

Requests for internal decision making rules

A guide to section 22 of the OIA and section 21 of the LGOIMA

This is a guide to requests made under [section 22](#) of the Official Information Act (OIA) and [section 21](#) of the Local Government Official Information and Meetings Act (LGOIMA).

*For the sake of simplicity and given that section 22 of the OIA and section 21 of the LGOIMA are virtually identical, these requests are referred to in short in this guide as ‘**section 22 requests**’. Any reference to section 22 should therefore be read also as a reference to section 21 of the LGOIMA.*

Section 22 applies to requests for a particular type of information—the rules and guidelines agencies use to make decisions which affect people personally. Such requests need to be considered within the special code that this section creates.

This guide is published under the authority of the [Ombudsmen Rules 1989](#).

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What is a section 22 request?

A [section 22](#) request is one for:

...any document (including a manual) which is held by [an agency] and which 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.

This section is found in [Part 3](#) of the legislation. Ordinary requests for official information are considered under [Part 2](#).

Section 22 provides a **right** of access to internal decision making rules on request. It reflects the principle that *'the individual has a right to know the law that does or may affect [them] personally'*.¹ Because there is a right of access, the reasons for refusing requests are more limited than the reasons for refusing ordinary official information requests.

Section 22 means that people can understand and if necessary challenge the decisions made about them. It also means that agencies can be held accountable for the decisions they make which affect people personally.

Related provisions

Section 22 complements other provisions in the legislation that enable:

- people and corporate entities to request the **reasons** for a decision which affects them personally;² and
- corporate entities to request **personal information** about themselves.³

These provisions also deal with special types of information to which people have a right of access.

Like section 22, these provisions are about ensuring transparent and accountable decision making.

Here's a diagram to help you figure out which rules apply to which requests.

¹ Committee on Official Information, *Towards Open Government: Supplementary Report* (1981) vol 2 at 75.

² See s 23 OIA and s 22 LGOIMA. For more information see [Requests for reasons for a decision or recommendation](#).

³ See s 24 OIA and s 23 LGOIMA. Requests by individual natural persons for personal information about themselves are considered under the Privacy Act. For more information see [Requests by corporate entities for their personal information](#).

How did you decide?	Requests for internal decision making rules	Section 22 OIA / section 21 LGOIMA
Why did you decide?	Requests for reasons for a decision or recommendation	Section 23 OIA / section 22 LGOIMA
I want what you hold about my corporate entity	Requests by corporate entities for their personal information	Section 24 OIA / section 23 LGOIMA

Who can make a section 22 request?

The eligibility requirements are different under the OIA and LGOIMA.

Under the OIA

Section 22 requests can **only** be made by:⁴

- New Zealand citizens or permanent residents;
- people in New Zealand; or
- corporate entities (that is, companies or incorporated societies) which are either incorporated in New Zealand or have a place of business here.

Under the LGOIMA

Section 21 requests can be made by **any person** (individual or corporate entity), whether in New Zealand or not.

How to make or recognise a section 22 request

There is no special way to make a section 22 request. Requests can be made orally, or in writing. The requester does not need to refer to section 22. A section 22 request may look like an ordinary OIA or LGOIMA request, but what sets it apart is the nature of the information sought by the requester. If the requester is seeking:

- a [document](#) held by the agency;
- containing [internal decision making rules](#);
- that affect people personally;

⁴ See s 22(2) OIA.

then it must be considered under section 22.

These requests are usually made in the context of a person trying to understand how an agency will reach a decision or why it took the decision it did. Communications of this nature should automatically **raise a flag** for the agency to consider whether the person is making a section 22 request. Example scenarios in which a person might make a section 22 request include:

- a request by a job applicant for an agency's human resources policy; or
- a request for the criteria an agency uses to determine applications for a grant or benefit.

If a requester wants to make a section 22 request, it helps to refer to that section explicitly, so that the request is recognised and processed in accordance with its requirements. Requesters must specify the information sought with *'due particularity'*.⁵ This means they must provide sufficient information to enable the agency to identify the information sought. If a request lacks due particularity, the agency must provide reasonable assistance to the requester.⁶ Requesters may seek urgency, provided they give reasons.⁷

The decision or recommendation needn't affect the **requester** themselves. It's sufficient that the decision affect **any** person or group in their personal capacity.

What is a *'document'*?

The definition of *'document'* is not as narrow as it sounds. *'Document'* means a document in any form (ie, hardcopy or electronic), and includes:⁸

- any writing on any material;
- any information recorded or stored by means of any tape-recorder, computer, or other device; and any material subsequently derived from information so recorded or stored;
- any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means;
- any book, map, plan, graph, or drawing; or

⁵ The requirement for due particularity in s 12(2) of the OIA (s 10(2) of the LGOIMA) is incorporated by s 22(3) of the OIA (s 21(2) of the LGOIMA).

⁶ The duty to provide reasonable assistance in s 13 of the OIA (s 11 of the LGOIMA) is incorporated by s 22(3) of the OIA (s 21(2) of the LGOIMA).

⁷ The ability to seek urgency in s 12(3) of the OIA (s 10(3) of the LGOIMA) is incorporated by s 22(3) of the OIA (s 21(2) of the LGOIMA). For more information about responding to urgent requests, see [The OIA for Ministers and agencies](#) and [The LGOIMA for local government agencies](#).

⁸ See s 2 OIA and LGOIMA.

- any photograph, film, negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced.

What are internal decision making rules?

The committee which recommended the enactment of the OIA helpfully described the type of information to which section 22 applies as follows:⁹

This clause relates to what has been called ‘informal administrative law’ or ‘internal law’—the body of rules and criteria which is applied by agencies and statutory officers in making decisions affecting the rights, privileges, or liabilities of individuals. It includes the principles and guidelines in accordance with which statutory or administrative discretions are exercised.

Some of this ‘law’, like the case law built up by Courts and judicial tribunals, is based on precedents established in the course of making decisions. Some consists of departmental interpretations on points which have not been covered by judicial decisions. Some consists of policy decisions or directions issued by Ministers or senior officials. It may be contained in manuals, circulars, or desk or other files. In short, it covers material known to and used by officers or employees in making decisions affecting individual citizens.

Case study—is it a section 22 request?

In case 175825 (2008), a requester sought Immigration New Zealand’s (INZ) policies, procedures and guidelines concerning removal practices. The request on the face of it seemed to be one made entirely under section 22 of the OIA. INZ released its manuals and circulars, but withheld a ‘*Mind Mapped Analysis of “Turn Around” Provisions*’. The question was whether the ‘*mind map*’ was an internal decision making rule that needed to be considered under section 22. INZ argued that while the ‘*mind map*’ might be used as part of the formula to draft policies, procedures or guidelines, it was not in its current state ‘*the end product*’. The Ombudsman agreed that the ‘*mind map*’ did not provide administrative guidance to INZ’s staff on decision making, and therefore it was different in substance to the other information released. Section 22 did not apply.

In case 160841 (1999), a requester sought a copy of the ‘*internal directive or memorandum or letter*’ which related to a process whereby the Customs Service settled disputes involving seized vehicles. Neither the requester nor the Customs Service recognised this as a section 22 request, but the Ombudsman found the document to be ‘*in the nature of a general direction to relevant officials*’. It was clearly an aid to decision making in relation to the settling of disputes involving seized vehicles, the application of which would affect people personally. Section 22 did apply.

⁹ Committee on Official Information, *Towards Open Government: Supplementary Report* (1981) vol 2 at 75.

Processing requirements

The processing requirements for section 22 requests are largely the same as they are for ordinary official information requests under Part 2 of the OIA or LGOIMA.

Agencies are still required to:¹⁰

- provide reasonable assistance to a requester to make a request;
- transfer a request for information that is held by another agency or more closely connected with its functions;
- make and communicate the decision on a request for official information as soon as reasonably practicable and no later than 20 working days after the day it was received;
- notify any extension of this maximum time period within 20 working days;
- provide reasons for refusing a request, and tell the requester of their right to complain to the Ombudsman.

Agencies are also permitted to charge for the supply of internal decision making rules under section 22.¹¹ However, as with any charging decision, an agency must consider any factors that warrant waiver or remission of the charge in the public interest. Section 22 recognises that there is a strong public interest in general availability of internal decision making rules which may make it unreasonable for one requester to bear the full cost involved in making them available (see [case study 274689](#) below).

For more information about the requirements for processing official information requests see [The OIA for Ministers and agencies](#) and [The LGOIMA for local government agencies](#).

Case study 274689 (2010)—Charging for internal decision making rules

A requester sought a copy of the Customs Service's policies on checking passengers and their baggage. Customs decided to make some information available subject to a substantial charge. The Ombudsman pointed out to Customs that section 22 of the OIA applied. He had particular regard to *'section 22 ... and its presumption (over and above the OIA's general principle of availability) that policies and guidelines affecting persons will be accessible to those persons'*. Release of policies and procedures about how searches are carried out, and the rights afforded to those whose person and baggage is searched, would be likely to enhance public awareness of Customs' role at the border and help ensure that that role is carried out properly and that Customs is accountable for its actions. The Ombudsman found that the public interest in general availability of the information made Customs' decision to charge one requester a substantial amount

¹⁰ Section 22(3) of the OIA provides that ss 12(3) (urgency), 13 (reasonable assistance), 14 (transfers), 15 (decisions), 15A (extensions), and 19 (reason for refusal to be given) still apply. Section 21(2) of the LGOIMA provides that ss 10(3) (urgency), 11 (reasonable assistance), 12 (transfers), 13 (decisions), 14 (extensions), and 18 (reason for refusal to be given) still apply.

¹¹ Section 15(1A) of the OIA applies by virtue of s 22(3), and s 13(1A) of the LGOIMA applies by virtue of s 21(2).

unreasonable. The Ombudsman also encouraged Customs to make information subject to section 22 broadly available to the public online.

Reasons for refusing section 22 requests

Because there is a **right** of access to internal decision making rules, the reasons for refusing such requests are more limited.

Applicable withholding grounds

Section 22 is subject to some but not all of the withholding grounds found in Part 2 of the legislation.

These are the '*conclusive*' reasons for withholding that can apply:¹²

- security, defence and international relations (**OIA only**);¹³
- confidential information provided by another country or international organisation (**OIA only**);¹⁴
- maintenance of the law;¹⁵ and
- personal safety.¹⁶

'*Conclusive reasons*' for withholding official information are **not subject** to a public interest test. This means if they apply, there is no requirement to go on to consider whether there is a countervailing public interest in disclosure.

These are the '*good reasons*' for withholding that can apply:¹⁷

- privacy;¹⁸
- disclosure of a trade secret / unreasonable prejudice to the commercial position of a third party;¹⁹

¹² See s 22(1) OIA and s 21(1) LGOIMA.

¹³ See s 6(a) OIA.

¹⁴ See s 6(b) OIA.

¹⁵ See s 6(c) OIA and s 6(a) LGOIMA.

¹⁶ See s 6(d) OIA and s 6(b) LGOIMA.

¹⁷ See s 22(1) OIA and s 21(1) LGOIMA.

¹⁸ See s 9(2)(a) OIA and s 7(2)(a) LGOIMA.

¹⁹ See s 9(2)(b) OIA and s 7(2)(b) LGOIMA.

- information subject to an obligation of confidence;²⁰
- commercial activities;²¹ and
- negotiations.²²

These reasons for withholding official information are subject to a public interest test. This means agencies must 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.

In addition, the right of access to internal rules in section 22 is subject to section 10 of the OIA (section 8 of the LGOIMA).²³ This means an agency may refuse to **confirm or deny** the existence or non-existence of information if that would be likely to prejudice the interests protected by sections 6, 7 or 9(2)(b) of the OIA (sections 6 or 7(2)(b) of the LGOIMA).

For further guidance on the withholding grounds see our [official information legislation guides](#).

Withholding grounds that cannot apply

It's important to note that some of the common Part 2 withholding grounds, for example, free and frank opinions²⁴ and legal professional privilege,²⁵ do **not** provide a justifiable reason for refusing a section 22 request. Agencies should not expect to be able to withhold information in response to a section 22 request on these grounds.

Partial release

Where there is good reason to withhold only some of a document, an agency must either:

- make it available with deletions or alterations; or
- make a summary document available excluding the withheld information;

unless it is **impractical** to do so.²⁶ Whether it is *'impractical'* to do so will depend on the amount of work that would be involved in making the redactions or alterations, or summarising the information.

²⁰ See s 9(2)(ba) OIA and s 7(2)(c) LGOIMA.

²¹ See s 9(2)(i) OIA and s 7(2)(h) LGOIMA.

²² See s 9(2)(j) OIA and s 7(2)(i) LGOIMA.

²³ See s 22(1) OIA and s 21(1) LGOIMA.

²⁴ See s 9(2)(g)(i) OIA and s 7(2)(f)(i) LGOIMA.

²⁵ See s 9(2)(h) OIA and s 7(2)(g) LGOIMA.

²⁶ See s 22(4) OIA and s 21(3) LGOIMA.

Administrative issues

Section 22 does not incorporate the administrative reasons for refusing ordinary official information requests that are found in section 18 of the OIA or section 17 of the LGOIMA.

However, requesters are required to specify the information requested with '*due particularity*'.²⁷ This means an agency can ask for greater specificity if they are unable to **identify** the information sought by the requester. An agency must provide reasonable assistance to the requester.²⁸

In addition, where it is necessary to withhold some but not all of a document, agencies may have a basis for refusing to make redactions or summarising the document if it would be **impractical** to do so.²⁹

If the volume of information requested is problematic, agencies can also consider:

- extending the maximum time limit available to make a decision on the request;³⁰
- imposing a reasonable charge for supply of the information (although see the charging [case study 274689](#) above).³¹

A section 22 request can also be refused if the requested document is not held. This is because the right of access only applies to any document which is '*held*' by an agency.³²

Publication of information

Many agencies making decisions that affect people personally already publish their internal decision making rules. The Corrections Department publishes the Prison Operations Manual; Immigration New Zealand publishes its Operational Manual; Work and Income New Zealand publishes its Manuals and Procedures.

Agencies revising their decision making rules or developing new rules should do so with a view to being able to make them available on request, or publishing them proactively. Consider keeping potentially prejudicial information visually or conceptually separate so it's easier to redact later if necessary, or attach it as an appendix that can be withheld in full.

When agencies grant a request for previously unpublished internal decision making rules, they should consider making that same information available to the general public online. This is an important class of information that the general public ought to be able to access, and it's more

²⁷ Section 12(2) of the OIA applies by virtue of s 22(3), and s 10(2) of the LGOIMA applies by virtue of s 21(2).

²⁸ Section 13 of the OIA applies by virtue of s 22(3), and s 11 of the LGOIMA applies by virtue of s 21(2).

²⁹ See s 22(4) OIA and s 21(3) LGOIMA.

³⁰ Section 15A of the OIA applies by virtue of s 22(3), and s 14 of the LGOIMA applies by virtue of s 21(2).

³¹ Section 15(1A) of the OIA applies by virtue of s 22(3), and s 13(1A) of the LGOIMA applies by virtue of s 21(2).

³² See s 22(1) OIA and s 21(1) LGOIMA.

efficient for everyone concerned if they're able to do so without needing to submit individual requests.

What if a requester is unhappy with the decision made on their section 22 request?

As with any other request for official information, if a requester is unhappy with the decision on their section 22 request they can complain to the Ombudsman.

However, section 22 investigations are slightly different in that they are required to be undertaken by the Ombudsman under the Ombudsmen Act 1975, rather than the OIA or LGOIMA.³³ This means any recommendations by the Ombudsman will not be binding.³⁴

In addition to complaining to the Ombudsman, a dissatisfied requester has a concurrent right of appeal to the courts. This is also distinct from ordinary OIA and LGOIMA complaints relating to Part 2 decisions, which must be determined by the Ombudsman in the first instance.³⁵

Further guidance

[The OIA for Ministers and agencies](#) and [The LGOIMA for local government agencies](#) provide more information about processing OIA and LGOIMA requests.

Further guidance on the reasons for refusal is available [here](#).

Our website contains searchable case notes, opinions and other material, relating to past cases considered by the Ombudsmen: www.ombudsman.parliament.nz.

You can also contact our staff with any queries about section 22 requests by email 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.

³³ See s 35(1) OIA and s 38(1) LGOIMA. Note the exception of decisions to issue s 10 notices (s 8 LGOIMA). Such decisions are investigated under the OIA or LGOIMA. See ss 35(1)(b) and 28(1)(d) of the OIA and ss 38(1) and 27(1)(d) of the LGOIMA.

³⁴ Recommendations under the Ombudsmen Act are not binding. In contrast, a public duty to comply with an Ombudsman's recommendation under the OIA or LGOIMA comes into effect 21 working days after it is made, unless vetoed by the Cabinet (under the OIA) or the local authority (under the LGOIMA); see s 32 OIA and LGOIMA.

³⁵ See s 34 OIA and s 37 LGOIMA.