

## Delay in responding to request for information about the Invited Visitor Policy and sponsorship

<b>Legislation</b>	Official Information Act 1982, ss 15(1), 15A, 28(4)(b), 30(1)(b); Ombudsmen Act 1975, s 22(1)(a)
<b>Agency</b>	Antarctica New Zealand
<b>Ombudsman</b>	Peter Boshier
<b>Case number(s)</b>	536264
<b>Date</b>	14 October 2020

*Failure by Antarctica New Zealand to make and communicate its decision on a request for official information within extended time limit—this appeared to be contrary to law—deemed to be a refusal under s 28(4)(b) OIA—investigation of deemed refusal commenced*

### Background

On 24 July 2020, Antarctica New Zealand received an Official Information Act (OIA) request for:

1. draft and final versions of the Invited Visitor Policy and all associated reports, advice and internal correspondence; and
2. information relating to the Government's direction that Antarctica New Zealand seek \$50 million in sponsorship from companies, and the specific consideration that had been given to this direction by the board and staff of Antarctica New Zealand.

On 10 August 2020, Antarctica New Zealand notified an extension of seven days, from 21 August to 28 August 2020.

On 13 August 2020, Antarctica New Zealand provided the requester with a copy of its Invited Visitor Policy, and advised that further information was still to come.

On 24 August 2020, Antarctica New Zealand advised the requester that it needed to consult the Ministry of Foreign Affairs and Trade, and the Ministry had indicated it would need more than five days for its own internal consultation and for consultation with the Minister of Foreign Affairs.

When the requester had still not received a response by 21 September 2020, she complained to the Ombudsman.

## Investigation

On receipt of the complaint, the Chief Ombudsman's investigator made preliminary inquiries with Antarctica New Zealand. She asked whether Antarctica New Zealand accepted that there had been a delay in responding, the reasons for the delay, and when a decision was expected to be made.

Antarctica New Zealand accepted that there had been a delay in communicating a decision to the requester, and explained that the delay had occurred due to consultation with the Ministry of Foreign Affairs and Trade.

Under section 15(1) of the OIA, agencies must make and communicate the decision on a request for official information as soon as reasonably practicable and no later than 20 working days after it was received, unless that time limit is extended in accordance with section 15A.

Under section 28(4)(b) of the OIA, a failure to comply with the extended time limit for decision is deemed to be a refusal of the request, and may be investigated by the Ombudsman on that basis.

The time limit in this case was extended until 28 August 2020, and so a decision was required to be made and communicated to the requester by that date at the latest. No decision had yet been made and communicated.

On 1 October 2020, the Chief Ombudsman formed the provisional opinion that Antarctica New Zealand had failed to comply with section 15(1) of the OIA within the extended time limit, and that this failure was ongoing. This appeared to be 'contrary to law', which is one of the conclusions that an Ombudsman may reach after an investigation.<sup>1</sup> He asked Antarctica New Zealand to make and communicate its decision on the request by 9 October 2020.

On 9 October 2020, Antarctica New Zealand acknowledged that it was now some way past the deadline for decision. It said that consultations with the Ministry and Minister were still underway, and it would dispatch the information as soon as they were concluded.

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<sup>1</sup> See s 30(1)(b) OIA and s 22(1)(a) Ombudsmen Act.

## Outcome

On 14 October 2020, the Chief Ombudsman confirmed as final his opinion that Antarctica New Zealand appeared to have acted 'contrary to law' by failing to comply with section 15(1) of the OIA within the extended time limit. He recommended that Antarctica New Zealand make and communicate a decision on the request as a priority.

As the breach was serious and ongoing, he also decided to investigate Antarctica New Zealand's deemed refusal of the request under section 28(4)(b) of the OIA. He asked Antarctica New Zealand to provide a copy of the information at issue.

On 15 October 2020, Antarctica New Zealand made and communicated its decision to release the information with redactions, and the Chief Ombudsman's further investigation then focused on whether there was good reason for those redactions.

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