right in Aotearoa New Zealand during the 1980s and 1990s. In 1996, the USA’s Democrat president, Bill Clinton, used his State of the Union address to tell citizens the era of big government was over and they could look forward to “smaller, less bureaucratic government” (as cited in Roberts, 2006, p. 150). Roberts points out that Clinton’s administration nevertheless spent as much and had the same “catalogue of functions” (p.150) as its predecessors – but it did have fewer employees. What changed most significantly, however, was the approach taken to getting government work done. As was happening in Aotearoa New Zealand and most other wealthy democracies, the “volume of work that was being transferred to private contractors was growing steadily” (p. 150). As other governments were, the Aotearoa New Zealand administration was under pressure to keep selling state assets. Major utilities and industries and myriad services from the national airline to passport photos were put into private hands.

The centrality of this ideological approach to government work to our understanding of FOI in Aotearoa New Zealand is because such a dramatic reduction in the size of government – that is, the number of government institutions performing functions in the interests of citizens – can only reduce the opportunities citizens have to become informed about the successes and failures of those initiatives, either through their own inquiries or through those by journalists. While much of the literature critiquing neoliberalism in Aotearoa New Zealand traverses a controlled shift of wealth and economic control to the private sector and a consequent reduction in government (eg, Jesson, 1987, 1999, Kelsey, 1993, 1995; Easton, 1997; Phelan, 2014), not much has been made of the effects of this on journalists and journalism. Kelsey (1993, pp. 174–179) records the struggle to retain an overview of state-owned enterprises through the scrutiny of the OotO and through the OIA 1982 and the subsequent attacks on the powers of government watchdogs such as the OotO and the Auditor General. She also records the abuses of the OIA 1982 that were carried out in the 1990s by officials and politicians increasingly confident of their ability to flout the law and get away with it. But the frustrations journalists have felt since the abuse of the FOI regime began as they attempt to carry out a normatively constructed watchdog function are rarely, if ever, studied. This research is intended to begin to correct that imbalance. Journalists are key

users of a country's FOI regime. If a return to secrecy is common among powerful neoliberal governments around the world (Roberts, 2006; Treadwell, 2016), then journalists and their practice are impeded. If the government is shrinking, life for public-interest journalists becomes harder.

The implementation of such models of private operation of public services is a kind of structural pluralism, bound "neither to the monisms of bureaucracy or market, and pragmatic in the choice of methods for advancing the public interest" (p. 151). In fact, public administrations around the world have undergone metamorphic restructuring until they have divested themselves of as many commercial responsibilities as possible. The logic of the marketplace was the theory that drove such change. But in Aotearoa New Zealand, one of the most transformed administrations and economies, in part as a result of its quasi-socialist starting point, the efficiencies of the marketplace were highly valued by Treasury (Easton, 1997, p. 85-111) and subsequently by both Labour and National governments. Roberts (2006) predicts an unrecognisable public service when the alterations to "advanced democracies" (p. 160) is complete. "This process of restructuring has already posed a substantial threat to disclosure laws, and this threat will grow in coming years" (p.160). Already, the very existence of the corporatised, privatised and publicly funded services that resist full transparency is at odds with the fundamental precepts of FOI, particularly its clear and necessary distinction between the public and private sectors. Some FOI researchers might advocate for full transparency from any private organisation that holds information significantly in the public interest, but, in reality, the vast majority of FOI regimes around the world acknowledge the private sector's need for virtually complete privacy. The public sector, on the other hand, holds information FOI regimes consider belongs in meaningful ways to the citizenry.

While the smaller the public sector, the less information it holds, the information itself has not been reduced in volume necessarily. It is now held by other organisations who may have good reason to want to withhold it from public scrutiny and circulation. This growing array of organisations occupying a new middle ground between the public and private worlds are confusing the picture and creating blurred boundaries (p. 152). They confound the very purposes of FOI, which are to reassert, in significant and pragmatic ways, the primacy of the people over their government by establishing clearly the lines of accountability to the State. Self-determination in the dark is clearly impossible.

2.4.2.2 The “privatised sector”. It began with corporatisation but privatisation was inevitable (Easton, 1997, p. 23). The corporate model for state-owned agencies created after the 1984 change of government in Aotearoa New Zealand was soon replaced by a privatisation model established, often concurrently with the sale of publicly owned equity. The complex cost-benefit analyses of state ownership became two-dimensional commercial propositions within a mirroring, at least, of a free market. “Economic liberalisation (including the commercialisation of the state-owned enterprises) would mean, Treasury supposed, that market prices would move close to the value society placed on those resources, so there would be no need for that [cost-benefit analysis] adjustment” (p. 21). A programme of imitating free market conditions for government enterprises meant the Government would offload both the fiscal and managerial burdens of those enterprises to private interests, as well as the financial risks. It would also eliminate the economic damage from interventionist policies and increase efficiencies in the public sector, which would be run along private-sector lines. The failures of the past could be “quietly dropped” (p. 21) as enterprises from the Bank of New Zealand and Petrocorp to New Zealand Steel and Air New Zealand were commercialised. Easton argues (p.23) that privatisation of these commercialised but state-owned enterprises was inevitable and always planned by Treasury, but also that a broader review of research than Treasury allowed for shows commercialised state-owned enterprises – those that are subject to market forces but not sold into private hands – do only about as well in terms of efficiencies as private firms.

Efficiencies, real or imagined, are one thing and accountability another. The privatisation process has created a deepening fog over the once-corporatised and now-privatised sector, through which it is hard to find information. It is a fog that has crept further to also swallow some entirely private companies contracted to the public purse. Public funds are being spent on or by such organisations but the transparency public investment would normally require is deemed by those organisations to be significantly against their interests, given the State’s requirement that a successful business operation – and so profit and growth often amid competitors unencumbered in such transparency terms – is its primary objective. Hence those wanting to hold the State to account for, for example, a contract with a private company that it has used public money to secure, increasingly find strong resistance to the notion that that contract is a public document. But governments, too, often want them kept secret, if for no other reason than to “obscure evidence that might compromise their claims about the success of highly controversial privatization programs” (Roberts, 2006, p. 152).

2.4.3 Neoliberalism and journalism. Before discussing data to do with privatisation, it is helpful to first contextualise that discussion by detailing how journalists' relationship to neoliberalism is understood here. To attempt a thorough identification of neoliberal structuralism in the world of media would be a mistake. Not only is it outside the scope of the research, but the focus of this thesis is on the function within democracy theory of a mechanism designed to correct an imbalance in power relations. To centralise neoliberal theory excessively would be to restrict the research too much to a political-economy perspective. Rather than making a case for neoliberal theory, this thesis takes as its starting point that the theory explains the shadows that have been cast over some state-held information by the growth of the privatised sector, itself a central aspect to the structural adjustments (Kelsey, 1993) that were made to economic, political and, ultimately, social worlds in Aotearoa New Zealand. Any nuances in neoliberal ideology circle around a fixed determination to release the power of the market at every opportunity. In conjunction with this approach came the abandonment of equity as a political economic principle in Aotearoa New Zealand (Easton, 1997) and, in terms of FOI and democracy theory, as an inflexible principle in the ownership of and access to information.

One of the attributes commonly ascribed to neoliberalism is its ability to centre itself, making other ideologies stand out as such while claiming some sort of ideological neutrality for itself. Following Aune (2001), Phelan (2014) attributes this normalisation of “post-ideological” (p. 91) neoliberal objectives to the “realist style” (p. 99) in which the neoliberal world is articulated and then reaffirmed by journalism. Phelan wants to understand critically an “enduring journalistic tendency to assume an ideologically charged stance that is enacted as ideologically or politically indifferent” (p. 97). He also seeks to go beyond restricted political-economy analysis that casts journalists as “relatively straightforward transmitters, reproducers or apologists of neoliberal ideology” (p. 90). In this argument's stronger forms, journalists are simply unthinking agents of the dominant ideology (p.90). But such an approach is inadequate for three reasons: it entirely dismisses the impact of journalistic identities on journalistic practice, it unhelpfully views neoliberalism as a single unitary force, and it casts media as “a politically hopeless and ideologically contaminated space” (pp. 90–91).

Applying field theory (Bourdieu, 2005), it is reasonable to see journalistic doxa, the shared and unspoken assumptions of those with habitus in the journalistic field – that is, those ideas subject to the “schemes of perception, thought, and action”

(Bourdieu, 1986, p. 14) of the field – as complicit with the shared and unspoken assumptions of neoliberalism. “The resonances between journalistic and neoliberal logics can be partly understood, therefore, as a convergence of realist styles and dispositions” (Phelan, 2014, p. 99). In fact, an understanding of third-way, or post-ideological, neoliberalism shows “we cannot understand its social authority independently of its specific resonances with the ‘journalistic habitus’: the cognitive and affective dispositions generated and naturalized (sic) in the journalistic field” (p. 93). Through this imbrication, the values of the ideology of the market are reproduced as taken-for-granted and prerequisite social parameters. As Harvey puts it, neoliberalism “has, in short, become hegemonic as a mode of discourse” (2005, p. 3).

Bourdieu’s own approach to neoliberalism and journalism was not so different from the insufficient political-economy argument – the economic field has come to dominate the journalistic one and journalists’ autonomy is undermined by the imposition of ratings and metrics as measures of success. As Phelan outlines (pp. 95–96), Bourdieu is critiqued for the arguable and enduring domination he assigns to the economic field over the political one, for totalising neoliberalism as an oppressive world order, and for a fatalistic, anti-democratic sensibility in his view of the news media’s levels of sophistication. Field theory has more to offer than that, and importantly shows journalism to be self-limiting through “factors often taken for granted within the logic of the field” (p. 94). Both neoliberalism and journalism have ideologies that are normalised and rendered relatively invisible through anti-political expressions of themselves. The cultural-studies perspective on journalism has, “in one sense, become commonsensical” (p. 98), yet the “notion that journalism should aim to be objective, impartial, balanced and neutral is still inculcated in the education and socialization of journalists, even if most have absorbed enough post-modern doxa to ritually concede that absolute objectivity is impossible” (p. 98). The image of a journalist as a trusted public servant now appears “rather quaint” (p. 97).

However, it would be a mistake to cast the old modernist imaginary as irrelevant, especially if we look beyond the US context that exemplified the changes identified by Hallin. Cross-national surveys document journalists’ ongoing affinity to modernist logics in different countries. Objectivity, accuracy, balance, political detachment and the watchdog principle are still important tenets of journalism practice . . . even within a journalistic universe transformed by neoliberalism. (pp. 97–98)

The imaginary of the modernist past is what drives public-interest journalists’ still-persistent OIA requests, despite the obstacles they know they will encounter. The sub-

genre in which they practice distinguishes them from the parts of the media suffering extreme commercialisation and they define their work as having value to citizens, rather than consumers.

2.5 Summary

Freedom of information is understood as a “lifeblood” (Nader, 1970, p. 1) for democracy, something without which democracy would be dead, or would not be democracy. Critical scholarship often seeks to clarify the gap between the promise and the practice of FOI because that represents a gap between the promise and the practice of democracy. FOI is used as a test for actually-existing democracy. It is a canary down the mineshaft for democracy because the theoretical ideas of accountability and representation are meaningless without a third idea – transparency – giving them form. The fourth-estate, scrutinising role of the media is only possible with such transparency and is ultimately important as the final pillar (Lidberg 2006, pp. 15–38) on which FOI rests and which are directly connected to democracy. In theoretical constructions of democracy, FOI has a salient role to play. From the fundamental nature of a citizen’s periodic electoral duties to the nuanced tug of war that is monitory democracy in practice, there is little that can be done in the public sphere effectively without full and timely access to information. So clear is the principle that its manifestation in a socio-political reality might be thought to be comparatively straightforward, at least when a widely applauded act provides both operational flexibility and a clearly defined and narrow list of exclusions, most of which themselves have to pass a public-interest test in any specific case to take effect.

However, the scholarship paints a picture of precarity – FOI is grounded by legal apparatus across more than half the countries of the world but in many it is ineffective to varying degrees. If some are well meant but operationally corrupted, there are many which are simply window-dressing for the needs of international trade and politics and the idea of them operating in good faith is rejected by a non-democratic regime. Even in liberal democracies, which constituted the first significant wave of countries to adopt FOI, there is growing understanding of the stifling of information that occurs in day-to-day politics and the infringement it is on a citizen’s rights when it occurs. Disclosure legislation, which comes into play every time a journalist asks an official for information, is often found to be ineffective in securing state-held information. FOI is undermined every day in myriad ways, from blatant disregard by unaccountable leaders diffident about the law to obfuscations by officials and even

minor delays in the delivery of information. While many dictators are famous for restricting information from their own people, the more global the power, the more global the impact. When Britain and the USA took steps backwards from transparency as global tension rose in the first decade of the 21st century, the FOI movement across the globe was affected. In the age of the so-called war on terror, security services in many countries, including Aotearoa New Zealand, became more opaque. In the USA, the Bush administration was able to build support for its attack on Iraq in 2003 using “secrecy that prevented a more complete view of the available evidence” (Roberts, 2006, p. 45). In Britain, Tony Blair had to later admit that evidence he relied on before the invasion was wrong. Some of it had been copied from a student’s thesis. Iraq proved later to have not had weapons of mass destruction.

Far from the lofty heights of global power, FOI failures wreak their weakening work on democracy in the day-to-day dealings citizens have with power elite whom constitute the State. Even the field of political power cannot entirely restrict information from other fields in Aotearoa New Zealand democracy and of course the habitus of agents within the field is influenced not only by the needs of agents with elite cultural capital, in this case power, but also through acknowledgement of other stakes in the fields, such as operational requirements and the integrity of the agency. Much information passes from state to citizen this way. However, public-interest journalists find administrative discretion is brought to bear in controlling ways when their FOI requests do not find favour with either politicians or administrators.

3. Battlefield Narratives: Theoretical and Methodological Frameworks

“One of the problems that faces every researcher, and especially in the social sciences, is to know how to free yourself from the things you know.”

– Pierre Bourdieu (1930-2002), French philosopher

The windows through which we look on the world help determine that world. Social research must be cognisant of, and transparent about, its research paradigms – both their place in time, which needs to be understood but cannot be overcome, and their lineages, which engender that time-dependent understanding of knowledge. This chapter outlines a theoretical framework that remains conscious of these issues. It explains the reasons for its political-science framing and the home it finds in the multidisciplinary context of journalism studies. It proposes democracy theory as a still-useful tool for understanding freedom of information (FOI) in the normative terms of the newsroom, even if, as growing scholarship argues, democracy theory is no longer sufficient for a full understanding of journalism (e.g., George, 2012; Josephi, 2012a&b; Nerone, 2012; Zelizer, 2012). The chapter also explains why social field theory (Bourdieu, 1990, 1998a, 1998b, 2005, 2012a, 2012b) is employed to analyse the obstacles faced by PIJ in its deployment of FOI rights through determining and connecting the relations of domination that exist between agents and agencies both within the fields of journalism and political power and across the boundary between them. It explores how neoliberal theory, used in critical contexts by some scholars (e.g., Kelsey, 1993; Phelan, 2014) to understand the political-economic transformation of Aotearoa New Zealand during and since the 1980s, helps locate the most serious of the operational issues facing FOI.

The chapter explores the epistemological underpinnings of the research and the qualitative methodological approach to answering the research questions. Given there is relatively little research in the area, it was seen as a useful and foundational step to gather and analyse practice-based narratives emerging from newsrooms, and other news-generating sites, about FOI before moving to analysis of data that might start to reveal causality. The chapter details the qualitative approaches taken and argues the methods deployed provide for validity and reliability within a fallibilist, or sceptical, understanding of knowledge (Hammersley, 2008). It explores the reasons for the enrolment of purposively selected research participants, and presents as its principal method the thematic and inductive analysis of qualitative data collected through semi-structured interviews with elite subjects. It also explains the purpose of systematic

document analysis undertaken to add a longitudinal dimension to the research. The project's analytical engagement with the data at two distinct sites is explained.

3.1 Theoretical Frames of Reference

This study is positioned within the interdisciplinary field of journalism studies (Zelizer, 2000), an area of scholarship in which researchers are employing a growing array of theoretical approaches as they attempt to find common ground at the foundations of the discipline. "On the one hand, there is a wish to develop a shared understanding of journalism studies as a discipline, but on the other hand, the discipline is seen to be best served by a multitude of theoretical perspectives" (Steensen & Ahva, 2015, p. 3). This research brings an established political-science perspective to forum of varied approaches. This choice, while not constructively rejecting any other, endorses journalism's place at the political table, including the political nature of the act of journalism.

3.1.1 Journalism studies. In broad terms, Schudson (2002, p. 251) lists three ways scholars approach journalism: through political-economic theory, from within sociology and from within cultural studies. In other words, scholars approach it for its relations to economic power, its structural role within society or as a set of cultural practices. But through whichever lens they look, news remains a cultural product because it is a "structured genre or set of genres of public meaning-making" (p. 251). Schudson finds later (2005) that within the sociological approach to journalism, there are four theoretical perspectives taken – the economic organisation of news, the political context of news making, the social organisation of news work and cultural approaches. While remaining aware of the cultural nature of news, the perspective taken in this study is comparable to Schudson's "political context of news making", given its focus on a transparency mechanism awarded quasi-constitutional status by lawmakers. Levels of press freedom around the world are ultimately determined by political powers, be that in laws that protect press freedom or suppression of press freedom as part of the ongoing operations of government.

3.1.1.1 A political-science approach. A struggle for information is a struggle for power and a struggle to keep information secret is a struggle to retain and deny power. A journalist's request for information held by the State is an innately political act, if politics is taken to be the pursuit of power, and knowledge is a type of power – an idea widely accepted today but attributed to Francis Bacon (1561-1626) who declared: *Nam et ipsa scientia potestas est*. Journalists who seek information from the State to

empower public-interest stories help create a public that has power, being at least informed enough to participate in the political process. That news work is both political in nature, in that it attempts to define political realities even if it is not openly advocating for certain paths forward in social issues, and political in its enabling role in political representation and accountability. If FOI is an enabler of that political news work, it would seem productive, then, to approach it through the lens of political science. Much FOI research shares the qualities of political science – for example, comparative studies that seek to highlight differences between national contexts for and successes in FOI – and often it is taken for granted, given the nature of FOI, that its introduction is increasingly seen as a necessary part of any democracy’s rites of passage (Lidberg, 2006, p. 11).

Most FOI regimes, including Aotearoa-New Zealand’s, have bi-directional focus – that is, they are ostensibly concerned with both the rights of the citizen and the obligations of government concurrently – and are regulators intended to ameliorate a power imbalance. As such, they have a central function in democracy theory, attempting to ensure a transparency that facilitates citizen empowerment and engagement in government, making it in some satisfactory way self-government. In the world of social research, therefore, it is unsurprising that FOI brings democracy theory with it and, as a result, research about it tends to fall under a partly normative political-science rubric. While news is indeed a product of the world of cultural production (Schudson, 2002, p. 251), its ties to the legal and political world are real. FOI is perhaps the clearest example of such ties.

3.1.1.2 *Decoupling journalism and democracy.* Democracy theory has long been central to our understanding of journalism as a public good and of the role of the journalist as a public intellectual. However, Zelizer (2012) argues democracy has played too large a role in journalism studies, outliving its “shelf life” (p. 459) as an idea and had “settled in for the long haul of journalism scholarship because so much existing institutionalized knowledge depends on its presence” (p. 468). Early political philosophers advanced a “democracy-journalism nexus” but the mind-set they invoked was “often unreflective of circumstances beyond the West” (p. 465), she argues. Another problem has been practical in nature – a standard model would not account for significant national differences in the relationship of journalism to democracy, or indeed failures of journalism, including its adherence to notions of equivalence in the reporting of issues such as McCarthyism (and now global climate change).

[The] present period of partisan news in the United States clearly undermines the picture of rational discourse which long supported the link between democracy and journalism, suggesting instead that so-called objective journalism, so central to western notions of democracy, modernity and civil society, is an anomaly. Recent scandals in the United States and United Kingdom, ranging from WikiLeaks to the phone hacking at the *News of the World*, reveal problematic aspects of journalistic practice in countries that have been heavily invested in promoting a certain traditional view of the journalism/democracy nexus. (Zelizer, 2012 p. 466).

Journalism's "fourth-estate" role, on which it relies for the justification of its public-interest work, is now variously contested by social researchers, who argue increasingly that the role is, to some degree, mythical, even antithetical, in nature. Such scholars are either persuaded by journalism's ongoing legitimation and reinforcement of social power imbalances (e.g., Chomsky & Herman, 1988; Bourdieu, 2005) or by the organisational and occupational impediments to its accountability role (e.g., McChesney & Nichols, 2010). Meanwhile, others have detailed the deleterious effects on public-interest journalism of the financialisation of media ownership and the resultant market orientation of news-production processes in the context of that corporate struggle (Hope & Myllylahti, 2013). They now explore cultural over-reliance on official sources (e.g., Miller, 1993; Watson, 2014) or the relentless demands of today's news "cycle" and the demands of advertisers, both of which limit public-interest work. Much of what is put before news readers today is *not* about holding power to account on behalf of the public, if the public is defined as a reason-driven body politic (eg, Thussu, 2007). Scholars have long argued that not much of it was ever about that (e.g., Lippman, 1925; Nerone, 2012; Conboy, 2013). Researchers found the political-economic hegemony concealed in the hold when journalism was exported from the West (Nerone, 2012, p. 452) and pointed out that Al Jazeera, counted among the "credible and powerful voices in the world, is located in a country that is not a democracy" (Joseph, 2012a, p. 443). Still others identify business journalism's symbiotic relationship with the corporate and governmental power it claims to monitor (e.g., Starkman, 2014). Failures of FOI suggest journalism is struggling to be an effective "fourth estate", if it ever was one (Treadwell, 2016). It is widely acknowledged that in the West, at least, ongoing and internet-related diversifications of audience and advertising spends are resulting in a weakened, impoverished political media. And with an even broader purview, journalism researchers look at how the very idea of a democratically productive public sphere, in which journalism is tasked with playing a key role, has been structurally transformed by the influences of self-serving capitalism that act on it (Bourdieu, 1996; Habermas,

1962/1989). The frameworks through which today's journalism is critiqued as inadequate for its democratic roles of watchdogs, agenda-setters and gatekeepers for democracy (George, 2012), are multiplying. Indeed, "inherent to the past decade and a half of scholarship about journalism has been a recognition that the affinity between the rhetorical claims of journalism and its ability to realize these are growing apart" (Broersma & Peters, 2016, p. 3). A presumption of the centrality of democracy theory in journalism studies narrows the academy's analytical gaze, when journalism in all its complexity needs analysis. We might set aside the political implications of any act of journalism long enough to ask: What are the *social* factors behind and the *social implications* of the phone-hacking scandal that sparked an inquiry into media ethics and brought down the *News of the World* in the UK in 2011? A feminist perspective on the newspaper's treatment of murder victim Millie Dowler and her family seems highly (Deardon, 2014) relevant, as another example. In sum, a narrow theoretical view that sees information for democratic purposes as journalism's entire workload fails to taken into account its other centres of interest, audiences and social implications. A healthy public sphere encompasses more than a discussion of politics and inevitably journalism is a church broader than the political public sphere (Habermas, 1989).

Given this interdisciplinary and growing interest in the gap between the theory and practice of journalism – in other words, journalism is often heroic in its self-representations but, for reasons of immanent ideology or occupational impediments, the social realities of its practice are sometimes found to be in contrast to those stories – it makes sense to approach FOI with caution. FOI is a contested site where journalism can be an indignant, frustrated crusader of behalf of the public, where the failures of mediated political communication can be attributed more to the serve-serving tendencies of the State and less to any failure of journalism. In normative terms, FOI is considered an emancipatory legal mechanism but is itself increasingly portrayed by the media as one failing to adequately empower PIJ's "fourth-estate" activities (e.g., Fisher, 2014). Mostly missing from this narrative, however, is any consideration that journalism might share in responsibility for FOI failures. Members of government and their officials are unlikely to volunteer to provide information that calls into account their credibility and so they must be asked for it. To what extent are journalists motivated to uncover state-held information? To what extent are they insisting on their right to state-held information? To what extent are their employers allowing for the time-consuming nature of engaging state agencies in the tug-of-war of FOI? To what extent is the weakened state of the political media a cause in itself of a lack of

transparency from the State? Researchers interested in journalism's role in creating and maintaining state transparency have a legitimate focus on the tendency of the State towards secrecy, but some solutions to the problem, at least, are likely to lie beyond the State. Any form of democracy theory that relies on an urgent and persistent inquisition of the State from the news media presupposes the extent of privately owned media's motivation to be the inquisitor, not to mention the resources it decides it can deploy in any attempt. The unproblematic role of the news media as a champion of democracy is an increasingly problematic framing for journalism studies and one to which the academic journal *Journalism* devoted a special issue – *Journalism* 14(4) – in 2012. In this issue, scholars argue from multiple perspectives that journalism and democracy need rethinking, if not complete decoupling, in theoretical terms. With a historiographic approach, Nerone (2012) exposes the hegemonic exportation of the Western model of journalism. He notes the “multiple accounts of the rise of journalism” (p. 447) can be considered in two families, one emphasising the political, which sees journalism as “a cause and product of the age of bourgeois revolution” (p. 447) and a “creature of politics” (p. 448), and the other the marketplace, which looks to the 19th century and market theory, which suggests “class reconfigurations and market conditions encouraged the rise of a culture of news that emphasized political neutrality and something like objectivity” (Nerone, 2012, p. 448). In both theoretical families, however, journalism has at least “something to do with self-government”.

Alongside Nerone (2012) and Zelizer (2012), who, as noted earlier, argues the “shelf life” (p. 459) of democracy theory is over for journalism studies, Josephi (2012b) argues journalism is not so much dependent on democracy as it is dependent on freedom of expression and the level of autonomy given to media workers. Journalism happens, she points out, in countries where democracy is not the political system. The coupling of democracy and journalism has been

a marriage that suited scholars as much as it suited journalists. For practitioners, it served to define their profession by giving their role a political dimension which legitimized their claim for freedom from state supervision. For scholars, linking journalism with democracy served as a shortcut to a set of norms against which journalism could be measured. (p. 475)

3.1.1.3 Retaining democracy theory. However, decoupling journalism and democracy might be premature, given that such disconnection would obscure such vital signs of democracy as FOI. While the scholarly work published in *Journalism* 14(4) argues that democracy theory has overshadowed, even impinged on, other ways of understanding journalism, when it is returned to its rightful proportions, there is still a

direct and central line between democracy theory and the idea of the press as a key monitor of power. The implication of any study of FOI, even if that study, like this one, is centred on journalists and journalism, is an implication for democracy. To understand that implication, it is necessary to test it against democracy theory. No democracy will be a perfect manifestation of a theory and no newsroom operation a perfect manifestation of the normative theories of journalism. But both attempts – at democracy and journalism – are connected and interdependent at a level that is political. There may have been, as Steensen and Ahva say (2015, p. 12), “a broad paradigmatic change in journalism studies since 2000 from perspectives of political science to sociological perspectives” but where journalism and politics intersect – for example, in FOI – the political science that remains is well employed. If an undercurrent through the *Journalism 14*(4) issue is that journalism needs to be given its local context by scholars, and not enveloped by a homogenising framework, then this research is part of that idea. One risk in universalising FOI in theoretical terms is that Aotearoa New Zealand, often lauded in comparative FOI studies, is never considered in danger in terms of transparency, such is the positive contrast it provides with most other countries. It continues to be one of the few countries coloured white – signalling a “good” situation in terms of press freedom – on the annual press freedom map produced by journalism advocacy organisation Reporters Sans Frontières (RSF) (<https://rsf.org/en/world-press-freedom-index>). Given local context, however, Aotearoa New Zealand’s fifth place on the RSF ranking for press freedom can be viewed with less enthusiasm. It was once regularly in the top two.

Democracy is indeed still central to journalism in Western democracies, including Aotearoa New Zealand. Schudson (2000, p. 192) calls Herbert Gans’ list of American journalism’s “core values” – ethnocentrism, altruistic democracy, responsible capitalism, small-town pastoralism and individualism – “the unquestioned and generally unnoticed background assumptions through which news in the United States is gathered and within which it is framed”. Journalists, including those in Aotearoa New Zealand, consciously cite the needs of democracy in the justification of their work. A journalist’s grasp on democracy is their anchor among the waves of commercial and political influence they endure, and among the industrial chaos and the uncertainties surrounding its audiences in the digital age. As Berger notes (2000, p. 83), despite “all the complications, [the democratic ideal] survives as a powerful motivating force in the media industry globally, and which serves as *one* [emphasis added] very important standard by which the purpose and performance of journalism can be assessed”.

While multiple scholarly perspectives on journalism are helpful for journalism and for journalism scholarship, the move to such a diverse range of approaches does not mean the end of democracy theory as a useful framing for an inquiry into journalism. As Zelizer (2012, p. 468) says, “so much existing institutionalized knowledge depends on [democracy’s] presence’ in research”. Journalism researchers tend to understand FOI in its role as an enabler of a journalism that attempts to satisfy democracy’s needs. This research, for reasons outlined below and like others before it, gives primacy to democracy theory as a framework for understanding FOI’s role in journalism.

Unlike Habermas, Schudson (1994, p. 532) does not see the public sphere as distinct from the State, constructed purely of the members and institutions of civil society, but linked irrevocably to it. He argues the State, omitted in many conceptions of public space, engenders both social spaces and institutions that give the public sphere form and should be brought back into scholarly discussions of democratic deliberation. “I think it is important to examine not only how people make their voices effective in bringing issues before the public but how governmental institutions help to form the “voice” of citizens in the first place” (p. 532). This doctoral research is, perhaps, part of that tradition – one that sees the flourishing of a public sphere of some sort as dependent on state transparency and therefore on FOI. If a regulating state mechanism designed to empower the all-important public sphere in a democracy is failing, then democracy theory is an appropriate vessel from which to assess the damage.

In his influential historicisation of democracy, Keane (n.d., p. 82) dates the origins of today’s “monitory democracy” back to 1945, as discussed in Chapter 2. He situates it as the most complex form of democracy yet, and in direct lineage to earlier periods of assembly-based democracy and representative democracy. The theory accounts for a flourishing of myriad civil society organisations that exist in some way to exert pressure on power to act in the interests of citizens, either in general or on specific issues. With politicians unable to be trusted, civil society – represented by monitoring mechanisms from community committees to global watchdogs – holds to account society’s power elites and is itself re-energised by its agency. Such a rich array of monitoring roles within society deepens and broadens its democracy, paying attention, as they do, to details beyond – and, indeed, after – the cyclical election of representatives. One of the remarkable features of today’s monitory democracy, poses Keane, is “the way power-scrutinising mechanisms gradually spread into areas of social life that were previously untouched by democratic hands” (n.d., p. 89).

A relationship might be at least posited to exist between the development of such a culture of monitoring and the proliferation of FOI regimes around the world since the USA passed its Freedom of Information Act (FOIA) in 1966. Such monitoring roles require accurate, state-held information for their successful execution. Schudson, addressing the Sydney Democracy Network in 2015, pointed to the cultural shifts that built towards the political act that was the introduction of the FOIA in 1966 (Treadwell, 2015). Similarly, in New Zealand, pressure from the Coalition for Open Government, a group formed in response to a lack of transparency from the Muldoon-led government about its Think Big energy policies in the late 1970s, is widely accepted as having been influential to the introduction of the Official Information Act (OIA) in 1982 (Te Ara, n.d.). It would be wrong to think of New Zealand as a closed society until the introduction of its right-to-know laws. Rather, the introduction of the OIA 1982 followed “a long period of public concern and criticism about the lengths to which the government went to preserve secrecy” (Aitken, 1998, p. 4). In Aotearoa New Zealand as well, there were cultural shifts towards an open society and a concurrent growth of monitoring culture, culminating in the passing of the OIA in 1982. Such a framing has produced a dominant, albeit limited, academic narrative around FOI in New Zealand, mostly produced by policy and legal scholars (e.g., Poot, 1997; Price, 2006; White, 2007). This structural approach to understanding FOI risks avoiding its real-politik challenges, among which sits “administrative discretion” (Roberts, 2002), a paradox of FOI that sees those being monitored managing the business of the monitoring (officials themselves deal with complaints about their FOI practice). While the “new power-scrutinising innovations [of modern society] tend to enfranchise many more citizens’ voices” (Keane, n.d., p. 83), the levels of freedom such regimes are meant to create and protect are at risk when information sought by requesters is information harmful to the reputation of the State and/or its agencies. Monitory democracy, even with today’s “communicative abundance” (p. 97), is no guarantee of transparency.

The profusion of “-gate” scandals reminds us of a perennial problem facing monitory democracy: there is no shortage of organised efforts by the powerful to manipulate the people beneath them; and hence the political dirty business of dragging power from the shadows and flinging it into the blazing halogen of publicity remains fundamentally important. (p. 99)

Despite the constrained role of the fourth estate in the 21st century – both in independence and resources – journalism still attempts, to degrees of intensity, this “halogen of publicity”, and the success or failure of that attempt still has real impact on

the state of the civil sphere. Despite failings of the fourth-estate model, elections do happen and voters do need to be informed before them.

Given an assumption that respondents (senior and/or investigative journalists) will frame their own efforts at accessing state-held information in terms of the normative professional frameworks of Aotearoa New Zealand journalists, this research seeks to identify from within those framings, salient and revealing patterns of meaning-making. It asks how journalists perceive the OIA 1982 and any obstacles they find in their way as they pursue information from the State for the constitution of their news work. It inquires after freedom of information through the eyes of its participants, while remaining conscious of the social, political and professional norms and pressures under which journalists work and report on that work. It seeks to interrogate, in some way, an ideology – “democracy in Aotearoa-New Zealand” – on the substance of its achievements and begins that by studying the stated experiences of a sector of workers whose role is expected by society to function, irrespective of the funding society provides for it. Like much freedom-of-information research before it (e.g., Roberts, 2006), it assumes a strong interest on behalf of its beneficiaries in the authenticity of a claim to FOI and democracy, and so links itself to ideas in political science that seek to find the daylight between the promises of government and the experiences of the citizenry. An FOI regime is fundamentally a legal device that enables the democratic principle of state transparency and, as such, demands contextualisation within a generalised political framework.

3.1.1.4 Neoliberalism and journalism. This research employs social field theory as a framework of inquiry in its approach to neoliberalism. A fulsome account of neoliberalism would be outside the scope of this research, though Chapter 5 attempts an explanation of it in theoretical terms. But this research takes as its starting point a critical view that neoliberalism is “in the first instance a theory of political economic practices that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade” (Harvey, 2005, p. 2). However, the focus of this thesis is on public-interest journalists’ engagement with FOI, a mechanism designed to correct an imbalance in power relations between citizen and state. Neoliberalism is an economic theory with influence well beyond economics, and to centralise it would be likely to restrict the research too much to a political-economy perspective. Rather, this thesis takes as its starting point that the

theory explains the shadows that have been cast over state-held information by the growth of the privatised sector, itself a central aspect to the structural adjustments (Kelsey, 1993) that were made to economic, political and, ultimately, social worlds in Aotearoa New Zealand during the neoliberal revolution (Phelan, 2014). Any variations in the terms of neoliberal ideology still circle around a fixed determination to release the power of the market at every opportunity. In conjunction with this approach in Aotearoa New Zealand came the abandonment of equity as a political-economic principle in Aotearoa New Zealand (Easton, 1997) and perhaps, as will be explored in Chapter 5, in terms of FOI and democracy theory, as a principle in the ownership of and access to information.

One of the attributes commonly ascribed to neoliberalism is its ability to centre itself, making other ideologies stand out as such while claiming some sort of ideological neutrality for itself. Following Aune (2001), Phelan (2014) attributes this normalisation of “post-ideological” (p. 91) neoliberal objectives to the “realist style” (p. 99) in which the neoliberal world is articulated and then reaffirmed by journalism. “The resonances between journalistic and neoliberal logics can be partly understood, therefore, as a convergence of realist styles and dispositions” (p. 99). Phelan wants to understand the “enduring journalistic tendency to assume an ideologically charged stance that is enacted as ideologically or politically indifferent” (p. 97). He also seeks to go beyond restricted political-economy analysis that casts journalists as “relatively straightforward transmitters, reproducers or apologists of neoliberal ideology” (p. 90). In this argument’s stronger forms, journalists are simply unthinking agents of the dominant ideology. But such an approach is inadequate for three reasons (pp. 90–91): it entirely dismisses the impact of journalistic identities on journalistic practice, it unhelpfully views neoliberalism as a single unitary force, and it casts news media as “a politically hopeless and ideologically contaminated space”. This research, while informed by Phelan’s examination of neoliberal theory, puts emphasis on journalistic identities through the qualitative nature of their narratives, seeks to understand neoliberalism’s effect on FOI and does not dismiss PIJ as a politically hopeless project.

3.1.2 A social perspective. Despite employing political science as a home base for this inquiry, a social perspective is increasingly important to our understanding of journalism, dominated for so long by firstly normative and then empirical scholarship (Steensen & Ahva, 2015, p. 1). In Bordieusian terms, the research site is at the intersection of the journalistic and political fields (Bourdieu, 2005) and, as such, FOI is

a site of inter-field contestation. Following Max Weber and Emile Durkheim, Bourdieu's field theory views "modernity as a process of differentiation into semi-autonomous and increasingly specialized spheres of action – 'fields'" (Willig et al, 2015, p. 2). All fields are subsumed by the field of power, an all-encompassing meta-field "organized around an opposition between economic and cultural poles. Fields oriented towards cultural struggles tend to be dominated by fields revolving around economic stakes" (Lindell, 2015, p. 366).

The journalistic field – itself identified and explored by Bourdieu (2005) – is the social plane on which the agents of journalism act and constitute journalism's rules of engagement as they do. Such agents and their agencies – journalists, editors, publishers, networks and so on – hold positions within the field defined by their habitus, their socialised subjectivity as an agent within the field. Among other things, habitus reflects an agent's practical mastery of the operational nature of their field. Bourdieu uses the metaphor of the game to explain habitus: "Having a feel for the game is having the game under the skin; it is to master in a practical way the future of the game; it is to have a sense of the history of the game" (1998a, p. 81). Habitus is relational in nature, and thus defines an agent's status within the field and their orientation towards its concentrations of economic and cultural capital. Life in a social field is a constant struggle for or against domination – cultural, economic or both. The structure of the social world reflects the tensions between economic and cultural capitals, two forms of power within the field. The former can be simply defined as money and assets that deliver purchasing power (Benson, 2006, p. 189) and the latter knowledge (both general and specific) and expertise within the field. Economic capital tends to dominate cultural capital but status in the cultural aspects of the field helps "transform good fortune into 'legitimate' fortune" (p. 190). Cultural capital fuels the distinctiveness of the field at the internal, "autonomous" cultural pole. Meanwhile, pressures from outside the field, including from the field of political power, are found influencing the "heteronomous" pole, where, due to the economic nature of its capital, the field is engaged by other fields. An organisation's "economic weight" (Bourdieu, 1998b, p. 41) is easier to determine than its cultural weight.

Within this theoretical context, to try to understand how a journalist thinks and why she or he works in certain ways, it is helpful to understand the position that journalist occupies on the field in relation to the autonomous and heteronomous poles. The journalists at the centre of this research are found, in terms of field theory, towards

the autonomous pole. Their interests in the economic fortunes of their employers do not extend much beyond their employers' ability to retain public-interest journalists and continue to pay them adequately. It would be wise, however, to allow for some interest in economic matters, given the precarious state of the field of journalism (McChesney & Nicholls, 2010). As well, while in a small minority, the views of freelancers and journalists working for small and independent media production companies are represented in the research. Such is the economic struggle of these producers for a place in the field, it would be too narrow to suggest the senior public-interest journalists self-employed or employed by small companies are not strongly influenced in their thinking and work by its economic conditions and are pulled, in field-theory terms, variable distances towards the economic or heteronomous pole. Given this influence, however, respondents in this research project consciously and prominently foregrounded the prevalence of public-interest values in their daily work, positioning themselves closer to the field's cultural pole.

Deploying field theory in a study of the use of FOI also allows us to test the strength of this cultural capital of the journalistic field (even the relatively large amounts of field-specific cultural capital held by award-winning and investigative journalists) when compared to the strength of the capital wielded by the elite field of power – and even those in relatively subordinate positions of officialdom within the political field (Marliere, 1998). Strong asymmetry here would counter any notion that governments in liberal democracies are, even generally, actually held to account by the democratic principles of free speech and FOI and their manifestations in the work of journalists. Journalists are breaking stories of significance to the public interest every day and many of those stories shine light on places social and political power elites would rather not have light shone. The fact that the dominated party in the field relation is charged by the ambitions of democracy with seeking accountability from the other is an example of one of the great ironies of transparency – it is both essential and hard to attain. The conflict over FOI is between the State, an agent so strong in the field of power that it is among the super-stakeholders in both economic and political capital, and agents and agencies within the journalistic field, a sub-field of the field of cultural production that is feeble in power terms by comparison. While it is acknowledged by Bourdieu and others as having a distinct place in the social space because its products influence the agents of most other fields (Bourdieu, 1998b), the journalistic field is no match for the State in terms of its structural position or economic and political heft. Its only hope as the tectonic plates of the journalistic and political fields collide

asymmetrically and unhappily is the legal field's intervention with the introduction of right-to-know legislation.

3.1.2.1 *Habitus*. Habitus is a Bordieusian concept that situates an agent within a field and conceptualises the field-disposed capital she or he has for the ongoing contest that is social life. Here habitus is also proposed as a method of inquiry. "In short, the operationalisation of habitus as a research tool implies taking into consideration its complexity as a container of practices imbued in the objective and subjective contexts of the phenomenon under study" (Costa & Murphy, 2015, p. 8). Wacquant (2014) suggests three ways to understand it as a method: inductively, deductively and by examining the education of the agent into the field in question. Of the three options, this research employs the first, a synchronic and inductive attempt to "trace out connections between patterns of preferences, expressions, and social strategies within and across realms of activity so as to infer their shared matrix" (p. 6). Data generated by 18 in-depth and semi-structured interviews with senior and investigative journalists will be analysed for such patterns of preference and expression that will also allow a picture of the architecture of the journalist doxa, the normative matrix of spoken and unspoken assumptions that make the practice self-evident, as it pertains to FOI, to emerge. Within the context of their habitus and against this field doxa, journalists' expectations can be contextualised, as can their descriptions of their interactions with officials about FOI matters.

3.1.2.2 *Doxa*. Norm-orientated agency within the field takes places according to doxa, the "taken-for-granted communicative conventions and demands that regulate criteria for membership of a certain field" (Willig et al, 2015, p. 7). These systems for action within the journalistic field, the conventions of which are internalised by agents and so prescribe the boundaries of discourse, include the professional norms and objectives which journalists rely on for the justification of their claim to, among other things, a fourth-estate role in modern society. Thus, doxa is an important contextual element in a study that considers how journalists represent their public-interest work. To contemplate the doxa, the self-evident and taken for granted rules of the journalistic field, including those rules that prescribe the boundaries of relevant discourse, is to contemplate the normative context for actions upon it. Journalists asked to relate their experiences of freedom of information are likely to frame them – both consciously and unconsciously – according to the doxa of the field. For example, while empirical studies might show failures in FOI, contextualising those failures with reference to doxa helps

measure not only the degree of frustration faced by those with norm-based objectives but also the daylight between the findings of empirical research about journalism and its normative ideals.

3.1.2.3 Applying field theory in data analysis. Asked by co-author Loïc Wacquant to sum up his methodological approach, Bourdieu listed (Grenfell, 2014, p. 25) three levels to his analysis in sociological inquiry: an analysis of the field's position in relation to the uber-dominant field of power, a mapping of the objective structure of relations between the positions occupied by agents and an analysis of the habitus of agents. In this research, attention is given to all three as each is revealed in the thematic analysis of data. The power of the State, the positioning of public-interest journalists within the marketplaces of journalists and the cultural capitals of respondents are all potentially important to the project.

To analyse the narratives of public-interest journalists in relation to FOI is to start to build a scholarly map with frontline reports from the field and, in particular, the reports from agents' skirmishes with power. Subsequent research chapters will outline how codes formed inductively and progressively during the coding of qualitative data help explain the journalistic field's relationship to that power, the inter-field relations behind public-interest journalism, and the habitus of respondents.

3.2 A Qualitative Methodology

The primary research question this doctoral project seeks to answer is: *In what ways, if any, does an analysis of practice-derived representations of FOI by public-interest journalists relate to conventional transparency narratives in Aotearoa New Zealand?* This question is an important early step as social research responds to notions of FOI breakdown posited by anecdote. It seeks to answer this question within the theoretical framework outlined above, and through a qualitative methodology. The qualitative approach taken reflects an interest in "the complexity of social interactions expressed in daily life and by the meanings that the participants themselves attribute to these interactions (Marshall & Rossman, 2011, p. 2). However, a methodology reflects a research process and before discussing that in detail, it is vital to understand the position of the researcher in relation to knowledge and therefore to the proposed methodology itself.

3.2.1 Epistemology. While postmodernism is now "often regarded as having lost its potency within social theory" (Bryman, 2008, p. 23), its lingering effects still include the acceptance of manifold and co-existing views of the world (Boland, 2005).

Against this background of epistemological diversity, there is a need for clarity and openness from researchers. It is impossible to be certain, in scientific terms, of any social reality. Given, among other things, our proclivities for both cultural and class bias, not to mention any human tendency to self-importance, we must continue to test that we do know what we think we know. Such deepening relativism and its resultant uncertainties might be paralysing if it were not for the absolute need to avoid paralysis. This is where fallibilism can re-secure the footings of the research. Fallibilism holds that all theories may be false, including those we believe to be true (Hammersley, 2008, p. 48). By doing so it rejects foundationalist claims of access to an objective social reality, but it avoids the trapdoor marked “relativism”, under which researchers find epistemic criteria have been “rejected as ideological and replaced by a political, ethical or aesthetic concern with valuing, appreciating, or treating fairly, multiple conceptions of or discourses about the world” (p. 47). Fallibilism provides for acceptance of knowledge, even though certainty itself is unachievable. It encourages scientific pursuit as both possible and desirable but fruitful only within the context of its own fallibility, evidence for which was raised by Kuhn’s research (1970) showing that an understanding of the paradigm shifts that occur in the science world undermines confidence in a foundationalist perspective. However, moving forward from that discovery, notes Hammersley (2008, pp. 47–48), we are “presented with [only these] contrasting, old and new, positions as if there were no middle ground”. But cultural relativism and language studies are not the only alternatives.

By contrast with relativist and postmodern positions, fallibilism does not reduce the task of social science to [either] challenging dominant claims to knowledge or celebrating diverse discourses. Nor is it turned into a practical or political project directly concerned with ameliorating the world (p. 48).

Rather, it insists on a “more modest kind of authority than that implied by foundationalism” (p. 48) and is, as a result, a more modest but more satisfactory enterprise. If social inquiry is to be scientific, epistemic criteria and reflexivity (Wacquant, 2011, p. 89) are required.

This is not to discard all notions of relativism, which is important both in restraining narratives that dominate in hegemonic ways, for example the superiority of one culture over another, and in understanding phenomena that have cultural origins. A journalism-studies perspective on freedom of information (FOI) is in part culturally informed because news is a cultural product (Schudson, 2002, p. 251) – it is an outcome of culturally sited meaning-making. FOI, like the media systems it inhabits and helps

shape, varies profoundly around the world. To treat it in homogenous theoretical terms is to ignore its disparate realities, which are both political and, to some degree, cultural in nature. In some societies, despite a disclosure law, there is no culture of openness and state transparency is little more than a political façade. New Zealand's FOI regime evolved within a society seeking to grow its culture of openness (Danks, 1980). But citing the Zimbabwean Access to Information and Protection of Privacy Act, which Banisar (2006, p. 27) calls the most egregious of all, could bring an information requester a visit by a goon squad and a beating for their impudence. In between those two examples, are more than 115 other FOI regimes that have had widely varying success in creating transparency, embedded in a wide variety of cultural and political contexts.

This research is qualitative in nature. It investigates the experiences, as stated, of senior and investigative journalists through in-depth and semi-structured interviewing. It also contextualises the findings from the analysis of data generated in the interviews through document research into the socially and politically constructed purposes of the New Zealand FOI regime. Methodologically, the aim of the research is to form empirical conclusions through the analysis of data generated in in-depth interviews and then consider those against contextualising analysis of historical documents, notably Hansard's record of New Zealand Parliamentary debates, intended to show the thinking at the time of the introduction of the OIA in 1982 and to trace how political discourse about FOI has changed since.

3.2.2 Semi-structured interviews. In-depth research interviews are sites of knowledge construction as two or more individuals exchange views on a "theme of mutual interest" (Kvale & Brinkmann, 2009, p. 2). Such an approach was taken to gather rich qualitative data from professionals at the forefront of public-interest journalism. Journalists working in public-interest journalism are faced with access issues and are well placed to help constitute a picture of FOI in Aotearoa-New Zealand today. The researcher, long interested in FOI, was well placed to conduct interviews that were empathetic in nature but structurally suited – as far as their structure went – to developing the themes of the research project. The interviews were opportunities to record the personal views of some of New Zealand's best public-affairs journalists on one aspect of the functioning of New Zealand PIJ. But they were also opportunities to observe how journalists construct FOI in their narratives and how they describe their approach to their public-interest work.

There is, however, much more to semi-structured interviewing that needs consideration than its obvious benefits to the formation of research as a set of ideas and as a principal method by which the research plan formed by those ideas is executed. There is much scholarly debate about the value of interviews, the research values they actualise and the evaluation of the data they produce. Such focussed exchanges as they are, interviews will inevitably raise complex ethical issues as well. Partnership is today commonly proposed as a principle on which interviews with respondents in qualitative research should be based, maximising the interview subject's control of their situation as far as possible. A shift to the conceptualisation of social research data gathered in interviews as a co-construction of meaning was proposed first by feminist scholars, often influenced by ethnomethodology (Doucet & Mauthner, 2008, p. 335). This was a response to the potential for interviews to be places and times in which subjects are at risk of harm, a situation often worsened by an imbalance in perceived power levels between researcher and subject. An interviewer has a purpose, comprising to some extent elements of self-interest and so motivation to control proceedings as much in their favour as they can. Often research subjects have so much self-interest invested and become the tools of researchers, not partners in the research.

Meanwhile, it is not just power relations that can influence the findings from research interviews. Differences in social identities between interviewer and interviewee raise questions about the nature and even the value of data collected. As Marshall and Rossman put it (2011, p. 158), "a few stances" on such questions have emerged within research scholarship, including a feminist perspective that men interviewing women is less effective than women interviewing women. Others take strong positions that too similar a social identity to the respondents means researchers assume "too much tacit knowledge" (p. 158). Certainly, similarities in social identities between the researcher and respondents in this project can be identified. The researcher has spent periods of his working life as a public-interest journalist and experienced the same sort of occupational impediments that respondents are being asked to recall. This will be discussed further as a limitation of the research in Chapter 7. Yet others, say Marshall and Rossman (p. 158), find the issue is complex and nuanced. This is the position of this research – that semi-structured interviewing is a productive method for the recording of personal narratives which are constructions drawing on respondents' memories of their experiences. Respondents in this project are experienced journalists with substantial habitus on which to draw. The experiences they are asked to describe, while frustrating, are not traumatic. They are battle-hardened and successful at their

trade, with many occupational awards shared between them. Their work ranges from investigations into national security services to the unpacking for the public of the machinations of local government. They fit the theoretical idea of an elite subject, a subject who is “influential, prominent, and/or well informed in an organisation or community; they are selected for interviews on the basis of their expertise in areas relevant to the research” (p. 154) and the “valuable information” (p. 154) they can provide. In turn, potential influences on the interview to consider would include the ability to shape the conversation and influence the inferences taken by the researcher which being such experienced interviewers themselves, respondents are likely to have. Marshall and Rossman note that working with elites can place great demands on the interviewer to establish competence and credibility (p. 156) but in this case a lifelong interest in FOI, a background in journalism and ongoing practice in the field of public-sphere interviewing allowed the researcher to establish such credentials. Experience in interviewing was a strength in both sides of the conversation. In this project, the interview is conceptualised as a wide-ranging conversation, with reciprocity as a key value. The conversation is kept on track through a replicable paradigm produced by a list of closed and open-ended questions, with possible follow-up question and probing prompts. The risk of too close a social identity between researcher and respondent is real but so too are the benefits of a shared understanding of the world of FOI. It enabled the question-centred conversation to produce rich examples and tease out nuance implications.

The interviews for this research project were carried out in a variety of locations, dependent on the availability and requirements of the respondent. These including the researcher’s workplace, the respondent’s workplace, a (quiet) café, a bookable room in a public library and, in three cases, at the researcher’s hotel. All interviews were between 55 minutes and 1.5 hours long. Some notes were taken and the interviews were recorded in their entirety. These recordings were transcribed for analysis by both the researcher, who transcribed two for reasons of data familiarisation, and two paid transcribers. The transcribers signed confidentiality agreements before undertaking the transcribing to maintain the confidentiality offered to respondents.

3.2.2.1 Sample size and saturation. Eighteen journalists were interviewed for this doctoral project. While some researchers promote a certain number of interviews as adequate for a qualitative research project (e.g., Creswell, 1996), data saturation is now widely accepted as a successful determinant of sample size in studies based on

qualitative interviews. Saturation theory (Glazer and Strauss, 1967) stipulates that enough in-depth interviews have been conducted when “no new additional data are found that develop aspects of a conceptual category” (Francis et al, 2010, p. 1230).

This research follows Francis et al (2010), who propose (p. 1234) four criteria for an understanding of when data saturation has been reached. Firstly, the researcher should specify what size of sample will undergo a first-round analysis. Secondly, a “stopping criterion” – the number of consecutive interviews that yield no new themes – should be established *a priori*. Thirdly, the agreement levels between at least two independent coders should be reported to ensure the research is “robust and reliable” (p. 1234). Lastly, the methods for identifying saturation should be reported, as should the process of such identification itself.

Seeking to establish an indicative guideline for the number of interviews required in a social research project, Guest et al (2006, p. 74), using qualitative data from interviews with 60 respondents, established that saturation had been achieved after the first 12.

Francis et al recommend (p. 1234) an “initial analysis sample” of at least 10 interviews, after which three consecutive interviews without the emergence of data that modifies existing themes or initiates new themes from the data would indicate the stopping criterion had been met and so saturation achieved. Interviews 12, 13 and 14 in this study met that criterion and so by Interview 18 it was deemed saturation had been achieved.

Coding of interviews 12, 13 and 14 added more instances of data that related to existing nodes but did not modify the nodes themselves or created new nodes. This was in accordance with Francis et al’s (2010, p. 1234) stopping criterion of unsuccessful searches for new thematic contributions on three consecutive transcripts.

3.2.2.2 The sample. A sample of senior journalism practitioners was selected from the ranks of public-interest journalists in Aotearoa New Zealand as respondents for the study. Participants were selected for clear public-interest themes in their journalism, and for their experience of or knowledge of the country’s FOI regime. Purposive selection was chosen as a sampling method for the ability it gives the researcher to target data relevant to the research question. As Mabry (2008) says, building deep understanding takes time and a random selection of research subjects “might easily fail to yield the most informative sites or samples of human subjects, “skewing findings because of sampling bias” (p. 223). While subjects can also be

chosen, and indeed are in this research, as representatives of a larger population, they were not chosen randomly. Rather, they were chosen for their “informativeness” (p. 223), for the richness of the experiences and perceptions they can bring to the given research site and from which rich data can be drawn. Through reflexive online research during the planning stages and in the early stages of data collection a list of potential candidates who met criteria to be respondents was formed. Firstly, a journalist was considered for participation if they worked in Aotearoa New Zealand in public-interest journalism and had considerable experience in that field. Secondly, their work regularly included attempts, or had included attempts, to extract information from the State with invocations of their rights under the OIA 1982. While the need for a diverse range of those journalists whose work regularly involves the Act also impacted selection (to help achieve a balance in, say, gender or media platform), all journalists who became respondents in the study met the fundamental criteria of depending on state-held information for the successful execution of their journalism which is largely in the public interest.

Potential respondents were identified in one of two ways, either through the researcher’s own knowledge of their work (New Zealand journalism circles are small) or through the researcher’s network of contacts in journalism and journalism education. Potential respondents were approached initially by email. If the journalist’s response to being asked to participate in the study was initially positive (the two exceptions were investigative reporters who said they had lost faith in the OIA 1982 and no longer sought access to State-held information under its terms), they were sent a Participant Information Sheet detailing the project and further email correspondence conducted to establish a time and place for a research interview to be conducted.

It proved straightforward to assemble a purposively selected group of senior and investigative journalists who were happy to be interviewed in depth about their professional practice and their experience of Aotearoa-New Zealand’s FOI regime. Of those approached, only two declined to be interviewed – one because he said he had lost faith in the OIA and never invoked it and the other because he was too busy. A third potential respondent did not refuse to take part but said his use of the OIA was so sporadic – he, too, had no faith in it – to be of little use and he was not interviewed. All other potential respondents were enthusiastic. This response was encouraging for the research and suggested it was tapping into a distinct vein of interest within the Aotearoa New Zealand journalism community of practice. Throughout the collection of data,

respondents were, without exception, keen to share their experiences. For some it meant going out of their way (for example, being interviewed at the researcher's university workplace), while for others it meant taking time out of a busy work schedule or even, in one case, giving up Monday morning in a precious week of leave. One chief reporter running a small radio newsroom was unable to leave her desk but nevertheless was happy to be interviewed on the contingency that if a big story broke during the interview, she would have to abandon it. Fortunately, no such story broke.

To build a broad picture of FOI issues within the news media, interviewees came from a range of news organisations and included freelancers. They came from a range of geographical locations, represented all news platforms (print, online and broadcast) and had covered a broad range of professional specialisations within journalism, including so-called rounds, such as health, education, politics, local council, court, police, the environment, transport etc, but also methodological specialisations and other professional contexts, including investigative journalism and community news. At least two were journalists who produce almost exclusively long-form journalism. One was a community newspaper editor. Respondents included 13 male journalists and five female journalists, an imbalance derived from, in part, two unsuccessful attempts to enrol a female respondent who was expected to take part. These interviews did not eventuate for organisational reasons (unexpected work duties, for example) at a time when it was considered better to proceed with 18 respondents, and not seek to reach an initial target of 20. But the gender imbalance also reflects that investigative journalism tends to be dominated by men (Kaplan, 2013).

One respondent was a Māori journalist working on investigative taha Māori stories (stories that involve issues of specific interest to Māori New Zealanders).

Respondents' experience in journalism ranged from two years to 35 years. Altogether, respondents had 305 years' experience in journalism. The mean experience among respondents was 16.9 years.

Together, respondents represent overwhelmingly the public-interest mission of political journalism. Almost without exception, public-interest journalism is the vast majority of their practice. The only respondent to state the proportion of PIJ in their daily work as less than 50% was R18, who identified "issue-based stories" as 30% of his work but acknowledged he also covered art, sport and spot news, all of which regularly have strong public-interest elements. R18's total proportion of PIJ is likely to be significantly higher than 30%. R17, a young journalist with just two years'

experience, thought his work was about 65% in the public interest. R10 had five years' experience and thought 75% of his work was in the public interest. As Table 1 shows, with more experience comes a stronger emphasis on PIJ and almost every other R considered that at least 90% of their work was in the public interest. For four respondents, it was 100% or "all of it", while for another four respondents it was close to 100% ("99%", "almost everything", "pretty much all of it" and "close to 100%").

Table 1

Research respondents by gender, experience, specialisations, platforms and employment status

Respondent (R)	Gender	Experience in years	Stated proportion of public-interest work	Principal 'rounds' and/or method	Platform	Employed/self-employed
R1	m	27	'90%+'	investigative journalism	print/online	e
R2	f	8	'90%'	multiple rounds	print/online	e
R3	m	13	'80-90%'	multiple rounds	print/online	e
R4	f	6	'all of it'	multiple rounds; investigative journalism	print/online	e
R5	m	17	'100%'	conflict and disaster	print/online/radio	s-e
R6	f	15	'all of it'	taha Māori; investigative journalism	television	e
R7	m	34	'most'	multiple rounds; investigative journalism	print/online	e
R8	m	26	'almost everything'	multiple rounds; investigative journalism	print/online	e
R9	f	16	'95%'	politics	radio	e
R10	m	5	'maybe 75%'	crime and justice	print/online	e
R11	m	13	'90%'	multiple rounds	print/online	e
R12	m	29	'pretty much all of it'	economics/politics	print/online	s-e
R13	m	25	'all of it'	investigative journalism	print	s-e
R14	m	13	'close to 100%'	multiple rounds	radio	e
R15	m	8	'at least three-quarters'	multiple rounds	television/print	e
R16	f	13	'99%'	generalist/politics	print/radio	e
R17	m	2	'probably 65%'	health/council	print/online	e
R18	m	35	'30% ... issue-based stories'	multiple rounds/community news	print	s-e

3.2.2.3 Data analysis. Data embedded in transcriptions of the interviews were coded as part of an inductive analysis that deployed NVivo analysis software. NVivo provides a connected environment for analysis, including intricate coding systems and higher-level associations made through memo-based notation. Two phases of coding were undertaken – a pilot analysis of six interview transcripts and then a subsequent analysis of further interviews that would eventually reach data saturation. Behind the coding were ideas of inductive and comparative analysis through emergent categories.

Coding of both the pilot transcripts and the main body of transcripts was undertaken in two phases. First was an initial and open phase, during which line-by-line coding produced associations prompted by a-priori knowledge of both the norms and objectives of journalism practice and of FOI issues made prevalent through both anecdote and scholarship. Exploratory and proactive in nature, this first phase was also characterised by a willingness on the part of the coder to recognise and allow for unpredicted associations that might contribute to categorisation in similarly unexpected ways.

This was followed by a second, selective and focused phase, which further coded and recoded the data, moving from the nodes generated in the first phase to further nodes, and then to the ordering, comparing, re-ordering and, in many of the emergent categories, removal of nodes. In turn, further coding led to conceptual groupings of nodes and so to conceptualisation of the data in increasingly theoretical ways. This approach is in line with established inductive-abductive techniques in qualitative research (Charmaz, 2008, p. 472). Then to move beyond an objectivist use of inductive reasoning, which is likely to produce descriptive results, a researcher must use their “prior knowledge and disciplinary perspectives” to sensitise themselves to conceptual issues (p. 472). They must also seek new theoretical interpretations as they question their data.

The application of both stages of coding is discussed in detail below.

3.2.2.4 Pilot, coding and analysis. Guest et al, in their research into the coding of qualitative data (2004, p. 78), found the basic elements of “meta-themes” were apparent after the coding of six interviews. For this research, an initial “pre-set” or *a priori* coding scheme of five codes (known as “nodes” in the NVivo software) was developed through the researcher’s knowledge of and reflections on key FOI issues. Using these codes, an initial coding of six interview transcripts was conducted as a pilot

coding exercise to enable the emergence of such meta-themes. It was not assumed subsequent interviews would not provide further themes, however.

This was also an opportunity for establishment of a full set of exploratory, first-phase codes and in-depth data familiarisation. Because coding is an iterative process, those codes that develop are revisited on subsequent analyses of the particular text. The pilot exercise was also an incubator for the theoretical inferences of the project.

The aim of the initial coding was not to establish broad categories from normative concepts that might be populated and then later collapsed or expanded to create multiple, multi-layered directories of nodes and child-nodes. To list a number of well-known features in FOI failure in Aotearoa-New Zealand (e.g., requests, delays, refusals, appeals, exemptions, political interference etc.) would risk limiting its analysis to ultimately descriptive, and thereby its discussion and findings, by imposing theoretical restrictions at a foundation level. In an extreme example, this risks turning coding into a simple audit for enumerative analysis of issues and experiences. Such an approach may well predetermine too much the approach to the data and thus undermines the potential for deeper inductive reasoning and theory building. Rather, the pre-set codes were to initiate a number of approaches not only to categorising the data but also to the nature of the inquiry. That is to say, they were to identify ways of considering the data as much as to identify features of the data. As initial examples of ways into the data, they could be later used as springboards for further coding ideas or as types for replication across other categories. This way, as it progresses, the coding scheme expands in complexity and approach and not simply in volume. An iterative approach to coding ensures new complexities are considered in all cases and not just those examined after they first arise.

3.2.2.5 Initial codes. The initial five codes (or nodes, as the software being used calls them) were: the language of FOI; motivation, orientations and dispositions; the idea of appeal; impact on public affairs journalism; and power. These initial codes were drawn from the researcher's knowledge of and interest in FOI and its potential for failure, and from the conceptual framework behind the research.

- *The language of FOI.* How do respondents speak of FOI, the OIA and the FOI failures they experience as professional journalists? What metaphors and other forms of representation do they employ? Is their language approach one of defence or offence? What key concepts, if any, are expressed with linguistic consistency across the research group?

- *Motivations, orientations and dispositions.* In part useful for a field analysis that seeks an understanding of the respondents' habitus, this node was also intended in part to create a picture of where journalists have ended up in their frustrations over FOI in normative terms. What effect has FOI failure had on their attitudes to their work and, in particular, FOI? It was also intended that it might attract data not only on respondent's normative positioning on FOI matters, but also on less overtly expressed attitudes to both news work and FOI.
- *The idea of appeal.* This was a node designed to collate data relating to a right of appeal in FOI matters, whether theoretical or practical in nature. Any exemption in an FOI regime that allows information to be kept secret should be subject to potential appeal. This is fundamental to the success of FOI.
- *Impact on public-affairs journalism.* Whatever the view taken on the value of today's mainstream news media, it is certain that journalists in Aotearoa-New Zealand do regularly ask for state-held information and that some of that information, at least, is used to create public-affairs journalism. At a base level, then, this was a broad code to collate data on the impact on the important work of the respondents of the nation's FOI regime.
- *Power.* This node is to aggregate at an early stage in coding ideas that information is power, that FOI is an ameliorating mechanism in terms of a resultant power imbalance, that journalism has lost power, that it was never powerful in accountability terms or that it still held relative power in its relationship with the more-powerful State. And any other instances of power as a concept that might arise during coding.

Once these nodes were established, the first six transcripts (Interviews 1-6) were coded for overt elements of the discourse that pointed to these nodes and to others that were conceived of as part of the process in an open and initial analysis. These were both child nodes of the initial nodes and new emergent top-level nodes and their descendent nodes for which such a place in the register became self-evident. As a result, after the initial and open coding of the first six transcripts, the project coding scheme comprised nine top-level nodes, 24 child nodes and grandchild nodes. The top-level nodes (with child nodes in brackets) were: "citizen and state"; "gold"; "journalism"; "motivations, orientations and dispositions"; "Official Information Act 1982?"; "Official Secrets Act

Table 2

Data analysis: Nodes and child nodes
Italics indicate nodes emergent from child nodes.

citizen & state (34)	gold (27)	Journalism (33)	motivations, orientations & dispositions (70)	power (29)	the respondents (18)	wider FOI issues (12)
agencies (7)		Impact on PIJ (42)	attitude to FOI (33)		expertise (18)	change (7)
<i>best and worst (2)</i>		<i>'voting blind' (1)</i>	standing up for FOI rights (12)		frequency of FOI requests (18)	future of FOI (3)
function/dysfunction (73)		<i>Charging (1)</i>			proportion OF PIJ (18)	open govt etc (1)
<i>'gone out the window' (12)</i>		<i>Delay (22)</i>			validity questions (18)	Solutions (6)
human right (17)		<i>free and frank advice (9)</i>			why journalism? (18)	the idea of appeal (4)
OotO (33)		<i>structural pluralism (26)</i>			years in journalism (18)	the language of FOI (3)
performance of the civil service (44)		OIA requests from journalists (63)				<i>warfare (3)</i>
<i>'poacher and gamekeeper' (15)</i>		<i>horror stories (14)</i>				
politicisation of FOI (21)		<i>media performance (19)</i>				
<i>no surprises (16)</i>		<i>nature of requests (15)</i>				
purposes of operation of the OIA 1982 (16)		<i>positive stories (13)</i>				
two tiers (9)		understanding of FOI (24)				
Official Information Act 1982 & Official Secrets Act 1951 (15)		<i>Relationships (5)</i>				
Sub-totals:						
316	27	287	115	29	126	40
Total: 940						

1951”; “power”; “the respondents”; “wider FOI issues”. The continuation of coding interviews saw additions and subtractions from the top-level codes. By the end of the coding process, the analysis had produced a matrix of 48 nodes, (seven top-level, 26 child nodes and 15 further-descendent nodes), attracting 940 references in total. An explanation of the final top-level nodes and indicative examples of coded references from the dataset

for each are included as Appendix C. This is intended to help give some insights into the articulation of the world of FOI by Rs.

3.2.3 Document analysis – why Hansard? Are journalists’ expectations of Aotearoa New Zealand’s FOI regime reasonable? Asked by the researcher to help assess the state of the nation’s FOI regime for this study, New Zealand journalists related their successes and failures in obtaining information from the State to the practice-based norms of public-affairs journalism. Respondents measured the FOI regime against their own professional expectations of it and, in general, found it lacking. But are those normative objectives and the expectations that are derived from them enough? In order to triangulate the research – “the combination of methodologies in the study of the same phenomenon” (Denzin, 1970, p. 291) – this part involved the systematic analysis of parliamentary records to explore the intentions of the lawmakers at the introduction of the Aotearoa New Zealand’s FOI regime’s central piece of legislation, the OIA 1982. Do the battleground stories of FOI struggles, to some degree, contribute to a professional imaginary, a knight-vs-dragon narrative, which emboldens the reputation of public-interest journalists? To re-enact the thinking of the political elite of the time, to capture in detail their intentions and the reasoning behind them as they pressed a bill of constitutional magnitude into law, this research analyses the discourse of the parliamentary elite.

Document analysis is a tested and broadly used qualitative research method. It produces as data “excerpts, quotations, or entire passages from records, correspondence, official reports and open-ended surveys” (Labuschagne, 2003, p. 101).

[Documents] can provide data on the context within which research participants operate—a case of text providing context, if one might turn a phrase. Bearing witness to past events, documents provide background information as well as historical insight. Such information and insight can help researchers understand the historical roots of specific issues and can indicate the conditions that impinge upon the phenomena currently under investigation. The researcher can use data drawn from documents, for example, to contextualise data collected during interviews. (Bowen, 2009, pp. 29–30)

The systematic analysis of documents can also raise questions that help shape the analysis of other data (for example interview transcripts), provide supplementary research data, inform evaluations of change and corroborate other sources (Bowen, 2009, p. 30). In the case of this research, all of these attributes were helpful. Records of parliamentary debates about open government and transparency were analysed to establish the intentions of the lawmakers and the extent to which they represented the

will of New Zealanders. Of particular interest were the debates surrounding the first, second and third readings of the Official Information Bill.

Qualitative document analysis (QDA) in a mass-mediated age is a reflexive research methodology with an emphasis on “discovery and description, including searching for contexts, underlying meaning, patterns and processes, rather than on mere quantity or numerical relationships between two or more variables” (Altheide et al, 2008, p. 127). Bourdieu himself called it an “epistemological commonplace” (2012a, p. 54) that historical documents, like all documents, only speak if you have questions [to put to them]” (p. 54) QDA’s emphasis is on meaning derived from an investigation of emergent themes and the patterns of discourse that prompt questions that are resolved into answers. It is an iterative and interpretive process that begins with an initial and superficial examination of the documents in question to identify key points and other entry points into the data. This is followed by a thorough investigation and subsequent interpretation of the data. Bowen (2009) says such an approach starts with a content analysis – a process of identifying important data, rather than the “quantification typical of conventional mass media content analysis” (p. 32) – which is followed by a thematic analysis employing coding of data for emergent themes.

Atkinson & Coffey (1997, p. 47) call documents “social facts” used in organised ways. Hansard comprises social facts that have political constituency and are indeed used in highly organised ways. It records the statements of the politically powerful, those elected to rule, but over time it also collates a mass of socio-political facts that can tell a broader story of society and give historical arguments for a specific issue (Bowen 2009, pp. 29–30). The aim was to establish a framework for the analysis of parliamentary discourse during the legislative establishment of New Zealand’s FOI regime, and then to apply that framework and interpret the results. The research focus was brought to what the representatives of the body politic, those who wielded the legislative sword, had to say within the House of Representatives as they created both law and history with the OIA in 1982.

Hansard transcripts of the parliamentary debates were coded in two phases. The first was an initial and open phase, during which line-by-line coding, used freely, established codes based on both associations between references and their own notability. This was followed by a second, selective focused phase of coding, which sought and found relations between references, cases, nodes and child nodes over multiple return visits to the research site.

Parliamentary debates are at the heart of the mainstream political discourse in New Zealand democracy, and represent likely political outcomes because of that. They are transcribed and published by Hansard as an accurate record of the debates of the nation's lawmakers. As such, they have a central place in the political discourse of the day. Mainstream in nature in political terms, the debates under analysis are part of a tradition as old as parliamentary politics, the cut-and-thrust interrogation of social and political issues and the politicians who drive them. New Zealand's Hansard celebrated its 150th year in operation in 2017 (Hansard, 2017).

It is one of the longest running narratives in New Zealand's history and presents the raw and often passionate opinions of political representatives from era to era. Its format is that of a dialog or script. No wonder then that playwrights, journalists and cartoonists have found it such a source of inspiration for their work (2017).

Researchers, too, have rich and voluminous data at their fingertips now that online searches of Historical Hansard (www.parliament.nz/en/pb/hansard-debates/historical-hansard/) and its political discourses are possible. In the case of the OIA 1982, the debates in the House range across both the broad philosophies and the fine details of FOI. They interrogate, in a political manner, the issues still unresolved at the time, condensing years of wider debate into pressured decision-making over key points in the legislation. The politicians involved were among the dominant political players of the time, the cabinet ministers and other MPs in the third-term National government of the relatively authoritarian prime minister Robert Muldoon. They were, with some exceptions, Pākehā men and, as such, represented the dominant end of power relations in New Zealand. This chapter argues that their debates in Parliament can provide today's scholars, beyond the limitations of their immediate semantics, ways to think about New Zealand's quasi-constitutional reforms to FOI.

Ihalainen & Palonen (2009) argue that the centrality of Habermasian notions of the public sphere have meant a scholarly disregard, even contempt (p. 22), for the importance of the parliamentary debating chamber as a source of political narrative. They challenge "the view that pre-political or extra-parliamentary publicity has been the *major primus motor* of political change ever since the eighteenth century" (p. 21). A combination of parliamentary debates and existing literature could 'provide the most balanced account of how politics was understood by various levels of the political and intellectual establishment' (p. 7). This research seeks to establish the political thinking of the time and so, while cultural shifts brought about pressure for FOI, its final form

was a political compromise. Taking a hermeneutic approach (Lavery, 2003) to the reading, reflection and interpretation (Kafle, 2011 p. 195) of historical documents, while attempting to bracket the pre-existing assumptions of today's researcher, this part of the project creates a picture of the political thinking of the time and an interpretation of the stated intentions of those who legislated for state transparency in Aotearoa New Zealand.

Hermeneutic research is interpretive and concentrated on historical meanings of experience and their developmental and cumulative effects on individual and social levels. This interpretive process includes explicit statements of the historical movements or philosophies that are guiding interpretation as well as the presuppositions that motivate the individuals who make the interpretations (Lavery, 2003. p. 27).

More than just words on a page, Hansard is an account of New Zealand, its politics, society and history. Through it we can track the changes of our nation and see how our priorities and positions have developed or, in some cases, remained the same (Hansard, 2017).

As an historical record, Hansard can provide context for other data and it is in this way that the documents under analysis are most useful in this study. Bowen says close study of related documents 'can indicate the conditions that impinge upon the phenomena currently under investigation. The researcher can use data drawn from documents, for example, to contextualise data collected during interviews' (p. 30). Bowen's article touches on four other ways documentary data isolated from Hansard is at work in this research; documents, he says, can also provoke new questions in the research context, provide supplementary research data, track change and development, and corroborate evidence (p. 30).

3.2.3.1 Data. The data under analysis for Chapter 5's exploration of Hansard was gained from archival searches of Hansard from 1951, and from 1980 to 1983.

In total, 65 pdf files were created and downloaded via Historical Hansard, a service provided through the New Zealand Parliament website (<https://www.parliament.nz>). Three of these documents were created from the debates about the OSA 1951 and 62 were created from debates about the OIA 1982. Debates, part-debates and speeches by members of Parliament were identified through searches using the site's own search function and employing Boolean operators. The site's own .pdf generator was used to create searchable documents. In total, 7 pages of Hansard

from 1951 were downloaded and 173 pages of Hansard from 1980-83 were downloaded for analysis.

3.2.3.2 The OSA 1951 search. Volumes 288 to 298 of Hansard were searched for debates and speeches by Members of Parliament pertaining to the notion of “official secrets”. Hansard was accessed via Historical Hansard (<https://www.parliament.nz>) and through HathiTrust (<https://www.hathitrust.org/>), which offers full-text searches of archived parliamentary debates, including New Zealand’s, held at the University of California. All content downloaded was done so under the Creative Commons Zero licence (<https://creativecommons.org/publicdomain/zero/1.0/>), which places no restrictions on any reuse of the material.

The search period was from June 27, 1950 to October 24, 1952, which includes the first and second sessions of New Zealand’s 29th Parliament and the first session of its 30th. The search period was aimed at capturing references to the Act to isolate the parliamentary debate around its introduction in 1951.

This search was made was to gauge the House’s mood when affirming an act, albeit one based on a piece of UK legislation, that would make unauthorised releasing of state-held information a crime.

The search term, using Boolean operators, was “official secrets”, intended to produce referrals by the non-case-sensitive search engine to both the Official Secrets Bill (as it travelled the road to being law) and the eventual statute, the Official Secrets Act 1951 (OSA 1951). It was also intended to capture the words “official secrets” when they were used by parliamentarians during debates, to help build as detailed a picture of the mainstream political thinking about official information at the time.

Overall there were 19 references found within Hansard to the bill or act between (inclusive) June 27, 1950 to October 24, 1952.

There were no references to the OSA or OSB between the start of the search at June 27, 1950 (in vol. 289) and December 1, 1950 (vol. 294), which would suggest the research period captured much, if not all, of the political debate in the House. At the end of the search period, there were no references to the OSA 1951 after vol. 296, meaning the 19 references were all in vols. 294 to 296 or, in historical terms, recorded by Hansard stenographers during the second session of the 29th Parliament (June 26-July 13, 1951), the first session of the 30th Parliament (September 25-November 14, 1951) and the second session of the 30th (November 15-December 6, 1951).

Of the 19 references, five were within the Hansard index and were excluded from further consideration.

Of the remaining 14 references, five were process-orientated announcements, such as a motion for the House to consider the OSB under urgency, and other notices, such as the one that it would undergo its enumerated readings. These details of parliamentary process and bureaucracy are of interest in that they add colour and gravitas to the data, but were not subjected to further analysis.

Of the remaining nine results from the search “official secrets”, five occur on page 4 of Volume 296 and arise from the tabling in the House on June 26, 1951 of the customary speech by the Governor General, New Zealand’s head of state and representative of the Queen. The speech was downloaded from the online repository of New Zealand’s Hansard transcriptions (www.historicalhansard.org.nz) and coded inductively, using NVivo software. Four parent nodes (“the Commonwealth”, “the Mother Country”, “the state of the nation” and “the state of the world”) and one child node (“the industrial crisis”, subordinate to “the state of the nation”) emerged, encouraged by the research aim of creating a picture of the socio-political environment into which the antecedent of the OIA 1982 became established.

Subsequent references to the OSB or OSA were identified within Hansard transcriptions of the 30th New Zealand parliament (November 15-December 6, 1951), primarily when it was introduced for its second reading on November 28 and immediately referred to Parliament’s Statutes Revision Committee with little discussion, and then when it was committed to the House and there was some debate on December 5.

3.2.3.3 The OIA 1982 search. Volumes 429 to 455 of Hansard were searched for content relating to the introduction of the OIB and the subsequent enactment of the OIA 1982. The purpose of the search was to identify data for subsequent thematic analysis based on inductive coding and reasoning. Hansard was accessed via Historical Hansard (<https://www.parliament.nz>) and through HathiTrust (<https://www.hathitrust.org/>), which offers full-text searches of archived parliamentary debates, including New Zealand’s, held at the University of California. All content was downloaded under the Creative Commons Zero licence (creativecommons.org/publicdomain/zero/1.0/), which places no restrictions on the reuse of the material.

The search period was from May 15, 1980 to December 16, 1983, covering the second and third sessions of New Zealand's 39th parliament. The search term was "official information" using the Boolean quote marks to exclude unconnected mentions of either word and to capture all references to the Official Information Bill, the Official Information Act 1982, the Committee on Official Information (the Danks Committee), and the term "official information".

The aim was to find parliamentary debates about official information around the time of the introduction of the bill, given that then is likely to be when most discussion on the bill and then the resulting act would have taken place. The results would be narrowed to those that are relevant and the debates downloaded, coded and analysed.

The search captured full debates (e.g., the bill's second reading in the house), short exchanges about the proposed law and numerable single mentions of it during debates on other topics.

The search term was found on 169 Hansard pages, often multiple times, within the search period. The number of matches across the search period was 480. Of these, 66 were within the Hansard index and were immediately removed, leaving 368 inclusions of the search term "official information" to investigate.

There were six volumes of Hansard (vols. 431, 432, 435, 436, 440 and 451) during the search period in which there were no references to "official information".

In pursuit of this research aim – that is, an empirical understanding of New Zealand's legislative subscription to the ideals of FOI – documents were thematically analysed in an inductive manner.

3.2.3.4 Data analysis. A four-step progressive focusing model (O'Neill, 2013, p. 7) was used in inductively coding the downloaded documents. The analysis model used to construe meaning from the data comprises a "descriptive" stage in which initial associative coding takes place, a "topic" stage in which the subject of inquiry is redefined, an "analytics" phase and the drawing of conclusions.

3.2.3.5 The OSA 1951. Given its brief and largely unopposed passage through Parliament, references to the "official secrets" search term were relatively limited. However, codes were developed inductively across three source documents: the transcriptions of debates at the second and third readings of the OSB and the Governor-General's speech to the House on June 26, 1951. This speech was coded because it introduced the bill to the House but also because it ranged widely across New Zealand

society and Government and was thus useful in building a picture of the thinking that considered communism the nation's biggest threat, internationally and domestically, and saw the OSA as a logical and necessary defence against it.

Nodes developed from the second and third readings were: "Mother Country", which attracted three references to the remnants of New Zealand's colonial relationships with Britain, and "publicity & irony", which had one reference to the irony of the Government needing the press to publicise the opportunity for public submissions of evidence on the bill.

Nodes developed from the Governor-General's speech were more numerous (child nodes are in brackets): "OSB/OIA", "the Commonwealth", "the Mother Country", "the state of the nation" ("industrial crisis"), and "the state of the world".

The relatively small amount of data was used to frame the secrecy laws that operated in New Zealand from 1919 until 1982 and underscore the draconian nature of them given the social, cultural and political change that had occurred.

3.2.3.6 The OIA 1982. Comparatively, the search for "official information" yielded much more data. 70 pdf documents were downloaded. Eight documents with a total of nine references to the search term were excluded because they had nothing to offer in terms of content. Almost all were passing references to the OIA in the context of unrelated debate. Of 480 references to the search term, 354 occurred within six significant documents: two speeches by the Governor-General, one address-in-reply, the bill's introduction, and debates associated with its second and third readings.

Inductive coding of all 62 remaining documents encouraged the following nodes (child nodes in brackets): "Agencies" ("local government", "Parliament", "structural pluralism"), "criticism" ("poacher and gamekeeper", "Cabinet veto", "Labour policy"), "Danks Committee", "Global context" ("Mother Country"), "implementation", "importance", "journalism", "officialdom", "OIA 1982" ("Amendments proposed and accepted", "Information Authority", "liberal", "Ombudsman", "progressive release", "sanctions", "Section 4", "Section 5", "Sections 6&7", "time limits"), "OSA 1951", "parliamentary process" ("business of the House", "select committee", "submissions"), "power of the state", "principles of FOI" ("privacy", "public interest"), "secrecy" ("sensitive info"), "the switch to openness" ("cross-party co-operation"), "wider change" ("other bills and wider politics", "tangata whenua", "the economy", "unions").

3.2.4 Case study. This research includes a case study of a refusal by a state agency to provide information when asked to under the terms of the OIA 1982. An autoethnographic account (Marvasti, 2008, pp. 609–610) of the case, in which the researcher was involved, is included for the static example it provides.

Autoethnographic research is further categorised by Reed-Danahay (1997, p. 2) into three types. The first is native anthropology, in which groups formerly the subjects of external researchers have become the authors of their own studies. The second is ethnic autobiography or the personal narratives within an ethnic group. The third type is autobiographical ethnography, in which researchers “interject personal experience into ethnographic writing” (p. 2). It is this last tradition of autoethnographic research that this part of the project joins, a “form of writing wherein the ethnographer is the native” (p. 5). An ongoing attempt to access information from a state agency, which makes up much of the case study, is described as experienced by the researcher. The relating of that experience, however, was influenced by the shared experiences discussed with colleagues also involved in the case. The result is a personal, open interpretation of events that of course remains itself open to further qualitative interpretation. Any subsequent interpretation, however, is also shaped here by the impact of the case study’s role as a mechanism of triangulation. The researcher’s reconstruction of the events might easily have been found among the narratives of respondents interviewed for the research. Given this, it is a static and comparatively in-depth case to consider. Such a case study of an FOI dispute would be of some scholarly value on its own, giving access to form and functionality in the world of FOI as it would. However, it is of significantly more value here, as a semi-detached wing of the research project, where it connects thematically with other narratives provided by respondents and analysed by the researcher. It provides a close-up view, mediated by a participant, of FOI in action.

This specificity or positionality, once recognized and explored, is a source of comparative strength. Paradoxically, in order to understand, interpret and analyse others, the student, whether potential or actual researcher, benefits from subjective awareness of accumulated lived experience as a means of learning alternative ways of being. (Okely, 2012, p. 42)

Many other examples of FOI in the research are fleetingly recalled or coloured by sentiment. Case studies, say Alasuutari et al. (2008), are “most useful for identifying and documenting the pattern of ordinary events in their social, cultural and historical context” (p. 113). Inductive in nature, case studies are helpful in theory-building. While not easily achieved, their over-riding goal, according to Mabry (2008, p. 214), is deep understanding of the particular instance under observation. She acknowledges (p. 220)

that while researchers are usually outsiders to the case, this is not always the case; in this instance, a personal experience laid out in case form offers opportunities for reflective examination of detail and process that is not so clearly set out in other parts of the research. The case is offered for what it is – a single case of journalistic inquiry in the public interest hitting a wall of official resistance that serves in triangulating ways to strengthen the research.

3.3. Research Questions

The primary research question, introduced in Chapter 1 and restated below, leads two sub-questions. The three questions are intended to be interlocked, in that answering the sub-question puts the research conclusions in a place to answer the primary question. This is not, however, intended to be deterministic in nature and the research remains open to unexpected results from the combination of three questions on related matters.

3.3.1 Primary research question. The primary research question is: *In what ways, if any, does an analysis of practice-derived representations of FOI by public-interest journalists relate to conventional transparency narratives in Aotearoa New Zealand?*

3.3.2 Research sub-questions. *Sub-question 1: What was the political thinking behind the introduction of the Official Information Act in 1982 in Aotearoa New Zealand?*

Sub-question 2: How do public-interest journalists experience Aotearoa New Zealand's FOI regime today?

3.4 Summary

This chapter has outlined the ontological and epistemological underpinnings of the research and explained the fundamentally qualitative methodological approaches taken. The theoretical approach taken situates FOI as a prerequisite for actually-existing democracy and centres it in a framework of human rights. It has argued for a fallibilist view of human knowledge, which rejects foundationalist claims an objective social reality but keeps the research focus on empiricism while remaining conscious of the limitations of any paradigm-shaped inquiry. Pragmatic in outlook, this position maintains a focus on the object of study, acknowledging the research frameworks of reference that are evoked and involved, but not becoming pointless because of them. Empirical inquiry is valuable; even if normative structures in both social and natural

sciences can never eliminate the risk of error, they are there to minimise it (Hammersley, 2008, p. 48).

The project's frames of reference were introduced and outlined. Given that FOI is constitutional in nature but has become, in *realpolitik* terms, a power struggle for public-interest journalists, political science is the discipline through which the impact of that might be most keenly understood, specifically in terms of how it might shake a framework of democracy theory. Neoliberal theory is engaged to help understand how structural transformation of the political economy of Aotearoa New Zealand has affected FOI.

The chapter has explained the project's methods of data gathering and analysis. Rich data about contemporary FOI practice was gathered through conducting semi-structured interviews with elite subjects in the field of public-interest journalism and a state watchdog, the OotO. At a related research site designed to complement that data, document analysis was used to explore the thinking behind the establishment of the Aotearoa New Zealand FOI regime. At both sites, the data were thematically analysed with the help of analysis software. In addition, and for purposes of triangulation, an autoethnographic case study was included.

4. What were they thinking?

“... if doctors bury their mistakes, bureaucrats hide theirs under a cloak of secrecy ...”

– Richard Prebble (1948-), Aotearoa New Zealand politician

Exploring the thinking behind Aotearoa New Zealand’s FOI regime, this chapter draws from the literature review in Chapter 2, other document research and two thematic document analyses, undertaken to help contextualise, in political terms, the passing of the OIA in 1982. It begins with detailed background to the Act. For the subsequent document analysis, verbatim transcripts from New Zealand’s parliamentary debates are archived as Hansard, the official record of the New Zealand House of Representatives and the relevant transcripts were downloaded, coded and analysed to gain a clearer understanding of the political and social motives behind the introduction of the ground-breaking rights law

Taking a hermeneutic approach illuminates the socio-political context of the nascent FOI regime of 1982 and allows further analysis, explained in chapters 5 and 6, to calculate those “developmental and cumulative effects” on social levels in Aotearoa New Zealand. First, the parliamentary debates surrounding the introduction of the OIA’s precursor, the OSA 1951, were analysed with associative coding software (NVivo). The analyses of the two acts will be discussed separately and then the implications of considered. The OSA 1951 is explored to establish a sense of the territory, in terms of transparency, from which a liberalising Aotearoa New Zealand society was emerging. The OIA 1982 is considered to provide a backdrop for the freedom-of-information (FOI) issues of today.

The aim of coding was to seek clarity around the extent to which the State had the right to keep secrets from its citizens in the years *before* 1982. This helps understanding of both the culture of state secrecy that grew from the OSA 1951 and of how revolutionary the OIA 1982 was. The chapter then turns to the introduction of the OIA itself, examining the debates between divisions of elite political powerbrokers involved to establish the intentions of those behind a significant constitutional law that has hardly changed since. The chapter explores the thinking of the time when New Zealand moved to politically and legally legitimise widening social expectations of openness. The aim is to capture both the spirit and purpose of the law but also its complexity through the categorisation of matters that were still at issue when it was passed. It is intended to articulate a sense of the society that desired to and then

managed to annul the State's long-held assumption of the right to secrecy. The chapter is linked closely with Chapter 5, which will examine the effects of governmental approaches on the FOI interface between public-interest journalists and government today.

4.1 The Official Information Act 1982

Scholars and journalists agree that in 1982 New Zealand took a dramatic, even “radical” (Shroff, 2005), step in its development as a liberal democracy when it passed legislation that turned on its head a long-held presumption of the Government's right to keep secrets and to be the sole arbiter of when and why it might do that. Under the OSA 1951 – a statute derived principally from a long-established British tradition of state secrecy (Leigh, 1980) – the government of New Zealand was free to pick and choose what information, if any, it shared with the public. Indeed, information held by the State was presumed, in legal terms at least, to be categorically secret unless specifically approved for disclosure (Aitken, 1998, p. 4), regardless of its nature. Those who released information without approval were deemed to have committed an offence under the Act and to be a government employee of virtually any sort meant being “good at keeping secrets” (Te Ara, n.d.). If ignorance is a politically weak position (the corollary of the widely accepted view that knowledge is power), the New Zealand government had virtually unbridled influence, if it chose to wield it, over the level of power actually experienced by the electorate. To be able to decide what information another party is privy to is a powerful and authoritarian position and the relationship between the Government and its people was becoming unbalanced by such a loading of power. At its core, the State was guarded and secretive, having enshrined such legislation to help in its defence against communism. The State-sponsored newsreels of the 1940s and 1950s (e.g., Huntley Film Archives, 2015) attest to the propagandist nature of the political communications of the Government at the time. Preoccupied with the threat of being spied on, it prohibited any official from passing information to anyone with catch-all law-making (Official Secrets Act, s. 6).

By the time a disclosure law was established, there had been a “long period of public concern and criticism about the lengths to which the government went to preserve secrecy” (Aitken, 1998, p. 4). In political-science terms, there had emerged a fundamental conflict between the one-way nature of the relationship between State and electorate, at least in terms of information flow, and the notion of political representation – that is, if democracy was to be a form of self-rule by the people, how

could the people endure being kept in the dark about government business? And if they were in the dark, how could they steer the ship they were supposed to be in charge of on a safe and productive course? It was an increasingly intolerable position and of the two possible ways to resolve it, only one was really a contender. To resolve the paradox, either the people would have to accept theirs was not a democracy constituted on the terms of people-rule they had grown to expect since World War II, or the government's strong predisposition towards secrecy would have to go. There was simply no way the electorate could discharge its democratic duty – the reasoned election of a house of representatives – if it could not be confident it had access to all relevant information. The movement for open government, growing around the Western world, was emerging in New Zealand too. In the first of two reports, the Committee on Official Information (1980a), which was tasked by the government of the day with developing an FOI regime for Aotearoa New Zealand, argued that the difference between the law and practice was in itself a good reason why change was necessary.

Nowadays it is generally accepted that the Government has a responsibility to keep the people informed of its activities and make clear the reasons for its decisions. The release and dissemination of information is recognised to be an inherent and essential part of its functions (Committee on Official Information, 1980a, p. 4).

Indeed, as early as 1962, the same year as the establishment of the OotO, a royal commission inquiring into state services noted that government administration was the “public’s business” (as cited by the Committee on Official Information, 1980a, p. 20). Two years later the State Services Commission itself said in an internal circular: “Too often information is only given if there is a good reason for doing so. The rule should be that information is only withheld if there is a good reason for doing so” (as cited by the Committee on Official Information, 1980a, p. 20). It was a succinct summary of both the position the nation found itself in the 1970s and the principle of availability, discussed below, that underpins and empowers the legislation that ensued.

4.1.1 Purposes of the Act. The purposes of the OIA 1982 are:

- (a) to increase progressively the availability of official information to the people of New Zealand in order —
 - (i) to enable their more effective participation in the making and administration of laws and policies;
 - and
 - (ii) to promote the accountability of Ministers of the Crown and officials, — and thereby to enhance respect for the law and to promote the good government of New Zealand:

- (b) to provide for proper access by each person to official information relating to that person:
- (c) to protect official information to the extent consistent with the public interest and the preservation of personal privacy. (Official Information Act 1982, s 4)

New Zealand's right-to-information act mirrors many others in that the availability of information made concrete by the statute provides for three distinct things: *better* participation in government by citizens because they are *informed* participants, accountability from ministers and their officials which is strongly encouraged by now-enforceable transparency around their work, and a citizen's access to the information the government holds on him or her in an assertion of the rights of the individual over the collective. This is a common formula for FOI laws around the world. As well, of course, the OIA 1982 enables the withholding of information from the public under categories of exception that relate to predefined needs of wider society. That is, information can be withheld from the public if it meets narrow and strict criteria set down in the Act. And even then, some information that meets those criteria will still be released if the appropriate official – the Chief Ombudsman, if it becomes necessary – cannot show withholding it is more in the public interest than releasing it. The centralised principle of availability, the driving principle of the Act, is defined immediately after its purposes are listed and before the list of conclusive reasons for withholding official information.

4.1.2 Principle of availability. The OIA 1982 is shaped by a foundational principle of availability. Its overarching influence on the Act is clear made clear in Section 5:

The question whether any official information is to be made available, where that question arises under this Act, shall be determined, except where this Act otherwise expressly requires, in accordance with the purposes of this Act and the principle that the information shall be made available unless there is good reason for withholding it. (Official Information Act 1982, s 5)

Short though the list of exemptions to this principle may be in international terms, there is still a variety of ways the government can legally keep information secret. It can keep it secret if releasing that information would prejudice national security, prejudice the entrusting of New Zealand with information by other countries and international bodies, prejudice the maintenance of law, endanger anyone, seriously damage the economy or could prejudice commercial negotiations. Personal privacy and trade secrets are also protected. Journalists working on stories about the machinations of government are

often confronted by the exemption that allows the advice by ministerial staff to their ministers to be kept secret. Advisers, goes the argument, must feel able to give free and frank advice in private without fear of exposure.

4.1.3 Amendments and LGOIMA. In 1987 an amendments act to the OIA 1982 was passed, and so was a sister act, the Local Government Official Information and Meetings Act 1987 (LGOIMA). Of the amendments of the OIA, most significant was the upgrading of a ministerial authority to over-ride an ombudsman's ruling on disputed access to information to a full executive veto. In other words, a single minister could not over-rule the Ombudsman – it would take a full vote of Cabinet to do that. This veto has never been used and most legal and policy advice is that it could not be used, even if Cabinet were so inclined. In a fulsome study of the OIA 1982, senior policy analyst Nicola White says her respondents believed it could never be invoked, because no government would want such focus drawn to it over-ruling the Ombudsman, which could trigger resignations and become “constitutionally explosive” (2007, p. 291).

The passing of LGOIMA 1987 extended the principles of the OIA 1982 to local government (regional, district and city councils and their subordinate bodies, district health boards, school boards and licensing trusts). The move answered a growing demand for transparency at local council level. A special focus of LGOIMA was the rules of access to public meetings of local bodies.

4.2 The Official Secrets Act 1951

How did Aotearoa New Zealand come to the OIA 1982 as the answer, and just what was the question, exactly? From an analysis of the parliamentary debates about the Official Secrets Bill (OSB) in 1951, it is clear there was little parliamentary opposition to its becoming local law. Its second reading attracted little comment as it was referred immediately to Parliament's Statutes Review Committee for the consideration of possible amendments. By its third reading on December 5, the committee had called for one minor amendment, the striking out of a clause about potential mapping of the country by foreign agents and the definition of “sketch” elsewhere broadened to include maps. The political emphasis of the bill is to prevent successful enemies of the state from taking advantage of state-held information. There is no contradiction of the implicit need for this, despite its broad application to all state-held information, in the face of the international threat of communism discourse of the time.

There is in the relative absence of debate an assumption of consensus behind the need to localise the Mother Country's law on secrecy; indeed, its provenance is

assumed to be advantageous and in no need of critique, as suggested by the Attorney General, Clifton Webb:

The Bill is modelled on the Official Secrets Act in the United Kingdom and has been adapted to New Zealand conditions. There are no clauses of any consequence in the Bill that do not appear in the various Acts governing the law on official secrets in England. That is the Act of 1911, to which there have been amendments, including one in 1920. This measure provides our own code in relation to official secrets just the same as we have our own Army code (1951, p. 1360).

Despite the lack of debate, there are references in Hansard at the time to the OSB outside its official readings, most particularly in the Governor-General's speech at the opening of Parliament.

4.2.1 The speech from the throne. At the time, the post of Governor-General was held by Lieutenant-General Sir Bernard Cyril Freyberg, the celebrated and heavily decorated military commander who led troops in both world wars. His Speech from the Throne, as it was, and still is, known, was delivered during the opening of the country's 30th Parliament. It was read on behalf of the Governor-General by the Speaker of the House, Matthew Oram. As the speech from the throne, it outlined government intent for the upcoming period of administration. While subsequent references to the search term also add something to our picture of the thinking that saw the introduction of the OSA 1951, this first set of references deserves sustained attention for a number of reasons. Firstly, the post of Governor General is theoretically an apolitical one and so some sort of detachment from the issues facing the Parliament and the Government can be expected and an overview of sorts, albeit elitist in terms of power relations, allowed to emerge. Secondly, the customary nature of the Governor-General's speech at the opening of Parliament is to summarise the successes and challenges being experienced by the nation and so by the government of the day. Such a focus allows this research to examine the New Zealand social landscape as it was encapsulated in a single, but privileged and elite, report. The Governor-General was concerned. as we shall see, with matters political, social, economic, military and industrial (Freyberg, 1951) and provides a socio-political framework against which we might judge the introduction of the OSA 1951.

In his speech, the Governor-General tells Parliament two important things about the Official Secrets Bill, which it is set to consider in this parliamentary term. The first is that it replaces the UK's Official Secrets Act 1911, on which it is modelled, and which until now has been the only legislation concerning state-kept secrets in force in

New Zealand (Freyberg, 1951, p. 5). The second is that the new act will “bring the law on official secrets into correspondence with present needs” (p. 5). Adding global context to the idea of those “needs”, he adds: “The Bill has been prepared with regard to experience in other countries in recent years” (p. 5). An analysis of earlier parts of Freyberg’s speech supports the notion that both the international and domestic situations, strongly connected to each other, are threatening in nature to the Government of New Zealand in 1951, and that it is “needs” associated with these situations – both of which have the perceived threat of communism at their centre – that have driven any advances made by the proposed OSB. In international terms, New Zealand is at war against communism in Korea, having been among the first to join the USA in the United Nations’ resistance to the invasion of South Korea by North Korea, backed by communist China in 1950. Freyberg said his Government welcomed the “resolute leadership” (p. 4) of the USA and was “gratified” (p. 4) that Commonwealth forces were now joined as a single military division. Welcome progress has been made on a Japanese peace treaty; New Zealand’s prime interest is the danger of a “resurgent” Japan (p. 4) and early talks get under way on the formation of a military alliance between New Zealand, Australia and the USA (p. 4). To increase its state of readiness for the developing international situation, New Zealand will modify its compulsory military training scheme (p. 4).

The Governor-General’s advisers consider “the revolutionary character of Communism to be the chief menace to international peace” (p. 4).

. . . they feel bound to accept the fact that if the democratic nations are to defend their liberties successfully against attack they must willingly and resolutely shoulder the heavy burden of re-armament which the threat of aggression imposes upon free peoples everywhere (p. 4).

The Cold War rhetoric of the late 1940s had already encouraged suspicion of communism (Ministry for Culture and Heritage, 2014a) and now Freyberg seemed to be encouraging readiness for increasing states of war. It is important, he says, to make the maximum effort in supplying the defence forces of New Zealand and other Commonwealth countries (Freyberg, 1951, p. 5).

It has been a tough year domestically for the Government, and communism has played its part there as well. The tough state controls imposed during World War II are wearing thin for those who feel they deserve more spoils from Allies’ victory (Ministry for Culture and Heritage, 2014b). A state of emergency has had to be declared to take control of the infamous waterfront dispute, which began as a lockout of wharf workers

seeking pay equity but has bloomed to an industrial action by 22,000 workers (the national population is 2 million). It will prove to be New Zealand's largest ever industrial dispute. Striking wharfies are denounced as communist conspirators by the Government (Ministry for Culture and Heritage, 2014a) and accused of harming the war effort in Korea by diverting the nation's armed forces from where they are needed. Indeed, Freyberg tells Parliament, his government regrets the "drastic curtailment of the normal activities of the Armed Services" (Freyberg, 1951, p. 4). It is as if the striking workers are in co-hoots with the North Korean communist regime.

Against this spectre of communist threat, however, is a buoyant economy and a government prepared to spend, despite visible threats of strong inflation. Public finances are healthy, and the Government is greatly encouraged by over-subscription to its national development loan scheme (p. 5). To combat inflationary pressures, wool growers have agreed to keep £50 million out of circulation (p. 5) and the Government, for its part, is to start a war fund, the monies in which, if war is avoided, will "be applied towards cushioning the effect on the national economy of a return to more normal amount price-levels" (p. 5). State beneficiaries are to get a bonus in their benefits, as are New Zealand families. There is money to go round and the Government is to push ahead with hydro-electric-power schemes, funding them out of its own savings (p. 5).

Laws to be considered by this Parliament are listed, perhaps not exhaustively, by the Governor-General and give an insight into the political landscape of the time. They include the Justices of the Peace Act, the Juries Act, the Family Homes Act, the Infants Act, the Licensing Act, the Family Protection Act, the Divorce and Matrimonial Causes Act, the Sea Carriage of Goods Act, and the Deaths by Accident Compensation Act (p. 5). New Zealand was emerging from the post-war years with a legislative focus on strengthening civic life. Among these changes, however, was the contrasting Official Secrets Bill, which took up very little of Parliament's time. It was introduced without fanfare by Sidney Holland's National government, which had replaced Peter Fraser's Labour government at the 1949 election. It drew no opposition, bar the odd polite inquiry about a detail or two, from the Opposition benches.

The new law governing the State's behaviour with information was a derivative of English law, drawn with accuracy to the original. In committing the OSB to the house for its passing, Attorney General Clifton Webb says on December 5, 1951 (the last day of the first session of the 40th New Zealand parliament): "There are no clauses

of any consequence in the Bill that do not appear in the various Acts governing the law on official secrets in England” (1951, p. 1360). If that was the case, and the law was modelled on the UK one (Freyberg, 1951, p. 5), then it seems fair to assume its provisions are in response to similar threats considered to be affecting the UK. A coding in NVivo of the OSA 1951 itself quickly reveals that its focus is not the appropriate management of state-held information but the confounding of enemies perceived to be both within and beyond its borders, particularly the ideology of communism. After some explanation of names and terms in Sections 1 and 2, Section 3 immediately turns to the threat of spying, seeking to protect “the safety or interests of the State” (Official Secrets Act 1951, s. 3), a term which occurs 10 times across the 11-page bill. Section 4 defines, among other things, “foreign agent” and Section 5 deals with those who might disguise themselves in some way to gain access to protected information. Section 6 is the section that had an effect far beyond the borders of spying, real or imagined. Its text in effect prohibits any government employee from sharing official information with anyone. While it, too, seems to be preoccupied with spying, it also prohibits anyone who has information due to the position they hold from passing that information to anyone, a general catch-all inclusion that makes the release of any state-held information a crime (Official Secrets Act, s. 6) and which would in future years prove to be such a legislative block to the increasing transparency demanded by Aotearoa New Zealand citizens.

4.3 The Official Information Bill (OIB)

By the late 1970s, when the shift towards openness in New Zealand society had gathered momentum and now included a widely supported proposal for a right-to-know law, public servants were not normally prosecuted under the OSA 1951 for releasing information to the public. Among other regulations, the introduction of the State Services Act in 1962 and the Public Service Regulations of 1964 meant there were now other sanctions available in the event of problematic and unauthorised disclosure, and the Crimes Act had a section on spying (Committee on Official Information, 1981a, p. 8). Meanwhile, in New Zealand, as had happened in the USA (Schudson, as cited in Treadwell, 2015) and other liberal democracies, an increasingly influential cultural movement for transparency had developed. Opposition to the Vietnam War, to Muldoon’s Think Big policies and, later, to the Springbok rugby tour of 1981, during which New Zealanders experienced high levels of civil unrest when rugby supporters, anti-apartheid protestors and baton-wielding police clashed in the streets, were part of a

political awakening that included increasing demands for transparency. Alongside it was increasing consciousness of contemporary Māori land issues, brought to focus by the famous land occupation (Waitangi Tribunal, 1990) at Takaparawhā (Bastion Point) in 1977-78 and the principles of tino rangatiratanga (sovereignty). In Parliament, during the debates on the OIB, Christchurch Central MP Geoffrey Palmer was accused of devising “a grandiose scheme for the universal and rapid reform of every institution of government” (Minogue, 1981a, p. 1914). It was a time of change but this socio-political awakening came face to face with Muldoon’s authoritarian approach to leadership, which included such famous confrontations with accountability as the banning of political cartoonist Tom Scott from covering political delegations overseas and even from the Prime Minister’s own press conferences (Fensome, 2014). Muldoon declined to halt the Springbok rugby tour that was dividing the country and was dismissive of the proposal for an FOI regime. Concern had grown over some decades about the unrestrained nature of executive power in New Zealand (Aitken, 1997, p. 2) – a powerful Cabinet, dominated by a pugilistic prime minister, itself dominated a relatively small parliament (99 members) and there was no upper house to impose restraint if required. There was a growing public mood for openness, but the introduction of the OIA in fact followed a “long period of public concern and criticism about the lengths to which the Government went to preserve secrecy” (p. 4). The Act is historicised (Aitken, 1997) as part of a chronological series of policy correctives designed to improve accountability, both political and administrative, starting with the creation of the Office of the Ombudsman in 1962, and including the OIA 1982, the introduction of parliamentary select committees in 1985, the State Owned Enterprises Act 1986, increased recognition of the Treaty of Waitangi, the State Sector Act 1988, the Public Finance Act 1989, the Bill of Rights 1990, and the Privacy Act in 1993. Judith Aitken, a senior civil servant ended her account of this socio-political transformation of New Zealand democracy – this depowering of the inadequately restrained State – with the introduction of a mixed-member proportional (MMP) electoral system in 1994, when she spoke to an open-government conference in England (1997, pp. 3–4). The cumulative effects of these structural changes, which had considerable constitutional implications, was a government considerably more open than in the past and now divergent in key respects from its Westminster progenitor. There was “greater transparency in the relationship between Ministers and public servants, more effective parliamentary scrutiny of the executive and more explicit measures to protect the rights of citizens” (p. 4). It had been argued, she noted, that open government was the 20th

century's most significant constitutional development and equivalent in scale to the introduction of the male franchise during the 19th century. As this chapter shows, the introduction of FOI in New Zealand was not just about people getting hold of documents – it was at least intended as a fundamental shift in the structurally embedded power relations inherent in New Zealand democracy. Prime Minister Robert Muldoon publicly called it a “nine-day wonder” (Cullen, 1981a, p. 5590) but New Zealand was making advances towards becoming an open society and the expectations on both sides – citizen and state – were more favourable towards flows of information; the OSA had become anachronistic in its legal effects. In the preceding years, attempts were made to open up the state bureaucracy through administrative means to reflect the growing assumption of openness on the part of the public and news media but they were generally unsuccessful (White, 2007, p. 21). Legally and technically, the “default setting” (White, 2007, p. 21) of the Government was still to withhold information from the public, rather than release it. Right until the time of the deliberations of the Committee on Official Information (the committee which proposed the OIA as a solution to the developing RTI impasse), new employees to the civil service had to sign a declaration that they understood the regulations about state-held information, including the implications of Section 6 of the OSA 1951, which affirmed state ownership and so the Government's proprietary control of information. Information gained through state servants' work could only be used for the discharge of their official duties, no information could be shared without permission of the Minister, and, perhaps in a nod to the future of political communication, only authorised employees were to talk to the news media (Committee on Official Information, 1981a, p. 11). By the 1970s, state agencies may have assumed reasonably far-reaching authority to disclose information but just what information was available to the public and what was not depended heavily on departmental and ministerial attitudes (p. 11). As the committee noted, this uneasy compromise over state-held information did “not square with present day needs and attitudes of the New Zealand community” (p. 11).

Against this background of increasing awareness of the need for a FOI law, the issue manifested itself most visibly in the context of environmental issues associated with the so-called Think Big energy policies of the autocratic prime minister and interventionist finance minister, Robert Muldoon (Aitken, 1998). As community and environmental groups fought the Government on issues associated with such large-scale forestry and energy-production projects, they found themselves unable to secure the state-held information that would fully empower their advocacy. Out of this

dissatisfaction grew the Coalition for Open Government, an ultimately influential coalition of pressure groups acknowledged for its role in cracking open the nut of state secrecy in Aotearoa New Zealand (Te Ara, n.d.). By 1977 a Labour MP, Richard Prebble, had introduced an FOI bill but it failed to gain a second reading in the House of Representatives. Just the following year, however, the National government created a steering committee in response to ongoing pressure for an FOI regime. The Official Information Committee, later dubbed the Danks Committee after its chairman Alan Danks, an economics professor, was directed to review the OSA1951 and to consider the extent to which official information – a euphemism for any information in government hands – might be made readily available to the public.

What the Danks committee recommended in its two reports amounted to a fundamental upsetting of the existing relationship between state and people in Aotearoa New Zealand. An “official information act” was proposed to deliberately reverse the presumption of the State’s right to secrecy and base a new relationship between the State and citizens, at least in terms of information sharing, on an underlying principle of availability. That is, all information held by the Government would become available to anyone in New Zealand (unlike many other regimes around the world, rights to official information are not restricted to citizens and residents but are accorded to anyone on New Zealand soil) unless there was good reason for withholding it. An underlying principle of availability was included – the default status for official information was to be no longer “secret” but “available”. The public were effectively to be the owners of the information and so if property rights meant anything, it was within their basic rights to ask for and be given it. Media-law researcher Steven Price has it that

[essentially] . . . we, the public, own the information that’s held by government. And we’re entitled to see it on request unless there’s good reason to withhold it. “Good reason” isn’t just any old reason the government thinks is justified. There is a careful list of “good reasons” for refusing to give you information in the OIA (such as prejudice to national security or international relations). If the government can’t find a good reason from that list, it has to give you the information. (n.d.)

Indeed, information could still be withheld from the public under the new regime if it met certain strict and narrow criteria – its status would then be changed from available to unavailable. But situations demanding such secrecy were now defined in law and restrained principally to matters of state and crown security, commercial privilege, “free and frank” advice to ministers, and the privacy of natural persons. In global terms, New Zealand’s list of reasons for withholding information was comparatively short, one of

several factors contributing to the conventional narrative around New Zealand being highly successful in actually-existing FOI. Helping this reputation was the fact that in New Zealand, even if information qualified under its strictly limited list of criteria for secrecy, outside a few conclusive restrictions such as national security, it still had to pass an over-riding public-interest test if it was to be withheld from a requester – that is, while there may be reasons for withholding information, it would still be released if it was more in the public interest for it to be released than it would be in the public interest for it to be withheld. The Official Information Act (OIA) was passed in 1982 and came into effect the following year. It was roundly celebrated as one of the most liberal and permissive regimes on the planet and in late 1999 the country's chief ombudsman, Sir Brian Elwood, was still happy to declare that New Zealanders' right to know was, as far as he knew, "unmatched" (Elwood, 1999). It was two years after the New Zealand Law Commission had carried out the first of two reviews of the OIA and had concluded there was nothing that called into question the underlying principles of the Act (New Zealand Law Commission, 1997). As the national discourse developed around the democratic innovations of the law and its importance and success, New Zealand's citizens, along with its journalists, were often deemed to be among the most liberated around.

So fundamental is FOI to the authenticity of a nation's claim to democracy, that it now seems remarkable that the State's right to secrecy was the legal default in New Zealand until 1982. The Danks Committee's recommendations were adopted in most part, despite being radical, and the Official Information Bill (OIB) was drafted.

It is at around this time that this research looks to establish the political moods behind the introduction of the Official Information Act. The aim here is establish not the legislative aims of the Act – they are there stated plainly in Section 4 (Official Information Act, s. 4) – but to establish the thinking about freedom of information that was behind it, the thinking with which news media would have subsequently approached as the conditions of access under which to develop its public-interest journalism over the ensuing years, given that the new law has now prescribed recognisable limits to both the information available and reasons for information to be withheld from it. These raised new possibilities for journalism – legally accountable officials who were legally obliged to provide information as soon as they practicably could (the OIA's 20-working-day limit was the result of a 1987 amendment).

By the time FOI reforms were getting close in New Zealand, Muldoon had

concentrated power significantly in his own hands; holding both the Prime Minister and Minister of Finance portfolios is now accepted as a democratically dangerous combination. Autocratic as the former and interventionist as the latter, Muldoon oversaw a state-driven programme of large-scale energy projects, known as Think Big, as a response to rising international oil prices. New Zealand was experiencing rampant inflation, typically at 10 per cent during the 1970s (Easton, 1997, p. 7), and Muldoon's government imposed a wage and price freeze of "draconian intensity" (p.9). These interventions were typical of the contradiction between Muldoon's economic ideas and the market liberalisations that had begun as early as the 1950s and in which there had been a "marked quickening" (p. 8) in the late 1970s. Those ideas would of course be replaced by the unprecedented surge of liberalisations that would follow the election of David Lange's Labour government in 1984. But it was against the backdrop of Muldoon's decreasing popularity and increasing regulatory intransigence that the OIA was introduced. The Opposition was increasingly calling for liberalisations in both economic and transparency terms. On the Labour benches were some MPs who would go on to play major roles in the political-economic transformation of New Zealand of the 1980s and 1990s (Easton, 1997; Kelsey, 1993) and these figures, too, would have influence, albeit not the influence of government, on the FOI reforms. Some, like Geoffrey Palmer, would sit on the select committee that considered and made changes to the bill before the House enacted it. Others led the cross-floor challenges in the House to both the overall aims and the details of the Act.

Meanwhile, some political opponents of Think Big were being frustrated in their attempts to get information from the Government about its energy projects and a pressure group, the Coalition for Open Government, was formed. Its campaign for information would add significant weight to the existing pressure for FOI reforms (Te Ara, n.d.) and by 1978, the Government had agreed to move on the obsolescence of the OSA 1951. It appointed a committee, made up primarily of senior civil servants (McLay, 1981a, p. 1908) and charged it with considering to what extent state-held information might be made available. Alan Danks was appointed its chair. While the did not go far enough for some (e.g., Palmer, 1981b, p. 5669), the generally liberal thrust and the workability of the bill that resulted has been attributed (e.g. McLay, 1981a, p. 1908; Palmer, 2007, pp. 2–3) to the make-up of the committee that considered the issue, consulted with interested parties and presented a draft bill that largely became law. In introducing the Official Information Bill to the House on July 23, 1981, Attorney-General Jim McLay noted that the members of the committee had "wide experience of

the realities and practicalities both of administration, and of the political process” (1981a, p. 1908). All but two were senior civil servants who understood how bureaucratic systems worked. There were no politicians and no media representatives on the committee. There were two academics. For these and other reasons, the Danks Committee has been generally commended by scholars (e.g., Snell, 2000; Palmer, 2007, pp. 2–3) for its approach to FOI, which created a regime considered friendly to its users and workable for officials. This was arguably a key moment in the shift of the State, in a symbolic sense, from master of the citizen to servant.

4.3.1 The weight of the law. The grave significance of the law was not at issue in parliamentary debates, even though Prime Minister Rob Muldoon was taken to task for belittling outside the House (Prebble, 1981b, p. 5599). The government member most noted for his advocacy of FOI, Mike Minogue (1981, pp. 431–432), told the House a year before the introduction of the Official Information Bill that the very parliamentary democracy New Zealand so valued would not survive without FOI reforms. His comment came during the address-in-reply in response the Governor-General’s speech opening the second session of the 39th Parliament. He said one of New Zealanders’ most important beliefs was in limits to the power of the State (1981, p. 431).

Most New Zealanders not only believe that there should be limits to the power of the State, but they have a positive interest in the retention of a parliamentary system of government. They want positive assurance that such a system can, in a changing world, still function affectively (sic).

I have said on many occasions that I do not think this parliamentary institution can long survive what has become the habitual practice in connection with information. I refer to the growing habit of official secrecy in vital matters. The reason for this growing habit is our continuing support for section 6 of the Official Secrets Act, which has long been used to obscure and conceal information about public affairs. It is quite stupid and untrue to pretend any longer that secrecy has not become the habit of both bureaucracy and politicians. This must change if the health of the institution of Parliament is to be safeguarded (1981, pp. 431–432).

Minogue went on to champion the Official Information Bill to effect the changes he believed needed to be made. Analysis of the “importance” node (26 references) shows New Zealand’s Parliament was under no illusions about the magnitude of what would be achieved with the passing of the OIA. With the exception of the Prime Minister, who had made his opposition to relinquishing the State’s default right to secrecy publicly known (Cullen, 1981, p. 5590), there was no opposition to the idea that

FOI reforms were required and that the goal was the almost-complete political transparency of the State.

Introducing the bill, Attorney General Jim McLay apologised for the length of his imminent remarks but justified it with the weight of the law that was proposed. It was “one of the most significant constitutional innovations to be made since the establishment of the office of the Ombudsman in the early 1960s” (McLay, 1981a, p. 1908). In debating whether the legislation should have an expiry date, a “sunset clause”, Minogue said (1981a, p. 1909) the law proposed to increase citizen rights and, as such, “should be seen as a lasting part of our legal and constitutional fabric”. Labour agreed on the importance of the bill but argued it was “excessively moderate”, in fact (Palmer, 1981a, p. 1912). Its member for Auckland Central, his metaphor echoing others before him, said information was “the coinage of democracy” (Prebble, 1981a, p. 1915).

As if to underscore the importance of the bill, the Attorney General closed his introductory remarks by returning to the core, constitutional values of FOI:

I reiterate that the Bill represents a significant constitutional innovation. It seeks to improve communication between the citizen and the bureaucracy. It makes governments more accountable to the people. But perhaps, above all, it materially alters the delicate balance that exists between the citizen and the State, not by diminishing the effectiveness of government but rather by greatly increasing the rights of the individual in his or her dealings with an otherwise all-powerful State. In so doing it very substantially enhances the freedoms of each and every New Zealander (McLay, 1981a, p. 1908).

This was a game-changing piece of legislation, required to correct a constitutional crisis in power relations that was developing because of the obsolescence of existing law. That law was very much a mirror-image of the Mother Country’s own secrecy law (Webb, 1951, p. 1360), and was introduced primarily to foil the tentacles of communism. But the State had captured all New Zealanders in its authoritarian and increasingly unworkable grip on information. While the argument, made in this chapter, that New Zealand was already a relatively open society by the late 1970s is valid, passing the OIA 1982 was not simply regulating a happy and extant situation that was not yet covered by law. The State’s “default setting” (White, 2007, p. 21) was still that it decided, without public justification, what was public information and what was not. The Government was aware (McLay, 1981a, p. 1909) that the tradition of secrecy was still strong in the corridors of government and that, irrespective of regulatory reform, entrenched attitudes and long-held habits among politicians and the civil service would take time to change.

4.3.2 Opposition to aspects of the bill. An examination of the nodes “criticism” and its child nodes “poacher and gamekeeper”, “cabinet veto” and “Labour policy” provided access to the views critical of the bill that were present in Parliament. Led by the MP for Christchurch Central, Geoffrey Palmer, the Opposition challenged, in particular, two aspects of the proposed law – the extent to which it still provided for state secrecy in sections 6 and 7, and that the final decision on release of information with the minister whose ministry held the information, and not with the mechanism of appeal, the Ombudsman. The ministerial veto would eventually be amended under Labour to require approval of all Cabinet members, a move so full of potential political impact it was unlikely ever to be used (Palmer, 2007, p. 2) (and, indeed, has yet to be).

The Opposition welcomed the bill but believed should be “much more liberal yet” (1981a, p. 1911) and that it “demonstrated an abundance of caution” (p. 1913). It was much more restrictive once it had been shaped by the select committee (Cullen, 1981a, p. 5591). Labour asked what guidelines would help officials decide for or against release because that would affect whether the presumption on balance was for against disclosure (p. 5591). To ensure the presumption was for disclosure, as the Danks committee intended, the conclusive criteria for withholding information under clause 6 needed to be narrow, since they were the exclusions that did not have to be weighed against the public interest in release, as those in clause 7 did. The most significant reasons for exclusion were listed in clause 6 – information can be withheld if releasing it would threaten the security of the nation, the entrustment of New Zealand with information from other governments, the maintenance of law, endanger anyone, or seriously damage the New Zealand economy (Official Information Act, s. 6). In these cases, officials would not have to run the withholding of information against a public-interest test to establish that it is more in the public interest to withhold it than release it. In the criteria under clause 7, which includes the protection of commercially sensitive material and officials’ free and frank advice to their ministers, they would have to run such a test. (Note: after subsequent amendments, the intentions behind clause 7 in the original bill are now found in section 9 of today’s act).

While there was broad agreement on the nature of FOI principles, the quality of FOI legislation lay in its details, Geoffrey Palmer (1981a, p. 1911) told the House. He disagreed “profoundly” (p. 1912) with some of the Danks Committee’s conclusions, including that government ministers should have the final say on whether any particular information was released or not. There needed to be a “neutral umpire” (p. 1912) on

FOI disputes. “The Government must surrender the keys to the palace,” Palmer told the House (p. 1912). At issue was whether ministers would invoke their right to a veto “frequently” (p. 1912) and thereby reduce FOI. He hoped the special select committee to consider the bill would change this aspect of it (p. 1912).

The “poacher and gamekeeper” node was an in-vivo code established during a pilot project for the substantive analysis of interviews for this doctoral project. It was introduced here during coding to see if connections might be made between the argument of Respondent 5 (R5) (discussed in Chapter 6) and others (e.g. Roberts, 2002) that officials should not have administrative discretion over the release or non-release of information under their control. R5 said: “For a law to be workable it can’t involve the poacher and gamekeeper playing the same role. You can’t necessarily rely on the people who are supposed to be complying with the law to enforce any lack of compliance” (Interview: R5). In the parliamentary debates under analysis, there were indeed iterations of this argument as far back as 1981. In a terse exchange over the Ombudsman’s review role in relation to FOI refusals, Attorney General Jim McLay told the Opposition that the public could expect that a “public-interest” argument for the withholding of information would not “become a synonym for administrative convenience or for the avoidance of political embarrassment” (1981a, p. 1910). Labour argued having a neutral umpire was a basic tenet of FOI laws (Palmer, 1981a, p. 1912). It said a ministerial veto was the sort of concentration of executive power that was at the heart of much current discontent with the Government, which must “give up the keys to the palace” (p. 1912). However, the Government’s response was that making the Ombudsman’s FOI rulings binding on parties would be “an abdication of the functions of the Government in favour of some other institution that is neither elected nor responsible in that sense” (McLay, 1981a, p. 1921), a situation the OotO itself recognised. The Government stressed that it expected the ministerial veto to be used “only in very strong and exceptional cases (McLay, 1981b, p. 5602). The veto, which had to be announced within three weeks if used and formally gazetted, would remain (it was later amended to a full cabinet veto which has never been used), which led Palmer to later predict that an important factor in any future success of the FOI regime would be “the attitude of public servants and Ministers to the disclosure of information will be a most important feature of the success of the legislation” (1981b, p. 5669).

4.3.3 Issues on the table. There was indeed wide agreement among the parties in the House about the need for FOI but there were fundamental differences in the

extent to which each of the two major parties (Social Credit had two MPs) wanted it to go. The issues on the table at the time of the debates are likely to inform our thinking about today's FOI issues. Two were dominant and do have implications for today: the inclusion or exclusion of certain agencies under the Act, thereby making them transparent and open for public inspection, and the time in which the State had to respond with the information a citizen had asked for.

4.3.3.1 Schedule of agencies subject to the Act. The implications of right-to-information laws are that the transparency of the entire government is transformed by them. However, which state agencies and which agencies contracted to the State should be subject to the OIA 1982 is still at issue even today (Treadwell, 2016, pp. 126–127). One focus of this research is on organisations within the privatised sector, in terms of what Roberts' (2001), following Giddens (2000), calls “structural pluralism”, the provision of public services through a mix of public, quasi-public and private organisations. And as the Act made its way through the parliamentary process, the length of its reach was at issue, particularly for the Opposition, which complained at the broadening of the clauses that permitted secrecy (primarily sections 6 and 7) by the Government-stacked select committee that considered the bill. The node “agencies”, with child nodes of “local government”, “Parliament”, and “structural pluralism”, revealed that right from the start that organisations connected to the public purse were granted rights to secrecy and that Parliament's exclusion, and the ramifications of that today, was the result of the way the Committee on Official Information viewed the parameters of its terms of reference. The Attorney General said he agreed with the committee that including Parliament, the courts and local government under the bill was outside its brief (McLay, 1981a, p. 1909). Local government, however, was already nominated for future inclusion in the country's FOI regime (Palmer, 1981b, p. 5588) and so the automatic nature of the exclusion of Parliament never was directly explained. In 2012 a central recommendation of New Zealand Law Commission's (New Zealand Law Commission, 2012) review of the OIA 1982 was that it be extended to the business of Parliament but the Government quickly moved to affirm the long tradition of secrecy at Parliament. When it came to quasi-autonomous non-governmental organisations, quangos, as they were known at the time, the seeds of today's discontent over quasi-corporate bodies with connections to the public purse being excluded from FOI regimes (e.g., Roberts, 2006, pp. 150–170; Treadwell, 2016, pp. 126–127) were arguably germinating even as the bill was passed. In response to a challenge from the Opposition benches, the Attorney General told the House it would “take too long to enumerate all

the quangos that are excluded” (McLay, 1981a, p. 1920) and offered examples of organisations for which exclusion took place: judicial bodies (e.g., licensing commissions), local bodies, and occupational administrative organisations (e.g., the Real Estates Licensing Board). He referred members of the House (p. 1920) to page 104 of the Danks Committee’s supplementary report on official information, which gives the principles on which exclusion of quangos was based.

Among the factors suggesting the exclusion of an organisation are that it is more concerned with local government than with central government, has large areas of autonomy from central government in its composition, the source of its funds and the fixing of priorities, their use, the making of its decisions and the carrying out of its functions. More broadly, another basis of exclusion is that the organisation is primarily concerned with regulating or assisting an area of industry or determining entry into a profession or occupation independent of government or is of a judicial character (Committee on Official Information, pp. 104–5).

Despite “wide areas of agreement” (Palmer, 1981b, p. 5587), the Opposition was critical of the bill in several ways, particularly once the Select Committee on Official Information had returned the bill to Parliament. In terms of exclusions from responsibility under the Act, Palmer, who would become one of the most respected constitutional voices in New Zealand politics, called on the Government to not exclude the state-owned Bank of New Zealand (p. 5588) from the schedule of organisations that would be subject to the RTI law.

Local government – primarily comprising city councils, district councils, regional councils, health boards, licensing boards and, after 1989, school boards were not subject to the Act because the Danks Committee felt any openness requirements it might need, like those of Parliament and the courts, were outside its brief. But the Opposition was already of the view the RTI principles in the OIB must be applied to local government too (p. 5588), as it would be under the Labour government elected in 1984. The Local Government Official Information and Meetings Act, which effectively extended the reach of the OIA 1982 and set rules for access to local-government meetings, would be passed in 1986.

4.3.3.2 Time limits. The law passed by Parliament in 1982 set no time limit by which the State must produce information asked for by New Zealand citizens. Instead, it required it to respond to requests as soon as practicable, a notion under fire from the Opposition in the second-reading debate on the bill. The notion of a timely response has been a point of contention ever since. This is discussed in the next chapter. Labour believed time limits should apply and was “worried that, in practice, delay will often be

the most convenient course for the executive branch to take, because time has a habit of making many things less controversial” (Palmer, 1981, p. 5588). Without time limits, says Auckland Central MP Richard Prebble, the whole purpose of the Act would be undermined because “in many cases information delayed is information denied” (1981b, p. 5601). At the same time, the provision that it was a minister’s right to veto the Ombudsman’s decision in favour of releasing information was changed to a full Cabinet veto.

This notion of delayed release impacting the newsworthiness of information will be taken up again in Chapter 5, when in-depth interviews with journalists conducted in 2016 are analysed; it will become apparent that even today the issue is very much alive.

It became obvious that without time limits, delays were inevitable (Palmer, 2007, p. 7) and they were eventually introduced by Labour through amendment to the Act in 1986. The State was from then on allowed 20 working days to respond – either with the information requested or with its reason for either withholding the information or for needing more time.

4.3.3.3 *Labour’s proposed amendments.* Labour proposed a series of amendments to rectify what it said were flaws in National’s approach to FOI. Labour had its own detailed proposal for a FOI regime (Palmer, 1981a, p. 1911) and so easily identified what it saw as the Government’s FOI shortcomings. The party did not oppose the introduction of the bill, giving it tacit approval, but argued that the devil was in the detail. At its second reading on December 14, 1981, Labour’s objections were outlined in detail: the reasons the State could withhold information, listed in sections 6 and 7, were too wide. In particular, the Government’s hold on information about the economy remained too strong (Palmer, 1981, p. 5588). The range of sanctions which could be brought against state servants revealing information that was prejudicial to the security of the nation also concerned Labour. The Act was not so different to the approach taken in the OSA 1951, in that regard. National, as it turned out, agreed and they would not be part of the final act at all. At that point, the OIA became entirely an FOI bill and the issue of spying, a remnant of the OSA 1951, was left to other legislation.

At the third reading, the Opposition presented the amendments it had proposed but had seen defeated when put to a select committee dominated by Government members. As a group, these eight amendments mostly targeted the broadness of the exclusions in sections 6 and 7 that allowed the State to keep information secret. They proposed what might appear to be minor changes to wording but each case was an

attempt to “widen the range of information that would be available under the bill” (Palmer, 1981b, p. 5669) because Labour felt it was too narrow. It wanted potential damage to the “international relations of the Government of New Zealand” removed from the list of reasons for withholding information because it was too broad. It also wanted less potential secrecy around the Government’s economic information, “because Opposition members were worried that the hand of Treasury had been at work too heavily upon the bill” (p. 5669). Further, it wanted clarification about what constituted competitive commercial activities, which allowed for the secrecy of certain information in clause 6b, which made information about such activities by state agencies secret. Labour’s amendments also objected to an over-emphasis on the Crown’s right to keep its commercial information private and to the requirement in clause 7 that the public interest in non-disclosure should be weighed up against the public interest in disclosure, which it called “a muddled kind of balancing” (Palmer, 1981b, p. 5670).

The Government had no interest in Labour’s suggested improvements and rejected them at select-committee stage, during which it had found it necessary to make 22 amendments to the bill itself and was subsequently accused of rushed law-making (Cullen, 1981b, p. 5671). If Labour’s intention was to widen the ambit of the disclosure law, National clearly thought that was going too far. Closing the debate before the bill’s third reading, the Attorney General dismissed Labour’s amendments one by one, saying they would have threatened international relations, disadvantaged the Government in economic terms and upset a careful public-interest balance created by the select committee that considered the bill. Others would have caused trade secrets to be revealed and “imposed an arbitrary 28-day limit on the supply of information, a matter that is more than adequately dealt with by the powers of the ombudsman to investigate any undue delay in the supply of information” (McLay, 1981b, p. 5672). The issues the Opposition raised had all been “most carefully considered by the select committee” (p. 5672) and he commended the bill to the House for its third reading. The bill was passed shortly before 4.30am. (Espiner, 2017). The middle of the night was ironic time to pass a sunshine law, noted Labour’s MP for St Kilda, Michael Cullen (1981b, p. 5670). Thirty-five years later, and now with a past career that included a period as Prime Minister and a knighthood for his services, Geoffrey Palmer would look back on that period of law-making as one of unfortunate irregularity. Having interviewed the venerable Palmer as part of a series on former prime ministers, journalist Guyon Espiner wrote:

A lot of legislation – from the important to the self-serving – was passed in the dead of night, when some MPs were asleep, drunk or insanely tired. That is if Parliament sat at all. When Palmer first arrived Parliament would sit for four or five months a year. The rest of the time, well, the Prime Minister ran the country (2017).

4.3.4 Implementation. The inductive nature of the coding undertaken for this analysis allowed for the emergence of the “implementation” node, when it became apparent that debates subsequent to the passing of the bill continued to mention it. This allowed access – at least from within a parliamentary context – to the initial periods of the operation of New Zealand’s new FOI regime. This was also the period of operation for the Information Authority, a body established by the Act with a temporary lifetime and whose tasks revolved around the implementation of the Act, and references to the authority were also coded.

4.3.4.1 The Information Authority. The members of the Information Authority were: Alan Danks, who chaired it and had chaired the Committee on Official, respected broadcaster Shirley Whitley-Maddock and a former chairman of the State Services Commission, Ian Lythgoe. Resources were devoted to it to “get the Act going” (Palmer, 2007, p. 3); the authority oversaw a programme of training of civil servants in their responsibilities under the Act. It also made sure “the Act was properly supported from an administrative point of view” and was very successful in this early work (p. 3).

The “implementation” node (14 references) tells a different story about the early days of the Act, however. MPs are already frustrated in their attempts under the Act to get information out of the government. Michael Cullen (St Kilda) accused the Government of not even knowing its own “pseudo-liberal” (1981c, p. 2016) Act:

In their replies to me refusing information two Ministers did not even know of their statutory duty to inform me of my right to appeal to the ombudsman. The State Services Commission should run instruction courses on the Official Information Act for Ministers (p. 2016).

Fran Wilde (Wellington Central) pursued the same line, asking the same question of every cabinet minister:

What particular steps have so far been taken in the Ministry of Works and Development to prepare for the introduction of a new regime pertaining to official information, what is the future programme in this respect, will any new staff be required to cope with the extra work load, and, if so, how many, and when will they be employed? (Wilde, 1981, p. 5866)

In answering on behalf of all ministers, the Minister of State Services, David Thompson, said planning for the implementation of the OIA began in late 1981. Three

“broad areas of activity” (Thompson, 1981, p. 5866) were preparing operating manuals and guidelines, creating a directory of official information, and familiarising staff with the Act and its intent. Senior staff attended seminars run by State Services Commission staff and training aids, including a “video film” (p. 5867), would help introduce the legislation to all staff and “improve the judgmental skills of those delegated to take decisions on requests for information” (p. 5867). Two additional staff would be appointed to the information unit of the State Services Commission as advisers and some departments took on temporary specialist staff to help prepare their entries for the directory.

4.3 Conclusions

The OSA 1951 and the OIA 1982 were both acts strongly reflective of their respective times. Six years after World War II, communism had already been cast as a threat, both in international terms and in domestic industrial relations. New Zealand had been among the first countries to join the USA in its retaliation against North Korea, while locked-out wharf workers at home were called communist insurgents by the Government. The OSA was introduced to further localise a secrecy law that had been borrowed from England since 1919. The new act was not constitutional in nature, as its successor would be, because it was to serve the interests of the Government, not the people. Government information was just that – the Government’s. The Act was shaped for its times; it was created to meet a security demand that pre-existed it. It was a response to the threats the Government of the day said were being made against it and the country. It reinforced an explicit assumption of state power – that the power of information was primarily the State’s to wield in defence of itself, whether that threat was internal or external.

Despite the liberalisation of New Zealand society in the period before the proposal for an RTI law was developed in the early 1980s, the information-rights framework under which New Zealanders lived was based on secrecy and was still in place, both in strict legal terms and in the practice of civil servants who handled the State’s information. That much benign information flowed from the State to the citizenry without any reference to the OSA does not obscure the extant secrecy that remained. Questions could be asked of the Government in the House of Representatives by the Opposition but the citizenry had no forum for information gathering. (Question time in the House was one of the things predicted to change under the new FOI regime, once MPs no longer had to wait for it to ask questions of the government. Much

information could be exchanged freely outside the House, freeing up the parliamentary Question Time for more in-depth political debate.)

Both the Government and the Opposition made it clear in the House that the FOI situation in New Zealand was no longer tenable. The weight of the issue and the importance of the law change required to solve it were heavily emphasised by both sides. One government member said he believed the rot of secrecy would eventually bring down Parliament and democracy itself. Labour proposed a solution that went further than National's, that would have narrowed the list of possible exclusions from the obligation to release information, included Parliament itself in its legal ambit and accorded the Ombudsman final powers of decision over FOI disputes. But despite these differences in the proposed solutions, the problem was very much the same, from wherever you looked. An anachronistic law from earlier times, politically speaking, was still enabling a clandestine approach to government that was out of sync with the direction society was moving relatively quickly. Given the opportunity to, servants of the State would employ secrecy when they deemed it necessary. A long period in which civil society groups were increasingly vocal about these ills of state secrecy preceded legislative change, a period in which the liberalisation of thinking was at odds with the reins of power held tightly by an increasingly autocratic prime minister who held the two top jobs in Cabinet.

New Zealand was a member of the first wave of liberal democracies who adopted FOI laws the second half of the 20th century and, through that framing, it might be reasonable to attribute the passing of the OIA, in part, to common external influences. Australia and Canada, similar countries in terms of their wealth, stable liberal democracies and their membership of the British Commonwealth, were passing FOI acts at much the same time and their move appeared to theorists (e.g. Roberts, 2006; Banisar, 2006, p. 19) to mirror each other in important ways. Indeed, the early-1950s threats from communism had now morphed into the battle between the West and the Soviet Union; the latter and militarily more sophisticated stages of the Cold War had begun and Western countries like New Zealand were keen to differentiate their stance on the rights of the citizen from the Soviets'. These countries arguably had these political influences in common and establishing FOI regimes was a key part of asserting ownership to the moral high ground in the rejection of totalitarianism.

However, this chapter has shown that there was also local context to the formation of New Zealand's FOI regime that helps deepen understanding of it. New

Zealand's move to FOI was a correction of a damaging imbalance that had resulted from society outpacing its own laws. The OSA 1951 was restrictive and authoritarian, everything the ongoing liberalisation of social practice and the recognition of human rights sought to reject. A complete change was required and the presumption of the State's right to secrecy was flipped on its head with the enactment of the OIA 1982. It was, the Opposition argued, a rushed affair, unlikely to work properly and too favourable towards the State. But the law was well designed, in technical terms, by a group which included both advocates for transparency and experts in the workings of government. As a result, the law was much more liberal than its counterparts in Canada and Australia and brought some derision from policy analysts who thought its flexibility (for example, information is not defined as necessarily being held in document form) would create havoc for the civil service. As it turned out, its flexibility was its strength (Snell, 2000), and before long the Act was being lauded as a world-leading piece of FOI legislation. However, as shown in this chapter, seeds of discontent were evident even in the parliamentary debates that ushered in this imperfect sea-change in power relations within a democracy. Keane's (2011) historical thesis that monitory democracy began in the years after World War II gets power with the inclusion of the FOI regimes of the 1960s to the 1980s. Monitoring bodies that were proliferating across multiple planes of society now had the power of FOI behind them as they carried out their work. It was, in a sense, the shift of the State from master to servant. It was that important.

5. Retracted freedoms: Neoliberalism and FOI

“There’s no such thing as a free lunch.”

– Milton Friedman (1912-2006), neoliberal economist

With its enactment of the OIA 1982, the Aotearoa New Zealand government set itself and future administrations the task of “progressively [increasing] the availability of official information to the people of New Zealand” (Official Information Act, s. 4). The intentions of the lawmakers were that with this continually improving state of affairs, the State would also be encouraging the inclusion of the public in the making of the laws of the land (see Chapter 4). With its substratal presumption in Section 5 strongly in favour of disclosure, the OIA 1982 has been widely understood as a constitutional guarantee (Palmer, 2007, p. 3) of transparency, without which self-rule becomes impossible. “It wasn’t some silly little compromise or stunt or something. It was quite a serious endeavour. Whatever has gone wrong with it since, it has got real intentions [behind it] and it partly lives up to them” (Interview: R13). Chapter 4 showed the elite political discussions around transparency in the late 1970s and early 1980s were strongly nationalist in nature. Aotearoa New Zealand, redefining itself on the world stage and at home, set about breaking up its secrecy laws and creating a statute that would deliver openness and improved state accountability in line with growing domestic expectations and much contemporary practice. It was looking to share an open future with similar democracies, counterpointing its existing and growing reputation for actually-existing accountability against the faux accountability of authoritarian nations positioned against the Western bloc during the Cold War. Constitutional expert Sir Geoffrey Palmer, president of the New Zealand Law Commission, would later call the development of the OIA 1982 “the biggest policy game in town” (Palmer, 2007, November, p. 3) and scholars who downplay its constitutional importance are hard to find.

However, irrespective of its significance, the development of the OIA 1982 was a game played in ignorance of an imminent centralisation of neoliberal political-economic policy within the State’s agenda, the so-called “Rogernomics” revolution (Easton, 1993) of economic and trade liberalisations, and privatisations within the State sector. Aotearoa New Zealand would quickly move from “what had probably been the most protected, regulated and state-dominated system of any capitalist democracy to an extreme position at the open, competitive, free-market end of the spectrum” (Nagel, 1998, p. 223). Keynesian economics, credited with establishing global economic

stability, at least in Western countries, after World War II, was now increasingly viewed by economists as responsible for a period of so-called stagflation (a term describing uncommon economic conditions in which both inflation and unemployment rise against the background of a recessive economy) being experienced in increasing numbers of economies in the 1970s and exacerbated by price jolts in the international oil market. The most powerful nations abandoned their “embedded liberalism” (Harvey, 2005, p. 11) and “the capitalist world stumbled towards neoliberalization as the answer” (p. 13). The long-term effects of such transformative change would be felt on virtually every social field in Aotearoa New Zealand but the research interest of this chapter is in the effects, direct or indirect, of its multiple and ongoing economic liberalisations (Easton, 1997, pp. 13–43) on levels of freedom of FOI experienced by public-interest journalists. It explores Kelsey’s idea that the “transfer of economic and political power from the State to capital [that was at the heart of the neoliberal reforms] had required a strong executive, untroubled by electoral mandates, parliamentary scrutiny or external accountability” (1993, p. 188). As a central argument in answering the primary research established under the Aotearoa New Zealand FOI regime and the outcomes of material changes to the political economy of the nation that followed, beginning in 1984, just two years after the enactment of the OIA. Drawing on the analysis of data generated through interviews with respondents, it explores the idea that elements of the neoliberal agenda in Aotearoa New Zealand – including the “neutralisation” (p. 175) of public watchdogs, the shrinking of government through policies of privatisation, and the politicisation of the civil service – have been deleterious for FOI in Aotearoa New Zealand, and therefore for the work of its public-interest journalists. Public-interest journalism (PIJ) tends to be reluctant to paint power structures in ideological terms, given that the job of its practitioners, in normative terms, is to search the minutiae of daily politics for the stuff that affects the day-to-day lives of their readers, listeners and viewers. Such no-nonsense approaches might be seen as anti-intellectual in nature but they are central to the cultural capital of journalists, who tend to eschew the discourses of the elite and their entrapments, as they ground their reporting in the so-called realities of daily life. Nevertheless, what respondents say about FOI in Aotearoa New Zealand has particular and resonating relevance for our understanding of both the implementation of the neoliberal project in Aotearoa New Zealand and its impact on PIJ.

This chapter will consider three connected items on the neoliberal economic agenda in Aotearoa New Zealand (Jesson, 1987; Kelsey, 1993, 1995; Easton, 1997;

Phelan, 2014) that have affected FOI. Firstly, it will explore the perception of the politicisation of civil servants in Aotearoa New Zealand through analysis of accounts by public-interest journalists and how that politicisation impacts PIJ. This helps deepen understanding of the State and its activities in the public domain. Secondly, it will consider the reduction in the “size” of government, an ambition central to the politics of neoliberal governments worldwide, in part through the ongoing privatisation of public services. Such is the ongoing ambition of radical neoliberalism to privatise publicly owned enterprise that even government itself has been proposed as multiple “privatized government service providers” (Lynch, 2017, p. 90) in a post-crisis survivalist theory of utopian enclave libertarianism that would finally recast citizens entirely as “mobile consumers of government services” (p. 82). The privatisations near the heart of the neoliberal agenda in Aotearoa New Zealand began not long after the 1984 general election, when a tired and unpopular National government led by the authoritarian and economically interventionist Robert Muldoon was replaced by a Labour government, led by David Lange. Labour would instigate fundamental economic and social change through its “Rogernomics” programme, named after its finance minister Roger Douglas.

In the space of a decade, a strong central state authority, operating with almost total disregard for democratic process and pluralist politics, and abetted by a private sector elite, revolutionised New Zealand’s economy and its people’s lives . . . This truly was an experiment. Economic theories which had never been tried, let alone proved, anywhere else in the world became New Zealand government policy (Kelsey, 1995, pp. 348–349).

The flagship law at the start of the privatisations was the State-Owned Enterprises Act 1986, which established nine government-owned corporations, each charged with an overriding statutory obligation to be successful in business terms. And over the next four years the Labour government of the time applied “the corporatisation formula to almost every state activity with a conceivably commercial function: works, railways, ports, government computing, government supply brokerage, radio, television, airport holdings and meteorological services” (p. 119). The far more transformative process of privatisation that would follow was inevitable, argues Easton (1997, p. 23). It was often made manifest concurrently with the sale of publicly owned equity and complex cost-benefit analyses of state ownership became two-dimensional commercial equations, produced within a mirroring, at least, of free markets. “Economic liberalisation (including the commercialisation of the state-owned enterprises) would mean, Treasury supposed, that market prices would move close to the value society placed on those resources, so there would be no need for that [cost-benefit analysis]

adjustment” (p. 21). A programme of imitating free market conditions for government enterprises meant the Government would offload the fiscal and managerial burdens of those enterprises to private interests, as well as, in many cases, the financial risks. It would also eliminate the economic damage from interventionist policies and increase efficiencies in the public sector, which would be run along private-sector lines. Failures of the State-ownership model of the past could be “quietly dropped” (p. 21) as enterprises from the Bank of New Zealand and Petrocorp to New Zealand Steel and Air New Zealand were commercialised.

The logic of marketplace theory drove such change. In Aotearoa New Zealand, one of the most transformed administrations and economies under neoliberalism, in part as a result of its quasi-socialist starting point, the efficiencies of the marketplace were highly valued by economists in the State treasury (Easton, 1997, p. 85-111) and subsequently by politicians in the Labour and National governments that leap-frogged each other into the 21st century. Roberts (2006) predicts an unrecognisable public service when these ongoing alterations to advanced democracies (p. 160) are complete. “This process of restructuring has already posed a substantial threat to disclosure laws, and this threat will grow in coming years” (p. 160). Already, the very existence of the corporatised, privatised and publicly funded services that resist full transparency is at odds with the fundamental precepts of FOI, particularly its clear and necessary distinction between the public and private sectors. The vast majority of FOI regimes around the world accede the private sector’s need for virtually complete privacy while establishing that the public sector, on the other hand, holds information that belongs, in meaningful ways, to the citizenry. A variety of exemptions apply, depending on the regime’s architecture, to protect interests deemed important enough (e.g., state security, people’s privacy and the nation’s economy) but other than those, the ball is in the people’s court. If they want information, they can have it. It’s theirs. But the smaller the government, the less information it holds. It is now held by other organisations who may have good reason to want to withhold it from public scrutiny and circulation. This growing array of organisations occupy a new middle ground between the public and private worlds, confusing the picture and creating blurred boundaries (p. 152) at the edges of the public right to know. They confound the purposes of FOI, which are to reassert, in significant and pragmatic ways, the primacy of the people over their government by establishing clearly the lines of accountability to the State. Self-determination in the dark is clearly impossible.

This act of shrinking government inevitably reduces the volume of information available to citizens, given that the processes of government themselves are only accessible to citizens in the form of information. Less government means less information from and about the State as governmental functions are transferred to the private sector, creating blurred lines of accountability (Roberts, 2006, pp. 150–170). This chapter will consider the impact on FOI of successive governments' privatisation programmes and the now-standard public contracts to quasi-public organisations that operate in (ideally) free marketplaces, for assumed gains in efficiency and innovation. Some of these are state-owned but commercial in nature (eg, Television New Zealand) and some privately owned or run but funded with public money (eg, private prisons and charter schools). In either case, they are organisations in which the public has significant interest, given, if nothing else, that organisation's tie, however indirectly, to the public purse. This public interest, however, is often in conflict with the secrecy considered necessary to operate successfully in commercial markets. Full transparency is seen as counterproductive to competitive advantages in efficiency and other areas gained through business strategy. FOI, then, is a threat to the project of privatisation of state services, in which both private enterprise and State are heavily invested. Together they form a powerful blockade if threatened by journalists invoking the OIA 1982 in their attempts to enforce accountability of the agents within the field of power.

Thirdly, and finally, the chapter considers the loss of the OotO as an effective means for journalists to challenge refusals to release state-held information to them. Such are the numbers of complaints that the time it takes for them to be resolved effectively renders that information less than useful to journalists.

It shows the interconnected phenomena of the politicisation of the civil service, the submerging of the FOI section of the OotO under a deluge of complaints and the increasing reliance on structural pluralism to provide essential public services have all combined to stymie PIJ in Aotearoa New Zealand.

5.1 Agency and Habitus: A Self-Adjusting Officialdom

Respondents in this research conceived of FOI today as a game of second-guessing state officials, whose intentions often seemed to be to stem the flow of politically sensitive information to journalists, to various extents and through a variety of methods. Submitting freedom-of-information requests initiated a two-sided contest. Despite state officials being required by the OIA 1982 to service the public's official-information requirements in neutral ways, respondents were consistent in their belief the

civil service of Aotearoa New Zealand had become politicised and now defended the State executive instinctively and against the interests of public-interest journalists. In the Office of the Prime Minister, for example, there was an “OIA expert” (Interview: R16), whose job was to manage responses to requests for sensitive information. Public-relations and communications staff throughout government were portrayed by respondents as now needing – and usually possessing – the skills to manage the demands of journalists, not facilitate them.

In Bourdieusian terms, then, state officials have found the nature of the symbolic capital required to maintain or improve their position in the field of power has changed with the introduction of neoliberal state policies in Aotearoa New Zealand. The administrative field, a distinct and comparatively neutral field in pre-neoliberal times, has now been subsumed in part, or in whole, into the field of political power. Bourdieu’s metaphors provide a succinct framework through which to understand the politicisation of a civil service. But whether or not the administrative field has disappeared altogether or been modified in terms of its doxa (the shared and often-unspoken assumptions by agents, categories of agents, and agencies within a specified field, or the rules and non-codified conventions of the game) by the influences of the all-powerful field of political power, gradually, what has become required of administrative agents processing OIA requests is no longer an ability to distinguish the political from the non-political – and ensure their behaviour remains in the non-political arena – but an ability to operate, within certain formal constraints, in ways that reduce the risk to the State when information with political impact is requested. This is strongly encouraged by first the involvement of politicians in top civil-service appointments, which effectively makes the minister everyone’s boss in the ministry, and second by the Cabinet policy requirement that the minister is not surprised, in political terms, by a release of state-held information, which means, in effect, that senior civil servants do not want to be so surprised, either. This directive is manifested in the expectations of and on ministers contained within the Cabinet Manual. Thus, the politicisation of communication between PIJ and the State is immediately enabled. Respondents consistently report its manifestation in either in the operation of the Act (for example, using all 20 working days available even when it is not necessary to buy the minister and senior officials some time) or in the employment of exclusion provisions outside the spirit of the Act, withholding illegally information that could be politically damaging for the Government. Since the enactment of the State Sector Act 1988, which, among other things, gave Cabinet ministers a role in the appointment of ministerial

chief executives, the state bureaucracy and the politicians it serves have been joined at the hip in parallel ambitions of self-preservation. This change to the nature of state officialdom was, for R13, “the most fundamental thing [affecting FOI] that happened was in those Rogernomics years” (Interview: R13). As a result, the doxa of the field (Bourdieu & Eagleton, 1992, pp. 113–114) has shifted. Responding to journalists’ OIA requests is no longer performing a neutral, bureaucratic role in the democratic state machinery but one requiring attuned political sensibilities, to varying degrees. Agents of the State begin to act primarily, if not overtly, in its interest, as though they, too, have skin in the game, now that they were socialised to the shifted rules of engagement. And indeed, they do, given the explicit incentive provided by the “no surprises” policy to avoid conflict with the Minister. Even if there is no way to avoid releasing damaging information, agents within the newly politicised administrative field, increasingly connected to the operations of the field of power, will respond in ways intended to minimise any political damage. R16, an experienced senior journalist working in Christchurch, said officials at the Canterbury Earthquake Recovery Authority before its dissolution in 2016 did not view their roles as independent from the politicians who were politically responsible for the city’s recovery.

They all saw themselves, to a greater or lesser extent, working for [earthquake-recovery minister] Gerry Brownlee and his purpose. It’s very much his ship there. So, it’s what’s-in-Gerry’s-interests-is-in-our-interest and of course that extends to the type of information [they will release]. If you are, to use the term, a low-level civil servant, are you going to have the balls to explain to Gerry Brownlee and his temperament why you have allowed some information out that has made him look stupid on the front page of a national newspaper? I don’t think so. (Interview: R16)

The neoliberal reforms in Aotearoa New Zealand have been accused of damaging the public-service culture of government departments (eg, Easton, 1997, pp. 181–183). During the country’s early corporatisation phase (which would lead to programmes of privatisation), organisational heads were expected to run business-like, rather than department-like, operations (p. 180). To reduce costs that would be borne now by their own cost centres, state departments cut costs but failed to provide the public with improvements to the “service and security” (p. 182) that were supposed to accrue. In recent years Christchurch public-interest journalists watched as the Christchurch City Council brought the private sector, including international finance, into the rebuild of the earthquake-stricken city but “failed spectacularly” (Interview: R14). The commercial nature of such partnerships was “just another excuse for them to slap ‘commercially sensitive’ onto [information sought by journalists]” (Interview:

R14).

The Cabinet's no-surprises policy inevitably puts further pressure on such officials, R16 said.

It has to. It has removed the element of them being civil servants because they have to put a political hat on. They have to put a PR hat on. They have to start looking at information as a weapon, as opposed to it just being information and handing it out. They have to look at it and go, "Ah, well, why would they be asking for this?" (Interview: R16)

An OIA request by R7 to the New Zealand Police about payments made to police witnesses in a high-profile murder trial brought the response from police PR staff that there were no records of any such payments. But R7 knew those payments had been made, having seen references to them in High Court documents. He was asking for detailed records he knew must be on police force's master file on the case. Some six months later, after a complaint to the Ombudsman, R7 was told the police did not know why the payments made were on court records but not theirs. R7 was able to publish a story but, he noted, only because he had seen corroborating references to the payments elsewhere. "Ninety-nine per cent of the time" (Interview: R7), when officials wanted to deny the existence of information, there was no such way of foiling them. While some respondents accused officials of ignorance of their responsibilities under the OIA 1982, R9 was convinced they knew them well because they knew "all the out-clauses" (Interview: R9) that could be employed to keep state-held information from journalists.

. . . certainly we find that release of information is heavily massaged for political risk, which, to me, is not part of the OIA. That's a function of [requests] going through the political advisors, rather than a ministry getting an OIA, considering it on its merits and against the law, and releasing it. I think that's had a huge impact on the amount and type of information that gets released. (Interview: R9)

State officials may not always act in openly partisan ways, but "they do know how to avoid political landmines. The more astute have finely tuned antennae that would impress *Yes Minister's* Sir Humphrey Appleby" (Ellis, 2016, pp. 128–129).

5.1.1 Agents of defence. As discussed in the literature review in Chapter 2, applying field theory requires a three-step process (Grenfell & Hardy, 2007, p. 60) – a comparative field analysis, consideration of the objective structure of relations within the field under study and an analysis of relevant agents' habitus. As becomes clear, the first – an analysis of the journalistic field's position in relation to the field of power – is highly relevant to this research. The second and third steps are also helpful, establishing that the civil and constitutional rights of public-interest journalists are no match for the

straightforward power that agents of the field of power can wield, affirming Bourdieu's thesis that all other fields are subordinate to the field of power. If officials are now part of that field, as this chapter argues, then we need to ask how they feel legitimised in their politicisation of FOI processes. In other words, if the crisis in FOI in Aotearoa New Zealand is indeed constitutional in nature (Ellis, 2016; Palmer, 2017, May 31; Palmer & Butler, 2016), then scholars must consider it from a variety of angles.

The first step researchers need take, then, to understand a social situation through field theory is to "analyse the position of the field [at question] vis-à-vis the field of power" (Grenfell & Hardy, 2007, p. 60). Given the interactional nature of FOI, this relationship is strongly foregrounded in this research. Despite ambitions of so-called self-rule, Aotearoa New Zealand democracy is itself a network of power relations that exist structurally in forms that result from the competition of interest groups – the State, employers, workers, media interests, political movements and so on – and are guided by constitutional and electoral processes. While structurally its fourth-estate role might be to hold the State accountable, the journalistic field is subordinate to it, as all other fields are, and in many more ways than just those provided by the visible and officially sanctioned media regulatory environment.

The widely acknowledged dysfunction in the processing of journalists' OIA requests that is at the heart of this research, for example, could not have developed as it has, irrespective of its causes, without the adoption of a disposition of powerfulness by state officials handling those requests. Respondents report a poacher-and-gamekeeper situation in which, short of appealing to the hamstrung OotO, which is often a lengthy and unproductive exercise, journalists can only watch as officials, whom they believe are not detached politically from their requests, deal themselves with the requester's complaint. R6 said officials treated both her as an individual and "the wairua of the law" with disrespect (Interview: R6). The relationship between the field of power and the journalistic field – or at least certain agencies within the field such as PIJ – is antagonistic in nature but asymmetrical power relations have seen a slow-landslide victory to the ultimately dominant field of political power.

Secondly, to apply field theory researchers should "map out the objective structure of relations between the positions occupied by agents who compete for the legitimate forms of specific authority of which the field is a site" (Grenfell & Hardy, 2007, p. 60). The research site, in this case, is an inter-field contest, not an internal one involving agents in the same field jostling for positions in relation to the economic and

cultural poles of that field. Rather, it is an intrusion by a less powerful field on the field of power, a hopeless tilt at the barricades were it not for the legitimacy, in democratic terms, brought to that intrusion by FOI. It would be naïve to think there were no internal contestations between agencies and agents within the field of power over FOI and transparency. However, to what degree the doxa of the field of political power encourages and therefore values habitus based on loyalty to constitutional and democratic principles, particularly when out of sight of the public, is not for assessment here. Structurally, it suffices to view the field of power as a hierarchy of agencies, each constructed in structural hierarchies of other agencies and agents. Those hierarchies are the conduits which fail when PIJ is frustrated in legitimate inquiries of the State, even if not every conduit fails.

Meanwhile, an exploration of the relative positions held by public-interest and investigative journalists within the journalistic field – under transformation, with both its cultural and economic poles weakening – will strengthen our understanding of their contest with the field of power. In addition, defining the structural relations within the field of power itself – if we take it that officials now operate, at least partly, from within that field – will illuminate the pressure under which officials have operated since the introduction of the Cabinet’s no-surprises policy. Cabinet ministers will be found clustered at the field’s heteronomous pole, and so their influence is easily felt by those officials at the edge of the field, underscoring the relational nature of power within the field.

I talk to officials who will pull stuff before it goes so that the minister doesn’t receive stuff that is going to have him fly into a rage and demand that staff toddle up from the ministry to the Beehive and get carpeted by him or his private secretary . . . so no-surprises has an awful lot to do with it. (Interview: R1)

Researchers’ third task involves analysing agents’ habitus – the “systems of dispositions they have acquired by internalizing a deterministic type of social and economic condition” (Grenfell & Hardy, 2007, p. 60). Much of Bourdieu’s approach to field theory is about explaining relational structures within a field – for example, to identify such social and economic conditioning in terms of causality. For the purposes of this research, however, the relationship under scrutiny is not between agents in the same field. Habitus is, however, interesting in its own right, both that of the officials who administer FOI requests on behalf of the public and that of the journalists who are most likely to invoke the OIA 1982, and helping us explore the journalistic response to FOI.

5.1.2 Habitus and doxa: State officials. In terms of socialised subjectivity within their field, state officials must now defend the field when it is intruded upon by agents from the journalistic field and their FOI requests. They are incentivised to first maintain and then improve their habitus within the field this way. Newly reshaped and reshaping doxa embed culturally within the field's new, if still slowly metamorphosing, priorities. Among these is now the protection of the Government, as far as possible, from damaging information releases. The two fields may collide over the non-release of information but the field of politics is, after all, the field of power and the journalistic field is subordinate to it, as are all other fields (Bourdieu, 1993 & 2005). The gradually altered doxa pertaining to FOI within the field of power now encourages a politicised and often forceful response. Of course, it would be wrong to claim all civil servants now consciously eschew the public-service principle of political neutrality. But at stake here is not the neutrality required of civil servants towards the incumbent government, irrespective of its political colours. Rather, it is the neutrality civil servants owe to the public, and therefore to public-interest journalists, in their consideration of information requests against the narrow criteria for exclusion provided by the OIA 1982. R1 thought the next most negative aspect of FOI in Aotearoa New Zealand was "how easy it was for [officials] to manipulate the Act in a way that worked for them" (Interview: R1). While the Act itself was sound as a piece of law, it relied strongly on "good faith" (Interview: R1) from both sides to operate well. Officials were now under pressure to protect the Government from journalists and the Act's famous built-in flexibility (Snell, 2000) allowed them to do that.

5.1.3 Habitus and doxa: Public-interest journalists. Although this section's title – "Agents of defence" – refers directly to the changes in the cultural capital accrued by agents within the field of power, specifically officials who deal with OIA requests, it is helpful to also establish where respondents sit within the journalistic field, which itself has been the subject of transformative change and altered doxa since the disruptions associated with the digitisation of public information took hold. The changes in the nature of cultural capital in the field – new things are now valued in the practice of journalists, such as increased speed and digital-communication skills – have meant altered doxa swirling through the networks of agents and agencies within the field. Some parts of the field now require habitus that is as much concerned with, for example, matching the opposition's stories online or maximising reader engagement with stories. For these new tasks to be integrated into the culture of the field, new doxa emerges to inform and constrain the exercising of those tasks. This is not to say all

website journalists have no interest in FOI, do not send OIA requests or would not have useful and interesting views on the subject. But it is to say respondents in this project are journalists who share doxa that pertains to the public interest and whose habitus has little or no attitudinal alignment with non-PIJ. In terms of their position, these journalists have status within the field; their work over many years illustrates the process of building up cultural capital within it. Within the occupational mythologies of the field that infiltrate and influence its doxa, they are the elite success stories of the field and the actual-defenders of the public interest. They are not, however, likely to hold positions near the economic pole of the field – that will be more highly influenced by agents who control budgets and who are able to show favourable returns in the journalistic field. The journalistic field has itself been subject to ultimately transformative disruption which has increased the value of habitus more strongly disposed to high-clicks journalism and, while not rejecting it, decreased the value of higher-cost public-affairs journalism. Such public-affairs journalists as the respondents here have the prestige associated with a habitus the field cannot afford to publicly devalue too much, given theirs is the award-winning work the field celebrates as the pinnacle of its professional practice.

5.2 Office of the Ombudsman: The Watchdog is Tied Up

Critical scholarship (e.g., Kelsey, 1993 & 1995; Harvey, 2005) tends to portray a slow but steady hegemonic takeover by neoliberalism, with both its overt privatisation programmes and its often-less-than-covert disposition towards the demands of the elite and powerful, as a carefully planned transfer of wealth and power from the public sector to the private sector. To be successful, such a transformation needed to be fundamental, far-reaching and, in Aotearoa-New Zealand's case it seems, done quickly (Kelsey, 1993 & 1995). These requirements could not be met – or, at least, would be significantly harder to meet – without the “neutralisation” (Kelsey 1993, pp. 175–188) of watchdogs whose role it is to monitor and, when necessary, challenge the State, publicly but judiciously if necessary. Among these watchdogs is the OotO, which sought purview over the newly created state-owned enterprises (SOEs) as privatisation policies took hold, but when it finally won that oversight role it was simply stymied by the State in other ways (pp. 175–176). Scrutiny of the SOEs before select committees and in Parliament was “equally inadequate”. The workload of the OotO increased hugely (p. 181) and by 1984 even cabinet ministers tended to treat the OIA 1982 with “disdain” (p. 182). Complaints piled up (Treadwell & Hollings, 2015) and the OotO, once celebrated as an

accessible, affordable and effective appeal mechanism, and once a functioning watchdog relied on by journalists, became overloaded with complaints.

Table 3 (below) shows the total number of complaints about OIA processes that the OotO received in one year (July 2016-June 2017) from “media” was 216. (The researcher treats these as complaints by journalists and not by other representatives of media organisations.) Complaint numbers have only been released by agency, type and source, as well as total number, since 2016. Longitudinal data analysis is not possible, therefore. For the first time, however, straightforward data analysis can help us further explore the *nature* of public-interest journalists’ issues with the processes of FOI in Aotearoa New Zealand. It is clear journalists’ major concerns are around the withholding of information that they believe should be released under the terms of the OIA 1982.

Complaints about the refusal in part or in full of information held by the State constituted 73 per cent (n=158) of all complaints from media (n=216) in the year July 2016-June 2016. Alleged delays in either decision-making (n=29) or the release of information (n=3) accounted for 15 per cent (n=32) of all complaints. Other causes for complaint were numerically much less significant. The focus of this research is on the impact of FOI failures, systemic or deliberately created, on PIJ. However, to put these journalists’ complaints into perspective, it is useful to contextualise them against the total number of complaints about FOI received by the OotO in the same year, particularly if we want to understand the much-bemoaned time, among respondents, that it now takes for a complaint about FOI to be resolved.

From Tables 3 and Table 4 (below), it can be deduced that complaints by “media” make up 17.5 per cent (n=216) of all FOI complaints (n=1159) made to the OotO in that year.

The total requesting population (journalists and all others) is also mostly unhappy about refusals to release information either in part or in full, which together made up 53 per cent (n=615) of all complaints, compared to 73 per cent (n=158) of all media complaints (n=216).

Delays in decision-making (n=215) and releasing information (n=19) together (n=234) make up 20 per cent of all complaints (n=1159). In one year (July 2016-June 2017), then, the OotO had 1159 alleged breaches of the OIA 1982 reported to it.

FOI is only part of the watchdog role the office assumes. Respondents in this

Table 3

FOI complaints received from the media by the Office of the Ombudsman, July 2016-June 2016.

	Media complaints	Decision not as soon as practicable	Refusal in full	Refusal in part	Delay in making decision	Delay in release	Charge	Extension	Incomplete or inadequate response	Neither confirm nor deny info's existence	Other
July-Dec 2016	102	3	41	38	11	1	1	4	2	0	1
Jan-June 2017	114	1	55	24	18	2	2	4	5	3	0
Total for 1 year:	216	4	96	62	29	3	3	8	7	3	1

Source: <http://www.ombudsman.parliament.nz/resources-and-publications/oia-complaints-data>

research project view the OotO as virtually unable to respond in timeframes that do not themselves stymie strong public-affairs journalism. R1, for whom FOI is to be treasured, still refers two-thirds to half of his requests that are declined to the OotO (Interview: R1). Several times during the research interview R1 declared he still had faith in the OIA 1982 when others no longer did but the OotO had been “somewhat Beltway-captured”, a reference to the culture and influence of government officialdom.

A lack of resources at the OotO was the biggest concern for R10 who found it necessary to pick his battles because of the delays that would inevitably ensue if an appeal became necessary. The OotO was very good at the basics – such as responding in pro forma to complaints on time – but delays in investigations were too long for the speed of the journalism he liked to conduct (Interview: R10). R12 had had good experiences when issues had occasionally been advanced via the OotO through productive phone calls. An experienced political and economics reporter used to the ways of the State, even he had stopped appealing to the OotO.

Firstly, in recent times, simply because you know damn well that it will take two to three years, right? Or whatever it's going to be. I think two years was the benchmark that it seems to be lately. Putting together a proper complaint – appeal, whatever you call it – takes time and I just haven't had the time. So, you do a bit of triage with your own time and just go, “Is that going to be worth it?” (Interview: R12)

Table 4

All FOI complaints received by the Office of the Ombudsman, July 2016–June 2017

	Media complaints	Decision not as soon as practicable	Refusal in full	Refusal in part	Delay in making decision	Delay in release	Charge	Extension	Incomplete or inadequate response	Neither confirm nor deny info's existence	Other
July-Dec 2016	538	4	165	133	107	5	6	20	39	0	59
Jan-June 2017	621	9	178	139	108	14	8	39	58	5	63
Total for 1 year:	1159	13	343	272	215	19	14	59	97	5	122

Source: <http://www.ombudsman.parliament.nz/resources-and-publications/oia-complaints-data>

R16 called the OotO “next to useless” and “pretty ineffectual” (Interview: R16) and agreed the office’s hands were tied.

Two years’ [waiting], good lord. I know journalist careers that have lasted less than two years. That’s ridiculous. There does need to be a better process for appeals and dealing with them and whether that’s a question of funding I don’t know, but it could be a question of how they organise themselves better.
(Interview: R16)

Clearly, respondents felt the appeal process through the OotO was choked and ultimately of very little help in their battles against officials who were either ignorant of or consciously in breach of their duties. This was not conceptualised by respondents as a tentacle of control manipulated by those behind the neoliberal project – the neutralising of a watchdog in the wider political field. Rather, respondents tended to see the negative behaviour of officials that led to failed requests as derivative of the pressures of accountability brought to bear on the State by PIJ and the response of a state indifferent to the fine details of its own right-to-access law. Officials often saw OIA requests as “journalists digging for dirt” (Interview: R2) and, politicised by, among other things, pressure brought to bear under the Cabinet’s no-surprises policy, they responded in ways that constricted, not enabled, the flow of state-held information to reporters. That it was a Labour-led government which introduced the policy and subsequent National-led administrations which saw no reason to change it only fuels the notion that this need for information-control belongs to the State of today, irrespective its ideological

structuring. Respondents see the requirement not to surprise the minister as an executive function now, not a party-political policy.

I think through the [Helen] Clark years things began to tighten and now it's even worse and I think it started with the no-surprises thing of Clark's government, which sounds benign enough but actually meant: Don't do anything that's going to get me into trouble politically. (Interview: R8)

However, while there was little or no clear consciousness that emerged through interviews with respondents of any connection to wider political ideologies, and certainly nothing outside a normative left- and right-wing dichotomy, the experiences they related nevertheless point strongly to neoliberal achievements described by critical scholars. Public-interest journalists' experiences of a hobbled OotO, in relation to their stated experiences of degrading commitment to FOI from a politicised civil service, for example, add weight to Kelsey's thesis that neutralising state watchdogs, including the OotO, was necessary if the neoliberal turn, given its dramatic and transformative nature, was to succeed. Resistance needed to be minimised. The theoretical notion that officials, once agents of a relatively autonomous administrative field, have now, to varying degrees, been subsumed into the field of political power and act as agents in its interest is supported strongly by the experiences related by respondents in this research. R2 was unequivocal:

[Officials] think when journalists ring for information it's to try and get them. They've politicised the whole way that we interact with them. They are creating their own beds to lie in. So, the whole thing has gone out the window. (Interview: R2)

Among respondents was a view that the long wait for their appeal to be dealt with – two years was commonly cited, even three occasionally – made even OIA requests significantly less attractive as news-gathering devices. Several said repeated failures in obtaining state-held information under the terms of the OIA 1982 meant they no longer sent such requests for information. R13, formerly a persistent requester under the Act, said the long delays in appealing to the OotO meant he had virtually stopped invoking the OIA 1982 at all. It had usually been only after an intervention by the OotO that he had received “good information” (Interview: R13), so now requesting information that might be seen as politically sensitive under the OIA 1982 seemed even more hopeless.

As discussed in Chapter 2, the Chief Ombudsman, Dame Beverley Wakem, released a report in 2015 that was the result of an investigation into the FOI practices of State agencies. In it she found that there was not a practice of deliberate obfuscation

behind the controversies over information release, but that there were serious issues with its processes. These included the fact that “40 per cent of the current and former government workers who responded to my survey advised that they did not know whether their chief executive or senior managers have a ‘pro-disclosure’ attitude towards the release of information” (p. 3).

5.2.1 A response from the Office of the Ombudsman. To enrich the perspectives explored in the thesis, an approach was made to the Office of the Ombudsman for an interview with an officer familiar with the FOI appeal process. At first, the response was positive, a suitable person identified and, to give time for answers to be formulated, a set of indicative questions was sent. The questions are attached to this thesis as Appendix A. Unfortunately, after the submission of indicative questions, the idea of an interview became complex, and the person who was to be interviewed emailed to say it could no longer be them and that the researcher would be contacted by someone from the OotO. That contact never came and when the researcher attempted to contact the official again, there was no response. Eventually a letter from Chief Ombudsman (Appendix B) arrived via email. The letter addressed some of the issues raised in the researcher’s indicative questions (Appendix A). It stresses the volume and backlog of complaints faced by the office when the current Chief Ombudsman was appointed. The Chief Ombudsman notes with relief, among other reassurances, that the backlog is processed and expectations of timeliness have returned to normal.

5.3 Smaller Government is Better Government

As noted in Chapter 2, decreasing the size of government – a process central to the neoliberal agenda (Kelsey, 1993) – is sold to the public on the basis of the obvious savings that will be made. Government is perceived, by its very nature, to be excessive and wasteful. Money that is gained for free – so, duties and taxes in the State’s case – will be spent excessively and unwisely just because it came for free, according to the neoliberal ethos. Money that is earned through hard labour or clever investment will be used wisely just because of the struggles that were required to gain it. Divestment of state assets into private hands through a mix of different models of privatisation, then, apart from anything else, has this positive side – those organisations delivered into free-market environments are expected to stand on their own and at least not cost the taxpayer, if they can’t, in fact, make a positive return to government coffers. Risk is perceived to be transferred to the operation of the organisation within the market and

accountability is perceived to lie now with its executive. As a result, spending will be constrained and effective. Critical scholars might describe such privatisation as a transfer of power and wealth from the public realm to the private (e.g. Kelsey, 1993) but even so, runs the neoliberal line, taxpayers will be better off with the risk – and so the losses – carried by the private sector. This is, of course, a fallacy; while privatised organisations are required to operate *as if* they were in a free market, numerable such organisations are still connected to the public purse and, because of that, are either in restricted positions within the free market (for example, the State is their only possible customer, as in the case of private prisons, or, despite a failure in the market, they are the subject of taxpayer-funded bailouts, as was the formerly state-owned Bank of New Zealand in 1990).

Public-interest journalists have concerns over the effects on transparency of the increasing structural pluralism viewed as essential to Third Way economics (Giddens, 2000), that is, the transfer of responsibilities to a myriad of private operators and the creation of myriad profit opportunities. However, they rarely discuss ideology in connection to this, either lamenting the decades-long privatisation programme run by consecutive governments since the 1980s or the inadequacies of the OIA 1982 to deal with such change. They do not tend to openly associate the struggles they have with FOI in the “privatised sector” with a seismic ideological shift in the government of Aotearoa New Zealand. If pressed, they will acknowledge the difficulties they have accessing information from quasi-governmental organisations (eg, private prisons and charter schools). However, they believe information from and about those organisations is obtainable in other ways. They would rather look for a solution to the access issue than rail against the ideology that created such organisations. They would not necessarily trust a different ideology more to be open. Rather, any ideology is not to be trusted; their task is to prise open the secret chambers of government and that, rather than what type of government it is, is their focus.

Respondents grudgingly admitted that sometimes officials were just doing their jobs but this is a hard claim to substantiate when their job is in fact to release the information under the terms of the Act. FOI failure is not thought to be associated with the other systemic characteristics of neoliberalism. Rather, it is a thorny issue at the heart of PIJ, which happens to be imposed upon by political economic policy and is restricted as a result. This approach, driven though it might be by an authentic professional norm of working in the public interest, neglects to consider the neoliberal

logics (Phelan, 2014, p. 56), that has become subsumed into the operation of the civil service. If neoliberalism was a term used almost exclusively by critical theorists until recently, its increasing use in wider discourse may yet bring journalists to recognise and navigate its translucent parameters.

Respondents agreed that privatised and semi-privatised organisations were significantly more opaque, even if they were subject to the OIA 1982. Sometimes that opacity was because of poor organisation of information. R13 recalled a Crown Research Institute that attempted to charge him more than \$100,000 to provide “a few emails” (Interview: R13), which were stored on an old hard drive and needed an obsolete encryption cracked.

They literally did a schedule of the time it would take and the IT people they’d have to bring in. So, for me asking for some not-very-old emails – I wasn’t asking for [something from] the 1940s – it was going to be a hundred and something thousand dollars is what they estimated. (Interview: R13)

Respondents did not refer to neoliberal strategies behind such opacity. Indeed, searches in NVivo confirmed that neither word, “neoliberal” nor “neoliberalism”, appears once in the transcripts of the 20 interviews on which data for this part of the research project is drawn. Respondents did not attribute the failings of the FOI regime in any way to an ideology that had required the politicisation of the civil service or privatisation of the public sector, transferring the control of collectively owned capital into private hands and, ultimately, transferring wealth and power from the State to capitalist corporations (Kelsey, 1993, 1995). Rather, they were aware, to varying degrees, of the privatisation programmes that had taken place in the decades either side of the new millennium and saw them as a *fait accompli* and simply an immovable background to their current story. More senior respondents remembered the passing of the State-Owned Enterprises Act in 1986 and the freedom-of-information issues that surrounded the nine state-owned enterprises (SOE) that it created. They would eventually be made subject to the OIA 1982 but to many respondents, today’s FOI issues, at least in terms of the privatised sector, have more to do with private prisons and charter schools, which have been involved in high-profile issues, including FOI issues, in recent years. As far as other publicly funded private businesses, and privatised and corporatised state functions are concerned, respondents were often uncertain as to their rights to access information.

To what degree this lack of clarity among journalists is actually a construction of neoliberal forces, or at least a convenient side-effect of them, is hard to tell, of course. R10 said confusion existed about transparency responsibilities of private-prison

company Serco, and he believed the company took advantage of it. “There’s a general lack of awareness about Serco and their relationship with the public. Are they just a private company? What is their obligation to the taxpayer?” (R10) The confusion over such obligations – Roberts calls this the issue of “blurred boundaries” (2006, p. 152) – plays into the hands of officials who want to maintain as much control as possible over the narratives being constructed in public about their organisation. Given the highly varied roles in society these privatised organisations play – from providing meteorological services to the management of the rebuild of Christchurch, hit by a devastating earthquake in 2011 – the grey areas around FOI that privatisation has created have become naturalised (Phelan, 2014) within the logic and assumptions of neoliberalism in a veritable array of social and political sites in Aotearoa New Zealand. Journalists might feel the opposition to their information requests more keenly from a privatised organisation but they are unlikely to attribute this to neoliberalism. Privatisation was essentially a strategy of economic philosophy, right or wrong, and the struggle to get information from a company contracted to the state or a state organisation operating in a free market is an effect of that. To R7, a lack of information about private prisons meant the Government had to be taken on trust that the controversial contract with Serco¹ was running smoothly and agreed targets were being met. When it turned out Serco’s performance was so poor it would be sacked, for R7 it was also government failure to audit transparently on behalf of the public. A critical cultural studies lens here would distance itself from the journalist until its purview was wide enough to see neoliberalism at work in the response of the journalist to the situation she or he finds themselves in in, naturalised into a relationship of faux-antagonistic failure with the neoliberal State. From within a centring media (Couldry, 2003a), journalists fail to uncover stories detailing the real impact of post-ideological neoliberal policies because of their existential involvement in the corporate world that demands that the logic of the unfettered market is accorded primacy. The journalistic disposition, or habitus (Bourdieu, 2005) is orientated towards self-preservation through the almost invisible manufacture of consent (Chomsky & Herman 1988) for neoliberalism. What journalists challenge when discussing FOI failures is not the system that reinforces their unreasonable subordination in through the preservation and application of power, but the particularities of the offences against them and the

¹ Private-prison operator Serco Ltd lost the Mt Eden Prison contract in 2017 when evidence of “fight clubs” involving prisoners emerged.

indifference, sometimes malevolence, of the officials who simply could stop behaving in a politicised manner and treat all information as public, which it is.

If information is increasingly hard to get for journalists, then journalists are increasingly restricted to what the public-relations agents put before them. Even the senior and investigative journalists who agreed to be respondents for this study – or at least the vast majority of them – work under intense time pressures. If it is uncertain, indeed improbable, that a journalist will easily get the information from the State or its multiple and varied tentacles, she or he thinks might help develop a story, then an easier story might just seem the better option. The information border between the public, represented by public-interest journalists, and the State has become a no-man's land, forays into which are increasingly time-consuming and unsuccessful, and increasingly only for the battle-hardened. Whether journalists express their awareness of its role in the wider neoliberal scheme of things or not, the quality of information available to the voting public is poorer for it.

R1 was convinced the ownership of an agency – whether it was partly or fully owned by the State – affected their transparency.

Massively, yeah. Um, so Crown Research Institutes, they're pissed off they have to spend the money [processing OIA requests], when they could be doing other things. They don't think the information belongs to you, and they do think everything is commercially sensitive. That tends to be a lot of SOEs as well. Yeah. (R1)

Because their prime objective was to turn a profit, it was “not for them to care about things like enhancing respect for law and lawmakers, or good government” (Interview: R1), which are among the written and quasi-constitutional purposes of the OIA 1982.

While the size and function of organisations brought into the privatised sector have varied widely since the enactment of the State Enterprises Act in 1986, neoliberalism and then post-ideological neoliberalism (Phelan, 2014) have both displayed unwavering commitment to the logics of the market. By 2016, even the duty of care displayed by the State in the aftermath of the devastating Christchurch earthquake in 2011, was, in part, put into the privatised market. Otakaro Ltd, a Crown company, was formed to manage the so-called “anchor projects” in the rebuilding of the city. It was asked by R17 about the future of a building that it came to own that was damaged in the earthquake.

R17: No one would tell us anything about it. I said, “Even just a passing comment – can you tell us, are you thinking about demolishing it? Are you

thinking about renovating it or anything?” They said, “It’s all commercially sensitive.’ All right, stuff you, OIA. So, I sent them an OIA saying I want all the documentation that mentions this building. I want emails, I want meeting notes, all that kind of thing. They took their full 20 days and they sent me, I kid you not, 53 pages . . . it was definitely 53 pages. I think it was 25 paragraphs of un-redacted information. It was just black lines through 53 pages and there were about 25 paragraphs that weren’t redacted.

Researcher: Did you get a story?

R17: I did. The main gist of the story was that Otakaro sent me 53 pages of redacted information (*laughs*) (R17).

R17’s dogged persistence and the redactions he received for his troubles are indicative of the asymmetrical power imbalance between citizen and the State, which has recreated FOI as a site of contestation and not one of order. A contest over clarity of the rules is itself a time-consuming obstacle between a journalist and the information she or he seeks. Such delays are often story killers for journalists under pressure to produce stories, an issue arguably accentuated by today’s demanding 24-hour news cycle. Holding a position at the “blurred boundaries” (Roberts, 2006, p. 152) of public and private enterprise allows an organisation wanting to withhold information from journalists to question the right of the journalist to the information and often long enough until that journalist is drawn to other story leads. R17 was unequivocal that the more “privately owned or independent” an organisation was, the more difficult it was to get information out of it.

There’s absolutely a black hole of public spending. I don’t know how big it is but in New Zealand there is a certain amount of public money that we don’t know what it’s used for. The usual cover-up for that is “commercial sensitivity” (R17).

For R5, the “growing” grey area of uncertainty and obfuscation is a significant issue and the OIA should be updated to cover the organisations within it. “The thing is you’re run on public money and therefore you have a public responsibility of transparency around it” (R5). Such is the culture of secrecy that has nevertheless grown under successive neoliberal governments (Hager, 2002) that when private-prison operator Serco was relieved by the Government of its management of Mt Eden Prison in Auckland, it took a journalist, after the fact, to make the sacking public.

It turned out there were grounds of their poor work that was sufficient for the Government to sack them. That should be in the public interest because if the Government won’t give us any information about how [well] they’re doing their job because of privacy, then we have to trust the Government each year that gives them a tick and a bonus for doing a good job, which they had done, so the Government as auditors had failed. That’s in the public interest to know that

one, Serco had failed and two, the Government auditors who we rely on, because it won't give us any information under the [OIA], had failed as well. (Interview: R5)

R8 became a journalist in 1991. As a young reporter, it was easier then than it is today to get information out of the corporatised arms of government. Initially, in the first moves towards privatisation, there was “enough of that kind of public-service culture” (R8). Today, for example, council-controlled organisations were commercial in nature and did not enjoy scrutiny. “There's no recognition that they're public servants. People think that's a swear word” (R8).

R9 felt there was, “in a way, a portal” to information about coalmining SOE Solid Energy, through the relevant minister's office but admitted that was likely to only work when a highly controversial issue was at play, not for day-to-day inquiries. There were avenues for journalists to try when wanting information about SOEs: they could submit OIA requests to the minister, they could access information if it was put before a select committee of Parliament, they could “doorstop” (R9) politicians or they could read the organisations' annual reports. “Within that range, there is some transparency but certainly not the transparency or accountability of Ministry of Health in theory, or [the] Ministry of Education” (R9).

R2, until recently an education reporter, cited charter schools as a perfect example of the issue. She had been covering accusations that a charter school had surreptitiously absorbed another charter school without any re-examination of its contract with the State.

I knew about all of this but trying to get it [officially], normally you would go to the school and you would say I want, give it to me. You'd say, I want your meeting documents. You could OIA the shit out of the school. We couldn't do that so we had to go the back door, trying to get what does the Ministry have and they didn't have everything. So, it becomes impossible to find out the truth of what's happened and then you publish it and they're able to go, oh that didn't happen. Well prove it didn't happen. You've got the documents. That is just a perfect example. Just a messy, messy situation. (Interview: R2)

R3 was clear that, speaking generally, agencies “that will claim to have more of a private ownership will cling onto that as much as they can in terms of refusing requests.” But he admitted he had never thought of the issue in terms of privatisation.

. . . but undoubtedly the agencies which didn't exist in that form 30 odd years ago and now do certainly do from my experience rely on, particularly around commercial sensitivity, they'll fall back on that one a lot because they are expected to make money. So they will use that one a lot to not release

information, which another wholly taxpayer funded organisation probably would release. (Interview: R3)

For R6, it was all about the money:

I think that if you receive public money, even if you're putting it into a separate holdings company, I think New Zealanders have a right to that information . . . If you require public funding of some sort, then you should be accountable to the public that funds you. (Interview: R6)

R12 was quick to point out some of the organisations under discussions were private businesses. He stressed the difference between “government bodies” and the many “government trading arms or businesses” that have emerged through privatisation. There was also the partial privatisation of state-owned electricity companies, which had moved them outside the purview of the OIA 1982. He also raised the “growing provision of social services by community groups” as an issue of transparency in the public interest.

I do think that if you've got a business whose whole reason for being there is contracting to the government, then I think there should be some sort of extension of the OIA to include their business. (Interview: R12)

R13, an experienced investigative journalist and at-times persistent user of the OIA 1982, said that while privatisation had been negative for FOI, there was a more impactful aspect, in terms of information availability, to the neoliberal regimes in power since the 1980s.

The examples related by respondents indicate a growing shadow over significant portions of public spending and organisations taking on roles in the private sector struggle with their obligations to transparency. Questions raised by such implications include how widespread such attitudes have become. For example, is such interference in the transparency process restricted to those agencies and organisations in the privatised sector whose work is in the most competitive markets? Might journalists expect higher levels of secrecy from, say, transport agencies because of their role in highly competitive tendering processes involved in road building? Equally, should journalists expect more transparency from agencies with community, rather than commercial, objectives?

During the course of this research, a postgraduate experiential learning project, which involved the researcher as a teacher, emerged as relevant to these issues. It is explored here in depth to further the triangulation of the research but also as a fascinating example of FOI failure.

5.4 NZ Lotteries Commission – a Case Study

The researcher and a senior lecturer at another Aotearoa New Zealand university had jointly sought State-held data for a collaborative data-journalism project with two cohorts of postgraduate students. We had sought data under the terms of the OIA 1982 from a Crown entity charged with operating a commercial operation. As journalists, we considered the information strongly in the public interest and as educators we considered the student experience would be enhanced by the real-life strength of the project. Such is the applicability of this case to the research that it is offered here as a study that supports and enhances findings at the project's other sites of data collection. As noted in Chapter 3, the personal voice in research has a strong history, as members of cultures and subcultures take back the narratives of their communities. Here it is employed from the privileged insider position of journalist, tempered by the analysis required to contribute meaningfully to the research. It needs to engage thematically with other research devices to provide a close-up view, mediated by a participant, of FOI in action. The researcher's "subjective awareness of accumulated experience" (Okely, 2012, p. 42) is both acknowledged and taken advantage of. The aim of the upcoming section is to advance the research by offering insights relevant to the discussions in chapters 5, 6 and 7.

This autoethnographic case study is of a dispute over access to state-held information in which the researcher was involved. A personal narrative follows. Mabry (2012, p. 214) notes that the goal of a case study is deep understanding and this objective drives all decisions, including those about which participants may be most informative. In this case, in what is one strand of the research, the personal experiences provided in the field by the researcher and a collaborating academic help provide that understanding.

5.4.1. A data-journalism project. In mid-2015, as a senior lecturer in journalism at AUT University, I joined with a research and teaching colleague at the University of Canterbury in launching an experimental data-journalism project involving cohorts of postgraduate universities from both universities. With the support of a Fulbright specialist scholar, a data journalist from Chicago, USA, who had run a similar experiential projects with students in both the USA and Chile, we set out to investigate state-sponsored gambling in Aotearoa New Zealand. Our aim was to identify if the nation's government lottery had become, as other nations' state lotteries appeared to have, a big business trying to extract the maximum from its market with insufficient

regard for the negative social outcomes of its products. It would be fair to say our hypothesis, after our initial investigations into areas comparable with those in overseas studies, was that it had indeed become this. There were many things we could find out reasonably easily – for example that the chief executive of Lotto NZ is paid more than the Prime Minister of Aotearoa New Zealand (approximately \$470,000) and attends annual perk-laden international conferences in upmarket locations. We learned that senior management salaries at the New Zealand Lotteries Commission (NZLC) had climbed exponentially. We also found out that the six highest concentrations of Lotto outlets in Aotearoa New Zealand are among the seven poorest electorates and that there was a spike in self-referrals to problem-gambling services just after sales of Lotto tickets were made as easy as adding an item to your shopping at the supermarket. We could find out that community leaders in Auckland’s most deprived areas were concerned that spending reasonably large amounts on the multiple gambling opportunities the State creates every week has become a naturalised part of some citizens’ budgets – in effect, an expensive and hopeless weekly attempt to escape from poverty. If students were able to show, through analysis of lottery sales data, that the lottery was funded disproportionately by poorer Aotearoa New Zealanders, they would not only learn data-journalism processes experientially, but they would have a significant investigation under their collective belt, boosting their confidence and, more than likely, attracting interest from mainstream media. Some months ahead of the course starting, to give officials and ourselves plenty of time, we applied under the OIA 1982 to the Department of Internal Affairs (DIA) for annual sales data for Lotto’s various products by store for the past six years. The information we requested is listed in Appendix C. In summary, the information we sought included details of retailers contracted to sell Lotto products, regional annual sales figures for each Lotto product, the total of sales made at supermarket checkouts, details of online sales of gambling products, details of reward schemes for retailers and instances of any legal breaches by retailers. After negotiation and the provision of some of this information, we focussed our requests on two important data sets that had been denied us – the minutes of the NZLC board of director and the sale figures by community.

As required by the Act, the commission responded, acknowledging our request and saying it would endeavour to meet our request for the information by May 7, 2015, 20 working days from receipt of the request. On April 9, the Lotteries Commission emailed, saying the DIA had transferred the request to it and it would endeavour to meet the May 7 deadline. On April 13, the commission’s general manager of corporate

communications and social responsibility telephoned and encouraged us to accept that the minutes could not be released. She also pointed out a logic flaw in our request for information about the lottery's jackpots. We were happy to correct the request by mail. We pointed out:

You mentioned that the minutes would be hard to collate because, in part, they included commercially sensitive information. We would ask the commission to remain cognisant of the clear criteria for application of section 9(2)(b)(ii) of the Official Information Act 1982 to material supplied by or about a third party. To legally withhold information under this section, an agency must both show releasing it would 'be likely to unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information' and that public interest in its release does not outweigh that commercial interest. Here, we would argue there is strong public interest in maximising transparency around state-run gambling. (G. Treadwell & T. Ross, personal communication, April 14, 2015).

Shortly after the deadline passed, the commission emailed to say that because of the volume of information requested, it needed another month. This extension is allowed for by the Act. On July 6, a month after the new, extended deadline, we received a response which included some of the information we requested but which declined to supply the rest, including the information most needed by our students' data-journalism project: the annual sales data of Lotto products by geographic location. These figures would have allowed students to familiarise themselves with both software and analysis processes required for effective journalism. Knowing how much each geographic area spends on Lotto would allow them to defend empirically our thesis that state-sponsored gambling in Aotearoa New Zealand is effectively funding elite sports by targeting poorer communities with slick marketing and highly concentrated and extended opportunities to gamble. Meanwhile, highly paid executives inhabit pseudo-creative spaces in corporate buildings as the national lottery industry does very well thank you. But we were not after numbers alone – good journalism contextualises its quantitative data and we wanted to explore the culture at Lotto NZ. Where better to analyse a subculture than through its executive discourse? So, we also asked for copies of the minutes of the meetings of the NZ Lotto Board for the years 2008-2014. We wanted to know how those making decisions about state-sponsored gambling in Aotearoa New Zealand communicated about their job, the purposes of their industry and its impact on problem gamblers. The board minutes were not included with the information sent by the general manager of corporate communications and social responsibility, nor mentioned in her covering letter. As is considered best practice by the OotO, we were keen to initiate dialogue and contacted the commission's general manager of corporate

communications and social responsibility. The phone call was unfruitful in terms of getting access to the board's minutes, which the general manager of corporate communications and social responsibility said were full of commercially sensitive information. In a follow-up letter, we pointed out that firstly, the OIA 1982 is very clear that being commercial in nature is not in itself enough to make information commercially sensitive and that much information in the minutes must surely not be commercial in nature at all. We pointed out no test had been conducted on the public interest in the release of the information, as is required by Section 9 of the Act. We said we had no interest in making public the details of any Lotto outlet's business details and so were happy to have the sales data by postcode. Given the general manager of corporate communications and social responsibility's verbal objections to the amount of data we had requested, we focused on the two data sets we most urgently wanted and reduced the timespan over which we wanted them to four years, which we considered was just enough to be able to establish themes and perhaps some trends.

As to the board's minutes and the notion of the commercial secrets of Lotto retailers that the commission claimed needing protecting, we noted that we believed our argument for the public-interest would apply to much of the so-called commercially sensitive information in the minutes as well. And even then, Section 9(2)(b)(ii) of the Act only allows for such information to be withheld if it "would be likely to *unreasonably* prejudice the commercial position of the person who supplied or who is the subject of the information". We could not see how our request could do that. But more urgent was

the release of the information you do not consider commercially sensitive that is contained in the minutes. In other words, we see very little reason for any redaction of information and absolutely no reason for the withholding of the official record of the board's meetings, which would be against both the letter of the [OIA 1982] and the principle of availability that underpins it. We believe much of the information held in the board's official meeting minutes cannot be commercially sensitive (G. Treadwell & T. Ross, personal communication, July 13, 2015).

Our hopes of having the data ready for the students to clean, analyse, visualise and report on were slimming. We reminded the commission of its obligation to a time-frame specified in statute.

We would also ask that the release of this material is immediate. We waited more than three months to be told we couldn't have what we had asked for and our request for progressive release of the information appears to have been ignored. We would ask that the commission recognises its obligations to transparency under the purposes of the OIA, which include progressively

increasing the availability of official information to increase public participation in government and to promote accountability. (G. Treadwell & T. Ross, personal communication, July 13, 2015).

The letter appeared to fall on deaf ears. We filed a complaint with the OotO, arguing that given the time pressure we were now under with the advancing semester, our appeal might be prioritised highly by the office. We pressed on with the course, introducing the students to principles of data analysis and allowing them in groups to develop angles on our state-gambling story while we waited for the data. Although some persistence was required, the AUT students secured an interview with the chief executive of Lotto NZ and two of them duly visited, nervously, its corporate offices to meet him. Others visit Mangere, in South Auckland, speaking to Lotto retailers and buyers and meeting community leaders who express their concerns about what Lotto costs local residents who cannot really afford it. Another team investigates the marketing of Lotto, including its expensive and seductive television advertisements. Others compile short biographies of all the Lotto NZ board members. The work goes on; the groups are successful as far as they can go without the vital information under appeal with the OotO. The course ends and the students pass but everyone, students and staff, feel unsatisfied and foiled.

The epilogue to this story did not take begin until September 2017, when, presumably under pressure from the OotO, the commission's general manager of corporate communications and social responsibility wrote to say the commission had reconsidered its refusal. We could have the information we asked for but it would cost us \$1140 for the sales data and \$1444 for the minutes thanks to the substantial collation required. We were warned the final cost could be higher. This is not a quote. We have referred the charge of \$2584 for information significantly in the public interest (one of the time, according to the Ombudsman's OIA guidelines, when officials should not charge for information) to the OotO.

At the conclusion of the writing of this research report, we are still no the wiser to which communities spend what on the national lottery. We have re-submitted our request afresh to include the years of data that have been collected and kept secret since our inquiries began. On January 31, 2019, we received another email in a series from the OotO, letting us know they were ready to ask the NZLC for its views (NZLC, 2019, personal communication). Before it did that, however, it needed to know if we were still

interested in pursuing the matter. This was three and a half years after our initial inquiry. We replied that we were indeed still keen to pursue the matter.²

5.4.2 Case study conclusions. In this instance, a case study has proved highly valuable for its “capacity to be informative about a theory, an issue, or a larger constellation of cases” (Mabry, 2008, p. 215). Indeed, it has been illuminative in all three of these ways. The theory advanced by Roberts (2006) and others that neoliberalism’s blurring of the boundaries between the private and public worlds has damaged FOI and state transparency is borne out by this case study. Commercial information, irrespective of levels of commercial *sensitivity*, was automatically treated as privileged and confidential by NZLC representatives. The issue of administrative discretion which sits at the heart of many failed OIA requests was disappointingly prevalent in the cut and thrust of disagreement between the applicants and NZLC over access to its board minutes and to data showing how much different communities spend on Lotto products. As for a larger constellation of cases, applications for information relating to the operations of a Crown agency are not outside the scope or intentions of the OIA 1982 and journalists, it would be fair to say, regularly seek such information. The experiences involved in a three-year wait for information that is in the public interest have mirrored, if imperfectly, the interminable delays described by respondents in other parts of the research. Delays beyond 20 working days that was the ambition of the lawmakers are *de rigeur* in today’s operation of the Aotearoa New Zealand FOI regime; information delivered on time according to the terms of the OIA 1982 is more noteworthy than the relatively common extension of a month which officials can assign themselves without too many questions asked. Respondents might complain about such self-granted extensions and other delays to the OotO as part of an appeal but increasingly they find extensions an expected and endured part of the process. Delays because of the appeal process have added to the experience of feeling justified in our pursuit of the data but stymied by the commercial interests of an organisation purportedly working in the public interest. The notion of complete public oversight of the workings of the national lottery was anathema to officials at the NZLC. The head of

² Note: During the period of the examination of this thesis, the Chief Ombudsman concluded his consideration of our appeal, ruling that the NZLC had no reason to charge for the supply of its minutes but the critical sales data we requested did not exist and would have to be created with new software. The NZLC was therefore justified in charging because, as outlined in his provisional ruling, the commission would have ‘to pull together and create new data sets from existing raw data held within its systems’. It was three years and 10 months since we first applied for the information. No news stories have yet resulted from our investigation.

its corporate communications unit felt it was adequate to decline to provide the minutes of the commission's governance board on the phone because they would contain commercially sensitive information. She made no reference to the public-interest required under Section 9 of the OIA 1982 and which the decision to withhold such information must survive, nor to the need under the Act to avoid conflating all information of a commercial nature with commercially sensitive information, the release of which may advantage a competitor or competitors in the same marketplace. It became clear to us during our investigation of Lotto that while it had no clear competitors for its place in charge of state-sanctioned national gambling systems, it behaved as if it did have competitors and as if its right to keep its minutes and any other data it chose secret had become naturalised by the demands of its competitive environment. The NZLC had saturated the market with a dazzling array of addictive products which were ever more easy to purchase. Its marketing budget is large and its advertisements omnipresent and powerful. Lotto tickets were introduced to supermarket checkouts but since then it has become even easier to play. A simple "Yes" reply to a mobile phone text from Lotto NZ (Lotto NZ, n.d.). We had some corroborating qualitative data that supported the idea it had become increasingly easy to buy Lotto tickets and desperate circumstances were prompting people to spend more than they could afford on a virtually impossible dream of financial redemption. Yet when asked for figures that might show poor communities spending unrealistically on its products, Lotto NZ behaved as if it had to guard its commercial secrets, despite holding a pseudo-monopolistic market position. While its market share is often represented as its share of the entire gambling market and, as such, is reasonably steady (Te Tari Taiwhenua/Department of Internal Affairs, n.d.), Lotto NZ has in fact been in expansionist mode in recent years. In 2009/2010 Aotearoa New Zealanders spend \$347 million on Lotto products (Te Tari Taiwhenua/Department of Internal Affairs, n.d.). But by 2016/2017 it was \$555 million. In comparison, in 2016/2017, \$572 million was spent gambling in casinos. Gaming machines outside casinos cost Aotearoa New Zealanders \$870 million that year and \$338 million was gambled on racing. Yet such market success is closed to deep public scrutiny, despite the NZLC being a Crown entity. If journalists are restricted from seeing beyond the powerful marketing and public-relations spin of such corporatised and privatised organisations, as they so often are with private companies, then the nation's democracy is poorer for it. This example of expectations of privacy by a commercialised Crown entity today embodies many of the issues raised by respondents over state-owned enterprises, charter schools, disaster

recovery organisations, private prisons, council-controlled organisations and other organisations either owned by the State but modelled on the structures of the private sector or a private enterprise contracted to the public purse. The metamorphosis of Lotto from a community fundraiser into a member of a global lottery industry has been in part enabled by the secrecy with which it operates. Its membership of the privatised sector has so far enabled it to prevent journalists from telling the public the full story of its commercial ambitions.

This case study has added more finely focussed data to the research project, albeit of a single instance of a refusal to release information. It has allowed close-up exploration of the power imbalance that can exist between the fields of journalism and political power, and revealed the willingness of a Crown entity to resist transparency. It has underscored the distance between the operating model, in terms of information, envisaged by the architects of Aotearoa New Zealand's right-to-information (RTI) law and that understood in practice by a state agency today. It has provided useful triangulation of results, while also allowing for detailed examination of one case.

5.5 Conclusion

The privatisation of state services that was essential to the neoliberal reforms of the political-economies of the West created what Roberts calls a "conceptual muddle" (2006, p. 160), in typological terms. Driven by the pragmatism required for reinventing the provision of such services, the now-privatised sector is a melange of organisational structures and unique solutions. "Some will still look like traditional government departments; but others will be non-profit organisations, or for-profit enterprises, or partnerships of all three of these forms" (p. 160). Respondents in this research project narrated experiences with just such a kaleidoscope of administrative and commercial functions, very much a changed State and a changed state of affairs in terms of FOI as the uniformity of process established by the OIA 1982 becomes disrupted by a variety of models, each with its own distinct interest in FOI and secrecy. These fundamental reforms to the profile of government were ideological in nature and intended to, among other things, correct an indolent State, a State that could spend a morning ordering paper clips (Fensome, 2015; see, also, Chapter 3 of this thesis). Commercial imperatives came to influence the service environment and, in a variety of ways and manners, secrecy crept back into the unwritten operational manuals of public service as a result. In the terms of field theory, the doxa of the administrative field was reshaped by the doxa of the political field and the neutrality of the moment of information exchange was

dissolved. A case study of a response to a request for public-interest information from the NZLC shows much of this transformed doxa at play. NZLC's public-relations staff were reluctant to even entertain releasing its board minutes because of commercially sensitive information which they contained. Given that Lotto's public image is that of a community-focussed organisation working in the wider public interest, it was surprising to find it was not prepared to allow close public examination of its sales or the discussions of its directors. However, that much of the information in the minutes would necessarily not be commercially sensitive (the board cannot spend each of its monthly meetings *entirely* on commercially privileged information that is more in the public interest to withhold than release) seemed immaterial to NZLC. As well, the sales data that would show where the most was spent per capita on the State's gambling systems. Doxa reflects the habitual attitudes of agents towards phenomena occurring in the field, such as requests for public access in this case. The need for field agents to meet the needs of those closer to the field's centres of power and so affirm their own habitus has led to this doxic shift. Under pressure brought about by structural change, the civil servant has become, to an extent, a political one. Guided by corporate communication specialists, agencies set out to manage information flows in which they become involved through the OIA 1982. Requests for information from journalists are regularly considered for their political, not just administrative, implications. FOI responses are chosen as part of an organisation's communication strategies. Roberts notes (p. 160) the classical distinction between the private and public worlds that is prerequisite to and a foundation for FOI.

Bourdieu's sociological metaphors help explain the shift described above from a highly functioning, if not perfect, FOI system that continued to work adequately for public-interest journalists into the early years of the neoliberal revolution (Hager, 2002) to today's often-dysfunctional relationship between state officials and journalists that has seen the flow of complaint resolutions at the OotO become obstructed. Respondents in this project are all experienced public-interest journalists with significant cultural capital within their field. Indeed, many would be feted as elite public-interest journalists in Aotearoa New Zealand, agents highly regarded in their field. Yet they are rendered increasingly powerless in the cross-border skirmishes with a civil service which now has habitus in the field of political power.

As a result, many journalists have abandoned the constitutional concept of FOI as a highly valuable and daily component of their public-interest journalism. For others,

the place they enjoy in the journalistic field will continue to prompt FOI requests, given that such agency holds a traditional and time-honoured centrality in the public-interest journalism. But even these reporters have a cynical and submissive view of FOI today and expect their requests to be viewed as problematic by those processing them. Seen through a lens of field theory, the politicisation of the civil service in Aotearoa New Zealand during and after the neoliberal turn can be construed as a resultant sideshow to the main events of the neoliberalisation programme, including the privatisation of public assets and the shrinking of the State. Whether it was a necessary condition for the success of the transformation of the political economy of Aotearoa New Zealand is not at issue here. What is important here is the disappearance of large amounts of information from the purview of public-interest journalists through the shifting of public services increasingly into the private sector. The privatisation of State functions and the contracting of privately owned organisations to provide public services funded by taxpayers have both become established and expected practice since neoliberalism emerged as the dominant political ideology in Aotearoa New Zealand. Among the ideology's victims has been FOI – and so, to a significant degree, state transparency.

6. Transparency thwarted – the undermining of FOI

“Unfortunately, secrecy, once accepted, becomes an addiction – it is difficult to kick the habit.”

– Edward Teller (1908-2003), theoretical physicist

Journalists are often depicted as having a powerful and insatiable thirst for information. When one story is done, the quest for the next one has already begun; they are often prepared to talk to or meet sources who have information at almost any time of day, such is the value of good information. After all, as it soon becomes clear to young reporters, their perceived worth to the newsroom lies largely in the number and impact of their stories. Producing great stories is what brings respect and honour and improves a journalist's position within the field, perhaps influencing her habitus or ingrained habits and dispositions. Given this desire and pressure for high-quality information as cultural capital, it is prudent to remember that much of what a journalist does is influenced by that pressure and that much of their gaze on the world is driven by it. A journalist without a story is not much use, and as they wait for that next yarn to break, expressing a few freedom of information (FOI) frustrations at news conferences, or at the office water-cooler, might help keep the chief reporter off a reporter's back. That way they can blame, at least partially, the news-desk's ongoing wait for their story on some unnamed official who is causing delays by refusing to release information. Such is the narrative of official intransigence in the world of newsgathering now that it would come as little surprise to find a story delayed this way. As agents in a social field, journalists jostle for position and themselves have skin in the game, and intransigent officials may sometimes take more than their fair share of the blame for delays in story production. To what extent, we need to ask, does journalistic doxa, the shared and often-unspoken cultural assumptions of the field, position journalists as victims of miscreant officials before an FOI request has even been sent? In other words, it is important to remember the shared cultural assumptions of the field and that, in the case of the journalistic field, these often include the assumption of the role of frustrated public crusader.

Yet there is a distinction between resistance a reporter might encounter from the social, administrative and political worlds as she or he hunts out a story, even has to “dig” one up, and the embedded cultural practices of delay and obstruction that are common in the stories respondents tell in interviews for this research. There they describe systemic and sanctioned obstruction well beyond the realms of daily occupational frustration.

This chapter explores examples of FOI failures related by respondents, before considering the risk these pose to the outcomes of public-interest journalism (PIJ) and, by extension state transparency and Aotearoa New Zealand democracy. It discusses FOI as a site of contestation, not one of order, and the resultant potential for impact on public knowledge. It will also consider the distance between today's state of affairs concerning journalism and FOI and what is reasonable to expect, given the initial ambitions behind the Aotearoa New Zealand disclosure regime discussed in Chapter 4. The State has twice declined recommendations from its own legislative watchdog, the New Zealand Law Commission (New Zealand Law Commission, 1998, 2002), to rewrite the Official Information Act (OIA) 1982. Journalists still invoke principles of openness expressed within the Act but today's state is a different beast to the one to which the OIA 1982 first applied. This chapter will explore in depth, further than the structural pluralism discussed in Chapter 5, the idea of a mismatch between the society for which the OIA 1982 was drafted and the state of FOI affairs with which public-interest journalists find themselves confronted today.

6.1 A darkening sky

An experienced journalist from Aotearoa New Zealand was following a lead in an investigation into the New Zealand Defence Force in 2010/2011 when he became aware that another reporter looked as though he might stumble on it first.³ From the safety and comfort of his own home, this other reporter was repeatedly filing numerous and persistent freedom-of-information requests with the Government, while he, the shoe-leather reporter, had travelled overseas and was scouring unfamiliar landscapes, “sweating in the dust and dirt and working painstakingly” (Respondent 5) as he searched beyond the official accounts of the story. He mentioned his frustration to one of his sources, a high-ranking officer, who reassured him confidently that his rival's requests under the OIA would come to nothing. Indeed, the inquiries were being deliberately stalled and defence force staff had joked about it.

He said, “Trust me. He ain't gonna get nothing.” They actually told me – this source told me – that they had chairs in an office where they'd get his OIA requests and they'd put them on a chair and then they'd wait for a month and then they'd move them to the second chair and that would be the chair for “This OIA request is complicated, we need another month”. Then they'd have another

³ An earlier retelling of this anecdote was in my chapter “Political journalism and two-sided transparency”, included in *Themes and Critical Debates in Contemporary Journalism*, published in 2017 and edited by Verica Rupar.

chair for “We need more time to consult”, and so on. (Respondent 5)

A second source, one of the journalist’s best, he said, then told him the officials’ ploy to foil his competitor was later a humorous topic at an end-of-year party, when even a member of the OotO, the agency charged with inquiring into alleged breaches of the OIA, seemed to be in on the joke. “They were basically all having a joke about it together” (Respondent 5).

This anecdote, told during an interview about freedom of information by an experienced journalist from Aotearoa-New Zealand, illustrates the disregard for the country’s freedom-of-information laws that it reports. The image of New Zealand Defence Force staff laughing away their responsibilities to transparency induces a sense of powerlessness and of the virtually impregnable machine that is the military in the 21st century, even in a relatively open society. It may not be the Abu Ghraib photos (Greenberg & Dratel, 2005) but the apparent confidence behind the officials’ rejection of a journalist’s freedom-of-information requests is still deeply troubling. After all, in normative terms, transparency is intended as the result of a well-functioning freedom-of-information regime, determined as it is by “the extent to which citizens can monitor and influence government processes through access to government information and access to decision-making arenas” (Meijer et al, 2012, p. 13). Such transparency is now considered a “consensual and administrative norm in public life” (Brooke, 2016, p.19), yet examples of its abuse abound in both the literature and in anecdote. Many Western transparency theorists (eg, Birkinshaw, 2006), who have little choice but to write in grand terms given their subject’s quasi-constitutional status, consider that its progenitor, freedom of information, is a basic human right; after all, the ground for it to be valued in this way was prepared by provisions in Article 19 of the Universal Declaration of Human Rights in 1947. Birkinshaw (2006, p. 4) says freedom of information deserves to be ranked with freedom of speech, access to justice and a fair trial, and protection of privacy. If defence force staff in Aotearoa New Zealand were found to treat any of these other important rights with such Kafkaesque disdain, the practices of the State would be subject to righteous scrutiny. Of course, the object at the centre of the defence force’s game of musical chairs was the work of one journalist and the public rarely shows much concern for journalists. But his requests were representative of Aotearoa New Zealand citizens’ right to access their state-held information. If there had indeed been clear and good grounds under the OIA 1982 for refusing to release the information he sought, then surely that would simply have been the course of action taken by officials. The

game of chairs could be nothing other than delay tactics targeted at frustrating a journalist's inquiry or, if entirely successful, foiling it. This example, related in detail by the R5, is included here for two reasons. First, it stands in stark contrast to the story of FOI success that opens Chapter 1 of this thesis, in which state employees speeding in government vehicles are exposed. If the release of data gathered by global-positioning system (GPS) equipment in New Zealand Transport Agency vehicles was relatively smooth for the successful completion in a timely fashion of the reporter's story, then the example here is at the other end of the scale – an agonisingly slow process with an outcome pre-determined without reference to the nation's disclosure laws, bar insincere and inaccurate invocations of exemption clauses. If officials choose to apply an extension under the Act to an OIA request because of the volume or complexity of the information sought, which is their right to do, that extension is solely to enable the provision of that information in a timely way and must be invoked within 20 working days of the request for information being received. The way it was invoked by the actions of defence force, according to R5, as staff shifted a pile of paper from one chair to another each month, is the converse of that transparency. It is disabling of FOI and so entirely hostile to the purposes of the Act.

6.1.1 “Horror stories”. This section is named after an in-vivo node conceived of inductively during coding of the transcripts of interviews with respondents. These are breaches of any citizen's legislative rights not only to information but to due process in getting it. The “horror stories” node became a repository for those narratives delivered by respondents as worst-practice examples, for those breaches journalists believed most impacted their ability to conduct PIJ. The Defence Force anecdote above might be thought of as the first horror story.

6.1.1.1 *From the top.* Disdain for FOI protocols in Aotearoa New Zealand is cited by respondents at all levels of government and “goes all the way to the top”, according to R5. “Indeed, you could argue that it starts at the top” (Interview R5). A senior army officer once took six months to decline information requested under the OIA 1982, according to R5. Firstly, R5 endured the “usual one-month thing” and then a further delay because consultation was required. Six months went by.

It was one of the last things he did before he left the office and switched out the lights, I think, at the end of his time with the defence force. I got an OIA letter pretty much saying, ‘I decline to answer your questions because that would prejudice New Zealand's security or international relations . . .’ (Interview: R5)

The army officer would have his argument that he was entitled to do that, said R5, but “if it were legally correct, which I doubt, what he did was anathema to the spirit of the law and the intention of the law and Parliament.” (Interview: R5).

R8, an experienced investigative journalist, said he had experience of very senior officials – in this case, in the police force – brazenly rejecting his right to information, not officially and on the grounds that it was information the OIA 1982 would deem should not be released, but as an internal directive to staff dealing with the request. Trying to verify claims from a source that some police statistics in the Counties-Manukau district were being manipulated, R8 applied under the OIA 1982 for information that would help determine the accuracy of his source’s serious allegations. His request “then turned into four years’ worth of chasing my tail and being royally fucked over”. It took two years for the resistant police force to finally release the information but before R8 received it, it was leaked to another journalist, who had no idea about R8’s story and so R8 was “scooped”, in journalistic parlance, and saw a great story slip through his fingers.

Then I found out that an inspector of the police that was dealing with my OIA, who I think actually was a straight-up guy, he says that he was given instructions by his boss to not comply with my OIA, to ignore it. His boss told him that that had come from the man who is now [position removed], who had passed on not to deal with my OIA because it was embarrassing to the now [position removed]. He felt compelled enough to put that on the job sheet and put that on a police file, which I find extraordinarily brave of him to have done that. So, he committed it to paper. (Interview, R8)

It took another two years for the Ombudsman to investigate and report on the case, bringing the saga that started with a legitimate single inquiry seeking accountability of the State to four years in length, something, it might be argued, more appropriate for the reputation of an authoritarian regime than the liberal democracy of Aotearoa New Zealand so reputed for its openness.

6.1.1.2 The political risk of transparency. R2 was an education reporter when the Ministry of Education accidentally made public that OIA requests received by the ministry undergo a risk-analysis as part of the process to approve or decline the release of the information sought under the OIA 1982. R2 received some information she had asked for to inform a story she was writing about “how the Ministry tried to hide that they’d asked [the Education Review Office] to re-write a really damning report about the care of babies in childcare centres” (Interview R2). However, with the information

she received, and not listed among those documents being released under the OIA 1982, was the ministry's "sign-off sheet" (Interview R2), complete with a risk analysis of her request. It is impossible to know if the risk reported is simply for the benefit of those, right up to the Minister, who might have to deal with the public fallout of the release of information, or whether the level of risk identified affects the likelihood of release. Risk to the agency is not considered by the OIA 1982.

6.1.1.3 *A tactic of denial.* The case of an Aotearoa New Zealand citizen wrongfully convicted of rape and murder who would spend more than two decades in prison, was the source of a "horror story" for R7. An experienced investigative crime reporter, R7 became aware from references made in court documents that some of the Crown witnesses were being paid by the police. The police had "the massive master file" (Interview R7) on the defendant, from which any documents at the High Court were drawn anyway, so he applied for copies of those documents. R7 was told there were no documents in that file pertaining to the payment of any witnesses. However, he remembered references to witness payments in High Court files he had seen.

I knew that the payments had occurred so I was able then to talk to police headquarters and say to their comms person that you know, what's going on? Either this is very poor record-keeping or something more concerning. They responded by saying, "We can't explain why it's not on the file". That took six months for that story to come out . . . Ninety-nine per cent of the time that's the end of the inquiry for the journalist because they don't have that other information. (Interview: R7)

6.1.1.4 *"So glib and off-hand".* A persistent and regular requester of information under the Act and a self-professed "OIA geek" (Interview R1), was following up on a story he had already written and had published about an \$80,000 military contract to a private company owned by a former senior air force non-commissioned officer. The officer had been in charge of the maintenance area when it was deemed the defence force no longer had the capacity to service its lifejackets and was now an entrepreneur whose company was now paid to do that work. In following up the story, R1 had requested documents on the matter from the Auditor General. Two weeks after the request's 20-working-day time limit expired, an official from the New Zealand Defence Force called to say his request had been passed to the defence force but somehow it had been missed by staff.

Don't know how it slipped through the gaps, ah, we'll pop it through now and we'll do our best to start the 20 days from back when you first put it in and 20 days later [they] rang to say, hey, sorry we haven't got this to you, we'll send in an extension and so the extension comes through [and is not met] and then I

rang them to say what's going on and they said, oh look sorry it's gone to the minister's office, um, and the minister's out of the country, so, uh, he's not going to be looking at it till he gets back. So, sorry, don't know when you're going to get your information ... ah ... which was just so glib and off-hand (Interview: R1).

R6 strongly believed that 10 to 15 years ago, stories that were generally in the public interest were pretty well serviced by the OIA 1982. But these days even the clearly very important public-interest stories are hobbled by politicisation of the civil service and attitudes of indifference among officials.

What's annoying is not even that you get declined, but, to me, it's the way that the legislation is abused in its application. If you're going to decline me, I'm sure you probably know within two days of my OIA arriving. You know that you're going to look at that, and you're going to say, "There's no way I'm giving this up to you guys, and these are the excuses, the thinly-veiled excuses, that I'm going to use not to give you this information." But, instead, they will wait for the 20 working days, and then another couple of days will lapse, and then you'll get an email saying, "At the end of the week we're going to respond," and then the response will be: "We need another 20-day extension." Then, you'll get to the end of the 20 days, and then another week will go past, and then they'll go, "We've looked at the thing, and we've decided that on the grounds of X-Y-Z, your OIA has been declined." That's one of the things that irritates me most – it's frustrating enough that they decline you for grounds that you don't agree with, but it's the way they string you along and treat you so disrespectfully – and the law and the wairua of the law so disrespectfully – that really frustrates me personally. (Interview: R6)

These "horror stories" are the ones that best reveal how far a culture of rejection has developed, to what ends it is working and just how high the stakes are. The power game in which journalists and officials are involved has real consequences for the reach of PIJ. Perhaps the best summation of the reach of the effect of that culture came from R8, who thought one in five of his OIA requests were declined in full and many others mostly declined:

Researcher: What proportion of your requests would you say were declined?

R8: If you look at the actual information that I request, and what I get back, I'd say I get back 20 per cent of the information I ask for.

Low success rates, even if they are not as bad as that recounted by R8 or accepted as matter of fact by journalists, are now expected and can themselves be deterrents to invoking the Act on behalf of the public. As R16, a senior journalist, put it:

I can't think of any recent bad OIA experiences. But also, the thing now is that you just assume that you've been fucked around so much with OIAs anyway that it's sort of the norm. You'd have to have a really, really bad experience with an OIA for it to be kind of like, "Oh well, this is bad". (Interview R16)

But these stories are not typical, being examples of the poorest responses to OIA requests that respondents related. As the outliers, though, their radical nature best exemplifies the way power operates when the stakes are high, helping us then recognise the same power when it is less obviously at work, when every day FOI requests are met with resistance by officials (Hager, 2002). These are arguably the stories that provoke the most pessimistic contextualisations from respondents. Under an inductively conceived node titled “gone out the window”, the most fatalistic statements by respondents were collected. For R1, the Prime Minister’s brazen public admission the Government took its time releasing information if it suited it and disregard for the public showed how far things had come. “I thought, why on earth would you say that? It breaches all the principles . . . it breaches so many parts of the Act it’s not funny. It’s just dumb” (Interview: R1). For R2, officials had become defensive, politicised and unhelpful because they think when journalists ring for information it is “to try and get them. They’ve politicised the whole way that we interact with them. They are creating their own beds to lie in. So, the whole thing has gone out the window” (Interview: R2).

6.2 Motivations, Dispositions and Orientations

To be able to usefully contextualise the stories respondents tell about their FOI experiences, it is necessary to consider their motivations, dispositions and orientations in the world of public-interest journalism. During coding, the “motivations, dispositions and orientation” node had attracted 75 references, and two child nodes, “attitude to FOI” and “standing up for FOI” attracted 33 and 12, respectively. Respondents seemed concerned about FOI in general but rarely displayed an attitude that constituted “standing up for FOI”. There were, of course, exceptions and, in particular R1 and R3 discussed their approaches to making the FOI issues they face more widely known. Data analysis showed respondents have a narrow range of dispositions when in pursuit of information under the OIA 1982. No longer trusting the OIA 1982 will deliver, they send their requests in a cynical state of suspicion. Requests that are answered quickly and fully are celebrated but as the infrequent exception to the rule. Respondents acknowledge many officials are helpful and information does get released. But it seems to respondents that when it really matters – when a high-stakes public-interest news story is forming, for example – FOI processes collapse in on themselves. Delays begin, grey areas begin form and a journalist’s hopes fall commensurately.

6.2.1 Dispositions towards the OIA 1982. R1 strongly admires the OIA 1982 as a law, calling its purposes “sublime” and “fantastic” (Interview R1). While full of

praise, R1's approach is still pragmatic in nature; power will always be self-serving and such a law is required to keep the political elite as much on their toes as possible. His nuanced understanding of the OIA 1982 and its appeal process through the OotO made him stand out within the group of respondents. R2 thought Aotearoa New Zealand would be like a dictatorship without the OIA 1982 because even with it, it was "impossible to find out what's going on" and public-interest journalism (PIJ) was "not the best it could be" as a result (Interview R2). For R5, there are many ways to frame the importance of FOI – the Aristotelian tradition would count access to important information as important to the possibility of a flourishing life. It was a human right because seeking and receiving information was "central to the concept of a free and evolved human being – [in] that you can make inquiries, you can educate yourself, you can improve yourself, you can improve your local community, you can improve your national community" (Interview R5). But information control had, in fact, been used over the centuries by the powerful to keep people in ignorance,

whether it's the church's monopoly on written language or whether it's dictatorships keeping the public in the dark about what's really happening to help maintain a monopoly on power. I mean, maintaining constraints on information is anathema to democracy because for people to live freely and make free choices they need to have open access to any information that's necessary to make informed choices (Interview R5).

Others had a clearer understanding of the law as it pertained to their work but, while they all understood its role in a democracy, rarely articulated it in terms discussed in Chapter 2, either as a representation of political philosophy or in more legal-normative terms as an instance of an international movement for disclosure. Rather respondents view it as mechanistic but broken. R3 tried to take a "documents-first mind-set" (Interview: R3) into his stories so was regularly trying to find out where the information he sought had been written down. While there were other ways to get information from and about the state sector, the OIA 1982 was critical to his work, he said. Aotearoa New Zealand was lucky to have such a law and PIJ would be stronger if it was working better. Respondents' understanding of the origins of the Act its purposes was relatively even, even if some were more politically philosophical about it than others. There were perhaps two outliers – R1, who, as noted above, had strong knowledge of the Act and a sophisticated understanding of its place in Aotearoa New Zealand democracy, and R9, a senior and respected journalist, who had somehow become misinformed quite badly about the Act. R9 thought the OIA 1982 was passed in the late 1990s to "counteract the Privacy Act" which she thought had threatened

journalists' access to much information and the OIA was brought in as a salve to that issue, ensuring the Privacy Act 1993 achieved its purposes without negatively affecting the important work done by public-interest journalists. In fact, R9 is in part right about the dangers of the Privacy Act 1993 to journalists, but wrong about the solution, which was an exemption in the Privacy Act 1993 for journalists engaged in bona fide reporting. Such a mistaken view of the origin of the OIA 1982 reminds us of the power of narratives developed in the newsroom, at risk in any case from simplification in the interests of cultural cohesion, and what it might mean when journalists have misread the reality of the situation. This risk to the research integrity is discussed further in Chapter 8 but it is important to note here both the pragmatism inherent in the fallibilist framework of the research and the predominately strong knowledge of the OIA 1982 within the respondent group. Indeed, even R9 had little doubt about the function of the right-to-information (RTI) law as far as its importance to journalism was concerned.

From a journalist[']s point of view, it is to open up [government] decisions, to reveal the background and the build-up to some decisions, and the justifications, and, from a very blunt point of view, [it is] a means of the politicians knowing that we are watching what they're doing. (Interview R9)

R12 agreed FOI was part of the "bedrock rules" by which society operated. A politics and economics reporter, his motivation for applying for information under the OIA, however, was not usually "the smoking-gun document" (Interview R12) that would instantly provide an angle for a story. Rather, he used the Act to inform himself about how the Government worked and to familiarise himself with political and economic issues. As a result, he found he had to apply under the Act less and less often these days because increasingly such information was being proactively made public and available. Yet he and many other respondents had pessimistic views on the availability of political information. There would always be both legitimate and illegitimate grounds for the withholding of information "and the way the Act is written unfortunately gives a very wide grey area between the two, which the unscrupulous can sort of screw around with" (Interview R12).

6.2.2 Progressively unavailable. Strongly expressed within the interviews with respondents was the view that things have got worse. It was a common story, particularly from more experienced respondents, that state-held information was once easy to get by comparison, and often only required a phone call to a civil servant or two. Now the politicisation of the public service through the Cabinet's no-surprises policy and the growth in the number and power of former journalists and public-relations (PR)

practitioners employed as communications staff have meant treating public access to state-held information as a given is a thing of the past. “You’ve got all these gatekeepers to that information and it’s like they see themselves as having to protect their department when in reality they’re actually public servants” (Interview: R4).

I used to be able to ring up a ministry and say, “Is there anyone there that can tell me how many Māori students received that scholarship last year, and the year before?” And the person would go, “Hang on, I’ll get someone to call you back,” and they would, and it’d be someone who’d spend an hour or so poking around, and they’d ring you back. Nowadays, you’ll have to file that as an OIA. You can ask for the most simple thing that would literally take them minutes to find out, and it can appear to be completely non-controversial, but they’ll still make you file it as an OIA. And, then you do the dance of death with them. It’s like a battle of attrition to get information now. (Interview: R6)

A straightforward request for easily accessible information is still often required to be submitted in writing, though the OIA 1982 makes no distinction between verbal and written requests for information. R5 had even been asked to put in writing a request that was simply an inquiry about how much a lieutenant-colonel in the New Zealand Army earns per annum. These days R9, a political reporter, tries to not make requests under the Act, unless it becomes necessary, because even benign information can now take her 20 working days to get access to. In her experience, reports that back up what a Member of Parliament (MP) might be saying in the House of Representatives are relatively easy to get but the release of something that doesn’t suit the interests of a politician will become a struggle under the Act.

R16, a senior journalist working in Christchurch in the years after the 2011 earthquake had numerous dealings with Canterbury Earthquake Recovery Authority (CERA), a government organisation, and found the politicisation of its staff painfully obvious. They were beholden to Cabinet, not the public. The no-surprises policy had forced civil servants to put a political PR hat on and look at the potential impact of information and its value as a political weapon. They have to look at it and go “Ah, well, why would they be asking for this?” (Interview: R16). R9, a senior journalist in a leadership position, said her newsroom found the release of information was heavily massaged for political risk.

That’s a function of it going through the political advisors, rather than a Ministry getting an OIA, considering it on its merits and against the law, and releasing it. I think that’s had a huge impact on the amount and type of information that gets released . . . Political manipulation or political consideration should have no part in it, but they absolutely do. (Interview: R9)

6.2.3 Standing Up for FOI. If the use of FOI is becoming the bane of public-interest journalists' professional lives, then are they doing anything about it? It is worth asking if passivity, even, perhaps, through resignation, is contributing to the power imbalance between them and politicians, government officials and public servants, who are the agents of the domineering field of power. It is true that two senior and investigative journalists declined to take part in the research when invited because, in both cases, they had become disillusioned with the OIA 1982 and never bothered invoking it in their inquiries or submitting formal OIA requests any more. Others, who might cite the Act in their requests, no longer appealed to the OotO irrespective of the reason a request may have been declined because it took so long, some years in some cases, to get a ruling that it did not seem worth it. Others still appealed as often as they thought they had been declined incorrectly. Conceived of inductively, the analysis node "standing up for FOI" came to attract those sentiments that indicated respondents were interested in more than complaining about their FOI rights but were prepared to resist the resistance they met. R4 took a belligerent stance: "We own this information, so give it to us. Why are you withholding it?" (Interview: R4). R6 described the "dance of death" required to extract information from officials in passionate tones and then apologised. "I'm sorry, I didn't realise how [angry I was becoming]" (Interview: R6). R8 invoked the Act when the information he sought was somewhat out of the ordinary to underscore his right to access it. His message to officials was then: "[Hey,] I'm serious about this. We've got [a] no-comment response and I actually want to know what this information is and I know you hold it, so tell me".

6.2.4 Dispositions towards conventional narratives. Initial research for this doctoral project encountered multiple narratives that had appeared to have developed within the field of practice and have established themselves as central features of the normative journalistic discourse about FOI in Aotearoa New Zealand. These have origins on both sides of the information divide – some pertain to the way journalists operate, others to the way officials treat requests; such is the anecdotal frequency of four of these narratives that it was considered a useful inquiry to establish respondents' views on the validity of these common and generalising narratives that help normalise shared cultural perspectives within the field. Statements (S) read to respondents that represent the four narratives were:

S1: Officials who deal with information requests from journalists often resent the request and action it only when they absolutely must.

S2: Officials think journalists sometimes use the OIA to make life difficult for them.

S3: Journalists often send OIA requests that are, in part, to make life difficult for officials dealing with those requests.

S4: Journalists often send OIA requests that are technically difficult or impossible to fulfil.

Respondents were asked to rate these statements as entirely valid, mostly valid, partly valid or not valid. Table 5 (below) shows responses after respondents were asked to rate the validity of each of four common narratives about FOI dysfunction involving journalists that circle at the FOI junction between the fields of journalism and political power. The results were enumerated (“not valid” = 1; “partly valid” = 2; “mostly valid” = 3; “entirely valid” = 4) and a mean figure found for responses grouped by question. What is sought here is the figure that best represents the view of the group of respondents. A “neutral” option was not offered to respondents because the objective was to ascertain the position the group can be said to occupy on a scale, at one end of which is a belief the statement in question has no validity and at the other end is a belief the statement in question is entirely valid. Just how valid did respondents think these narratives are?

6.2.4.1 Statements about officials. Respondents expressed more faith in the validity of the statements about officials (S1 and S2) than those about journalists (S3 and S4). They did not strongly support S1 and S2 as valid statements, but they thought both S1 (“Officials who deal with information requests from journalists often resent them and action them only when they absolutely must.”) and S2 (“Officials think journalists sometimes use the OIA to make life difficult for them.”) were both partly to mostly valid. Two respondents thought S1 was entirely valid and one thought it was not valid. Four respondents thought S2 was entirely valid and two thought it was not valid. The statements about officials were treated with some scepticism but overall there was more agreement than disagreement.

6.2.4.2 Statements about journalists. Respondents expressed much less support for the idea that S3 and S4 are valid statements. Both S3 (“Journalists often send OIA requests that are, in part, to make life difficult for officials dealing with those requests.”) and S4 (“Journalists often send OIA requests that are technically difficult or impossible to fulfil.”) were considered overall to be only partly valid at best. Respondents as a group found them to be not valid to partly valid. The statements about journalists

Table 5
Narrative validity according to respondents enumerated

	<i>S1. Officials who deal with information requests from journalists often resent them and action them only when they absolutely must.</i>	<i>S2. Officials think journalists sometimes use the OIA to make life difficult for them.</i>	<i>S3. Journalists often send OIA requests that are, in part, to make life difficult for officials dealing with those requests.</i>	<i>S4. Journalists often send OIA requests that are technically difficult or impossible to fulfil.</i>
R1	2	2	1	1
R2	3	3	2	2
R3	3	3	1	1
R4	3	2	1	1
R5	2	4	1	1
R6	4	4	1	1
R7	1	1	1	2
R8	3	4	1	2
R9	3	3	1	1
R10	2.5	3	1.5	1.5
R11	3	2	2	2
R12	2	2	2	2
R13	2	3	1	2
R14	2	2	2	1
R15	2	3	1	4
R16	4	4	2	1
R17	2	3	2	2
R18	<u>2</u>	<u>1</u>	<u>2</u>	<u>1</u>
Σ=	45.5	49	25.5	27.5
mean =	2.5	2.7	1.4	1.6
Respondents' view of statement validity =	PV-MV	PV-MV	NV-PV	NV-PV
<i>Legend: not valid=1; partly valid=2; mostly valid=3; entirely valid=4</i>				

initiated some reflection on respondents' practice but overall there was more than disagreement than agreement with the idea S3 and S4 were valid statements.

Irrespective of the behaviour of officials in reality, these results indicate there is some distance between where journalists are now and a position of trust in officials and FOI. Of course, official behaviour will vary too much for any of these generalisations to be meaningful in themselves. Rather, they are the agglomeration of sentiments expressed over time in the discourses of agents in the political and journalistic fields

that have taken form and become familiar in the doxa – a concept that “stresses the naturalization of ideas” (Bourdieu & Eagleton, 1992, p. 113) – of both fields.

What is of interest here is not actually the validity of the criticism of both officials and journalists that is inherent in these statements, but the credence respondents are prepared or not prepared to give them. Respondents recognised the narratives about both journalists and officials. While expected to defend their journalistic practice and that of their colleagues and other journalists and, given the general scepticism among respondents over officials’ motivations, to see more validity in the two statements about officials. There is nevertheless here still a strong indication of the dysfunction that has developed.

6.3 Power Games

A tempting inference from the use of power games as an idea in the study of FOI might be that officials find some sort of pleasure in denying journalists’ requests. This may be the case sometimes of course but the metaphor is more useful if we see the power game as having two sides, rather than two participants and only two participants. Information is power and the powerful can be reluctant to part with it; when this is the case, the asymmetry of the power relations between the two social fields becomes obvious. The OIA 1982 is a legislative mechanism designed to ameliorate the effects of that imbalance, which is the given background to any FOI regime. It sets time limits in which officials must produce information sought by the public, including journalists. Unlike many other disclosure laws, including Australia’s (Snell, 2000), it makes no distinction between *types* of information; it insists that only the effect of a piece of information’s release, and not its classification, is to be considered in any choice between release or non-release. Its emphasis is on the democratic function and socio-political benefits of FOI. It creates a default status of availability, subject to possible exclusion. Its list of exclusions is considered short by international standards. It provides an appeal mechanism for citizens, including journalists, who are refused information. It seems, from the conclusions of Chapter 4, that little was left undone in the establishment of FOI in Aotearoa New Zealand as lawmakers attempted to codify transparency practice. But the field of political power is strongly autonomous in its relations with other fields. When threatened by FOI requests that would prove embarrassing or worse, politically speaking, the State is prepared, despite the bad press that may ensue, to perform significantly below the expectations of the disclosure law. The journalistic field, a sub-field of the field of cultural production, is not a match for it,

despite its occasional wins through the OotO. If the instigation of neoliberal policies in Aotearoa New Zealand required a frustrated fourth estate, then, as discussed in Chapter 5, FOI was a good place to create that frustration.

Agents within the journalistic field, including those rich with symbolic capital (for example, senior and investigative journalists), must approach the Goliath-like field of power armed with FOI requests deployed by email. Agents within the administrative field, who now have some status within the political field (see Chapter 5), are under pressure from the Cabinet's no-surprises policy to minimise the sensitive information that passes through the semi-permeable membrane that separates the State and the news media. It is, of course, wrong to paint every official as responding with the same need to protect the interests of the State. And because the level of impact of the release of the information will vary according to the nature of the information, officials, who are now less autonomous, will feel different levels of pressure to do with its potential release. In some cases, officials can be downright helpful. As R12 said, there are officials "who will be as obstructive as possible and there are others who will ring up and say, 'Okay, you silly bugger, what do you really want?'" But when such levity is inappropriate, when requests are not inconsequential, what then? And stark differences between agencies, even between officials, is not helpful for FOI. R10 sent requests under LGOIMA 1987, the sister act of the OIA 1982 that extends key FOI regulations to local government, to [today's] 67 territorial authorities in pursuit of a story. While R10 acknowledged that the request would have required "a lot of collation" (Interview: R10), the manner in which the agencies responded varied widely and in one case the local authority attempted to charge \$5000 for the information. "Some of them were very good and some were genuinely helpful. Others were aggressive and obstructive and clearly didn't know the law. I had some people ask me, 'What's your angle?' and that kind of thing" (Interview: R10).

Field theory allows us to see the denials, delays and obfuscations of state officials for what they are – manifestations of power in action. The agents dealing primarily with an FOI request may lack autonomy in the field of power but by virtue of the autonomy of the field of power itself, are positioned to frustrate inquiries and get away with it. Despite the constitutional implications of the legislation empowering those requests, there are still ways to resist – perhaps locatable in the doxa of officialdom – and the media, viewed as relatively self-interested and so to an uncertain extent divorced from public interest, rather than embodying it, can be resisted with

some impunity. Why should officials assume the best of journalists when wider society often assumes the worst of them? And journalists, under pressure from editors, can design unhelpful requests, including requests for large amounts of data, and officials find themselves wasting “a hell of a lot of time trying to pull together these massive data stats about ludicrous information that would never amount to a story, but because a chief reporter has said you’ve got to file an OIA this week” (R4). Perhaps there should be more funding in state agencies for the execution of officials’ duties under the terms of the OIA 1982, as several respondents suggested. But it appears for now that officials are at the mercy of journalists who may or may not be actually chasing a story, may be simply fishing in the hope they catch a story, or even be setting out to deliberately, even mischievously, land officials with more work in a sometimes-vicious power struggle. Respondents said there was some validity, if not much, to the notion that journalists often send OIA requests to make the lives of officials worse.

6.3.1 Power tools. Instruments of power that allow the agency of state officials to become dominant over the agency of journalists become visible through field theory. The accounts of the FOI battlefield from respondents portray a civil service to significant extents in control of the information the public is allowed through the news media. Its most-employed tools include delay and the invocation of the FOI regime’s commercial-sensitivity exemption. To a lesser extent it invokes the regime’s protection of free and frank advice to ministers. Less obvious mechanisms of domination include cultural assumptions around the intentions of journalists, which at times obscure the principles of access that underpin FOI. Officials often act as if the information a journalist has asked for belongs to them, or at least to the ministry involved, respondents said. Journalists are seen in administrative doxa as in some way undeserving of the information because they are journalists and everyone knows what that means. More significant than even this is the downwards pressure applied by politicians through the Cabinet’s insistence, codified in policy documents if not law, that they are not surprised, politically, by the release of information to journalists. When engagement occurs, agents of the field of power have more power than the power available to journalists, even those wielding the OIA 1982 and their influence on the capacity and performance of PIJ is significant. Were this not the case, then journalists would complain little, given the generous nature – on paper, at least – of the FOI regime in Aotearoa New Zealand. But while R3 thought state agencies varied in their levels of responsiveness to OIA requests, when asked how often he was dissatisfied with the results of his requests, he said: “More often than not is probably the best way to

answer that” (Interview: R3).

When deployed together across multiple parts of the battlefield, then together these instruments have had a chilling effect on PIJ. Most recognised by respondents was the process of politicisation of civil servants through the Cabinet’s no-surprises policy in line with the needs of the neoliberal Aotearoa New Zealand state. But other common tools of obstruction include delays that are commonly outside the terms of the OIA 1982, even allowing for legitimate extensions. Others include charging significant amounts to put cash-poor newsrooms off their inquiries despite the ease of data collection and distribution today and the negligible costs involved other than staff time. Officials can help manifest grey areas around the nature of the information (eg, commercially sensitive information), despite Aotearoa New Zealand lawmakers consciously declining to make state-held information available or unavailable to the public according to its *class* of information (eg, security information or information held in a certain form) but according to only the impact on the public interest, be that positive or negative.

6.3.2 “Fishing trips” as a response to powerlessness. “Fishing trips” are broad and hopeful FOI requests, rather than targeted and knowledge-driven ones. Journalists sometimes send requests asking for larger-than-necessary amounts of information in the hope there will be information that will help them with a story they are working on or provide a starting point for the development of a new story. Levels of confidence that there will be useful information among the requested information vary and the more hopeful the request is, while no less legitimate as an FOI request, the more it is considered to reflect badly on the requester. The Act requires “due particularity” (Official Information Act 1982, s 12). Such fishing trips are acknowledged as potentially problematic FOI actions and to an extent unfair on officials dealing with such requests. Mostly, however, fishing trips were seen by respondents in this research as still a legitimate newsgathering ploy if they became necessary. Respondents tended to prefer being able to target information. R17 usually tried to have a source within the agency describe the documents he should ask for to help. “Fishing expeditions – I know some people love them. I find they don’t work that well” (Interview: R17). R1 thought journalists had a duty to act in good faith in their FOI requests and ill-prepared fishing trips didn’t help. R2 had seen “some appalling OIA requests that are fishing trips” (Interview: R2). R3 acknowledged fishing trips could cause delayed information releases but officials responded “grudgingly” (Interview: R3) to information requests,

rather than making them a priority, and acted as if they, not the public, owned the information that is sought. R4 thought fishing trips were often the result of inexperienced reporters under pressure from newsroom bosses to regularly file OIA requests. Officials were likely to decline the request and the reporter was likely to give up. But other dispositions towards so-called fishing trips were also evident in the interview transcripts and represent a power public-interest journalists seek to retain. As well as an acknowledgement of the difficulties they might cause officials, respondents were reluctant to reject them as newsgathering techniques. R6, who has requested information on government procedures over the years, acknowledged the size of some of her requests but was unrepentant. “Sometimes we go on fishing expeditions, and sometimes we know specifically what we want” (Interview: R6). R2 had seen some “appalling” (Interview: R2) fishing trips but things could be solved if officials would just call back, she said.

On all my OIAs I write them and I say, “Give me a call to discuss, ring me about this”, because you don’t often know the exact term for the thing you want. You’re kind of like, I think it’s this, I think it’s this kind of document. So you ask for a broader range because you don’t know because you don’t know what you don’t know. So you say give me a call, give me a call, can I talk to the expert on this? (Interview: R2)

In cases like this, journalists are left with little confidence in their own power to hold the State to account through access to state-held information. Vast amounts of important information feel beyond their grasp and fishing trips may be all they have left in their arsenal.

Such narratives become peripatetic explorations of issues raised in the review of literature in Chapter 3, including the creep of administrative discretion in decision-making about FOI applications and State’s retreat from openness. Many suppositions used in the building of a counter-narrative when the heroic status of FOI in Aotearoa New Zealand was first being challenged are borne out by this research and are discussed further below.

6.4 Function and Dysfunction – A “Growing Gulf”

During coding, the “function and dysfunction” node, a child node of the “citizen and state” node which acknowledged the mechanistic nature of FOI and its potential for functional failure, attracted 73 references. These were a variety of texts representing a variety of issues, feelings and experiences around the functioning and non-functioning of the Aotearoa New Zealand FOI regime. In general, respondents were happy to

acknowledge the rights of agencies to withhold information under certain circumstances and were conscious of, if not apologetic for, the effects their requests had on officials' workloads. Respondents recounted receiving different levels of response from the same agency and very different responses from different agencies to the same request. They generally agreed some state agencies were far worse at supplying information than others, though they generally disagreed on which ones were the worst. R10's response to being asked about this was indicative of respondents' experiences:

It's difficult for me to talk about police because I deal with them so much and it's very complex. They sometimes are very good, sometimes very opaque. Again, I'm trying to say it objectively without letting, you know, we have a lot of arguments and sometimes that can affect your thinking about a whole organisation. The most secretive I find . . . well I find Auckland Council surprisingly. I always used to find them quite obstructive, bloated sort of civil spin-doctor, PR. I mean, currently I would say that NZDF are the ones that I find just, in terms of their organisational culture, are just repeatedly unprofessional, obstructive, and not transparent. (Interview: R10)

Respondents varied in their views on which State agencies dragged the chain the most in terms of FOI. Of course, differing depths of engagement with agencies and the variety of agencies involved in their work helped shape these responses. R2 thought the Ministry of Education was poor but so was Defence. The Police had more complications to deal with and did not set out to be unhelpful. Probably Corrections might be the worst and some of the councils ere quite bad as well. Respondents had a smorgasbord of worst offenders to choose from.

For R12, a senior politics and economics journalist, the OIA 1982 had been very important to his work, but less so lately because now "it's not working" (Interview: R12). Not only was it hard to get hold of information that was obscure, but even requests for basic information were being treated as OIA requests, which technically they were. It was a common experience among respondents that increasingly officials were treating mundane requests for information as requests that triggered the terms of the Act, for example an allowance of 20 working days for the provision of the information. R12 thought this was sometimes an attempt to slow down or delay the provision of the information. Clearly, at one end of the scale of questions, requests for basic local government information (the cost of entry to a council-owned pool, for example) should not trigger such protective and duty-bound provisions. The question then becomes, at what point do mundane requests become official requests for state-held information? This was one area of puzzlement for respondents.

R13 found the OIA 1982 “decreasingly effective” (Interview: R13). “. . . if there’s something they don’t want you to know it’s just got harder and harder and harder to get that to a point where . . . my own use of it has gone from very regular to almost ground to a halt”. (Interview: R13). R15: “The chips are stacked against the people who want the information, who don’t have it yet. Which is not to say the people who have it do not give it, but it is totally within their power to not give it, in a lot of cases” (Interview: R15). R16 was so used to being “dicked around with OIAs” (Interview: R16) that it was now the norm and would have to be really bad to ruin her day.

In my experience if, and there’s different ways of looking at it, but if you’re asking for information that possibly might suit the Government’s narrative or the agency’s narrative about something I generally find that they are more willing to release information, or tell you about documents that you might not have asked for or speed up the process to the point where things occur in hours or days as opposed to endless refusals. So, if they want to release something they generally will. If they don’t want to release something they’ll make you jump through hoops, which might take you years to get to the end of, by which point the story is no longer newsworthy. The cynic in me wonders whether that’s been done on purpose because they know that. (Interview: R3)

For R4, the best way to use the Act was not to file written requests at all but insist on talking directly to those who hold the information. Not enough journalists did that, which meant

a lot of these officials wasting a hell of a lot of time trying to pull together these massive data stats about ludicrous information that would never amount to a story, but because a chief reporter has said, “You’ve got to file an OIA this week.” (Interview: R4)

The nature of the dysfunction that has developed at the social and political moment when agents on the journalism field present expectations of accountability to the field of political power is important to our understanding of how FOI in Aotearoa New Zealand has developed such unsatisfactory, and widely acknowledged, blockages. The self-interests of the powerful have dominated those demands, which are justified politically by democracy theory and legally by statute, despite the attempts to prevent such a situation that were imagined, developed and executed before the advent of neoliberalism in the post-Muldoon years. With hindsight, it becomes apparent the early years of FOI in Aotearoa New Zealand, before the politicisation of the civil service, or perhaps when it had quietly begun, the OIA 1982 appeared an effective and innovative improvement to Aotearoa New Zealand democracy (Hager, 2002). If there are multiple factors behind that dysfunction, the politicisation of the state bureaucracy is one. So

widely accepted is the notion of a politicised civil service that Salmond (2017a) wrote in a commentary that neoliberalism had damaged the strength of communities but also undermined democratic institutions in Aotearoa New Zealand. Elections are now seen a “Darwinian contest” (2017b) in which the winners and their supporters take all. Further, the independence of the civil service is eroded and its bosses serve ministers and not the public interest by default. If chief executives are in such a state of subservience before their ministers, then the politicisation of administrators dealing with OIA requests that look to be leading a journalist to a story the Government would rather not see published becomes inevitable. Respondents in this study recognised and articulated the notion of the politicisation of the state bureaucracy. R1, in one of the most resonating comments coded during data analysis, said it appeared state-held information being made progressively more available (Official Information Act 1982, s 4) was frightening to those in positions of political power. “I feel that’s grown worse and I feel there has been a growing gulf between the citizenry and, ah, politicians and the public service” (Interview: R1). The gulf lies, then, between a coalition of political and administrative powers and relatively powerless citizens, represented in this research by public-interest journalists. In unison, though not without their own power relations, they turn on a subordinate field to maintain their hegemony over the information power and the relation between fields. Behind journalists as they attempt to sustain the autonomy entitled to them under the law, there is nevertheless little support from a disillusioned public and, politically, “a failing system” (Interview: Respondent 8). “I think that is part of the reason that people are so disillusioned about politics, are not engaged in politics, not engaged in society” (Interview: Respondent 8).

While some OIA requests are processed smoothly and the outcome is in line with the intentions of the Act, many others are not. Respondents recalled being foiled in their inquiries by threats of charges amounting to thousands of dollars (eg, Interview: R10). For R12, journalism once focussed on problems but now, instead, someone taking offence at something has become a story. Once you were entitled to your own opinion but not your own facts – now everyone claims their own facts and takes offence at any attack on them. “It’s gone right through our entire body politic, our society and you’re seeing it in officials where they’re frightened to say boo to a bloody goose” (Interview: R12).

6.4.1 Public relations. As Mayhew (1997) notes, political leaders, with communications specialists in their ears, these days “set great store by controlling the

agenda and terms of [public] discussion in order to allow space for spinning, imposing frame-defining catch phrases, avoiding defensive postures, and fixing consistent messages” (p. 266). Indeed, a strong need for careful management of information flows by government agencies is apparent to and significant for respondents. R12 recalled from his research into New Zealand’s economic crises a memo from the Governor of the Reserve Bank, written in the 1970s, which warned international market fluctuations would mean some farmers in Aotearoa New Zealand – the “no hopers” – would be forced off their land. That, noted R12, would simply never be written down today. “Cabinet papers now read like PR brochures” (Interview: R12). A growing number of public-relations and media-relations staff control information flows, though those in some agencies, R12 would swear, were “kept in a little room down the end of the garden and they’re not told anything about what goes on” (Interview: R12). A common form of obstruction of the flow of information was to treat every request for information as a formal invocation of the OIA 1982, which meant all information was slowed down and a vestige of control maintained by officials. The Act had been very important to his work as a politics and economics reporter but was not so important these days because it was “not working” (Interview: R12). R12 had also had experience of filing OIA requests over family-health matters as a concerned parent, not as a journalist. The difference in the official response when filing them as a citizen was “astounding” and “a real eye-opener”. (Interview: R12). Citizens were treated with much more respect, in his experience.

R13, an experienced independent journalist, said the FOI dysfunction that came with obfuscation of the law and resistance from civil servants represented “an informal re-writing of the OIA where the assumption is that none of us have got any right to get it and you’ve got to fight your way to get something” (Interview: R13). For R15, the “chips are stacked against the people who want the information” (Interview: R15). R16, a senior reporter in Christchurch said journalists in the city faced regular delays in getting information and became “quite battle-weary” in the years after the 2011 earthquake. “. . . you would send in an OIA and 21 days later you’d just get the response, ‘We need more time, we need more time’. I think that is just complete bullshit on their side, essentially” (Interview: R16).

R6 heard that an employee at Māori Television Service (MTS) had been previously jailed for fraud after using the identities of dead children to apply for student loans and then extracting the cash portion available from each for herself. What was

more, the Minister of Māori Affairs was aware, having been brought in to sort out other issues at the fledgling broadcaster.

I put in an OIA to [the Minister's] office and said, "Did you know this person had been employed?" And, I got a letter back, a few weeks later: "Yes, we did know that this person had been employed, and we knew about her background." And, of course, I put that story to air, and mainstream media picked up on it, and it was interesting. That would never happen in a million, trillion years now. You would never ever, ever have a minister's office provide you with that type of confirmation. It just would not happen. (Interview R6)

R5 used the "poacher and gamekeeper" analogy to describe the dual role politicised civil servants have ended up with under successive neoliberal governments. Officials have what Roberts (2002) calls "administrative discretion" over FOI information matters. "You can't necessarily rely on the people who are supposed to be complying with the law to enforce any lack of compliance" (Interview: R5). Asked how well she thought officials understood their responsibilities under the OIA 1982, R9 said: "I think pretty well, and probably too well, because they know all the out clauses" (Interview: R9). Officials were "gaming the rules", though she understood that if there were parties outside government involved in an information request – for example, pardoned convicts such as David Bain and Teina Pora – the State did have a duty of consultation which could take time.

6.5 Conclusion

To seek state-held information as a journalist today is to enter a dysfunctional world of lop-sided power relations as the underdog. At one level, there is the tug of war with officials who act in the interests of the organisation before they act in the interests of journalists and others who seek information in the public interest and on behalf of the public (see the case study in Chapter 5). However successful their attempts at withholding the information they would rather journalists did not have are ultimately, their approach to FOI as a site of contestation reflects the politicising pressure civil servants feel – or perhaps have by now become inured to – from the administrative and political agents closer to the autonomous pole within the field of power administering the Cabinet manual's "no-surprises" policy. In other words, in their own interests, officials will not include more incendiary information that was asked for because they don't want to release anything that will have their minister "fly into a rage and demand that staff toddle up from the ministry to the Beehive and get carpeted by him or his private secretary" (Interview 1). Respondents strongly agree the policy has a lot to do with the dysfunction they experience after submitting OIA requests. Pressure from the

powerful makes unspoken demands on staff processing requests, who in turn, in their attempt to resolve that pressure, use their own power advantage to apply a similar pressure on the applicant. Armed with the advice of public-relations professionals, the powerful neoliberalist elite confront challenges from journalists on a number of fronts, be they in broadcast interviews, in the corridors of Parliament or on social media. But they apply their resolve to stay in control of potentially damaging issues in more subtle ways as well. The Government's no-surprises policy may have some understandable purpose but its impact on FOI is so deleterious there seems to be a conflict of constitutional proportions.

Despite this, there have been six successive New Zealand governments which have declined to address this conflict in any meaningful way. Power has pushed back since it enthusiastically adopted radical information freedoms in the early 1980s, in part to further help distinguish democracy from those secretive nations in the Eastern bloc taking a stance against West in the Cold War. It was a small but significant redrafting of nation's democracy framework, intended to improve in important and pragmatic ways the state of actually-existing democracy in Aotearoa New Zealand. The advance of the neoliberal social and economic policies that followed on the heels of this new law required more state control of information than the OIA 1982 allowed for. Such a relatively sudden switch of direction by the political and economic elite of Aotearoa New Zealand required sustained and methodical structural change that needed to happen in full. The change-agents across a range of fields – from Treasury experts and parliamentarians to the corporate business elite and their spin-doctors – needed to remain resolute in the face of any opposition. Kelsey (1993, p. 130) notes that to “restructure and limit the power of government, and re-establish a free market, the reformers had to use the legal authority of the State to the full”.

This thesis contends that the neoliberal State, in the case of Aotearoa New Zealand, in fact has found it necessary to go beyond its legal authority with regards to FOI to maintain the security of its hegemony of the discourse around its policies. Whether a conscious part of the design of neoliberal restructuring in Aotearoa New Zealand or a situation that evolved as an enabler of sustained change, the State's restricting of the flow of information that has potential to damage the incumbent government in the eyes of voters has given it a degree of impunity, exemplified by former Prime Minister John Key admitting (McCulloch, 2014) in an off-the-cuff manner that his government readily withheld information until the statutory 20-day

window for providing it was over, instead of releasing it to journalists as soon as practicable, as the law requires.

7. Conclusions: Searching among shadows

“When information which properly belongs to the public is systematically withheld by those in power, the people soon become ignorant of their own affairs, distrustful of those who manage them, and – eventually – incapable of determining their own destinies.”

– Richard Nixon (1913-1994), 37th President of the USA

This research points to the notion of transparency in Aotearoa New Zealand as rich with troubling assumptions and contradictions; it is worth remembering as the project draws its conclusions that even disgraced president Richard Nixon could say the right thing about FOI. Aotearoa-New Zealand’s early successes in actually-existing freedom of information are now holding up a façade at risk in ways that are analogous to the ways Aotearoa New Zealand’s so-called “clean, green” international image is at risk today (phys.org, 2017, March 21). Behind the public, official and even scholarly narratives, the reality has changed. Increasingly, as the grip of the State on the information it holds slowly tightens, the celebration of the successful design and function of the Official OIA 1982 becomes less convincing. PIJ is revealed as holding onto information ideals which, while arguably needed today more than ever, are at risk of seeming to belong to a different time. Significantly, trust in the State and in FOI is lost when journalism reaches out for information to find the game can be as much lottery as law.

This chapter will discuss these and other research findings and present conclusions derived from the analysis of Parliamentary records, rich data from the lived experience and professional practice of elite respondents, and the project’s autoethnographic case study. In answering the research questions, the ambitions at play as lawmakers brought FOI into existence in Aotearoa New Zealand are reconstructed, before conclusions are drawn about the secretive nature of parts of the State and the organisations spending public money, and about the FOI dilemmas facing PIJ. The limitations of the research are discussed and opportunities for further and different research are considered.

7.1 High Hopes

Aotearoa New Zealand society made its ambitions for open democracy more coherent with the enactment of the OIA in 1982. Setting out to establish the thinking of the time, this research finds political and social pressure for FOI in the 1970s prompted a highly innovative response to the problem. In a constitutionally formative moment,

Aotearoa New Zealand defined its desire for an accountable State in a world rich with unaccountable States. Its revolutionary right-to-information (RTI) law was the culmination of efforts across a number of social and political sectors. Such was the both public and cross-party support for it, that it came about despite an authoritarian Prime Minister who opposed it. Such a law would better represent contemporary realities, removing the last vestiges of a regime of secrecy established in response to the perceived threats of communism in the two decades after World War II. It was helpfully legitimised, too, by concurrent efforts to create transparency by other liberal democracies, especially Commonwealth members Australia and Canada. Public-interest journalism embraced its new levels of access and, for the most part, there was consensus across both news media and officialdom that the law was functional, flexible and, while imperfect, was the foundation of a strong FOI regime.

The political thinking behind the Act reflected a public desire to put the nation's age of secrecy officially behind it. Politicians were no longer highly trusted and transparency was needed to ensure their accountability to the electorate. But international politics, too, played its part. The indigenising of the OSA in 1951 had been a reaction to the threats of communism, and the response to the Eastern bloc 30 years later was to flaunt Western life and the idealisms of democracy such as FOI. The OIA 1982 was an enabler of the electoral accountability fundamental to the freedom rhetorics of the West. As well as its strategic purposes for alliances with other nations, legislating for access to state-held information strengthened a national narrative of freedom and, given the successes of totalitarianism elsewhere at the time, underscored the values associated with personal freedom and self-government.

7.2 Journalism: Public Interest and Private Gain

Any dissatisfaction a journalist might feel with the FOI regime they engage with in their daily practice of PIJ is derived, in some part, from the relational and semi-autonomous nature of their work. The relentless search for the next story that underpins investigative reporting requires both strength of character and occupational vigour in the face of multiple obstacles, including FOI refusals by the State. A good reporter pushes back hard against authority when necessary and will engage in proactive, often assertive, ways in their relentless search for more information. The expectations and reward system of the job demand this. The more public-interest stories a journalist publishes, the more cultural capital they collect, enriching their habitus and representing some level of success in the omnipresent struggle between agents in the field. This

search and perhaps all searches, is characterised by frustration until a breakthrough of some sort is made, and the searcher feasts on the findings. Immediately one story is completed, their relentless hunt for information resumes, perhaps in a new direction, influenced by the nature of the first kill. Then the search-head will become slowed and ultimately frustrated again until the arrival of the next meaningful breakthrough. This research acknowledges this engine-room process that drives, in part, the professional and personal-at-work motivations of public-interest journalists. It is not hard to understand that the nature of the endless search for information others held contribute to the professional pains that are endured. However, this thesis contends that professional norms, objectives and values of journalism nevertheless still lie near the heart of that search and that the frustration of those is also what prompts such strong criticism of officialdom. Public-interest journalists, including respondents in this project, need their pay packets and will usually accept they operate within environments less than ideal for the production of PIJ. But they have, in fact, only earned their pay if they have made inquiries on behalf of the public. It is this credibility that respondents sought above most all else. Public-interest journalists hope their professional inquiries lead to stories that serve the public and reflect well on them as professionals. In normative terms, they believe in serving democracy by answering the political information needs of their audience, which is conceptualised as a part of, if not entirely representative of, the body politic. It is the audience that journalists regularly claim to be actually working for.

However, in Bourdieusian terms, public-interest journalists also hope to strengthen both the news media's position in society and their own cultural capital. They hope to advance their position in the field in some way towards its autonomous pole – creating possibilities of advancement, pay rises, awards and other benefits with exceptional work. This self-interest is some part of any public-interest journalist's daily motivations. Another possibly obscured influence on the work of public-interest journalists is a desire an experienced practitioner may have to speak in the language of the elite of their occupation – and to be heard speaking it – to reaffirm, at the least, their symbolic capital. In the case of journalists, this might be the tough talk of the hard-boiled reporter, protecting their reputation as a journalist with the personal fortitude to take on power with tales of FOI injustices. Is some of the tough talk of respondents simply part of that reputation management? In fact, successful senior and investigative public-interest journalists, including respondents, create reputations not with talk but with stories and their impact on the general public and the elite. Reputations do matter in journalism but this research concludes that while shaped to some degree by the

influences discussed above, none of those can account in significant ways for the strength of the narratives of practice under study. Neither the impact of their self-interests, nor journalism's partial acquiescence to neoliberalism's norms of power relations account for the level of dysfunction that many FOI inquiries reach when precipitated by a public-interest journalist. Without exception, respondents counted their public-interest stories as more than 90 per cent of their work. Without exception, respondents gave their time to this research project without hesitation. They were keen to talk and felt they had a lot to share about FOI failures and their experiences of the OIA 1982. The significant restriction of access they say they regularly experience is among the most prominent of their professional frustrations. In journalism, of course, frustrations can be professionally ordinary. However, the frustrations public-interest journalists express over the functioning of Aotearoa-New Zealand's FOI regime are not the ordinary obstacles to finding out information that investigators experience. Rather, theirs are experiences that argue for an indifferent civil service that is, to an extent, now antagonistic towards the media on behalf of the Government.

7.2.1 Theatre of the absurd. The FOI world journalists find themselves caught in sometimes resembles an early Harold Pinter play, a comedy of menace, rich in long pauses and very little action. At the beginning of each month a pile of folders is moved from one chair to another. Protagonists behave in unexpected ways, each time ratcheting up the stakes involved. At other times, the game seems Kafkaesque, with brutal copy-and-paste refusals from officials and an overloaded Office of the Ombudsman combining to produce a monolithic wall of silence. A 53-page document has just 25 paragraphs not redacted behind authoritarian black lines when it arrives by email. Police take two years to respond to an inquiry into their record-keeping and then release the information to a rival journalist. A very senior military officer takes six months, and then says no to an information request. A local council threatens to charge \$5000 for information another council is happy to provide. The police deny there are records of three paid witnesses in a murder trial – but there are. Neoliberalism's normalising influences threaten to make the idea of FOI as a site of contestation, rather than democratic order, appear sound and OIA requests by journalists can be made to seem unreasonable and self-interested.

The neoliberal solution was presented as a *fait accompli* to citizens of Aotearoa New Zealand and as the nation's only realistic option. The policies contained in it were without a regular collective signifier; this tendency, in which structural identifiers are taken as naturalised and common sense (Harvey, 2005, p. 39), even natural, is a strong

characteristic of such approaches to the political-economic order. Practical changes had to be made and were not conceptualised publicly as emerging from a number of beliefs in liberal individualism that together formed a plan for transformation of the political economy. While it was given a name by the media – “Rogernomics” – this personalised it, rather than located it as an ideology. In subsequent decades, a culture of rejection developed within the information services of the State, against the spirit of the OIA 1982 and an anathema to the transparent, action-filled FOI world that lawmakers planned for Aotearoa New Zealand and which PIJ holds to ideologically as an ideal framework of operation. This thesis argues that, underlying these difficulties, is a problem of the incompatibility of actually existing FOI with the neoliberal dominance of the political-economy of Aotearoa New Zealand. It argues the power struggle has been won by the dominant, autonomous field of political power and a journalist firing off an FOI request might well end up feeling as if they are waiting for Godot.

7.3 The Neoliberal Intervention

Despite some minor “pragmatic U-turns” (Kelsey, 1993, p. 10) by the State when it encountered pockets of public resistance, the neoliberal reform project in Aotearoa New Zealand was embedded resolutely into a society previously attuned to more communitarian aims. Any significant resistance that the architects of the changes might meet would be emboldened by full access to information held by the State, as had proved the case when a culture of openness grew in the 1970s and, as discussed in Chapter 4, empowered those challenging Robert Muldoon’s authoritarian administration and its economic interventionism. Now commonly historicised as an offshoot of the economic agendas of the UK under Margaret Thatcher and the USA under Ronald Reagan, Rogernomics is also cast as the most adventurous of the neoliberal experiments that took place in Western societies. The transformation of the Aotearoa New Zealand economy was deemed to be imperative and needed to be complete. The need was “urgent and dramatic” (Kelsey, 1993, p. 9). It is the contention of this research is that among the ideals that were compromised by the exigencies of that rushed revolution was FOI. As the economy was transformed from one of the most regulated to one of the most deregulated in quick time, increasing amounts of operational and capital expenditure on behalf of the public was conducted by the private sector, blurring the lines around public access to information required for accountability purposes. The result is a fourth estate with restricted access to the very parts of the experiment that are at political issue. As a result, State transparency and accountability were restricted.

However, such approaches to public spending continue today and almost every year new commercial, semi-commercial and quasi-commercial organisations emerge in response to the State's ongoing commitment to market principles in the delivery of public service. Public-interest journalism continues to be significantly excluded, as exemplified by both the gap between the reports of information sought by its practitioners and those of its release, and the impact of withholding information circumscribed here through a case study.

Whether or not there is much use to economics scholars in the notion of the privatised sector, it is a highly interesting idea in journalism studies. Accountability, linked irrevocably to transparency in a representative democracy, is central to the formation of the doxa of the journalistic field and ultimately to the habitus of its agents. A public-interest journalist's status in the field is the result, to an extent, of their success in the intra-field competition to achieve accountability from the State. If whole state organisations take a step back from the window of transparency, public-interest journalism (PIJ) is held at arm's length, hobbled by the self-interest of a quasi-private entity. While the spirit and body of the State may have been diminished in the structures of the privatised sector, the involvement of the taxpayer, generally, has not.

The privatisation process has created a fog that has crept further to also swallow some entirely private companies contracted to the public purse. Public funds are being spent on or by such organisations but the transparency public investment would normally require is deemed by those organisations to be significantly against their interests, given the State's requirement that a successful business operation – and so profit and growth often amid competitors unencumbered in such transparency terms – is their primary objective. Hence those wanting to hold the State to account for, for example, a contract with a private company that it has used public money to secure, increasingly find strong resistance to the notion that that contract is a public document. But governments, too, often want them kept secret, if for no other reason than to “obscure evidence that might compromise their claims about the success of highly controversial privatization programs” (Roberts, 2006, p. 152).

The logic of the marketplace was the theory that drove such change. But in Aotearoa New Zealand, one of the most transformed administrations and economies, in part as a result of its quasi-socialist starting point, the efficiencies of the marketplace were highly valued by Treasury (Easton, 1997, p. 85-111) and subsequently by both Labour and National governments. Already, the very existence of the corporatised,

privatised and publicly funded services that resist full transparency is at odds with the fundamental precepts of FOI, particularly its clear and necessary distinction between the public and private sectors. When the neoliberal alterations to advanced democracies are complete (Roberts 2006, p.160), FOI is likely to have a significantly reduced role in the day-to-day functioning of the Aotearoa New Zealand democracy. The growing array of organisations occupying a new middle ground between the public and private worlds are confusing the picture and creating blurred boundaries (p. 152). They confound the very purposes of FOI, which are to reassert, in significant and pragmatic ways, the primacy of the people over their government by establishing clearly the lines of accountability to the State. Self-determination in the half-light is virtually impossible and the monitoring of the powerful in the shadowlands created by FOI failures an unenviable task. To ask what extent today's dysfunction at the intersection of FOI and PIJ is the result of neoliberalism and to what extent other things, such as ministerial interference, misses the point that neoliberalism is the normative environment in which PIJ has operated since 1984, two years after the introduction of FOI. It is the systemic enabler of FOI failure. These research findings concur with Kelsey's assertion that the success of the neoliberal project, given both its own requirements and the speed and intensity with which it was implemented, depended on the neutralising of the State's own civic watchdogs, including the OotO (1993, pp. 174-188) and, ultimately, the more penetrating work of the news media. To attempt to find proportional causality – that is, to ask *how much* neoliberalism is at fault for FOI failures – assumes there are separate deleterious influences on it. This misses the interconnectedness of those failures with the restructuring of government, the sliding shift to a politicised bureaucracy and ongoing structural adjustments to the political-economic order. Further confounding such simple analyses, is journalism's own, increasingly consolidated structural dependency (Phelan, 2014, p. 138) on the market-driven world of neoliberalism.

7.3.1 A conviction of publicness. This project concludes that journalism is unsure, even confused at times, about FOI today, but it is confident about the publicness that underpins it. Respondents conceptualise the privatised sector as one still held somewhat to account by PIJ because information related to its constituting organisations but held by the State can be accessed. Executives can be pressured to speak publicly and the success or otherwise of its endeavours can be traced through market results and annual reports, which provided “some transparency” (Interview: R9). But respondents believe there are stories beyond their meaningful scrutiny on behalf of the public because of the privatised status of an organisation and the desire for privacy that creates.

They recognise that the shifting of public operations to the private sector does not significantly reduce the public interest in those operations but increases the resistance they encounter when seeking information. Crown research institutes and other government entities, private prison operators, charter schools and council-controlled organisations all came in for strong criticism from respondents for a lack of transparency. However, as this research reveals, it is not always clear on exactly which privatised organisations that were formerly state-run and which new-market entrepreneurs contracted to the public purse (e.g., private-prison operators), could be held to account through the terms of the OIA 1982. Respondents were more likely to know the status with regards to FOI of the organisations which they had investigated in depth or regularly. Most were clear that state-owned enterprises were subject to the nation's FOI regime, but were uncertain over newer types of organisations, such as crown entities, charter schools and council-controlled organisations (CCOs). Respondents accepted their work involving such organisations was less likely to produce high-quality results as their work involving organisations more deeply within the state sector. It was more difficult and they became less motivated. "Door stepping" executives from the organisation, i.e. seeking comment on the record with no warning, was sometimes the only way but did not provide a journalist in-depth material (Interview: R9).

Public-interest journalism in Aotearoa New Zealand knows it is being excluded from the spending of public money in these situations. However, there is not a distinct belief that this is an ideological intrusion by neoliberal politicians and economists. Instead, the privatisation of large parts of the State is seen by respondents as having been probably inevitable. Respondents were reluctant to imagine a wholly operational and effective FOI regime, which seems idealistic given the capacity the powerful in society have for self-protection and the imbalanced nature of the relationship between the powerful who hold information and the less powerful who seek it. They are reluctant to conceptualise an ideological apparatus behind the failures of FOI and still believe there are ways to ameliorate the dysfunction, though their solutions – including penalties, public naming of errant agencies and better education of journalists – lack consensus. They have faith in FOI, despite the regular, even daily, reminders in their work of its inadequacies and the frustration with which they relate them. Public-interest journalists do not view the OIA 1982 as badly flawed and therefore the cause of the problems. Rather, while there might be some improvements that would adjust FOI processes to account for today's world in ways that would benefit respondents

themselves, respondents' conceptualisations of FOI are devolved from a mix of the function of FOI "as an anti-corruption measure" (Interview: R10) and the constitutive political function of the public in a democracy, where "information that can be public should be public" (Interview R16). They are reluctant to acknowledge a neoliberal ideology as a root cause of transparency loss since the 1990s in Aotearoa New Zealand; such a theory implicates journalism (Phelan, 2014) in ways that contradict the role respondents accord to it in normative terms as a public defender. Neoliberalism has centralised itself, framing itself in common-sense terms. Journalists seeking independence and autonomy from the influence of power attribute its reluctance to be fully transparent as an inevitable characteristic of the powerful. In the end, they balance their work, reluctant to advance social democracy as more transparent than neoliberalism. Indeed, if society is in the grips of a rampant privatisation of public services that is so damaging to the public interest, then journalism, considered part of the problem by many critical theorists, has so far failed to clearly identify and present that to the public. PIJ casts itself as a reluctant player in such games of ideology, because of that implication which, if accepted, might put PIJ in the role of defender of neoliberalism. Rather journalism tends to see ideology as something imposed from the outside on an existing and unwilling order, often considered something of a natural or at least settled order.

However, respondents advance an ideology of their own – one of openness and public ownership in which cabinet ministers and officials understand "it's not their stuff – it's the public's stuff" (Interview: R9). Sceptical of FOI because of its renowned failings, respondents nevertheless conceptualise and promote such an idea of a reasonable and functioning exchange of information that helps them better represent the interests of the public. This ideology allows PIJ to be disconnected from the influences of the financialised ownership that characterises most major media companies today and, indeed, from the broader ideological landscape of the day, be it neoliberalism or some other categorical orthodoxy. Against a background of the shrinking audiences of the mainstream media in Western societies, respondents hold on to the ideals of public service that connect their journalism practice to FOI. They operate in a much-changed world now but do not want the Act to be very different to how it has always been. Many respondents argue it needs little or no changes at all. They remain convinced by its structural integrity. The world of officialdom is where changes are needed. However, in the meantime, the actualisation of their ideology of openness is confounded by FOI failure.

7.4 Journalism's Part in the Farce

The detachment of officials from the political fortunes of superiors is too often missing in the operation of the OIA 1982 in Aotearoa New Zealand. The accountability line from administrator to Cabinet minister, underscored by a Cabinet policy of “no surprises”, muddles the role of the official handling FOI requests. In these cases, the FOI rhetoric of the representative official becomes empty and the public is left with no empowered advocates, neither in the state agency concerned nor often in the relevant newsroom because journalists are kept at bay. PIJ is in a pickle, its feet stick in the mud of refusals and delays, slowing its progress; it is rejected by the political agents of the State in its advances. It is unable to count on disputes with state agencies being resolved in a timeframe that enables the expectations of editors linked to news cycles and periods of public interest to be met. Yet the FOI regime itself is applauded by the agents of PIJ, and its time limitations and extensions are seen as reasonable; it is defective and essential at the same time. It makes large amounts of information available but fails when it really counts. It isn't a functional seizure, but an operational one. Indeed, the legend of the OIA among journalists has survived into the second decade of the 21st century, despite widespread anecdote of its practical dysfunction. Journalism continues to defend the law with which it constitutes much of its power in the public interest, despite reaching for its support to often find it missing. Some public-interest journalists have given up using it, others have given up appealing when refused information they might once have been more determined to get. But without exception, respondents engage with the State in recurring information requests that succeed or don't succeed. Their dispositions towards the Aotearoa New Zealand FOI regime are generally affirmative, though coloured by nostalgia for most respondents for the *way things used to be*, when a common response to information inquiries was, “Hang on. I'll get someone to call you back” (Interview: R6). This nostalgia draws attention from the realities of today, leaving PIJ bemoaning the state of affairs and urging officialdom to return to more open ways. This anchoring of itself in the hopes of the past means PIJ is less than prepared for the transparency of tomorrow. As we have seen, the State has little desire to change its FOI laws to any significant extent. PIJ, then, is complicit with the State in insisting on the status quo.

The “exercise in good faith” (Interview: R1) that characterises successful FOI transactions needs PIJ to play its part. Journalists have no special formal status under the OIA 1982 but their requests do sometimes gain a status separate from other OIA

requests because the information they seek is destined, in many cases, for public consumption. This can help in cases when publicity is seen as useful to the public or agency, or both, but can hinder the journalist in others, prompting a lengthy and cautious period of negotiation from officials. Unfortunately, chief reporters and other newsroom managers often demand that reporters file OIA requests with a supposedly optimum regularity. Respondents report a newsroom culture in which OIA requests were viewed as markers of investigative and hard work, rather than opportunities to be taken when appropriate and most likely to be productive. Too often the story idea is the OIA request itself. The result is not only OIA requests based on inadequate information but an arguably wasted time by the officials processing them. OIA requests do not guarantee a publishable public-interest news story. Rather, they are the progenitors of often-lengthy dialogue and negotiations with the State that may end with some success in revealing information to the public but often do not. They should be conceived in much wider terms than simply the producers of previously hidden documents that provide gotcha news stories. Such news stories did indeed make appearances among the narratives of respondents, but just as often their search for information stumbled or they received unhelpfully redacted documents in those cases. For many respondents, citing the OIA 1982 was as much about doing background research as tomorrow's headline and often it was about getting to know the systems of government. Overall, respondents strongly objected to aspects of newsroom culture to do with FOI requests, which saw young reporters who were not adequately au fait with the FOI regime firing off poorly construed requests that were likely to fail.

A significant impact might be made here with a more nuanced approach from and more time invested by journalism educators into the realities of the FOI regime emergent journalists face. Best-practice guidelines might include an emphasis on using the OIA 1982 in careful, targeted ways. Too often, it seems, an OIA request is the first response to a story idea. As soon as that FOI process becomes dysfunctional, as it well might, the story is inevitably stalled. Better practice would be to corral as much information through other research and dialogue with sources until there is little room to wriggle for an obstructive official, if the journalist is unlucky enough to be landed with one. Indeed, FOI requests have never replaced the need for sources inside government and they are a less potent tool in the hunt for news. Of course, guidelines in this area cannot not be prescriptive. But perhaps a good rule of thumb might be: Sources first, then OIA requests for the proof.

Critical scholars approaching neoliberal theory and the media's place in it tend to emphasise journalism's role within a neoliberal order (e.g. Phelan, 2014), which is described variously as complicit with, indifferent to or ignorant of that political-economic order. Journalism, it seems, is unable, or at least unwilling, to critique society in ways that would undermine its own financialised ownership and promotion-related income streams. While the "construction of consent" (Harvey, 2005, p. 40) for the agendas of neoliberalism varied between Western nations, the media were prominent among the institutions through which neoliberalism put out powerful ideological feelers, took root and became normalised. While the virtues of competition are privileged by neoliberalism in rhetorical terms, the reality is that the media is among those sectors to have seen both diversity and competition rapidly lost until all that is left is "a few media magnates [who] control most of the flow of news, much of which then becomes pure propaganda" (p. 80). However, within such a restricted public debate, FOI and its users still exist. The disjuncture between the notions of democracy theory and the realities of the aftermath of the neoliberal takeover does not make RTI legislation meaningless. If PIJ is blinkered to the wider social realities of neoliberalism, it might be in part because it declines to face up to its own part in reproducing the neoliberal social order by failing to adequately challenge the narrative that there is no other way, and then in helping neoliberalism naturalise and become invisible. Considering that journalists profess to have a deep mistrust of ideology, it seems surprising journalists are reluctant to recognise neoliberalism as such. Still today, mainstream media tend to consider the free-market radicalism since the 1980s as a right-wing but mainstream economic philosophy, locating opposition to it in a balancing of laissez-faire and interventionist economics, a reductionist approach that fails to see neoliberalism for what it is – radical, pervasive and anti-communitarian. Within that world, PIJ attempts every day to lift the lid on state secrecy. This is done within the normative frameworks embedded across the public landscape perhaps, but nevertheless within the terms and conditions of public life and with its conviction of publicness mostly intact. While conscious of the dominance of the State in the FOI relationship, PIJ nevertheless clings to the very mechanism that has enabled that dominance – the OIA 1982. It is a law that while revolutionary in many ways, has in fact in other ways enabled the growing shadows that PIJ now faces, dark places exacerbated by the corporatisation of the public sector and the subsequent part-politicisation of the civil service. Yet public-interest journalists still cling to the OIA 1982, even when reminded

of the innumerable occasions it lets them – and the public of Aotearoa New Zealand – down.

7.5 An Increasingly Unaccountable State

While Aotearoa New Zealand's RTI law makes no distinction between types of requesters, journalists find their requests are, in fact, treated differently from those made by other information-seekers. They may sometimes be prioritised because of the origins of the request, given the risk of poor publicity for the agency involved if the terms of the OIA 1982 are breached. Some respondents found their employment within news organisations meant all the 'i's were dotted and the 't's crossed when it came to their FOI requests. But more regularly respondents reported finding themselves in a game of cat and mouse over information they believed was clearly in the public interest and for which there should be little argument over availability or the need for extensions and redactions. The liberal nature of the OIA 1982 is celebrated by journalists but its inherent flexibility provides grey areas for information to be hidden or at least delayed which also foils them. When suspect decisions are challenged, journalists can find themselves in a secondary, push-and-pull phase of the information-seeking game, in which the makers and reviewers of decisions to withhold information are often the same person. It is only when an appeal is made to the OotO that journalists feel an independent arbiter is involved. There is little trust that officials can and do take independent and impartial views of OIA requests and pleasant surprise expressed when that does occur. Only once an appeal process outside the political environs of the agency involved has begun do journalists feel that impartiality is possible. Of course, that appeal can take some years, given the intransigency of some agencies. A pointed example can be found in the case study of a request for information from the New Zealand Lotteries Commission included in Chapter 5 of this report. It must be acknowledged here, however, that despite the OotO's decision not to participate directly in an interview for this research, the office did provide a statement by way of a letter from the Chief Ombudsman, which is appended to this research report (Appendix A). In it he celebrates that the OotO has caught up with a serious backlog in appeals the office faced when he took over. This news, and a new sense of determination over FOI issues from that office reported by respondents (R1 and R5, in particular) should encourage public-interest journalists. However, as R13 elaborated, positive action from the OotO is often only required because insufficient information has been released in the first place. As R13 noted (Interview: R13), he invariably got more information from the

agency he was dealing with once the OotO had reviewed the case, meaning he was invariably short-changed in terms of the law. To shift such intransigency will take a culture shift in Cabinet, substantial enough to lead to the removal of the no-surprises policy, which this research concludes that of all the pieces of today's FOI puzzle, that now-longstanding requirement on officials is fundamental to the difference PIJ finds between the promise and the practice of FOI.

It is useful here to return to the list 10 "themes" that emerged from White's study of the OIA (2007, pp. 90–92), at least those pertinent to PIJ, in light of the findings of this study. (All themes are listed in Chapter 2.) White found Aotearoa New Zealand Government had become much more open because of the Act. Such a finding affirms the Act as functional to some degree but increased openness is to be expected. Finding no increase in transparency after the installation of FOI laws would indeed be bigger news. This research finds, too, that Aotearoa New Zealand is an open society – to the extent that it is – largely because of the OIA 1982. However, the vision of the lawmakers that the transparency would continue to grow, as required by section 4 of the Act (Official Information Act 1982), has been stymied. Without the Act, there would indeed be darkness. But even with it, nearly 40 years on, democracy in Aotearoa New Zealand has become a murkier affair. Trends towards transparency have been reversed and PIJ is held back as a result. White's finding that many requests for information were unproblematic reflects the non-sensitive nature of requests made by members of the public. It will be journalists, predictably, who are mostly behind the requests that cause problems for those in government. A truer test of transparency is to isolate those requests that seek politically sensitive information from all others. Political transparency might be said to have been achieved when these requests are answered strictly under the terms of the relevant disclosure law. There should be a different sort of applause for a State that willingly or proactively releases information that does not have political impact when it enters the public arena.

Since White's finding that the Ombudsman's role had been a success, long waits, sometimes years, for appeal processes to be completed have come to be expected by public-interest journalists, "by which point the story is [often] no longer newsworthy" (Interview: R3). Even as the role's success was highlighted, though, so were long processing delays. The OotO has argued, with good reason, that things have improved in recent years. But the case study undertaken as part of this research shows the delays can still be interminable and debilitating for the inquiry. Almost four years

after the initial request, the OotO cleared the way for the release of the minutes of a board of directors running a Crown entity.

Other findings by White's study still ring true in today's melange of digital information, faster-turn-around news and reluctant officials. More training of officials in the State's responsibility under the OIA 1982 would shift the burden of partiality off their shoulders, to some degree. If the requirements of the Act are very clearly on the table and understood by all, officials may have a chance to resist the pressures that come with being subjected to the Cabinet's no-surprises policy. Instead, Price's findings (as cited in Palmer, 2007, p. 14) that requests for sensitive information are more likely to find their way to the relevant Minister's office, often with questionable justification for such referral, is now broadly accepted by public-interest journalists as inescapable. The two-tier system Price identified – one tier of unproblematic information requests and another, much slower-moving tier of requests considered sensitive – has today become widely normalised within the culture of FOI, while never having been accepted within its laws.

The architects of the Aotearoa New Zealand FOI regime – those much-lauded civil servants who devised it and those revolutionary parliamentarians who cemented it in law – did not see its creation as equivalent to a sudden opening of the curtains on the State. They understood it would take time, perhaps a long time, until the State was sufficiently open with those it ruled. Thus, the purpose of the OIA 1982 was, among other things, to *progressively increase* the availability of official information to the people of Aotearoa New Zealand (Official Information Act, s. 4). It is clear from this research that this progression as an increasingly open society has stalled. Ideological forces had other needs, including a strong control over the political-economic structures of society, as they restructured the shape and role of the State. Transparency is no longer an increasing thing, but set at a level that the neoliberal State can tolerate. The switch of power relations embedded in the OIA 1982 has, to a significant state, been reversed. FOI is intended to encourage citizens to be involved in the making of laws, to break down the distance between citizen and State, and, indeed, to give effect to the notion that the people are self-governing and so are themselves synonymous with the State. This research attests to the idea the State is not synonymous with the people, from whom it once again, after a brief time in the sunlight, guards secrets from inquisitive journalists in a rejection of transparency

7.6 What else and where next?

Research projects are necessarily limited by their scope, context and perspectives. These structural and epistemological issues are explored in Chapter 3 but what is also needed is not just an understanding of what is within the scope and architecture of the research but also what is excluded by them. This doctoral project was devised as a response to a perceived need for a journalism-studies thread to the scholarly narrative about FOI in Aotearoa New Zealand. As such it necessarily excludes many other viewpoints and should not be seen as seeking to be definitive outside the scope of journalism studies. For example, outside the daily or weekly needs of the public-interest journalist, FOI is a conduit for many personal exchanges between State and citizen. This private side to FOI responds to the needs of the individual and not those claiming to represent the collective. The frustrations experienced by a journalist, while testing perhaps, are in the end professional frustrations, and not often critical in personal ways beyond that professional context. The FOI battles fought by many individuals seeking justice of one sort or another from the State via transparency measures are potentially life-changing and require an entirely different type of research.

There are, of course, many FOI requesters whose work may benefit the public but their role is not as professional journalist. Most obviously, perhaps, are the citizen journalists and bloggers, whose political allegiances may be strong but nevertheless may claim to be working in the public interest. Their FOI requests share some purpose with those of PIJ and could make for helpful comparisons. However, there are also many other variants of researchers, from those in political movements to those within sociology departments, whose engagement with FOI would provide useful sites for such foundational and comparative studies.

The gender imbalance in the respondent group, discussed in Chapter 3, is arguably another limitation of the research.

This project has, too, its own epistemological and structural limitations, which are discussed below.

7.6.1 Limitations. The normative framework within which the data for the research was generated might be considered as a limitation. While the researcher acknowledges the personal and professional self-interests that drive the news-gathering of public-interest journalists and the structural dependence on markets that many of their employers have, it still equates in some ways the ambition of the journalist with the attainment of public good. While the numbers of readers or the show's ratings are

critical, so is the representation of the public that the journalist attempts in their work. Without it, FOI is scarcely needed, beyond personal requests for files and political manoeuvres. But the focus here on the professional norms and objectives of PIJ, while contextualised by neoliberal theory has necessarily meant privileging the culture of the newsroom and the perspective of respondents. This can be seen as a limitation given its circumscribing of the terms of the research.

This research has traversed landscapes previously familiar to the researcher, a lecturer in journalism and a researcher working within journalism studies. This familiarity is advantageous, helping launch an advanced level of dialogue with respondents, and provides the case study in Chapter 6. However, it also helped set the objectives and parameters of the research and so was exclusive of alternatives. Given the researcher's interest in journalism as a public good, the focus was limited by that interest, as well as engendered by it.

The process of appeal against decisions to withhold information was clearly of great interest to respondents who expressed decreasing expectations of successful appeals but who still valued the appeal opportunity and did still appeal when it seemed important enough. The cancellation of a research interview with a representative of the OotO in response to some of these issues necessarily limited the research. A helpful addendum to the research findings would be to re-establish communication and complete that interview.

7.6.2 Opportunities for research. Multiple opportunities for further research arise from this doctoral project. Research outside the strongly qualitative approach taken here would contribute to the journalism-studies scholarship about FOI. Similarly, an ethnographic approach might be taken to the culture of officialdom behind and beyond the official pronouncements about transparency. Similarly, ethnographic work may illuminate more about newsrooms and their use of FOI today. Multi-modal discourse analysts might, for example, study the relationships between journalists and officials.

An important and clear limitation to this research is the absence of consideration of FOI under the terms and principles of Te Tiriti o Waitangi. This could be an area for significant work by Māori researchers. As for Pākehā researchers, possibilities for comparative studies into the implementation of FOI regimes still exist aplenty. In the two reports by the Danks Committee, which acted as the theoretical foundation of the OIA 1982, the only reference to Māori at all are two mentions of the Maori Affairs

Department, as it was then. It would be interesting to find out if Australia and Canada paid as little attention to the views of the indigenous community when developing their FOI regimes as Aotearoa New Zealand did.

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Appendix A

Indicative questions for the Office of the Ombudsman

FOI in New Zealand – a doctoral project.

Greg Treadwell, AUT University

Please see the Participant Information Sheet for more information about this project.

Questions for an interview with [], of the Office of the Ombudsman.

1. *Preamble:* During my research among journalists in NZ, I have heard many stories about the OotO's helpfulness and hard work and, in general, respondents had a strong appreciation of the value of the role of the Ombudsman in FOI. Many expressed gratitude for the efforts of OotO staff in helping with their requests and appeals. But I've also heard many that reflect frustration over the length of time it takes to have complaints adjudicated by the OotO. It was generally thought by respondents the office was overloaded with complaints and paralysed in its processes as a result. When reaching for worst-case examples, respondents cited two, three or even more years for a decision to be made on their complaint about treatment of an OIA request by a state agency. Some thought this was a bigger problem for FOI than the secrecy of officials they were complaining about. The currency of stories is critical in journalism so often these stories die and the public never hear about the facts at issue. Journalists feel frustrated.

Asked why he no longer referred refusals he felt were outside the terms of the OIA to the OotO, one respondent said: "Firstly in recent times simply because you know damn well that it will take two to three years right or whatever it's going to be. I think two years was the benchmark that it seems to be lately. Putting together a proper complaint/appeal, whatever you call it, takes time and I just haven't had the time. So, you do a bit of triage with your own time and just go is that going to be worth it?"

Another respondent said appeals by parliamentary research teams and public-relations agencies were clogging the system and so he had given up appealing. Others said they should send more than they do but their prediction of long waits kill the motivation to do so.

Excerpt from transcript of R17 interview:

Q: Do you refer those to the ombudsman? A: I should. I normally don't bother. Q: Why not? A: The ombudsman takes up to two years to get back to you and it just isn't worth it. I should, I really should refer them on.

How would the OotO respond to the idea that such delays are, in general, damaging to public-interest journalism and so to the capacity of the NZ public to make informed and well-reasoned decisions?

How would you summarise the causes of such delays, if indeed they are as long as respondents claimed?

2. *Preamble:* While some had given up on appealing, other respondents were keen to refer many or almost all OIA requests declined by state agencies to the OotO.

One persistent requester (R1) said he referred up to three-quarters of the refusals he received to you.

In your experience, do journalists make many unreasonable appeals, that is appeals that are highly unlikely to be upheld and are therefore clogging up the system unhelpfully?

Do journalists have realistic expectations of the OotO and the appeal process? Can you elaborate?

3. *Preamble:* In one case, a respondent said he was told his FOI struggles with the NZDF were the subject of mirth between members of the defence forces and representatives of the OotO. His OIA applications were being moved once a month from chair to chair in an office somewhere and officials from both the NZDF and the OotO were having a laugh about it at an end-of-year function.

How's your relationship with public-interest journalists, would you say? Why do you think that?

4. *Preamble:* Some respondents thought successive governments had left the OotO inadequately resourced to deal with the multitudinous OIA appeals it receives.

R9: "One of my reporters has had a complaint with the Ombudsman, and I think it's now coming onto two years old – that was about the flag referendum. That is still live. It's incredibly disappointing when we hear the Ombudsman come to select committee every year, and talk about resourcing. My feeling is that it's a cynical response. If they really wanted to beef up the Ombudsman office, and deal with us, they could. [But] they don't."

Has resourcing been an issue behind long waiting times for appeals to be resolved? Can you elaborate?

5. *Preamble:* International research (eg, that by Alisdair Roberts and others) shows a tendency by Western governments to shy away to some extent from a spirit of disclosure since 9/11 and for other reasons. Corporatisation and privatisation of state services over the past three decades have also seen FOI restricted as newly invented organisations with commercial interests resist scrutiny. Political scientists (eg, Gavin Ellis) and media writers (eg, David Fisher) have normalised a debate about a reduction of state transparency in recent times. These issues seem real.

Is the volume of appeals the OotO faces thanks in part to a decrease in transparency by recent New Zealand governments? If so, to what extent is this a significant public issue? How concerned are you?

6. *Preamble:* Respondents seemed concerned that things were bad and getting worse, in terms of FOI in NZ. At the same time as the rise of influential public relations consultants and political spin-doctors, fact-checking through the OIA 1982 was becoming harder.

As a watchdog on political process itself, what does the OotO think about such concerns?

7. *Preamble:* There have been changes in personnel and approach to FOI at the OotO in the past year or two. One respondent said the new chief ombudsman seemed to be taking a “more muscular approach” to FOI (Interview: R5).

Can you summarise recent changes at the OotO and what impact they have had on FOI appeals?

Appendix B

Letter from the Office of the Ombudsman

Our ref 475943 (Complaint ground: 475950)

Contact [*name removed*]

10 August 2018

Mr Gregory Treadwell

Senior Lecturer in Journalism

AUT University

By email: gregory.treadwell@aut.ac.nz

Dear Mr Treadwell

RE: your doctoral project into freedom of information in New Zealand

I refer to your previous correspondence with [*name removed*] of this Office.

Thank you for your offer to meet with my staff. I have decided to provide the response to your questions by way of letter, as the nature of the information you are seeking potentially raises issues with respect to the Ombudsman's secrecy obligations under section 2¹ of the Ombudsmen Act 1975.

I note that several of your questions relate to historical delays by the Ombudsmen and/or their level of resourcing. I inherited an office that was plagued by unacceptable delays, and have publicly addressed this topic several times. Of particular relevance is an address¹ I delivered to the Institute for Public Administration New Zealand in 2017, in which I observed:

Nearly 18 months ago, I joined an Office hamstrung by an avalanche of complaints, a toxic backlog of unresolved complaints that were more than a year old, and processes that were simply not fit for purpose. The Office didn't have the reputation I would have liked and the need for substantial change was apparent.

In April 2016, we had 1,812 complaints on hand. 637 of those were more than a year old – this was our backlog of aged complaints. Lengthy delays were

¹ Chief Ombudsman Peter Boshier, *Inside the Office of the Ombudsman*, 4 May 2017, available at: http://www.ombudsman.parliament.nz/ckeditor_assets/attachments/480/inside_the_office_of_the_ombudsman.pdf?1494215216, last accessed 10 August 2017.

common and the system was creaky.

The first task was to clear the backlog. We set ourselves the goal of no backlog by June 2019, procured targeted funding for the purpose, and brought in a crack team of highly experienced operators.

By the end of June this year, we expect the backlog to have halved. We're on track to clearing it completely by the end of June 2018, a year earlier than planned. It was nice to get recognition for this from the Offices of Parliament Committee in March.

Another goal we set was to resolve 70 percent of complaints within three months of receipt; the rate in 2015/16 was only 58% resolved within three months.

Again, we've achieved our target already; the number of complaints on hand is down to 1,400, and by 2020 I want no complaint, no matter how complex the investigation, to take longer than 12 months to resolve.

We've achieved all this by introducing a new business model with a much stronger focus on early resolution and more flexible practices. I learned the value of early, though not hasty, resolution during my time at the Family Court: if we can engage with complainants and agencies in a flexible and responsive way then complaints are resolved more quickly and efficiently, to the benefit of all parties.

The Office of the Ombudsman is now working almost entirely electronically. We have funding for specialised staff to go out to agencies and local government for training and support, and we've produced comprehensive new guides on the OIA legislation to assist both agencies and requesters.

This includes guidance for agencies concerning the legislation itself, such as how to apply the public interest test when deciding whether to release or withhold; and subject guides on matters such as requests about Chief Executive expenses, or local body events funding – the latter, of course, belonging under LGOIMA.

One guide currently under development is a model protocol for agencies in consulting with Ministers on official information requests. You can find all these guides and other resources on our website, and another vision of mine is that before too long you'll find access to e-learning initiatives too.

I am pleased to report that the Office of the Ombudsman has indeed now cleared its backlog.

You may be aware that I recently published my Strategic Intentions 2017-2021

document.² This addresses several other matters you express interest in, including:

- my vision that all complaints will be completed within 12 months by 2019/2020;
- my commitment to proactive identification, resolution and investigation of systemic issues; and
- my commitment to providing advice, guidance and training to public sector agencies and other parties.

In recent years, the Ombudsmen have provided this kind of assistance to public sector agencies and other parties on request. Central government agencies and local authorities traditionally have represented the bulk of this work, simply because they ask for assistance. There is nothing, however, to preclude journalists or other stakeholders from seeking guidance or training on the application and use of the legislation. To this end, I note that: my staff provided OIA training to journalism students at the New Zealand School of Broadcasting on 11 June 2018; and I have had several meetings with media outlets to discuss ways in which they could improve their requests to make it easier for agencies to respond meaningfully. I have appended the 2016/2017 Annual Report, which might also be of interest to you.

Finally, I am pleased that New Zealand again ranked number one in Transparency International's Corruptions Perceptions Index 2016.³ Transparency International New Zealand's Patron and former Commonwealth Secretary General Sir Don McKinnon stated that the result '*reiterates the importance of New Zealand having strong integrity systems in place*'. The Ombudsman is one of those integrity systems, and a stated purpose of the OIA is to: *increase progressively the availability of official information ... [and thereby] enhance respect for the law and to promote the good government of New Zealand*. I am therefore encouraged by the public's positive perception of New Zealand's integrity systems. I agree with Sir Don, however, that this public perception must not be taken for granted. It is important that New Zealand's integrity mechanisms remain vigilant and are resourced to a level which allows them to perform their vital integrity, transparency and accountability functions.

Thank you for your interest in the practices of the Ombudsmen, and I trust my letter

² Office of the Ombudsmen, *Strategic Intentions 2017/21*, available at:

http://www.ombudsman.parliament.nz/system/paperclip/document_files/document_files/2857/original/ooto_strategic_intentions_2017-2021.pdf?1530662429, last accessed 10 August 2017.

³ Transparency International, Corruptions Perceptions Index 2017, available at:

<https://www.transparency.org.nz/corruption-perceptions-index-2017/>, last accessed 10 August 2017.

provides information that is useful for your research.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter Boshier', with a stylized, cursive script.

Peter Boshier

Chief Ombudsman

Encl 2016/2017 Annual Report

Appendix C

NZLC Case Study; Information Initially Requested

1. A list of all Lotto retailers in New Zealand authorised to sell Lotto products, broken down by store name, city or town, address and postcode
2. The annual total sales figures of each Lotto product for each year from 2008 to 2014. These include but may not be limited to: Lotto, Powerball, Strike, Big Wednesday, Instant Kiwi, Keno, Bullseye and Play 3.
3. The monthly sales figures of each Lotto product in each region (by territorial authority or other appropriate regional division) from 2008 to 2014.
4. The total sales figures for Lottery Commission products sold by supermarkets which sell them at the checkout, for each year from 2008 to 2014 and those sales figures by territorial authority area (or other appropriate regional division) for each year from 2008 to 2014.
5. A list of all supermarkets that sell Lotto products at their checkouts, including their addresses.
6. Online sales:
 - a) The number of players registered to buy Lotto products online in total and by territorial authority or other appropriate regional division.
 - b) The number of people who have played online each week for the 2013/2014 financial year in total and by territorial authority or other appropriate regional division.
 - c) The total figures for online sales of each NZ Lotteries Commission product in each NZ region (by territorial authority or other appropriate regional area) for each financial year from 2008 to 2014.
 - d) The number of MyLotto players who are currently subscribed to 3-month, 6-month and 12-month options.
 - f) The total annual transaction fees for MyLotto by year since it was introduced and the use those fees are put to.
6. The total annual sales commissions paid to retailers nationally for each year from 2008 to 2014 and the total commissions paid to retailers in each territorial authority for each year from 2008 to 2014.

7. The number of retailers taken on grants tours each year from 2008 to 2014 including the cost of each tour and details of where and when tours took place.
9. The number of breaches by retailers – and the details of each breach – each year, from 2008 to 2014 of any provisions of the Gambling Act, Fair Trading Act, Commerce Act and Consumer Guarantees Act.
10. The Win-Win reward programme for top retailers:
 - a) What the programme involves
 - b) The cost of the programme each year from 2008 to 2014.
 - c) A list of the retailers who have been rewarded and why, each year from 2008 to 2014.
11. ‘Jackpot’ draws
 - a) The number of weekly jackpot draws between 2008 and 2014 (inclusive) that had a jackpot prize that equalled or exceeded \$10 million.
 - b) The number of weekly jackpot draws between 2008 and 2014 (inclusive) that had a jackpot prize that equalled or exceeded \$20 million.
 - c) The number of weekly jackpot draws between 2008 and 2014 (inclusive) that had a jackpot prize that equalled or exceeded \$30 million.
 - d) The number of each Lottery Commission product sold across New Zealand for each of those draws.
 - e) The total sales for each of those draws by region (by territorial authority or other appropriate regional area).
 - f) The locations of the winners of those draws.
12. Full details of any requests by the Lotteries Commission for retention of profits in any given year, including copies of the request to the minister and the amount retained, if any, in each case.
13. The total Lottery Duty paid each year from 2008 to 2014.
14. The total Problem Gambling levy paid each year from 2008 to 2014.
15. Copies of the minutes of the Lotto NZ Board for its meetings from 2008 to 2014.
16. The number of new licences granted to retailers to sell Lotto products by each financial year from 2008 to 2014, broken down by store, name, town or city, address

and postcode. Also a list of licences cancelled or not renewed and reasons for each cancellation or non-renewal.

16. The amount of winnings awarded by each retail outlet for each financial year from 2008 to 2014.

Appendix D

Top level nodes

This appendix provides background to, and examples of, coding at the top level of data analysis in this doctoral project. It explains the reasons behind seven top-level nodes (the NVivo term for codes) that emerged subsequent to, and eventually, replaced the five initial preset codes used to initiate the analysis and then remained throughout as key node categorisations. The number of references to the top-level node and the combined number of references to child and further-descendent nodes are in brackets. Descendent nodes are italicised in the text. Examples of coded references are included to give some insight into the articulations of the journalistic discourse of FOI.

CITIZEN AND STATE (34 references to top level code; 280 references to descendent nodes)

This was not a preset node but emerged strongly during early phases of coding as a critical area of inquiry for the project. FOI is at the heart of political relationship between citizen and state in a democracy (see Chapter 2 for an explanation of the importance of FOI to other human rights). Journalists have little or no special status under FOI laws so their requests for State-held information are no different to those of an ‘ordinary citizen’. Consequently, the relationship between citizen and state is highly relevant to transparency.

Child nodes derivative of the *citizen & state* node included: *function & dysfunction* of that relationship; the *performance of the civil service* within the context of that relationship; FOI as *human right*; the *purposes and operation of the OIA 1982*, the *Office of the Ombudsman*, which oversees that relationship; the notion that *two tiers* of information, politically sensitive and non-sensitive, and the *OIA 1982*, for specific coded references. Nodes descended from these child nodes are listed in Table 3.

Examples of coded references:

R1: I did a training course on this yesterday . . . on the OIA and how to make the best use of it and how not to waste the citizens’ time, cause it’s their time we’re using, really, the government’s time. One of the bases of the training session I [gave] yesterday was first to say let’s deal with that the OIA is not there for journalists. It’s there for citizens.

R16: I think each department will have their person who understands the Act completely. You’ve got someone on the 9th floor at the Beehive who is a pro and OIAs

so her job for the past, you know, she's just an expert on OIAs. She knows how to write them, she knows how to get around them when releasing information, so if the 9th floor has got someone like that up there then I'm assuming...

R17: A: My approach to the whole thing is you find in some newsrooms, all newsrooms probably, that there is an 'us and them' attitude. It's very easy to fall into that way of thinking and I deliberately try and stop myself from doing it.

GOLD (27 references to top level code; 0 references to descendent nodes).

This node emerged from the idea that some statements by respondents are more powerful than others and represent in-depth understanding and/or engagement with the issue at hand. A 'gold' reference was one that would stand out among less noticeable statements. There were no child nodes.

Examples of coded references:

R1: Yep, but even beyond that, um, everything they do belongs to us. Yknow? Their mistakes belong to us. Their successes belong to us.

R12: A: Yes. Everything is massaged and managed because somebody might get offended somewhere, so you go through all these official channels. Good journalism is about avoiding the official channels - well not avoiding them completely right but you need other channels.

R13: It was particular information I wanted and it was quite important to me, I really wanted it. What it came down to was that their record keeping systems practically didn't exist and what they literally came... they said to me that to get the emails that I wanted that they were on hard drives that they had stored. They would have to go to the place where they were stored, take them off there and try to figure out what the encryption was because they didn't have the encryption any more. In other words, no one had thought anything about keeping records of any sort. They came up with a sum, which I can't tell you the exact sum to tell the joke properly because it is a joke, but it was over \$100,000 to get a few emails. They literally did a schedule of the time it would take and the IT people they'd have to bring in. So for me asking for some not very old emails, I wasn't asking for the 1940s, it was going to be a hundred and something thousand dollars is what they estimated.

JOURNALISM (33 references to top level code; 251 references to descendent nodes)

Journalism is at the heart of the research and all interviews involved discussions on FOI's importance to journalism, and by extension, the impact of its failures on journalism and the public sphere. It also helped the research to consider Rs' understanding of FOI within their role as journalists. Child nodes were: *Impact on PIJ*, *OIA requests from journalists*; and *understanding of FOI*.

Examples of coded references:

R1: But um, you know you grab a comment like that and you bail up the minister on the bridge on the way to Parliament and he's thinking about something else and he says something stupid and then you go all Duncan and Paddy rabid on the six o'clock news and you beat the guy over the head – or the woman over the head – until they are eventually jettisoned out of their public office um, for something that really, you know . . .

R10: You don't have to put I want every email, fax, post-it note, you just put all information and it's not that difficult, but people don't know that and people are often too shy to ask. I've asked some of the new reporters... I'm like before I send this template out do you work much with the OIA? They're like yeah, yeah, they nod their head and they go yeah, but they haven't actually. They're just too shy or embarrassed to say they've never filed one.

POWER (29 references to top level code; 0 references to descendent nodes)

During the review of literature, the data-collection stage and early phases of coding, it quickly became apparent power relations were at the centre of this research. To be able use social field theory to explore these, it became clear coding references to power, powerfulness and powerlessness would be important. There were no child nodes.

Examples of coded references:

R5: Yes, you can locate it in the Aristotelian philosophical tradition but I don't see that as the only possible way of framing this. You could locate it in a lot of different ways. I mean, obviously, information throughout history has been used, or withholding information has been used, to keep people in ignorance, whether it's the church's monopoly on written language or whether it's dictatorships keeping the public in the dark about what's really happening to help maintain a monopoly on power. I mean, maintaining constraints on information is anathema to democracy because for people to live freely and make free choices they need to have open access to any information that's necessary to make informed choices.

R12: The OIA is the gotcha right, where you think there's going to be a smoking gun document there if I can put my fingers on it right? I've tended not to do that so much. I've tended to do it

more as a research tool, I want to inform myself more on this particular issue and I suppose to alleviate my previous comments to some point, one of the reasons I'm using that aspect less is because they are publishing a lot more that's just out there.

THE RESPONDENTS (18 references to top level code; 108 references to descendent nodes)

This node was to collate data about Rs to establish their credentials as Rs and to collate data about their work. Much of this participant data can be found tabulated in Chapter 3 (Table 1). Child nodes were: *expertise; frequency of FOI requests; proportion of PIJ; validity questions; why journalism?; and years in journalism.*

MOTIVATIONS, ORIENTATIONS AND DISPOSITIONS (70 references to top level code; 42 references to descendent nodes)

This parent node helped collate data that pointed to journalism's approach to FOI. It was hugely helpful in lifting the research out of the anecdotal realm into a study that worked in areas beyond the normative expectations of newsrooms. Child and further-descendent nodes were: *attitude to FOI and standing up for FOI rights.*

Examples of coded references:

R1: I think it's a critical part of public-interest journalism and I've got a point of comparison there, having worked in the UK for five or six years before the FOI [act] came in over there. And, um, which Tony Blair has said was his biggest mistake, I think. He pushed it through. Hehe.

R12: I've tended to do it more as a research tool, I want to inform myself more on this particular issue and I suppose to alleviate my previous comments to some point, one of the reasons I'm using that aspect less is because they are publishing a lot more that's just out there.

R12: I used to be much more savage about it and I'd refer quite a lot, but these days I would only do it if I genuinely thought there was some kind of human rights injustice. I don't tend to have a tantrum about my own stories as much any more, just because I think there's no point. If it's just a story that I want for news purposes then it's like no, Christ, by the time I get this back it's not going to be a story. So I tend to really pick my battles and I think if it's a thing that no matter what this needs to come out.

R5: Yes, like most journalists my philosophy, if you like, or my motivation and my interests have changed or coalesced or shifted over the time that I've been a journalist. But since I've been covering conflict in particular I've been very focussed on the difference between what the government tells people and what actually happens on the ground, whether it's the US government or the Afghan government or the Iraqi government or the New Zealand government. I find that measuring the daylight, if you like, between what governments and officials say and what actually happens on the ground is usually likely to reveal an incredible amount of daylight.

WIDER FOI (12 references to top level code; 27 references to descendent nodes)

This top-level node attracted references to FOI that were outside the immediate scope of the RQ but which might inform wider discussions about FOI that could, in turn, inform the exploration of the relationship between journalism and FOI. Child and further-descendent nodes were: *change, future of FOI, open govt etc, solutions, the idea of appeal, the language of FOI and warfare.*

Examples of coded references:

R10: I think that sounds nice but I think that it's just not going to happen any time soon unless society was, it would require probably a... I just don't see that in a culture where free enterprise and capitalism are so dominant that's ever going to happen.

R17: Huge public interest. They literally, they affect our economy in a big way. If Fonterra does something stupid the price of bread, butter and milk goes up and bank interest rates change.

R6: But, what amazes me too, is they don't just treat journalists like that, they treat ordinary New Zealanders like that. For example, I'm working on this incredibly sad story about a Māori man who went missing in the bush five years ago, and the police, without any evidence to support their theory, immediately decided – on the grounds of statements given by two incredibly dodgy witnesses – that he had wilfully gone missing in the bush, and that he was going to pop out sometime soon – which, of course, he never did. There's never been any follow up by police. On the yearly anniversary, you never hear, "We're still looking for this person" – there's been nothing. They just did not give a shit about this guy who had adult daughters, who was a loving father, who was a bushman, who would never just go wandering off into a random bush without his gear.

