



# FAQs: official information requests during COVID-19

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## Tools and strategies for managing requests

### What are some of the tools and strategies for ministers, public service agencies, and local government bodies (collectively referred to as the agencies) managing official information requests during the COVID-19 emergency?

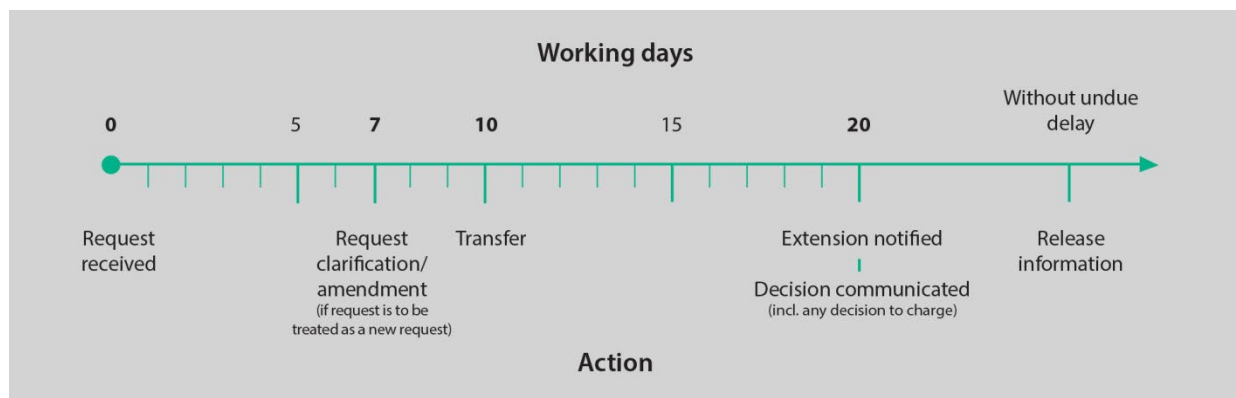
Some of the tools and strategies for agencies to manage official information requests at this time include:

- **Communicate with the general public** about how the agency is handling OIA and LGOIMA requests at this time, and any particular challenges it is dealing with (for example, [information that is inaccessible](#) while staff are working remotely). A good place to do this is on the agency's OIA or LGOIMA webpage.
- Consider **proactively publishing** information that is likely to be in demand in the current circumstances. Proactively publish OIA or LGOIMA responses that are likely to be in the wider public interest. See more FAQs about proactive release [below](#).
- Ensure **proper triage and scoping** of requests as soon as possible after they are received. This will set agencies up for clear and effective communication and consultation with requesters.
- As part of the triage process, identify those requests that warrant **urgent or priority** treatment. This could include requests for information about decisions that involve public health and safety, or those affecting someone's financial circumstances, housing situation or family circumstances.
- **Communicate promptly and clearly with individual requesters** about any difficulties agencies are experiencing in processing official information requests, and the implications for agency response times.
- Effective **consultation with requesters** will enable agencies to gain a proper understanding of what is sought and how it can be provided without an unnecessary or unreasonable amount of work.
- Seeking early **amendment or clarification** of broad or unclear requests (within the first seven days), will mean the amended or clarified request can be treated as a new one, for the purpose of calculating the response time.
- Make reasonable use of the ability to **extend** maximum response times where that is necessary in the circumstances of a particular request, because of the volume of information at issue, or the need for consultation to be undertaken. See more FAQs about extensions [below](#).
- Consider whether it would be appropriate to **grant the request and release the information later** (but without undue delay). See more FAQs about delayed release [below](#).

- Consider **alternative ways of meeting the request** where it is not possible to provide exactly what has been requested, in the way preferred by the requester. This could include:
  - releasing a subset or sample of the information at issue;
  - releasing other information;
  - releasing the information in an alternative form (like a summary); or
  - releasing the information on conditions.See more information about these options in our [Substantial collation and research](#) guide.
- Consider whether charging would enable the agency to meet requests that would otherwise need to be refused because of the amount of work that would be required. See more information our [Charging](#) guide.
- Create robust business continuity plans which include the resources required for addressing official information requests. For example:
  - agencies may wish to ensure that every Tier 1-4 manager and lower nominates ‘an heir and a spare’ to make sure that they have the necessary people to undertake the work needed to answer official information requests;
  - have a plan for staff absences and how official information requests will be managed in those circumstances, keeping in mind that processing such requests is ‘core business’;
  - have a system to track and anticipate expected increases in requests (for example where work is underway on an area in which there is high interest), and a plan for upscaling resource early; and
  - consider split or rotational shifts with staff.

## Key timeframes

### What are the timeframes under the OIA and the LGOIMA during the COVID-19 emergency?



The OIA and LGOIMA timeframes remain the same during the COVID-19 emergency. While agencies have now had time to adjust to the new demands arising under COVID-19, the Chief Ombudsman recognises that complying with the OIA and the LGOIMA may still be more difficult on occasion, particularly where new or unexpected information requests arise. The Ombudsman therefore encourages agencies to keep the public informed about their arrangements for dealing with official information requests via their social media channels and websites. Individual requesters should also be kept up to date about their requests, particularly if there are any unavoidable delays.

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; and
- make available any official information it has decided to release without *'undue delay'*.

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;
- transfer a request to another agency promptly, and no later than 10 working days, after the request is received;
- 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.

The Ombudsman's full statement on official information response times during the COVID-19 emergency is available on the website, [here](#).

## What counts as a ‘working day’ during the COVID-19 emergency?

While some public sector employees may not be able to work, or may be required to work remotely, during the COVID-19 emergency, that does not change the definition of ‘working day’ under the OIA and the LGOIMA.<sup>1</sup>

In the OIA that definition is:

### **2 Interpretation**

(1) *In this Act, unless the context otherwise requires,—*

**working day** means any day of the week other than—

- (a) *Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s birthday, and Waitangi Day; and*
- (ab) *if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and*
- (b) *a day in the period commencing with 25 December in any year and ending with 15 January in the following year.*

In the LGOIMA it is:

### **2 Interpretation**

(1) *In this Act, unless the context otherwise requires,—*

**working day** means any day of the week other than—

- (a) *Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s birthday, and Waitangi Day; and*
- (ab) *if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and*
- (b) *the day observed in the appropriate area as the anniversary of the province of which the area forms a part; and*
- (c) *a day in the period commencing with 20 December in any year and ending with 10 January in the following year.*

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<sup>1</sup> Also refer to the OIA and LGOIMA calculators on the [Ombudsman’s website](#).

## The requester has asked for an urgent response, what does the agency need to do?

A requester may ask that a request be treated as urgent, and if so must give the reasons for seeking the information urgently.<sup>2</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.

Things that might warrant a request being given more urgent treatment at this time include decisions that involve public health and safety, or those that affect someone's financial circumstances, housing situation or family circumstances.

## What if the agency cannot answer a request on time during the COVID-19 emergency?

Effective processes should be set up to allow an agency to respond to most requests as soon as reasonably practicable and no later than 20 working days. However, if an agency is still within the original 20 working day period, it can consider whether a reasonable extension is warranted. See '[Extensions](#)' for further information on the criteria for extensions.

If it looks like the agency will be unable to meet the original or extended time limit, it 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 to provide a staged reply. If part of the request is straightforward and the response is ready to go, there is often no need to hold that up in order to deal with the remaining issues.

Requesters are entitled to complain to the Ombudsman if they do not receive the decision on their request within the original or extended time. The Ombudsman may take the current COVID-19 emergency and associated circumstances into account when deciding how to deal with complaints about delays or extensions. You can read his full statement [here](#).

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<sup>2</sup> See s 12(3) OIA and s 10(3) LGOIMA.

## **Can the agency make a decision on the request now and provide the information later?**

Yes, information can be released after the decision on a request has been made and communicated to the requester, provided this is done without *'undue delay'*.<sup>3</sup>

Usually information will be released at the same time as the decision on a request is made and communicated.

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 (in part or in full), it will take 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 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. Our [Template letter 6: Letter communicating the decision on a request](#) has wording that can be used in this situation.

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 requester's response to the proposed charge will not generally be an undue delay in making the information available.

## **Is proactive release a good option during the COVID-19 emergency?**

If agencies can identify information that is likely to be the subject of requests during this period, then proactively releasing this information will help to ease the burden of multiple requests.

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.

## **Can the agency refuse a request on the basis that it is planning to proactively publish the information?**

An agency may choose to proactively publish information that is likely to be the subject of requests during this period. If agencies can identify that the specific information that has been

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<sup>3</sup> See s 28(5) OIA and s 27(5) LGOIMA.



requested is or will soon be publicly available, section 18(d) of the OIA (section 17(d) of the LGOIMA) allows an agency to refuse the request.

The Ombudsman has published a guide about publicly available information, which is available [here](#).

## Extensions

### Can the agency extend the timeframe for responding because of the COVID-19 emergency?

Agencies cannot refer only to *'the COVID-19 emergency'* to extend the timeframe for responding to a request.

The permissible reasons for extension are where:<sup>4</sup>

- (a) *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*
- (b) *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.*

At least one of these factors (volume or consultations required) must be present in a particular case in order to justify an extension. The agency might need to consult with the requestor, internal agency staff, or any interested third parties to make a decision, and these people may not be available or reachable over this period.<sup>5</sup> See [The staff the agency needs to consult are not available, what should it do?](#)

Provided they are present, the impact of the COVID-19 emergency can be considered in deciding whether *'meeting the original time limit would **unreasonably** interfere with the operations of the agency'* or that *'a proper response to the request cannot **reasonably** be made within the original time limit'*.

There is also scope to consider the impact of the COVID-19 emergency in setting the period of the extension. Extensions must be *'a reasonable period of time having regard to the circumstances'*.<sup>6</sup> See [How long is 'a reasonable period of time' for extensions during the COVID-19 emergency?](#)

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<sup>4</sup> See s 15A(1)(a) and (b) OIA and s 14(1)(a) and (b) LGOIMA.

<sup>5</sup> In respect of extension decisions, agreed internal reviews and sign-out process is not *'consultation'*, see <https://www.ombudsman.parliament.nz/resources/unreasonable-extension-time-limit-internal-consultations>.

<sup>6</sup> See s 15A(2) OIA and s 14(2) LGOIMA.

## **Can the agency do a blanket extension for all the requests it is currently dealing with?**

No. The decision to extend and the period of the extension must be based on the circumstances of each particular request.

Agencies may find it helpful to have an initial triage process so they can assess the urgency or priority of each request and prioritise accordingly.

## **How should the agency respond to a request if the extended deadline can no longer be met?**

It is possible to make a further extension if an agency is still within the original 20 working day period. Once outside that period, no further extensions may be made.

If it looks like the agency will be unable to meet the extended time limit, it 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 to provide a staged reply. If part of the request is straightforward and the response is ready to go, there is often no need to hold that up in order to deal with the remaining issues.

Requesters are entitled to complain to the Ombudsman if they do not receive the decision on their request within the extended time. The Ombudsman may take the current situation and associated constraints into account when deciding how to deal with complaints about extensions. You can read his full statement [here](#).

## **How long is ‘a reasonable period of time’ for extensions during the COVID-19 emergency?**

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.

Agencies may take into account the impact of the COVID-19 emergency on their operations in deciding what a reasonable period of time is. If the information requested is important from a public interest perspective, a reasonable period of time is likely shorter than it is for other information.

Agencies should be realistic about what they are likely to be able to achieve in setting the period of an extension. They can also reassure requesters that they will aim to process the request faster if that is possible.

## **The staff the agency needs to consult are not available, what should it do?**

Agencies should try to consult with the required staff, such as subject matter experts within the original request timeframes. However, where these staff are not available as a result of COVID-19, agencies may use the ability to extend the original 20 working day time frame for responding to a request, and take this factor into account in determining what a reasonable period of extension is. Also see [Staff availability](#)

## **Access to information and resources**

### **How should the agency respond to a request if the information requested is not accessible?**

Agencies should make reasonable enquiries to satisfy themselves first that the information is not accessible remotely. This may include consulting other staff who are able to physically access the information or likely to have knowledge of how the information may be accessed remotely (for example, knowledge management and information technology staff). It is a good idea to keep a record of these enquiries, in the event that a complaint is made to the Ombudsman.

If the information is not available remotely, agencies should communicate with the requester about any difficulties in accessing work premises to enable processing of their request in part or in full, and the implications for the response time. Agencies may also be able to make use of the ability to extend maximum response times where that is necessary in the circumstances of a particular request. See '[Extensions](#)' for further information on the criteria for extensions.

### **Staff availability**

If it is not possible for an agency to access the requested information, due to staff absences or staff redeployment to other areas in the organisation, agencies should communicate with the requester about the difficulties or consider utilising the ability to extend maximum response times where necessary.

Please note however, that if in certain circumstances, making available official information contravenes the Director-General of Health's orders<sup>7</sup>, and therefore constitutes an offence under the Health Act<sup>8</sup>, an agency may be able to refuse a request under section 18(c)(i) of the OIA (section 17(c)(i) of the LGOIMA) while those orders were in effect.<sup>9</sup>

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<sup>7</sup> See Sections 70(1)(m) and (f) of the Health Act 1956.

<sup>8</sup> See s 72 Health Act 1956.

<sup>9</sup> This section applies if 'the making available of the information requested would be contrary to the provisions of a specified enactment'.

## What if the agency doesn't have access to the resources that it needs to process a request, like printers, scanners or redaction software?

Many public sector employees will be working from home during this time. Requests that can be processed electronically, through the use of redaction software, may still be able to be met.

However, if manual redaction methods are required this may make it more time-consuming and/or difficult to process requests, particularly ones for a lot of information. Manual redaction generally requires access to printers and scanners, which staff at home will not have.

Agencies should consider whether it is possible to make and communicate the decision on a request, and (where applicable) release the information once they have access to the resources they need, but without undue delay.

## Transfers

### Can the agency transfer a request to another agency that may hold the requested information but isn't as busy?

No, agencies cannot transfer a request to another agency just because it is less busy. The requirement to transfer arises only where the information:<sup>10</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.

The [National Pandemic Plan](#) establishes a number of 'lead agencies' during the COVID-19 emergency.<sup>11</sup> A lead agency's functions during this time may make that agency more appropriate to deal with the information and request.

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.

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>12</sup> The requester must be informed that the request has been transferred.

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<sup>10</sup> See s 14 OIA and s 12 LGOIMA.

<sup>11</sup> See page 29 onwards of the National Pandemic Plan.

<sup>12</sup> See ss 14 and 15A OIA and ss 12 and 14 LGOIMA.

## LGOIMA—meeting requirements

### Are councillors still expected to meet in person while the epidemic notice is in force for COVID-19?

[Part 7](#) of the LGOIMA has been amended by the Epidemic Preparedness (COVID-19) Notice 2020. This notice allows changes to the way that Councils and councillors can meet and invite public participation during COVID-19.

The Epidemic Notice allows for Council meetings to be ‘open to the public’ by way of live audio and/or video broadcast, which is then made available after the meeting, free of charge. It also allows meeting agendas (and any report referred to in that agenda) and meeting minutes to be posted on the council’s website.

## LGOIMA—Land Information Memoranda (LIMs)

### What are the timeframes for providing LIMs under LGOIMA during COVID-19?

The timeframes for providing LIMs remain the same during the COVID-19 emergency. A council’s legal timeframe requirements for responding to a LIM application are to provide a LIM ‘in relation to matters affecting any land in the district of the authority’ to the applicant within ten working days.

While some public sector employees may not be able to work, or may be required to work remotely, during the COVID-19 emergency that does not change the definition of ‘working day’ under the LGOIMA:

#### **2 Interpretation**

(1) *In this Act, unless the context otherwise requires,—*

**working day** means any day of the week other than—

- (a) *Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s birthday, and Waitangi Day; and*
- (ab) *if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and*
- (b) *the day observed in the appropriate area as the anniversary of the province of which the area forms a part; and*
- (c) *a day in the period commencing with 20 December in any year and ending with 10 January in the following year.*

Councils may wish to consider releasing a LIM containing only the mandatory information required under section 44A(2) where circumstances make it difficult to comply with the legal

timeframe requirement during the COVID-19 emergency.<sup>13</sup> However, if councils can still issue the mandatory information<sup>14</sup> and the discretionary information<sup>15</sup> to LIM applicants they should continue to do so.

## Advice for requesters

### **Can requesters still request official information during the COVID-19 emergency?**

Yes. The Ombudsman has asked requesters to be mindful of the present circumstances and the pressures agencies are under when making information requests. For further advice on making requests, please refer to [Making official information requests: A guide for requesters](#).

### **If requesters want to make a broad request about COVID-19, how can they refine it to make it more manageable?**

It can be challenging for agencies to respond to requests that are broad and undefined. This is particularly so when many public sector employees are working remotely, and where agency resources may have been redirected toward the agency's response to COVID-19. Requests which are unclear, or are too broad, may result in delays, charges, or even refusals. Therefore, it pays to have in mind some strategies for refining a request so that it can be met. For instance:

- Ensuring the time period is specific.
- 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).
- Asking for a list of the documents that are potentially in scope of the request.
- Asking for the information at issue in an [alternative form](#) (such as a summary) or subject to conditions.

### **The agency advises the requester it's too busy dealing with the COVID-19 emergency to respond to the request, what should the requester do?**

If the requester is unhappy with the response to the request, the requester can complain to the Ombudsman. There is no charge for making a complaint.

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<sup>13</sup> The protections under sections 44A(5) and 44A(6) of the LGOIMA apply only to the mandatory information listed under section 44A(2) of the LGOIMA.

<sup>14</sup> See s 44A(2) of the LGOIMA.

<sup>15</sup> See s 44A(3) of the LGOIMA.

The Ombudsman can consider most matters concerning an agency's decision making on an official information request.

Under the OIA and the LGOIMA, an Ombudsman can investigate complaints about:

- a decision to refuse (or partially refuse) a request for information;
- delays in making a decision or in releasing information;
- a decision to extend any of the maximum time limits;
- a decision to charge for supplying information;
- the way in which information has been made available; and
- conditions imposed on the release of information.

The Ombudsman has stated that he may take extenuating circumstances into account when deciding how to deal with complaints about delays or extensions of the timeframes for responses to requests. However, his expectation is that individual requesters should be kept up to date about their requests, particularly if there are any unavoidable delays.

### **Can an agency ask the requester for more information or to change or clarify the request?**

Yes. If an agency decides that it needs to do so, it can ask that the requester provide it with more information or to clarify or amend the request so that it is able to make a decision whether to grant or refuse it.

The requester is under no obligation to do so but, if they don't, the agency may need to extend the time limit to respond to the request, may have to impose a charge to cover administrative or other expenses, or may need to refuse the request altogether.

Clarification or amendment of the request can result in it being treated as a new request that replaces the original one, except if the agency sought the requester's clarification more than 7 working days after receiving the original request.<sup>16</sup>

### **Can an agency consult others about a request?**

An agency may decide to consult before it makes a decision on a request. Consultations may be with:

- The requester;
- the agency's in-house policy or legal team, external legal advisors, a particular staff member, the chief executive or relevant Minister for their comments on the proposed response;

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<sup>16</sup> See s 15(1AA) and (1AB) OIA; s 13(7) and (8) LGOIMA.

- external third parties who supplied or are the subject of the requested information (to see if they have any concerns about disclosure, for example in relation to privacy issues, understandings of confidentiality or commercial sensitivities); and
- any other agency with an interest in the information.

If requesters have any concerns about disclosure of their identity to third parties during consultation, they should make this clear to the agency as soon as possible.

## Further information and help

### Where can I go if my question isn't answered here?

If your question is not answered here, please contact [info@ombudsman.parliament.nz](mailto:info@ombudsman.parliament.nz). These FAQs will be updated as new issues arise or any advice changes.

Otherwise, the Office of the Ombudsman is still receiving complaints and providing advice.

### For people wishing to make a complaint

For complaints please use our [web form](#). For any other queries please visit our [Get help \(for the public\)](#) page.

### For agencies

Staff will be on hand to provide advice and answer your inquiries. Please visit our [Get help \(for agencies\)](#) page for more information.

Alternative arrangements are being made for any scheduled face-to-face meetings. Where possible, they'll be replaced by telephone or audio-visual conference.

The Office of the Ombudsman is still open to receiving requests for agency training. Please email [info@ombudsman.parliament.nz](mailto:info@ombudsman.parliament.nz).

Please note that alternative arrangements may be made for any scheduled training sessions, for which our staff will be in touch to discuss appropriate timing and mode of delivery.