

The OIA and school boards of trustees

This guide sets out the key ‘need to know’ information about the obligations of Boards of Trustees (BOTs) under the Official Information Act (OIA). It also explains the Ombudsman’s role in relation to complaints about OIA requests.

All BOTs of state and state-integrated schools are subject to the OIA.¹ This means that anyone can request information held by a BOT, and the BOT must respond in accordance with the requirements of the OIA.

¹ Boards of Trustees constituted under Part 9 of the Education Act 1989 are listed in Schedule 1 of the Ombudsmen Act 1975, which means they are an ‘organisation’ for the purposes of the OIA (see section 2).

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What is an OIA request?

An OIA request is one for any information held by the BOT. This includes information held by employees and contractors of the BOT, in their capacity as employees and contractors.² There is no set form for making an OIA request, and BOTs cannot insist that requesters follow a particular form in order for their request to be accepted. OIA requests can be made orally or in writing; in hardcopy or in electronic form; and the requester does not need to refer to the OIA when making their request.³ Put simply: if the requester is seeking information held by the BOT then it is an OIA request.

Personal information and the Privacy Act

A request for official information that is personal information about the requester is considered under the Privacy Act not the OIA. Some requests will seek information that is both personal information about the requester and information about other people or subjects, in which case they must be considered under both the OIA and the Privacy Act.

Who can make an OIA request?

OIA requests can be made by any New Zealand citizens and permanent residents or anyone in New Zealand, as well as companies or incorporated societies that are incorporated or have a place of business in New Zealand⁴—requesters don't have to be associated with the school. BOTs can ask a requester for information that is necessary to ascertain whether that person is

² See s 2(4) and (5).

³ See s 12(1AA).

⁴ See s 12(1).

eligible to make an OIA request. However, they should not impose unnecessary or unreasonable requirements. In most cases it should be reasonably clear from the surrounding facts that a request has been made by an eligible person. Even if the OIA doesn't apply, BOTs should provide a reasonable response to ineligible requesters, as their response could still be investigated under the Ombudsmen Act.

Why does the requester want the information?

A requester may give reasons for making an OIA request but there is no obligation on them to do so. BOTs can ask for this information if they think it would be helpful in reaching a decision, but they cannot insist that it be provided. BOTs should be careful not to suggest that the supply of reasons by the requester is a prerequisite for getting an answer to their OIA request. If a requester chooses not to state their reasons for making an OIA request the BOT must still fulfil its legal obligations under the OIA.

What are the legal obligations?

The key legal obligations on BOTs are:

- To provide reasonable assistance to a requester to make their request.⁵
- To tell the requester the decision on their request as soon as reasonably practicable and within 20 working days (unless that time limit is extended).⁶
- To release information unless there is a '*good reason*'⁷ or an '*administrative reason*'⁸ under the OIA for refusing to do so.
- To release information without undue delay.⁹
- Where a request is refused, to tell the requester the reasons for the refusal, and that they have a right to complain to the Ombudsman about that refusal.¹⁰

⁵ See s 13.

⁶ See ss 15 and 15A.

⁷ See ss 5, 6 and 9.

⁸ See s 18.

⁹ See s 28(5).

¹⁰ See s 19.

Special rights of access

The OIA also contains special rights of access to:

- Policies, principles, rules, or guidelines which affect decisions ¹¹
- Reasons for decisions that have affected the requester personally. ¹²

The reasons for refusing such requests are more limited. In the school context it is difficult to see that there would be any basis for refusing to provide a requester with details of the policies, principles, rules or guidelines which inform the school's decisions.

Who can you ask for help?

If you receive an OIA request and need advice about the processing requirements you can call our office on 0800 802 602. A staff member will be happy to discuss the request with you in general terms, remembering that we cannot tell you what decision to make. You can also access helpful guides on our website <http://www.ombudsman.parliament.nz/resources-and-publications/guides/official-information-legislation-guides>, as well as a response calculator, to help you work out the date by which you need to respond to an OIA request.

The Ombudsman's role

The Ombudsman considers complaints by requesters who are unhappy with the response or lack of response to their OIA request. When we receive an OIA complaint an investigator assisting the Ombudsman may contact the school to make informal enquiries about the complaint. If the Ombudsman decides to investigate a complaint he or she will write to the Chair of the BOT providing details of the complaint and any response that may be sought. The Ombudsman's role is to form an opinion on whether the request should have been refused, or whether the decision complained about is otherwise wrong or unreasonable. Before forming an adverse opinion the Ombudsman will give affected parties an opportunity to comment. Where the Ombudsman finds that a complaint has merit, they can make any recommendations they think fit.

¹¹ See s 22.

¹² See s 23.