

# Delay in responding to a request for information about cannabis-related medicines

<b>Legislation</b>	Official Information Act 1982, ss 15(1), 15A, 28(4)(b)
<b>Agency</b>	Ministry of Health
<b>Ombudsman</b>	Peter Boshier
<b>Case number(s)</b>	550200 and 552669
<b>Date</b>	July 2021

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*Failure by the Ministry of Health to make and communicate a decision on a request for official information within extended time limit— contrary to law— decision to extend the time limit also unreasonable*

## Background

On 16 March 2021, the Ministry of Health (the Ministry) received a request for official information relating to cannabis-based medicines. On 15 April 2021, the Ministry notified the complainant of the need to extend the 20 working day maximum timeframe for responding to the request, until 21 May 2021 (the extension decision). The Ministry made this decision under both sections 15A(1)(a)<sup>1</sup> and 15A(1)(b)<sup>2</sup> of the Official Information Act 1982 (OIA).

On 18 May 2021, the Ministry wrote to the complainant, stating it had granted the request but additional time was required to prepare the information for release, which would occur by 11 June 2021. The Ministry apologised for the delay.

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<sup>1</sup> Section 15A(1)(a) of the OIA, allows for an extension of time if ‘*the request is for a large quantity of official 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 department or the venture or the Minister of the Crown or the organisation*’.

<sup>2</sup> Section 15A(1)(b) of the OIA, also allows for an extension of time if ‘*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 complainant made a complaint to the Chief Ombudsman about the extension decision. The complainant also made a complaint about the delay by the Ministry in providing the requested information.

## Investigation

The Ombudsman investigated whether the extension decision was unreasonable, as well as the complaint that there was a delay in communicating its decision to the complainant.

### The extension decision

In the Ombudsman's consideration of the extension decision, the Ministry explained that there had been delays in scoping the request, and that it was undertaking internal consultation with the subject matter expert at Medsafe.

However, the *'consultation'* identified by the Ministry appeared to be only scoping work by the subject matter expert, on behalf of the OIA team. The Ombudsman considered this kind of work to be a routine part of the collation and research in the early processing of information requests, as opposed to *'consultations necessary to make a decision'*, and that section 15A(1)(b) did not therefore apply.

The Ombudsman took the view that the extension decision was made more as a result of the Ministry's workload pressures. While sympathetic, the Ombudsman noted this was not a reason under section 15A of the OIA to extend the timeframe for responding to requests for official information. In the absence of any specific details to indicate there was a substantial amount of information the subject matter expert was required to search through, the Ombudsman was also not satisfied that section 15A(1)(a) of the OIA applied to this case. The Ombudsman therefore considered the extension decision was unreasonable.

### Delay in communicating the decision

The Ombudsman was also not satisfied that the letter of 18 May 2021 was a decision within the terms of the OIA. While it stated the Ministry was *'granting'* the request, the Ministry confirmed to the Ombudsman that not all information within the scope of the request was likely to be released. Further, the Ministry was still collating the information within the scope of the request at the time of the decision. The Ministry had therefore not reviewed all the information to be able to make a decision about what information it would be releasing to the complainant at the time of the 18 May 2021 letter.

There were continued delays in considering this request beyond 11 June 2021, with the Ministry's decision still having not been finalised. Overall, the Ombudsman considered that there had been a failure by the Ministry to meet the obligations imposed by section 15 of the OIA. The failure to meet these statutory obligations is contrary to law<sup>3</sup>.

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<sup>3</sup> Section 30(1)(b) of the OIA and section 22(1)(a) of the Ombudsmen Act 1975.

## Outcome

The Ministry accepted the Ombudsman's consideration of both aspects of this complaint. However, a decision on the request was still outstanding when the Ombudsman formed his final opinion on 13 July 2021. The Ombudsman expressed his disappointment at the continued delays. The Ombudsman recommended the Ministry:

1. make and communicate its decision to the complainant as a priority and by 16 July 2021 at the latest;
2. remind its staff of the statutory obligations under the OIA; and
3. apologise to the complainant for the extensive delays in processing the request for information.

The Ministry accepted the Ombudsman's recommendations, and gave effect to them by apologising to the complainant and providing the final decision on the request.

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