

## Requests made online

A guide to requests made through [fyi.org.nz](http://fyi.org.nz) and social media

*This guide deals with [Official Information Act 1982](#) (OIA) and [Local Government Official Information and Meetings Act 1987](#) (LGOIMA) requests made through [www.fyi.org.nz](http://www.fyi.org.nz) (FYI) and the social media websites of Twitter and Facebook.*

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## What are FYI, Twitter and Facebook?

**FYI** is a website that allows people to publicly lodge official information requests online. Requests, responses and associated correspondence are published online. Requesters choose from a range of *'public authorities'* to make their request to and FYI sends that request by email to the relevant agency. The website is run by Open New Zealand and hosted and supported by the New Zealand Herald.

**Twitter** is an information network which uses messages with a limit of 140 characters. Twitter users can *'follow'* one another to see the messages they post to the network. Agencies can communicate with their followers by posting *'tweets'*, including photos, videos or links to websites. People can communicate with agencies by replying to their tweets or by direct message (but only if the agency is following them).

**Facebook** is a social networking site that connects people with friends and enables them to share information. Agencies can create and post information to a Facebook page. As well as appearing on the agency's Facebook page, that information appears in the personal newsfeed of people who've liked the page. People can communicate with agencies by posting to a message to the agency's Facebook page, or by personal message.

## Can requests be made this way?

Yes—official information requests can be **made in any form and communicated by any means**.<sup>1</sup> Any agency that has an email address can receive a request via FYI, and agencies that have a Twitter account or Facebook page can receive requests in that way.

### Case study 331942 (2012)—Request made via Twitter

A requester tweeted to their local council: *'hi I'd like to do a LGOIMA request via Twitter. How much is being spent to advertise the council page on facebook?'* The council replied *'we cannot take LGOIMA requests over twitter. Please call or email us'*. The requester complained to the Ombudsman about this response. The complaint was resolved informally by explaining to the council that there was no basis under the LGOIMA to decline to answer the request simply because it was made via Twitter. The council agreed that the advice provided to the requester was incorrect, and agreed to respond.

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<sup>1</sup> See s 12(1AA) OIA and s 10(1AA) LGOIMA.

## Who is the requester and why do they want the information?

Many agencies consider this to be important information, but under the OIA the identity of the requester is only strictly required for the purpose of [establishing eligibility](#). (There are **no eligibility restrictions under the LGOIMA**.<sup>2</sup>)

There is also no requirement for a person to give reasons for their request. Reasons can be helpful in identifying the specific information sought, and in weighing competing public interests in favour of withholding and disclosure. Agencies **can ask** a requester for their reasons. However, requesters **cannot be compelled** to supply them, and should not be pressured to do so.

It can be difficult with online requests to know who the requester is, or whether they are really who they say they are, but in this respect they're not that different to ordinary requests. There is nothing to prevent someone in the 'real world' (as opposed to the 'online world') from submitting a request by proxy (ie, getting someone else to make it for them). Nor is there anything to prevent them from publishing online any hardcopy information they receive in response to a request.

### Establishing eligibility under the OIA

To be eligible to request information under the OIA, a requester must be:<sup>3</sup>

- a New Zealand citizen or permanent resident;
- a person in New Zealand; or
- a corporate entity (that is, a company or an incorporated society) which is either incorporated in New Zealand or has a place of business here.

Agencies that receive online requests may have limited information with which to establish a requester's eligibility.

An agency that gets a request via **FYI** will receive the requester's name and a computer-generated '@requests.fyi.org.nz' email address. FYI recommends that requesters use their real name. An agency that gets a request via **Twitter or Facebook** can check the user's online profile. This may have information about their location, work and education that is sufficient to satisfy an agency as to a requester's eligibility. However, the extent of information displayed is up to the user.

Agencies are entitled to make reasonable enquiries to satisfy themselves that a requester is eligible to make a request under the OIA. However, the eligibility requirement is not about

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<sup>2</sup> A LGOIMA request may be made by 'any person'—see s 10(1) LGOIMA.

<sup>3</sup> See s 12(1) OIA.

imposing unnecessary barriers to legitimate requests. Agencies should only query eligibility if there is a genuine need to do so, and they should be mindful of their obligation to provide reasonable assistance to requesters.<sup>4</sup> Time taken to confirm eligibility may mean less time is available for processing a request that is subsequently confirmed to be valid. With that in mind, agencies should endeavour to resolve any doubts about a requester's eligibility as soon as possible.

Querying eligibility can be tricky if an agency's exchanges with the requester are taking place in the public domain (as they are in FYI requests, tweets and Facebook posts, but not direct or personal messages). The best way to do this may be to reply to the requester (preferably at the same time the request is acknowledged), explaining the eligibility requirements, and providing the name and contact details of a staff member the requester can contact privately in order to provide the assurance required regarding eligibility.

Even if the requester turns out to be ineligible to make a request under the OIA agencies should still provide a reasonable response, as their response could be investigated under the Ombudsmen Act 1975 (if the agency is subject to that Act). Agencies may also decide it doesn't really matter whether the requester is eligible or not, because they'd be perfectly happy to supply the information to any person regardless of eligibility.

## When are online requests 'received' for the purpose of calculating the maximum response date?

Under the OIA and LGOIMA, agencies must make a decision and communicate it to the requester 'as soon as reasonably practicable' and no later than 20 working days after the day the request is **received**.<sup>5</sup> When a request is **received**, and when it is **seen** by someone in the agency, are not the same thing.

Where an agency has designated a particular information system (like an email address, Twitter account, or Facebook page) for the purpose of receiving electronic communications, those communications will be taken to be received at the time they **enter** the information system, not when they come to the agency's attention.<sup>6</sup>

So whenever the email, tweet or post enters the system, that's when it's received. Use that date as the day of receipt for the purpose of calculating the maximum 20 working days for responding to an official information request. This is so regardless of whether the email, tweet or post was received **outside business hours**. The definition of 'working day' in the OIA and

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<sup>4</sup> See s 13 OIA and s 11 LGOIMA.

<sup>5</sup> See s 15(1) OIA and s 13(1) LGOIMA.

<sup>6</sup> See s 214 of the Contract and Commercial Law Act 2017.

LGOIMA makes no reference to business hours.<sup>7</sup> Use the online calculator on our [homepage](#) to help calculate maximum response times.

Querying a requester's [eligibility](#) will **not affect** the date that a request was received. The working day count still starts from the day after the request was received, not the day after eligibility was confirmed.

## Social media requests to Ministers

The position may be more complicated with Twitter and Facebook requests to Ministers, who are only subject to the OIA in their **official capacity** as Ministers, not in their capacity as MPs or members of a particular political party.

While Ministers may have Twitter accounts or Facebook pages, it may not be clear that those information systems are established and maintained in the Minister's official capacity.

This does not necessarily mean that official information requests cannot be made to Ministers via social media. However, it could affect the date on which a request is taken to be received for the purposes of the OIA (and therefore the working day count for responding to a request).

For example, it may be arguable that a Minister has not designated a Twitter account or Facebook page for the purpose of receiving electronic communications in their capacity as Minister, and therefore, such communications will not be taken to be received until they come to the Minister's attention. As there may be no guarantee when this will be, requesters may prefer to use officially designated channels for ministerial communication (see [www.beehive.govt.nz](http://www.beehive.govt.nz)).

## Advice for agencies

### Release in electronic form

There are a range of ways in which agencies may make official information available in response to a request.<sup>8</sup> However, agencies **must** make information available in the way preferred by the requester unless it would:<sup>9</sup>

- impair efficient administration;
- be contrary to any legal duty the agency has in respect of the information; or
- prejudice the interests protected by section 6, 7 or 9 of the OIA, or section 6 or 7 of the LGOIMA.<sup>10</sup>

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<sup>7</sup> See s 2 OIA and LGOIMA.

<sup>8</sup> See s 16(1) and (1A) OIA, and s 15(1) and (1A) LGOIMA.

<sup>9</sup> See s 16(2) OIA and s 15(2) LGOIMA.

With FYI requests, it's a given that the preferred form of release is **electronic**. The purpose of the site is to publish responses to official information requests online. It's possible that Twitter and Facebook requesters may also want an electronic response—if in doubt, agencies should ask the requester how they want to receive the response.

Nowadays, there's often nothing to prevent an agency providing an electronic response. Either the information is already in electronic form and able to be processed, if necessary, using redaction software; or it is able to be converted to electronic form relatively easily by scanning the relevant documents.

Agencies can respond to **FYI requests** by email with the relevant information attached, or directly from the FYI website by clicking '*respond to request*'.<sup>11</sup> The latter option enables agencies to upload files. If agencies are having difficulty uploading large files (perhaps because of a limit imposed by their own email server on the file size of any attachment), they can contact FYI for assistance; FYI will provide a URL where files of up to 100Mb each can be uploaded.

Tweeting a response to a request made by **Twitter** may be possible if the response can be made in fewer than 140 characters. If it can't, agencies could consider:

- uploading the response to their website or to a '*cloud*' service such as Dropbox, and posting a link to it; or
- asking the requester how they would prefer the response to be conveyed, given it is not possible to respond in the same way the request was made.

If information is not provided in the way preferred by the requester, the agency must explain the reason for not providing the information in that way, and if asked, the grounds supporting that reason.<sup>12</sup>

## Online publication

Information made available in response to **FYI** requests will be published online automatically if the response is made by the FYI website or by replying to the email address from which the request was sent. It is FYI's policy not to delete requests on the basis that it is a permanent public archive of such requests (although in rare cases FYI will hide responses or requests, for example, when personal information has been inadvertently published).

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<sup>10</sup> And in the case of the interests protected by s 9 of the OIA or s 7 of the LGOIMA, there is no countervailing public interest.

<sup>11</sup> Clicking on this link will prompt the agency to create a password-protected user account with the FYI site, so that only it can upload documents to the site using this link.

<sup>12</sup> See s 16(3) OIA and s 15(3) LGOIMA.

Tweets and posts in response to **Twitter and Facebook** requests will also be publicly available. Many agencies wonder how this factor is relevant to their decision making process under the OIA or LGOIMA.

The fact that information will be published online is not a reason in itself for refusing a request for official information. Publication of information released in response to official information requests has always been a possibility. Agencies have never been able to control what a requester does with the information they receive (unless there is a valid basis for imposing conditions<sup>13</sup>). However, it may be one factor to take into account in considering whether or not there is good reason to withhold the information.

On the one hand, it is possible that online publication of the information may be more likely to cause prejudice to the interests protected by the withholding grounds. For instance, online publication may be more likely to impinge on the privacy of natural persons, or to unreasonably prejudice the commercial position of a third party, than release to a particular requester with conditions where necessary.

On the other hand, online publication may lend weight to the public interest in disclosure, because the information will become available to the general public and not just the requester.

FYI is not intended to be a tool for making requests for personal information about the requester or others. However, there may be information the requester is not aware of that raises privacy implications. Agencies will need to consider the privacy interests of the requester (if applicable) and others in responding to requests via FYI.

## Copyright

Agencies often query whether it will breach a third party's copyright to make information available in response to an official information request. This is a particular issue when the information will be published online.

The fact that information is subject to copyright is not a reason in itself for refusing a request for official information. However, agencies dealing with requests for copyrighted material should consider whether any of the withholding grounds are engaged. There may be good reason to withhold the information<sup>14</sup> or to refuse to make it available in the way preferred by the requester (ie, online).<sup>15</sup> It may also be appropriate to consult the copyright holder before making a decision on the request for information.<sup>16</sup>

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<sup>13</sup> For more information about imposing conditions on the use, communication or publication of information see 'Conditional release' in [The OIA for Ministers and agencies](#) or [The LGOIMA for local government agencies](#).

<sup>14</sup> See ss 6 and 9 OIA and ss 6 and 7 LGOIMA.

<sup>15</sup> See s 16(2)(c) OIA and s 15(2)(c) LGOIMA. For more information about the form of release see 'Deciding how to release information' in [The OIA for Ministers and agencies](#) or [The LGOIMA for local government agencies](#).

<sup>16</sup> For more information about consulting third parties see 'Consultation' in [The OIA for Ministers and agencies](#) or [The LGOIMA for local government agencies](#).



Agencies are protected from any civil proceedings (including for breach of copyright) for release of information in good faith in response to a request made under the OIA or the LGOIMA.<sup>17</sup> The general law will apply to proactive disclosure of information by an agency, and requesters are similarly subject to the general law in respect of what they may do with any information disclosed to them.

## Managing your online communication tools

Agencies should ensure that the information systems they have designated for the purpose of receiving electronic communications are monitored, so that any requests for official information can be identified and actioned as soon as possible after they are received.

They should also consider adopting and publishing a social media policy (if they haven't already), so people know how they will manage their Twitter and/or Facebook accounts. It would be helpful to include specific mention of the OIA or LGOIMA in the agency's social media policy.

Agencies should check the address that FYI has for them to ensure it is up-to-date and appropriate (select the relevant '*public authority*' on the FYI website and click on '*view OIA email address*'). If it's not up-to-date they should contact FYI and let them know.

## Advice for requesters

### Requests not received or overlooked

Requesters should be aware that although requests may be made online there is a risk that they may not be received or they may be overlooked.

Sometimes **FYI** may not have the correct email address for the agency. This is particularly so with requests to Ministers when there has been a change in government or a Cabinet reshuffle, or requests to agencies when there has been a merger or rebranding. Sometimes the operation of spam filters means that although the request is sent by FYI it is not received by the agency.

Agencies that have set up **Twitter** accounts and **Facebook** pages may not have anticipated that they would be used to make official information requests. Their systems for tracking and monitoring Twitter and Facebook communications may not be as developed or sophisticated as the ones which exist in relation to more traditional forms of communication.

In addition, with [social media requests to Ministers](#), there may be some doubt as to when the request was received (when it entered the system or when it came to the Minister's attention?). This could affect when the working day count for responding to a request will start.

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<sup>17</sup> See s 48(1)(a) OIA and s 41(1)(a) LGOIMA.

With that in mind, requesters should consider:

- invoking the OIA or LGOIMA explicitly, to minimise the risk that their request will be overlooked; and
- requesting an acknowledgement, and following-up (perhaps with an alternative method of communication) if one is not received.

## Eligibility under the OIA

If a requester is seeking information under the OIA (as opposed to the LGOIMA) they need to be prepared for the fact that an agency may query their eligibility to make a request. This may affect the time taken to respond to a request. Requesters should consider offering details of the basis for their eligibility (for example, *'I am eligible to make this request because I am a New Zealand citizen'*), and asking the agency to contact them as soon as possible if proof of eligibility is required.

## Online publication

Requesters should bear in mind that they are seeking and may receive information in a public forum. With FYI in particular they should be aware that all responses are automatically published on the website for anyone to read.

Requesters should think carefully about what they're requesting and whether it could raise any privacy implications for themselves or for others. FYI is not intended to be a tool for seeking personal information about requesters or others. Requesters who want to make their request in private should contact the relevant agency direct.

Requesters should also be aware that agencies may be hesitant about publishing online information that relates directly or indirectly to their staff (for instance, names, phone numbers, email addresses etc). If requesters are not seeking information of this nature, they could consider saying so up-front. This may help ensure a more timely response.

## Further guidance

Further guidance for Ministers and central government agencies on processing OIA requests is available here: [The OIA for Ministers and agencies.](#)

Further guidance for local government agencies on processing LGOIMA requests is available here: [The LGOIMA for local government agencies.](#)

Further guidance for requesters on making official information requests is available here: [Making official information requests.](#)

Our staff are also able to provide advice and guidance in relation to online requests. You can contact our staff at [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.