

## Consulting third parties work sheet

### Important note

This work sheet takes you through the process of consulting an external third party on an OIA request. More detailed information is available in our [Consulting third parties](#) guide.

**Reminder:** Think about whether it's possible to respond in stages if not all of the information at issue relates to a third party. It might not be necessary to hold up your decision on all the information while you are consulting a third party on some of it.

### 1. Should I consult?

- Third party consultation is permitted but not required under the OIA/LGOIMA.
- You must decide whether consultation is necessary and appropriate in the circumstances of the particular case. Consider the following:
  - Is the information about a third party ie, is it personal information about an identifiable individual or corporate entity?
  - Did a third party supply the information?
  - Could release adversely affect a third party eg, impact on their privacy or lead to harassment, risk their safety, breach an obligation of confidence, or prejudice their commercial position?
  - Are there any legislative or contractual requirements to consult?

If the answer to any of these questions is **yes**, it may be appropriate to consult the third party.

- Consultation might be unnecessary, impractical, or inappropriate where:
  - The third party cannot be located.
  - They have already made their views on disclosure clear.
  - It would reveal information to the third party that they would not be entitled to access under the Privacy Act or the OIA.
  - There are too many third parties to consult (but consider whether it would be possible to consult a representative organisation or sample, see [Who should I consult](#) below).

	<ul style="list-style-type: none"> <li>- It would cause the third party undue distress.</li> <li>• If you decide not to consult, document your reasons, then go ahead and make a decision on the request based on what you already know. If you decide to consult, go to step 2.</li> </ul>
<p><b>2. Who should I consult?</b></p>	<ul style="list-style-type: none"> <li>• Identify who should be consulted. <ul style="list-style-type: none"> <li>- If the third party is an <b>individual</b>, consult that person themselves. Some people might need support to be able to understand and express their views on disclosure. People who might be able to help include a trusted relative or friend; an independent third party (such as a health care professional or disability support service); or someone with legal authority to act on the individual’s behalf (for example, their lawyer, welfare guardian, or person with power of attorney over their property or care and welfare).</li> <li>- Where the person is a <b>child</b>, it may be appropriate to consult their parent or guardian. However, children who are old enough to understand and express their own views on disclosure should be consulted directly, or at least involved in the consultation.</li> <li>- Where the individual is <b>deceased</b>, agencies can consult someone close to them (eg. their partner or next of kin, or the executor or administrator of their estate).</li> <li>- Where the third party is a <b>company or incorporated body</b>, agencies can consult the directors, secretary or chief executive. Where it is an <b>unincorporated group</b> (like a group of concerned citizens), agencies can consult the nominated leader or spokesperson for the group.</li> <li>- If there are too many third parties to consult, consider consulting a representative organisation or sample.</li> </ul> </li> <li>• Once you have identified who should be consulted, go to step 3.</li> </ul>
<p><b>3. Tell the requester you need to consult</b></p>	<ul style="list-style-type: none"> <li>• Let the requester know you need to consult the third party.</li> <li>• Consider whether you need to extend the timeframe for deciding on the request at the same time.</li> <li>• Invite the requester to get in touch if they want to amend or refine their request so that consultation may not be necessary.</li> <li>• Use our <a href="#">Template letter 24: Letter to requesters where third party consultation is necessary</a>. Go to step 4.</li> </ul>

<p><b>4. Consult the third party</b></p>	<ul style="list-style-type: none"> <li>• Tell the third party about the OIA request and give them a reasonable opportunity to comment. <ul style="list-style-type: none"> <li>- Explain how the OIA works, including the principle of availability and the withholding grounds.</li> <li>- Provide a copy of the information at issue (with redactions if necessary), or a schedule if they already hold it.</li> <li>- Explain the agency’s preliminary assessment of the withholding grounds and the countervailing public interest in release (if relevant), and outline any information that is proposed to be released.</li> <li>- Ask the third party to confirm whether they have any concerns with release and if so, to explain the basis for them.</li> <li>- Explain that their views will be taken into account before the agency makes its decision, but they cannot veto release.</li> <li>- Provide a date for response, and explain what will happen if no response is received by that time.</li> <li>- Provide contact details for a staff member with whom they can discuss the request.</li> </ul> </li> <li>• Use our <a href="#">Template letter 25: Consultation with third parties</a>.</li> </ul>
<p><b>5. Make the decision on the request</b></p>	<ul style="list-style-type: none"> <li>• If the third party has <b>no objection</b> to release, withholding is unlikely to be necessary to protect their interests. Any reason for withholding in this situation would likely need to relate to the agency’s own interest or concerns.</li> <li>• If the third party <b>doesn’t respond</b>, go ahead and make a decision on the request based on what you already know. However, it does pay to check that the third party received your correspondence, and that there isn’t a legitimate reason why they need longer. Don’t assume that no reply means the third party consents to release.</li> <li>• If the third party <b>opposes release</b>, consider what they have to say objectively, and decide whether it gives rise to a good reason for withholding. The third party’s views are relevant, but not determinative. They cannot veto disclosure. Let the third party know your decision on the request, particularly if you decide to release some or all of the information. This can be done at the same time or shortly before the decision is conveyed to the requester. Use our <a href="#">Template letter 26: Letter informing third parties of the decision on the request</a>.</li> </ul>