

Dear

OFFICIAL INFORMATION ACT REQUEST

In late 2010, you requested and received information relating to the production of *The Hobbit* and the wider film production industry in New Zealand, under the Official Information Act 1982. Due to similar information requests being received by a number of Ministers, the same documents were released to all those who made a request.

Following the release of these documents, the Ombudsman received two complaints regarding the information release.

In response to these complaints, I reviewed all the information relevant to your request and that of others regarding this matter, and I released several documents in October 2011.

Further to these complaints, I am now releasing additional information on this matter. I have chosen to release this information to all those who received the earlier release and note that some of the information provided may be outside the scope of your original request.

Documents i to iv, viii and xii through xv have not been released previously, while some new information in documents v to xii and ix to xi is now being released. Some information continues to be withheld as indicated on the documents. The reasons for withholding this information are:

- a. In terms of section 9(2)(a) of the Official Information Act 1982, the withholding of information that is necessary to protect the privacy of natural persons.
- b. In terms of section 9(2)(b)(i) of the Official Information Act 1982, the withholding of information that is necessary to protect information where the making available of the information would disclose a trade secret.
- c. In terms of section 9(2)(b)(ii) of the Official Information Act 1982, the withholding of that information is necessary to protect information where the making available of the information would be likely to unreasonably prejudice the commercial position of the person who supplied or who is the subject of the information.
- d. In terms of section 9(2)(g)(i) of the Official Information Act 1982, the withholding of information that is necessary to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any department or organisation in the course of their duty.

- e. In terms of section 9(2)(i) of the Official Information Act 1982, the withholding of information that is necessary to enable a Minister of the Crown or any department or organisation holding the information to carry out, without prejudice or disadvantage, commercial activities.
- f. In terms of section 9(2)(f)(iv) of the Official Information Act 1982, the withholding of information that is necessary to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials.

I am satisfied, in terms of section 9(1) of the Official Information Act 1982 that, in the circumstances of this case, the withholding of information in the enclosed documents is not outweighed by other considerations which render it desirable, in the public interest to make the information available.

You have the right, by way of complaint under section 28(3) of the Official Information Act 1982 to an Ombudsman, to seek an investigation and review of my refusal to release the information referred to above.

Yours sincerely

Hon Gerry Brownlee

Commercial In Confidence

Film Industry Meeting on Actors' Equity and Immigration Issues

To	Hon Gerry Brownlee	Priority	Medium
Date	28 April 2010	Deadline	29 April 2010

Purpose

- 1 This report provides information for your meeting with Immigration Minister Dr Jonathan Coleman and film industry representatives on Thursday the 29th of April at 10 am. The purpose of this meeting is to discuss an ongoing issue with NZ Actors' Equity ("Actors' Equity") and [] s9(2)(i)

Meeting Overview

- 2 The Immigration Minister Dr. Jonathan Coleman and Paul Swallow from MED will be attending this meeting, in addition to the following film industry representatives:
 - *Penelope Borland*, Chief Executive, Screen Production and Development Association of New Zealand (SPADA) – SPADA is a non-profit, membership-based organisation that represents the interests of producers and production companies on all issues affecting the commercial and creative aspects of independent screen production in New Zealand.
 - *Sue Thompson*, Film New Zealand (Formerly Acting Chief Executive, currently transitioning Gisella Carr into the Chief Executive role) – Film New Zealand is the national film locations office that provides information, introductions and support to international and domestic filmmakers¹. It is possible Gisella Carr will also attend.

Background on Issue

- 3 Actors' Equity is the industrial and professional organisation that represents performers who work in New Zealand's entertainment industries. Actors' Equity merged two years ago with the Australian union Media Entertainment and Arts Alliance (MEAA), and now operates as an autonomous part of MEAA.
- 4 Actors' Equity plays a role in the immigration process for issuing temporary work visas by supplying letters of non-objection for non-New Zealand actors cast in a production.
- 5 Film or television production companies wishing to bring in cast and crew to work here temporarily can use the Specific Purpose or Event subcategory of immigration temporary work policy. In line with the overall intent of immigration temporary work policy, this policy is designed to ensure that New Zealanders are provided with opportunities to work on all productions.

¹ Film New Zealand receives operational funding from Vote Economic Development at the current annual level of \$799,000.

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- 6 Film New Zealand and SPADA have recently been involved in correspondence with Actors' Equity over an issue with a [] production. [] was trying to obtain temporary work visas to bring [] to New Zealand for the US production []. Actors' Equity requested that [] supply the names of all New Zealanders who auditioned in the casting process and the reasons why each individual was not cast.

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s9(2)(i)

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s9(2)(i)

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s9(2)(i)

Update on Issue

- 10 MED has been advised by the Department of Labour (DOL) that this issue in respect of the [] film [] has been resolved and that the visas have been issued in time for the production to keep to its schedule. The visa applications, once lodged, were approved within two working days.

- 11 DOL has advised that in situations where Actors' Equity is not prepared to issue letter of non-objection to satisfy visa requirements, production companies need to raise this with DOL. If the issue cannot be resolved between the parties concerned, the issue can then be brought to the attention of the Associate Minister of Immigration, who may make a determination on whether the visa application can proceed. This has happened in several cases in the last 12 months, with all being approved by the Associate Minister.

MED Comment

- 12 While individual production companies do not dictate the Government's film and related policies, [] is responsible for [] productions in New Zealand and it would obviously be a major concern if [] was to move its productions offshore due to one body unduly influencing immigration procedures.
- 13 MED is concerned that production companies, such as [] are becoming increasingly frustrated by the processes involved in securing temporary work visas for overseas actors, and that this may lead production companies to choose not to undertake productions in New Zealand.

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- 14 While MED recognises that there are immigration procedures that need to be followed, the information requested by Actors' Equity in order to process recent visa requests from [] appears to be causing unnecessary production delays, and if it continues is likely to result in [] and possibly other large international production companies, deciding not to undertake further productions in New Zealand.

s(9)2(g)(i)

Recommendation

We recommend you:

Note the contents of this report in preparation for your meeting on Thursday.

Paul Swallow
Manager, Industry Policy
Industry and Regional Development Branch

Hon Gerry Brownlee
Minister for Economic Development

From: Penelope Borland [REDACTED]
 Sent: Tuesday, 12 October 2010 1:40 pm
 To: Tim Hurdle (MIN)
 Subject: [REDACTED] etc

[REDACTED] s9(2)(a)

Hi Tim

I understand that Dave Gibson is trying to speak to you. We need urgent resolution of The Hobbit situation now. Things are not looking good.

Please see below the situation with [REDACTED] as outlined by their international line producer [REDACTED] Fran and Peter asked for this.

Best
 Penelope

From: Penelope Borland
 Sent: Tuesday, 12 October 2010 1:35 p.m.
 To: [REDACTED] s9(2)(a)
 Cc: "Matthew Dravitzki"; "Richard Fletcher"
 Subject: [REDACTED] etc

Hi Fran and Peter

Please see below email from [REDACTED] s9(2)(a)

[REDACTED] line producer.

[REDACTED] s9(2)(b) [REDACTED] I knows that I am passing this on to you in confidence to understand the situation with [REDACTED] s9(2)(b)(i)

Cheers
 Penelope

s9(2)(b)(i)
 s9(2)(b)(ii)

From: Penelope Borland
Sent: Tuesday, 19 October 2010 5:05 pm
To: Tim Hurdle (MIN)
Subject: Agreement

] s 9(2)(e)

Hi Tim

The agreement is signed as per the attached.

We await the signal from [] for our update and media release.

s 9(2)(b)(ii)

Penelope

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Agreement dated the 19th day of October 2010

The Screen Production and Development Association (SPADA), NZ Actors' Equity (Equity), and the Council of Trade Unions representatives met on 14 October 2010, in a meeting facilitated by the Minister for Economic Development Gerry Brownlee.

As a result of that meeting it was agreed that:

1. The parties would work together, in good faith, over the next four to six months, to update the conditions of engagement for performers in the New Zealand screen production industry with a view to concluding these negotiations by no later than 31 March 2011;
2. As a sign of co-operation, whilst that process takes place Equity will not enter into any negotiations or undertake any legal or industrial action against any production which commences bona fide pre-production in New Zealand before 31 March 2011 and which undertakes to adhere and adheres to the guidelines as set out in the Code of Practice for the Engagement of Cast in the New Zealand Screen Production Industry dated 6 June 2005 (and more commonly known as the "Pink Book") in their entirety and contracts performers accordingly. Nor will it encourage or facilitate any of its affiliate bodies or members to undertake any legal or industrial action against these productions;
3. This Agreement may be executed by one or more counterparts (including facsimile, Tagged Image Format Files (TIFF) or Portable Document Format (PDF) copies) and provided that each party has executed a counterpart, the counterparts together shall constitute a binding and enforceable instrument between the parties.

Signed on behalf of:
The Screen Production and Development
Association

President - Karen Soich

GEO - Penelope Borland

Signed on behalf of:
Media, Entertainment & Arts
Alliance

Signed on behalf of:
NZ Actors' Equity

Director Actors Equity Section- Simon Whipp

President - Jennifer Ward-Lealand

Signed on behalf of:
The Council of Trade Unions

President - Helen Kelly

Cabinet Committee: Cabinet Domestic Policy Committee

Title of Paper: Review of the New Zealand Film Commission

MED Contact: Paul Swallow, Manager, Industry Partnerships and Networks, Industry and Regional Development Branch.

Issue

1. Government policy is to review the New Zealand Film Commission (NZFC) to ensure that it is able to support the contemporary New Zealand film industry under its existing legislation (The New Zealand Film Commission Act 1978).
2. The current paper seeks Cabinet's agreement to proceed with a review of the NZFC.
3. Subject to Cabinet's approval of the review, the Ministry of Culture and Heritage will appoint a reviewer, who will report to the Minister of Arts, Culture, and Heritage by Monday 1 June 2009.

Ministry Comment

4. In principle, MED does not object to the review of the NZFC.
5. MED has reviewed the Cabinet Paper and Terms of Reference. [

]

s 9(2)(g)(i)

59(2)(g)(i)

59(2)(g)(i)

7. These issues were raised with the Ministry of Culture and Heritage during consultation. However, we note that the points raised relate to clarity and structure rather than economic development issues.
8. MED has confirmed that, should the review be approved, MED officials will be consulted on aspects of the review that relate to the NZFC's administration of the Large Budget Screen Production Grant.

Recommendation

9. The recommendations in the paper should be supported, but with the suggestion that the draft Terms of Reference be clarified and strengthened in line with the comments above.

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Commercial In Confidence

17 July 2009

Film Industry Studio Infrastructure

Purpose

This report provides information about film studio infrastructure needs in New Zealand, and seeks your approval to examine the barriers to investment in screen industry infrastructure and report to you on recommended solutions to infrastructure requirements by 30 September 2009.

Action Sought

	Action Sought	Deadline
Minister for Economic Development	Agree that MED, in consultation with Investment New Zealand, will examine barriers to investment in the screen industry infrastructure, and the need for additional studio infrastructure at a national level, and report to you by 30 September 2009.	31 July 2009
		s9(2)(i)
	Agree to send the attached reply to [redacted] in response to his request that the Government consider investing in new film studio infrastructure.	s9(2)(a)

Ministry Contacts

Name	Position and Unit	Telephone		1 ST Contact
		Work	After Hours	
Paul Swallow	Manager, Industry Policy			✓
	Analyst, Industry Policy			

s9(2)(a)

Commercial In Confidence

Ministry of Economic
Development



Manatū Ōhanga

17 July 2009

Minister for Economic Development

Film Industry Studio Infrastructure

Purpose of Report

- 1 This report provides information about film studio infrastructure needs in New Zealand, and seeks your approval to examine the barriers to investment in screen industry infrastructure and report to you on recommended solutions to infrastructure requirements by 30 September 2009.

Background

- 2 On 22 June, your office received a [redacted] proposal [redacted] to build film studio infrastructure [redacted]
[redacted] s 9(2)(1) s 9(2)(a)
- 3 Investment New Zealand (Investment NZ) and the Ministry have been in discussions with [redacted] as well as several other industry players in other regions, about the industry's infrastructure needs.

Current Industry activity

- 4 Requests for assistance or discussion of studio infrastructure needs have also come from the following groups:

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s 9(2)(1)
s 9(2)(b)(ii)

s9(2)(i)
s9(2)(b)(ii)

s9(2)(i)
s9(2)(a)
s9(2)(g)(i)

- 5
- 6 MED and Investment NZ have received several requests for government assistance in building film studio infrastructure and/or attracting investment. Unpredictability of demand in the industry and the need for capacity to allow growth to occur means that the private sector does not fund all of the necessary infrastructure.

Studies into infrastructure needs

7 Several reports have been commissioned by industry members and regional authorities on infrastructure needs in the film industry.

- 8 Reports suggest that there is demand for increased studio infrastructure. Occupancy rates for current infrastructure are about 80% (compared to an international average of 60-65%) and anecdotal evidence suggests large budget productions are choosing to film outside of New Zealand due to a lack of studio space. Productions that were considering New Zealand, but were unable to be accommodated total \$500m of lost expenditure over the last five years, though the industry estimates of actual productions lost to New Zealand could exceed \$2bn in the last five years.

- 9 In Auckland, reports suggest that there is a particular need for facilities which can host large budget productions. Auckland has three main public-access studios in the region: Henderson Valley, Kelly Park, and Studio West.

s9(2)(g)(i)

¹ A horizon tank is a large exterior pool on the edge of the coast used for filming water based films. They enable a 180 degree horizon for shooting. There are only two such tanks in the world – both are in the Northern Hemisphere.

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- 10 To a lesser extent, there is also demand for facilities in Otago. As filming in Otago is location-driven, the PricewaterhouseCoopers report into demand for facilities in the South Island concludes that demand is largely for alternative facilities in the event of poor weather, rather than purpose-built facilities for large budget productions that do not require filming outdoors.]

] s 9(2)(i)

- 11 While the reports commissioned by industry groups and regional authorities do give some indication of the regional demand, the reports cannot be used as a basis to assess national demand for studio infrastructure. For example, no reports have been commissioned on infrastructure demand in Wellington, the second largest location for screen production. From existing information, it is not clear if additional infrastructure would increase production levels in New Zealand, or if it would simply increase competition between studios in New Zealand for existing productions.
- 12 MED commissioned a report in 2006 on the current studio facilities in New Zealand, and demand for new facilities. The report concluded that international filmmakers perceive there to be a lack of high end, international quality studio infrastructure in New Zealand, and again suggest that productions are choosing not to film in New Zealand due to a lack of international standards studio space available.
- 13 The report states that the unpredictability of demand in the industry and need for capacity to allow growth to occur means that the private sector does not fund all of the necessary infrastructure. As such, public-private partnerships, and, to a lesser extent, wholly government funded studios, are common.
- 14 The report also considers current government support for sound stages in comparison with international projects. The New Zealand government has invested in two studios in New Zealand - \$2m for the construction of the largest sound stage at Stone Street, Wellington in 2004; and \$2m for an additional sound stage at Henderson Valley Studios in 2005. In comparison, recent government assistance for individual studio projects in other countries has been between \$4m and \$50m (Canada \$4m, South Africa \$6m, Australia between \$10m and \$50m).

] s 9(2)(i)

15

s 9(2)(g)(i)

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sq(2)(g)(i)
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Suggested approach

- 17 MED and Investment NZ recommend that the issue of studio infrastructure demand needs to be considered at a national level, taking economic development priorities in to account.
- 18 Given the wealth of reports with a regional focus, with your approval we would like to examine the need for additional studio infrastructure at a national level, drawing on and consolidating existing reports. We would envision this work would also look at the level of government assistance for such infrastructure internationally and what level and type of investment would best suit New Zealand's needs (if any).
- 19 At this stage, it is likely any recommended government support would be for a large, international class facility capable of attracting large budget productions (and therefore more economic benefit), close to existing facilities – e.g. in Auckland or in Wellington.
- 20 However, in examining the industry's infrastructure needs, we will also compare the benefits of investing in traditional infrastructure such as soundstages and the benefits of targeting infrastructure investment at areas where New Zealand is developing a competitive advantage, such as post-production digital and visual effects.
- 22 We have also drafted a reply to [] letter to Prime Minister John Key, which was referred to you for reply, for your approval.

² except for one of the investors, the proposed project manager, agreeing to waive developer fees.

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Risks

Fiscal

23 [

s9(2)(b)(i)

] While some projects could apply for Enterprising Partnership Fund grants (or, in the case of Auckland projects, Enterprising Auckland Fund), it is likely this would form this basis of a request for one-off funding³.

- 24 There is a risk that any government assistance to increase infrastructure in order to attract more large budget international productions could also increase the demand for the Large Budget Screen Production Grant, which currently runs as an uncapped fund. MED and Treasury are currently working on ways to manage the structure of this grant.

Recommended Action

We recommend you:

- a **Agree** that MED, in consultation with Investment New Zealand, will examine on barriers to investment in the screen industry infrastructure, and the need for additional studio infrastructure at a national level.

Yes / No

- b **Note** that MED will report to you with a recommendation for any infrastructure requirements by 30 September 2009.

- c **Note** this report will include a comparison of government investment in studio infrastructure internationally, and will investigate what level and form of government assistance would best suit New Zealand's needs (if any).

d [

s9(2)(i)

Yes / No]

³ In addition, the dates for future funding rounds of the Enterprising partnerships Fund have yet to be confirmed.

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- e **Agree to** send the attached reply to ^{s 9(2)(2)} [] in response to his request that the Government consider investing in film studio infrastructure.

Yes / No

Paul Swallow
Manager, Industry Policy
Industry and Regional Development Branch

Hon Gerry Brownlee
Minister for Economic Development

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CURRENT FILM INFRASTRUCTURE

502(1)

502(1)

$$59(2)(a)$$

In Confidence

8 September 2009

Meeting with Patsy Reddy, Chair of the NZ Film Commission

Purpose

To provide background information for your meeting with Hon. Chris Finlayson and the New Zealand Film Commission (NZ Film Commission) on 10 September at 11am.

Action Sought

Deadline	Action Sought
10 September 2009	Minister for Economic Development Note the contents of the report. Circulate to the Minister for Arts, Culture, and Heritage and the Minister of Trade

Ministry Contacts

1 st Contact	After Hours	Work	Position and Unit	Name
✓			Manager, Business Projects	Paul Swallow
			Analyst, Industry Policy	

59(2)(a)

OFFICIAL INFORMATION ACT

In Confidence

Meeting with Patsy Reddy, Chair of the NZ Film Commission

Purpose of Report

- 1 To provide background information for your meeting with Hon. Chris Finlayson and the New Zealand Film Commission ('the Film Commission') on 10 September at 11am.

Meeting details

- 2 You are meeting with Hon. Finlayson, Minister of Arts, Culture, and Heritage, and Patsy Reddy, Chair of the Film Commission from 11am to 11:30am. Paul Swallow from MED and an NZTE official will also attend.
- 3 The Film Commission would like to talk to you about the overlapping roles for support of film production in NZ and ways in which the Film Commission might work with MED and NZTE to provide support for the film industry in NZ.

Background

Role of the Film Commission

- 4 The Film Commission is a government and lottery funded organisation. Approximately 23% per cent of the Film Commission's income comes from the Government, via Vote: Arts, Culture, and Heritage¹.
- 5 The Film Commission has the statutory responsibility "to encourage and participate and assist in the making, promotion, distribution and exhibition of films" made in New Zealand by New Zealanders on New Zealand subjects.

Government support for the screen industry

- 6 The Government provides support for the screen industry through production incentives such as the Large Budget Screen Production Grant (Vote: Economic Development) and the Screen Production Incentive Fund (Vote: Arts, Culture, and Heritage). It works through NZTE and Investment NZ to develop capability in the industry and to facilitate investment in screen infrastructure, with the overall goal of making the NZ screen industry globally competitive in film and TV, as well as other competitive screen businesses that have emerged from the success of the NZ film industry over the last 10 years, such as animation and special effects.
- 7 The Government also provides operational funding for Film NZ, the national film locations office, to facilitate, promote, and leverage commercial screen production in New Zealand by international and domestic industry professionals.

¹ The Film Commission also receives funding of \$200,000 per annum from Vote: Economic Development to administer the Large Budget Screen Production Grant.

In Confidence

- 8 Film NZ and NZTE/Investment NZ have recently carried out a review of their respective roles and responsibilities in the sector. As a result of this review, which included input from the screen industry, it was decided that one organisation – Film NZ – should lead all work on promoting NZ as a screen production location (onshore and offshore), with a strategic focus.
- 9 These changes reflect the evolution of the industry over the past 10 years, and have resulted in a strengthened Film NZ with a clear strategic grasp on the opportunities for global growth for the NZ screen sector beyond its current role as locations office. The review has also clarified NZTE's role in the areas of foreign direct investment into the industry, building company capability to create competitive global companies, and playing a key role in developing screen infrastructure (e.g. sound stages). A summary of these changes is attached as Annex 3.
- 10 The domestic filmmaking context in which the Film Commission operates has also evolved over time, from a focus on building cultural identity through the medium of film, to playing a major role in developing the capability of the domestic film industry and contributing to its emergence as a global industry.
- 11 MED is of the view that agencies' roles are reasonably clear, particularly after the recent Film NZ/NZTE changes.
- 12 [
- 13 A breakdown of the current roles of government-supported agencies in the screen sector is attached as Annex 1, and a summary of government activity in the sector, which demonstrates areas of alignment, potential convergence, and overlap which could inform this discussion, is attached as Annex 2.

You may wish to note:

- The consolidation of marketing and promotion related activity is intended to clarify the roles of NZTE and Film New Zealand in the screen industry.
- This consolidation aims improve efficiency and maximise impact in our overseas markets.

You may wish to ask:

- How does the Film Commission see Film NZ and the Film Commission working together?
- Are there any areas where the Film Commission's marketing and promotion activities "cross over" with Film NZ's work?
- Does the Film Commission consider the roles of different organisations in the screen industry to be complementary?

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Current issues in the screen industry

Film Commission Review

- 14 The Government is in the process of reviewing the activities of the Film Commission to examine and identify what is needed to enable the Film Commission to work in the most effective way possible as New Zealand's film funding agency in a rapidly changing environment.
- 15 A number of the submissions to the review team refer to MED, the Large Budget Screen Production Grant, and the roles of government agencies in the sector. The final report by the review team is due 30 September 2009.

Large Budget Screen Production Grant

- 16 The international screen industry is particularly sensitive to any possible policy shifts by Government, and New Zealand is well regarded as a "film-friendly" country internationally.
- 17 Ms. Reddy has indicated she would like to discuss the Film Commission's administration of the Large Budget Screen Production Grant (LBSPG), particularly to note that the Film Commission would appreciate being consulted early in the process if there are any possible policy changes to the grant. The Film Commission oversees the application and approval process for the LBSPG, while MED is responsible for LBSPG policy and administering the grant funding, including payments to recipients.
- 18 The Terms of Reference for the Film Commission review include an assessment of what impact the introduction of the LBSPG and the Screen Production Incentive Fund has had on the public funding environment and the role of the Film Commission, and what the role of the Film Commission is in helping New Zealand production companies take advantage of these new incentives.

You may wish to note:

- *MED has no concerns with the administration of the LBSPG by the Film Commission.*
- *At this stage, there are no plans to adjust the policy for the grant. As far as possible, we aim to signal any policy changes to incentive structures well in advance.*
- *The grant is scheduled for review in 2011. The Government will consult with stakeholders, including the Film Commission, as early as possible in the 2011 review process.*

You may wish to ask:

- *What impact has the introduction of the Large Budget Screen Production Grant Scheme and the Screen Production Incentive Fund had on the Film Commission's role?*

In Confidence

- *What role does the Film Commission see itself having in helping New Zealand production companies take advantage of these incentives?*

Recommended Action

We recommend you:

- a **Note** the contents of this report.
- b **Circulate** to the Minister for Arts, Culture, and Heritage and the Minister of Trade

Yes / No

Paul Swallow
Manager, Business Projects
Industry and Regional Development Branch

Hon. Gerry Brownlee
Minister for Economic Development

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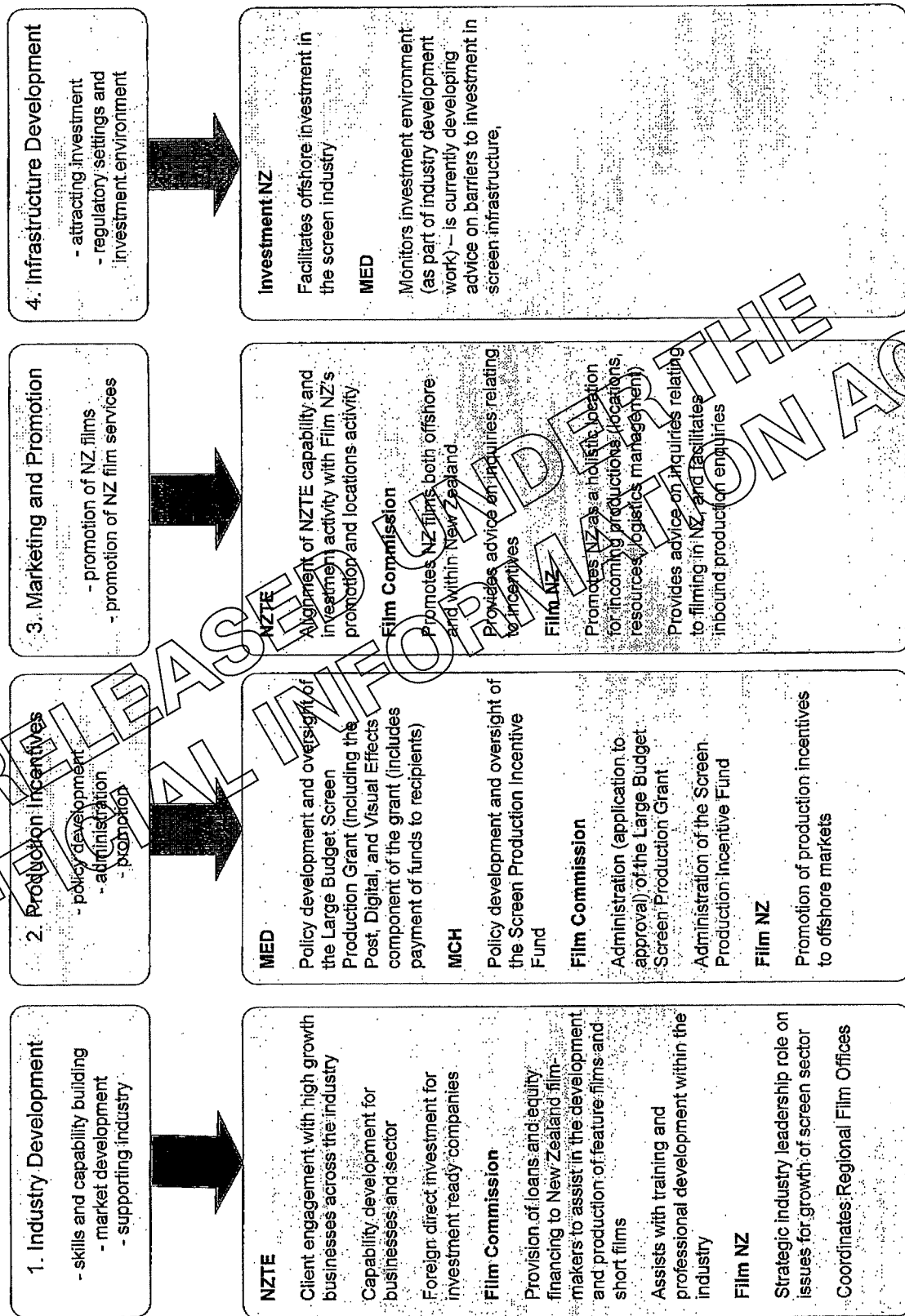
In Confidence

Annex 1: Roles of Government and Government-supported agencies in the screen sector

	Loans and equity financing for films	Marketing and promotion of NZ film services	Marketing and promotion of NZ films	Supporting development of NZ films	Industry relationship building	Capability building	Facilitating investment	Incentives - Administration	Incentives - Promotion	Incentives - Policy
New Zealand Film Commission	✓		✓					✓	✓	
Film New Zealand		✓			✓				✓	
NZTE/Investment NZ							✓			
Ministry of Culture and Heritage										✓
Ministry of Economic Development										✓

* MED is currently working with Investment NZ on how to facilitating investment in screen infrastructure due to market failure issues. This role is normally undertaken by NZTE/Investment NZ.

Annex 2: Government involvement in the screen sector – four key areas



Confidential

Revised proposal from Film Auckland for funding the Asia Pacific Producers Network Conference

To	Hon Gerry Brownlee	Priority	High
Date	7 October 2010	Deadline	7 October 2010

Purpose

- 1 This brief notifies you of Film Auckland's revised proposal requesting a government underwrite of \$70,000, in addition to the \$50,000 committed already, to host the Asia Pacific Producers Network Conference, and recommends that you decline the underwrite request.

Recommendation

- 2 We recommend that you:

- **Decline** to underwrite \$70,000 for the 2011 Asia Pacific Producers Network Conference

Yes / No

- **Sign** the attached letter to Film Auckland.

Yes / No

Background

- 3 Film Auckland is hosting the annual Asia Pacific Producers Network Conference in November 2011 and in July Michael Brook wrote to you seeking \$340,000 from central government towards the costs to host the conference.

- 4 Officials liaised with other agencies on potential government support and your reply to Film Auckland offered them \$50,000 of government funding (from MED, NZTE, the Film Commission and Film NZ).

- 5 Film Auckland then sent its official response and revised proposal to MED. It accepted the \$50,000, but explained that the amount is insufficient to host the conference to a level which is required and requested that the government consider the following proposal:

- a. the \$50,000 offered to be a cash grant
- b. the government to underwrite a further \$70,000 which would be used if Film Auckland were unable to secure additional funding and sponsorship

- 6 Film Auckland has revised its budget and its costs have reduced [] It has had talks with APN staff to secure funding towards the costs of the airfares, and Film Auckland assures us that it is actively seeking sponsorship and industry support. To date it has secured [] from sponsorship, []

s9(2)(b)(ii)

s9(2)(g)(ii)

Confidential

MED Comment

- 7 Although there are benefits from hosting this conference, in particular the opportunity to bring key players in the Asian film industry to New Zealand to attend co-production pitching sessions, it is our view that \$50,000 is a sufficient contribution from government.
- 8 MED does not have any other money to commit to this event and there is no single source of funding for assisting industry sectors to host this sort of business event. In general government expects conferences of this nature to be mostly self funding.
- 9 Film Auckland needs to continue seeking private sector partners/sponsors for the conference. There is significant buy in and support from industry for this event and there is clearly value for industry in having the conference in New Zealand.

Paul Swallow
Manager, Industry Policy
Industry and Regional Development Branch

Hon Gerry Brownlee
Minister for Economic Development

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5902/40

Tim Hurdle (MIN)

From:
Sent:
To:
Subject:

s9(2)(a)

Friday, 15 October 2010 4:07 pm
Tim Hurdle (MIN); Mark Da Vanzo (MIN)
Fw: News from an Equity minded friend...

] Peter and Fran

Dear Ministers Brownlee and Findlayson - just to be clear

Best regards,

Fran and Peter

From: Blackwood, Carolyn (NLC)

Sent: Friday, October 15, 2010 3:02 PM

To:

Cc: Ken Kamins

Subject: RE: News from an Equity minded friend...

] Peter and Fran
s9(2)(a)

-----Original Message-----

From:

Sent: Thursday, October 14, 2010 7:06 PM

To: Blackwood, Carolyn (NLC)

Cc: Ken Kamins

Subject: Fw: News from an Equity minded friend...

] Peter and Fran.
s9(2)(a)

Hi Carolyn and Ken - we just got this from a sympathetic friend in the acting community.

Subject: FW: News from an Equity minded friend...

Got this third hand news just now

----- Forwarded Message

Just got sent this from a friend:

"Equity and SPADA have agreed to negotiate over the next 4-6mths to improve the conditions contained in the so-called "Pink Book" and to work towards a more binding document. Nothing will be off limits, everything will be up for negotiation including minimum rates of pay, residuals etc. This is a HUGE step forward. The deadline for this negotiation is March 31st next year, meaning that there will have to be a new set of conditions agreed by both parties by that date. Secondly Equity has negotiated with Warners a residual deal that is second only to SAG worldwide. Including residuals for ALL performers (not only those the production deems fit) on ALL uses after 24mths, so DVD's, Toys, Posters etc. So today has been a big day, stay tuned for more developments..."

----- End of Forwarded Message

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OFFICIAL INFORMATION ACT

Tim Hurdle (MIN)

From: Penelope Borland
 Sent: Thursday, 23 September 2010 11:11 am
 To: Tim Hurdle (MIN)
 Subject: Action against The Hobbit
 Attachments: ATT38491.htm; Hobbit Urgent Meeting Notice.pdf; ATT38492.htm; Hobbit Fact Sheet.pdf; ATT38493.htm; ATT38494.htm

Hi Tim

I know the Minister must have a lot on his plate at the moment, personally and portfolio wise. I was in Christchurch for the earthquake and its aftermath. What an experience, hopefully never to be repeated!

FYI the immigration issue still rolls on, and we have been engaging in good faith to try to resolve, but not at all happy with the process from Immigration New Zealand.

Please see notice attached of NZ Actors Equity/ MEAA Alliance action against *The Hobbit*. This is a serious risk for the NZ film industry and international production.

MEAA is advising NZ performers not to work on *The Hobbit* unless Wingnut agrees to enter into a collective agreement directly with the union, The Alliance: MEAA Australia.

This is similar to the action that MEAA/ Equity has tried to take with NZ dramas and some features over the past 18 months and intersects directly with the immigration issue.

Immigration NZ don't want to know about this.
 s 9(2)(b)(i)

The notice of urgent meeting next Tuesday 27 in Auckland on this has been authorised by Simon Whipp who runs MEAA, The Alliance in Australia, which fully funds Equity and is affiliated with the Screen Actors Guild in the US.

We understand that there is a back up plan which involves relocating the production elsewhere (UK).

which
 s 9(2)(b)(i)

If this blows undoubtedly Ministers will have to become involved. It's directly related to the immigration issue Tim which we have done everything in our power to resolve but the cards are stacked against production companies.
 still on hold etc.

Kind regards
 Penelope Borland

Dear All,

Can you send out urgently to everyone on your books. One is the notice of the meeting on Tuesday 28th September at 7pm at the Grey Lynn Community Centre; the other is the background with links to the relevant correspondence.

Could you do everything in your power to encourage performers (union and non-union) to attend the meeting.

Thanks

Frances

Frances Walsh
Industrial Organiser
NZ Actors' Equity

59(2)(a)

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X

Tim Hurdle (MIN)

From: [] s 9(2)(a)
Sent: Monday, 18 October 2010 7:08 pm
To: Tim Hurdle (MIN)
Subject: Re: RE:

Thanks for the prompt reply, Tim. It will be terrific for Gerry and Carolyn to speak. I'll need to tell her before tomorrow, since it's news they have been waiting for all day, and she's still awake in LA.

[] s 9(2)(i)
There is no connection between the blacklist (and it's eventual retraction), and the choice of production base for The Hobbit. What Warners requires for The Hobbit is the certainty of a stable employment environment, and the ability to conduct it's business in such a way that it feels it's \$500m investment is as secure as possible.

Unfortunately Warners have now become very concerned about the grey areas in our employment laws. This situation hasn't been helped by the fact that they spent a lot of money fighting (unsuccessfully) the Bryson case in our courts, so they have seen these vague laws in action. []

[] s 9(2)(i)
They are just looking for reasonable security, and unless it's provided, it's likely they will choose to base the movie somewhere else. But we all know this ... it's been discussed endlessly these last few weeks.

I'll talk with Warners now.

Cheers,

Peter []

On 18/10/2010, at 6:49 PM, Tim Hurdle (MIN) wrote:

- > Hi,
- >
- > It is Mr Brownlee's intention to speak to Carolyn Blackwood tomorrow
- > to explain what decisions have been made.
- >
- > He is more than happy to explain. At the moment, it is a call on
- > timing of the announcement of decision. We are close to positive
- > developments in what has been a potentially volatile industrial
- > dispute.
- >
- > At the moment we wish to keep our powder dry to ensure the best
- > possible outcome and provide Warners with clarity for their decision
- > making process.
- >
- > We have and can continue to give Warners a guarantee that we will back
- > casting decisions through immigration processes.
- >
- > In the end, the New Zealand Government - and not any other party -
- > will determine who can enter the country.

>
> We look forward to Warners coming to New Zealand for discussions.

>
> Regards,

>
> Tim

> -----Original Message-----

> From: [REDACTED]
> Sent: Monday, 18 October 2010 6:13 pm
> To: Tim Hurdle (MIN)
> Subject: Re:

J 59(2)(a)

>
> Hi Tim,

>
> I'm going to need to bring Warners up to speed about the failure to
> address the visa issues at today's cabinet meeting. Does Gerry want me
> to tell them, or is he intending to tell them himself?

>
> Please drop me a quick note one way or the other, since I'll need to
> discuss it with them ASAP.

>
> Cheers,

>
> Peter J

>
> On 18/10/2010, at 3:06 PM, Tim Hurdle (MIN) wrote:

>
>> Hello Sir Peter and Fran,

>>
>> Mr Brownlee is trying to call you. What is the best number?

>>
>> Tim

>

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Tim Hurdle (MIN)

From: Tim Hurdle (MIN)
Sent: Tuesday, 28 September 2010 7:19 pm
To: Hon. Gerry Brownlee (MIN); Eileen O'Leary (MIN); Hon. Tim Groser (MIN); Natalie Maher (MIN); Kathleen Lambert (MIN); Jemma Adams (MIN); Hon. Jonathan Coleman (MIN)
Cc: Hon. Christopher Finlayson (MIN); Wayne Eagleson (MIN); Natalie Roberts (MIN); Fleur Thompson (MIN); Melissa Turner (MIN); Richard May (MIN)
Subject: The Hobbit

Hon Finlayson has asked me to prepare a note of his meeting with Sir Peter Jackson to discuss "The Hobbit", this afternoon.

Tim

Hon Christopher Finlayson held a meeting with Sir Peter Jackson, Frances Walsh and representatives of the Screen Producers Association (SPADA).

Sir Peter has been given the green light yesterday by major studios Warner Bros and MGM for a two part film shoot of "The Hobbit" in New Zealand.

Sir Peter outlined the impact on these films that industrial action driven by the Australian-based Media, Entertainment and Arts Alliance (MEAA) - of which the New Zealand Actors Equity is aligned - would have. MEAA are attempting to position to lead collective bargaining arrangement for New Zealand actors.

The two key issues are

- Status of self-employed contractors versus collective bargaining arrangement for employees.
- The Actors Equity being able to vet the employment of actors because they have to provide letters of non-objection

Sir Peter and the Screen Producers and Directors Association (SPADA) maintain that actors in New Zealand are contractors because they may only be employed for a short period i.e. a few weeks.

Under New Zealand law (the Commerce Act of 1986, section 30) if New Zealand actors are deemed to be independent contractors, they would not be permitted to engage in 'price-fixing' - so a collective agreement negotiated by the MEAA would be illegal. The Union has a legal opinion from Simpson Grierson that this would not be the case if they were employees. This is considered impractical by the industry.

This has also highlighted a legal judgement "The Bryson Decision" which decided that an individual engaged by Weta Workshops was actually an employee rather than a contractor as assumed by the company. This decision has created uncertainty as to the ability of the film industry to employ contractors.

"The Hobbit" is an attractive target for the union due to its length of filming and that there will be two blocks of 8 - 9 weeks, where there will not be filming. In these periods, employees would of course be on a payroll. They are using this situation to collectivise the New Zealand film industry.

The MEAA, is a registered Australian union which effectively bankrolls the NZ Actors' Equity and has no legal status in New Zealand. Actor's Equity is not registered as an NZ trade union, nor are they on the register of incorporated societies. Sir Peter estimates that less than 10% of New Zealand actors are actually members of Actors Equity. Sir Peter has received large numbers of emails in support from other actors who are concerned at the implications of union action on the health of the New Zealand screen industry.

The motivation of the Australian union is questioned, as they have only arrived in New Zealand after the success of Lord of the Rings and Narnia. At the same time, Australian studios have struggled, in part due to what are seen by producers as restrictive labour market practices. In Australia, actors are deemed to be employees but gain the benefits of being able to take tax deductions for work related activity i.e. gym memberships. The MEAA have promised New Zealand actors similar treatment - however this is not a realistic prospect. In practice as contractors, actors gain benefits from being able to write off expenses i.e. their agents' percentage etc.

The MEAA claim that they are attempting to get the same pay and conditions as other jurisdictions. Sir Peter was adamant that they pay in accordance with New Zealand negotiated industry "pink book" standards. The only material difference with US Screen Actors Guild (SAG) standards is around "residuals" - payments for repeats, DVD sales etc - where the intention is to pay in line with UK and Canada practice. For "The Hobbit", Warner Bros have created a profit pool to ensure equal treatment of SAG and non-SAG actors. Very few NZ actors are SAG members.

[RELEASSED UNDER THE OFFICIAL INFORMATION ACT] s 9(2)(i)
The MEAA had enlisted the support of the SAG to effectively "blacklist" the Hobbit production. This has caused considerable concern from the American Studios.

Delays in filming would be very difficult as it means that the studio would not be able to release the film during the lucrative Christmas season and make the maximum return. [

s 9(2)(i) [They have a cast list and need to start working with their actors on costuming and prosthetics. Sir Peter considers there is a very real risk that, faced with this situation, Warners may choose to relocate production from New Zealand to Eastern Europe.

The letter of non objection issue has caused considerable difficulty for the film and television industry. In order to employ an overseas actor for a production, Actors Equity must produce a letter of non-objection. This is a labour market test to see whether a suitable New Zealand actor could not take the role. To arrange letter of non-objection, producers had found themselves dealing with Mr Whipp, the MEAA representative in Sydney. Actors Equity have been asking for cast lists and more information than necessary. They are believed to use these lists to target new membership. [

] s 9(2)(b)(ii)

Tim



28 September 2010

Minister of Arts, Culture and Heritage

Dear Minister

The Hobbit Movie - Commerce Act Advice
Our Ref: MCH/TBA

1. You ask for urgent advice today on whether s 30 of the Commerce Act 1986 ("Act") prevents the Hobbit movie producers ("Producers") from entering into a union-negotiated agreement with performers who are independent contractors.
2. In my view, the answer is yes. Section 30 prohibits competitors, in this case independent contractor performers, from entering into or giving effect to a contract, arrangement or understanding that has the purpose, effect or likely effect of fixing, maintaining or controlling prices for goods or services – which would include performance services.
- 3.
- 4.
- 5.
- 6.

7.

8. Finally, I understand that there is some suggestion that the relevant independent contractors should be treated as "employees" on the grounds that s 44(f) of the Act excludes the application of s 30 to "employees". However, if the real nature of the relationship between the Producers and the independent contractors is such that they are independent contractors then it cannot simply be asserted that they are "employees" for the purposes of the Act.

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OFFICIAL INFORMATION ACT

Briar Charmley (MIN)

From: Tim Smith
Sent: Wednesday, 29 September 2010 4:21 pm
To: Tim Smith; Briar Charmley (MIN)
Cc: Ben Thomas (MIN); Jan Fulstow; Teresa Mollo; Joanna Holden
Subject: RE: Bryson summary

Briar/Ben,

We don't seem to be able to find the AG report on Bryson (if there was one). I hope that you have enough for your purposes.

Kind regards,

Tim

From: Tim Smith
Sent: Wednesday, 29 September 2010 14:42
To: Briar Charmley
Cc: Ben Thomas ; Jan Fulstow; Teresa Mollo; Joanna Holden
Subject: Bryson summary

Hi Briar/Ben,

We are still looking for a report to the AG on Bryson and I will get back to you if we find anything. In the meantime, as discussed with Briar, attached are some paragraphs that Joanna drafted last night regarding the employee/independent contractor distinction.

Please let me know if you have any further queries

Kind regards,

Tim

Tim Smith
Crown Counsel
Crown Law Te Tari Ture o te Karauna

www.crownlaw.govt.nz

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Tim Smith

From: Jan Fulstow
Sent: Thursday, 30 September 2010 15:49
To: Tim Smith
Subject: FW: Hobbit advice

Tim

This is the request for the advice to the AG. Grateful if you could manage this please. Thanks.

Jan

From: Library Library
Sent: Thursday, 30 September 2010 15:38
To: Jan Fulstow
Subject: FW: Hobbit advice

From: Jack Nicol
Sent: Thursday, 30 September 2010 15:36
To: Library Library
Subject: Hobbit advice.

Good afternoon,

I am researching the current Hobbit dispute for a television program, and was hoping I could get a copy of the legal advice that Attorney General Chris Finlayson worked from, from Crown Law, about the competition laws in New Zealand that will allow the Hobbit to proceed without collective negotiation.

Is this possible?

Kind regards,

Jack Nicol
The Court Report

Briar Charmley (MIN)

From: Tim Smith
Sent: Tuesday, 26 October 2010 10:18 am
To: Briar Charmley (MIN)
Cc: Teresa Mollo; Matthew Palmer
Subject: Hobbit movie - Privilege and responses to OIA requests
Attachments: 895128_Hobbit - Briefing to AG re waiver of privilege, 21.10.10.pdf

Dear Briar,

I note that our response to the request from the Court Report is due this Friday. Do you know whether the Attorney has a view on the attached briefing?

Happy to discuss.

Kind regards,

Tim

Tim Smith
Crown Counsel
Crown Law *Te Tari Ture o te Karauna*

www.crownlaw.govt.nz

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4 October 2010

Lewis Holden
Chief Executive
Ministry of Culture and Heritage
PO Box 5364,
Wellington 6145,
New Zealand

Dear Chief Executive,

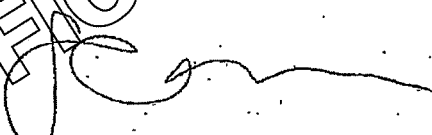
Under section 12 of the Official Information Act I request the following information:

Costing of the Crown Law opinion to the Minister regarding the industrial relations dispute with Actors Equity and the filming of *The Hobbit* including, but not limited to, emails, instructions from the Minister, details of involvement of the Ministry and details of the involvement and advice given by Crown Law.

If you require any clarification of the intent of my request please do not hesitate to contact me on (ph).

Thank you for your consideration.

Sarah Carson



Sarah Carson
Executive Assistant
Office of the Hon Steve Chadwick
Spokesperson for Arts, Culture and Heritage

29 October 2010

Mr Jack Nicol
The Court Report

Email:

Dear Mr Nicol

The Hobbit - Response to enquiry
Our Ref: CUL161/72

1. Thank you for your email to our library dated 30 September 2010 requesting a copy of Crown Law Office advice regarding the legality of collective bargaining in relation to The Hobbit ("Advice").
2. Your email has been referred to me and I have treated it as a request for Official Information under section 12 of the Official Information Act 1982 ("Act").
3. The Advice that you request was provided to the Honourable Christopher Finlayson in his capacity as the Minister of Arts, Culture and Heritage. As you appear to be aware, certain conclusions in the Advice have subsequently become public.
4. To the extent that those conclusions have become public, my view is that confidence in those conclusions has been lost. Accordingly, a redacted copy of the Advice, setting out the conclusions in respect of which confidence has been lost is enclosed.
5. However, I believe that the remainder of the Advice remains confidential and subject to legal professional privilege. I also believe that there are no circumstances in the particular case, which render it desirable, in the public interest, to make that information available.
6. Accordingly, to the extent that your request is for information in the Advice which remains confidential and subject to legal professional privilege, that information is withheld because the withholding of such information is necessary to maintain:
 - 6.1 the constitutional convention which protects the confidentiality of advice tendered by officials (pursuant to s 9(2)(f)(iv) of the Act);
 - 6.2 the effective conduct of public affairs through the free and frank expression of opinions to Ministers of the Crown and employees of the Crown Law Office in the course of their duty (pursuant to s 9(2)(g)(i) of the Act); and

6.3 legal privilege (pursuant to s 9(2)(h) of the Act).

7. I confirm that you have a right to complain to an Ombudsman if you are unhappy with my response to your request.

Yours sincerely

Peter Gunn
Crown Counsel

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OFFICIAL INFORMATION ACT

Briar Charmley (MIN)

From: Briar Charmley (MIN)
Sent: Tuesday, 26 October 2010 12:04 pm
To: Joanna Holden; Tim Smith
Subject: Meeting this afternoon

Hi Joanna and Tim

As just discussed with both of you, you may be needed to sit over at Premier House between 3:30pm and 6pm and be available to answer questions re the Hobbit. We'll know by about 2pm whether you're needed. If not, it would still be good to have your cell phone numbers in case John Harbord needs to call you. Would you mind emailing them to me?

Tim, in answer to your question, they have seen the 12 page advice from 7 October on both Employment and Commerce Act issues. John thinks this afternoon they'll be most interested in an amendment to the ERA and what it might look like etc.

I'll be in touch later.

Kind regards,
 Briar

Briar Charmley | Private Secretary (Attorney-General)
 Parliament Buildings | Wellington | New Zealand

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 OFFICIAL INFORMATION ACT