

## Changes to the Ombudsmen Act and official information legislation

*This is a quick reference guide to changes to the Ombudsmen Act (OA) and official information legislation which came into effect on 26 March 2015. The changes to the official information legislation were made as part of the Government's response to the Law Commission's review of that legislation.<sup>1</sup>*

*For full details of the amendments see the [Ombudsmen Amendment Act 2015](#), the [Official Information Amendment Act 2015](#), and the [Local Government Official Information and Meetings Amendment Act 2015](#).*

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<sup>1</sup> Law Commission, *The Public's Right to Know: Review of the official information legislation* (NZLC R 125, 2012), available at [http://www.lawcom.govt.nz/sites/default/files/publications/2012/07/the\\_publics\\_right\\_to\\_know\\_nzlc\\_r125\\_2012.pdf](http://www.lawcom.govt.nz/sites/default/files/publications/2012/07/the_publics_right_to_know_nzlc_r125_2012.pdf).

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## Changes to the Ombudsmen Act

Section 17 of the OA has been changed to clarify the grounds on which an Ombudsman can refuse to investigate (or further investigate) a complaint.

Those grounds are as follows:

- there is an adequate alternative remedy or right of appeal available to the complainant;
- the complainant has known about the act or decision that is the subject of the complaint for more than 12 months;
- the subject matter of the complaint is trivial;
- the complaint is frivolous or vexatious or not made in good faith;
- the complainant has insufficient personal interest in the subject matter of the complaint;
- investigation (or further investigation) is unnecessary.

The key change is to give the Ombudsman the ability to refuse to investigate a complaint if it appears to the Ombudsman, following preliminary inquiries, that having regard to all the circumstances of the case, an investigation is unnecessary.

## Changes to the official information legislation

The following changes have been made to both the Official Information Act (OIA) and the Local Government Official Information and Meetings Act (LGOIMA):

- [Form of requests](#)
- [Partial transfers](#)
- [Amended or clarified requests—effect on statutory timeframes](#)
- [Release in electronic form or by electronic means](#)
- [Refusing a request where the document does not exist or cannot be found](#)
- [New investigation functions](#)

There are also a couple of minor [LGOIMA-specific changes](#).

### Form of requests

The legislation now makes it explicit that a request:

- can be made in any form and communicated by any means, including orally;<sup>2</sup>
- does not need to refer to the OIA or LGOIMA.<sup>3</sup>

It also clarifies that where an oral request is made, agencies can ask the requester to put it in writing **if written clarification is reasonably necessary**.<sup>4</sup> If the requester declines or is unable to put the request in writing, the agency must record its understanding of the request and provide a copy to the requester.<sup>5</sup>

### Partial transfers

The legislation now makes it clear that agencies can transfer part of a request to another agency.<sup>6</sup>

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<sup>2</sup> Section 12(1AA)(a) OIA; s 10(1AA)(a) LGOIMA.

<sup>3</sup> Section 12(1AA)(b) OIA; s 10(1AA)(b) LGOIMA.

<sup>4</sup> Section 12(4) OIA; s 10(4) LGOIMA.

<sup>5</sup> Section 12(5) OIA; s 10(5) LGOIMA.

<sup>6</sup> Section 14 OIA; s 12 LGOIMA.

## Amended or clarified requests—effect on statutory timeframes

Consultation with a requester often results in an amended or clarified request. Changes have been made to make it clear when an amended or clarified request will be a new request for the purpose of calculating the maximum statutory timeframe for response.

An amended or clarified request will be treated as a new request that replaces the original request unless:<sup>7</sup>

- the amendment or clarification was sought by the agency; and
- the agency did not seek that amendment or clarification within 7 working days of receiving the original request.

This should incentivise agencies to identify very early on whether a request requires clarification or amendment in order to be able to respond. They can only benefit from this provision if they seek to elicit the required clarification or amendment within 7 working days of receiving the request.

The full range of scenarios that can arise with respect to amended or clarified requests is covered in our guides [The OIA for Ministers and agencies](#) (pages 13–15) and [The LGOIMA for local authorities](#) (pages 13–14).

Agencies should bear in mind their obligation to provide reasonable assistance to a requester.<sup>8</sup> This may mean:

- explaining the lack of clarity or difficulty involved in meeting the request as it is currently framed; and
- giving options for how the issues or difficulties might be addressed.

For instance, agencies could provide contact details of a person the requester can consult with, or provide lists, indexes or a description of the information potentially at issue.

## Release in electronic form or by electronic means

Section 16 of the OIA (section 15 of the LGOIMA) discusses the ways in which information comprised in document may be released to a requester. It says the information must generally be made available in the way preferred by the requester. While that remains the case, an amendment to the legislation clarifies that information may be made available in electronic form or by electronic means (eg provision by email).<sup>9</sup>

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<sup>7</sup> Section 15(1AA) and (1AB) OIA; s 13(7) and (8) LGOIMA.

<sup>8</sup> Section 13 OIA; s 11 LGOIMA.

<sup>9</sup> Section 16(1A) OIA; s 15(1A) LGOIMA.

## Refusing a request where the document does not exist or cannot be found

The official information legislation provides a reason for refusing a request for a document if it does not exist or cannot be found.

A change makes it clear that an agency must have made **reasonable efforts to locate** the document before refusing a request on this ground.

The amended ground provides a reason for refusal if *'the document alleged to contain the information requested does not exist or cannot be found, despite reasonable efforts to locate it'*.

## New investigation functions

Failure to make and communicate a decision on a request for official information as soon as reasonably practicable deemed to be a refusal

The Ombudsman has a new function to investigate and review an agency's failure to make and communicate its decision on a request for official information as soon as reasonably practicable. Such failure is deemed to be a refusal of the request.<sup>10</sup> Previously a complaint of this nature would have needed to be considered under the Ombudsmen Act.

## Notification to Chief Archivist of refusals on certain administrative grounds

The Ombudsman may notify the Chief Archivist of a complaint that an agency refused a request because the information:<sup>11</sup>

- does not exist or cannot be found;
- cannot be made available without substantial collation or research;
- is not held.

## LGOIMA-specific changes

### Information held by independent contractors

The deeming provision in section 2(6) of LGOIMA related to information held by independent contractors has been changed to align with the equivalent provision in the OIA.

Previously, a local authority would be deemed to hold information held by an independent contractor which the local authority was **entitled to access under or by virtue of the contract**.

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<sup>10</sup> Section 28(4) OIA; s 27(4) LGOIMA.

<sup>11</sup> Section 28(6) OIA; s 27(6) LGOIMA.

Now, a local authority will be deemed to hold any information held by an independent contractor **in its capacity as contractor**.

### Purpose of progressive availability

Section 4 of LGOIMA is amended to state that the purpose of the legislation is to *'increase progressively'* the availability of official information. This aligns it more closely with the purposes provision in the OIA.