



Ministerial notifications and the obligation to communicate decisions ‘*as soon as reasonably practicable*’

Legislation	Official Information Act 1982, section 15(1)
Agency	New Zealand Police
Ombudsman	Chief Ombudsman Peter Boshier
Case number(s)	570702
Date	16 May 2022

Summary

Section 15(1) of the Official Information Act 1982 (the OIA) requires that decisions on requests for official information are made and communicated ‘*as soon as reasonably practicable*’.¹ In this case, Police made a decision on the request 16 working days after receipt but did not communicate this decision to the requester until the 20th working day. The reason for the delay was that Police had the practice of providing the Police Minister with a three-working day advance notice of decisions on certain requests.

The Chief Ombudsman formed the final opinion that Police failed to communicate its decision on the request to the requester as soon as reasonably practicable, as required by section 15(1)(b) of the OIA. The Ombudsman highlighted that agencies cannot take a blanket approach to ministerial notifications. Agencies should assess what notice period is appropriate on the facts in each particular case. In this case, Police did not demonstrate that a 72-hour notice period was necessary.

¹ Section 15(1) of the OIA requires that the decision on a request is made “as soon as reasonably practicable, and in any case, not later than 20 working days” after the request is received.

Background

The requester asked for information about Police's '*consent to assume online identity*' process, after the issue had been the subject of media reporting. Police communicated its decision to the requester on the 20th working day after receiving it. However, the date on the response letter was day four of the 20-working day period. When requester queried this with Police, it told the requester that the date was correct, but that Police's internal review had delayed matters.

The requester then made a complaint to the Ombudsman, specifically raising Police's obligations to communicate a decision to them '*as soon as reasonably practicable*'.

Ministerial notification

Ministerial notification is the process of letting the Minister know about the decision an agency has taken on a request and will be communicating to the requester. The purpose of notifying decisions is to enable the Minister to prepare for the possibility of public commentary. This is part of the effective operation of the convention of individual ministerial responsibility.

While not expressly provided for in the OIA,² notification is permissible provided it **does not interfere** with an agency's ability to comply with its OIA obligations. This includes the obligation to communicate that decision to the requester '*as soon as reasonably practicable*' (section 15(1) of the OIA refers).

Where possible, decisions should be notified to the Minister at the same time as they are communicated to the requester. However, in some cases a short period of advance notice may be required to enable the Minister to be properly briefed so that they are able to respond appropriately to enquiries and legitimate scrutiny

The blanket application of a standard 3–5 working day period of notice in situations where that is not required is likely to be unreasonable. Agencies should keep adequate records and be prepared to justify the need for, and period of, advance notice in each case.³

Investigation

The Ombudsman established that the response letter was created on day four of the 20-working day period, but not finalised. Police was actively working on the request until day 16, when the decision was approved by Police executive. This meant that Police was in a position to communicate its decision to the requester at this point.

Police had marked the request as '*High Organisational Impact*' as it had received several other similar requests around the same time, showing increased interest by members of the public in

² In terms of OIA requests involving Ministers, the OIA provides for official information requests to be transferred (section 14 OIA) or for the Minister to be consulted (sections 15(5) and 15A OIA).

³ For more information, see Ombudsman guidance: [Dealing with OIA requests involving Ministers](#)

the ‘consent to assume online identity’ process. Police explained that it had a “72-hour ‘no surprises’ Ministerial notification period” for all requests marked as High Organisational Impact. Police notified the Minister of its decision on the request on day 16 of the 20-working day period. Police then communicated its decision to the requester on day 20, having received no comment from the Minister’s office.

The Ombudsman accepted that ministerial notification may have been appropriate in this case, given the sudden uptake in interest and media coverage. However, the information at issue was not particularly complex or sensitive, nor was there a substantial amount of documentation to review. The particular issue did not appear to be something the Minister would have needed to devote significant time and resources to be properly briefed on in order to respond appropriately to enquiries and legitimate scrutiny.

Police said the 72-hour notice period was standard practice for all ministerial notifications. This approach was informed by both ministerial and Police workloads. However, Police had a statutory obligation to make and communicate a decision on the request ‘as soon as reasonably practicable’. Ministerial notification is acceptable providing it does not interfere with an agency’s ability to comply with this statutory obligation. The Ombudsman’s view was that agencies should assess what period of notification is appropriate on the facts in each particular case, rather than apply a blanket approach to all notifications. In this particular case, Police did not demonstrate that a 72-hour notification period was necessary.

Outcome

The Ombudsman formed the final opinion that Police failed to give notice of its decision on the request to the requester as soon as reasonably practicable, as required by section 15(1)(b) of the OIA. The Ombudsman did not make any recommendations in this case, as Police informed him it had amended its ministerial notifications practice during the investigation. The Ombudsman is publishing this case note to assist other agencies with their own ministerial notification practices.

Disclaimer

This case note is published under the authority of the Ombudsmen Rules 1989. It sets out an Ombudsman’s view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.