

Model protocol on dealing with OIA requests involving Ministers

Some OIA requests received by agencies need to involve the responsible Minister. It is important for agencies to have clear and transparent processes for dealing with such requests. It is also important that these processes are both lawful and reasonable.

This model protocol is intended to provide a useful starting point for agencies and their Ministers to discuss and agree upon clear criteria for managing OIA requests involving the Minister. It should be read in conjunction with our detailed guide to [Dealing with OIA requests involving Ministers](#).

Model protocol on dealing with OIA requests involving ministers

1. Contents

[Background and purpose](#)

[Context and principles](#)

[Notification of requests](#)

[Transfer](#)

[Consultation](#)

[Notification of decisions](#)

[Record-keeping](#)

[Disputes](#)

[Assistance](#)

2. Background and purpose

2.1 The parties to this protocol are [agency] and the [portfolio Minister].

2.2 This protocol is effective from [date]. It expires when the present [portfolio Minister] no longer holds that position.

2.3 The purpose of this protocol is to set out how [agency] and the [portfolio Minister] will deal with *OIA requests involving the Minister* made to [agency].

2.4 *OIA requests involving the Minister* are ones where there is the potential for the [portfolio Minister] to be affected by release of the requested information because:

- it relates to their functions or activities as a Minister; or
- they may be required to prepare for the possibility of public or political commentary.

2.5 The operative version of this protocol will be published on [agency's] website at [URL].

3. Context and principles

3.1 [Agency] and the [portfolio Minister] acknowledge the principle of availability which underpins the OIA and means that official information must be made available on request unless there is good reason, in terms of the Act, for withholding it.¹

3.2 [Agency] and the [portfolio Minister] will apply this protocol in a way that does not interfere with their statutory obligations to make and communicate decisions on requests for official information as soon as reasonably practicable and within 20 working

¹ See [s 5](#) OIA.

days² (subject to extension only where necessary),³ and to release official information without undue delay.⁴

- 3.3 The [portfolio Minister] recognises that [agency] is responsible for making decisions on OIA requests it receives, unless those requests are required to be transferred to the [portfolio Minister] in accordance with [section 14](#) of the OIA.
- 3.4 [Agency] recognises that the [portfolio Minister] may need to make, be involved in, or know about decisions on *OIA requests involving the Minister*.
- 3.5 [Agency] will work with the office of the [portfolio Minister] to identify *OIA requests involving the Minister* and decide the appropriate mechanism for dealing with them:
- transfer;
 - consultation; or
 - notification of the decision.
- 3.6 [Agency] and the [portfolio Minister] acknowledge that this is a decision to be made on the facts of each case, and in accordance with the law, and not pursuant to any general policy or directive.

4. Notification of requests

- 4.1 [Agency] will notify the office of the [portfolio Minister] of receipt of any *OIA request involving the Minister*, including where the requested information [[for example:
- relates to the [portfolio Minister's] functions or activities;
 - could impact on the [portfolio Minister]'s functions or activities;
 - was generated by or on behalf of the [portfolio Minister];
 - is sensitive or controversial; or
 - is likely to be published in the news media⁵ or debated in the House]].
- 4.2 [Specify arrangements for notification of requests, including information to be included in the notification].

² See [s 15\(1\)](#) OIA.

³ See [s 15A](#) OIA.

⁴ See [s 28\(5\)](#) OIA.

⁵ Following the definition in [s 68\(5\) of the Evidence Act 2006](#), 'news media' is media for the dissemination to the public or a section of the public of news and observations on news. Following the judgment of the High Court in *Slater v Blomfield* [2014] NZHC 2221, this can include a blogger who regularly disseminates news (ie, new information about recent events or events of interest to the public), or observations on news, to a significant body of the public.

5. Transfer

- 5.1 [Agency] will transfer all or part of an OIA request to the [portfolio Minister] when that is required under [section 14](#) of the OIA—that is:
- when the requested information is not held by [agency] but is believed by the person dealing with the request to be held by the [portfolio Minister]; or
 - when the requested information is believed by the person dealing with the request to be more closely connected with the functions of the [portfolio Minister].
- 5.2 The [portfolio Minister] acknowledges that, in the absence of these circumstances, transfer is not permitted and responsibility for deciding on the request rests with [agency].
- 5.3 The need for transfer will be determined on the facts of the particular case, with regard to the specific information at issue and the functions of the [portfolio Minister], and in consultation with the office of the [portfolio Minister].
- 5.4 The [portfolio Minister] will likewise transfer all or part of an OIA request to [agency] when that is required under [section 14](#) of the OIA.

6. Consultation

- 6.1 [Agency] will work with the office of the [portfolio Minister] to identify requests requiring consultation.
- 6.2 Consultation may be required with the [portfolio Minister] where [for example:
- they supplied the information;
 - it is about their functions or activities; or
 - release could affect their functions or activities or legitimate interests].
- 6.3 [Agency] will provide the [portfolio Minister] with all information necessary for informed consultation, including the request, the information at issue, and the decision [agency] proposes to take. [Agency] will allow a minimum 5 working days for consultation to take place, unless the circumstances of the particular request demand a shorter period of time.
- 6.4 The office of the [portfolio Minister] will respond to all consultations as expeditiously as possible. The office of the [portfolio Minister] will let [agency] know if more time is required so that [agency] can consider whether it is necessary to extend the maximum 20 working days for making a decision on the request.

6.5 The office of the [portfolio Minister] will provide appropriate input in response to [agency] requests for consultation. Appropriate input means comments and suggestions regarding:

- the proper application of the withholding grounds and the public interest test;
- the release of additional information, including additional explanatory material to place the information that is being released in its proper context;
- the proactive release of the same information to others, provided there is no undue delay in providing that information to the requester.

6.6 The office of the [portfolio Minister] will not provide inappropriate input, such as raising irrelevant considerations (like political embarrassment), or asking or instructing [agency] to act in a way that would be contrary to the requirements of the OIA, including withholding or delaying release of official information without any proper statutory basis.

6.7 [Agency] will consider the input of the [portfolio Minister]'s office on an OIA request in good faith and with an open mind, before deciding whether that input provides a reasonable basis for changing its proposed decision on the request. [Agency] may proceed to make a decision on an OIA request if the [portfolio Minister] does not respond to the consultation, or advise that further time is required.

7. Notification of decisions

7.1 [Agency] will work with the office of the [portfolio Minister] to identify decisions requiring notification. Notification may be required where the requested information is [for example:

- sensitive or controversial in nature; or
- likely to be published in the news media or debated in the House].

7.2 Notification will be for the [portfolio Minister]'s information only.

7.3 Notification will be done at the same time as the decision is communicated to the requester, except where it is necessary, in the circumstances of the particular case, to provide a short period of advance notice to enable the Minister to be properly briefed so they are able to respond appropriately to enquiries and legitimate scrutiny.

7.4 [Specify arrangements for notification of requests, including information to be included in the notification].

8. Record keeping

- 8.1 [Agency] and the [portfolio Minister] will keep full and accurate records of interactions in relation to OIA requests, in accordance with normal prudent business practice, as required by [section 17\(1\)](#) of the Public Records Act 2005.
- 8.2 In cases where it is necessary to give advance notice of a decision to the [portfolio Minister], the [agency's] record will include the reasons why advance notice is necessary in the circumstances of the particular case, and the period of advance notice agreed.

9. Disputes

- 9.1 Where disputes arise between the parties regarding the proper application of the OIA or this protocol, these should be referred to [the chief executive or named delegate] of [agency] and the [portfolio Minister or named delegate].
- 9.2 Any alleged breach of this protocol should be referred to [the chief executive or named delegate] of [agency] and the [portfolio Minister or named delegate].

10. Assistance

- 10.1 The Office of the Ombudsman offers an advisory service on the operation of the OIA. They can be contacted by email info@ombudsman.parliament.nz or freephone 0800 802 602. The Office should be contacted as early as possible to ensure it can answer any queries without delaying the response to a request for official information.

Signed by:

[Portfolio Minister]

[Chief Executive on behalf of agency]

Date

Date