Official Information Act compliance and practice

Callaghan Innovation

Office of the Ombudsman
Tari o te Kaitiaki Mana Tangata
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Foreword

Rukuhia te wāhi ngaro, hei maunga tātai whetū.
Explore the unknown, pursue excellence.

Callaghan Innovation’s Whakatauākī

Callaghan Innovation (Callaghan) is ‘New Zealand’s Innovation Agency’. It is a Crown entity, with a stated mission ‘to accelerate the commercialisation of innovation by New Zealand businesses, and to grow New Zealand’s economy by helping innovative businesses to succeed.’

Callaghan works to achieve this by:

- providing businesses with access to technical experts;
- facilitating collaboration between businesses;
- offering programmes and workshops which teach businesses how to eliminate operational inefficiencies and accelerate product development; and
- offering grants to support research and development.

Callaghan also operates several commercial entities, which earn revenue by providing services to paying customers in New Zealand and overseas.

Callaghan is responsible to Hon Dr Megan Woods, Minister for Research, Science and Innovation, and reports to the Minister through the Ministry of Business, Innovation and Employment (MBIE).

In the 2017/18 financial year, Callaghan received 67 OIA requests, of which 94 percent were handled within legislative timeframes.

Callaghan has advised me that it accepts all my action points. It has already begun work on many of these, and all are intended to be implemented in the coming months.

In addition to implementing my action points, I hope that Callaghan takes the opportunity afforded by my investigation to consider how to optimise its OIA processes, and effect any further improvements that may enhance its practice. I will be following up with Callaghan on a quarterly basis to check in on its progress in implementing my suggested action points.

I would like to thank Callaghan’s staff for the positive and open way they engaged with my investigation, particularly those in the Ministerial Services Team, and those staff who met with investigators from my office. I would also like to thank those stakeholders who participated in my investigation.

Peter Boshier
Chief Ombudsman
Introduction

This report sets out my final opinion on how well Callaghan is meeting its obligations under the Official Information Act 1982 (OIA).

My investigation has included consideration of Callaghan’s supporting administrative structures, leadership and culture, processes and practices, including information management, public participation, and proactive release of information to the extent that these relate to achieving the purposes of the OIA.

One of the purposes of OIA is to increase the availability of information to the people of New Zealand in order:

- to enable effective participation in the making and administration of laws and policies; and
- to promote the accountability of Ministers of the Crown and officials,

thereby enhancing respect for the law and promoting the good government of New Zealand.

As Chief Ombudsman, I am committed to improving the operation of the OIA to ensure its purposes are realised. Key to achieving this is Parliament’s expectation that I regularly review the OIA practices and capabilities of government agencies.

I have initiated this practice investigation using my power under the Ombudsmen Act 1975 (OA). This provides me with the tools needed to investigate matters I consider important to improve administrative decision making across the public sector. The full terms of reference for my investigation are in Appendix 1.

I have considered the information gathered through my investigation against an assessment framework consisting of the following five areas:

- Leadership and culture;
- Organisation structure, staffing and capability;
- Internal policies, procedures and resources;
- Current practices; and
- Performance monitoring and learning.

A set of good practice indicators within each of these areas can be found in Appendix 2. These indicators are not exhaustive and do not preclude an agency demonstrating that good practice in a particular area is being met in other ways.

Reporting the outcome of these investigations promotes an agency’s accountability, and gives the public an insight into the agency’s ability to promote openness and transparency.

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1 See sections 13(1) and 13(3) Ombudsmen Act 1975
My opinion

I have not identified any conduct by Callaghan that was wrong, unreasonable or contrary to law and, as such, I have not made any formal recommendations. Through the investigation process, areas of good practice have been identified, and opportunities for improvement are suggested where areas of vulnerability have been identified.

I address each of the five dimensions listed above, setting out:

- an overview of my findings;
- aspects that are going well; and
- opportunities to improve Callaghan’s OIA compliance and practice.

Prior to confirming my opinion, I provided the opportunity for Callaghan to review and comment on my provisional findings; and I provided the opportunity for the Taxpayers’ Union to review and comment on those aspects of my provisional findings that pertained directly to them.

My opinion relates only to Callaghan’s practice during the period in which my investigation took place.

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2 Formal recommendations under the OA are only made if I form an opinion that a decision, recommendation, act, or omission by the agency was wrong, unreasonable or contrary to law, etc. under s 22 of the OA.

3 On occasion we may look at material from before the investigation period where particular issues warrant further investigation.
 Timeline and methodology

- Notification of investigation to Callaghan Innovation: 17 October 2018
  - Desk research, including a review of information on Callaghan’s website, and information held by my Office on Callaghan’s OIA practice
  - Circulation of surveys to: the agency, agency staff, agency stakeholders

- Meetings with key staff

- Assessment of all information against key indicators

- Provisional Opinion provided to Chief Executive for comment: 3 May 2019

- Final Opinion provided to the Chief Executive, Board Chair and responsible Minister: 26 June 2019

- Final Opinion tabled in Parliament and published on the Ombudsman website: July 2019
Executive summary

This summary draws together the key findings and suggested actions from my investigation. The diagram on page 10 further summarises the action points into a ‘snapshot view’ of those aspects I consider will further lift OIA performance at Callaghan.

Leadership and Culture

Discussions with staff and their responses to the staff survey indicate that a generally positive culture exists around the importance of the OIA, and organisational transparency. However, this exists absent any formal and consistent messaging from senior leaders to staff about the importance of the OIA. Without regular messaging to this effect, there is a risk that the existing culture could erode over time. I consider Callaghan is missing an opportunity to use its innovative internal communication methods to foster and promote a culture of openness.

Internal messaging from senior leaders to staff may increase and improve if senior leaders themselves develop further their understanding of the principles and purposes of the OIA and of open government. Although not a criticism, I note that a number of senior leaders, including the CE herself, were drawn from the private sector, which reflects Callaghan’s role as an interface between government and industry. Callaghan’s CE should ensure staff receive an appropriate induction into the state sector environment, particularly in relation to freedom of information legislation, and open government principles. I encourage Callaghan to take advantage of any guidance that agencies such as the State Services Commission (SSC) and my Office can provide in this respect.

Callaghan is developing a policy for the proactive release of information, which I commend. The systematic, strategic release of information may assist Callaghan in managing its OIA workload, which is particularly important for an agency with a small Ministerial Services team. It will also enhance the agency’s reputation for openness about the work it does and thereby promote trust and confidence in executive government.

I have identified opportunities for improvement in relation to the visibility and accessibility of OIA content on Callaghan’s website. I would also encourage Callaghan to state its values and intentions around the OIA and transparency in its strategic documents.

Action points: Leadership and culture

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<table>
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<tbody>
<tr>
<td>1</td>
<td>Senior leaders should make clear, visible and regular statements to staff about the importance of the OIA, and the agency’s commitment to openness and transparency</td>
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<tr>
<td>2</td>
<td>The CE should ensure staff, especially senior staff, receive appropriate induction and guidance on their obligations under the OIA</td>
</tr>
<tr>
<td>3</td>
<td>Update website to include information for OIA requesters</td>
</tr>
<tr>
<td>4</td>
<td>Develop a policy around public engagement and incorporate this into strategic documents</td>
</tr>
<tr>
<td>5</td>
<td>Incorporate principles around openness, transparency and the importance of the OIA into strategic documents</td>
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</table>
Leaders to champion a system for staff to identify and communicate opportunities for improvements to OIA policies and practice

Organisation structure, staffing and capability

Callaghan uses a ‘mixed’ model of OIA handling. The co-ordination of OIA requests is performed by staff in the Ministerial Services team, but most of the processing is performed by staff in other business units. It appears the ‘mixed’ model for OIA handling is appropriate for Callaghan, given its size and the number of OIA requests it receives. The resilience of this structure was demonstrated recently by Callaghan’s improved compliance with reported timeliness obligations during a year in which it experienced a sharp increase in OIA requests.

Of course, OIA responses must not only be timely but also of a high quality, and internal decision making should be consistent. Accordingly, for the mixed model of OIA handling to be effective there must be adequate, on-going training targeted to specific roles, and sufficient support available for those staff charged with preparing responses to OIA requests. I consider there is more Callaghan can do to ensure it delivers adequate and appropriately targeted training to its staff.

I note that the Chief Executive’s delegated authority to make decisions on OIA requests is not formalised. The lack of clarity in this respect is a potential vulnerability that I suggest Callaghan address.

I would also suggest that OIA responses bear the signature of the delegated decision maker in order to promote accountability and transparency.

<table>
<thead>
<tr>
<th>Action points: Organisation structure, staffing and capability</th>
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<tbody>
<tr>
<td>1 Develop and implement OIA training for all staff at induction</td>
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<tr>
<td>2 Develop and implement targeted OIA training for GMs, managers, decision makers and those who triage information requests, including the media team</td>
</tr>
<tr>
<td>3 Confirm and clarify the Chief Executive’s delegated authority for OIA decision makers</td>
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<tr>
<td>4 Ensure Ministerial Services staff have access to, and understand how to use the OIA tracking spreadsheet, and ensure back-up checks are built into the process</td>
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Internal policies, procedures and resources

Callaghan has produced an OIA policy and an OIA Procedures Manual to guide staff in its approach to processing OIA requests. The guidance documents are succinct and written in language that is easy to understand; however, they hold some inaccuracies. I set out within the relevant chapter some improvements and corrections that can be made to increase the efficacy of these resources.

It is encouraging that Callaghan is currently developing a policy to guide the proactive release of information. There is great opportunity for Callaghan to publish information that will assist
the public’s understanding of the work it does. In turn, this may result in fewer, or more targeted OIA requests.

Callaghan was formed out of an amalgamation of several different agencies. As a result, it holds information that is stored on multiple information management systems. This may complicate the process of searching for and collating information in response to OIA requests. Callaghan is in the process of migrating to a new IM system which should allay many of these issues.

**Action points: Internal policies, procedures and resources**

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<tbody>
<tr>
<td>1</td>
<td>Revise OIA guidance documents incorporating my suggestions</td>
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<tr>
<td>2</td>
<td>Consider how the new IM system can be developed and implemented in a way that facilitates the agency’s ability to respond to OIA requests, and ensure the introduction of the system is accompanied by appropriate guidance and training</td>
</tr>
<tr>
<td>3</td>
<td>Prioritise the development of a proactive release policy</td>
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**Current practices**

Generally, Callaghan implements its policies in such a way that it adheres to its obligations under the OIA. There is an opportunity to improve its practice in relation to interactions with Ministers’ offices on departmental OIA requests, and its record keeping in relation to OIA decision making.

Callaghan may do more to ensure that all relevant information is provided for OIA requesters in its response letters. It may also benefit from reviewing its practice in terms of signing out its OIA response letters.

Callaghan also needs to ensure that all requests for official information, including those processed by its media team, are handled in accordance with the provisions of the OIA.

**Action points: Current practices**

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<tbody>
<tr>
<td>1</td>
<td>Undertake a review of policies and procedures on Ministerial involvement with OIA responses, in conjunction with relevant Ministers’ offices</td>
</tr>
<tr>
<td>2</td>
<td>Record reasons for OIA decisions, including consideration of the public interest if applicable, for example in a covering memo or file note which is accessible to staff. If the final decision is to refuse, this reasoning should include the basis for the decision, and the details and outcome of any consultations involved</td>
</tr>
<tr>
<td>3</td>
<td>Record administrative steps behind OIA responses where this may be necessary</td>
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<tr>
<td>4</td>
<td>Review the use of template response letters and ensure key information for requesters is included in OIA responses</td>
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<tr>
<td>5</td>
<td>Review practices around the sign out of OIA responses by decision makers</td>
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<tr>
<td>6</td>
<td>Ensure that all information requests are handled in accordance with the provisions of the OIA</td>
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Performance monitoring and learning

Callaghan collects some data in relation to OIA requests. Most of this held in a spreadsheet which is administered by the Policy Advisor, Ministerial Services. While the spreadsheet appears to have functioned reasonably well in terms of managing the OIA process, there is room for improvement in terms of collecting more OIA performance data and applying better analysis of this data—for example, to inform decisions about capacity and capability, and to identify opportunities to proactively release information.

The implementation of performance measures, not necessarily limited to OIA timeliness compliance, may be used to drive improved performance and staff engagement in the OIA process.

Peer review processes at Callaghan can be reinforced, as can processes around disseminating information such as Ombudsman and States Services guidance.

<table>
<thead>
<tr>
<th>Action points: Performance monitoring and learning</th>
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<tbody>
<tr>
<td>1. Implement OIA performance targets and make these known to all staff</td>
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<tr>
<td>2. Consider collecting more comprehensive data on Callaghan’s handling of OIA requests so that opportunities for improvement and for the proactive release of information can be identified</td>
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<tr>
<td>3. Report OIA data to senior leadership on a regular basis</td>
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<td>4. Include OIA requests handled by the media team in OIA statistical reporting</td>
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<tr>
<td>5. Reinforce and formalise the existing peer review process</td>
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<td>6. Consider implementing performance measures based on quality</td>
</tr>
<tr>
<td>7. Formalise the process for learning from Ombudsman and State Services Commission guidance and reflect this in OIA policies and procedures</td>
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Further lifting OIA performance at Callaghan Innovation: summary of actions

<table>
<thead>
<tr>
<th>Performance monitoring and learning</th>
<th>Organisation structure, staffing and capability</th>
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<tbody>
<tr>
<td><strong>Implement</strong> OIA performance targets and consider performance measures based on quality</td>
<td><strong>Implement</strong> OIA induction training for all staff, and targeted training for staff in specific roles</td>
</tr>
<tr>
<td><strong>Consider</strong> collecting more data on the handling of OIA requests</td>
<td><strong>Confirm</strong> the chief Executive’s delegated authority for OIA decision makers</td>
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<tr>
<td><strong>Report</strong> OIA data to senior leadership on a regular basis</td>
<td><strong>Ensure</strong> that back-up checks are built into the OIA handling process</td>
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<tr>
<td><strong>Include</strong> OIA requests handled by the media team in statistical reporting</td>
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<tr>
<td><strong>Formalise</strong> existing processes for peer review and learning from official guidance</td>
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<table>
<thead>
<tr>
<th>Leadership and culture</th>
<th>Current practices</th>
<th>Internal policies, procedures and resources</th>
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<tr>
<td><strong>Deliver</strong> clear, regular messages to staff about the importance of the OIA</td>
<td><strong>Review</strong> ministerial involvement with OIA responses</td>
<td><strong>Revise</strong> OIA guidance documents</td>
</tr>
<tr>
<td><strong>Update</strong> website with information for requesters</td>
<td><strong>Record</strong> administrative steps and reasons for OIA decisions</td>
<td><strong>Consider</strong> how the new IM system can facilitate responses to OIA requests, and support its release with training and guidance</td>
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<tr>
<td><strong>Ensure</strong> staff receive guidance on OIA obligations</td>
<td><strong>Ensure</strong> key information is included in template response letters</td>
<td><strong>Prioritise</strong> the development of a proactive release policy</td>
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<tr>
<td><strong>Develop</strong> a public engagement policy</td>
<td><strong>Review</strong> practices around the sign out of OIA responses by decision makers</td>
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<tr>
<td><strong>Develop</strong> a system to identify policy and practice improvements</td>
<td><strong>Ensure</strong> all information requests are handled in accordance with the provisions of the OIA</td>
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Leadership and culture

At a glance

What's going well

- There is a generally positive culture among staff about the importance of the OIA, and a general perception, internally, that the agency is committed to public engagement and participation.

Strong, consistent messaging from senior leaders is required to foster and embed a culture of transparency.

- The CE should take the lead in ensuring staff recruited from the private sector receive a grounding in public sector obligations.

- More can be done to engage with the general public and inform them about Callaghan's work.

- Work is required on Callaghan's website to ensure there is information available for OIA requesters.

Opportunities for improvement

Achieving the purposes of the OIA depends significantly on the culture of the agency and the attitudes and actions of its leaders. Ministers, chief executives and senior managers should take the lead in developing an environment that promotes openness and transparency, champions positive engagement with those who want to know and understand what work they are doing, and enables compliance with the principles, purposes and provisions of the OIA.

When it is clear to staff that their leaders respond to requests for official information positively and view it as an opportunity to operate in a more transparent, engaging and accountable manner, they will follow.

To assess Callaghan’s leadership and culture, I considered whether:

- Ministers, chief executives, senior leaders and managers demonstrated a commitment to Callaghan meeting its obligations under the OIA and actively fostered a culture of openness;

- senior leadership had established an effective official information strategic framework which promoted an official information culture open to the release of information; and

- senior leadership demonstrated a commitment to proactive disclosure and public participation, with clear links to Callaghan’s strategic plans, creating a public perception of openness.
After discussing aspects that are going well for Callaghan, I identify some opportunities for improvement.

**Aspects that are going well**

I am satisfied that a generally positive culture around openness and the importance of the OIA exists at Callaghan. A number of staff we spoke to, particularly those who are directly involved in OIA handling, said it was their impression that the Chief Executive was committed to transparency, and that senior leaders have ‘hands on’ involvement in OIA responses. However, organisation-wide messaging from senior leaders about the agency’s approach to the OIA and to openness and transparency more generally is limited, with only one example able to be cited by the agency or recalled by staff we spoke to, as I will discuss further below, under *Internal messaging*.

Although evidence of internal messaging from senior leaders is limited, the staff survey responses were reasonably positive to the question regarding senior leaders’ internal messaging around the OIA. However, nearly a fifth said they ‘didn’t know’ if the CE or senior leaders were ‘pro-OIA’ and a quarter said this of their immediate manager. Again, this reflects a lack of visible messaging from senior leaders permeating through the agency.

The table below shows a summary of staff responses for the survey questions asking staff to rate the signals from leaders about the OIA.

**Staff’s perception of leadership’s messaging about the OIA**

<table>
<thead>
<tr>
<th>Leadership level</th>
<th>strongly or moderately pro-OIA</th>
<th>strongly or moderately anti-OIA</th>
<th>‘they are silent on the issue’ or ‘don’t know’</th>
</tr>
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<tbody>
<tr>
<td>Chief Executive</td>
<td>78%</td>
<td>3%</td>
<td>19%</td>
</tr>
<tr>
<td>Senior Leadership team</td>
<td>76%</td>
<td>7%</td>
<td>17%</td>
</tr>
<tr>
<td>Immediate Manager</td>
<td>73%</td>
<td>0%</td>
<td>27%</td>
</tr>
</tbody>
</table>

The majority of staff who responded to the survey also reported that the Chief Executive and senior leaders were strongly or moderately positive regarding ‘openness’ generally, and that they considered Callaghan had a strong commitment to public engagement and participation.

**Opportunities for improvement**

There are the following opportunities for improvement:

- internal messaging—regular, clear and visible messaging from senior leaders about the OIA and openness;
- external messaging—visible and explicit statements regarding Callaghan’s commitment to openness, transparency and public engagement;
- adding information on its website about how to make OIA requests;
• proactive release of documents released under the OIA, and a programme of proactive release of other documents, supported by a clear policy; and
• a clear and considered approach to external messaging and public engagement, articulated in strategic documents.

Internal messaging
Senior leaders’ messaging to staff about their roles and obligations under the OIA, and the importance of the public having access to official information, can have a significant impact on the agency’s overall culture of openness. Even for those staff who are not directly involved in OIA processing, the importance of their role in creating and storing information in a way that facilitates the agency’s ability to find and retrieve information, should be highlighted. Emphasising that the purpose of the OIA is to enable the people of New Zealand to more effectively participate in government goes some way to ensure that staff are not just ‘complying’ with the OIA, but understand more fully the role each of them has in contributing to our democratic system as a whole.

I have found that there is limited explicit messaging from the CE and senior leaders to all staff about the agency’s commitment to the OIA, and to openness about the agency’s work and activities.

In its response to my agency survey, Callaghan advised that its Chief Executive made a statement to staff reinforcing the agency’s commitment to transparency, in response to an allegation of obfuscation from a frequent requester of official information. Other than this example, there is no evidence of regular and explicit internal messaging to staff about the importance of transparency, and to adhering to the principles of the OIA. Where the only example of a senior leader making an explicit statement about the importance of openness is a purely reactive one, it strikes me that other opportunities to promote this message are being missed.

Although a generally positive culture of openness appears to exist among staff, as I discussed earlier above under Aspects that are going well, it is vital in order to drive and maintain this culture that senior staff make strong, clear, visible statements to staff on a regular basis.

I also encourage senior staff to be aware of any tacit messages they may send to staff when discussing OIA requests or requesters.

Callaghan’s operations are spread through a number of offices throughout the country, and they have developed innovative solutions to keep staff connected, using Skype to conduct meetings, and implementing an enterprise connectivity platform called Workplace to collaborate within and between teams. Callaghan is missing an opportunity if it does not consider the ways in which these resources may be used to champion the principles of the OIA, openness and transparency.
**Action point**

Senior leaders should make clear, visible and regular statements to staff about the importance of the OIA, and the agency’s commitment to openness and transparency.

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**Induction into the public sector environment for senior leaders**

Given Callaghan’s role as an interface between the public and private sectors, it tends to recruit a high proportion of officials with a purely private sector background, including at an executive level.

As I discussed earlier, under *internal messaging*, there is an opportunity for senior staff to actively role model openness and transparency and to embed these principles at Callaghan. However, their ability to do so may be challenged where they have less experience in public sector processes and practices, particularly in relation to compliance with the principles and purposes of the OIA and open government.

An agency’s CE bears ultimate responsibility for decision making under the OIA. Therefore, Callaghan’s CE may wish to take the lead in ensuring all senior staff are confident and knowledgeable in the state sector environment in relation to freedom of information legislation, and open government principles. This may be through approaching the SSC for guidance, or approaching other public agencies to discuss opportunities for mentorship. My Office is also available to assists with developing and delivering training on the application of the OIA.

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**Action point**

The CE should ensure staff, especially senior staff, receive appropriate induction and guidance on their obligations under the OIA.

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**OIA webpage**

In addition to explicit messaging from leadership, the information published on an agency’s website can also send a strong message to the public, and indeed to staff, about its commitment to openness and to the principles and purposes of the OIA.

Callaghan’s website holds no information about how to make an OIA request. The website does have a ‘*contact us*’ section located one click from the homepage. This contains:

- an email address with an invitation for potential clients to seek Callaghan’s professional services; and
- a contact for Callaghan’s media team.

The lack of any reference to, or guidance on the OIA does not adequately reflect the OIA’s constitutional significance as a key mechanism for the public to access information from...
government, and it sends a tacit message about Callaghan’s priorities in relation to engaging with the general public about its work.

I strongly encourage Callaghan to add an OIA section to its website, which could include:

- a statement of principle about the right of the public to access official information;
- information to assist requestors, such as a description of the information Callaghan holds, as detailed in section 20 of the OIA;
- guidance for those who wish to make a complaint to the Ombudsman about the agency’s response to an OIA request;
- a link to internal OIA policies and procedures;
- a link to Callaghan’s internal decision-making rules, as detailed in section 22 of the OIA; and
- responses to substantive OIA requests.

Callaghan may wish to consult the guidance developed by the State Services Commission on the content and structure of agency OIA webpages,5 and the guidance on this topic in Not a Game of Hide and Seek.

**Action point**

Update website to include information for OIA requesters

**Public engagement**

A key aspect of Callaghan’s purpose is to facilitate collaboration. It is unsurprising then that Callaghan regularly engages with its recognised stakeholders to inform its strategy and the design of its services. Callaghan’s media team also regularly produces ‘success stories’ which are published on its website to highlight the achievements of Callaghan and its customers.

Although Callaghan is adept at recognising and engaging with its stakeholders, customers, and potential customers, I consider there is more Callaghan can do to engage with the broader public. For example, Callaghan could do more to analyse information demand, in order that it releases not just the stories it wishes to tell about itself, but what the New Zealand public want to know. I will discuss Callaghan’s approach to proactively releasing information further, under Internal policies, procedures and resources.

As Dame Beverley Wakem noted in Not a Game of Hide and Seek:6

> The purposes of the OIA make it clear that this was never intended to be the sole mechanism by which the public could find out about the activities of the government. Section 4(a)(i) in particular states that one of the purposes of the OIA

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is ‘to increase progressively the availability of official information in order to enable the more effective participation in the making and administration of laws and policies’. This does not restrict its scope to availability in response to a direct request, but envisages a progressive opening of the doors into government, whereby both reactive and proactive openness combine to create the necessary environment to facilitate participation.

I encourage Callaghan to establish a clear policy around public engagement, which should then be incorporated into its strategic planning. The Department of the Prime Minister and Cabinet has a ‘policy tool-box’ for public participation on its website, which may assist Callaghan in this respect.7

In line with the above, Callaghan’s strategic plan should also ideally include clear commitments to openness, transparency and the availability of official information. During the course of my investigation, I could find no overarching public statement of Callaghan’s commitment to transparency and openness within strategic documents or on Callaghan’s website, and this provides an opportunity for improvement.

In addition, Callaghan should consider its values and strategies around embedding principles of openness, transparency and the importance of the OIA into its culture, and include messaging to this effect in its strategic plan and other corporate documents.

### Action points

<table>
<thead>
<tr>
<th>Develop a policy around public engagement and incorporate this into strategic documents</th>
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<tbody>
<tr>
<td>Incorporate principles around openness, transparency and the importance of the OIA into strategic documents</td>
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### Callaghan’s response

As noted in my foreword, Callaghan has accepted all my suggested action points. In relation to my suggestion to develop a policy around public engagement, Callaghan has noted that it ‘engages extensively with the innovation ecosystem’.

I strongly encourage Callaghan to consider ways it can also engage with the broader public.

### System for staff to identify improvements

Callaghan states that staff are able to suggest improvements to its OIA processes and practices. However, it is not evident that there is a mechanism in place for staff to do so, nor is there consistent encouragement from leaders to identify such opportunities. Provision of such a system has the potential to obtain innovative ideas from staff, which may enhance Callaghan’s OIA processes.

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Action point

Leaders to champion a system for staff to identify and communicate opportunities for improvements to OIA policies and practice

Public perception

In order to gain a full picture of the public’s perception of Callaghan, I invited stakeholders to answer a survey about Callaghan’s OIA practices. Due to the low number of responses received, little can be inferred from the results of this survey. However, a representative of the Taxpayers’ Union (TU) used the survey to raise some concerns about its interactions with Callaghan around OIA requests.

The TU advised me that it held information to suggest its requests to Callaghan were treated ‘differently’ to others, and it therefore felt compelled to anonymise its information requests. Its use of fictitious names to submit requests received some attention in the media. This informed, in part, my decision to include Callaghan in the current round of official information practice investigations.

It is not unlawful for OIA requesters to use fictitious names, although, as I have stated publicly in the past, it is a shame that requesters resort to subterfuge in order to use the OIA. I consider that the exchange between the agency and the requester may be more useful and productive where both parties engage with each other transparently.

There are some instances where it may be appropriate to treat requests ‘differently’; for example, a request may be prioritised above others where the requester can show valid reason why it should be treated with urgency. However, it would be concerning if an agency’s approach to responding to requests was influenced by the identity of the requester in a way that resulted in a breach of the agency’s obligations under the OIA.

The TU’s concerns about Callaghan’s treatment of its OIA requests were not borne out by my review of Callaghan’s responses to TU requests, compared to its responses to requests from other individuals and organisations. Information gathered through exploring the concerns raised by the TU has informed some of my comments throughout this chapter.

Although little can be concluded about the general public’s perception of Callaghan based on the response rate to my survey of stakeholders, I note that, when asked to rate Callaghan’s openness relative to other central government agencies, 67 percent of respondents rated Callaghan the least open.

As I discussed earlier in this chapter, Callaghan’s CE has voiced her commitment to transparency. I have also discussed how the messaging to staff can be improved, in order to embed this commitment and promote a culture of openness. There is now a great opportunity for Callaghan to visibly demonstrate its commitment through its actions. For example, this may

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8 There were 12 responses to the stakeholder survey, however, only ten may be considered valid as two did not provide a name and/or email address.

include the proactive release of information, including information about Callaghan’s OIA practices, which I will discuss in more detail under Internal policies, procedures and resources.

I am optimistic that by improving the availability of information about its work, combined with improved internal and external messaging about its commitment to openness, Callaghan can have a profound impact on its public perception.
Organisation structure, staffing, and capability

At a glance

What is going well

- The 'mixed' model of OIA handling appears an appropriate fit for the agency
- Callaghan has done well to improve OIA timeliness compliance, even during a spike in the number of OIA requests

Opportunities for improvement

- Training should be expanded to ensure all staff receive OIA training at induction, and those in key roles receive targeted training
- The Chief Executive's delegated authority for OIA decision making should be clarified and formalised
- More can be done to ensure resilience within the Ministerial Services team

Responding to official information requests is not only a legal requirement but a core function of the public sector. Therefore, it is expected agencies will organise their structure and resources to ensure they are able to meet their legal obligations under the OIA, in a way that is relevant to their particular size, responsibilities and the amount of interest in the information they hold.

To assess Callaghan’s organisational structure, staffing and capability, I considered whether:

- Callaghan had the capacity to discharge its official information obligations, with clear and fully functioning roles, accountabilities, reporting lines, delegations and resilience arrangements; and
- Callaghan had the capability to discharge its official information obligations.

After discussing aspects that are going well for Callaghan, I identify some opportunities for improvement.

Aspects that are going well

Callaghan employs a ‘mixed’ model of handling OIA requests. In this model, the Ministerial Services team performs the administrative functions of assigning OIA requests to the relevant business unit, tracking the progress of OIA requests, applying redactions, and providing technical guidance on the OIA and on Callaghan’s OIA process. Staff in the relevant business
unit have responsibility for drafting the response, and the Records team assist in searching for data where necessary. Given the subject matter expertise required to respond to complex requests for information, and the typically low number of requests received by Callaghan, this model appears to be an appropriate fit.

Since SSC began publishing OIA timeliness statistics, beginning from the 2015/16 financial year, the number of OIA requests received by Callaghan has varied greatly, ranging from 16 OIA requests in the 2015/16 year, to 67 OIA requests in 2017/18.

I commend Callaghan for not just coping with this precipitous increase, but actually improving its timeliness compliance during this time, from 81 percent in 2015/16 to 94 percent in 2017/18.

The variation in the number of OIA requests Callaghan receives from year to year, demands a resilient system with effective escalation processes. I understand that where escalation of an OIA request is required, the Ministerial Services team will directly approach the relevant GM. Ninety-six percent of staff survey respondents said they found the escalation process effective.

Although the ‘mixed’ model and escalation processes appear to have functioned effectively to date, more can be done by Callaghan to ensure its systems are resilient during busy times and in the event of the sudden absence of key staff. I will discuss this further under Resilience within Ministerial Services team.

Opportunities for improvement

There are opportunities for improvement in relation to:

- OIA training, including targeted training to decision makers and communications staff, as well as regular refresher sessions;
- ensuring resilience in the Ministerial Services team; and
- formalising and clarifying delegated authority for ‘decision makers’.

Training

The *Not a Game of Hide and Seek* investigation found that an effective training framework should encompass:10

- training at induction;
- introductory basic awareness of key OIA principles;
- advanced courses for specialists covering, for example
  - proper application of the public interest and harm tests;

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10 *Not a Game of Hide and Seek*. (December 2015): 65.
- dealing with broad, complex requests covering a large volume of information; and
- refresher courses.

Callaghan does not currently deliver any OIA training to its staff, though an online induction training module is under development. I am aware that Callaghan may lack the capacity to deliver regular group training sessions to its staff and, in any case, may not have enough staff as attendees to render this efficient. I am also aware that the Ministerial Services team offers guidance to staff where there is a need, and where it has capacity to do so.

I suggest Callaghan adopts training solutions that are within its capacity and fit for its size. Some options for Callaghan to consider may include web-based training modules—of which one is already under development—and/or partnering with another agency, such as the Ministry of Business, Innovation and Employment, to develop and deliver training sessions. In addition, members of my staff are available to deliver OIA training, and to assist in the development and/or delivery of a training programme, including the type of training required for different roles (for example, targeted training for the media team as discussed below, under Current Practices) and for different levels of seniority.

In particular, decision makers at the third tier management level and above should receive targeted training to ensure they are aware of any changes to legislation and current Ombudsman guidance; and so they are able to appropriately apply the provisions of the OIA, including the public interest test. This will help to ensure Callaghan’s decisions on OIA requests are robust and internally consistent.

While some senior managers have experience in the public sector, and all have access to support in the Legal and Ministerial Services teams, relying on an individual’s knowledge and past experience to make the appropriate decisions leaves Callaghan vulnerable to unintended poor practice and decisions that are passed on to other staff, and then embedded into current practice.

### Action points

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<tr>
<td>Develop and implement OIA training for all staff at induction</td>
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<tr>
<td>Develop and implement targeted OIA training for GMs, managers, decision makers and those who triage information requests, including the media team</td>
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### Delegations

While the Chief Executive of Callaghan is the accountable decision maker on requests for official information, for practical reasons this authority is delegated to certain staff members at tiers two and three. I am advised by Callaghan that the delegations are outlined in its OIA Procedures Manual, which states:

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11 See s 14(4) OIA.
The response will then need to go through the manager of stakeholder and government engagement, the General Manager of Marketing, Engagement and Experience and possibly to the Chief Executive...

As this is the only detail around the delegated authority it is unclear, for example, whether staff who are acting temporarily in the named roles assume this delegation.

In line with the State Sector Act 1988, I suggest the Chief Executive clarify, in writing, the scope and terms of their delegated authority in this respect.

**Action point**
Confirm and clarify Chief Executive’s delegated authority for OIA decision makers

Resilience within Ministerial Services team

Notwithstanding my above comments about Callaghan’s mixed model of OIA handling, there is a risk in relying on one staff member to administer the OIA process, particularly if that staff member is unexpectedly absent. Callaghan must ensure that a sufficient number of staff in the Ministerial Services team have access to, and are familiar with, the use of the existing spreadsheet. It would also be prudent for another staff member to regularly check the spreadsheet as a ‘back up’, to minimise inevitable human error and oversights.

**Action point**
Ensure Ministerial Services staff have access to, and understand how to use the OIA tracking spreadsheet, and ensure back-up checks are built into the process

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See s 41(1).
Internal policies, procedures and resources

At a glance

What is going well

Callaghan has produced guidance on the use of its primary information management system, and on staff’s record-keeping obligations

Although Callaghan has produced OIA guidance for staff, some work can be done to enhance this

Callaghan may benefit from developing a policy for the proactive release of information

Callaghan is in the process of implementing a new information system, which should be accompanied by appropriate training and guidance

Opportunities for improvement

While it is not a legislative requirement, nor an assurance that compliance with the OIA will follow, I do expect as a matter of good practice that Callaghan develops or adopts policies and procedures that will assist staff to apply the requirements of the OIA consistently. In addition, staff should be supported by good systems, tools and resources that will enable them to effectively process requests and make good decisions consistent with the provisions in the Act.

To assess Callaghan’s internal policies, procedures and resources, I considered whether it had accurate, comprehensive, user-friendly and accessible policies, procedures and resources that enable staff to give effect to the OIA’s principle, purposes and statutory requirements. This includes policies, procedures and resources in relation to:

- dealing with official information;
- records and information management; and
- proactive release of information.

After discussing aspects that are going well for Callaghan, I identify some opportunities for improvement.
Aspects that are going well

Callaghan has induction guidance for staff on the use of its primary IM system, ‘Edi’, which is a SharePoint system. It has also a Records Management Policy and a document detailing Records Management responsibilities which, together, detail:

- creation, maintenance and storage of records;
- what a ‘record’ is;
- information security;
- disposal of records; and
- assigned responsibilities for different roles.

I am aware that Callaghan is in the process of transitioning to a Cloud-based IM system and I discuss this further under Information management system.

Callaghan has produced two documents to assist staff in processing OIA requests, and in understanding their obligations under the OIA. These documents are ‘Official Information Act (OIA) policy’ (the policy document) and ‘OIA Procedures Manual’ (the procedures manual). Both documents are succinct and written in plain English. They are also highly accessible to staff, with 76 percent of respondents to the staff survey answering that the guidance is ‘very easy’ or ‘moderately easy’ to find.

The procedures manual includes links to helpful information such as relevant legislation, the Ombudsman website, Ministry of Justice charging guidelines, and the SSC’s OIA guidelines. The policy document describes clear lines of accountability at each stage of the OIA process. Some amendments can be made to these documents to enhance their utility for staff, which I will discuss further below, under OIA guidance.

Opportunities for improvement

There are opportunities for improvement in relation to:

- Callaghan’s policy document and procedures manual, to which a number of amendments are suggested;
- information management systems; and
- development of a policy for the proactive release of information.

OIA guidance

Callaghan’s policy document and procedures manual, referenced above, require some amendments to improve their accuracy and avoid confusion for staff.

I note that neither the policy document nor the procedures manual defines ‘official information’ or explains how to identify an official information request. It is important that staff are able to recognise OIA requests when one is made, rather than defining requests by
the channel through which they are submitted. Many requests submitted to agencies’ media teams, for example, are official information requests under the definition of the OIA but staff may not view them as such because they are handled outside a formal OIA process.

Note that this does not mean that all requests for information must be sent to the OIA processing team; merely that the staff member dealing with the request must be aware of their obligations to the requester under the OIA, particularly if any aspect of the request is declined. If staff are not aware of their obligations the agency is at risk of breaches of the OIA.

I consider this could be a particular risk for an organisation such as Callaghan in which there are multiple pathways for information requests to be received, and no specific training for staff around how to identify an OIA. I will discuss this further under Current practices.

I am pleased to note that Callaghan’s OIA policy document includes reference to the ‘principle of availability’, a key tenet of the OIA which is articulated in Section 5 of the legislation:

The question whether any official information is to be made available...shall be determined...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.

However, Callaghan has interpreted the principle as follows:

The principle of availability means that when in doubt you should err on the side of caution and make the information available.

I am concerned that this oversimplifies the principle of availability and leaves the agency at risk of releasing information without giving due consideration to the conclusive and good reasons for withholding information outlined in sections 6 and 9 of the OIA, respectively, and (where section 9 may be applicable) the countervailing public interest considerations outlined in section 9(1) of the OIA. This approach also overlooks other options provided within the OIA for managing risks which might arise from disclosure, for example, allowing inspections of documents, or providing summaries of information.

Callaghan’s OIA procedures manual lists ‘common reasons for redactions/withholding information’. This highlights some withholding grounds from sections 6 (conclusive reasons) and 9 (good reasons) of the OIA on which it has most frequently relied. There is little guidance within this document on how to approach decisions on withholding information, and what factors should be taken into consideration when doing so.

Callaghan’s guidance document advises staff that some information is ‘usually’ withheld in relation to specific, named businesses. I am concerned that this will result in information being withheld as a matter of course, without due consideration being given to the particular circumstances of each request. I would therefore suggest the guidance document is updated to highlight that withholding grounds must always be considered on a case-by-case basis. This should also be emphasised in training for staff.

In neither document is there guidance on, or indeed mention of, the public interest test. I strongly suggest Callaghan’s guidance be updated to include the fact that, where reason to withhold information exists, this must be weighed against any countervailing public interest,
pursuant to section 9(1) of the OIA. This should also be highlighted in training for staff. Callaghan may wish to note that a guidance document on the topic of public interest is available on the Ombudsman website that can assist.¹³

Callaghan also lacks guidance on how to manage administratively challenging requests under Part 2 of the OIA. This part of the Act contains tools to guide agencies when managing a large volume of requests, or broad requests. These tools include using the extension provisions appropriately, charging for information, and when and how to apply the grounds related to substantial collation and research. Policies on the application of these provisions may be a useful addition to the guidance provided to Callaghan staff.

Part of Callaghan’s work is to make decisions on funding, grants, and awards which may affect individuals or body corporates in their personal capacity. As such, it is particularly important that Callaghan be aware of the distinctions between requests made under the Privacy Act and Parts 3 or 4 of the OIA, and that guidance on this is made available to staff. In the absence of such guidance, Callaghan could be vulnerable to making errors by applying the wrong Act or the wrong part of the OIA when making decisions on requests.

I suggest the following aspects be included or expanded upon in the revised guidance document:

- the appropriate application of administrative reasons for refusal (Part 2 of the OIA)
- requests for information on internal decision-making rules and requests for statements of reasons (Part 3 of the OIA);
- requests by corporate entities for personal information (Part 4 of the OIA);
- requests for personal information about an identifiable individual which should be considered under the Privacy Act;
- the duty to consider consulting with requesters in certain circumstances;
- dealing with urgent requests;
- how to apply the withholding provisions and the public interest test;
- how to scope the request and ensure all relevant information is identified;
- documenting searches undertaken for the information within the scope of the request;
- documenting reasons for each item of information withheld and the agency’s consideration of the public interest; and
- a clear statement about where responsibility rests for Ministerial OIA requests.

Finally, I note that Callaghan’s procedures manual includes a link to a document on the Ombudsman website, referring to a checklist for responding to information requests. The

linked document is a guide to the Local Government Official Information and Meetings Act, which is not applicable to central government agencies. Callaghan should have provided a link to the parallel document on the Ombudsman website which provides guidance on the OIA. While the steps for responding to requests are substantially similar between the two documents, directing staff toward incorrect legislative guidance may be confusing, and could lead to errors.

**Action point**

Revise OIA guidance documents incorporating my suggestions

**Information management systems**

Callaghan Innovation was formed in 2013 from an amalgamation of several different agencies and parts of agencies. The legacy of being formed in this way is that Callaghan has a range of disparate information management (IM) systems in which data is stored. This offers an extra level of complexity when staff are required to search not just one centralised IM system, but multiple systems in order to find the information within the scope of an OIA request. The difficulty in navigating these systems to find information was a common theme among staff we spoke to.

Prior to my investigation, Callaghan had already initiated a project to transition to a Cloud-based system to consolidate and streamline the multiple existing IM systems. This transition is part of Callaghan’s Digital Strategy, which includes improvements to its IM systems, and the introduction of automated workflows. I am advised that migrating data from legacy systems into the new IM system is an intended part of this strategy, which will make it significantly easier to retrieve information requested under the OIA.

Callaghan has the opportunity to design and implement its new IM system in a way that improves the efficiency of capturing, storing, search and retrieval of information to support its overall capabilities and performance. I encourage it also to consider how the system can support the proactive release of information, and the agency’s ability to respond to OIA requests.

Until its Digital Strategy is fully realised, Callaghan must remain aware of the limitations of its current IM systems, and ensure it has processes in place that will mitigate any risk of information being overlooked when it is searched for in the context of an OIA request. From the OIA perspective, it is important that the Records team are embedded in the OIA process, and that staff are aware the Records team can offer assistance where document searches are required.

It is also important that the introduction of the new IM system should be accompanied by updated guidance documents and comprehensive training for staff.
**Action point**

Consider how the new IM system can be developed and implemented in a way that facilitates the agency’s ability to respond to OIA requests, and ensure the introduction of the system is accompanied by appropriate guidance and training.

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**Proactive release policy**

Callaghan proactively releases some information on its website, including:

- corporate documents such as its annual reports, statements of intent, and briefings to incoming Ministers;
- formation and background documents;
- Performance Improvement Framework (PIF) reports (reports from Callaghan’s proactive self-reviews are on its website; the formal review undertaken in 2016 is accessible via a link to the SSC website); and
- entertainment expenses for the 2015/16 and 2016/17 financial years (these are accessible through the ‘News and events’ section of Callaghan’s website, though I note that the link to these documents under the ‘Publication and documents’ section does not work).

Callaghan does not have a written, proactive release policy though it has reported to me that one is being drafted and that the Group Manager Market, Engagement and Experience is responsible for its delivery. Though it lacks a policy for the proactive release of information, staff advised me that discussions take place at the ELT level about opportunities to proactively release information. Callaghan’s decision to publish entertainment expenses for the 2015/16 and 2016/17 financial years is an example of Callaghan making a strategic decision to use the proactive release of information to improve its reputation for transparency.

Because a proactive release of information policy is currently under development, now is an ideal time for Callaghan to also consider how it might also use the proactive release of information to manage OIA demand, and to make it easier for the general public to engage in and to understand the work that it does.

As I discussed earlier under *Organisation structure, staffing and capability*, Callaghan has a small Ministerial Services team, which makes it more vulnerable to sudden increases in OIA workload than a larger agency might be. It experienced the effects of such a spike in the 2016/17 financial year, when the number of OIA requests it received increased to 67, from 16 in the previous year. Proactively releasing information may reduce the number of OIA requests Callaghan receives, and may encourage requesters to make more targeted requests for information that is clearly held rather than broad, unspecific requests covering a general area of interest, which can be time consuming for agencies to respond to.

Once updated, Callaghan may benefit from proactively releasing its OIA policy, discussed earlier under *OIA guidance*. Where agencies have reasonable and clearly articulated policies
for issues such as charging for the provision of information; checking the eligibility of requesters; and how it will consider requests for urgency, it will be less vulnerable to criticism when it applies these policies.

In addition, proactively releasing certain information such as OIA responses and entertainment expenses may result in enhancement of the public’s perception of Callaghan’s transparency, which I discussed earlier under Leadership and culture. The trust and confidence benefits linked to increased openness and transparency can also be used to motivate continuing improvement in this area.

A proactive release policy could usefully include:

- a high level commitment to proactively releasing information;
- the types of information that will be proactively released. For example:
  - information that has been released in response to OIA requests;
  - information described in section 20 of the OIA about the agency and the information it holds;
  - information described in section 22 of the OIA about the agency’s internal decision-making rules, including its OIA policies and procedures;
  - strategy, planning and performance information;
  - financial information relating to income and expenses, tendering, procurement and contracts;
  - information about work programmes and policy proposals;
  - information about public engagement processes, including public submissions;
  - information relating to policy development, including Cabinet papers;
  - minutes, agendas and papers of advisory boards or committees; and
  - information about regulatory or review activities carried out by agencies;
- a process for identifying opportunities for proactive release, for example, where a high number of OIA requests is received about a subject, or there is otherwise high interest in the topic;
- a process for preparing for proactive release, including managing risks around personal or confidential information, commercial information, and information subject to third party copyright;
- a process for considering frequency and timing of publication;
- a commitment to releasing information in the most useable form (in accordance with the New Zealand Government Open Access and Licensing framework); and
- provision for the policy to be regularly reviewed and updated.
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<td>Prioritise the development of a proactive release policy</td>
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Current practices

At a glance

What is going well

Callaghan has achieved a laudable improvement in OIA timeliness performance
Generally, Callaghan adheres to its obligations under the OIA
Callaghan’s information management team are embedded in the OIA process, which helps to ensure all information within the scope of an OIA request has been captured

Opportunities for improvement

A policy should be developed to guide interactions with Ministers’ offices
More can be done to adequately record the decision-making process for OIA requests
Callaghan must ensure all OIA requests are considered on a case-by-case basis
Use of template letters could be more consistent, and responses should be signed out by the decision maker
Media and other information requests must be handled in accordance with the provisions of the OIA

The effectiveness of the OIA is largely dependent on those who implement it on a day-to-day basis and how they apply the resources available to them to manage the realities of giving effect to the Act.

To assess the current practices of Callaghan, I considered whether:

- Callaghan’s official information practices demonstrate understanding and commitment to the principles and requirements of the OIA;
- Callaghan’s staff have a good technical knowledge of the OIA; and
- Callaghan is coping with the volume and complexity of requests, and decisions are compliant.

After discussing aspects that are going well for Callaghan, I identify some opportunities for improvement.

Aspects that are going well

Generally, Callaghan’s practices allow it to comply with its obligations under the OIA. In particular, I note a good awareness and adherence to statutory timeframes for extensions and transfers and a willingness to engage with requesters to refine and clarify their requests.
Based on discussions with staff, I understand that Callaghan’s IM team are heavily involved in the OIA process, providing support by conducting searches for information. I consider it is good practice for IM subject matter experts to be engaged in the OIA process, particularly because Callaghan’s IM systems are reported by staff to be difficult to navigate, as I discussed earlier, under Internal policies, procedures and resources.

Opportunities for improvement

There are opportunities for improvement in relation to:

- Callaghan’s interaction with Ministers on OIA requests;
- documenting the decision making behind OIA responses, including consideration of the public interest;
- the use of template response letters; and
- handling media and other information requests in accordance with the OIA.

Interaction with Ministers on OIA requests

As part of my investigation, Callaghan provided my office with a sample of its OIA files. The files included the email correspondence between Callaghan and its Minister’s office in relation to proposed departmental OIA responses. I saw examples of Callaghan forwarding its proposed OIA responses to its Minister’s office without making it clear whether the responses were solely for the information of the Minister, or whether consultation was being sought. However, in other cases, Callaghan invited comment from Ministers’ offices on responses concerning matters which do not obviously need Ministerial input, including operational matters.

Based on discussions with staff in Callaghan’s Ministerial Services team, it is clear that they are aware of the distinction between:

1. consultation—being a mechanism that allows an agency to seek the Minister’s input before making a decision on a request; and
2. notification to the Minister, for their information only, of a decision Callaghan has made on a request.

However, in practice, it appears that Callaghan is not making a clear distinction to its Minister’s office on which basis it is proffering the response. This could lead to confusion for both parties. It could also result in a situation where Callaghan may feel compelled to amend a response on the advice of the Minister’s office when advice was not required.

I consider that the tone of the relationship between the agency and Ministers should be role-modelled at the level of the Chief Executive and supported by messaging from the top down. Staff need to have confidence that their leaders will support them if they need to push back on any inappropriate input from Ministers’ offices on an OIA response or if, in order to fulfil timeliness obligations, an OIA response must be sent to the requester before the Ministers office has responded.
I encourage Callaghan’s leadership to take an active role in developing policies and procedures, in conjunction with its Minister, for interactions between the agency and Ministers. I recently published guidance on *Dealing with OIA requests involving Ministers*, which may assist with this.

Callaghan routinely refers substantive OIA responses to the relevant Minister’s office five days in advance of the statutory 20 working-day deadline. I understand that there have been very few recent instances in which genuine, formal consultation with Ministers has been required in order to assist decision-making on a request; rather, responses are typically sent for the information of the Minister under the Cabinet Manual’s ‘no surprises’ principle, though as discussed above, this may not always have been made clear.

I understand that it is appropriate for Ministers to be made aware of requests that may result in questions in the House or from the media on sensitive or controversial issues. However, Callaghan’s ‘no surprises’ obligation to the Minister may be met by providing a copy of Callaghan’s decision to the Minister at the same time, or shortly before, it is sent to the requester. A delay of up to five working days in cases where input from the Minister is not required puts Callaghan at risk of failing to meet its legal obligation to make and communicate a decision on an OIA request ‘as soon as reasonably practicable’ and, once Callaghan has made its decision, to release information ‘without undue delay’. It also enables suspicion and mistrust to grow as to the politicisation of Callaghan’s decision.

I was also advised by staff that, in the event a Minister’s office does not provide input or approval on a response within the 20 working-day deadline, Callaghan’s response may be delayed until this is received. I must stress that I would find it unacceptable for an OIA response to be delayed beyond the statutory deadline because an agency was awaiting comment on a response sent to a Minister’s office under the ‘no surprises’ principle.

**Action point**

Undertake a review of policies and procedures on ministerial involvement with OIA responses, in conjunction with relevant Ministers’ offices

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**Documenting decision-making and administrative steps for OIA responses**

It is important for a number of reasons for an agency to keep a comprehensive record around its decision making on OIA requests, because doing so:

- will enable the agency to provide grounds in support of its reasons for refusing an OIA request, if they are sought by the requester;\(^{15}\)
- will be easier to respond to an Ombudsman in the event of an investigation of a complaint; and

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\(^{15}\) See s 19(a)(ii) OIA.
• provides an opportunity to create a repository of knowledge about how the agency makes decisions on OIA requests, thereby developing a consistent approach. (I discuss this further below, under Performance monitoring and learning).

Callaghan keeps a spreadsheet to log and monitor OIA requests, and to collect data on OIA performance measures. It appears that the spreadsheet is also sometimes used to collect limited details about the decision making on requests. In many cases though, Callaghan’s decision-making process is not documented and can only be inferred from associated documents, such as internal emails, in individual OIA files. In cases where the staff member drafting the response conducts consultations verbally rather than via email, there may be no complete record of the decision making process.

As I discussed above, (under Internal policies, procedures and resources) the decision making process in relation to OIA responses must include a genuine consideration of the public interest where section 9 withholding grounds apply, and this should be detailed in Callaghan’s documentation of its decision making.

Where appropriate, Callaghan should also document administrative steps in relation to processing OIA requests. Documenting the steps taken to search for information, and the number and type of any documents located, can assist staff handling similar requests in future, particularly if the request is for a broad range of information. In addition, recording the time taken to collate a sample of documents within the scope of a request for a large amount of information can assist Callaghan in responding to an Ombudsman’s investigation where a complaint is made about a refusal under section 18(f) of the OIA, or about a decision to charge for the supply of information.

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<td>Record reasons for OIA decisions, including consideration of the public interest if applicable, for example in a covering memo or file note which is accessible to staff. If the final decision is to refuse, this reasoning should include the basis for the decision, and the details and outcome of any consultations involved</td>
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<tr>
<td>Record administrative steps behind OIA responses where this may be necessary</td>
</tr>
</tbody>
</table>

Withholding grants information

Although its OIA guidance does not specifically mention its approach to requests about Growth grants, my discussions with some Callaghan staff members indicate that an ‘unofficial’ practice of declining requests for the amounts paid in Growth grants to individual organisations, may have developed. It is my understanding that the rationale behind this practice is that the amount paid as a Growth grant indirectly reveals the organisation’s Research and Development (R&D) expenditure, as Growth grants were based on a fixed percentage of this figure.¹⁶

¹⁶ Growth grants have now been replaced with the R&D tax incentive
The withholding of information related to Growth grants suggests a ‘class withholding’ approach. This ignores the agency’s obligation to consider OIA requests on a case-by-case basis, including the public interest factors that may apply in each case, and may differ in different circumstances. Adopting a blanket approach to withholding grounds leaves agencies vulnerable to making decisions that are not compliant with the OIA.

I have not associated an ‘Action point’ to my comments on this matter, as this ties in with my previous comments under Internal policies, procedures and resources in which I suggested that the OIA guidance document is updated to highlight that withholding grounds must always be considered on a case-by-case basis. This should also be emphasised in training for staff. It would then be expected that practice would align with Callaghan’s policy.

Use of response template letters

Many agencies use template response letters tailored to different scenarios, (extension of time limit for decision, consultation with third party, transfer to another agency, etc.) in order to expedite their responses and to ensure that the provision of key information, such as the applicant’s right to complain to the Ombudsman in the event information is refused, is not overlooked. I have published template letters on the Ombudsman website for the assistance of agencies.

Callaghan has advised me that it has not created its own template response letters because it uses those published on the Ombudsmen website. Based on my review of the sample OIA files Callaghan provided for the purpose of my investigation, it does not appear that it is using the templates consistently, using only excerpts of the wording from my template letters in its responses. For example, Callaghan uses an excerpt of my template letter to acknowledge a request has been received, and the wording advising requesters of their right to make a complaint to the Ombudsman was used in all cases I reviewed, which is pleasing to see.

However, in other cases, Callaghan strayed from the wording used in my template letters and, by doing so, missed an opportunity to provide useful information to requesters. For example, in all cases I saw in which information was withheld pursuant to section 9(2) of the OIA, mention of Callaghan’s consideration of any countervailing public interest was omitted, as was any specific detail about the perceived harm in releasing information.

The lack of detail about Callaghan’s decision making in its OIA responses will only be partly addressed by Callaghan adopting my template letters in full (or developing its own). The lack of training for staff on the OIA also likely contributes to the issue, as I discussed earlier under Organisation structure, staffing and capability. Once staff gain confidence in how to consider withholding grounds, and how to apply the public interest test, I am hopeful that this will be reflected in their communication with requesters.

I also note that Callaghan sends its OIA responses without a named person as a signatory. In almost all the cases I reviewed, Callaghan’s response was signed by ‘Ministerial Services’. In the interests of accountability of the decision maker, and in transparency for the requester in relation to whom they are corresponding with, Callaghan may wish to consider including a named signatory in its OIA responses.
**Action points**

| Review the use of template response letters and ensure key information for requesters is included in OIA responses |
| Review practices around the sign out of OIA responses by decision makers |

**Media and other information requests**

Callaghan has a media team responsible for responding to straightforward information requests from the media. I understand the need for a mechanism to swiftly process requests according to the demands of the 24-hour news cycle. However, Callaghan must be mindful—as must all agencies—that such requests are governed by the OIA. This makes little practical difference when the media team is able to fully meet the requester’s needs in their preferred timeframe but, if not, it is essential the OIA is complied with in all respects.

In particular, decisions on requests from the media to decline in full or in part must be communicated in accordance with section 19 of the OIA, which requires that an agency:

- provide the reason for the refusal and, if requested, the grounds in support of that reason; and
- advise the requester that they may make a complaint to the Ombudsman and seek an investigation and review of this decision.

The same is true for information requests received through other pathways, such as the websites for commercial arms of Callaghan (such as Glycosyn and the Measurement Standards Laboratory) which it administers. I understand that straightforward requests for information submitted through these sites may be handled outside the ‘formal’ OIA process, while those identified as OIA requests are forwarded to the Ministerial Services team. However, because no training or guidance is given to staff on how to identify OIA requests, I cannot be confident that requests are always correctly identified, or handled in line with the requirements listed above.

I wish to stress that I am not suggesting that every information request received should be funnelled through the Ministerial Services team; only that Callaghan must ensure that all information requests are handled in accordance with the provisions of OIA. This should include providing specific guidelines and training for the media team and all customer-facing staff on how to recognise an OIA request, and their obligations under the OIA. Callaghan may wish to note that staff in my office can be contacted to assist with the development and delivery of training.

I further discuss the tracking of media requests, and their inclusion in OIA reporting statistics under *Performance monitoring and learning.*

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17 This applies only to requests seeking information already held by Callaghan as described, not requests for the creation of new information, such as a request for comment on an issue.
**Action point**

Ensure that all information requests are handled in accordance with the provisions of the OIA.
Performance monitoring and learning

At a glance

The OIA does not impose specific requirements on agencies in relation to record keeping and management of requests they receive for access to information. However, the Ombudsmen have consistently advocated maintaining a full audit trail for any decision made by an agency. Formulating a decision on a request for access to official information is no different. Once this information is recorded, agencies have a wealth of information that can be used to inform business planning and future decisions concerning access to information—but only if it is captured in a way that is meaningful, facilitates subsequent analysis, and regular monitoring and reporting occurs.

To assess performance monitoring and learning of Callaghan in relation to requests for official information, I considered whether:

- Callaghan has an established system for capturing meaningful information about its official information activities and established appropriate and relevant performance measures;
- there is regular reporting and monitoring about Callaghan’s management performance in respect of official information requests; and
- Callaghan learns from data analysis and practice.

After discussing aspects that are going well for Callaghan, I identify some opportunities for improvement.
Aspects that are going well

The Ministerial Services team logs all OIA requests into a tracking spreadsheet, together with an entry into its IM system, Edi, for each OIA request. Callaghan is able to extract information from this spreadsheet about the number of requests, key dates of statutory time limits, when a response was sent, the number of extensions, the length of extensions, and whether the Minister was consulted on the decision. In order for Callaghan to find information about, for example, the reasons for extensions or transfers, each individual OIA file would need to be searched. The spreadsheet system appears to have functioned adequately, to date, but there are risks in relying on this method, which I will discuss further below, under Opportunities for improvement.

There is an ad hoc system for disseminating guidance released by my Office and SSC, with selected individuals receiving updates and distributing these to relevant individuals. The same applies for communicating the outcome of any investigations I may have completed.

Opportunities for improvement

There are opportunities for improvement in relation to:

- formalising performance targets;
- collection, analysis and reporting of OIA data;
- the creation of quality performance measures and an improved quality assurance process;
- the recording of the decision making process; and
- formalising a system to disseminate Ombudsman and SSC guidance and feedback.

Performance targets and monitoring

Based on discussions with staff, it seems there is a tacit assumption that the organisational OIA performance target is to achieve 100 percent timeliness. However, this is not articulated in any internal documents, or in Callaghan’s Strategic Intentions or Annual Report. This also seems to be Callaghan’s only performance target, spoken or unspoken. At this stage, there are no qualitative measures or targets, which I will discuss further below, under Quality measures.

Improvements in performance and in staff engagement in the OIA process may be made by implementing performance targets, making these known to staff, and making good performance against these targets visible. This also aligns with my earlier comments, under Leadership and culture, about the importance of clear messaging from senior leaders around the importance of the OIA and openness.

As mentioned above, Callaghan uses a spreadsheet to monitor the progress of OIA requests. The spreadsheet is administered by the Policy Advisor, Ministerial Services. The system of tracking responses and ensuring timeliness is reliant on this staff member correctly logging OIA
requests, and regularly consulting the spreadsheet to identify where responses are at risk of being late. There is a risk in relying on one staff member to administer the OIA process, which I discussed earlier, under *Organisation structure, staffing and capability*.

I understand that Callaghan’s Digital Strategy, discussed earlier under *Internal policies, procedures and resources*, includes a transition to automated workflow systems which should minimise the risks in manually tracking OIA progress.

**Action point**

Implement OIA performance targets and make these known to all staff

### Analysis and reporting of OIA performance data

Callaghan advised that the Manager, Stakeholder and Government Engagement reports to ELT on an ‘as required’ basis, rather than on a regular schedule. My impression is that reporting to ELT will take place when there is a risk to OIA timeliness.

With the focus on timeliness reporting, Callaghan is missing the opportunity to report to its leadership on emerging themes or trends, opportunities for proactive release, resourcing, capacity or capability issues, and the outcome of any Ombudsman investigations. While timeliness and throughput are important, other measures (like the outcome of a request) are equally important. An undue focus on timeliness can incentivise fast, but poor quality, decisions. There is an opportunity to collect more meaningful information about Callaghan’s OIA performance. In addition to timeliness compliance rates, I encourage Callaghan to consider whether it may benefit from collecting other information, such as:

- the type of request (Part 2, 3 or 4 of the OIA);
- the type of requester;
- the number of and reason for transfers, and whether the transfer was made in time;
- the reason for extensions;
- the outcome of the request (granted in full, granted in part, refused in full);
- the number and amount of charges made and collected;
- whether the decision was notified to the Minister;
- the time from receipt of the request to communication of the decision;
- the time from receipt of the request to release of the information; and
- the reasons for delays.

Another issue to note is the importance of capturing data on information requests that are sent to Callaghan’s media team. At present, these are recorded by that team’s own tracking system, but are not included in OIA tracking overall. This not only results in an incomplete picture of Callaghan’s reported OIA timeliness compliance, but also an incomplete picture of
Callaghan’s overall transparency and openness. The inclusion of media information requests in OIA reporting would result in a more accurate – and, in all likelihood, improved – reported rate of compliance with OIA timeliness obligations.

While Callaghan may need separate reporting systems for the Ministerial Services and media teams to gauge their respective performances and workloads, I strongly encourage Callaghan to base its reporting on OIA compliance on the combined total of OIA requests handled by both teams.

**Action points**

| Consider collecting more comprehensive data on Callaghan’s handling of OIA requests so that opportunities for improvement and for the proactive release of information can be identified |
| Report OIA data to senior leadership on a regular basis |
| Include OIA requests handled by the media team in OIA statistical reporting |

**Quality measures**

At present, Callaghan does not have a clearly outlined peer review process, though all responses are reviewed by the signatory, a third or second tier Manager and, in some cases, the CE. The system for approaching the Legal team for advice when considering applying withholding grounds is ad hoc, and doing so is not a requirement.

There would be merit in Callaghan developing a more formalised system for peer review or quality assurance, to ensure consistency of decision making and the identification of risk, particularly where information relates to the interests of third parties. This might include peer review with a set of criteria that each response is to be assessed against, and/or a random quality assurance check of closed files on a regular basis. Better analysis and tracking of OIA data, along with quality and performance measures related to OIA performance, would enable Callaghan to identify areas for improvement such as:

- an enhanced ability to track themes of requests and identify opportunities for proactive release;
- an ability to identify areas of weakness where additional training or support may be needed;
- a system where it is better able to assess and quantify the level of resourcing it needs to adequately respond to the requests for information it receives, thereby bringing benefits in developing appropriate budget bids and workforce plans; and
- an understanding of how request spikes or an increase in proactive release, affect the OIA workload.
**Action points**

<table>
<thead>
<tr>
<th>Action point</th>
<th>Description</th>
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<tbody>
<tr>
<td>Reinforce and formalise the existing peer review process</td>
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<tr>
<td>Consider implementing performance measures based on quality</td>
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</table>

**Record of decision-making process**

As noted earlier under *Current Practices*, Callaghan does not appear to be taking adequate steps to record the decision-making process on OIA requests. While there is some record of consultations, there were gaps in the decision-making process in the files my staff reviewed, and no discrete place where the rationale behind the decision was clearly articulated.

The resulting information should be stored in a place where it accessible to all staff to assist as a reference point in the handling of future OIA requests.

An important aspect of performance monitoring is that it enables Callaghan to learn from its data to inform future decision making. Therefore, failure to record the outcome of past decisions can make it difficult for other staff within Callaghan to locate similar, previous requests to either ensure consistency of decision making or justified departure from any responses. Callaghan may wish to consider building a step into their decision-making process whereby similar requests are scanned, which will also help to ensure consistency of decision-making.

**Mechanisms for distributing guidance and updates**

As noted above, Callaghan currently has an ad hoc system for disseminating updates from my Office and SSC, with the responsibility for this generally resting on specific individuals. There are inherent risks with this, especially if key individuals are away, or leave Callaghan. There would therefore be a benefit to developing a formalised mechanism to share updates throughout the agency, whether this be by email, use of the intranet or meetings. This will help to ensure that the information reaches the relevant people, and create the ability to discuss best practice throughout the agency.

**Action point**

<table>
<thead>
<tr>
<th>Action point</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>Formalise the process for learning from Ombudsman and State Services Commission guidance and reflect this in OIA policies and procedures</td>
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Appendix 1.

Official information practice investigation — terms of reference

Callaghan Innovation
17 October 2018

This document sets out the terms of reference for a self-initiated investigation by the Chief Ombudsman into the practices of Callaghan Innovation relating to the Official Information Act 1982 (OIA).18

Purpose of the investigation
The investigation will cover how your agency works to meet the requirements of the OIA and achieve its purposes through its processing and decision-making on requests for access to information it holds.

The investigation will include consideration of the agency’s supporting administrative structures, leadership and culture, processes and practices, including information management public participation, and proactive release of information to the extent that these relate to achieving the purposes of the OIA.

The investigation will identify areas of good practice, and make suggestions for improvement opportunities if any areas of vulnerability are identified.19

Scope of the investigation
The investigation will evaluate Callaghan Innovation’s leadership and culture, organisational systems, policies, practices and procedures needed to achieve the purposes of the OIA, with reference to a set of indicators, grouped around the following dimensions:

- Leadership and culture
- Organisation structure, staffing and capability
- Internal policies, procedures, resources and systems
- Current practices
- Performance monitoring and learning

18 See sections 13(1) and 13(3) of the Ombudsmen Act 1975 (OA).
19 Formal recommendations under the OA will only be made if the Chief Ombudsman forms an opinion that a decision, recommendation, act, or omission by the agency was unreasonable or contrary to law under section 22 of the OA.
The investigation will include consideration of how the agency liaises with its Ministers on its preparation of responses to OIA requests that are made to the agency, and may meet with ministerial advisers working for the agency’s Minister(s).

The investigation will not consider how the agency handles requests made to the Minister, nor review any decisions made by Ministers on individual OIA requests.

A sample of decisions reached by an agency on individual OIA requests may be considered as part of this investigation, to assist the Chief Ombudsman’s understanding of the agency’s official information practices. If evidence emerges concerning specific examples of OIA breach, then a determination will be made in each case as to whether it can be addressed adequately within this investigation, or whether a separate stand-alone intervention is warranted. Any process issues which can be resolved during the course of the investigation will be rectified immediately.

Investigation process
The Manager Official Information Practice Investigations will work with a team of Senior Investigators and Investigators to assist the Chief Ombudsman conduct the investigation. The investigation team will liaise with your nominated contact official during the investigation. Information may be gathered through the processes set out below.

Information gathering
The information for the investigation will be gathered through desk research, a detailed survey of Callaghan Innovation’s official information practices, a staff survey, meetings with key staff, and a survey of key external stakeholders. As usual, any requests for information during this investigation will be made pursuant to section 19 of the Ombudsman Act 1975 and subject to the secrecy provisions in section 21 of that Act.

Desk research
A review of publicly available information including the agency’s annual reports, strategic intentions documents, and any other material made available on its website. Desk research will also review data and information held by the Office of the Ombudsman (for example, statistical data).

Surveys
A survey of the agency, including requests for the supply of internal documents about:

- Authorisations to make decisions on OIA requests
- Strategic plans, work programmes, operational plans
- Policies, procedures and guidance on responding to OIA requests
- Training materials and quality assurance processes
- Reports on OIA performance and compliance to the agency’s senior management.
- The logging and tracking of OIA requests for response
- Template documents for different aspects of request processing
- Policies, procedures and guidance on records and information management to the extent they facilitate achieving the purposes of the OIA
- Policies, procedures and guidance on proactive publication.

A survey of agency officials about their experience of the agency’s OIA culture and practice within the agency.

A survey of key media and stakeholder organisations that have sought information from the agency. The Chief Ombudsman may issue a media release that includes a link to the stakeholder survey.

Meetings

In addition to the meeting between the Chief Ombudsman and the agency’s Chief Executive, the investigation team will meet with staff within the agency as set out in the schedule below. Also included is the likely length of time required for each meeting:

<table>
<thead>
<tr>
<th>A member or members of staff with responsibility for</th>
<th>Approximate time required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strategic direction, organisation and operational performance</td>
<td>1 hour</td>
</tr>
<tr>
<td>Logging and allocating and tracking OIA requests, processing and dispatch of OIA requests</td>
<td>½ - 1 hour</td>
</tr>
<tr>
<td>Providing information in response to OIA requests.</td>
<td>½ to 1 hour</td>
</tr>
<tr>
<td>Processing and dispatching of OIA requests</td>
<td>½ to 1 hour</td>
</tr>
<tr>
<td>Decision makers on OIA requests</td>
<td>1 hour</td>
</tr>
<tr>
<td>Media/communications</td>
<td>1 hour</td>
</tr>
<tr>
<td>External relations / stakeholder engagement</td>
<td>1 hour</td>
</tr>
<tr>
<td>Website content</td>
<td>½ hour</td>
</tr>
<tr>
<td>Information management</td>
<td>½ hour</td>
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<tr>
<td>Human Resources and training</td>
<td>½ hour</td>
</tr>
<tr>
<td>Providing legal advice on the OIA, including the application of refusal grounds, when a response is being prepared</td>
<td>1 hour</td>
</tr>
<tr>
<td>Receiving public enquiries (receptionist, call centre manager if relevant).</td>
<td>½ hour</td>
</tr>
</tbody>
</table>
A summary of key points gathered from the meetings will be sent by email to the individual staff to confirm accuracy.

Other
A review of the agency’s intranet.
A review of a sample of files held by the agency on previous requests for information.

Fact checking
After all the information has been gathered, an initial summary of the facts relevant to support each of the indicators will be sent to the agency to ensure any relevant information has not been overlooked.

Reporting

Draft report
The draft report of the Chief Ombudsman’s investigation will cover the indicators and incorporate good practices as well as any issues that may have been identified during the investigation. The draft report will outline the Chief Ombudsman’s provisional findings and when relevant, identify the suggestions and/or recommendations that may be made to improve Callaghan Innovation’s official information practices. The draft will be provided to the Chief Executive for comment.

The Chief Ombudsman is required to consult with the Minister before he forms the final opinion, if the Minister so requests.\(^{20}\)

Final report
Comments received on the draft report will be considered for amendment of, or incorporation into, the final report. The Chief Ombudsman will provide the final report to the Chief Executive of Callaghan Innovation so that she can respond to the findings and suggestions and/or recommendations.

The final report will be made available to the relevant Minister(s) and published on the Ombudsman’s website.\(^{21}\)

Evaluation
Following completion of his investigation, the Chief Ombudsman will conduct a review exercise as part of his Continuous Improvement programme. This will involve seeking the views of the agency’s senior managers on their experience of this practice investigation, its value and

\(^{20}\) See section 18(4) Ombudsman Act 1975.
\(^{21}\) The Chief Ombudsman may also table a final report in the House of Representatives in specific cases/circumstances.
relevance to their improving their work practices, and how future investigations may be improved when applied to other agencies.
Appendix 2.

Introduction

There are five key dimensions that have an impact on official information good practice in government agencies:

3. Leadership and culture
4. Organisation structure, staffing and capability
5. Internal policies, procedures and resources
6. Current practices
7. Performance monitoring and learning

These dimensions are underpinned by a series of indicators, which describe the elements of good practice we would expect to see in order to evaluate whether each of the dimensions is being met.

These indicators are not exhaustive and do not preclude an agency demonstrating that good practice in a particular area is being met in other ways.
Leadership and culture

Achieving the purposes of the Act largely depends on the attitudes and actions of leaders, including Ministers, chief executives, senior leaders and managers within the agency. Ministers, chief executives and senior managers should take the lead in promoting openness and transparency, championing positive engagement with official information legislation.

<table>
<thead>
<tr>
<th>Elements</th>
<th>Things to look for (indicators)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministers, chief executives, senior leaders and managers demonstrate a commitment to the agency meeting its obligations under the Act and actively foster a culture of openness within the agency</td>
<td>✓ Chief executives, leaders and the relevant Minister(s) actively and visibly work together to promote a culture of positive OIA compliance and good administrative practice</td>
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<tr>
<td></td>
<td>✓ Leaders make clear regular statements to staff and stakeholders in support of the principle and purposes of official information legislation, reminding staff of their obligations</td>
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<td>✓ Leaders demonstrate clear knowledge and support of the Act’s requirements</td>
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<td></td>
<td>✓ Leaders encourage staff to identify areas for improvement and provide the means for suggesting and implementing them when appropriate</td>
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<td></td>
<td>✓ Leaders make examples of good practice visible</td>
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<tr>
<td></td>
<td>✓ A visible and explicit statement exists about the agency’s commitment to openness and transparency about its work</td>
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</table>

22 ‘The Act’ refers to the Official Information Act 1982 or the Local Government Official Information and Meetings Act 1987, whichever is applicable to the investigation.
### Elements

<table>
<thead>
<tr>
<th>Things to look for (indicators)</th>
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<tbody>
<tr>
<td>✓ The agency has a strategic framework committed to promoting</td>
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<tr>
<td>- Compliance with the Act</td>
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<tr>
<td>- Good practice</td>
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<tr>
<td>- A culture of openness and continuous improvement</td>
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<tr>
<td>- Participation and access to information by the public and stakeholder groups</td>
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<tr>
<td>✓ Senior leadership takes an active role in the management of information</td>
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<tr>
<td>✓ A senior manager has been assigned specific strategic responsibility and executive accountability for official information practices including proactive disclosure</td>
</tr>
<tr>
<td>✓ Senior managers have accountabilities for compliance with the Act</td>
</tr>
<tr>
<td>✓ Appropriate delegations exist for decision makers and they are trained on agency policies and procedures and the requirements of the Act</td>
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<tr>
<td>✓ Senior leaders model an internal culture whereby all staff:</td>
</tr>
<tr>
<td>- Are encouraged to identify opportunities for improvement in official information practice (including increasing proactive disclosure) and these are endorsed and implemented</td>
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<tr>
<td>- Are trained to the appropriate level for their job on official information policies and procedures and understand the legal requirements</td>
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<tr>
<td>- Have compliance with the Act in their job descriptions, key performance indicators, and professional development plans</td>
</tr>
<tr>
<td>✓ Senior leaders oversee the agency’s practice and compliance with the Act, the effectiveness of its structures, resources, capacity and capability through regular reporting. Issues are actively considered and addressed</td>
</tr>
<tr>
<td>Elements</td>
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</tbody>
</table>
| Senior leadership demonstrate a commitment to proactive disclosure, and public participation with clear linkages to the agency’s strategic plans creating a public perception of openness | ✓ Senior leaders are committed to an active programme of proactive disclosure and stakeholder engagement where the agency seeks and listens to the public’s information needs through:  
- Regular stakeholder meetings and surveys  
- Reviewing and analysing requests and media logs  
- Reviewing and analysing website searches  
✓ There is clear senior leadership commitment to the agency publishing information about:  
- The role and structure of the agency  
- Internal rules and policies  
- Details of current or planned work programmes, including background papers, options, cabinet papers and consultation documents  
- Corporate information about expenditure, procurement activities, audit reports and performance  
- Monitoring data and information on matters the agency is responsible for  
- Information provided in response to official information requests  
- Other information held by the agency in the public interest  
✓ The agency holds up to date information that is easily accessible (easy to find, caters for people requiring language assistance or who have hearing or speech or sight impairments) about:  
- What official information it holds  
- How it can be accessed or requested by the public and its stakeholders  
- How to seek assistance  
- What the agency’s official information policies and procedures are (including charging)  
- How to complain about a decision  
✓ The agency makes information available in different formats, including open file formats  
✓ The agency’s position on copyright and re-use is clear  
✓ The public and stakeholders perceive the agency to be open and transparent |
Organisation structure, staffing and capability

Responding to official information requests is a core function of the public sector. Therefore, it is expected agencies will organise their structure and resources to ensure they are able to meet their legal obligations under the Act considering each agency’s size, responsibilities and the amount of information held.

<table>
<thead>
<tr>
<th>Elements</th>
<th>Things to look for (indicators)</th>
</tr>
</thead>
</table>
| Agency has the capacity to discharge its official information obligations, with clear and fully functioning roles, accountabilities, reporting lines, delegations and resilience arrangements. | ✓ An appropriate, flexible structure exists to manage official information requests which is well resourced reflecting the:  
- Size of the agency  
- Number of requests received (and from whom, public, media, other)  
- Number or percentage of staff performing official information functions in the agency  
- Percentage of time these staff are also required to undertake other functions  
- Need to respond within statutory time limits  
- Use of staff time, specialisations, structural resilience  
✓ Roles and responsibilities are clearly defined:  
- Specific responsibility exists for coordinating, tracking and monitoring official information requests and agency decisions (and ombudsman decisions) and there is the authority and support to ensure compliance\(^{23}\)  
- Decision makers are sufficiently senior to take responsibility for the decisions made and are available when required, and if not, resilience arrangements exist.  
- The official information function is located in an appropriate unit or area within the agency |

\(^{23}\) This indicator is also relevant to performance monitoring and learning
<table>
<thead>
<tr>
<th>Elements</th>
<th>Things to look for (indicators)</th>
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<tbody>
<tr>
<td>Agency has the capability to discharge its</td>
<td>✓ Training at all levels on the requirements of the Act is provided regularly and staff are expected to comply with them</td>
</tr>
<tr>
<td>official information obligations</td>
<td>✓ Training is role specific with additional training for senior managers, decision makers and staff with official information responsibilities to support their work</td>
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<td></td>
<td>✓ Expectations are set by senior leaders that regular refreshers are provided to all staff</td>
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<td></td>
<td>✓ Training is provided on information management and record keeping</td>
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<td></td>
<td>✓ The process for staff to assess and make decisions on official information requests is clear, understood, up to date and applied</td>
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<td></td>
<td>✓ Agency staff, including front line staff and contractors, know what an official information request is and what to do with it</td>
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<td></td>
<td>✓ User-friendly, accessible resources, guidance and ‘go to’ people are available</td>
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<td>✓ The agency can and does meet its obligations under the Act</td>
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<td></td>
<td>✓ Staff official information capability is regularly assessed and monitored</td>
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<td>✓ Official information obligations are included in induction material for all staff</td>
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<td></td>
<td>✓ The agency’s internal guidance resources are highly accessible to its staff</td>
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</table>
### Internal policies, procedures and resources

Agencies should develop or adopt policies and procedures that will assist staff to consistently apply the requirements of the Act supported by good systems, tools and resources ensuring effective processing of requests consistent with the requirements of the Act.

<table>
<thead>
<tr>
<th>Elements</th>
<th>Things to look for (indicators)</th>
</tr>
</thead>
</table>
| Good official information policies, procedures and resources | ✓ Good policies, procedures and resources exist for receipt and assessment of requests, which cover:  
  - What is official information  
  - Identifying the type of official information request received (Part 2, 3 or 4 of OIA and LGOIMA) and distinguishing from Privacy Act requests  
  - Identifying the scope of the request  
  - Consulting with and assisting the requester  
  - Establishing the eligibility of a requester when necessary  
  - Logging requests against a standardised definition  
  - Acknowledging receipt of the request  
  - Establishing statutory time limits and tracking the handling of the requests  
  - Identifying who in the agency should respond to the request  
  - Establishing criteria for deciding whether, and if so, how a response to a request should be provided urgently  
  - Managing potential delays (including the reasons for them, the escalation process and invoking the extension provision)  
  ✓ Good policies, procedures and resources exist for information gathering on requests, which cover:  
  - Identifying the information at issue  
  - Searching, finding and collating the information at issue  
  - Documenting the search undertaken for the information within the scope of the request (including time taken if charging is likely)  
  - Transferring requests to other agencies or Minister(s) and advising the requester  
  - Consulting officials within the agency and third parties  
  - What to do if the information is held by a contractor covered by the Act by virtue of section 2(5) of the OIA and 2(6) of LGOIMA  
  - Engaging with Ministers on official information requests  
  ✓ Good policies, procedures and resources exist for decision making on requests, which cover:  
  - Engaging with Ministers on official information requests  |
<table>
<thead>
<tr>
<th>Elements</th>
<th>Things to look for (indicators)</th>
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</thead>
<tbody>
<tr>
<td>- Making a decision whether to release the information</td>
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<td>- Making a decision on the format in which information is released</td>
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<tr>
<td>- Making a decision whether to charge for the release of information</td>
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<tr>
<td>- Guidance on application of withholding or refusal grounds relevant to requests made under Parts 2, 3 and 4</td>
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<td>- Guidance on any statutory bars on disclosure relevant to the legislation the agency administers</td>
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<tr>
<td>- Imposing conditions on release where appropriate</td>
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<td>- Advising the requester of the decision</td>
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<tr>
<td>- Recording reasons for each item of information withheld, and the agency’s consideration of the public interest in release where required</td>
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</table>

- Good policies, procedures and resources exist for releasing requests, which cover:
  - Providing the information in the form requested
  - Preparing information for release (including deletions)

- The agency has tools and resources for processing official information requests, such as templates, checklists, ‘go-to’ people, effective tracking and monitoring systems, and redaction software and staff are trained on how to use them.

- The agency’s official information policies, procedures and resources are regularly reviewed and up-to-date

- Staff find them useful and easy to access
<table>
<thead>
<tr>
<th>Elements</th>
<th>Things to look for (indicators)</th>
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</thead>
</table>
| Good records and information management policies, procedures and resources | ✓ Staff are able to identify, access and collate information that has been requested under the Act  
✓ The agency has accurate and comprehensive records and information management policies, procedures and resources which enable information relevant to a request to be identified and collated  
✓ The policies and procedures cover aspects such as:  
  - Creating, organising, maintaining and storing records  
  - Managing and modifying records  
  - The security of information  
  - A guide to determining which records systems exist and what information each holds  
  - Retaining, retrieving and disposing of records  
  - Both manual and electronic records, including personal e mail accounts, instant messaging and text messages  
  - Assigned responsibilities and performance criteria for records and information management by staff  
  - The provision of secure audit trails  
  - Annual/periodic audits of records  
✓ These policies and procedures are regularly reviewed and up-to-date  
✓ Staff find the policies and procedures useful and easy to access |
### Elements

<table>
<thead>
<tr>
<th>Good proactive release policies, procedures and resources</th>
<th>Things to look for (indicators)</th>
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</thead>
<tbody>
<tr>
<td>✓ The agency has accurate and comprehensive proactive release policies and procedures</td>
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<tr>
<td>✓ The policies and procedures cover the release of such things as:</td>
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<tr>
<td>- Information that has been released in response to official information requests</td>
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<tr>
<td>- Information described in section 20 of the OIA about the agency and the information it holds</td>
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<tr>
<td>- Information described in section 22 of the OIA about the agency’s internal decision making rules, including its official information policies and procedures</td>
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<td>- Strategy, planning and performance information</td>
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<td>- Financial information relating to income and expenses, tendering, procurement and contracts</td>
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<td>- Information about work programmes and policy proposals</td>
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<td>- Information about public engagement processes, including public submissions</td>
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<td>- Minutes, agendas, and papers of advisory boards or committees</td>
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<td>- Information about regulatory or review activities carried out by agencies</td>
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<td>✓ The policies and procedures include a process for identifying opportunities for proactive release, for example, where a high number of official information requests is received about a subject</td>
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<tr>
<td>✓ The policies and procedures include a process for preparing for proactive release, including managing risks around private or confidential information, commercially sensitive information and information subject to third party copyright</td>
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<tr>
<td>✓ The policies outline how and where the information should be made available for access, and if any charge should be made</td>
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<tr>
<td>✓ They are regularly reviewed and up-to-date</td>
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<tr>
<td>✓ Staff know about the agency’s proactive release policies and procedures</td>
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<tr>
<td>✓ Staff find them useful and easy to access</td>
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Current practices

The effectiveness of the Act is largely dependent on those who implement it on a day to day basis and how they apply the resources available to them to manage the realities of giving effect to the Act.

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| Official information practices demonstrate full implementation of policies and procedures resulting in excellent official information performance that is well evidenced with verified data | ✓ The agency complies with maximum statutory timeframes to transfer, extend, decide on requests, and release official information  
 ✓ Requests are handled in accordance with the applicable law (Privacy Act, Part 2 OIA, section 22 OIA, section 23 OIA, Part 4 OIA)  
 ✓ The agency makes appropriate use of the withholding grounds and administrative reasons for refusal  
 ✓ The agency makes appropriate use of the mechanisms for dealing with large and complex official information requests  
 ✓ The agency gives proper consideration to the public interest in release of official information, and explains this to requesters  
 ✓ The agency interprets the scope of official information requests reasonably  
 ✓ The agency consults with, and provides reasonable assistance to requesters  
 ✓ The agency consults appropriately with third parties  
 ✓ Ministerial involvement in agency official information decision making is appropriate  
 ✓ Official information is released in the form requested unless there is a good reason not to  
 ✓ Consideration is given to releasing information in accessible formats  
 ✓ Staff regularly use the Agency’s policies and procedures |
### Good record keeping and management practices

- The agency documents its handling of official information requests, including the steps taken to search for the requested information, the information identified as relevant to the request, and the reasons for its decisions.
- The agency’s records and information management practices facilitate official information compliance (it is generally easy to find information that has been requested under the Act).
- There are high levels of staff compliance with records and information management policies and procedures as described in *Good records and information management policies, procedures and resources*.

### Good proactive release practices

- The agency’s entry in the *Directory of Official Information* is full, accurate and likely to assist requesters, and is linked to from, or reproduced on, the agency’s own website.
- The agency publishes useful information online including the types of information described in the Good proactive release policies, procedures and resources indicator.
- The agency publishes information in multiple formats, and applies open use standards.
- The agency’s position on copyright and re-use is clear.
- Staff regularly use the Agency’s proactive release policies and procedures.
Performance monitoring and learning

Agencies should adopt performance monitoring and learning frameworks that enable them to learn and drive performance improvement and innovation.

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| The agency has an established system for capturing data to inform meaningful and appropriate performance measures | ✓ Performance measures include:  
- Quantity – e.g, the number of requests, from where and the number processed  
- Efficiency – e.g, duration of request handling, number of responses that exceed legislative maximum time limits, the reasons for any delays  
- Quality - e.g, outcome of any internal quality assurance reviews and/or external reviews of official information decisions and processes and whether or not the results of those reviews provide evidence of system wide issues  
- Monitoring of opportunities for proactive release – e.g, identifying common types of requests or a high number that indicates information that could be made available  

✓ The agency collects data about its performance under the Act including such things as:  
- The number of requests  
- The type of request (Part 2, 3 or 4 of the Act)  
- The type of requester  
- The information sought  
- The number and reason for transfers, and whether the transfer was made in time  
- The number, length and reason for extensions  
- The outcome of the request (granted in full, granted in part, refused in full, withdrawn or abandoned)  
- The number and amount of charges made and collected  
- The grounds on which information was withheld or the request refused  
- Whether the requester was consulted prior to any refusal under section 18(f) or 17(f)  
- Whether the Minister was consulted on the decision  
- Whether the decision was notified to the Minister  
- Whether, and which, third parties were consulted  
- The time from receipt of the request to communication of the decision |
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<tbody>
<tr>
<td></td>
<td>- The time from receipt of the request to release of the information</td>
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<td>- If the time limit (extended or not) was breached, the reasons for the delay</td>
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<td>- Whether the response was proactively published and if not why</td>
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<td>- Whether the Ombudsman investigated or resolved a complaint about the request</td>
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<td>- The outcome of the Ombudsman's investigation or involvement</td>
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<td>- The outcome of any internal quality assurance reviews of processes or decisions</td>
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<td></td>
<td>- Staff time spent and costs incurred in processing official information requests</td>
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<td>✓ The agency analyses this data to determine whether it is complying with its relevant performance measures</td>
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<tr>
<td>✓ The agency monitors information demand (for example, through official information requests, website use, and other enquiries) to identify opportunities for proactive release</td>
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<tr>
<td>✓ The agency monitors any difficulties in identifying and collating information that has been requested</td>
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<p>| There is regular reporting about the agency’s management and performance in respect of official information requests | ✓ Data about the agency’s official information performance, and information demand is regularly reported to senior leaders, and at least quarterly to the Chief Executive |
|                                                               | ✓ Reports include emerging themes or trends, opportunities for improvement and proactive release, resourcing, capacity or capability (training) issues |
|                                                               | ✓ Reporting informs planning, resourcing and capability building decisions                                                                               |</p>
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| The agency learns from data analysis and practice | ✓ The agency has a system for sharing official information learning and experience, such as meetings, newsletters, email or intranet updates, or official information ‘champions’  
 ✓ The agency monitors relevant data, guidance and publications, including those produced by the Ombudsman and State Services Commission  
 ✓ The agency monitors the outcome of Ombudsman investigations and reports these to relevant staff, including official information decision makers  
 ✓ The agency analyses this information to determine where it has the potential to improve official information practice, stakeholder relations, or increase opportunities for public participation  
 ✓ The agency periodically reviews its relevant systems, structures, and compliance with policies and procedures  
 ✓ The agency actively participates in initiatives to share and discuss best practice externally, for example through forums, interest groups, networks and communities of practice |