Dear Lyn Provost, dear Maria Rawiri, dear staff at the Office of the Auditor-General

Thank you for your Office’s letter dated 17 December 2014, which was in response to my second formal request (dated 04 November 2014) under the Public Audit Act 2001, for an inquiry into, and a special performance audit of, administrative and operational activities performed by staff at the Office of Ombudsmen. My reformulated request was particularly in regards to the processing and assessment of my complaint/s under reference 3xxxxx by Miss Xxxxx Gxxxxxx, and whether she and her Office complied with applicable legal obligations and standards. I read with much regret and disappointment that you have decided to not carry out the specific investigation I requested. According to your comments your Office has no role in assessing the individual performance of staff in other entities. You write that this is the responsibility of each entity. You also comment: "We note that you have raised your concerns with the Chief Ombudsman as is appropriate." You state that your Office is part of a broader accountability system for public sector entities. You refer to your primary role in undertaking financial audits of all public entities. You also add that you will bear my comments in mind, during your on-going work with the Office of Ombudsmen. When I presented an earlier request you had commented that my request was then far more wide-ranging in scope than a performance audit or inquiry your Office carries out under the Public Audit Act. You stated that you were not equipped to carry out "a review of the entire functioning of the Ombudsmen".

Both your responses to my requests have been received and acknowledged with great disappointment. It seriously worries me, that with your decisions you have decided to not investigate evident serious failures, and apparent professional misconduct, by at least one investigating staff member, which regrettably also seems to indirectly implicate the Chief Ombudsman. I would have thought that any such serious failures to meet statutory obligations by staff or management at an Office of Parliament, which still appears to fall under your scope of responsibilities, would raise sufficient enough concerns to take some actions. Given my detailed, evidence-supported requests, your Office should in my view have felt prompted to conduct an investigation on your own initiative, and by doing so, within a scope and form that your Office can carry out. You have the statutory authority and ability to define or redefine the exact scope and form of an audit or inquiry under the Public Audit Act. You also have a responsibility, to ensure that legal obligations under statute law are met by public entities.

Your comment, that I had appropriately raised my concerns with the Chief Ombudsman, fails to acknowledge the fact, which I had already explained to you in earlier correspondence,
namely that Miss Wakem simply failed to fulfil her own responsibilities. In her letter dated 10 July this year, Miss Wakem firmly refused to even properly look at my whole complaint from 16 June 2014. She protected her staff from any allegations, without examining all the evidence I put forward. She therefore failed at least in her duties as an employer under section 11 (2) of the Ombudsmen Act 1975. In blindly relying on her investigating staff member, who was very poorly handling my two complaints about the Health and Disability Commissioner (HDC), the Chief Ombudsman also failed to perform her functions under section 13 (1) of the Ombudsman Act, to investigate clear, proven misconduct by staff at the HDC Office, who were lying about email evidence they received. The mentioned failures also raise concerns as to whether the oath given by the Chief Ombudsman under section 10 (1) of that Act has been honoured. All this raises a number of issues, which include the use of resources and compliance with statutory obligations. It is my view that your Office has the power, ability and in this case compelling reasons to act in the matters I presented to you under section 16 (1) (a), (b) and (d), same as section 18 (1) of the Public Audit Act. The same Act refers not only to the “efficient” use of resources, but also mentions the “effective” use of them. Also is the performance of staff part of resource related matters that deserve consideration when conducting an audit or inquiry. Most certainly the failure to comply with statutory obligations, not only under the Public Audit Act, must be of concern to you. In any case, your decision has caused me to once again re-consider my request, and to consequently file this new request, which is more appropriately specified to meet your Office’s responsibilities, scope and ability.

Newly defined, third request for an inquiry and special audit

Therefore I ask you to please accept my new, third request to your Office. I request you to conduct a special, independent and thorough inquiry into - and audit of – particular administrative, operational and managerial activities, performed by the team of investigating officer staff members, and the Chief Ombudsman, working at the Wellington Office of Ombudsmen, that cover only Ombudsman Act (O.A.) based complaints about OTHER state sector organisations’ administration and decision-making. This excludes those O.A. complaints against ordinary government departments and local authorities. That is for the period from 01 July 2013 to 31 July 2014. Included should also be complaints made about the Privacy Commissioner’s and the Health and Disability Commissioner’s Offices. Such an inquiry and audit should establish whether the stated activities by the Ombudsman Office’s  mentioned staff, relating to the specified types of complaints they handled, did comply with the statutory obligations under the Ombudsman Act, same as with other relevant legal requirements and applicable standards. The inquiry and audit should also seek to establish whether resources were used appropriately, effectively and not only efficiently.

This is a request seeking your actions under sections 16 (1) (a), (b) and (d) and section 18 (1) of the Public Audit Act 2001. I ask you and your Office to fully investigate and audit relevant aspects of the conduct and performance of said staff members, including their communications with the Chief Ombudsman. My request includes an inquiry into how the mentioned staff at that Office coped with performance, output target and service quality expectations set by the Chief Ombudsman, and what exact procedures they were instructed to follow, while processing and assessing complaints. In the case that an inquiry and audit cannot be focused on the types or range of complaints mentioned, I do instead ask you to conduct one on the performance and conduct of the staff members for the same period, but in relation to a range of O.A. complaints that can be set and managed by your Office. If it may need to be so, that may be reduced to such ones only against the Privacy Commissioner and HDC Office. I make this request due to the following very serious concerns about the Office of Ombudsmen and said staff in relation to the handling of these complaints:

- unacceptably long complaints-assessment, processing and resolution times
- long delays in the Office’s responses, even after repeated contacts seeking updates
- stream-lining, reorganisation and restructuring leading to too many complaints being dismissed or treated as needing no (further) investigation
- serious mistakes and omissions made by an investigating officer during assessments of my complaints, affecting quality and standards of service by the Office
- an investigating officer’s apparent misrepresentation of complaint related details to the Chief Ombudsman; i.e. concealing own mistakes and/or negligence
- poorly formed decisions made by the Chief Ombudsman to not investigate complaints, while failing to acknowledge or accept clear, compelling evidence
While I accept that you may have no role in assessing the individual performance of staff in other public entities, I am aware that you have the authority to conduct special inquiries and audits into individual public entities, in some cases even into the conduct of individual public office holders. Your Office has on your website published a list of “inquiry reports” that show this, and there have also been repeated media reports on certain inquiries and special audits conducted by your Office. Inquiries have been made into particular public entities, into public office holders and into particular activities, like for instance the following:

- Inquiry into the Mangawhai community wastewater scheme
- Inquiry into decision by Hon Shane Jones to grant citizenship to Mr Yang Liu

I consider that the above mentioned, requested measures need to urgently be taken, and that they are in the public interest. The situation at the Office of Ombudsmen has over recent years been extremely unsatisfactory, so that as a consequence of poor performance and failures in fulfilling statutory obligations, I and many other complainants were denied appropriate, fair consideration of our complaints and with that denied justice. The stated concerns were aggravated by the fact that the Office of Ombudsmen appears to have been seriously under-funded for a number of years since well before 2012, while the Office’s workload increased substantially and disproportionately to available resources over the past years. This became evident from the annual reports the Office of Ombudsmen released, as well as from many somewhat recent media reports. Public trust in the performance and quality of service by the Office of Ombudsmen has been seriously damaged due to the above stated issues (see [5]). This may be remedied to some degree for the future, but for the fact that I and other complainants have not been served justice under the Ombudsmen Act, a special inquiry and audit remains more than justified.

Important information to consider prior to launching an inquiry and special audit

As you will be familiar with the details I presented in my original request, I must again refer you to paragraphs [3] to [23] of my letter dated 28 August 2014. In paragraph [19] of that letter I listed the failures that occurred in the handling of my complaints by Miss Gxxxxx as investigating officer at the Ombudsmans’s Office. Of particular concern is the fact that I referred to in paragraphs [6] and [21] in my letter, namely that Miss Gxxxxx failed to establish or accept that staff at the Office of the Health and Disability Commissioner gave wrong information about email correspondence received from me. In paragraph [22] I explained how further crucial evidence I presented to the Office of Ombudsmen appears to have been ignored out of intent, or at least neglect. It is my impression and conclusion that breaches of sections 10, 13 (1) and (3), and also section 17 (1) (b) of the Ombudsmen Act 1975 occurred. I ask you to re-examine and re-assess the particular information provided in my letter to your Office from 28 August in the context of this new request. The further information about the past annual reports issued by the Office of Ombudsmen, same as the quoted media and other reports will by now be familiar to your Office and staff. If you require further information, I trust that the Ombudsmen will provide all correspondence and evidence in this matter to your Office.

I also ask that paragraphs [59], [61] and [65] in my letter to you from 28 August are again given some consideration, in the context of this request. I wish to point out again, that I followed the advice given on your Office’s website - under the topic or heading ‘How to ask for an inquiry’, and that I first raised the matters of concern with Dame Beverley Wakem as Chief Ombudsmans (‘Step 1), before contacting your Office. It is with regret that my correspondence to Dame Beverley from 16 June 2014 was not well received. I have done everything that a person can reasonably be expected to do, when trying to first raise serious issues with the Office of the Health and Disability Commissioner, then with the Office of Ombudsmen, and now with your Office of the Auditor-General. It is extremely disheartening and not assisting me in maintaining any trust in the institutions mentioned, when no significant, committed and sincere efforts are made to appropriately and constructively address and resolve the problems I have now repeatedly presented.

The Office of the Auditor General’s powers and authority

While I accept that you may have no role in assessing the individual performance of staff in other public entities, I am aware that you have the authority to conduct special inquiries and audits into individual public entities, in some cases even into the conduct of individual public office holders. Your Office has on your website published a list of “inquiry reports” that show this, and there have also been repeated media reports on certain inquiries and special audits conducted by your Office. Inquiries have been made into particular public entities, into public office holders and into particular activities, like for instance the following:

- Inquiry into the Mangawhai community wastewater scheme
- Inquiry into decision by Hon Shane Jones to grant citizenship to Mr Yang Liu
The fact that the Office of the Ombudsmen may as another Office of Parliament be on a similar level as your Office, does not necessarily mean it is excluded from the same level of scrutiny that applies to other offices and entities falling under your Office’s jurisdiction and responsibility. According to sections 5 (1) (b) and 14 (1) of the Public Audit Act the Offices of Parliament come under your authority. We are here also talking about the Ombudsman’s failures to address major issues that arose during the appalling handling of two complaints to the HDC, which is an independent crown entity (section 7 of the Crown Entities Act 2004), falling also directly under your authority. I may suggest you should also consider an inquiry and audit into their complaints handling, given the apparent misrepresentation by their staff of facts regarding complaint emails and evidence received re complaint C11HDCxxxx.

Given my experiences with the handling of two complaints by the Health and Disability Commissioner (HDC), and their apparent failures and even dishonest conduct in relation to emails and evidence presented to them (C11HDCxxxx), your Office should indeed feel prompted to also conduct an inquiry and special performance audit into the Office of the HDC. Sadly the Health and Disability Services Consumers’ Rights, offers the HDC far too much discretion to take action or to take no action. Certain powers the HDC has to offer complainants remedies are generally not used or applied in most cases. Many cases of malpractice or failures by providers of health and disability services get insufficiently addressed, so that many affected do not even bother filing complaints with the HDC. It is my view that the existing law and practice applied by the HDC is rather undermining the rights of affected patients. That put aside, one would at least expect that complaints are treated appropriately, fairly and honestly, which did not happen in my case. Hence it is doubly disturbing to have the Ombudsman dismiss my complaints as she did, and did not even feel urged to reassess my complaints.

For the case that you may again decide, to not conduct an inquiry or audit at the Wellington based Office of Ombudsmen, I must insist that you then refer the whole correspondence and evidence that I presented to your Office, to the Speaker of the House of Representatives. That is the last resort to have the matters addressed, which I stated in this and my former letters.

The Speaker of the House of Representatives’ responsibility over the Ombudsman

It is the Speaker of Parliament, who holds a higher authority over the Officers of Parliament, including the Office of Ombudsmen. Through statutory reporting requirements and his constitutional position the Speaker can and must hold Officers of Parliament to account for their conduct and functional responsibilities. I may quote from the following report:
“New Zealand National Integrity System Assessment 2013 Chapter 5: Ombudsman (pillar 7)”,
Web link: http://www.transparency.org.nz/docs/2013/Integrity-Plus-2013-Pillar-7-Ombudsman.pdf:
Extracts from that report:
“7.2.4 Accountability (practice)
To what extent do the Ombudsmen report and be answerable for their actions in practice?”

“Score: 5
The Ombudsmen comply with the legal accountability requirements. There has been no occasion in recent years for judicial review.”
“The Ombudsmen report to Parliament through the Speaker each year, and the report contains comprehensive information on the activities of the Ombudsmen and their staff, including performance against the measures specified in their public Statement of Intent. The report has always been submitted on time. Neither the House nor the Officers of Parliament Select Committee has recently debated the Ombudsmen’s report, 761 though there has been debate in the Government Administration Select Committee.”
“It is not unusual for complaints about the Ombudsmen to be made to the Speaker. Although the Speaker has no legal duty to consider such complaints, there is a practice whereby the complaint is forwarded to the relevant Ombudsman, who then reports to the Speaker on it.”

I may also refer to the following part of that report, for some further relevant information:

“7.2.6 Integrity mechanisms (practice)
To what extent is the integrity of the Ombudsmen ensured in practice?”

Hence, in case your Office should again decide to not use your authority to conduct an inquiry and a special performance audit into the mentioned section of the Wellington based Office of the Ombudsmen, I ask you to forward ALL the correspondence I sent you with my previous and this requests, including all evidence documents, to the Speaker of Parliament. It will then be up to the Speaker to seek clarifications and explanations from the Chief Ombudsman, if he may so desire. Given the disappointing experiences with Dame Beverley Wakem not even seriously re-considering my complaint, she has in my view not acted as a responsible employer and as the impartial Officer she is expected to be. Her failures may simply be based on reliance on poor advice by some of her staff, but she is ultimately responsible for them. I will reserve my final judgment in this matter depending on the final outcome of this request.

Yours sincerely

Xxxxxxx Xxxxxx