

## Chief executive expenses

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## Introduction

This guide sets out the Ombudsmen's approach to requests for information about state sector Chief Executives' expenses. The **state sector** in this context means all agencies that Parliament has decided should be covered by the Official Information Act (OIA) and the Local Government Official Information and Meetings Act (LGOIMA). Although this guide focuses on **chief executive** expenses, it will also be relevant in considering expense information of others in positions of power and responsibility, such as Mayors and chairpersons.<sup>1</sup>

This guide does not prescribe the expense information that should be made available **proactively** (that is, voluntarily and not in response to a request made under the OIA or LGOIMA). A proactive disclosure regime already exists in respect of expenses of chief executives of public service departments and Crown entities.<sup>2</sup> Agencies that have opted to release information proactively are free to determine the form and content of such release. However, where official information requests are concerned, agencies (and the Ombudsmen on review) are bound to consider the specific information sought. That information must be made available unless one of the reasons for refusal in section 18 is made out.<sup>3</sup> Nevertheless, if

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<sup>1</sup> The Ombudsmen have not yet considered access to similar information held in respect of second or third tier managers, but some of the same considerations will be relevant.

<sup>2</sup> See [www.ssc.govt.nz/ce-expenses-disclosure](http://www.ssc.govt.nz/ce-expenses-disclosure).

<sup>3</sup> Section 17 of the LGOIMA.

agencies have chosen to release expense information proactively, this may affect the public interest balancing exercise carried out in responding to subsequent requests under the OIA or LGOIMA.

**Expense information** includes credit card and other expenses. It usually takes the form of credit card statements and expense reimbursement claims. However, the form may differ slightly if the relevant agency has expense management software. Expense information also includes invoices and receipts provided in support of credit card statements and expense reimbursement claims. This guide deals separately with [credit card statements and expense reimbursement claims](#) and [invoices and receipts](#). It also deals with [personal expenses](#) incurred on business credit cards and [names of individuals](#) that may appear in the expense information.

## Credit card statements and expense reimbursement claims

The Ombudsmen's starting point is that, in most cases, chief executive credit card statements and expense reimbursement claims should be made available with the minimum necessary redactions and at no cost to the requester.

The main argument advanced in favour of withholding is that it is necessary to protect the [privacy](#) of the chief executives. However, the Ombudsmen consider that the privacy interests of the chief executives in this information are generally low, and outweighed by the [public interest](#) in release.

[Other withholding grounds](#) may be relevant, but in the absence of exceptional circumstances, are unlikely to provide a blanket basis for refusing requests for credit card statements and expense reimbursement claims. Even if the statements and claims themselves may be withheld, summary expense information ought to be disclosed.

The Ombudsmen are also of the view that credit card statements and expense reimbursement claims should in most cases be made available to requesters free of [charge](#).

## Privacy

The official information legislation provides that information may be withheld:

- if it is necessary to protect the privacy of natural persons; and
- this interest is not outweighed by other considerations which render it desirable, in the public interest, to make the information available.<sup>4</sup>

The information at issue in credit card statements and expense reimbursement claims includes transaction dates, names of businesses and total amounts. It may also include information

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<sup>4</sup> Section 9(2)(a) of the OIA and section 7(2)(a) of the LGOIMA.

about the purpose of the transaction and the names of the parties to the transaction (see [names of individuals](#)).

Because this expenditure is incurred by very **senior** employees acting in an **official** capacity and for a **business purpose**, the Ombudsmen consider that the privacy interests of the chief executives who incurred the expenditure are low, and it is not necessary to withhold this information to protect their privacy.

State sector chief executives and others in positions of power and responsibility cannot reasonably expect their business-related expenditure to remain private. This is particularly so in the current context, where we have seen record levels of transparency of official expenses.<sup>5</sup>

The Privacy Commissioner has agreed *“that expenditure that has a business purpose will generally have a low privacy interest for the individuals who incurred the expenditure”*.

## Public interest

This low privacy interest must be balanced against the public interest in disclosure.

There is a strong public interest in accountability for expenditure of public money. As the High Court has recognised:

*“It is fundamental to the [OIA] that the public are to be given worthwhile information about how the public’s money and affairs are being used and conducted, subject only to the statutory restraints and exceptions”*.<sup>6</sup>

Disclosure of chief executive expense information:

- promotes accountability of agencies and officials for expenditure decisions;
- facilitates public understanding of the purpose of expenditure;
- provides public assurance about the propriety of expenditure; and
- ensures proper and prudent expenditure of public money through transparency of decision-making.

There are significant benefits to be gained from having very high levels of transparency around expense information. State sector employees aware that information about their official expenses will be publicly disclosed will be more inclined to demonstrate financial probity. Public trust and confidence in government stewardship of public money will grow in turn.

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<sup>5</sup> Ministers’ expenses are released on a quarterly basis by the Department of Internal Affairs ([www.dia.govt.nz](http://www.dia.govt.nz)); MPs’ expenses are released on a quarterly basis by the Parliamentary Service ([www.parliament.nz](http://www.parliament.nz)); public service departments and Crown entities release chief executive expenses on a biannual basis on their own websites and through the online portal [www.data.govt.nz](http://www.data.govt.nz).

<sup>6</sup> *Wyatt Co (NZ) Ltd v Queenstown-Lakes District Council* [1991] 2 NZLR 180 at 190.

The Ombudsmen consider that any privacy interest in information about official business expenses is outweighed by the public interest in accountability for expenditure of public money.

Of course, not all agencies subject to the OIA fund their expenses with public money. The source of funding is a relevant consideration in assessing the level of public interest in disclosure of detailed expense information. However, it is also necessary to consider why those agencies are subject to the OIA or LGOIMA: what is it about their constitution, their powers, their relationship with the Government and New Zealanders generally that warrants the application of that additional accountability measure?

Take, for instance, State-owned enterprises (SOEs), whose expenses are funded through commercial revenues rather than taxpayer money. As the Privy Council has recognised:

*“A state-owned enterprise is a public body; its shares are held by ministers who are responsible to the House of Representatives and accountable to the electorate. [It] carries on its business in the interests of the public”.<sup>7</sup>*

The need for transparency and accountability in SOE expenditure arises not because SOEs are funded by taxpayer money, but because of the proprietary rights of the public in SOEs. The Ombudsmen consider that this interest is sufficient to outweigh any privacy interests on the part of the individuals incurring the expenditure. The Privacy Commissioner has agreed, noting that:

*“The connection of a state owned enterprise to the interest of the public is demonstrable and real and I don’t see any need to distinguish the need for accountability for such agencies in the public arena.”*

Statutory producer boards are another example. Such bodies are established by statute and funded by compulsory levies or tariffs. They may be required to account to producers on their activities and use of levy money and other resources. The establishing statutes may confirm that the assets of the producer board ultimately belong to the producers they serve. Marketing authorities may be in a similar position – established by regulation made pursuant to the Primary Products Marketing Act 1953, funded by compulsory levies, and required to account to levy payers for their use of levy money and other resources.

In this context, there is a strong public interest in disclosure of expense information to promote the accountability of producer boards and marketing authorities to their stakeholders and funders. There is arguably also a wider public interest in promoting the accountability of statutory entities performing important functions related to economically significant industries. The Ombudsmen consider that these interests are sufficient to outweigh any privacy interests on the part of the individuals incurring the expenditure. The Privacy Commissioner has, again, agreed, stating:

*“The producer boards fall into a similar category of agencies that are sufficiently closely connected to the business of the State to be captured by the wider public*

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<sup>7</sup> *Mercury Energy Limited v Electricity Corporation of New Zealand* [1994] 2 NZLR 385 at 388.

*interest in promoting the accountability of statutory entities. ... they perform an important function relating to economically significant industries. In order to ensure public confidence in them I agree that privacy interests are outweighed when it comes to the expenses incurred by senior staff in those agencies."*

The public interest in disclosure is strengthened because of the number of state sector agencies that already disclose the relevant expense information. The Ombudsmen consider that consistent disclosure across the wider state sector would promote overall levels of accountability. It would enable comparisons to be drawn between state sector agencies of different types; among state sector agencies of the same type; and, if the information was to be released on an ongoing basis, between expense information of a single agency over time. The first type of comparison will be broad because of the diverse nature of the functions and activities of the agencies, but that does not invalidate the comparison entirely. The second type of comparison begins to be more focused. The third type of comparison is likely to be particularly meaningful – enabling the public to compare a particular agency's expense information over time.

## Other withholding grounds

Other withholding grounds may also be relevant.

For instance, section 9(2)(i) of the OIA applies if withholding is necessary to enable an agency to carry out commercial activities without prejudice or disadvantage. That section may be relevant to agencies engaged in commercial activities.<sup>8</sup>

However, barring exceptional circumstances, other withholding grounds are unlikely to provide a basis for withholding credit card statements and expense reimbursement claims in their entirety. Even if exceptional circumstances are made out, summary information ought to be released e.g. total annual spend per category of expense.

The Ombudsmen do accept a need to withhold **credit card numbers and expiry dates**. This is on the basis that such information could be used to facilitate the commission of identity fraud offences, and is therefore capable of being withheld under section 6(c) of the OIA.<sup>9</sup>

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<sup>8</sup> See Chapter 4.2 of the Ombudsmen's Practice Guidelines for more information about the application of this withholding ground.

<sup>9</sup> Section 6(c) provides good reason for withholding if disclosure would be likely to prejudice the maintenance of the law, including the prevention, investigation and detection of offences. The equivalent provision of the LGOIMA is section 6(a).

## Charging

Under the official information legislation, an agency is entitled to charge for the supply of official information.<sup>10</sup> Any charge fixed must be reasonable and regard may be had to the cost of the labour and materials involved in making the information available.<sup>11</sup>

The Government has approved guidelines for charging for official information.<sup>12</sup> The guidelines apply to government departments, Crown entities, SOEs and all other organisations which are subject to the OIA. They “represent what the Government regards as reasonable charges for the purposes of the OIA and should be followed in all cases unless good reason exists for not doing so”.<sup>13</sup>

The guidelines specify rates that may be charged for staff time and photocopying. They also provide that the liability to pay a charge may be modified or waived at the agency’s discretion, and that in considering waiver or remission it would be appropriate to consider, inter alia:

*“...whether remission or reduction of the charge would be in the public interest because it is likely to contribute significantly to public understanding of, or effective participation in, the operations or activities of the government, and the disclosure of the information is not primarily in the commercial interest of the requester”.<sup>14</sup>*

The Ombudsmen consider that, provided a request for credit card statements and expense reimbursement claims relates to a reasonably confined period of time, it is unlikely to require a significant amount of processing time.

Such information is likely to be readily retrievable, particularly bearing in mind public offices’ obligations under the Public Records Act to maintain public records in an accessible form so they are able to be used for subsequent reference.<sup>15</sup> The charging guidelines say that any charge imposed should not include any allowance for extra time spent locating and retrieving information which is not where it ought to be.

The Ombudsmen also consider that due weight must be accorded to the [public interest](#) considerations discussed above. These factors will warrant significant remission, and potentially full waiver, of any charge that may otherwise have been legitimately imposed.

In general, the Ombudsmen consider that credit card statements and expense reimbursement claims – or the equivalent information derived from the agency’s expense management software – should be available at no cost to the requester.

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<sup>10</sup> Section 15(1A) of the OIA and section 13(1A) of the LGOIMA.

<sup>11</sup> Section 15(2) of the OIA and section 13(3) of the LGOIMA.

<sup>12</sup> Available at [www.justice.govt.nz](http://www.justice.govt.nz).

<sup>13</sup> Charging Guidelines, p 1.

<sup>14</sup> Ibid, p 5.

<sup>15</sup> Section 17(2) of the Public Records Act.

We are aware that some agencies have found it more expedient to meet requests for credit card statements by seeking the relevant information from their bank. While they are not required to do so under the legislation, if this eliminates the need for agency time that would otherwise be required to search for and retrieve the information, then this is an entirely reasonable approach.

## Invoices and receipts

Drilling down a level, agencies will also hold invoices and receipts submitted in support of credit card statements and expense reimbursement claims. This can include:

- Eftpos receipts containing transaction dates and times, names of businesses, and total amounts.
- Travel invoices and receipts, including flights, taxis, petrol and parking. Besides dates, times and amounts, these invoices and receipts sometimes reveal pick-up/destination locations, credit card numbers and expiry dates, and names of taxi drivers.
- Accommodation invoices and receipts, which reveal where an individual stayed, the rate for the room, and any extra charges (food, bar, telephone, movie). These invoices tend to contain general information only e.g. “bar”, “breakfast”, “dinner”, and do not reveal the exact nature of the expenditure incurred.
- Restaurant invoices and receipts, containing dates and times, names of businesses, total amounts, and in some cases, an itemised breakdown of the food and drinks ordered.
- Invoices and receipts for conference registrations, membership fees, and subscriptions to publications.

## Administrative issues

It may be more difficult administratively to comply with a request for **all** invoices and receipts. This will depend on the volume of information at issue and how the information is stored. If a request for all invoices and receipts does raise administrative difficulties, agencies have the option of extending the timeframe for complying with the request, or imposing a reasonable charge to cover the cost of supplying the information.

To be clear, the Ombudsmen accept that it may be legitimate to charge for supplying **all** invoices and receipts for a particular period. There may be a strong public interest in release of **particular** invoices and receipts – but insofar as requests for **all** invoices and receipts are concerned, the Ombudsmen consider that the [public interest](#) considerations discussed above are likely to be largely met by disclosure of credit card statements and expense reimbursement claims, or the equivalent information presented in a different format.

If extending or charging are not feasible alternatives,<sup>16</sup> it may be open to agencies to refuse requests for all invoices and receipts under section 18(f) of the OIA,<sup>17</sup> on the basis that it would require substantial collation or research to make the information available.

Agencies must remember that before refusing a request under section 18(f) they must also consider whether consulting the requester would assist that person to make the request in a form that would remove the reason for refusal.<sup>18</sup> Requesters will often be prepared to refine their requests if agencies take the time to explain the difficulty involved in meeting them as currently framed.

## Privacy

As with credit card statements and expense reimbursement claims, the Ombudsmen will generally not accept that it will be necessary to withhold invoices and receipts to protect the privacy of chief executives (see earlier comments on the [privacy](#) withholding ground).

The Ombudsmen do accept that [credit card numbers and expiry dates](#) may be withheld under section 6(c) of the OIA.<sup>19</sup> They also accept that it is necessary to withhold personal addresses and the names of taxi drivers to protect the privacy of natural persons. There is unlikely to be a countervailing public interest in disclosure of this information.

The Ombudsmen have considered the argument that itemised restaurant invoices and receipts should be withheld because menu choices are personal and could reveal private health issues.

Whether this is the case depends on the specific information contained in the invoice or receipt. It seems unlikely that restaurant invoices and receipts will reveal private health issues about identifiable individuals – but if they do there may be a basis for withholding, at least in part.

Where the card holder is dining alone, or he/she is dining with others who all order the same thing, this may reveal personal preferences. This may give rise to a slightly higher privacy interest. Where the card holder is one of two or more diners, it becomes more difficult to argue that the information in itemised receipts can be connected with identifiable individuals, thereby revealing personal preferences.

On the whole, the Ombudsmen's view is that the privacy interests in individual receipts and invoices are likely to be negligible. Withholding may not be "necessary" to protect those interests, which may also be outweighed by the [public interest](#) considerations discussed above.

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<sup>16</sup> Section 18A(1) of the OIA and section 17A(1) of the LGOIMA.

<sup>17</sup> Section 17(f) of the LGOIMA.

<sup>18</sup> Section 18B of the OIA and section 17B of the LGOIMA.

<sup>19</sup> Section 6(a) of the LGOIMA; see p 5 of this guide.

## Personal expenses

Most credit card policies provide that cards should not be used for personal expenses. However, cards are sometimes used for personal expenses inadvertently or contrary to policy.

The Ombudsmen accept that there is a privacy interest in personal expenses, even if they are incurred on business credit cards. The weight of that interest, and of any countervailing public interest in disclosure, will depend on the nature and context of the personal expenses. Contextual factors may heighten both the privacy interest in withholding, and the public interest in disclosure.

As a minimum, agencies should disclose information about the amount(s) of any personal expenses, along with confirmation that the expenses have been repaid. There will also be a strong public interest in disclosure of information documenting the repayment of personal expenses, should it be sought.

## Names of individuals

Names of individuals appear in state sector expense information where:

- individuals have met with the person incurring the expense (e.g. *“parking at airport for meeting with Mr A”*); and
- individuals are beneficiaries of the expenditure.

Individuals may be employees of the state sector agency or members of the public.

Where the information at issue is that particular individuals met with the person incurring the expense, the Ombudsmen will follow the early Ministerial diaries cases.<sup>20</sup> Accordingly, where the meeting is for a **business purpose**, it will not be necessary to withhold names to protect personal privacy. Where the meeting is on a purely **personal basis**, it may be necessary to withhold names to protect personal privacy (e.g. *“parking for visit to Mrs Y in Middlemore Hospital”*).

Where the information at issue is that particular individuals were the **beneficiaries of the expenditure**, then as a starting point the following information should be disclosed:

- names of elected representatives, board members, directors, chief executives, and senior managers;
- number of other officials / employees;

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<sup>20</sup> See Case Notes W47385, W47386, W47387, W47389, W47390, W47391 & W47544, available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz).

- names of senior representatives of private sector, non-governmental or international organisations;
- any personal relationships between officials / employees and guests (e.g. chief executive + partner); and
- number of guests.

We accept that there may be a privacy interest in the names of guests, but the strength of that interest will depend on factors such as:

- the purpose of the event;
- the location of the event (whether it was in a public or private place);
- who else attended;
- the public profile of the guests;
- the knowledge of the guests regarding who funded the event;
- the relationship between the agency and the guest i.e. whether there is a business relationship, even if the furtherance of that business is not the primary purpose of the event; and
- any special confidentiality needs.

The privacy interest of the guests must also be balanced against the public interest in disclosure, which may depend upon the following factors:

- the amount of expenditure incurred;
- the type of expenditure, for instance, whether it is “*sensitive expenditure*” as defined by the Auditor-General;<sup>21</sup>

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<sup>21</sup> “Sensitive expenditure” provides, or has the potential to provide, or the perceived potential to provide a private benefit to an individual staff member of a public entity that is additional to the business benefit to the entity of the expenditure (Controlling sensitive expenditure: Guidelines for public entities, Controller and Auditor-General, 2007, p 7). As the Auditor-General notes “there is heightened public sensitivity when individuals in the public sector are perceived to benefit personally, or do directly benefit, from sensitive expenditure incurred during the conduct of a public entity’s business” (ibid, p 9).

- whether there are problems, difficulties or concerns in relation to the expenditure;<sup>22</sup> and
- whether sufficient information has been disclosed about the purpose of the event to assure the public of the propriety of the expenditure.

There may be situations where it is necessary to disclose the names of guests to meet the public interest in awareness of the purpose of the expenditure. For example, it may not be necessary to disclose the names of attendees for a dinner for staff prior to a late evening meeting with the Minister – the purpose of such a meeting may be judged irrespective of the identities of the attendees – but it is arguably necessary where the sole purpose of the expenditure is to entertain a particular guest.

Once again, the [public interest](#) factors discussed above carry considerable weight.

The Privacy Commissioner has agreed that *“where the information at issue is information about a meeting for a business purpose it should not usually be necessary to withhold the identities of those persons at the meeting to protect personal privacy”*. The Privacy Commissioner also agrees that the factors listed above provide *“a good reference point to examine reasons that would militate against withholding information in circumstances that require accountability and transparency in the public interest”*.

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<sup>22</sup> According to the Auditor-General the most frequently occurring problems arise with expenditure that is:

- of a nature that is, or could be regarded as, extravagant or immoderate for the public sector;
- incurred without there being a justifiable and adequately documented business purpose;
- subject to poorly defined policies and procedures;
- not adequately substantiated by invoices, receipts, or other relevant documentation to support claims or payments;
- committed before appropriate authority has been obtained; and
- made without proper scrutiny to ensure compliance with an entity’s policies and procedures (ibid, p 9).