

## The OIA for Ministers and agencies

A guide to processing official information requests

*The purpose of this guide is to assist Ministers and government agencies in recognising and responding to requests for official information under the [Official Information Act 1982 \(OIA\)](#). This guide focuses on processing requirements. Separate guidance is also available on making a decision whether or not to grant a request and release information, and in relation to particular subject areas, [here](#).*

## Contents

<b>What is the OIA?</b>	<b>4</b>
<b>Key principles and purposes of the OIA</b>	<b>4</b>
Principle of availability	4
Purposes of the Act	4
<b>Is my agency subject to the OIA?</b>	<b>5</b>
<b>What is official information?</b>	<b>6</b>
Is the information ‘held’ by the agency?	6
Information held by employees	7
Information held by Ministers of the Crown	7
Information held by independent contractors	7
Information held by unincorporated bodies set up by an agency	7
<b>Special categories of official information</b>	<b>8</b>
Internal rules or guidelines for decision making	8
Requests for statements of reasons	8
Personal information requests by corporate entities	9
<b>What is not official information?</b>	<b>9</b>
Personal information about individuals	10
<b>Eligibility to request official information</b>	<b>11</b>
Who can make an OIA request?	11
What if a requester is not eligible?	12
<b>The form of an OIA request</b>	<b>12</b>
What does an OIA request look like?	12
‘Due particularity’—a requester’s obligation	13
Amended or clarified requests	13
<b>An agency’s duty to assist</b>	<b>15</b>
<b>Processing requirements</b>	<b>16</b>
Key timeframes	16
Timeframe for making and communicating a decision	17
Timeframe for making information available	18
Transferring a request	18
Extensions	23
Failure to meet the maximum time limits	24
Requests for urgency	24
Consultation	25
<b>Making a decision</b>	<b>28</b>

Considering whether to grant the request _____	28
Deciding how to release information _____	30
Conditional release _____	32
Charging _____	32
<b>Communicating the decision _____</b>	<b>34</b>
Releasing information in response to a request _____	34
<b>Publication of information _____</b>	<b>35</b>
<b>Good faith protection _____</b>	<b>35</b>
<b>Further guidance _____</b>	<b>36</b>
<b>Appendix 1. Checklist for processing an official information request _____</b>	<b>37</b>
<b>Appendix 2. Troubleshooting tips _____</b>	<b>40</b>
Consulting the requester _____	40
Managing a broad request _____	40
Managing multiple requests from the same requester _____	41
Managing multiple requests for the same or similar information from different requesters _____	42
What to do when the information requested is difficult to identify or cannot be found _____	42
What to do when the information is not ready to be released _____	43
<b>Appendix 3. Template letters _____</b>	<b>44</b>
1. Acknowledgement of receipt of a request _____	44
2. Clarification or amendment of request required _____	45
3. Transfer of a request to another agency—letter to requester _____	46
4. Transfer of a request to another agency—letter to other agency _____	47
5. Extension of time limit to make a decision or transfer a request _____	48
6. Notification to the requester of the decision on a request _____	49

## What is the OIA?

The OIA allows people to request official information held by Ministers and specified government agencies (agencies). It contains rules for how such requests should be handled, and provides a right to complain to the Ombudsman in certain situations.

There is also a separate Act called the Local Government Official Information and Meetings Act 1987 (LGOIMA), which applies to local government agencies—see [The LGOIMA for local government agencies](#).

## Key principles and purposes of the OIA

### Principle of availability

The principle of availability underpins the whole of the OIA. The OIA explicitly states that:<sup>1</sup>

*The question whether any official information is to be made available ... shall be determined, except where this Act otherwise expressly requires, in accordance with the purposes of this Act and the principle that **the information shall be made available unless there is good reason for withholding it** (emphasis added).*

This principle should always be kept in mind when an agency is considering how best to respond to a request for official information.

### Purposes of the Act

The key purposes of the OIA are to:<sup>2</sup>

- progressively increase the availability of official information to the people of New Zealand to:
  - enable more effective public participation in the making and administration of laws and policies; and
  - promote the accountability of Ministers and officials;and so enhance respect for the law and promote good government; and
- protect official information to the extent consistent with the public interest and the preservation of personal privacy.

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<sup>1</sup> See s 5 OIA.

<sup>2</sup> See s 4 OIA.

The key purposes of the OIA reflect competing interests between making information available and protecting it where necessary. In line with these competing interests, agencies will need to balance:

- considerations which favour **releasing** information; and
- considerations which favour **refusing** requests for information.<sup>3</sup>

## Is my agency subject to the OIA?

The types of agencies that come under the OIA include:

- Ministers of the Crown in their official capacity;
- government departments and organisations, including the Police;
- crown entities and some state owned enterprises;
- district health boards;
- universities, polytechnics, colleges of education, wananga and other tertiary education institutions (but not private training establishments); and
- boards of trustees of state schools.<sup>4</sup>

If the agency is listed or described in Part 1 or Part 2 of [Schedule 1 of the Ombudsmen Act 1975 \(OA\)](#), or in [Schedule 1 of the OIA](#), then it is subject to the OIA.

Agencies not covered by the OIA include:

- Parliament and its agencies (the Parliamentary Counsel Office and the Parliamentary Service);
- courts and tribunals;
- the Ombudsman; and
- the Independent Police Conduct Authority.

If you are unsure whether the OIA (or the LGOIMA) applies to your agency or any other, please ring us on 0800 802 602.

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<sup>3</sup> See ss 6, 7, 9, 10 and 18 OIA.

<sup>4</sup> Note: State schools include integrated schools, designated character schools, correspondence schools, and kura kaupapa Māori, but do not include private schools or charter schools.

## What is official information?

Official information means **any information held** by an [agency subject to the OIA](#).

It is not limited to documentary material, and includes material held in **any format** such as:

- written documents, reports, memoranda, letters, notes, emails and draft documents;
- non-written documentary information, such as material stored on or generated by computers, including databases, video or tape recordings;
- information which is known to an agency, but which has not yet been recorded in writing or otherwise (including knowledge of a particular matter held by an officer, employee or member of an agency in their official capacity);
- documents and manuals which set out the policies, principles, rules or guidelines for decision making by an agency;<sup>5</sup> and
- the reasons for any decisions that have been made about a person.<sup>6</sup>

### Is the information ‘held’ by the agency?

It does not matter where the information originated, or where it is currently located, as long as it is held by the agency. For example, the information could have been created by a third party and sent to the agency. The information could be held in the memory of an employee of the agency.

For the OIA to apply, the information must be held by the agency concerned. With the exception of providing a response to a request for a [statement of reasons](#), there is **no obligation on an agency to form an opinion or create information** to answer a request.

If a requester seeks information by asking a question, there is a distinction between:

- questions which can be answered by providing information already known to and held by the agency (official information); and
- questions which require the agency to form an opinion or provide an explanation and so create new information to answer the request (not official information).

If a request is made for information that is not held by the agency, then it should be considered whether to [transfer](#) the request to another agency subject to the OIA or LGOIMA, or whether to refuse the request under sections 18(e) or (g) of the OIA (because the requested document does not exist, or the information is not held). Detailed information on these provisions is available in our [Information not held](#) guide.

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<sup>5</sup> See s 22 OIA.

<sup>6</sup> See s 23 OIA.

However, there is nothing to prevent an agency from creating information in response to a request, if it chooses to do so. Even if there is no information held by the agency that can be requested under the OIA, it may be administratively unreasonable for the agency to refuse to provide a response to the questions asked. If the person has any concerns about the response that they receive, then they can complain to the Ombudsman under the OA.<sup>7</sup>

## Information held by employees

Information which an officer, employee or member of an agency holds in their **official capacity** is deemed to be held by the agency.<sup>8</sup>

## Information held by Ministers of the Crown

The OIA applies to information held by a Minister of the Crown in their **official capacity** only.<sup>9</sup>

Official information does not include information which is held by a Minister:

- in their private capacity;
- in their capacity as an MP (electorate information); or
- in their capacity as a member of a political party (caucus information).

However, such information may become official information if it is subsequently used for official Ministerial purposes.

## Information held by independent contractors

Agencies may contract private individuals, companies or other organisations to carry out particular work on their behalf.

Information which an independent contractor to an agency holds in that capacity is deemed to be held by the agency.<sup>10</sup>

## Information held by unincorporated bodies set up by an agency

If an unincorporated body is established under legislation or by an agency, in order to assist, advise or perform functions connected with any agency, the information held by the unincorporated body is deemed to be held by the agency that established it.<sup>11</sup>

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<sup>7</sup> Providing the agency is subject to the OA (Ministers are not).

<sup>8</sup> See s 2(4) OIA.

<sup>9</sup> See paragraph (a)(ii) of the definition of '*official information*' in s 2 of the OIA.

<sup>10</sup> See s 2(5) OIA.

<sup>11</sup> See ss 2(2) & 2(3) OIA.

For example, if a department set up a board or committee to assist it on a particular issue, and that entity was not itself subject to the OIA, the information held by the board or committee would nevertheless be able to be requested under the OIA, as the information would be deemed to be held by the department.

## Special categories of official information

Certain rules apply to three particular categories of information that may be requested under the OIA. These are:

- [internal rules or guidelines](#) for decision making;
- [statements of reasons](#) for decisions; and
- [personal information requests by corporate entities](#).

### Internal rules or guidelines for decision making

The OIA provides requesters with a **right** to access any document which:<sup>12</sup>

*...contains policies, principles, rules, or guidelines in accordance with which decisions or recommendations are made in respect of any person or body of persons in [their] personal capacity.*

The ability to refuse such a request is very limited.

### Requests for statements of reasons

Section 23 of the OIA also provides a **right** to a written statement of reasons for a decision or recommendation made about the requester by the agency.

Requests for written statements of reasons are often made by individuals or groups with concerns about a decision or recommendation that affects them personally. The right to a statement of reasons provides a requester with the ability to obtain further information about that decision.

Requesters need not specifically refer to section 23 of the OIA in seeking to invoke their right to request a written statement of reasons for a decision that has affected them personally. However, it should be relatively clear from the terms of the request that this is what they are seeking to obtain. If it is unclear whether the requester is seeking a written statement of reasons, it may help to consult them.

The right to request for a written statement of reasons must be exercised within a '*reasonable time*' of the decision or recommendation at issue.

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<sup>12</sup> See s 22 OIA.

A written statement of reasons should be full and comprehensive in explaining the decision making process, and must include the following elements:

- the findings on material issues of fact;
- a reference to the information on which the findings were based; and
- the reasons for the decision or recommendation.

Some agencies may already hold a written statement that contains all the elements listed above. If not, the agency will need to create such a statement.

There is only a limited basis to withhold information from a statement of reasons.<sup>13</sup>

## Personal information requests by corporate entities

Every corporate entity (company or incorporated society), which is either incorporated in New Zealand or has a place of business in New Zealand has the **right** to access any information an agency holds about it, under Part 4 of the OIA.<sup>14</sup>

The Privacy Act 1993 only applies to [requests by individual 'natural' persons for personal information](#) about themselves.

The requirements for an agency to process such requests are more or less the same as for any other request for official information. However, as the corporate entity has a specific right to access any information about itself that can be readily retrieved, the reasons for refusing such requests are more limited.

Special precautions must also be taken when information is released, to confirm the identity of the requester and ensure that the information will only be received by the requester or their authorised agent. The requester must also be advised of their right to request correction of the information released.

## What is not official information?

Official information does not include:<sup>15</sup>

- library or museum material for reference or exhibition purposes;
- information held by an agency solely as an agent or for the sole purpose of safe custody on behalf of a person who is not subject to the OIA;
- information held by the Public Trustee or Maori Trustee in their capacity as a trustee;

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<sup>13</sup> See ss 23(1), 23(2A) and 23(2B) OIA.

<sup>14</sup> See s 24 OIA.

<sup>15</sup> See s 2 OIA.

- evidence or submissions to a Royal Commission or a commission of inquiry;
- certain information related to inquiries established under the Inquiries Act 2013 (evidence or submissions subject to an order forbidding publication, and documents relating to the internal deliberations of an inquiry);
- any correspondence or communication between any agency and the Ombudsman or the Privacy Commissioner, in relation to their investigations;
- victim impact statements; and
- evidence, submissions or information given or made to the Judicial Conduct Commissioner, a Judicial Conduct Panel, or the Judicial Complaints Lay Observer.

## Personal information about individuals

Individual natural persons have the right to access personal information about themselves under the Privacy Act.<sup>16</sup>

Deciding whether information is covered by the Privacy Act or the OIA is not always straightforward. This is primarily because the same document can contain information about more than one person.

Whether the Privacy Act or the OIA applies will depend on who is asking for the information and who or what it is about. If the information is about the person requesting it, then it will be covered by the Privacy Act. If it is information about someone or something else, then the OIA will apply.

A good example is where a person makes a request for a file that contains information about them and other people. Generally:

- information solely about the person requesting it should be considered under the Privacy Act; and
- information about other people should be considered under the OIA.

If a requester is seeking information on behalf of someone else with their **informed consent**, then that person should generally be considered to be acting as the person's 'agent' and the request should be dealt with as one for personal information under the Privacy Act.

Having determined which Act applies, the agency must make a decision on the request in accordance with the particular requirements of that Act. Sometimes both Acts will apply.

Enquiries about the application of the Privacy Act should be made to the Privacy Commissioner, whose contact details are available at [www.privacy.org.nz](http://www.privacy.org.nz).

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<sup>16</sup> See Principle 6 and Part 5 of the Privacy Act. See also s 12(1A) OIA. As discussed [above](#), corporate entities can seek their personal information under Part 4 of the OIA.

### Which set of rules applies?

There are different rules that apply to different types of requests. It is important to be aware of which rules to apply, in order to ensure that the right decision is made.

**Part 2 OIA:** General requests for access to official information that is not about the requester (or otherwise described below).

**Part 3 OIA:** Requests under section 22 for access to an agency's policies, principles, rules, or guidelines for making decisions or recommendations in respect of any person.

**Part 3 OIA:** Requests under section 23 for a written statement of reasons why a decision or recommendation was made about the requester.

**Part 4 OIA:** Requests by a corporate entity for information about itself.

**Privacy Act:** Requests by an individual natural person (or that person's authorised agent) for personal information about themselves.

## Eligibility to request official information

### Who can make an OIA request?

One of the requirements for a valid OIA request relates to the eligibility of the requester.

Any person is entitled to make a request under the OIA who is:<sup>17</sup>

- a New Zealand citizen;
- a permanent resident of New Zealand;
- a person who is in New Zealand;
- a body corporate (ie, company or incorporated society) which is incorporated in New Zealand; or
- a body corporate which has a place of business in New Zealand.

Agencies are entitled to satisfy themselves as to the requester's eligibility to make a request under the OIA.

With requests submitted by post the origin of the request will usually be clear from the post mark, and the requester will normally provide a return address, which should provide sufficient assurance that the requester is in New Zealand, and therefore eligible.

If a request is made by email or over the internet, agencies are entitled to ask reasonable questions to check whether the person is eligible to make a request. However, agencies that

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<sup>17</sup> See s 12(1) OIA.

wish to query eligibility should do so promptly so as to not unnecessarily delay the proper processing of a valid request. For more information see our guide to [Requests made online](#).

## What if a requester is not eligible?

Even if a person is not eligible to make a request for official information under the OIA (for example a person who is overseas and not a New Zealand citizen or resident), they can still ask an agency for the information they are seeking.

While the agency is not required to respond in accordance with the requirements of the OIA, it should still deal with the request for information in an administratively reasonable manner. If the person has any concerns about the response that they receive, then they can complain to the Ombudsman under the OA.<sup>18</sup>

## The form of an OIA request

### What does an OIA request look like?

There is no set way in which a request must be made. An OIA request is made in any case when an eligible person asks an agency for access to specified official information.<sup>19</sup> In particular:

- a request can be made in any form and communicated by any means, including orally;<sup>20</sup>
- the requester does not need to refer to the OIA;<sup>21</sup> and
- the request can be made to any person in the agency.

If a request is made orally, an agency may ask for it to be put in writing if that is *'reasonably necessary'* to clarify the request.<sup>22</sup> If the requester refuses or is unable to do so, then the agency must record its understanding of the request and provide a copy of that record to the requester.<sup>23</sup> The working day count will start the day after the requester confirms or clarifies the agency's understanding of the request is correct.

In practice, an agency will receive many requests for information which can be responded to by front-line staff immediately. For example, a request for the agency's annual report could be met by providing direction to the agency's website. Agencies may therefore wish to set up appropriate internal systems to ensure the requirements of the OIA are met, and that:

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<sup>18</sup> Provided that the agency is subject to the OA.

<sup>19</sup> See s 12(1) OIA.

<sup>20</sup> See s 12(1AA)(a) OIA.

<sup>21</sup> See s 12(1AA)(b) OIA.

<sup>22</sup> See s 12(4) OIA.

<sup>23</sup> See s 12(5) OIA.

- staff (including call centre staff) are aware the OIA applies to **all** requests for information that they receive; and
- requests which may be refused or require time to consider are dealt with in accordance with a specified process.

### **‘Due particularity’—a requester’s obligation**

To be a valid request, the information sought must be *‘specified with due particularity’*.<sup>24</sup> This means that the agency must be reasonably able to identify what information is being requested.

The request should be considered carefully to identify the specific information that has been requested, including the scope of the request and any relevant time period that the requester has identified. If there is any uncertainty about the scope of the request, clarification should be sought from the requester.

The fact that a request is for a large amount of information does not of itself mean that the request lacks due particularity. The term ‘fishing expedition’ is not recognised in the OIA as a reason to refuse a request. If the information requested is duly particular, the request cannot be refused simply on the basis that it is so large as to be considered to be a fishing expedition. If there are genuine administrative concerns with processing the request or making the information available, then the reasons for refusal under section 18 of the OIA may need to be considered, along with other mechanisms for [managing broad requests](#).

### **Amended or clarified requests**

Section 15(1AA) and (1AB) of the OIA deal with *‘amended or clarified requests’*.

If a request is amended or clarified after it is made, it can be treated as a new request which replaces the original one. This voids the agency’s obligation to respond to the original request, and re-starts the statutory time limit for responding to the new one.

However, this will not apply where the amendment or clarification was sought by the agency more than 7 working days after receiving the original request.

The primary intention of these provisions is to incentivise agencies to identify and clarify problematic requests early on. Those that do may be able to take advantage of the working day ‘clock’ being re-set upon receipt of the amended or clarified request.

While it sounds straightforward, the effect of this section will depend on various factors, including:

- whether the amendment or clarification was sought by the agency or made on the requester’s own initiative;

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<sup>24</sup> See s 12(2) OIA.

- whether the amendment or clarification is actually received after it is sought by the agency and, if so, when; and
- whether the ‘new’ request is intended to amend or clarify the terms of the original one, or to be separate and additional to it.

The following scenarios may arise.

<p><b>Requester</b> amends or clarifies request on their own initiative</p>	<p>The new request replaces the original one, and the 20 working day time limit for responding starts the day after that new request was received. The agency has no further obligation to respond to the original request.</p> <p>NB, it must be clear that the new request is intended to replace the original request by amending or clarifying its terms. This will not apply where the new request is clearly intended to be separate and additional to the original one.</p>
<p><b>Agency</b> seeks amendment or clarification <b>within 7</b> working days—amendment or clarification <b>received</b> within 20 working days</p>	<p>The new request replaces the original one, and the 20 working day time limit for responding starts the day after the new request was received. The agency has no further obligation to respond to the original request.</p>
<p><b>Agency</b> seeks amendment or clarification <b>within 7</b> working days—amendment or clarification <b>not received</b> within 20 working days</p>	<p>The original request still stands, and to ensure that it complies with its obligations under the OIA, the agency must within the original 20 working days either extend the time limit for responding (to enable consultation with the requester), or convey its decision on the request. The agency will need to consider whether the request can be granted as it stands, or whether extending or charging would enable it to be granted, or, as a last resort, whether the request must be refused under one (or more) of the applicable refusal grounds.</p>
<p><b>Agency</b> seeks amendment or clarification <b>outside 7</b> working days—amendment or clarification <b>received</b> within 20 working days</p>	<p>Provided that what is received is in fact an amended or clarified version of the original request, then the maximum 20 working day time limit for responding to that request still counts from the day after the original request was received. Within that time, the agency must either extend the time limit for responding, or convey its decision on the request.</p> <p>However, if a completely different request is received (as opposed to an amended or clarified version of the original request), that will be a new request and the 20 working day time limit for responding will start the day after that request was received. Note, it must be clear that the new request is intended to replace the original request. If there is any doubt about this, it may be wise to check with the requester.</p>

**Agency** seeks amendment or clarification **outside** 7 working days— amendment or clarification **not received** within 20 working days

The original request still stands, and to ensure that it complies with its obligations under the OIA, the agency must within the original 20 working days either extend the time limit for responding (to enable consultation with the requester), or convey its decision on the request. The agency will need to consider whether the request can be granted as it stands, or whether extending or charging would enable it to be granted, or, as a last resort, whether the request must be refused under one (or more) of the applicable refusal grounds.

## An agency's duty to assist

Agencies must be mindful of their duty to give reasonable assistance to a person who:<sup>25</sup>

- wishes to make a request in accordance with section 12 of the OIA;
- in making such a request, has not done so in accordance with the requirements in that section; or
- has not made the request to the appropriate agency.

As noted [above](#), section 12 requires a request to be made by an eligible person for official information that is specified with due particularity. Until that happens, an OIA request will not be made (and the relevant timeframes will not apply).

If the agency cannot reasonably identify what information is being requested, then there is a duty on that agency to give reasonable assistance to the requester to reformulate the request in a manner that is specified with due particularity.

Reasonable assistance is more than telling the requester that the request is not specific. Having regard to the purposes of the OIA and the principle of availability, all reasonable steps should be taken to provide assistance. The aim of the assistance should be to enable the requester to clarify the request so that it is specific enough for the agency to identify the information sought.

The key is to communicate with the requester. If a request isn't clear, contact the requester and explain what you need to help them.

### What is reasonable assistance?

Reasonable assistance may include things like:

- providing an outline of the different kinds of information which might meet the terms of the request;

<sup>25</sup> See s 13 OIA.

- providing access to catalogues, indexes or lists to help the requester understand the nature and extent of information held by the agency;
- providing a general response to the request, setting out options for further information which could be provided on request; and
- giving the requester a reasonable opportunity to consult with a contact person.

## Processing requirements

### Key timeframes



An agency's legal timeframe requirements for responding to requests for official information are to:

- **make a decision and communicate it** to the requester *'as soon as reasonably practicable'* and no later than 20 working days after the request is received;<sup>26</sup> and
- **make available** any official information it has decided to release without *'undue delay'*.<sup>27</sup>

Where necessary in a particular case, additional timeframe requirements are to:

- **request clarification** of a request within 7 working days, if the amended request is to be treated as a new request;<sup>28</sup>
- **transfer** a request to another agency promptly, and no later than 10 working days, after the request is received;<sup>29</sup>

<sup>26</sup> See s 15(1) OIA.

<sup>27</sup> See s 28(5) OIA.

<sup>28</sup> See s 15(1AA) and (1AB) OIA.

<sup>29</sup> See s 14 OIA.

- **extend** the maximum time limits to make a decision or transfer a request, within 20 working days after the day on which the request was received.<sup>30</sup>

### How to count time

A tool to automatically calculate response times is available on the home page of our website: [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz).

When counting working days, day 1 is the first working day after the day on which the request is received by the agency.

'Working day' means any day of the week other than:

- Saturday and Sunday;
- national public holidays (Waitangi Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Labour Day); and
- the period from 25 December to 15 January inclusive.

A regional anniversary is a working day.

A working day is not limited to 9am to 5pm. Therefore, if a request is received by email or other electronic means outside business hours, it will still be counted as being received on that day, and the count will start on the next working day.<sup>31</sup>

## Timeframe for making and communicating a decision

An agency must make a decision and communicate it<sup>32</sup> to the requester '*as soon as reasonably practicable*' and no later than 20 working days after the day on which the request was received.<sup>33</sup>

The decision must state whether the request will be granted, and if so in what manner and for what charge (if any).

The agency's primary legal obligation is to notify the requester of the decision on the request '*as soon as reasonably practicable*'. The reference to 20 working days is not the de facto goal but the **absolute maximum** (unless it is [extended](#) appropriately).

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<sup>30</sup> See s 15A OIA.

<sup>31</sup> See s 214 of the Contract and Commercial Law Act 2017.

<sup>32</sup> By giving or posting notice to the requester.

<sup>33</sup> See s 15(1) OIA.

It is important to note that when the maximum time limit was inserted into the OIA in 1987 Parliament made it clear that 20 working days should not be treated as the normal period within which to respond to a request. The Law Commission has reinforced this view:<sup>34</sup>

*We consider that the basic obligation upon agencies should remain to deal with requests as soon as reasonably practicable. This requirement remains paramount notwithstanding the existence of a 20 working-day limit.*

## Timeframe for making information available

If a decision is made to release information, then the agency must not unduly delay in making it available.<sup>35</sup> In some cases, the agency may be justified in providing the information to the requester at a later date, after the decision is made.

Agencies should note that the distinction between the time requirements for making and communicating a decision on a request, and for making information available, can be important, especially when responding to large requests. Ideally, where a request is granted, the decision and the information will be sent to the requester together. If the information is ready to be released at that stage, not to send it would amount to ‘*undue delay*’. However, that may not always be possible and sometimes an agency may need extra time to prepare the information for release.

For instance, an agency may know that it intends to grant a request subject to some redactions but the process of preparing the material for release will take a bit longer. The agency can advise the requester of its decision on the request as soon as reasonably practicable and within the maximum 20 working day time limit, and give an indication of when it will be in a position to release the information requested. The agency’s decision must still comply with the OIA, but so long as there is no ‘*undue delay*’ in making the information available there will be no breach of the timeframe requirements in the OIA.

## Transferring a request

The OIA requires requests to be transferred between agencies in certain circumstances. Transfers can be made between any agencies subject to the OIA or LGOIMA, including Ministers, central government agencies and local government agencies. See our template letters for [transferring a request to another agency](#), and [advising the requester of the transfer](#).

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<sup>34</sup> Law Commission, *Review of the Official Information Act 1982* (NZLC R40, 1997) at 61.

<sup>35</sup> See s 28(5) OIA.

## The obligation to transfer

An agency **must** transfer a request to another agency if some or all of the information requested:<sup>36</sup>

- is not held by the agency, but is believed by the person dealing with the request to be held by another agency; or
- is believed by the person dealing with the request to be [more closely connected](#) with the functions of another agency.

This is not a discretion, but a mandatory requirement in circumstances where the person dealing with the request has a genuine belief that the information is either held by another agency, or more closely connected with its functions.

In the absence of these circumstances, a request cannot be transferred and the agency that receives the request must make the decision on it.<sup>37</sup> However, this does not prevent an agency [consulting](#) other interested parties before making the decision.<sup>38</sup>

The OIA does not support a blanket policy of transferring all requests from a particular source (for example, media requests), or all requests about a particular subject. It is the specific **information requested** that must be held by the other agency or more closely connected with its functions, and this must be assessed on a case by case basis.

### Deciding whether information is ‘more closely connected’ with another agency’s functions

The following factors can be considered in deciding whether information is more closely connected with another agency’s functions.

- The author of the information—if another agency wrote it, maybe they should decide on the request.
- The subject of the information—does the information relate to another agency’s activities or functions?
- The context of the information—does another agency have overall responsibility or leadership for the issue or process the information forms part?

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<sup>36</sup> See s 14 OIA.

<sup>37</sup> See s 15(4) OIA.

<sup>38</sup> See s 15(5) OIA.

## Partial transfers

Where the above circumstances only apply to part of the information requested, only the relevant part of the request should be transferred, rather than the request in its entirety. The transfer should make it clear what parts of the request are being retained by the original agency, and what parts are being transferred.

## Time frame for transferring a request

Any decision to transfer a request to another agency for response must be made promptly and no later than **10 working days** after the agency received the request (unless a valid [extension](#) of that time limit is made within 20 working days of the original request).<sup>39</sup> The requester must be informed that the request has been transferred.

When the other agency receives the transferred request, it is effectively a new request made to that agency under the OIA (or LGOIMA) and the working day count, in terms of the maximum time limit for making and communicating a decision, begins again.

The OIA is clear—the need to transfer a request is something the agency should identify and action as early as possible. An extension to the maximum time limit of 10 working days for transfer may be made, for example where the relevant agencies are [consulting about the proposed transfer](#). However, if a request is transferred outside the maximum (or extended) time limit, this could potentially be the subject of complaint to the Ombudsman under the OA, and a potential finding that the agency had acted ‘*contrary to law*’.<sup>40</sup>

Having said that, a delay will not invalidate the transfer. Even if a transfer is made out of time, it will still have the effect of shifting the responsibility for reaching a decision on the request to the most appropriate agency. That is, after all, what the transfer provision is about—ensuring that the agency that holds the information, or that is best placed to know whether there are valid concerns about disclosure, makes the decision on the request.

If the agency identifies the need to transfer all or part of a request outside the 10 working days (or extended time period), it should consider contacting the requester to explain the reason for the delay and the need for the transfer. Requesters will appreciate being kept informed, and may be more understanding if the agency ends up in breach of the timeframe requirements.

### Can a transfer be made during an Ombudsman’s investigation?

It’s not uncommon for an agency to realise, after it’s already made a decision on a request, and that decision is under review by the Ombudsman, that it should really have transferred (part of) the request to another agency. However, it’s too late to transfer at this point. The decision making agency can consult the other agency in preparing its response to the Ombudsman, in order to support its argument in favour of withholding.

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<sup>39</sup> See ss 14 and 15A OIA.

<sup>40</sup> Providing the agency is subject to the OA.

## Consulting about the proposed transfer

It can be a good idea to consult the requester and/or the other agency before transferring a request.

The requester can clarify why they made the request to your agency, and what information they hoped to obtain. They may be interested in knowing what your agency holds in connection with its functions, and not what the 'lead agency' on a particular issue holds. Knowing this, an agency is more likely to provide a response that meets the requester's needs first time.

Consulting the other agency will enable you to make appropriate arrangements for the transfer:

- Have they already received [the same request](#)?
- Are they the right agency to receive the transfer?
- Who within the other agency should the transfer be addressed to?
- Does your agency need to transfer the information it holds along with the request, or does the other agency already hold all the relevant information?

It will also minimise the risk of 'bounce-backs', where the other agency disagrees that the information is more closely connected with its functions and returns the request to the original agency.

### What if the other agency already has the same request?

Sometimes your consultation about a proposed transfer will reveal that the other agency is already dealing with exactly the same request. In this instance, it's probably pointless to make the transfer. You could try discussing the situation with the requester. They will likely want an assurance that your agency doesn't hold any additional relevant information that the other agency won't have, and they may end up withdrawing their request if such an assurance can be given. Alternatively you could respond to the requester along the following lines:

*'In our view, it would have been necessary under section 14 of the OIA to transfer your request to [agency] because the information you requested is [held by that agency / more closely connected with its functions]. However, we are aware that you have already made your request to [agency], and therefore we have not transferred it. [We do not hold any additional relevant information that is not already held by [agency] / We have provided copies of all additional relevant information that we hold to [agency] for consideration in responding to your request] You have the right to complain to the Ombudsman about this decision. Relevant information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or freephone 0800 802 602.'*

## Transfers between Ministers and agencies

In determining whether information is more closely connected with a Minister's or an agency's functions, it can be helpful to consider the role of the Minister.

Ministers:<sup>41</sup>

- take significant decisions and determine government policy collectively, through the Cabinet decision-making process;
- exercise statutory functions and powers under legislation within their portfolios, within the collective Cabinet decision-making context;
- determine both the policy direction and the priorities for their departments;
- have a political role in maintaining government stability, which requires maintaining close working relationships with all other parties as issues arise.

If the information relates to executive government decision making functions, and release could prejudice Cabinet's or the Minister's ability to perform those functions, then transfer to the Minister may be justified. If the information relates more closely to operations and policy implementation, then the agency should probably be responsible for deciding on the request.

Even if a transfer is not warranted, there is nothing to prevent an agency consulting its Minister (see [consulting Ministers](#)).

If consultation leads to disagreement about the appropriate response to a request, this is not, in itself, a reason to transfer. The person dealing with the request must have a genuine belief that the information is more closely connected with the Minister's functions before transfer can legitimately occur. If disagreements arise, these should be handled at a senior level of the agency.

In any case, it is important that the transfer of the request does not have the effect of narrowing its scope or excluding relevant information. The agency that received the request should identify the relevant information first, and if necessary, transfer that information along with the request.

For more guidance see [Dealing with OIA requests involving Ministers](#).

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<sup>41</sup> Cabinet Office, *Cabinet Manual 2008* at [2.21].

## Extensions

An agency may extend the maximum time limits for both **transferring** a request and **making a decision and communicating it** to the requester—but only if certain criteria are met. These are:<sup>42</sup>

- there must be a valid reason for the extension, either:
  - the request is for a large quantity of information or necessitates a search through a large quantity of information, and meeting the original time limit would unreasonably interfere with the operations of the agency; or
  - consultations necessary to make a decision on the request are such that a proper response to the request cannot reasonably be made within the original time limit.
- the extension must be for *'a reasonable period of time having regard to the circumstances'*,<sup>43</sup> and
- the decision to extend the maximum time limit must be communicated to the requester<sup>44</sup> within 20 working days after the day on which the request was first received by the agency.

In making an extension, the agency must advise the requester:

- that it has decided to extend the time limit;
- the specific period of the extension;
- the reasons for the extension; and
- that the requester has a right to complain to the Ombudsman about the extension decision.

When giving the period of the extension it can help to specify a date in preference to a number of working days or weeks, in order to avoid confusion about when a response can be expected.

See our template letter for [extending the timeframe](#) for responding to a request.

Nothing in the OIA prevents multiple extensions being made, providing any extensions are made **within** the original 20 working day time period after receiving the request.<sup>45</sup> For example, if an agency notifies the requester of a one week extension, and then later realises that a two week extension is actually necessary, a second extension may be notified as long as the original 20 working day time period has not yet passed.

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<sup>42</sup> See s 15A OIA.

<sup>43</sup> A *'reasonable period of time'* is not defined in the OIA—what amounts to a reasonable period of time for an extension will depend on the circumstances of the particular case.

<sup>44</sup> By giving or posting notice.

<sup>45</sup> See s 15A(3) OIA.

However, multiple extensions are likely to irritate requesters, and may create a bad impression about the agency. It may be better to make one extension, for a reasonable but realistic period of time, and indicate that the agency will respond to the request sooner if possible.

## Failure to meet the maximum time limits

If it looks like it will not be possible to meet either the original or an extended maximum time limit, the agency should consider contacting the requester to let them know the current state of play and reasons for the delay. Requesters will appreciate being kept informed, and may be more understanding if the agency ends up in breach of the timeframe requirements.

Another option is a staged reply. If most of the decision on a request is straightforward and ready to go, there is often no need to hold that up in order to deal with a few remaining issues.

Agencies should be aware, however, that a failure to comply with a time limit may be the subject of a complaint to the Ombudsman.

## Requests for urgency

A requester may ask that a request be treated as urgent, and if so must give the reasons for seeking the information urgently.<sup>46</sup> An agency should consider any request for urgency, and assess whether it would be reasonable to give the request priority.

Notwithstanding a request for urgency, the agency's legal obligations remain the same:

- to make and communicate the decision on the request as soon as reasonably practicable and no later than 20 working days after the day on which the request was received; and
- to release any official information without undue delay.

However, a genuine and legitimate need for urgency may affect when it is '*reasonably practicable*' to make a decision on the request, and what would constitute '*undue delay*' in releasing the information.

Accordingly, in responding to a request for urgency, an agency should:

- assess the requester's reasons for seeking urgency (do they merit the request being accorded priority over other work, including other official information requests?);
- decide whether to accord urgency to the request; and
- advise the requester of this decision, and (if applicable) provide an indicative timeframe for response.

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<sup>46</sup> See s 12(3) OIA.

Agencies could consider discussing an urgent request with the requester. This may enable:

- agencies to clarify the competing priorities that would need to be side-lined in order to accord urgency to the request;
- requesters to clarify the reasons for urgency, in light of these competing priorities; and
- requesters to clarify the intended scope of their request, or to prioritise particular information, allowing decisions on certain information to be made sooner rather than later.

The OIA makes it clear that charges may be imposed to cover the costs incurred pursuant to a request to make information available urgently.<sup>47</sup>

A requester who is dissatisfied with an agency's response to an urgent request may complain to the Ombudsman that the agency has failed to make and communicate its decision on the request '*as soon as reasonably practicable*',<sup>48</sup> or to release the information without '*undue delay*'.<sup>49</sup>

Urgent requests are often made in order to enable the requester to participate in a consultation or decision making process on an informed basis. If you can see that this is a valid concern in the context of the particular request at issue, you could consider extending the deadline for participation. This may enable the information to be released and used by the requester, without imposing an unreasonable burden on the agency to comply with an urgent request.

## Consultation

Agencies may consult before making a decision on an official information request.<sup>50</sup>

Consultations may be with:

- [the requester](#);
- agency staff, including the agency's in-house policy or legal team, external legal advisor or chief executive;
- external [third parties](#), for example those who originally provided the requested information to the agency, or whom the information is about; and
- any other agency with an interest in the information, including [Ministers](#).

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<sup>47</sup> See s 15(2) OIA.

<sup>48</sup> See s 28(4)(a) OIA.

<sup>49</sup> See s 28(5) OIA.

<sup>50</sup> See s 15(5) OIA.

Any consultations should be necessary for an agency to make a proper decision on the request. If there are unnecessary consultations and sign-offs taking place, this could give rise to a complaint that an agency has failed to make and communicate its decision on a request ‘*as soon as reasonably practicable*’.<sup>51</sup>

When consultations are being undertaken, an agency should consider:

- whether the maximum time limit for responding to the request needs to be extended;
- whether all or part of the request must be transferred to another agency, on the basis that its functions are [more closely connected](#) with the requested information;
- whether a decision can be made in respect of some of the information requested, while consultations on the remaining information are under way; and
- speaking to the requester to explain the need to consult with others.

Although not obliged to do so, the requester may be able to clarify why the information is being requested. This often helps to expedite or inform the consultation process. Equally, the requester may be able to narrow or limit the request so that any consultation is no longer necessary.

## Consulting requesters

Consulting requesters can be very useful when considering a request. The reasons for consultation can include:

- confirming the exact nature of the information requested;
- explaining any difficulties the agency is having in processing the request (for example when there is a large amount of information at issue), and allowing the requester to consider amending or refining the scope of the request; and
- informing the requester if there are likely to be any delays in processing their request.

Often there may be a perception that agencies are unwilling to provide information or are deliberately seeking to delay or to hide information due to a lack of understanding about the process. If there is going to be a delay for any reason, it is important to let a requester know the reasons for this.

While agencies can consult with requesters for any reason, the OIA specifically requires agencies to consider consulting them before refusing a request on the basis that the information does not exist or cannot be found, despite reasonable efforts to locate it, or the information cannot be made available without substantial collation or research.<sup>52</sup>

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<sup>51</sup> See s 28(4)(a) OIA.

<sup>52</sup> See ss 18(e), 18(f) and 18B OIA.

Consultation with a requester may result in an amended or clarified request. The implications of this for an agency's statutory obligations are discussed above, under [amended or clarified requests](#).

## Consulting third parties

There is no requirement under the OIA for agencies to consult external third parties before making a decision on a request. However, agencies should consider whether it is necessary to do so because:

- the information is about the third party;
- the information was supplied by the third party; and/or
- release could adversely affect the third party.

This will often be relevant where agencies are proposing to release information that may raise privacy, confidentiality or commercial concerns.

Notwithstanding the outcome of any consultation, the decision on the request for information remains the agency's to take. Agencies should consider what the third party has to say, and reach their own independent view on the applicability of any withholding grounds, and the public interest in release.

The OIA provides protection for agencies that [release information in good faith](#) in response to a request. However, a complaint may potentially be made to the Ombudsman under the OA that an agency has acted unreasonably in either omitting to consult an external third party, or in how they went about that consultation, or in deciding to release the information notwithstanding consultation.<sup>53</sup>

For more guidance and template letters see [Consulting third parties](#).

## Consulting Ministers

Responsible Ministers may have a legitimate interest in OIA requests received by their agencies. Agencies are permitted to consult Ministers about the decision they propose to make on an official information request.

One way to do this is to provide advance notice to the Minister of the request, the information at issue, and the decision the agency proposes to take. The Minister's office can be afforded a reasonable period of time within which to raise any concerns about the proposed decision (say, five working days), after which the agency may proceed as indicated.

Consultation arrangements should be configured in such a way that the agency is generally able to meet its requirement to make and communicate the decision on a request within the maximum 20 working days. Accordingly, agencies should endeavour to provide advance notice

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<sup>53</sup> Providing the agency is subject to the OA.

to the Minister's office well before the maximum 20 working days expire (for instance, around the 10-15 working day mark).

For more guidance see [Dealing with OIA requests involving Ministers](#).

## Making a decision

When making a decision on an OIA request, an agency must decide:<sup>54</sup>

- whether the request will be granted; and if so
- in what manner; and
- for what charge (if any).

The agency must then communicate that decision to the requester as soon as reasonably practicable and no later than 20 working days after the day on which the request was received (unless the maximum time limit is extended).

### Information that comes to be held after a request is received

Often an agency will receive or generate additional relevant information after a request is received but before a decision is conveyed. Technically, a requester is only entitled to request information 'held' (ie, in existence) at the time of their request. However, there is nothing to prevent an agency from considering the additional relevant information in conveying its decision on the request. It may be reasonable to do so if there is no practical reason not to, and it is clear the requester would want to obtain the additional relevant information. At the least, an agency should make it clear to a requester if additional relevant information has come into existence which has not been captured by the scope of the request, so they may request it if they wish.

## Considering whether to grant the request

When considering whether to grant the request, the agency must keep in mind the key principle that information must be made available unless there is good reason to withhold it.

Requests made under Part 2 of the OIA can only be refused for one of the reasons set out in particular sections of the Act, namely:

- administrative reasons (section 18);
- conclusive reasons (sections 6 and 7);
- good reasons (section 9); or

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<sup>54</sup> See s 15(1)(a) OIA.

- neither confirming nor denying the existence or non-existence of information (section 10).

The administrative reasons for refusing a request should be considered first, ideally in the early stages of processing the request when the information at issue is being identified and assembled. The administrative reasons for refusing a request under section 18 are that:

- making the information available would be contrary to an enactment;
- making the information available would constitute contempt of Court or of the House of Representatives;
- the information is, or will soon be, publicly available;
- the request is made by or on behalf of a defendant, for information that could be sought under the Criminal Disclosure Act 2008;
- the document does not exist or cannot be found, despite reasonable efforts to locate it;
- the information cannot be made available without substantial collation or research;
- the information is not held by the agency, and there are no grounds to believe the information is held by another agency or more closely connected with the functions of another agency; or
- the request is frivolous or vexatious, or the information requested is trivial.

If there is no administrative issue, then an agency should go on to review the information and consider whether there is any potential harm in release, which may provide a substantive reason to withhold the information under the OIA. In particular:

- whether any identified harmful effect would prejudice one of the conclusive interests protected by section 6, including:
  - the security or defence of New Zealand;
  - New Zealand's international relations;
  - the maintenance of the law;
  - personal safety; or
  - New Zealand's economy; and
- whether any identified harmful effect would prejudice one of the interests protected by section 9, including:
  - privacy;
  - commercial activities;
  - information subject to an obligation of confidence;
  - constitutional conventions of confidentiality;

- free and frank opinion; or
- legal professional privilege.

Agencies considering the application of section 9 must also consider the extent of any public interest in release of the information. If there is a public interest in release which outweighs the need to withhold the information, then the request cannot be refused under section 9. Find out more about this in our guide to the [Public interest](#) test.

For further guidance on the reasons for refusing a request under sections 6, 7, 9, 10 and 18, see our [official information legislation guides](#).

Requests made under Parts 3 and 4 of the OIA can only be refused for one of the reasons referred to in those Parts, namely:

- reasons for refusing requests for internal rules affecting decisions (section 22);
- reasons for refusing requests for statements of reasons for decisions (section 23); and
- reasons for refusing requests by corporate entities for personal information (section 27).

## Deciding how to release information

If the decision is to grant the request, the agency must also decide how the information will be released.

There are a number of different ways an agency can make information available. The agency can:<sup>55</sup>

- give the requester a reasonable opportunity to inspect the information;
- release a hard copy of the information;
- release the information in electronic form or by electronic means;
- arrange for the requester to hear or view the information;
- provide a written transcript of the information;
- provide partial disclosure of the information—for example:
  - release a document with some information deleted ('redacted');
  - release a summary of the information;
  - release an excerpt, or particular passage, from a document; or
- provide the requester with an oral briefing.

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<sup>55</sup> See ss 16(1), 16(1A) and 17(1) OIA.

However, the agency must release the information in the way preferred by the requester unless to do so would:<sup>56</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 (and in the case of the interests protected by section 9, there is no countervailing public interest).

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>57</sup>

The agency may also decide to:

- release the information subject to certain conditions;
- release the information with an additional statement to put it into context (this can be useful if there is a concern that releasing the requested information on its own might be misleading or incomplete); and
- release other additional information it considers relevant to the request and helpful to the requester.

If the information to be released is contained in a document that includes other information outside the scope of the request, the agency can choose to either:

- release the document in its entirety; or
- delete the information that is outside the scope of the request and advise the requester accordingly.

If deleting information as being outside the scope of the request, it is important not to take an unreasonably narrow interpretation of the request.

### Tips for making deletions

Deletions (or 'redactions') can be made by:

- whitening the information out and then photocopying it;
- cutting the information out and then photocopying it; or
- deleting the information electronically by using redaction software.

Care should be taken with electronic release, having regard to potentially embedded information such as document versions, track changes and pivot tables. Similarly,

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<sup>56</sup> See s 16(2) OIA.

<sup>57</sup> See s 16(3) OIA.

information should not be blacked out on a hard copy document and then photocopied, as this may **not** obscure the deleted information in certain circumstances.

Any deletions should not change the essential formatting of the document, and it is good practice to indicate the reasons for the deletions on the document itself.

## Conditional release

The OIA implicitly recognises that information may be released subject to conditions on the use, communication or publication of the information.<sup>58</sup> Conditions can include things like:

- an embargo;
- a requirement that the requester keep the information confidential;
- a requirement that any discussion of the information should include reference to a contextual statement the agency has also provided; and
- a requirement to use the information only for a specific purpose.

It is important to note that conditions are **not enforceable** under the OIA. Release of the information subject to a condition is therefore reliant on a relationship of trust and confidence between the agency and the requester, or the establishment of a formal contract or deed.

## Charging

Part of making a decision on the request includes whether to charge. Any decision to charge must be notified to the requester at the same time as the requester is advised of the decision to release information.

An agency can charge for the **supply** of information under the OIA.<sup>59</sup> Any charge fixed must be *'reasonable'* and *'regard may be had to the cost of the labour and materials involved in making the information available'*.<sup>60</sup> The agency may require that all or part of the charge be paid by the requester in advance of the information being made available.<sup>61</sup>

Charges can be made for making the information available; including time spent retrieving and collating the information, and preparing it for release. However, charges **cannot** be made for the time spent or any expenses incurred in deciding whether or not to release the information.

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<sup>58</sup> See s 28(1)(c) OIA.

<sup>59</sup> See s 15(1A) OIA.

<sup>60</sup> See s 15(2) OIA.

<sup>61</sup> See s 15(3) OIA.

In addition, it may not be reasonable to charge for locating or retrieving information if there are poor record keeping practices in place that mean the information is not stored where it should be in accordance with the agency's normal prudent business practice.<sup>62</sup>

An agency should not consider whether and how much to charge for the release of information until it has decided whether (and to what extent) the information can be made available. An agency should also consider whether reduction or waiver of any proposed charge may be appropriate having regard to the circumstances of the requester and the public interest in release of the information.

The Ministry of Justice has published *Charging Guidelines for Official Information Act 1982 Requests*. The Guidelines are available from the Ministry's website, [www.justice.govt.nz](http://www.justice.govt.nz), by searching under 'publications'. The Guidelines set out details of the calculation of charges, together with circumstances where waiver of a charge may be appropriate.

Successive Ombudsmen have taken the view that applying the standard charging regime set out in these Guidelines will be reasonable in most cases. However, if a complaint is made, the Ombudsman must still consider all relevant factors when assessing whether a charge is reasonable in the circumstances of the particular case.

If an agency decides to charge it should advise the requester, at the same time as the decision to grant the request is communicated, of:

- the decision to charge;
- the maximum amount of the charge;
- how the charge has been calculated;
- whether all or part payment of the charge is required in advance of release of the information; and
- that the requester has the right to complain to the Ombudsman about the decision to charge.

Where the charge is substantial, an agency should give the requester an opportunity to refine the scope of the request in order to reduce or remove the need to charge.

An agency should wait until the requester has accepted the charge, and paid any amount required to be paid in advance, before undertaking the necessary work to make the information available.

You can read our detailed guide to charging for official information [here](#). It uses real life case studies to explain when it is reasonable to charge and how to charge. It also has practical resources including a step-by-step worksheet, a template charging letter, and a sample estimate of costs.

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<sup>62</sup> The requirements for good record keeping are set out in the Public Records Act 2005.

## Communicating the decision

A decision on the request must be communicated by giving or posting notice to the requester<sup>63</sup> within the [relevant timeframe](#).

Notice of the decision must include:

- whether the request will be granted; and if so
- in what manner; and
- for what charge (if any).

Decisions should be clearly worded and sensitive to any particular needs the requester may have.

If the decision is to **refuse** the request, reasons must be given for that decision.<sup>64</sup> This means that you must refer to the particular subsection relied on under the OIA to refuse the request. If the reason for refusal is found in section 9 of the OIA, it is also good practice to clearly identify the public interest considerations favouring release, and to give your reasons for concluding that the public interest in release does not outweigh the need to withhold.

The OIA also requires agencies to provide the grounds for relying on the relevant subsection, if the requester asks for them.<sup>65</sup>

Every decision to refuse a request must advise the requester of the right to complain to the Ombudsman and to seek an investigation and review of that decision.<sup>66</sup>

See our [template letter](#) for communicating a decision to the requester.

## Releasing information in response to a request

The OIA requires that information must be made available without '*undue delay*'.<sup>67</sup>

Generally, when a decision is made to grant a request for information, whether in full or in part, the decision and the information should be provided to the requester at the same time.

However, there may be times when this is not possible. For example, when the request is for a large amount of information and although the agency has reached a decision to grant the request, it will still take the agency further time to prepare the information for release.

Provided that there is no undue delay, the information may be provided to the requester at a later stage, after the decision has been made and communicated. In these circumstances, the

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<sup>63</sup> See s 15(1)(b) OIA.

<sup>64</sup> See s 19(a)(i) OIA.

<sup>65</sup> See s 19(a)(ii) OIA.

<sup>66</sup> See s 19(b) OIA.

<sup>67</sup> See s 28(5) OIA.

notice of the decision should clearly indicate that the information will be provided at a later date, with an estimated timeframe for the release. If some of the information is to be withheld, the notice should also advise this and state the reasons for refusal of that part of the request.

A later release of information may also be appropriate when a decision has been made to [charge](#) for the provision of the information. The agency may require all or part payment of the charge in advance, before the work is undertaken to prepare the information for release. Awaiting the response of the requester in that respect will not generally be an undue delay in making the information available.

## Publication of information

An agency may, whether proactively or in response to a request, choose to publish information as it sees fit. For example, an agency may decide to make information generally available to the public on its website.

Proactive release of information to the public promotes good government, openness and transparency and fosters public trust and confidence in agencies. It also has administrative benefits for the agency, including by reducing requests for information which is already publicly available, and allowing for greater ease of handling of the requests that are received.

Agencies should note that responses to requests made via [www.fyi.org.nz](http://www.fyi.org.nz) FYI will also be published online on that site.

## Good faith protection

Occasionally an agency may be reluctant to make official information available for fear that release of the information could expose the agency to litigation.

However, release of information in good faith in response to a request made under the OIA will not expose an agency to civil or criminal proceedings. The OIA explicitly states that:<sup>68</sup>

*Where any official information is made available in good faith pursuant to this Act no proceedings, civil or criminal, shall lie against the Crown or any other person in respect of the making available of that information, or for any consequences that follow ....*

This means that, as long as an agency releases information in the honest belief that the OIA requires disclosure (which may be demonstrated by the agency having made reasonable efforts to identify the interests requiring protection as well as any public interest in release, and to consider those interests in good faith), no civil or criminal proceedings will lie against the agency. This section effectively protects the Crown from any defamation or breach of

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<sup>68</sup> See s 48 OIA.

confidence proceedings, or complaints to the Privacy Commissioner under the Privacy Act, in respect of information which is made available in good faith under the OIA.

Some protection is also afforded to the author or supplier of the information.<sup>69</sup> However such protection does not extend to publication of the information by the requester or subsequent parties, such as a newspaper.<sup>70</sup>

The good faith protection under the OIA is also not available when an agency decides to proactively release information, rather than releasing information to a requester in response to an OIA request.

In addition, even when an agency does release information in good faith under the OIA, a complaint to the Ombudsman under the OA may still be made by any person affected by the release, if it is considered that the agency has not acted in an administratively reasonable manner, for example, by not taking due care when making deletions to information, or not affording them a reasonable opportunity to comment before release.

## Further guidance

Separate guidance is available on making a decision whether or not to grant a request, in relation to particular sections of the OIA and specific subject areas, [here](#).

Our website contains searchable case notes, opinions and other material, relating to past cases considered by the Ombudsmen, and can be accessed here: [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz).

Our staff are also able to provide general advice to agencies on the processing of an official information request, including the current interpretation of the OIA and how it has been applied in similar fact situations in the past. 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.

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<sup>69</sup> See s 48(1)(b) OIA.

<sup>70</sup> See s 48(2) OIA.

## Appendix 1. Checklist for processing an official information request

### Days 1–3

1. Register the request and note the date of receipt
  - Check for similar requests
2. Confirm section 12 of the OIA applies
  - Is the requester eligible to make a request?
  - Is the requested information specified with due particularity?
  - Is the request seeking an opinion or creation of information, rather than information held by the agency?
  - Consult the requester and provide reasonable assistance, if the request is not made in accordance with section 12
3. Calculate and record the relevant maximum time limits
  - For seeking clarification, if any amendment or clarification that is received is to be treated as a new request (7 working days)
  - For transferring the request to another agency (10 working days)
  - For extending the maximum time limits for decision and transfer (20 working days)
  - For deciding whether to grant the request, in what manner and for what charge (as soon as reasonably practicable and no later than 20 working days)
4. Confirm which set of rules applies
  - Is it a general Part 2 request for official information?
  - Is it a Part 3 request for internal rules, policies or guidelines (section 22 OIA)?
  - Is it a Part 3 request for reasons for a decision (section 23 OIA)?
  - Is it a Part 4 request by a corporate entity for access to personal information?
  - Is it a Privacy Act request by an individual for personal information about themselves?
5. Send a letter to the requester acknowledging receipt of the request (see our [template letter](#))
  - If section 12 of the OIA does not apply, or if it is a Privacy Act request, respond accordingly

### Days 1–7

6. Determine whether the request needs to be amended or clarified, whether this is because the request was made orally or otherwise, and seek amendment or clarification (see our [template letter](#))

**Note:** if clarification or amendment is sought outside this period, your agency will not be able to treat the amended or clarified request as a new request for the purposes of determining the statutory timeframe for making and communicating a decision

### Days 1–10 (and as soon as reasonably practicable)

7. Determine what information is held that is relevant to the request
- Confirm the scope of the information requested
  - Locate and assemble the information held by your agency
  - Are there any administrative difficulties in locating, assembling or providing the information (section 18 OIA)?
  - Is a full or partial transfer of the request necessary (ie, because your agency does not hold the information but another agency does, or because the information is more closely connected with another agency's functions)?
  - Is an extension of time, to transfer the request or to make a decision, necessary?
8. If necessary:
- Transfer the request, or part of the request (see our [template letters](#))
  - Notify the requester of an extension of the maximum time limit to transfer the request and/or make a decision on the request (see our [template letter](#))

### Days 1–20 (and as soon as reasonably practicable)

9. Consider the information at issue, with reference to the principle that the information must be made available unless there is good reason to withhold it
- Do you need to consult within your agency, with a third party, with another agency or with the requester?
  - Do you need to extend the maximum time limit for making a decision or transferring the request?
10. If necessary:
- Consult on the request
  - Notify the requester of an extension of the maximum time limit to make a decision on the request and/or transfer the request (see our [template letter](#))
11. Identify any potential harm in release of the requested information

- Consider any concerns with reference to the relevant reasons for refusal
- If any reasons in section 9 of the OIA are being considered, identify and assess any public interest factors that favour release of the requested information

12. Make a decision

- Decide whether to grant the request
- If the request is to be granted, in what form will the information be released?
- If the request is to be granted, will there be a charge?<sup>71</sup>

13. Advise the requester of your agency's decision (see our [template letter](#))

- Ensure the decision complies with the requirements in the part of the OIA the request was considered under
- Include the information, where relevant and if it is practicable to release the information at the same time as advising the requester of the decision
- If there is to be a charge, or if it is not otherwise practicable to release the information at the same time as the decision, prepare the information for release (after payment or part payment of the charge) without undue delay<sup>72</sup>

14. Keep a record of the final decision, including why it was made and what information was released and/or withheld

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<sup>71</sup> If a decision is made to charge, the requester should be given the opportunity to review/refine the request and/or complain to the Ombudsman about the reasonableness of the charge **before** the information is prepared for release. Read our detailed guide to [charging](#) for more information.

<sup>72</sup> If necessary, the information can be prepared for release after the decision has been made and communicated to the requester—as long as it is provided 'without undue delay'.

## Appendix 2. Troubleshooting tips

A number of factors can contribute to delays and administrative difficulties in processing an OIA request. Many of these factors can be addressed by using the tools available in the OIA to manage a request.

### Consulting the requester

- Ask the requester to be as clear and specific as possible about the information sought.
- Ask the requester to specify what information is not required.
- Find out if the requester is seeking reasons why a decision or recommendation was made—the request may be for a [statement of reasons](#) under section 23 rather than for documentary information.
- If a requester has asked for [urgent consideration](#), ask for the reasons why and the timeframe they are seeking the information in.
- Find out if the requester has concerns with disclosure of their identity to third parties should the agency need to [consult third parties](#) before making a decision on the request.
- Find out if the requester would be happy to receive the information in an [alternative form](#) to that requested, for example, oral briefing, viewing, or summary.
- Note, if you take steps to consult the requester within the first 7 working days, it may be possible to treat any amended or clarified request that is received as a new request (see [amended or clarified requests](#) above).

### Managing a broad request

- Identify which aspect of the request is causing concern, then contact the requester and explain the problem, including how much information their request covers as currently phrased, the nature of the resources available to complete the task, and the implications of managing the request on the operations of your agency.
- Invite the requester to reconsider or refine their request. If you take steps to consult the requester within the first 7 working days, it may be possible to treat any amended or clarified request that is received as a new request (see [amended or clarified requests](#) above). Have in mind some potential strategies for refining or redirecting the request that might be able to meet the needs of the requester without imposing an unreasonable administrative burden on your agency. For instance:
  - Refining the time period covered by the request.
  - Refining the types of document covered by the request. Requesters may be happy to accept key documents (such as final papers/reports, or reports/briefings to Ministers or Cabinet), if they understand that their request for all information on a subject is problematic and may be met with an outright refusal.

- Providing a list of the documents that are potentially in scope of the request, if one can be easily generated through your agency's document management system.
- Providing the information at issue in an [alternative form](#) or subject to [conditions](#).
- Consider engaging additional staff.
- Consider whether [charging](#) for the supply of information would be reasonable and appropriate in the circumstances. Read our detailed guide to [charging](#) for more information.
- Consider whether to [extend the maximum time limit](#) for making a decision on the request.
- Consider whether it is possible to release the information in an [alternative form](#), for example, summary, viewing, or oral briefing.
- Consider releasing the information at a later time, after the decision is made, as long as the information is prepared for [release without undue delay](#).
- As a last resort, consider whether it is necessary for the agency to refuse the request under section 18(f) of the OIA, on the basis that the information cannot be made available without substantial collation or research.

## Managing multiple requests from the same requester

- Invite the requester to prioritise the order in which they would prefer the requests to be answered.
- Consider [extending](#) the time limit on each request as needed.
- Consider whether [charging](#) for the supply of information would be reasonable and appropriate in the circumstances. Read our detailed guide to [charging](#) for more information.
- Advise the requester of the decision on each request as soon as reasonably practicable (and no later than 20 working days), and subsequently roll out the information to be released [without undue delay](#).
- Consider whether it is possible to release the information in an [alternative form](#), for example, summary, viewing, or oral briefing.
- Consider whether, in the circumstances of the case, the multiple requests can be treated as a single request under section 18A(2) of the OIA, for the purposes of deciding whether it is appropriate to refuse the request under section 18(f) on the basis that the information cannot be made available without substantial collation or research.
- Consider whether it would be appropriate to refuse the requests under section 18(h) on the grounds that the requests are frivolous or vexatious.

## Managing multiple requests for the same or similar information from different requesters

- Engage more officials to assist.
- Consider [extending](#) the time limit to make a decision on each request as needed.
- Advise each requester of the decision on their request as soon as reasonably practicable (and no later than 20 working days after the date of receipt), and subsequently roll out all the information to be released at the same time, but [without undue delay](#).
- Consider [releasing information publicly](#) on the agency's website. In this case the requesters must be advised of the release at least at the same time as it appears on the website.

## What to do when the information requested is difficult to identify or cannot be found

- Contact the requester—explain the problem and ask whether the request can be made more specific, or whether they can provide more information to assist in locating the information.
- Consider whether the agency is being asked to [create information or express an opinion](#) rather than to provide information that it holds.
- If the information is in the form of discussions that were held but not recorded, identify the relevant officials and record their recollections in writing.
- Consider [extending](#) the time limit to give the agency more time to locate the information.
- Consider whether all or part of the request should be [transferred](#) to another agency that does hold the information.
- Consider whether it is appropriate to refuse the request under section 18(e) of the OIA on the basis that the relevant document does not exist or cannot be found, despite reasonable efforts to locate it.
- Consider whether it is appropriate to refuse the request under section 18(g) of the OIA on the basis that the agency does not hold the information and has no grounds for believing the information is held by, or more closely connected with the functions of, another agency subject to the OIA or LGOIMA.

## **What to do when the information is not ready to be released**

- Consider refusing the request under section 18(d) of the OIA, if the information will soon be publicly available (for example the information is being printed or is in the final stages of being prepared for imminent public release). If so, explain to the requester:
  - where and how the information will be able to be obtained;
  - the date of public release; and
  - the difficulty in meeting the request immediately.
- Consider whether there is a substantive concern about releasing the information at the time of the request. If so, identify the particular harm in release at this stage and assess that harm against the reasons in the OIA for withholding information.

## Appendix 3. Template letters

### 1. Acknowledgement of receipt of a request

[Date]

[Name and address of requester]

Dear [name]

#### **Official information request for [brief detail of subject matter of request]**

I am writing to acknowledge receipt of your official information request dated [date] for [brief detail of the subject matter of the request].

We received your request on [date]. We will endeavour to respond to your request as soon as possible and in any event no later than [date], being 20 working days after the day your request was received. If we are unable to respond to your request by then, we will notify you of an extension of that timeframe.

Your request is being handled by [person/team]. If you have any queries, please feel free to contact [person/team] on [phone/email/fax]. If any additional factors come to light which are relevant to your request, please do not hesitate to contact us so that these can be taken into account.

Yours sincerely

[Name]

## 2. Clarification or amendment of request required

[Date]

[Name and address of requester]

Dear [name]

### **Official information request for [brief detail of subject matter of request]**

I refer to your official information request dated [date] for [brief detail of subject matter of request].

#### **[Use if request made orally]**

On [date] we advised that we considered it reasonably necessary that your request be put in writing to provide clarification. We understand that you are [unable / unwilling] to do so. Accordingly, we now set out our understanding of your request, as follows, in accordance with section 12(5) of the Official Information Act:

[record of your agency's understanding of the information requested and any relevant considerations advanced by the requester].

Please confirm that our understanding of your request is correct by [insert details of how the requester may provide the necessary confirmation, for example, by phoning or emailing the relevant contact person].

Note that your request will not be considered to have been received for the purposes of the Act until we receive your confirmation that we have correctly understood your request.

#### **[Use if request otherwise requires clarification or amendment]**

You requested [detail of information]. However [set out reason that clarification or amendment is required—explain the lack of clarity or difficulty involved in meeting the request as currently framed and suggest options for how these issues might be resolved. Provide contact details for a member of staff who can assist].

#### **[Use only where the letter is sent within seven working days of receipt of the original request]**

It appears likely that your original request will need to be clarified or amended to enable us to respond. Please note, any clarification or amendment of a request is considered to be a new request for the purpose of calculating the maximum statutory timeframe for response—see section 15(1AA) of the Official Information Act.

Yours sincerely

[Name]

### 3. Transfer of a request to another agency—letter to requester

[Date]

[Name and address of requester]

Dear [name]

**Official information request for [brief detail of subject matter of request]**

I refer to your official information request dated [date] for [brief detail of subject matter of request].

We have transferred [part of] your request to [agency]. [Part of the / The] information to which your request relates [, namely—detail of specific aspect of request to be transferred if a partial transfer] [is not held by us but is believed to be held by [agency] / is believed to be more closely connected with the functions of [agency]]. In these circumstances, we are required by section 14 of the Official Information Act to transfer your request.

You will hear further from [name of agency] concerning [that part of] your request. [Provide other agency's contact details if available].

Yours sincerely

[Name]

#### 4. Transfer of a request to another agency—letter to other agency

[Date]

[Name and address of agency]

Dear [name]

##### **Transfer of request for official information**

I write concerning an official information request received from [name of requester] on [date] for [brief detail of subject matter of request].

As discussed between [name] and [name] on [date], and for the reason set out in the attached letter to [requester], this request is being transferred [in full / in part] to your agency for response.

Please treat this letter as a formal transfer of [this aspect of] the request under section 14 of the Official Information Act. You should be aware that a response must be provided to the requester as soon as reasonably practicable, and no later than 20 working days after the day this transfer is received by your agency, unless an extension of time is required and duly notified to the requester.

Yours sincerely

[Name]

Encl copy of correspondence from [requester] of [date]

copy of correspondence to [requester] of [date]

## 5. Extension of time limit to make a decision or transfer a request

[Date]

[Name and address of requester]

Dear [name]

### **Official information request for [brief detail of subject matter of request]**

I refer to your official information request dated [date] for [brief detail of subject matter of request].

#### **[Use if extending time limit to make a decision]**

The Official Information Act requires that we advise you of our decision on your request no later than 20 working days after the day we received your request. Unfortunately, it will not be possible to meet that time limit and we are therefore writing to notify you of an extension of the time to make our decision, to [date].

#### **[Use if extending time limit to transfer request]**

This letter is to advise you that it may be necessary to transfer [part of] your request to [agency] and that we are extending the 10 working day time limit available to make this transfer, to [date].

#### **[Use in all cases]**

This extension is necessary because [your request is for a large quantity of information and meeting the original time limit would unreasonably interfere with our operations / your request necessitates a search through a large quantity of information and meeting the original time limit would unreasonably interfere with our operations / consultations [provide details if possible] necessary to make a decision on your request are such that a proper response cannot reasonably be made within the original time limit.]

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or freephone 0800 802 602.

If you wish to discuss any aspect of your request with us, including this decision, please feel free to contact [details of contact person].

Yours sincerely

[Name]

## 6. Notification to the requester of the decision on a request

Note: A charging template letter is available in our detailed guide to charging, [here](#).

[Date]

[Name and address of requester]

Dear [name]

### **Official information request for [brief detail of the subject matter of the request]**

I refer to your official information request dated [date] for [quote or set out detail of request].

#### **[Use if granting the request in full and releasing information immediately]**

The information you have requested is enclosed.

#### **[Use if granting the request in part and releasing information immediately]**

Part of the information you have requested is enclosed. However, we have decided to refuse your request for information which relates to [describe information withheld] under section [detail relevant section(s)] of the Official Information Act. [Describe relevant harm, and consideration of the public interest in release, if applicable].

#### **[Use if granting the request in full and releasing information at a later date]**

We have decided to grant your request. However, it will take us some time to prepare the information for release. We will send you the information by [date].

#### **[Use if granting the request in part and releasing information at a later date]**

We have decided to grant your request in part, namely information which relates to [describe information to be released]. However, it will take us some time to prepare this information for release. We will send you that information by [date]. We have also decided to refuse your request for information which relates to [describe information withheld] under section [detail relevant section(s)] of the Official Information Act. [Describe relevant harm, and consideration of the public interest in release, if applicable].

#### **[Use if including contextual information]**

In order to provide you with further context in terms of the information you have requested, please note that [set out or refer to contextual information to be provided].

#### **[Use if releasing information in a different form to that explicitly asked for by the requester]**

You asked for the information to be released to you [specify form of release asked for by requester]. However, we cannot release the information in that form as [this would impair efficient administration / be contrary to our legal duty to [specify legal duty] / prejudice the interests protected by section [detail relevant section(s)] of the Official Information Act]. [Describe relevant harm, and consideration of the public interest in release, if applicable]. We have therefore decided to release the information to you [specify form in which information will be released].

**[Use if imposing conditions on release]**

The information is released to you on condition that [specify relevant conditions including any relevant timeframes], as [describe relevant harm the condition is intended to protect].

**[Use if refusing the request in full]**

We have decided to refuse your request under section [detail relevant section(s)] of the Official Information Act. [Describe relevant harm, and consideration of the public interest in release, if applicable].

**[Use in all cases—unless request granted in full immediately]**

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or freephone 0800 802 602.

**[Use in all cases]**

If you wish to discuss this decision with us, please feel free to contact [details of contact person].

Yours sincerely

[Name]

Encl List documents enclosed