

## Requests by corporate entities for their personal information

A guide to Part 4 of the OIA and LGOIMA

*This is a guide to Part 4 requests made under the [Official Information Act \(OIA\)](#) and the [Local Government Official Information and Meetings Act \(LGOIMA\)](#).*

*Part 4 is a special code within the OIA and LGOIMA governing access by corporate entities to personal information about themselves.*

*This guide is published under the authority of the [Ombudsmen Rules 1989](#).*

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## What is a Part 4 request?

A [Part 4](#) request is one made by a corporate entity for personal information about itself. Most other requests for official information are considered under [Part 2](#) of the OIA or LGOIMA.

Prior to the enactment of the Privacy Act 1993, Part 4 of the OIA and LGOIMA governed people's right to access personal information about themselves. 'People' in this context included both individuals and corporate entities.

When the Privacy Act came into effect, individuals' rights to access personal information about themselves became governed by that Act. This left Part 4 as a special code within the OIA and LGOIMA governing access by corporate entities to personal information about themselves.

Part 4 gives corporate entities a **right** of access to personal information about themselves that can be readily retrieved.<sup>1</sup> Because there is a right of access, the reasons for refusing requests are more limited than the reasons for refusing Part 2 requests. This reflects the widely held view that a person has the strongest claim to access information about themselves.

### Related provisions

Part 4 complements other provisions in the legislation that enable people and corporate entities to request:

- the **internal rules** that agencies use to make decisions about them;<sup>2</sup> and
- the **reasons** for a decision which affects them personally.<sup>3</sup>

These provisions also deal with special types of information to which people have a right of access. They are about ensuring transparent and accountable decision making.

Here's a table to help you figure out which rules apply to which requests.

How did you decide?	Requests for internal decision making rules	Section 22 OIA / section 21 LGOIMA
Why did you decide?	Requests for reasons for a decision or recommendation	Section 23 OIA / section 22 LGOIMA
I want what you hold about my corporate entity	Requests by corporate entities for their personal information	Section 24 OIA / section 23 LGOIMA

<sup>1</sup> See s 24(1) OIA and s 23(1) LGOIMA.

<sup>2</sup> See s 22 OIA and s 21 LGOIMA. For more information see [Requests for internal decision making rules](#).

<sup>3</sup> See s 23 OIA and s 22 LGOIMA. For more information see [Requests for reasons for a decision or recommendation](#).

## Who can make a Part 4 request?

The eligibility requirements are different under the OIA and LGOIMA.

### Under the OIA

Under the OIA, Part 4 requests can **only** be made by corporate entities which:<sup>4</sup>

- are incorporated in New Zealand; or
- have a place of business here.

A corporate entity may be a company, an incorporated society, or any other body recognised as such by statute. To find out whether a requester is a company, search the [companies register](#). To find out whether a requester is an incorporated society, search the [register of societies and trusts](#).

### Under the LGOIMA

Under the LGOIMA, Part 4 requests can be made by **any person** who is not a *'natural person'*.<sup>5</sup> The right can therefore be exercised by any corporate entity. Unlike under the OIA, this right is not restricted to corporate entities that are incorporated in New Zealand or have a place of business here. It may be exercised by any non-natural person.

Requests by **individual natural persons** for personal information about themselves are governed by the Privacy Act not the OIA or LGOIMA.

## How to make or recognise a Part 4 request

There is no special way to make a Part 4 request. Requests can be made orally, or in writing. The requester does not need to refer to Part 4 or any of its provisions. A Part 4 request may look like an ordinary OIA or LGOIMA request, but what sets it apart is the nature of the requester and the nature of the information sought. If a request is made by a corporate entity for personal information about itself, it must be considered under Part 4.

Any request by a corporate entity should **raise a flag** for the agency to consider whether it is a Part 4 request. Sometimes requests will be for a mix of personal information about the requester and information about other people or subjects. In that case, the request will need to be considered under both Part 2 and Part 4.

The following are some common Part 4 requests that agencies might receive.

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<sup>4</sup> See s 24(2) OIA.

<sup>5</sup> See s 23(1A) LGOIMA.

- A corporate entity that has been audited by an agency seeking information about the audit.
- A corporate entity that has tendered for a contract with an agency seeking information about the evaluation of its tender.
- A corporate entity that has applied for a permit, license or grant from an agency, seeking information about the evaluation of its application.

If a corporate entity is requesting information about itself, it helps to refer to Part 4 explicitly, to ensure that the request is recognised and processed in accordance with its requirements. Requesters may seek urgency, provided they give reasons.<sup>6</sup>

## Processing requirements

The processing requirements for Part 4 requests are largely the same as they are for ordinary Part 2 requests.

However, in addition, agencies must:

- tell the requester of their [right to request correction](#) of the information; and
- take certain [precautions](#) before releasing the information.

## General processing requirements

Agencies are still required to:<sup>7</sup>

- provide reasonable assistance to a requester to make a request;
- transfer a request for information that is held by another agency or more closely connected with its functions;
- make and communicate their decision on a request for official information as soon as reasonably practicable and no later than 20 working days after the day it was received;
- notify any extension of this maximum time period within 20 working days;

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<sup>6</sup> Section 12(3) of the OIA is incorporated by s 24(3) of that Act; s 10(3) of the LGOIMA is incorporated by s 23(2) of that Act. For more information about responding to urgent requests, see [The OIA for Ministers and agencies](#) and [The LGOIMA for local government agencies](#).

<sup>7</sup> Section 24(3) of the OIA provides that ss 12(3) (urgency), 13 (reasonable assistance), 14 (transfers), 15 (decisions), 15A (extensions), 16 (documents), 17 (deletion of information from documents) and 19 (reason for refusal to be given) still apply. Section 23(2) of the LGOIMA provides that ss 10(3) (urgency), 11 (reasonable assistance), 12 (transfers), 13 (decisions), 14 (extensions), 15 (documents), 16 (deletion of information from documents) and 18 (reason for refusal to be given) still apply.

- provide reasons for refusing a request, and tell the requester of their right to complain to the Ombudsman.

Agencies are also permitted to charge for the supply of personal information under Part 4.<sup>8</sup> This is in contrast to personal information requests under the Privacy Act, for which public sector agencies are not generally permitted to charge.<sup>9</sup>

For more information about the requirements for processing official information requests see [The OIA for Ministers and agencies](#) and [The LGOIMA for local government agencies](#).

## Right to request correction

When a Part 4 request is granted, agencies must tell the requester of their right to request correction of the information.<sup>10</sup>

## Precautions

The following precautions must be taken before releasing information in response to a Part 4 request.<sup>11</sup>

- The agency must be satisfied concerning the identity of the requester before releasing the information.
- The agency must ensure through the adoption of appropriate procedures that the information is received only by the requester or their agent.
- Where the request is made by an agent, the agency must ensure that person has the corporate entity's written authority or other proper authorisation to obtain the information.

## Right to request correction

When a Part 4 request is granted, the requester may seek the correction of any personal information that they believe is inaccurate, or incomplete and misleading.<sup>12</sup> The agency must inform the requester of the action taken as a result of any such request.<sup>13</sup> If the agency

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<sup>8</sup> Because s 15(1A) of the OIA applies by virtue of s 24(3), and s 13(1A) of the LGOIMA applies by virtue of s 23(2).

<sup>9</sup> See ss 35 and 36 Privacy Act.

<sup>10</sup> See s 24(3A) OIA and s 23(3) LGOIMA.

<sup>11</sup> See s 25 OIA and s 24 LGOIMA.

<sup>12</sup> See s 26(1)(a) OIA and s 25(1)(a) LGOIMA.

<sup>13</sup> See s 26(2) OIA and s 25(2) LGOIMA.

declines to correct the information, the requester may require that a note be attached to the information indicating the nature of the correction sought but not made.<sup>14</sup>

## Reasons for refusing Part 4 requests

Because there is a **right** of access by corporate entities to personal information about themselves, the reasons for refusing such requests are more limited.

### Reasons for refusal

Part 4 incorporates the following withholding grounds from Part 2:<sup>15</sup>

- security, defence and international relations (**OIA only**);<sup>16</sup>
- confidential information provided by another country or international organisation (**OIA only**);<sup>17</sup>
- maintenance of the law;<sup>18</sup>
- personal safety;<sup>19</sup> and
- disclosure of a trade secret / unreasonable prejudice to the commercial position of a third party (subject to the public interest test).<sup>20</sup>

The right of access in Part 4 is also subject to section 10 of the OIA (section 8 of the LGOIMA).<sup>21</sup> This means an agency may refuse to **confirm or deny** the existence or non-existence of information if that would be likely to prejudice the interests protected by sections 6, 7 or 9(2)(b) of the OIA (sections 6 or 7(2)(b) of the LGOIMA).

For further guidance on the withholding grounds see our [official information legislation guides](#).

#### But it's free and frank...

Part 4 requests **cannot be refused** on the grounds that release would prejudice the effective conduct of public affairs through the **free and frank** expression of opinions (section 9(2)(g)(i) OIA / section 7(2)(f)(i) LGOIMA). This is similar to the position under the

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<sup>14</sup> See s 26(1)(b) OIA and s 25(1)(b) LGOIMA.

<sup>15</sup> See s 27(1)(a) OIA and s 26(1)(a) LGOIMA.

<sup>16</sup> See s 6(a) OIA.

<sup>17</sup> See s 6(b) OIA.

<sup>18</sup> See s 6(c) OIA and s 6(a) LGOIMA.

<sup>19</sup> See s 6(d) OIA and s 6(b) LGOIMA.

<sup>20</sup> See s 9(2)(b) OIA and s 7(2)(b) LGOIMA.

<sup>21</sup> See s 24(1) OIA and s 23(1) LGOIMA.

Privacy Act, which also has no direct equivalent to the free and frank withholding ground under the OIA and LGOIMA. Officials writing about people (individuals or corporate entities) should anticipate that this material may be disclosed to the subjects and take care to express themselves in professional terms.

Part 4 requests may also be refused if:

- disclosure would involve the [unwarranted disclosure of the affairs of another person](#) (living or deceased);<sup>22</sup>
- disclosure of [evaluative material](#), or information that would identify the supplier of that material, would breach an express or implied promise made to the supplier that this information would be held in confidence;<sup>23</sup>
- disclosure would breach legal professional privilege;<sup>24</sup> or
- the request is frivolous or vexatious, or the information requested is trivial.<sup>25</sup>

In addition, the right of access in Part 4 is subject to the savings provision in section 52 of the OIA (section 44 of the LGOIMA),<sup>26</sup> which says that nothing in the Act:

- authorises or permits the disclosure of information which would constitute contempt of court or parliament;
- derogates from any provision in any other Act, or in regulations in force prior to 1 July 1983, which imposes a prohibition or restriction in relation to the availability of official information, or regulates the manner in which official information may be obtained or made available.

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<sup>22</sup> See s 27(1)(b) OIA and s 26(1)(b) LGOIMA.

<sup>23</sup> See s 27(1)(c) OIA and s 26(1)(c) LGOIMA.

<sup>24</sup> See s 27(1)(g) OIA and s 26(1)(g) LGOIMA.

<sup>25</sup> See s 27(1)(h) OIA and s 26(1)(h) LGOIMA.

<sup>26</sup> See s 24(1) OIA and s 23(1) LGOIMA.

### What about the public interest in release?

People familiar with the OIA and LGOIMA will know that some of the withholding grounds in Part 2 are subject to a public interest test.<sup>27</sup> If there is a public interest in release which outweighs the need to withhold the information, then the request cannot be refused.

The only Part 4 withholding ground that is subject to the public interest test is the 'trade secret / unreasonable prejudice to the commercial position of a third party' ground that is incorporated from section 9(2)(b) of the OIA (section 7(2)(b) of the LGOIMA).

However, because there is a **right** of access to information under Part 4 agencies should have strong reasons for withholding information. Even where there are strong reasons to withhold, agencies should consider whether a partial release can be made, or whether the requester's interests in knowing what information is held about them can be met by release in an alternative form (for instance, a summary).

### Unwarranted disclosure of the affairs of another person

An agency may refuse a Part 4 request if release would involve the unwarranted disclosure of the affairs of another person.<sup>28</sup>

There are two issues to consider.

1. Does the information disclose the affairs of another person?

'Another person' in this context may be a natural person (including a deceased natural person), or a corporate entity other than the requester. The term 'affairs' must be broadly interpreted to apply not only to situations of personal privacy, but to all aspects of the ordinary pursuits of life, commercial or professional business. If the information discloses what has happened to or been done by a third party, it will disclose that party's 'affairs'.

2. Would that disclosure be 'unwarranted'?

In deciding whether disclosure is 'unwarranted', agencies need to balance the requester's **right of access**, including why they need or may be entitled to the information, against the **privacy or confidentiality interests** of the other person.

To get the balance right, agencies could consider partial release or release in an alternative form (for instance, a summary). The following factors may be relevant in undertaking this balancing exercise.

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<sup>27</sup> See s 9 OIA and s 7 LGOIMA.

<sup>28</sup> See s 27(1)(b) OIA and s 26(1)(b) LGOIMA.

<b>The nature and content of the information</b>	<ul style="list-style-type: none"> <li>• What does the information reveal about the other person?</li> <li>• Is it of a confidential nature? If it is of a confidential nature (ie, unknown to others), disclosure is more likely to be <i>'unwarranted'</i>. If it is already known to the requester, or in the public domain, disclosure is less likely to be an unwarranted breach of the other person's private or confidential affairs.</li> <li>• Is it of a sensitive nature? The more sensitive the details are, the more likely the other person's private or confidential interests will outweigh the requester's right of access.</li> </ul>
<b>The other person's expectations or views</b>	<ul style="list-style-type: none"> <li>• What were the other person's expectations about how the information would be used and disclosed? Were they told it would be kept confidential? Could they reasonably have expected it to be kept confidential?</li> <li>• If the information is in the form of a complaint about the requester, the other person may reasonably expect that it will be disclosed, at least to the extent that it is necessary to enable the agency to investigate that complaint, and the requester to respond to allegations against it.</li> <li>• What are the other person's views about whether the information should be disclosed to the requester? Consider consulting them if this is not known or cannot be reliably inferred. If the other person does not object to the information being released to the requester, disclosure is unlikely to be <i>'unwarranted'</i>.</li> </ul>
<b>The likelihood of harm from disclosure</b>	<ul style="list-style-type: none"> <li>• What harm might there be to the other person if the requester gets the information? For instance, would it: <ul style="list-style-type: none"> <li>- expose them to harassment?</li> <li>- result in serious damage to relationships?</li> <li>- affect their business standing or competitiveness?</li> </ul> </li> <li>• The likelihood of harm may depend on the other person's situation, for instance, whether they live in a small community, operate in a small industry etc. This is because disclosure in this context may have a larger or more disproportionate effect than disclosure in a large community or industry.</li> <li>• What other harm might result? For instance, would release prejudice the future supply of such information?</li> </ul>

**The requester's need for the information**

- Why does the requester need the information? Are there legitimate reasons why they should have access to it (or some of it)? If there are, then disclosure may be 'warranted'.
- For instance, disclosure may be warranted in circumstances where the requester needs the information (or some of it) to have a full and fair opportunity to respond to allegations made against them.

## Evaluative material

An agency may refuse a Part 4 request if it would involve disclosure of '*evaluative material*', or information that would identify the supplier of that material, in breach of an express or implied promise made to the supplier that this information would be held in confidence.

In simple terms, evaluative material is information concerning what the supplier thinks about the requester—their judgment or opinion as to whether the requester is eligible or qualified to receive an award of some sort.

Agencies need to be able to get this information in order to make good decisions about awarding contracts and other benefits. They may be unable to get such information if they cannot give and honour a promise of confidentiality to the person who supplies it.

There are two issues to consider:

1. Is the information evaluative material, or information that would identify the supplier of that material?

'*Evaluative material*' means evaluative or opinion material compiled solely for the purpose of:<sup>29</sup>

- determining the suitability, eligibility or qualifications of the requester for the awarding of contracts, awards or other benefits;
- determining whether any contract, award or benefit should be continued, modified or cancelled; or
- deciding whether to insure any person or property or to continue or renew the insurance of any person or property.

It is the evaluative or opinion material that is protected, not the **facts** upon which the evaluation or opinion is based. In addition, this material must have been compiled for the **sole** purpose of enabling the agency to make its decision. If it was compiled for another purpose, or for mixed purposes, it cannot be withheld.

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<sup>29</sup> See s 27(2) OIA and s 26(3) LGOIMA.

2. Would release breach an express or implied promise that was made to the supplier that the material and/or their identity would be held in confidence?

A promise must have been made to the supplier prior to or at the time the material was supplied that it and/or the identity of the supplier would be kept confidential. It must be evident that the supplier relied on this promise of confidentiality. These things are easier to establish when the promise of confidentiality was expressly recorded. However, they may also be implied from the circumstances where it is clear that the supplier must have expected confidentiality, and would not otherwise have been induced to supply the information.

### Case study 310785 (2011)—Reference checks

A company made a request for information relating to how its tender responses were evaluated. The agency refused the request on grounds that it was evaluative material and release would breach a promise of confidentiality. The information at issue comprised records of comments about the performance of the company, provided to the Council by referees. This information was compiled by the Council solely for the purpose of determining whether particular contracts should be awarded to the company. The Ombudsman accepted that the nature of the information and the circumstances in which it was obtained by the Council gave rise to an implied promise that the information and the identity of the supplier would be held in confidence.

## Administrative issues

Part 4 does not incorporate the administrative reasons for refusing ordinary Part 2 requests that are found in section 18 of the OIA or section 17 of the LGOIMA. Nor is there any requirement for the requester to specify the information with due particularity, as they must when seeking information under Part 2.<sup>30</sup>

However, the right of access is to information which is *'held in such a way that it can be readily retrieved'*.<sup>31</sup> The converse of this is that there will be no right of access to information which is not held in such a way that it can be readily retrieved.

In addition, if the volume of information requested is problematic, agencies can consider:

- extending the maximum time limit available to make a decision on the request;<sup>32</sup>
- imposing a reasonable charge for supply of the information;<sup>33</sup>

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<sup>30</sup> See s 12(2) OIA and s 10(2) LGOIMA.

<sup>31</sup> See s 24(1)(b) OIA and s 23(1)(b) LGOIMA.

<sup>32</sup> Section 15A of the OIA applies by virtue of s 24(3), and s 14 of the LGOIMA applies by virtue of s 23(2).

<sup>33</sup> Section 15(1A) of the OIA applies by virtue of s 24(3), and s 13(1A) of the LGOIMA applies by virtue of s 23(2).

- making the information available in an alternative form (for instance, allowing inspection rather than providing copies) on the basis that meeting the requester's preference in this regard would *'impair efficient administration'*.<sup>34</sup>

### Information not held

What if the information isn't held or the document doesn't exist or can't be found? In the case of a Part 2 request, there are specific grounds for refusal on this basis (sections 18(e) and (g) OIA and sections 17(e) and (g) LGOIMA). Those same grounds don't exist in relation to a Part 4 request. Nevertheless, if the information isn't held, doesn't exist, or can't be found, the request cannot be granted. The answer in this situation is that the request is not one for information which is held in such a way that it can be readily retrieved, and therefore Part 4 cannot apply.

## What if a requester is unhappy with the decision made on their Part 4 request?

As with any other request for official information, if a requester is unhappy with the decision on their Part 4 request they can complain to the Ombudsman.

However, Part 4 investigations are slightly different in that they are required to be undertaken by the Ombudsman under the Ombudsmen Act 1975, rather than the OIA or LGOIMA.<sup>35</sup> This means any recommendations by the Ombudsman will not be binding.<sup>36</sup>

In addition to complaining to the Ombudsman, a dissatisfied requester has a concurrent right of appeal to the courts. This is also distinct from ordinary OIA and LGOIMA complaints relating to Part 2 decisions, which must be determined by the Ombudsman in the first instance.<sup>37</sup>

## Further guidance

[The OIA for Ministers and agencies](#) and [The LGOIMA for local government agencies](#) provide more information about processing OIA and LGOIMA requests.

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<sup>34</sup> Section 16 of the OIA applies by virtue of s 24(3), and s 15 of the LGOIMA applies by virtue of s 23(2).

<sup>35</sup> See s 35(1) OIA and s 38(1) LGOIMA. Note the exception of decisions to issue s 10 notices (s 8 LGOIMA). Such decisions are investigated under the OIA or LGOIMA. See ss 35(1)(b) and 28(1)(d) of the OIA and ss 38(1) and 27(1)(d) of the LGOIMA.

<sup>36</sup> Recommendations under the Ombudsmen Act are not binding. In contrast, a public duty to comply with an Ombudsman's recommendation under the OIA or LGOIMA comes into effect 21 working days after it is made, unless vetoed by the Cabinet (under the OIA) or the local authority (under the LGOIMA); see s 32 OIA and LGOIMA.

<sup>37</sup> See s 34 OIA and s 37 LGOIMA.

Further guidance on the reasons for refusal is available [here](#).

Our website contains searchable case notes, opinions and other material, relating to past cases considered by the Ombudsmen: [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz).

You can also contact our staff with any queries about Part 4 requests by email [info@ombudsman.parliament.nz](mailto:info@ombudsman.parliament.nz) or freephone 0800 802 602. Do so as early as possible to ensure we can answer your queries without delaying the response to a request for official information.