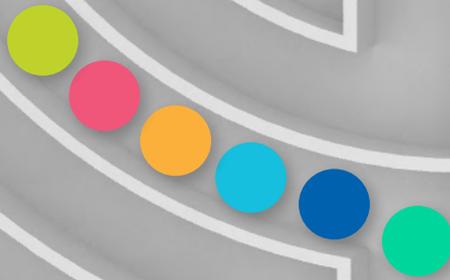


OIA compliance and practice in
Waka Kotahi
NZ Transport Agency



A report on the Chief Ombudsman's follow up investigation into the practices adopted by Waka Kotahi NZ Transport Agency for the purpose of compliance with the Official Information Act 1982.

Te Kaitiaki Mana Tangata Aotearoa

The Ombudsman New Zealand

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OIA compliance and practice at Waka Kotahi NZ Transport Agency

Opinion of the Chief Ombudsman

June 2021

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Background

In 2015 my predecessor, Dame Beverley Wakem, carried out an investigation to:

- examine the attitudes, policies, practices and procedures adopted by government agencies generally, in order to establish how well they were complying with the requirements of the OIA;
- identify good practices, areas of weakness or vulnerability and practices that could give rise to non-compliance; and
- recommend improvements where needed.

As it was not practicable to examine in detail the practices of all government agencies subject to the Ombudsman's jurisdiction, twelve government agencies were selected to investigate as being representative of central government agencies.¹ All 12 agencies were provided with individual reports and although these reports were not published, the agencies were provided with action points which, if implemented, would lead to improvements in OIA practice. A further 75 agencies and 27 Ministers' offices subject to the OIA were invited to provide information via a survey.

The resulting report titled *Not a Game of Hide and Seek*, was published in December 2015.

In December 2019, I decided that it was timely to revisit the 12 representative agencies involved in *Not a Game of Hide and Seek*, by initiating a follow up investigation to determine the current state of OIA practice and culture in these central government agencies.

Introduction

This report sets out my opinion on how well Waka Kotahi NZ Transport Agency (Waka Kotahi) is meeting its obligations under the Official Information Act 1982 (OIA).

My investigation has included consideration of Waka Kotahi's supporting administrative structures, leadership and culture, processes and practices, including information management, public participation, and proactive release of information to the extent that these relate to achieving the purposes of the OIA.

The purposes of the OIA are to increase the availability of information to the people of New Zealand in order to:

- enable effective participation in the making and administration of laws and policies; and
- promote the accountability of Ministers of the Crown and officials,

thereby enhancing respect for the law and promoting the good government of New Zealand.

¹ Accident Compensation Corporation, Department of Corrections, Ministry of Education, Ministry of Foreign Affairs and Trade, Ministry of Health, Ministry of Justice, New Zealand Customs Service, New Zealand Defence Force, Waka Kotahi NZ Transport Agency, Ministry of Social Development, Ministry of Transport, Public Service Commission.

The OIA also protects official information to the extent consistent with the public interest and the need to protect personal privacy.

As Chief Ombudsman, I am committed to ensuring official information is increasingly available and not unlawfully refused and to improving public sector capability in terms of decision making. Key to achieving this is Parliament's expectation that I regularly review the OIA practices and capabilities of public sector agencies.

I have initiated this practice investigation using my power under the Ombudsmen Act 1975 (OA). This provides me with the tools needed to investigate matters I consider important to improve administrative decision making across the public sector.²

I have considered the information gathered through my investigation against an assessment framework consisting of the following five areas:

- leadership and culture;
- organisation structure, staffing and capability;
- internal policies, procedures and resources;
- current practices; and
- performance monitoring and learning.

The impact of COVID-19

My investigation coincided with an unprecedented event, the emergence of COVID-19 and the resulting nationwide state of emergency. From 26 March to 13 May 2020, New Zealand was at Alert Levels 4 and 3, during which time individuals who were not deemed essential workers were instructed to stay home under a nationwide lockdown (the lockdown).³

The lockdown enacted in response to the COVID-19 pandemic has caused people across New Zealand, including in the public sector, to adapt to working differently – away from their office; remote from colleagues; and accessing work information from their homes.

While information gathering for my investigation commenced before lockdown, I had an opportunity and a responsibility to extend my investigation and consider how agencies' existing official information practices enabled them to adapt to the challenges presented by the lockdown, and to maintain compliance with official information obligations. By reporting my findings, my intention is to highlight good practices, identify any vulnerabilities and lift overall official information practices across the public sector, including by recommending where agencies ought to improve their current arrangements to enable them to maintain

² See sections 13(1) and 13(3) Ombudsmen Act 1975

³ Link to the Unite against COVID-19 [History of the COVID-19 Alert System webpage](#)

resilience and compliance should a pandemic or natural disaster occur at some point in the future.

A key aspect of my information gathering involved seeking information from the agency via a questionnaire, and seeking information from staff via an online survey before lockdown. I extended my investigation to include consideration of agencies' practices during the lockdown. After the lockdown, I asked agencies to complete another questionnaire, and staff to complete another survey. For clarity, I have outlined below how I will refer to these throughout my report:

- A questionnaire sent to agencies in late 2019 seeking information about policies, procedures and practices (I will refer to this throughout my report as 'my initial questionnaire').
- A questionnaire sent to agencies in mid-2020 seeking information about policies, procedures and practices *during lockdown* (I will refer to this throughout my report as 'my post-lockdown questionnaire').
- A survey of staff in late-2019 seeking their views about culture, policies, practices and procedures (I will refer to this throughout my report as 'my initial survey').
- A survey of staff in late-2020 seeking their views about culture, policies, practices and procedures *during lockdown* (I will refer to this throughout my report as 'my post-lockdown survey').

My opinion

Through the investigation process, I have identified areas of good practice, and areas of vulnerability that I think Waka Kotahi should address. My opinion relates only to Waka Kotahi's practice during the period in which my investigation took place.⁴ I notified Waka Kotahi of my investigation on 22 November 2019 and I formed my final opinion on 29 June 2021.

The investigation identified that Waka Kotahi has an increasingly open culture. It has gone through significant changes in the last five years or so, moving from a partly centralised OIA processing system to a fully centralised system. It has increased staff members in its Ministerial Services team, has some useful OIA guidance and a proactive release policy has recently been implemented.

I was particularly pleased with Waka Kotahi's response in relation to the COVID-19 pandemic. Its technology capabilities and leadership during the lockdown meant staff who were working from home were able to continue to perform their roles and meet obligations under the OIA. Waka Kotahi's reported OIA timeliness rate has improved over time, despite the number of OIA requests increasing. It is also positive that, as a result of this investigation, changes are underway to the practice of notifying Ministers' offices of OIA decisions.

⁴ On occasion I may look at material from outside the investigation period where particular issues warrant further investigation.

Some areas of vulnerability have also been identified, resulting in 26 suggested actions, which I consider will improve Waka Kotahi's practices. Waka Kotahi was given the opportunity to comment on my provisional opinion before I formed my final opinion and I have taken its comments into consideration. Waka Kotahi accepts all of my suggested action points and said progress on a number of actions is already well advanced. I refer to the agency's specific responses in the body of the report.

In addition, for the reasons set out in [Media information requests](#) below, my opinion is that Waka Kotahi appears to have acted contrary to law in one instance, by not providing a requester with the reason for the refusal and advice about the right to complain to my Office, as outlined in section 19 of the OIA. However, I have not made a recommendation in this instance as Waka Kotahi has advised that the example reviewed was an anomaly to its normal practice and was contrary to its OIA guide. Waka Kotahi has also advised that it will conduct training to ensure the practice does not occur again in future.

I would like to extend my thanks to Waka Kotahi for the positive and open way it engaged with this investigation, including during the lockdown period. In particular, my thanks to those staff members who took the time to meet with my investigators to discuss their OIA experience; completed employee surveys; and liaised with my Office throughout the investigation. I also acknowledge members of the public, including journalists and regular requesters, for the views they shared in my public survey.

I look forward to continuing productive engagement with Waka Kotahi as it works through my suggested actions.



Peter Boshier
Chief Ombudsman
29 June 2021

Executive summary

This summary draws together the key findings and suggested actions from my investigation.

Leadership and Culture

Leadership is key to developing and maintaining a strong culture of openness and transparency within an agency. The Chief Executive has an open leadership style and values transparency. While there was little evidence of internal communications to staff from the Chief Executive about the OIA and transparency, the staff survey results indicate Waka Kotahi's leadership is becoming more open. I encourage Waka Kotahi's leaders to provide regular and consistent positive messaging about the OIA and openness as this will lead to improved attitudes and actions from staff members.

Messaging from agencies to the public about the OIA and openness is also important. Waka Kotahi has improved its messaging to the public in a number of ways. For instance, it has updated its website; and commissioned a stakeholder survey that included questions about openness and transparency, which was made public. I am pleased that some key strategy documents include clear statements about Waka Kotahi's commitment to transparent decision making processes.

The OIA webpage is clearly sign-posted and only one click from the homepage. The OIA webpage contains a lot of useful information to assist requesters to make an OIA request and provides guidance on the type of information it holds. Some additions would further enhance the OIA page, such as adding an overarching OIA 'statement of principle' and publishing OIA guidance material on the website. It would also benefit from including a link on the OIA webpage to the Ministry of Justice's *Directory of Official Information* and signal on the webpage that supporting documentation can be requested in a variety of formats.

Waka Kotahi's leadership in relation to OIA and openness during the COVID-19 pandemic was good. It had an up-to-date and well-practiced business continuity plan, which meant staff could seamlessly meet statutory deadlines on OIA requests whilst working from home.

Action points: Leadership and culture

1. Ensure ongoing messaging from senior leaders to staff about the importance of the OIA, and openness more generally
2. Include an overarching 'statement of principle' on the OIA webpage, outlining the importance of OIA and openness
3. Provide a link on the OIA webpage to the *Directory of Official Information*
4. Signal on the OIA webpage that supporting documentation can be requested in a variety of formats
5. Publish relevant internal OIA decision making material on the OIA webpage

Organisation structure, staffing and capability

Waka Kotahi has moved from a partly centralised to fully centralised model for processing its OIA requests. Staffing numbers in the Ministerial Services team have increased with the additional work load. Staff report benefits to the model, which Waka Kotahi states will be reviewed on a six-monthly basis.

Training is conducted on the OIA to new staff at induction. However, there is no formal training programme to assist those managing OIA requests or advanced courses for OIA specialists, and regular refresher training is also not offered. I encourage Waka Kotahi's senior leaders attend formalised OIA training on a regular basis.

Action points: Organisation structure, staffing and capability

6. Ensure those with official information responsibilities attend role specific, specialist OIA training courses and regular refreshers
7. Ensure all senior leaders are attending formalised OIA training on a regular basis

Internal policies, procedures and resources

Waka Kotahi has a number of OIA resources to assist staff to manage requests. These include an OIA guide, template letters, and an OIA memo. It also has a number of process maps and specific OIA-related policies on its internal intranet site. Overall, the OIA guide includes useful information and is a good summary of the OI and Privacy Acts. However, some issues were identified and improvements could be made to further lift the quality of the document. For example, the guidance could be improved by including further information on the differentiation between consultation and notification with Ministers' offices; requests for internal decision making rules, requests for reasons, requests from corporate entities for personal information; considering urgent requests; and conducting the public interest test.

Waka Kotahi has recently implemented a policy on the proactive release of official information. It is positive the policy covers all types of proactive release, not just the release of OIA responses. Some improvements were identified which, if enacted, will enhance the policy further. For instance, Waka Kotahi should consider updating the proactive release policy to include information on the frequency and timing of release, as well as making information accessible. I also encourage Waka Kotahi to publish the proactive release policy on its website. Guidance which is used to make agencies open and accountable to the public should, in turn, be made available to the public.

A stand out area for Waka Kotahi was its technology capabilities during the lockdown. Having adequate resources to allow staff to work from home meant those responsible for OIA processing were able to continue to perform their roles and meet obligations under the OIA.

Action points: Internal policies, procedures and resources

8. Review and update OIA guidance material to include more information on:
 - consultations and notification to the Minister's office
 - requests for internal decision making rules, requests for reasons, requests from corporate entities for personal information;
 - considering urgent requests; and
 - public interest considerations
9. Review and update the proactive release policy to include information on the frequency and timing of release, as well as making information accessible
10. Publish the proactive release policy on the Waka Kotahi website

Current practices

There have been significant improvements to Waka Kotahi's reported OIA timeliness rate. This is despite the number of OIA requests more than doubling since the 2015/16 financial year. Meeting attendees said the improvement to timeliness is due to a number of factors; including new management, a focus on OIA processing, centralising request processing, increased staff numbers to deal with OIA requests, and an increase in the proactive release of OIA responses.

My investigators reviewed a random selection of OIA files and overall, processing was good. Record keeping was generally of a high standard and statutory timeframes were usually adhered to. However, there were some areas identified that require improvement. For instance, there were no records of consideration of public interest factors favouring disclosure, internal decision making deliberations, or the search for information.

Waka Kotahi received fewer OIA requests during lockdown, which allowed some staff in the Ministerial Services team to assist the internal COVID-19 response team. Waka Kotahi said there were no significant changes in OIA practices or their prioritisation during the lockdown. A positive outcome of remote working during lockdown was that the entire OIA process is now electronic, including the sign off process. However, there was a drop in the amount of information released proactively. I strongly encourage Waka Kotahi to consider ways to increase the numbers of OIA responses it publishes going forward.

Waka Kotahi provides approximately 20 percent of agency OIA requests to the Minister's office for 'noting'. The noting practice is concerning because Waka Kotahi requires an email from Minister's office staff indicating they have '*no comment*' before the request is sent to the requester. If the OIA request is provided to the Minister's office simply as a courtesy 'FYI' to inform the Minister of a decision Waka Kotahi has reached, a response from the Minister's office should not be a prerequisite for sending the response. If input is required, Waka Kotahi should consider consultation.

In addition, Waka Kotahi stated that it gives the Minister's office up to five days to provide a response to OIA requests before sending them to the requester. However in one instance, Waka Kotahi did not send an OIA response to the requester until it had received a response from the Minister's office that they had '*no comment*' nine days after it was sent to them for FYI. Section 15 of the OIA states that decisions on requests be made '*as soon as reasonably practicable, and in any case no later than 20 working days*'.

I am pleased that as a result of this investigation, Waka Kotahi has drafted a protocol clearly distinguishing between the consultation and notification of OIA decisions to the Minister's office. The protocol states that where notification is required, it will be conducted at the same time as the decision is communicated to the requester. I encourage Waka Kotahi to finalise the draft document and obtain written agreement with the Minister's office. As a result, the practice of the Ministerial Services team requiring a response from the Minister's office before sending it to the requester should no longer apply. The blanket application of a five working-day period for the Minister's office to respond to Waka Kotahi's decision should also be removed.

Requests to the Media team for information held are subject to the OIA. Waka Kotahi does not have a separate guidance document for dealing with media information requests, but there is some information in the OIA guide on requests they may *not* log as OIA requests. Waka Kotahi states it has very experienced Media Managers who work closely with the Ministerial Services team so there is often discussion on the best way to manage these types of requests. However, there are some improvements that could be made to ensure the Act is being adhered to.

My investigators reviewed a sample number of media information requests. I am concerned that in one instance, part of a media information request was refused, and the requester was not advised that they can make a complaint to the Ombudsman and did not provide the reason for its refusal. In this case, I consider this practice to be contrary to section 19 of the OIA. However, I have not made a recommendation in this instance because Waka Kotahi has advised that the example reviewed was an anomaly to its normal practice and was contrary to its OIA guide. Waka Kotahi has stated that refresher OIA training will be provided to the Media team to ensure that where a media information request is not responded to in full, it is actioned in accordance with the OIA.

Although Waka Kotahi's OIA guide outlines how information requests will be treated, it does not provide guidance on media information requests specifically. I urge Waka Kotahi to include details in its guide such as the circumstances in which a request from the Media team is passed onto the Ministerial Services team, and details on adhering to the OIA should a request be refused by the Media team. The guide should also include further details on a requester's right to ask for a request to be treated with urgency. Once updated, I encourage Waka Kotahi to publish the guidance document. This would give requesters a better understanding of its processes when an OIA request is received and help manage journalist expectations about why the information they request cannot always be made available within a 24 hour news cycle deadline.

I note that there was no evidence of records of conversations between the Media team and journalists being kept. I suggest the Media team ensure it keep a record of all substantive

communications with requesters, including telephone conversations and meetings. I urge senior leaders to reinforce the message that requests for official information that are dealt with by the Media team must adhere to the OIA.

The proactive release of information to the public promotes good government, transparency and fosters public trust. Waka Kotahi has improved its practice in this area in recent years. The public release of information promotes good transparent government, but also has administrative benefits. These potentially include reducing requests for information which are already publicly available, and allowing for greater ease of handling of the requests that are received.

Agencies should publish information in a format that accommodates the use of assistive technology, such as screen readers. For example, publishing or providing information in an 'image only' format could preclude the use of screen readers. It may also make the information less easy to use generally, by limiting the ability to search documents by keyword. Most of the OIA response documents published online by Waka Kotahi were searchable, but some were not. This indicates there may be some inconsistency of practice that could be mitigated by including details of accessibility and searchability in the Proactive Release of Official Information policy.

Action points: Current practices

11. Ensure OIA decision makers consider the public interest test where applicable
12. Record the reasoning behind OIA decisions, including consideration of public interest and results of consultations with third parties
13. Record administrative steps taken in respect to OIA responses where relevant, such as keeping a record of the search for information
14. Finalise the written protocol with the Minister's office on handling agency OIA requests
15. When notifying the Minister of an OIA decision, cease the practice of requiring a response from the Minister's office before sending it to the requester
16. When notifying the Minister of an OIA decision, cease the blanket application of a five working-day period for the Minister's office to respond to Waka Kotahi's decision
17. Update the OIA guide to include more detail on media information requests and consider publishing the guide
18. Keep a record of all substantive communications with requesters, including telephone conversations and meetings
19. Provide targeted OIA training to the Media team on a regular basis, to ensure they understand their obligations under the OIA

Action points: Current practices

- | |
|---|
| 20. Ensure messaging from senior leaders reinforces that requests for information handled by the Media team must adhere to the OIA |
| 21. Ensure all documents released in response to an OIA request or proactively released are searchable and not 'image only', and all visual elements are tagged with alternative text |

Performance monitoring and learning

Waka Kotahi collects and reports on a variety of OIA data from requests and responses stored in its information management system, 'Infohub'. Waka Kotahi monitors this data through its Workflow tool and reports regularly to senior leadership. Reporting includes requests received and completed within the maximum legislative timeframe, and the subject matter of any requests deemed notable.

Performance monitoring could be improved by expanding the range of data collected and reported to senior leadership to include qualitative data that would help measure and improve process efficiencies and the quality of responses to OIA requests. Waka Kotahi can obtain a more comprehensive picture of its OIA performance by expanding data collection to include OIA requests handled by the agency's Media team.

Waka Kotahi occasionally updates its internal resources in line with guidance my Office publishes. I encourage Waka Kotahi to formalise this process through written guidance. While I commend Waka Kotahi on its robust peer review process, I similarly encourage the agency to develop a formalised quality assurance process for completed requests.

Action points: Performance monitoring and learning

- | |
|--|
| 22. Formalise the process for learning from Ombudsman investigations and guidance, and reflect this in OIA policy and procedures |
| 23. Collect further qualitative data on the handling of OIA requests |
| 24. Improve details in regular reporting of statistics to senior leadership |
| 25. Include information requests handled by the Media team in OIA statistical reporting |
| 26. Develop a quality assurance process for completed OIA requests |

Leadership and culture

Achieving the purposes of the OIA depends significantly on the culture of the agency and the attitudes and actions of its leaders. Ministers, chief executives and senior managers should take the lead in developing an environment that promotes openness and transparency. They should champion positive engagement with those who want to know and understand what work they are doing, and enable compliance with the principles, purposes and provisions of the OIA.

When it is clear to staff that their leaders respond to requests for official information positively and view it as an opportunity to operate in a more transparent, engaging and accountable manner, they will follow.

To assess the Waka Kotahi's leadership and culture, I considered whether:

- chief executives, senior leaders and managers demonstrated a commitment to Waka Kotahi meeting its obligations under the OIA and actively fostered a culture of openness;
- senior leadership had established an effective official information strategic framework which promoted an official information culture open to the release of information; and
- senior leadership demonstrated a commitment to proactive disclosure and public participation, with clear links to Waka Kotahi's strategic plans, creating a public perception of openness.

Increasingly open and transparent leadership

The executive leadership team comprises the Chief Executive, the Director Office of the Chief Executive, and eight General Managers. The current Chief Executive was appointed in February 2020. Overall, information gathered from the staff surveys and meetings indicates that staff feel Waka Kotahi's executive leadership team is supportive of the OIA and the culture is generally open and transparent.

As part of my investigation, I conducted surveys of Waka Kotahi staff in early 2020 (initial staff survey) and following the COVID-19 lockdown (post-lockdown staff survey). In the initial staff survey, Waka Kotahi staff were asked what their impression was of the agency's overall commitment to a culture of openness and participation.⁵ Approximately 88 percent of staff who responded said they considered Waka Kotahi to be either strongly or moderately pro-openness.

A number of comments from respondents in the initial staff survey indicate there has been a culture shift over the last few years. Some examples of the comments received are:

Recently, following significant changes in senior personnel, there has been a notable move towards more transparency.

⁵ 250 Waka Kotahi staff responded to my initial survey.

Openness dipped then recovered with changes in [leadership].

One staff member said in a meeting that Waka Kotahi has come a long way over the past few years, especially culturally. Another said that the leadership has been open and transparent, which has had a positive impact on the team that deals with OIA requests (the Ministerial Services team).

I met with the Chief Executive to discuss the investigation. She indicated that while she values transparency and being an open organisation, staff should still feel comfortable making mistakes in order to learn from them. She said it can be complex to strike the right balance between openness and having a *'learning culture'*.

While the board is not involved in OIA decisions, it is consulted in relation to requests about board papers. A meeting attendee said that the board is not consulted in relation to other OIA requests, but the Chair is occasionally advised of OIAs *'from an awareness perspective'*.

The meeting attendee said she considers the good relationship with the board is due to *'huge support'* from the executive. They said increased support from the Chief Executive was very important for the Ministerial Services team. This sent a strong message that responding to OIA requests was important, which filtered through the organisation and had a positive impact in the OIA space. This is a good example of how strong, positive messaging from senior leaders can drive change within an organisation.

Messaging to staff

When this investigation commenced I invited Waka Kotahi to provide examples of recent messaging to staff from senior leadership about the importance of complying with the purposes, principles and provisions of the OIA. Waka Kotahi said it had created key policy documents, a training module and processes relevant to the OIA or openness. Communications were sent to all staff about the new policies when the updates were completed. It also said the executive leadership team receive statistics on OIA performance. These are positive actions and I commend these initiatives, which are discussed further in the sections below titled [OIA guidance material](#) and [OIA training](#).

However, my investigators found little evidence of regular, clear statements being delivered to staff about the commitment to the principles and purposes of the OIA. I would like to see strong, unequivocal statements in support of openness and OIA compliance from leaders in internal communications. Examples of internal messages to staff include emails to all staff, memos, the intranet, meetings, blogging and newsletters. It is clear that further improvements could be made in this area.

In my initial staff survey, I asked Waka Kotahi staff about their perceptions of leaders' approach to openness.⁶ Their answers are shown in the table below:⁷

⁶ 250 Waka Kotahi staff responded to this survey

⁷ Numbers may not add up to 100 as they have been rounded to the nearest percentage

How would you rate the signals sent by the following people *about the OIA*, as it relates to your agency?

Leadership level	Strongly or moderately pro-disclosure	'They are silent on the issue' or 'I don't know'	Strongly or moderately anti-disclosure
Chief Executive	56%	43%	1%
Deputy Secretaries	56%	42%	2%
Immediate Manager	75%	22%	3%

How would you rate the signals sent by the following people *about openness and public engagement more broadly*, as it relates to your agency?

Leadership level	Strongly or moderately pro-openness	'They are silent on the issue' or 'I don't know'	Strongly or moderately anti-openness
Chief Executive	84%	14%	2%
Deputy Secretaries	68%	26%	6%
Immediate Manager	84%	13%	3%

Waka Kotahi's response rates are consistent with the 12 agencies surveyed in my current investigation in relation to its leaders' signals on the OIA. It compared favourably on leaders' signals about openness and public engagement more broadly. The average ratings from staff across all twelve agencies were as follows:

- 56 percent of staff across all agencies said the signals sent by their Chief Executive are strongly or moderately pro-disclosure under the OIA.
- 76 percent of staff across all agencies said the signals sent by their Chief Executive are strongly or moderately pro-openness and public engagement more broadly.
- 58 percent of staff across all agencies said the signals sent by Deputy Secretaries are strongly or moderately pro-disclosure under the OIA.
- 69 percent of staff across all agencies said the signals sent by Deputy Secretaries are strongly or moderately pro-openness and public engagement more broadly.

I note that 43 percent of respondents said the Chief Executive was '*silent*' on the OIA or they did not know what signals the Chief Executive was sending. This is a strong indication that further messaging to staff on this topic is required. The initial staff survey comments were mixed. One respondent said:

There is a view shared by many, that some conversations should be held 'off-line' so as to avoid discovery by OIA when ideas are still being formulated and wouldn't have look good if they were shared via email and open to release.

However, on the whole, the comments reflected the culture shift discussed above. One respondent stated '*it [Waka Kotahi] is now far more open to disclosure than previously*'. Another respondent said:

As an agency we are encouraged to prioritise OIA queries. Majority of people I work with are pretty open and supportive of providing the information.

A staff meeting attendee said they consider themselves ‘lucky’ that the Chief Executive and executive leadership team prioritise the OIA and the Ministerial Services team functions well. They said ‘the word ‘OIA’ might not be used, but openness and transparency is signalled’.

Waka Kotahi had an interim Chief Executive for a year, prior to the current Chief Executive commencing the role in 2020. One of the ways in which the interim Chief Executive communicated openness and transparency was by conducting 30-minute live-streamed conversations, engaging all Waka Kotahi staff, where transparency and openness was discussed. I encourage the current Chief Executive to continue to consider new ways to provide messaging to staff about the OIA and to keep a record of any communication of this type. Regular and consistent positive messaging from leaders about the OIA and openness generally will lead to improved attitudes and actions from staff members.

Action point

Ensure ongoing messaging from senior leaders to staff about the importance of the OIA, and openness more generally

Messaging to the public

Messages from agencies to the community provide a window into the culture of an organisation. Ideally, agencies’ strategic plans and corporate documents should include clear commitments to openness, transparency and the availability of official information. Waka Kotahi has reported improvements to its external messaging and has said it demonstrates its commitment to clear messaging to external stakeholders by:

- Upgrading the external website, including to the information on ‘how to make a request’.
- Working with a range of key stakeholders to provide OIA information and advice.
- Proactively contacting requestors when the request is unclear to refine the nature of their request.
- Commissioning a Colmar Brunton stakeholder survey that included questions about stakeholder satisfaction with Waka Kotahi’s communication and whether it was perceived as open and transparent. The outcome of the survey was emailed to external stakeholders along with information on ‘how the Agency is going to work differently in future’.

Waka Kotahi published the stakeholder survey results, dated July 2019, even though the survey indicates that satisfaction had fallen since stakeholders were surveyed in 2016.⁸ The survey asked participants for their views on how open and transparent Waka Kotahi was on key influences on funding. Although the satisfaction rating was not overly high, the fact that the results were communicated back to stakeholders, and are available on the website, is a

⁸ Link to Waka Kotahi website

positive indicator that Waka Kotahi is acting in an open and transparent way. It is also positive that the 2018-19 Annual Report states:

We need to be more open and transparent in our relationships with others, and – considering the funding pressure we face – we must work together to reprioritise improving public transport, walking and cycling and local roads.

As part of my investigation I conducted a survey of the public, which included questions on whether respondents considered Waka Kotahi publishes sufficient information about the work it is doing. Only a small number of participants responded to the survey, and there were no discernible patterns in the comments. A number of respondents communicated a negative impression of Waka Kotahi's commitment to making information available to the public, although other comments were positive about the information published.

It is commendable that Waka Kotahi's updated regulatory strategy document, *Tū ake, tū māia – our regulatory strategy 2020-2025*,⁹ includes clear statements expressing commitment to transparent decision making processes. Some examples of the clear commitments to openness and transparency in the document are:

We are responsive and forward thinking ... we make considered and transparent decisions in context.

Conversations are open, transparent and upfront.

Enduring and open culture.

While it is very encouraging that external documents include overarching and broad messaging that is consistent with the OIA's principle of availability, the strategy document does not mention compliance with the OIA specifically. Explicit recognition of the OIA's purposes, principle and requirements would further enhance Waka Kotahi's strategic document.

Waka Kotahi's response

Waka Kotahi states it has now included high-level messaging in its corporate documents (statement of intent, statement of performance expectations and annual report).

OIA webpage

Information on Waka Kotahi's website about how to make an OIA request is clearly sign-posted, and is located just one click from the homepage. There is useful and easy-to-understand content on the website for requesters, including:

- when to expect a response;
- notification that responses may be published on the website;

⁹ Link to [Waka Kotahi website](#)

- how to submit a complaint to the Ombudsman if the response is not satisfactory; and
- a list of ‘sources of information’, which provides some guidance on the type of information held.

The information published on an agency’s website is a strong indicator of senior leaders’ approach to openness. Waka Kotahi proactively publishes OIA responses which can be easily accessed and searched from the OIA page on the website.

The additions listed below would ensure the website promotes Waka Kotahi’s intention to be more open and transparent with the public:

- Adding a ‘statement of principle’ to the OIA page, outlining the importance of the OIA and openness.
- Although there is a list of ‘sources of information’ on the OIA webpage, it does not include a link to the Ministry of Justice’s *Directory of Official Information*.¹⁰ I suggest Waka Kotahi add a link to the *Directory of Official Information* to enable people to find out exactly where their requests for information should be made.
- The OIA website states that supporting documentation will usually be an attachment in a PDF format. As discussed in [Accessibility of official information responses](#), agencies should publish information in a format that accommodates the use of assistive technology. Some requesters may find other formats more accessible for a number of reasons. I would like the website to signal to requesters that they can request information in different formats.
- Waka Kotahi’s information guidance documents are not published on its webpage. Publishing internal OIA decision making/guidance resources on the OIA webpage would allow Waka Kotahi to explain its internal functions and operations when responding to OIA requests. This would provide requesters with a better understanding of its processes when an OIA request is received.

Action points
Include an overarching ‘statement of principle’ on the OIA webpage, outlining the importance of OIA and openness
Provide a link on the OIA webpage to the <i>Directory of Official Information</i>
Signal on the OIA webpage that supporting documentation can be requested in a variety of formats
Publish relevant internal OIA decision making material on the OIA webpage

¹⁰ Link to the [Directory of Official Information](#)

Open leadership during COVID-19

During the COVID-19 pandemic, the OIA remains a primary means of accountability at a time when other transparency measures may not be available to the public.

The Chief Executive said she decided to use the lockdown as an opportunity to be more transparent and communicative. Waka Kotahi set up regular telephone calls with staff and service providers to enable direct engagement with the Chief Executive. She noted that the value of these high-levels of communication was recognised and the agency continues this practice because it was ‘a game changer’.

However, the results from the staff survey question on the signals sent by the Chief Executive on OIA disclosure were higher in the pre-lockdown (initial) staff survey than the post-lockdown survey. Approximately 46 percent of post-lockdown staff survey respondents said the signals from the Chief Executive about OIA disclosure were either strongly or moderately pro-disclosure. The pre-lockdown survey result was 56 percent.

In response to the question on Waka Kotahi’s overall culture of openness, the pre-lockdown and post-lockdown staff survey results were similar. When asked of their overall impression of Waka Kotahi’s commitment to a culture of openness and public participation during lockdown, 85 percent of staff survey respondents said the Chief Executive was either strongly or moderately pro openness. The pre-lockdown initial staff survey result was 88 percent. The average across the twelve agencies was 71 percent.

Overall, staff survey comments were positive about Waka Kotahi’s leadership response during lockdown. An example of some staff survey comments are:

Communications during the lockdown from the Chief Executive, our General Manager, specific senior managers etc. were all fantastic.

We were lucky in that we had great technology at home to enable the team to work as BAU [business as usual].

A staff meeting attendee said the Business Continuity Plan (BCP) was actioned from the announcement of the Alert Level 4 lockdown on 23 March 2020. The meeting attendee said Waka Kotahi’s BCP had been updated frequently and all staff had worked from home annually, in order to test the technology was fit for purpose. They said:

It is an annual thing where everyone works from home for one day to make sure the technology works.

It is positive that Waka Kotahi’s leadership provided adequate resources to ensure its BCP was regularly updated and tested by all staff to ensure the technology functioned well before being required to work from home. This meant that Waka Kotahi had a ‘business as usual’ response to processing OIA requests and the staff responsible for processing OIA requests were able to continue with their work from home.

Organisation structure, staffing, and capability

Responding to official information requests is not only a legal requirement but a core function of the public sector. Therefore, it is expected agencies will organise their structure and resources to ensure they are able to meet their legal obligations under the OIA, in a way that is relevant to their particular size, responsibilities and the amount of interest in the information they hold.

To assess Waka Kotahi's organisational structure, staffing and capability, I considered whether Waka Kotahi had:

- the capacity to discharge its official information obligations, with clear and fully functioning roles, accountabilities, reporting lines, delegations and resilience arrangements; and
- the capability to discharge its official information obligations.

Model for handling OIA requests

The team responsible for processing OIA requests at Waka Kotahi is the Ministerial Services team. It has gone through significant changes in the last five years or so, from a partly centralised OIA processing system to a fully centralised system. The Ministerial Services team does not just process OIA requests. It handles all official correspondence, including OIA requests, Privacy Act requests, ministerial correspondence, parliamentary questions and Coroner's reports.

In 2017, the team was made up of 10 FTE staff, in January 2020 there were 15 and the team currently has 26 FTE staff. One staff meeting attendee said the Ministerial Services team had been under resourced, which led to issues with OIA timeliness, discussed below under [Reported OIA timeliness](#). It is positive that the team's resourcing increased proportionally with the team's work load.

The move to a fully centralised OIA team occurred in November 2020. The new model has meant the Ministerial Services team is now responsible for the whole OIA process, with some input from subject matter experts. A meeting attendee said there are many benefits to this model, including the OIA request approach being agreed upfront between the subject matter expert and the Ministerial Services team. The meeting attendee said *'it tidies up the process'*. The team now conducts the search for information, requests content and information from the relevant business unit, prepares the documents, drafts a response and seeks approval from the relevant business unit before sending a response to the requester.

The meeting attendee said the model will be reviewed in six months. As discussed below in [Collecting OIA data](#), the team has a workflow tool that assigns work and it will help assess whether the new model is working well.

OIA training

The *Not a Game of Hide and Seek* investigation outlined that an effective training framework should encompass:¹¹

- training at induction;
- introductory basic awareness of key official information principles;
- advanced courses for specialists covering, for example:
 - proper application of the public interest and harm tests;
 - dealing with broad, complex requests covering a large volume of information; and
- refresher courses.

Waka Kotahi states it has developed a module for all staff to complete and is included as part of the induction programme. It highlights what it means to be a public servant, including some staff responsibilities under the OIA legislation and the wider principles of transparency and openness.

I am encouraged that the module stipulates an OIA request can come in any form, such as by email, phone, letter or even Twitter. It also states a requester does not need to quote the Act or even tell the staff member it is an OIA request. The module reminds staff that almost everything they do while working at Waka Kotahi can be requested and seen by any member of the New Zealand public. It states *'all information requests should be reviewed with the mindset that the information should or could be released unless there is a very good reason not to (within the law)'*.

However, there are some improvements that could be made to the module to ensure staff are adhering to the OIA. The module states Waka Kotahi are required to respond no later than 20 working days after the request is received. However, the OIA states that a decision is to be made *'as soon as reasonably practicable, and in any case not later than 20 working days'* after the day on which the request is received.¹² I consider this to be an important distinction to be made to all staff members, as the key obligation is to make and communicate a decision *'as soon as reasonably practicable'*.

Further, the module outlines some of the *'good reasons'* for not releasing information under the OIA. I am concerned the text does not state in what circumstances the need to withhold information must be weighed against other considerations which may render it desirable in the public interest to be made available.¹³ I understand the need to make training modules brief and accessible to all staff. However, adding the content outlined above would aid staff to have a more accurate understanding of the process and considerations at stake.

¹¹ Link to [Not a Game of Hide and Seek](#) (December 2015): 65.

¹² s 15(1) of the OIA

¹³ s 9(1) of the OIA

Approximately 50 percent of respondents of the initial staff survey said they received training within the last two years. The majority of respondents said the training was received during induction and they received a broad overview of the OIA.

Some of the comments from the staff survey indicate they may be open to receiving further training in this area. One respondent stated:

Training is probably an area that we need to focus and formalise for the organisation ... a formal training programme for others would be of benefit for those staff involved in managing these requests with us.

Not enough training is given to new staff who have decision making roles, especially those from the private sector who have limited/no exposure to the OIA.

Waka Kotahi said while there is no formal OIA training programme across Waka Kotahi (apart from the module at induction), there are several key resources available for staff to use that will assist when managing OIA requests. The internal resources are discussed further in the section below [OIA guidance material](#).

In addition to induction training, I would like to see advanced courses for OIA specialists. Waka Kotahi has said while those processing OIA requests are currently not provided with specialised 'in depth' training, the Ministerial Services team is made up of primarily experienced staff with previous ministerial experience that have been recruited into the agency from other government departments and former government positions. Waka Kotahi considers staff in this team do not require specific training in OIA process, other than to familiarise themselves with Waka Kotahi processes and policies, and to remain current with recently published Ombudsman guidance. While I appreciate that many of the staff in the Ministerial Services team may have experience and support mechanisms in place, relying on an individual's knowledge and past experience to make the appropriate decision may mean that any changes in law or new opinions I issue would not be considered. It also underestimates the benefits of ongoing training and regular refreshers.

As outlined in the section below, [Media information requests](#), the Media team does not receive specialist OIA training. I encourage the agency to introduce this, in order to ensure media information requests are dealt with consistently and in accordance with the Act.

I also encourage Waka Kotahi to introduce formalised training to all senior leaders on a regular basis. The benefits of requiring regular training for senior leaders involved in decision making include:

- demonstrating leadership from the top, that responding to OIA requests is core business and should be prioritised;
- testing decision-makers' understanding and knowledge;
- promoting efficiencies and consistencies in decision-making; and
- demonstrating a commitment to support and grow the professional development of staff.

Waka Kotahi may wish to be aware that staff in my Office are available to assist with developing and/or delivering training, on request.

Action points

Ensure those with official information responsibilities attend role specific, specialist OIA training courses and regular refreshers

Ensure all senior leaders are attending formalised OIA training on a regular basis

Waka Kotahi's response

Waka Kotahi has advised it is currently creating an advanced OIA training module targeted at those staff that complete OIA requests and OIA decision makers.

Internal policies, procedures and resources

As a matter of good practice, I expect Waka Kotahi to adopt policies and procedures that will assist staff to apply the requirements of the OIA consistently. In addition, staff should be supported by good systems, tools and resources that will enable them to effectively process requests and make good decisions consistent with the provisions in the Act.

To assess Waka Kotahi's internal policies, procedures and resources, I considered whether it had accurate, comprehensive, user-friendly and accessible policies, procedures and resources that enable staff to give effect to the OIA's principle, purposes and statutory requirements. This includes policies, procedures and resources in relation to:

- dealing with official information;
- records and information management; and
- proactive release of information.

OIA guidance material

Waka Kotahi has a number of OIA resources to assist staff to manage OIA requests. These include an OIA guide, template letters, and an OIA memo. It also has a number of process maps and specific OIA-related policies on its internal intranet site.

Waka Kotahi's *'Guide to Official Information Act and Privacy Act requests'* (OIA guide) was finalised in July 2018. The guide is a good summary of the OI and Privacy Acts. It includes useful information, for instance about the *'principle of availability'*,¹⁴ which states information should be released unless there is a good reason to withhold it. The OIA guide sets out who can make an OIA request, what official information is and the requester's obligation to seek information *'specified with due particularity'*.¹⁵ Key legislative timeframes are set out and I am pleased it states decisions are to be made *'as soon as reasonably practicable, and no later than 20 working days'* after receipt. Key agency timeframes are outlined to ensure the legislative timeframes are met. Details on transferring, consultations, extensions of time and what to do if the maximum time limits will not be met are included.

In relation to consulting with Ministers, the OIA guide states *'under the "no surprises" principle, requests should be sent to the Minister's office five working days prior to the statutory due date'*. I am concerned with this guidance for a number of reasons. First, the guide does not differentiate between:

- consultation with the Minister – where the Minister's input on an OIA request is required, and the agency's decision on that request might legitimately be delayed until that reasonably be obtained;¹⁶ and

¹⁴ s 5 of the OIA

¹⁵ s 12(2) of the OIA

¹⁶ See s 15(1) OIA

- notification of the agency's decision on an OIA request to the Minister - which is done for the Minister's information only, at the same time or shortly before the decision is conveyed to the requester.

Second, as discussed in [Ministerial interactions on OIA requests](#), providing OIA requests to the Minister's office five working days in advance of their release to the requester may impinge on the requirement to make a decision '*as soon as reasonably practicable*'. It may also significantly reduce the time staff have to compile and compose the response. I urge Waka Kotahi to add more information to its guide on consultation and notification (or FYI) to Ministers. I encourage Waka Kotahi to ensure its practice is consistent with my guidance [Dealing with OIA requests involving Ministers](#). I suggest making these changes in addition to developing a written agreement between the agency and relevant Ministers outlining the various processes and expectations in relation to OIA requests. See [Ministerial interactions on OIA requests](#) for further details.

The OIA guide does state that requests can be made under differing parts of the OIA. For instance, internal decision making rules (part 3, section 22), requests for reasons (part 3, section 23) and requests by corporate entities (part 4, section 24). However, the guidance does not explain how these requests should be treated differently to a request made under part 2 of the Act.

I am pleased the OIA guide has a section on '*requests for urgency*', which states '*a requester may ask that a request is treated as urgent, and if so must give the reasons for seeking the information urgently*'. The OIA guide outlines some of the factors to consider when an urgent request is received. However, it does not go into detail about the assessment or the action for staff to take in regard to them. As discussed in my guide titled [The OIA for Ministers and agencies](#), agencies should consider discussing the urgent request with the requester to enable clarification in the case of competing priorities. I suggest further detail on urgent requests should be included in the OIA guide to ensure requests for urgency are being adequately considered and carried out.

In terms of making a decision, the guide outlines when to consider granting a request, how to release information and preparing a response. The OIA guide sets out the grounds for withholding information under the OIA and states that a '*blanket approach*' to withholding information does not comply with the OIA. Some of the commonly used withholding grounds are listed in the guide and a full list is attached at the appendices.

The OIA guide does not include much detail on applying the OIA provisions to withhold information. In particular, there is very little guidance on how staff can balance the public interest in disclosing information against the need to withhold it, as stipulated in section 9 of the OIA. I suggest Waka Kotahi considers my guide titled [Public interest](#), and adds detail to its guidance around how staff balance public interest in practice. It would also be advantageous to have guidance on keeping a record of the public interest test.

Some staff members have expressed they may find it beneficial to have more detail in the OIA guidance material. One staff survey respondent said '*the OIA guidance or materials often doesn't cover situations specific to our area, for example confidentiality issues when releasing*

contingency tables with small counts'. Although I understand the appeal in keeping guidance material simple and easy-to-understand, it can be beneficial to include further detail in some instances. It may be worthwhile for Waka Kotahi to consider adding context and examples to the guidance when it reviews it next. It may also like to consider adding a mechanism by which staff can provide feedback on the guidance.

Another key guidance document used by Waka Kotahi is the *'Redaction of staff names in Official Information Requests - Guidelines'*. The guidance document was created in June 2018 (originally called the *'Redaction of staff names policy'*) and was last updated in August 2020. When developing the guideline, Waka Kotahi said the draft was shared with the Chief Ombudsman's staff and the Public Service Commission during development, with feedback from both agencies incorporated into the document. The guide states that it was updated in August 2020 to ensure alignment with the Ombudsman guide titled *'Names and contact details of public sector employees'* (April 2020).¹⁷

Waka Kotahi uses a number of other resources, such as an OIA memo template, an OIA response letter template and coversheets. It uses a coversheet for all agency OIA requests and a briefing coversheet for OIA requests processed on behalf of the Minister (as distinct from departmental OIA requests). Overall, the documents are sound. However, in the interest of continuous improvement and striving for excellence, some adjustments could be made to ensure all practices and considerations that take place in response to an OIA request are accurately recorded. For instance, it would be useful for the OIA memo to include details of the search undertaken for information, any rationale for information withheld, consultations conducted as well as any public interest considerations. Including sub-headings of this nature in the memo would prompt staff to both consider and record these key factors. Without capturing this information, the agency is also missing an opportunity to keep a repository of knowledge for current and future staff to learn from. Further, if any part of an OIA request is refused and adequate records are not kept, it may be difficult for the agency to explain to the Ombudsman why it came to the decision at the time it was made if and when an Ombudsman investigates and reviews that decision.

I am pleased Waka Kotahi said it conducts an annual review of the documents. By updating the guidelines about redacting staff names, it demonstrates it is able to adapt its documentation to include new advice from my Office. It is also positive that awareness among staff of the policies is high. Of the staff surveyed, 81 percent said it was either very or somewhat easy to find the OIA policies. In terms of ease of use, 71 percent found the OIA guidance very or somewhat easy to use and understand. I commend Waka Kotahi for providing staff with useful and up-to-date OIA resources that are accessible.

Action point

Review and update OIA guidance material to include more information on:

- consultations and notification to the Minister's office

¹⁷ Ombudsman guide [Names and contact details of public sector employees](#)

Action point

- requests for internal decision making rules, requests for reasons, requests from corporate entities for personal information;
- considering urgent requests; and
- public interest considerations

Waka Kotahi's response

Waka Kotahi advised that a review of the OIA guide is underway and will be published on the external website when it is finalised.

My comment

I commend Waka Kotahi on its progress in this area and will seek an update on the changes made to the OIA guide. I look forward to seeing OIA guide on the external website when it is finalised.

Proactive release of information policy

Waka Kotahi has recently implemented a policy, titled '*Proactive Release of Official Information Policy*', which was finalised in August 2019. The policy has a delegated 'policy sponsor' and states it must be reviewed every two years. The policy outlines that information can either be published on the website (for instance annual reports, statements of intents and research reports) or information released under the OIA can be publicly released. It is positive the policy covers all types of proactive release, not just the release of OIA responses.

It includes a broad statement that proactive release promotes '*good governance, openness and transparency, and it fosters the public's trust and confidence*'. The purpose of the policy is to increase the volume of information proactively released and ensuring employees are exercising appropriate caution before making information available. It sets out key accountabilities and responsibilities and high level details about redactions, staff personal information, consultation, record keeping and publication. The policy contains a useful appendix which includes a summary of legislative provisions and sources of further information. I am pleased the policy mentions public interest considerations.

Deciding what information to release publicly and ensuring all the legal ramifications are considered is complex. The policy provides a very good overview of proactive release of information and Waka Kotahi has said it was a deliberate decision to keep the policy high level. One meeting attendee said they did not want to be overly prescriptive with the proactive release policy. They said guidance provided by the Public Service Commission¹⁸ was followed, and they attended OIA forums to prepare the document.

¹⁸ Link to [Public Service Commission website](#)

I commend Waka Kotahi for developing a proactive release policy. Many agencies do not yet have a policy document of this type, which provides a framework around the publication of information. The policy covers most significant areas, but in order to further enhance the policy, I suggest adding some information. Specifically, about the frequency and timing of the release of information, as well as making information accessible.

I consider a proactive release guide should include an outline of the information expected to be released. As stated in my guide [Proactive release: Good practices for proactive release of official information](#), some agencies have adopted a 'publish unless there is a good reason not to' approach, which aligns with the principle of availability in the OIA. Other agencies have adopted a more restrictive 'publish if it is in the wider public interest' approach. The Chief Executive said Waka Kotahi's general approach to the proactive release of information is to pre-emptively identify issues that will attract public attention and then work to inform and share information before media inquiries or OIA requests are made. She said this approach is effective in being more transparent, informative and reduces the number of OIA requests received. She cited, as an example, the information proactively released through various platforms when the Auckland Harbour Bridge suffered damage and a lane was closed pending repairs.

There may be further opportunities for Waka Kotahi to broaden the scope of information released proactively. One initial staff survey respondent said:

There are a number of unpublished research projects which are conducted to inform decision makers in-house, these are often not written for publication and are considered 'internal business research projects' - however, there should be a publication protocol for this 'grey literature'.

Continuing to review which documents are suitable for proactive release ensures the availability of official information to New Zealanders is progressively increased. This will lead to strengthened public trust, improve the accountability of government and help people understand the reasons for decisions. I also encourage Waka Kotahi to publish the proactive release policy on its website. Guidance which is used to make agencies open and accountable to the public should, in turn, be made available to the public.

Action points

Review and update the proactive release policy to include information on the frequency and timing of release, as well as making information accessible

Publish the proactive release policy on the Waka Kotahi website

Waka Kotahi's response

Waka Kotahi advised that a review of the proactive release guidance is underway and will be published on the external website when it is finalised.

My comment

I commend Waka Kotahi on the progress it has undertaken in this area and will seek an update on the changes made to the proactive release guidance. I look forward to the proactive release guidance being published on the external website when it is finalised.

Resources during lockdown

A stand-out area for this agency was its technology capabilities during the lockdown. Of the staff who completed the post-lockdown survey, 89 percent said they had adequate resources to fulfil their role in relation to the OIA during lockdown. This is an excellent result and should be a positive example to other agencies.

A meeting attendee said they were able to work from home with everything they required to enable them to do their jobs. They used Microsoft Teams software and Zoom for meetings and took steps to ensure staff were working safely from home. This included providing '*technology packs*' to staff at home. The pack included screens, a mouse, keyboard and docking station system to enable staff to easily set up at home. The organisation quickly provided the tools staff needed to do their job. For example, staff were able to take chairs and keyboards, and desks were couriered to staff who required them. A meeting attendee said the technology packs took approximately a week to be received by staff, but in the interim, staff at least had laptops.

As mentioned in [Open leadership during COVID-19](#), the efficient roll out of resources to assist staff during lockdown was aided by a current and well-practiced Business Continuity Plan, which a meeting attendee said was actioned seamlessly from the announcement of the Alert Level 4 lockdown in March 2020. Having adequate resources to allow staff to work from home meant the staff responsible for OIA processing were able to continue to perform their roles and meet their obligations under the OIA.

Information management and record keeping systems

Waka Kotahi has one electronic document management system called '*Infohub*', where staff are expected to save all electronic documents and important emails.

In the initial staff survey, respondents were asked to describe the information management system(s) used at their agency. Approximately 34 percent of respondents said there are several systems in use for different types of information and it is not clear how (or for what type of information) each should be used. Thirty percent of staff said there is one, centralised system for records storage. One meeting attendee said some people may store certain information on the desktop of their computers, but they did not think it was too much of a problem. Some of

the uncertainty around the different systems may be from staff adjusting to new ways of working. One staff survey respondent said:

There IS only one centralised system for records storage. However, with the introduction of new technology (e.g. 365 and Teams), there are now different ways of saving documents outside of your laptop which means that documents aren't necessarily making it into the one centralised storage system.

While I understand that data stored in personal drives could be retrievable if requested under OIA, the staff member conducting the search would have to know to look there or ask the staff member concerned, in addition to searching the shared drives. Having to search in multiple locations and make separate requests to staff adds to the time it takes to locate information, which is an unnecessary administrative burden on staff handling OIA requests. The practice of using personal drives may also lead to data being lost to the organisation when staff members leave.

However, I am heartened that the issue was not raised as a problem for staff in the post-lockdown staff survey. As discussed above in [Resources during lockdown](#), Waka Kotahi rated well in relation to its information management and record keeping systems while staff were working remotely. As discussed below in [Collecting OIA data](#), further work has been done in this area. Waka Kotahi has recently launched a new workflow tool, which will enable improved reporting.

Current practices

The effectiveness of the OIA is largely dependent on those who implement it on a day-to-day basis and how they apply the resources available to them to manage the realities of giving effect to the Act.

To assess the current practices of Waka Kotahi, I considered whether it's:

- official information practices demonstrate understanding and commitment to the principles and requirements of the OIA;
- staff have a good technical knowledge of the OIA; and
- coping with the volume and complexity of requests, and decisions are compliant.

Reported OIA timeliness

As outlined in [Model for handling OIA requests](#), Waka Kotahi's model for processing OIA requests is generally going very well. It has recently moved to a fully centralised OIA model and it has increased the number of FTE employees. I am also pleased they appear to take a collaborative approach and contact requesters the beginning of the OIA process.

There have been significant improvements to reported OIA timeliness rates. The Public Service Commission publishes OIA statistics every six months.¹⁹ As the following table demonstrates, the reported percentage of OIA requests completed by Waka Kotahi within the statutory time limit has increased since the *Not a Game of Hide and Seek* investigation in 2015.²⁰

Financial year	Requests received	OIA requests handled within legislated timeframe
2015/16	495	80 percent
2016/17	553	85.9 percent
2017/18	664	99 percent
2018/19	1,055	99.5 percent
2019/20	1,124	99.5 percent

¹⁹ Link to [Public Service Commission website](#)

²⁰ Statistics reported to the Public Service Commission captures the number of requests completed by agencies in the six month reporting period; the number and proportion of these requests where legislative timeliness requirements were met; the number of responses proactively published on an agency's website; OIA complaints to the Ombudsman that were notified to the agency; final views issued by the Ombudsman where a deficiency was identified.

I commend Waka Kotahi for significantly raising its reported timeliness performance, especially given the increase in the number of requests received. When asked about the improvement in reported timeliness, one staff meeting attendee said it was due to new management and a focus on OIA processing. They also said centralising the requests helped with consistency and timing.

Another staff meeting attendee said the Ministerial Services team had been under resourced, which led to issues with OIA timeliness. When the new manager started, processes improved, they hired permanent staff and some contractors to 'kick-start' developments. As discussed in the section below, [Analysis and reporting of OIA data](#), the team increased its reporting in order to quantify the work they were doing. The team was able to demonstrate they were completing more work, therefore could justify an increase in employees. One meeting attendee said *'as we proved ourselves, we took on more work'*.

A staff meeting attendee also said they considered the proactive release of information played a part in increasing efficiencies and helped timeliness. Having a portal for people to have access to statistical information reduces some tricky and time consuming OIA requests.

OIA practices

To gain an understanding of how Waka Kotahi processes requests, my investigators reviewed a random selection of OIA request files. Overall, Waka Kotahi's OIA processing is good. In particular, record keeping was generally good, a full record was saved in a central electronic data base and the file structure gave a clear understanding of the events that took place. Records of emails and key correspondence were kept. As outlined above, maximum statutory timeframes were usually adhered to and correspondence was generally of a high standard.

There were some areas identified that require improvements. These include:

- Public interest considerations were not recorded. While the relevant response letters state *'with regard to the information that has been withheld, I do not consider that there are other factors that render it desirable, in the public interest, to make that information available'*, there is no evidence in the file of a public interest test being undertaken, which would include a record of what factors favouring disclosure were identified and what weight was affixed to them relative to the need to withhold. More consideration may need to be given to the public interest in making information available when withholding information under section 9 of the OIA and this ought to be recorded.
- There was no record saved of internal decision making deliberations. For instance, there were no records kept of telephone calls to requesters clarifying their requests, and no records provided of scoping meetings. This is despite a meeting attendee stating that their understanding was that records of scoping meetings are kept.
- There was no record of the search for information.

As a result of these issues, I have identified some inconsistency of practice. I consider improved guidance (see [OIA guidance material](#)), specialist OIA training (see [OIA training](#)) and improved

quality assurance processes (see [Quality measures](#)) would help mitigate inconsistencies or gaps in practice.

Action points
Ensure OIA decision makers consider the public interest test where applicable
Record the reasoning behind OIA decisions, including consideration of public interest and results of consultations with third parties
Record administrative steps taken in respect to OIA responses where relevant, such as keeping a record of the search for information

OIA practices during lockdown

Waka Kotahi received fewer OIA requests over the lockdown period (23 March to 13 May 2020). It said that 98 OIA requests were completed in the lockdown period, compared to 225 OIA requests completed in the same timeframe in 2019. The OIA statistics reported to the Public Service Commission also indicate that for the six month period which included lockdown Waka Kotahi received fewer requests than the previous six month period. From 1 January 2020 to 30 June 2020, Waka Kotahi received 461 OIA requests and during the same six month period the previous year they received 645 OIA requests.²¹

The drop off in numbers allowed some staff from the Ministerial Services team to be redeployed to assist the internal COVID-19 response team. Two Advisors moved into temporary positions because they had previously been in a similar role. A meeting attendee said this did not affect the Ministerial Services team's ability to meet its OIA responsibilities because some work was redistributed across the team, and staff with additional responsibilities only picked up work when they had capacity. It is positive the Ministerial Services team was able to be flexible in redeploying staff without affecting the ability to meet statutory obligations.

Waka Kotahi said there were no significant changes in OIA practices or their prioritisation during the lockdown. However it did change the acknowledgement email to advise requestors that there could be a delay in receiving their response. The following additional paragraph was inserted into all OIA acknowledgement letters and emails:

As you will be aware, New Zealand is currently responding to COVID-19 (novel coronavirus). As a result, resourcing is being redeployed across Government, and the response to your Official Information Act request could be delayed. We will endeavour to provide a response to you within the 20 day timeframe, or as soon as possible. In the meantime, we will keep you informed of any changing timeframes. We apologise for any inconvenience and appreciate your understanding.

²¹ Link to the Public Service Commission's [OIA statistics webpage](#)

This paragraph is consistent with my guidance released during lockdown that suggested agencies ‘*communicate with the general public about how your agency is handling OIA requests*’.

Staff were asked about their experiences of OIA processing during lockdown in our post-lockdown staff survey. When asked about their agency’s approach to processing OIA requests, 48 percent of respondents said there was no difference in priority given to OIA processing during lockdown (44 percent said they did not know). When asked if there was any change in Waka Kotahi’s ability to handle OIA requests during lockdown, 33 percent of respondents said there was no change, 54 percent said they did not know. As previously mentioned in the section above, [Resources during lockdown](#), Waka Kotahi compared very favourably to the other agencies surveyed when asked if staff had adequate resources to fulfil their role in relation to OIA processing during lockdown.

A positive outcome of remote working during lockdown for Waka Kotahi was that the entire OIA process is now electronic, including the sign off process. A meeting attendee said an Associate Minister had previously requested paper copies and emails of certain documents and files once a day. However, the ‘paper copies’ element of this practice ceased during lockdown and it has stayed electronic post-lockdown.

The challenges associated with keeping adequate records of meetings and discussions conducted virtually is a relatively new issue for some agencies. In Waka Kotahi’s case, records about informal meetings were not necessarily created. One staff meeting attendee said she kept a book for note-taking in meetings and that scoping meetings were recorded, in much the same way as with an in-person meeting. However, I note that the records of scoping meetings were not included in the documents provided by the agency for the sample OIA file reviews. Archives New Zealand has provided some useful information on information management during COVID-19.²² It may be valuable for Waka Kotahi to consider advice from Archives New Zealand around record keeping when working remotely, to ensure it is compliant in this area.

I note there was no formal OIA reporting to senior leaders during the lockdown. I am pleased the Manager Ministerial Services kept the Deputy General Manager and General Manager informed of OIA numbers and any issues as they arose. Keeping a record of the numbers of OIA requests and reporting them to senior leaders is important because it enables them to continue to learn and improve on their OIA activities. The reason for recording and reporting statistics continues to be important during lockdown. Waka Kotahi has advised that it has reinstated its OIA reporting, with added efficiency due to its new workflow tool. I encourage Waka Kotahi to ensure continuity of regular reporting if it experiences a disruptive event such as a lockdown in the future.

There was also a drop in the number of documents released proactively. In the six-month period prior to the lockdown, from July to December 2019, Waka Kotahi completed 663 OIA

²² Link to [Archives New Zealand webpage Managing information during COVID-19](#); Link to [Archives New Zealand webpage COVID-19: Disposal authorisation for response records](#)

requests and published 60 of the responses (approximately 9 percent). In the following six months, from 1 January 2020 to 30 June 2020, 461 requests were completed and 23 were published (approximately 5 percent). As stated earlier, open and transparent government continues to be important during the COVID-19 pandemic. In many ways, it is even more important for agencies to publish information and data proactively. I strongly encourage Waka Kotahi to consider ways to increase the numbers of OIA responses it proactively publishes.

Ministerial interactions on OIA requests

The agency reported that of the 461 requests received from 1 January to 30 June 2020, 90 were sent to the Minister's office for noting, which is approximately 20 percent of OIA requests received.

When I met with the Chief Executive, she said in her experience interactions with Ministers had not been an issue. She said her staff are proactive in addressing issues with Ministers by advising them of matters that may draw public attention, or become the subject of OIA requests, well ahead of time. The result is often OIA requests are addressed more promptly by the Minister's office than the five-day turnaround. The Chief Executive outlined the proactive approach Waka Kotahi took when the Minister was appointed. The agency has established close relationships with the Ministers' staff and embedded staff from Waka Kotahi into the Minister's office in order to fully understand the needs of the Minister.

Another meeting attendee confirmed that the Minister's office has five days to provide a response to the OIA requests that are sent through. They said if they have not heard back and it is getting close to the timeframe, they provide a '*gentle reminder*'. A number of OIA files were reviewed as part of the investigation. Of the files reviewed, approximately half of them went to the Minister's office for 'noting'. Of those that were provided to the Minister's office for noting, one was sent prior to the five-day timeframe.

The noting practice is concerning for a number of reasons. It appears the OIA files are provided to the Minister's office as an FYI, but it appears the team believes it requires an email from the Minister's office staff to confirm they have '*no comment*' before the request is sent to the applicant. If the OIA request is provided to the Minister's office simply as a courtesy 'FYI' to inform the Minister of a decision Waka Kotahi has reached, a response from the Minister's office should not be a prerequisite for sending the response. Notification of the decision should require no specific input from the Minister as the Minister's feedback is not necessary for Waka Kotahi to make and communicate a decision to the requester under the OIA. If the Minister's input is needed to make a proper decision on the request, Waka Kotahi should consider consultation.

As discussed in the section above [OIA guidance material](#), Waka Kotahi does not yet clearly distinguish between the consultation process and notification (noting or FYI) process. I am concerned that in one case, Waka Kotahi did not send an OIA response to the requester until it had received a response from the Minister's office that they had '*no comment*' nine days after it was sent to them for FYI. Two reminders were sent to the Minister's office from the Ministerial Services team asking if they were '*happy with the release*' and the staff member from the Minister's office responded after nine working days. The OIA response was then sent

to the requester. The request had been with Waka Kotahi for 20 working days in total. However, section 15 of the OIA states that decisions on requests must be made *'as soon as reasonably practicable, and in any case no later than 20 working days'*.

It is permissible for agencies to provide OIA responses to Ministers' offices as part of a *'no surprises'* arrangement if it is for a proper purpose (such as allowing the Minister to prepare for public commentary), and does not interfere with timeliness requirements. However, the obligation may be met by giving a copy of the decision to the Minister at the same time, or shortly before, it is sent to the requester. Informing the Minister of OIA responses under the *'no surprises'* principle should not interfere with the statutory obligation to make and communicate the decision as soon as reasonably practicable.

One way agencies can ensure best practice in interactions with Ministers is by having a clear written agreement in place. I developed a [Model protocol on dealing with OIA requests involving Ministers](#) in August 2019, to assist agencies in developing a framework around the interaction with Ministers in relation to OIA requests. The model protocol includes the elements of good practice and I would expect agencies to adopt this with Ministers' offices, either as a protocol document or in another agreed way. I expect the agreement to at least include:

- how they distinguish between consulting with the Minister's office on a request, and advising the Minister of a request as an *'FYI'* only;
- whether all responses deemed *'of interest'* are provided in full to the Minister's office, or whether some are notified by subject only;
- what factors would cause the agency to consider a request to be *'of interest'* to the Minister;
- the resolution process in the event of disagreement between the agency and the Minister's office;
- the timeline for providing responses to the Minister's office; and
- the process when the Minister's office is unable to respond to the agency within the statutory timeframe for the agency to respond to the requester.

A written agreement should guide and define the interactions between the agency and the Minister's office as it relates to official information releases. Therefore, it should not be unilateral but discussed and agreed between the parties.

I am pleased that Waka Kotahi advised that since the investigation commenced, it has drafted a protocol clearly distinguishing between the consultation and notification of OIA decisions to the Minister's office. The protocol states that where notification is required, it will be conducted at the same time as the decision is communicated to the requester. I encourage Waka Kotahi to finalise the draft document and obtain written agreement with the Minister's

office so there are clear and transparent expectations and processes for managing OIA requests that are both lawful and reasonable.

As a result the following practices should no longer apply when the Minister's office is notified of an OIA decision:

- requiring a response from the Minister's office before sending it to the requester; and
- the blanket application of a five working-day period for the Minister's office to respond to Waka Kotahi's decision.

Action points

Finalise the written protocol with the Minister's office on handling agency OIA requests

When notifying the Minister of an OIA decision, cease the practice of requiring a response from the Minister's office before sending it to the requester

When notifying the Minister of an OIA decision, cease the blanket application of a five working-day period for the Minister's office to respond to Waka Kotahi's decision

Waka Kotahi's response

Waka Kotahi advised that a draft protocol has been drafted, based on Ombudsman guidance that has not yet been approved by the Chief Executive and Minister. The draft protocol clearly distinguishes between the consultation process and notification process. It states that notification is to be undertaken at the same time as a decision is communicated to the requester.

My comment

I commend Waka Kotahi for drafting a protocol. I expect as a result, Waka Kotahi will cease the practices identified above immediately. I also encourage the agency to finalise the draft document and obtain written agreement with the Minister's office as soon as possible. I look forward to receiving an update in due course.

Media information requests

Requests to the Media team for information held are subject to the OIA. Media teams receive any number of requests from journalists, such as requests for information or requests for comment on a particular issue. Waka Kotahi states that requests for information from journalists are handled by the Media team where the information is easily obtained and will be released in full. Also, where the information is already publicly available and the request requires a quick turnaround to meet publication deadlines. All other requests for information received from media are sent through to the Ministerial Services team to action as per normal processes.

Waka Kotahi does not have a separate guidance document for dealing with media information requests. Its OIA guide provides information on which requests may not be logged as an 'OIA request'. These include:

- not logging requests for publicly available information;
- not logging requests where the information is provided immediately and in full.

The OIA guide states that any request where information may need to be withheld, involving large volumes, where consultation is necessary or in the interests of a Minister, will be logged. In these cases, the request must be referred to the Ministerial Services team to action.

Waka Kotahi states it has very experienced Media Managers who work closely with the Ministerial Services team so there is often discussion on the best way to manage these types of requests. A meeting attendee said the question of whether or not information is to be logged as an OIA can be a grey area. They said a journalist may state they do not want a request treated as an OIA because of the perceived time delay from going through the OIA process. However, they said if the request is complex, or some information needs to be withheld, it goes through to the OIA team. The meeting attendee said they have a conversation with the reporter to explain why, and the conversation might lead to the reporter narrowing the scope or modifying the request in order to receive the information quickly. However, it should not be the case that requests that go through to the OIA team necessarily take 20 working days to process. The statutory obligation is to make information available '*as soon as reasonably practicable*'.

To gain an understanding of Waka Kotahi's processing of media information requests, my investigators reviewed a random selection of media request documents. The majority of those reviewed were answered in full. However, a small number were not answered in full, including one that advised the requester some information was not provided due to '*commercial confidence*'. The partial refusal occurred despite Waka Kotahi advising that the Media team would not respond to a journalist if they were declining a request, requests of that nature are passed onto the Ministerial Services team. Refusing part of a request is also contrary to Waka Kotahi's OIA guide, which states that only information provided in full is not to be logged as an OIA request. Further, section 19 of the OIA states that where a request is refused, the requester should be advised that they can make a complaint to the Ombudsman to seek an investigation and review of this decision, have a reason for the refusal provided and, if requested, the grounds in support of that reason. I do not consider providing the refusal reason as '*commercial confidence*' is adequate as it is not clear which section of the OIA is being relied on to refuse the information, nor would it sufficiently explain on what basis information is being withheld.

In this case, I consider that Waka Kotahi acted contrary to law by not providing the requester with the reason for the refusal and advice about the right to complain to my Office. However, I have not made a recommendation in this instance as Waka Kotahi has advised that the example reviewed was an anomaly to its normal practice and was contrary to the OIA guide. Waka Kotahi has stated that refresher OIA training will be provided to the Media team to ensure that where a media information request is not responded to in full, it is actioned in

accordance with the OIA. Although Waka Kotahi's OIA policy outlines how information requests will be treated, it does not provide guidance on information requests to the Media team specifically. I urge Waka Kotahi to update its OIA guidance to include details such as:

- the circumstances in which an information request from the media is passed to the Ministerial Services team to deal with; and
- if an information request is refused by the Media team, the legal obligation to provide the reason for the refusal and the applicant's right to complain to the Ombudsman.

My understanding is that media teams may be reluctant to provide journalists with details to complain to the Ombudsman for a number of reasons. It is clear that the relationship between journalists and the Media team involves rapport building and an element of trust. It could be difficult to explain to journalists why they may seek a review from the Ombudsman or why part or all of their request is being passed onto the Ministerial Services team. One respondent to my public survey said:

I always submit requests for info through the agency's comms team. Anything controversial is often treated as an OIA, rather than a media query, which usually automatically means it takes longer to get an answer. By the time the info comes through it may no longer be relevant and there is the suspicion that this tactic may be a deliberate attempt to stymie media investigations.

This comment indicates there may be a perception from some members of the public that if a response is 'treated as an OIA' it will likely take closer to the maximum statutory deadline of 20 working days. This may discourage requesters from pursuing their request when the Media team is unable to provide information within their preferred timeframe. It should be remembered that in all cases, requests must be responded to 'as soon as reasonably practicable'. Under section 12(3) of the OIA, a requester may also ask that their request be treated as urgent, where reasons can be provided for doing so.²³ If an agency agrees that there is a valid need for urgency, this may change what is considered 'reasonably practicable' in the particular case. Agencies should have clear policy on how they will consider such requests and, where sound reasons exist, should ensure they have the capacity to respond as soon as reasonably practicable. I suggest Waka Kotahi update its OIA guidance to include details on a requester's right to ask the agency to treat their request with urgency, and how such requests should be dealt with.

Once updated, Waka Kotahi would benefit from proactively releasing the relevant guidance document. This would give requesters a better understanding of its processes when an information request is received. It would encourage consistency of practice and accountability to the public. I consider key OIA guidance, which is used to make the agency open and accountable to the public should, in turn, be made available to the public.

²³ While a reporting deadline would not typically be considered a valid reason to prioritise the handling of one OIA request above others, I note that media requesters may at times have other genuine and legitimate reasons to ask that their information request is treated with urgency.

I am pleased Waka Kotahi proactively publishes some of its responses to media information requests. A meeting attendee said there was some concerned feedback from a few journalists when they first started publishing OIA responses. He said some journalists were *'worried they would lose their scoop'* and they did not want to do the work for a story, for it to be published on the Waka Kotahi website for their competitors to see. To alleviate this issue, the meeting attendee said in some cases they provide the response to the requester first and may wait for the journalist to publish their story before publishing the OIA response on the website. They said that media are now generally accepting of the practice and most reporters now find the previously published responses to be a useful resource.

I am concerned that records of telephone conversations or emails between media information requesters and the Media team were not provided to my investigators for the review of the sample media files. If a request is clarified or scoped, the Media team should ensure a record of their conversation is kept. I appreciate that both the Media team and journalists value the immediacy and informality of their interactions, which facilitate fast turnaround of responses. However, the recording of telephone conversations does not need to be onerous. It is also preferable that an email from the journalist is saved, confirming the conversation and details of the updated request.

I note that while the Media team does receive induction training, it does not receive specialist OIA training. I reiterate the need for OIA training on a regular basis to ensure the Media team's practices demonstrate an understanding and commitment to the principles and requirements of the OIA. Training is also important for the team to recognise when they are refusing information so they either refer those requests to the Ministerial Services team or ensure the requester is given the reason for the refusal and the right to complain to my Office. Regular refresher training should also be available.

I urge senior leaders to reinforce the message that requests for information handled by the Media team must adhere to the OIA. I do not think compliance with OIA practices should interfere with timeliness or developing effective relationships between the Media team and members of the media.

Action points

Update the OIA guide to include more detail on media information requests, and consider publishing the guide

Keep a record of all substantive communications with requesters, including telephone conversations and meetings

Provide targeted OIA training to the Media team on a regular basis, to ensure they understand their obligations under the OIA

Ensure messaging from senior leaders reinforces that requests for information handled by the Media team must adhere to the OIA

Waka Kotahi's response

Waka Kotahi advised that it will provide refresher OIA training to the Media team and will ensure where a media request is not answered in full, it is actioned in accordance with the provisions of the OIA.

My comment

I acknowledge Waka Kotahi advising that it will provide training to the Media team on their obligations under the OIA. I look forward to receiving an update when the Media team's OIA training is complete.

Proactive release of information

The proactive release of information to the public promotes good government, transparency and fosters public trust. Waka Kotahi has improved its practice in this area in recent years. Waka Kotahi proactively released approximately six percent of its OIA responses in 2018, and 10 percent in 2019. In the first half of 2020, Waka Kotahi published approximately 10 percent of its OIA responses, which dropped to 5 percent in the second half of 2020. The drop is likely due to lockdown and, as discussed above in [OIA practices during lockdown](#), I encourage Waka Kotahi to continue to increase the number of responses it is releasing. It should also consider retroactively publishing responses that were not published during the lockdown period.

The percentage of OIA responses published by Waka Kotahi is below average compared to the other agencies included in the *Not a Game of Hide and Seek* follow up investigation, although one meeting attendee did describe the proactive release of information as a 'sea change' for the agency. A staff survey respondent said:

I think the last 12 to 18 months have seen a real shift towards releasing information and more transparency of the Transport Agency.

The public release of information promotes good transparent government, but also has administrative benefits. These potentially include reducing requests for information which are already publicly available, and allowing for greater ease of handling of the requests that are received. One meeting attendee said that the public release of information 'doesn't stop the OIAs coming, but it does make it easier'. Another staff meeting attendee said 'It does reduce. For example for major roading projects, it does make a difference'.

Examples of some information publicly released by Waka Kotahi, include:

- Responses to [previous OIA requests](#);
- Board [minutes](#) or Board [investment decisions](#);
- State Highway [projects](#);
- Other publications and [resources](#).

Accessibility and usability of official information releases

All public service and non-public service agencies are required to meet the NZ Government Web Accessibility Standard.²⁴ The standard is intended to make web content more accessible for users with a range of disabilities, including visual, auditory, physical, speech, cognitive, language, learning and neurological disabilities. Although the accessibility standards apply to website content, it is also best practice to apply these standards to information released in response to OIA requests.

Agencies should publish information in a format that accommodates the use of assistive technology, such as screen readers. For example, publishing or providing information in an 'image only' format could preclude the use of screen readers. It may also make the information less easy to use generally, by limiting the ability to search documents by keyword.

In response to my questionnaire, Waka Kotahi advised that:

All PDF documents released by the Agency are in a searchable format. All Ministerial staff are provided with the latest version of Adobe Pro that ensures we meet this requirement... The Agency always checks with the requestor on their preference with receiving documents in these instances.

My investigators have reviewed a number of OIA requests proactively published on Waka Kotahi's webpage from July 2020 to February 2021.²⁵ During the time period reviewed, Waka Kotahi proactively published 12 non-media OIA responses, including 33 PDF documents, two excel documents and one zip file. The zip file was not included in the review. Of the 35 PDF and excel documents, 28 were fully searchable, four were partly searchable and three were not searchable (image only PDFs).

Media OIA releases were reviewed from December 2020 to February 2021. There were five responses published in this timeframe, including 12 PDF documents.²⁶ Of the 12 PDFs, 11 documents were searchable and one partly searchable.

It is apparent that Waka Kotahi has come some way in making the documents it releases accessible. One staff member said in the survey:

... I consider that Waka Kotahi NZTA has good leadership support for openness, and it is committed to further improving the availability and accessibility of information.

I note that a number of documents were image only PDFs, with a watermark, which can sometimes inhibit the use of assistive technologies. Other documents with a watermark were still searchable. One response letter was also not searchable. This indicates there may be some

²⁴ Link to the Digital government [Web Accessibility Standard 1.1](#)

²⁵ Link to [Waka Kotahi website](#)

²⁶ Link to [Waka Kotahi website](#)

inconsistency of practice that could be mitigated by including details of accessibility and searchability in the Proactive Release of Official Information policy.

I have published a guide on proactive release which provides details on making information accessible to those with disabilities as well as information being discoverable and usable.²⁷ The guide includes a section on New Zealand's international and domestic obligations to ensure disabled people have equal access to information and provides advice on making information accessible. I note that not all members of the public have access to internet, and some may require information in other formats (including, but not limited to, audio, braille, printed materials, New Zealand Sign Language, and Easy Read) to cater for different access needs. The public should be advised that they can ask for accessible formats if required. The guide also provides details of other resources that would aid Waka Kotahi to update its proactive release policy to ensure published official information documents are accessible to all people.²⁸

Action point

Ensure all documents released in response to an OIA request or proactively released are searchable and not 'image only', and all visual elements are tagged with alternative text

²⁷ Link to [Ombudsman website](#)

²⁸ Link to Ministry of Social Development [accessibility guide](#)

Performance monitoring and learning

The OIA does not impose specific requirements on agencies in relation to record keeping and management of requests they receive for access to information. However, Ombudsmen have consistently advocated maintaining a full audit trail for any decision made by an agency. Formulating a decision on a request for access to official information is no different. Once this information is recorded, agencies have a wealth of information that can be used to inform business planning and future decisions concerning access to information—but only if it is captured in a way that is meaningful, facilitates subsequent analysis, and regular monitoring and reporting occurs.

To assess performance monitoring and learning of Waka Kotahi, in relation to requests for official information, I considered whether:

- Waka Kotahi has an established system for capturing meaningful information about its official information activities and established appropriate and relevant performance measures;
- there is regular reporting and monitoring about Waka Kotahi's management performance in respect of official information requests; and
- Waka Kotahi learns from data analysis and practice.

Sharing Ombudsman information

Waka Kotahi has advised that the Ministerial Services team manages Ombudsman investigations with input from the Legal team. The relevant business unit is also involved in the specific response. Where the Ombudsman has provided feedback on an OIA decision, the response is shared with the team and managers involved. Waka Kotahi states that it also reviews and updates its guidance when the Ombudsman provides feedback that relates to its processes.

I am pleased that Waka Kotahi's Ministerial Services and Legal teams are kept informed of Ombudsman investigations and any relevant feedback regarding the agency's OIA responses. I am also pleased Waka Kotahi states that feedback from Ombudsman decisions is both incorporated into guidance and relayed to relevant staff.

As discussed above in [OIA guidance material](#), Waka Kotahi has demonstrated that it does, on occasion, update its resources in line with new Ombudsman guidelines. The '*Redaction of staff names in Official Information Requests - Guidelines*' was updated in August 2020, after my guidance was published on the subject. However, this practice is not necessarily occurring consistently. Waka Kotahi may benefit from a more formalised process to ensure case notes and guidance published by my Office is incorporated into Waka Kotahi's practices and guidance where relevant. There may be merit in developing a formal policy to support this practice and to ensure that Waka Kotahi continues to benefit from Ombudsman decisions and guidance.

Action point

Formalise the process for learning from Ombudsman investigations and guidance, and reflect this in OIA policy and procedures

Collecting OIA data

OIA requests and responses are saved to Waka Kotahi's information management system called '*InfoHub*'. Waka Kotahi states that staff are able to extract information from the system, including the number of OIA requests received and the timeliness of responses. I am pleased that Waka Kotahi implemented a new workflow tool in September 2019 and has been continuously developing the tool since implementation. This tool has expanded the range of data the agency collects, and the ease with which data can be collected. Waka Kotahi advised it has expanded the range of data it collects to include:

- whether the decision was notified to the Minister;
- the number and length of extensions;
- the time from receipt of the request to communication of the decision;
- the time from receipt of the request to release of the information;
- whether requests are released in full, partially released or refused;
- reasons for refusal; and
- the number of transfers.

In addition to the data it now collects, Waka Kotahi states that its new Workflow tool allows staff to collect data automatically and monitor it in real time through dashboards. I commend Waka Kotahi for adopting more formalised and regular data analysis practices.

I understand that past data collection has been focused on compliance with statutory timeframes. As discussed in [Reported OIA timeliness](#), Waka Kotahi has made significant improvements in this regard and is currently complying with timeframes for more than 99 percent of requests it receives. I acknowledge this significant improvement and consider that Waka Kotahi is well placed to expand the range of data it collects to improve the quality of its responses and make its processes more efficient. I encourage Waka Kotahi to further expand the range of collected data to include:

- the type of request (Part 2, 3 or 4 of the OIA);
- whether referrals to the Minister's Office are for consultation or notification;
- the reason for extensions;
- the reason for transfers; and
- whether transfers are made in time.

It is encouraging that Waka Kotahi is continuing to develop its Workflow tool post-implementation and appears well placed to implement my suggestions. I am pleased Waka Kotahi is taking steps to ensure data is easy to collect, as these practices in turn facilitate more efficient and effective reporting of OIA data. As discussed in [Model for handling OIA requests](#), collecting a wide range of data allows agencies to better assess and quantify the level of resourcing it requires in order to respond effectively to OIA requests. Waka Kotahi has demonstrated that data such as this can be used to support a request for extra resources, such as occurred with the expansion of the Ministerial Services team.

Action point

Collect further qualitative data on the handling of OIA requests

Analysis and reporting of OIA data

Waka Kotahi has advised that its OIA reporting consists of a monthly report to the Chief Executive, a weekly report to the General Manager of Engagement and Partnerships, and a separate weekly report to the Executive Leadership team. The number of media requests received is also recorded and reported separately.

Waka Kotahi provided me with excerpts from two of these reports. The reports include noteworthy OIA requests received, the number of OIA requests completed that week and OIA requests completed within the legislative timeframe.

I encourage Waka Kotahi to expand the range of reported data to include, in addition to timeliness and request subject, indicators that would help measure and improve the quality of its responses to OIA requests, such as the following:

- Reasons for refusing requests or withholding information, which can enhance existing monitoring of request trends and promote compliance with the Act.
- Average response time, which can help quantify workload and inform resourcing decisions.
- Reasons for extensions or delays. Collecting this information may help Waka Kotahi detect potential systemic issues that are causing delays, such as over-reliance on extensions, institutional or OIA knowledge concentrated on particular staff members, or workload distribution among staff.

Keeping detailed records and reporting the data identified above can help identify opportunities for proactive release which may not otherwise be readily apparent. I note the importance of capturing this kind of information for media information requests received by Waka Kotahi's Media team. This would ensure senior leadership have a more comprehensive picture of Waka Kotahi's OIA performance.

Waka Kotahi states that senior leadership is advised of the subject of a number of OIA and media requests, and this information is used to inform decisions on the proactive release of information. As outlined in the section above, [Proactive release of information policy](#), there is

now a formal proactive release policy. It would be advantageous for Waka Kotahi to include details of its reporting arrangements to senior leaders and its proactive release decision making framework in the policy.

Action points

Improve details in regular reporting of statistics to senior leadership

Include information requests handled by the Media team in OIA statistical reporting

Quality measures

Good quality performance monitoring enables agencies to learn from previous practice in order to inform future practice. As noted in [OIA practices](#), Waka Kotahi staff should ensure adequate recording of internal practices and decision making on OIA requests. This will serve as a check that all necessary elements have been considered before a decision is made, and build up a resource for staff to refer to when considering the appropriate approach. It is also integral for quality assurance purposes.

Waka Kotahi's Manager, Ministerial Services team checks all correspondence before it is provided to the requester. OIA requests also go through a sign-out process before being sent to requesters. Waka Kotahi has advised that more complex requests are subject to review by a second tier manager on an ad-hoc basis. I commend the agency on its robust review process.

A quality assurance process differs from peer review. Quality assurance is conducted once the process of responding to the request is complete, and has a broader focus on the effectiveness of the process as a whole. There is a wealth of qualitative data to be gained from incorporating quality assurance into the OIA process. When analysed effectively, this can be used to inform improvements in the OIA process, including:

- ensuring consistency in the agency's approach across similar requests;
- determining the reason for any delays; and
- identifying areas for training.

The quality of OIA responses may encompass factors such as a robust and adequately documented decision making process, the inclusion of contextual information to assist requesters, and the quality of response letters. Establishing a system of quality assurance could assist Waka Kotahi to identify where additional training needs or support may be needed in a particular business unit, and to recognise excellent performance where it exists.

Action point

Develop a quality assurance process for completed OIA requests

Appendix 1. Official information practice investigation — terms of reference

Waka Kotahi

November 2019

This document sets out the terms of reference for a self-initiated investigation by the Chief Ombudsman into the practices of Waka Kotahi relating to the Official Information Act 1982 (OIA).²⁹

Purpose of the investigation

The investigation will cover how the selected agencies work to achieve the purposes of the Official Information Act through its processing and decision making on requests for information. It is essentially a follow-up to the 2015 investigation.

The investigation will assess how well the agency has implemented the action points raised in the 2015 investigation of its OIA practices, and will also consider its current official information practices, policies and culture. This will include consideration of the agency's administrative structures, leadership and culture, processes and practices, including information management, public participation and proactive release of information, to the extent that these relate to achieving the purposes of the OIA.

The investigation will identify areas of good practice, and make suggestions for improvement opportunities where areas of vulnerability are identified.³⁰

Scope of the investigation

The investigation will evaluate each agency's leadership and culture, organisational systems, policies, practices and procedures needed to achieve the purposes of the OIA, with the primary focus being how each agency has progressed with its implementation of action points from the 2015 *Not a Game of Hide and Seek* investigation. We may also investigate any new issues relating to the agency's official information culture, policy and practice that arise through the surveys or review of policies and guidance documents about Official Information processing, records management and information management.

²⁹ See sections 13(1) and 13(3) of the Ombudsmen Act 1975 (OA).

³⁰ Formal recommendations under the OA will only be made if the Chief Ombudsman forms an opinion that a decision, recommendation, act, or omission by the agency was unreasonable or contrary to law under section 22 of the OA.

The investigation will be underpinned by a set of indicators, grouped around the following dimensions:

- leadership and culture
- organisation structure, staffing and capability
- internal policies, procedures, resources and systems
- current practices
- performance monitoring and learning.

It will also compare data collected in, or relating to, the period of the 2015 investigation with current data to assess whether the agency has made improvements in any area(s). This data may include:

- Waka Kotahi's OIA statistics
- complaints received by the Office of the Ombudsman
- results from agency, staff, and public surveys
- content on an agency's website.

A sample of decisions reached by the agency on individual OIA requests may be considered as part of this investigation, to assist the Chief Ombudsman's understanding of the agency's official information practices.

If evidence emerges concerning specific examples of OIA breach, then a determination will be made in each case as to whether it can be addressed adequately within this investigation, or whether a separate stand-alone intervention is warranted. Any process issues which can be resolved during the course of the investigation will be addressed immediately.

Investigation process

The Manager Official Information Practice Investigations will work with a team of Senior Investigators and Investigators to assist the Chief Ombudsman in conducting the investigation. The investigation team will liaise with your nominated contact official during the investigation. Information may be gathered through the processes set out below.

Information gathering

Information will be gathered through desk research, a survey of each agency's official information practices, a staff survey, meetings with key staff, and a survey of the public. A sample of decisions reached by the agency on individual OIA requests may also be requested and considered as part of this investigation. As would be the case with any investigation conducted by the Ombudsman, any information requested of an agency by this Office during this investigation will be subject to the secrecy provisions in section 21 of the Ombudsmen Act 1975 (OA). Requests for information will be made pursuant to section 19 of the OA.

Desk research

A review of publicly available information including the agency's annual reports, strategic intentions documents, and any other material made available on its website. Desk research will also review data and information held by the Office of the Ombudsman (for example, statistical data), and statistics published by Waka Kotahi regarding reported OIA timeliness.

Surveys

A survey of the agency, including requests for the supply of internal documents about:

- the steps taken to implement action points suggested by the Chief Ombudsman in the 2015 investigation; and
- policies and guidance documents related to official information processing, record-keeping and information management.

A survey of agency staff, canvassing:

- Views of the agency's leadership and culture in relation to official information and transparency more generally.
- Views of the agency's policies, processes, training and resources relating to official information.
- Views of the agency's record-keeping and Information Management systems, policies, training and resources, inasmuch as these impact the agency's ability to discharge its official information obligations.

A survey of members of the public (including journalists/other media) that have sought information from the agency. The Chief Ombudsman may issue a media release that includes a link to the public survey, and will ask each agency to include a link to the survey on its public website.

Note that we may also request any other documents or information required to investigate issues that arise as a result of meetings with staff; and agency, staff and public surveys.

Meetings

The investigation team will meet with:

- the tier-two manager responsible for the agency's official information processing function; and
- the manager of the team that processes official information requests.

In addition, further meetings may be scheduled with other staff members after information collected from the agency and through staff and stakeholder surveys has been analysed by the investigation team.

My staff will also meet with staff of the Minister's office who liaise with Waka Kotahi on responses to OIA requests.

Staff members selected to meet with the investigation team will be provided with information about the meetings process and the purpose of the meeting. The meetings will be digitally (audio) recorded. Meetings are likely to take approximately one hour.

Other

A review of the agency's intranet.

Follow up period

After information has been gathered through the methods outlined above, the investigation team may request additional information or clarification from the agency on points that may have arisen throughout the course of the investigation, to assist our understanding of matters of fact and to provide the opportunity for further relevant information to be supplied.

Reporting

Draft report

The draft report of the Chief Ombudsman's investigation will incorporate good practices as well as any issues that may have been identified during the investigation. The draft report will outline the Chief Ombudsman's provisional findings and, when relevant, identify the suggestions and/or recommendations that may be made to improve the agency's official information practices. The draft will be provided to the Chief Executive for comment.

Final reports

Comments received on the draft report will be considered for amendment of, or incorporation into, the final report.

The final report will be sent to the agency's Chief Executive, relevant Ministers, published on the Ombudsman's website, and tabled in Parliament. Note that the published version of the report will not include detail of our assessment of the agency's progress toward implementing action points from the 2015 *Not a Game of Hide and Seek* investigation. We committed to each agency at the time that the details of the 2015 investigation for each agency would not be made public.

In addition to individual reports, we will produce an 'omnibus' report which will outline general trends across all agencies. Because this will be a summary of the final opinions for each agency, a draft of this report will not be provided to the agencies as they will have already had chance to comment on our findings.

Evaluation

Following completion of his investigation, the Chief Ombudsman will conduct a review exercise as part of his Continuous Improvement programme. This will involve seeking the views of the agency's senior managers on their experience of this practice investigation, its value and relevance to their improving their work practices, and how future investigations may be improved when applied to other agencies.

Appendix 2. Key dimensions and indicators

Introduction

There are five key dimensions that have an impact on official information good practice in government agencies:

1. [Leadership and culture](#)
2. [Organisation structure, staffing and capability](#)
3. [Internal policies, procedures and resources](#)
4. [Current practices](#)
5. [Performance monitoring and learning](#)

These dimensions are underpinned by a series of **indicators**, which describe the elements of good practice we would expect to see in order to evaluate whether each of the dimensions is being met.

These indicators are not exhaustive and do not preclude an agency demonstrating that good practice in a particular area is being met in other ways.

Leadership and culture

Achieving the purposes of the Act³¹ largely depends on the attitudes and actions of leaders, including Ministers, chief executives, senior leaders and managers within the agency. Ministers, chief executives and senior managers should take the lead in promoting openness and transparency, and championing positive engagement with official information legislation.

Elements	Things to look for (indicators)
Ministers, chief executives, senior leaders and managers demonstrate a commitment to the agency meeting its obligations under the Act and actively foster a culture of openness within the agency	<ul style="list-style-type: none"> ✓ Chief executives, leaders and the relevant Minister(s) actively and visibly work together to promote a culture of positive OIA compliance and good administrative practice ✓ Leaders make clear regular statements to staff and stakeholders in support of the principle and purposes of official information legislation, reminding staff of their obligations ✓ Leaders demonstrate clear knowledge and support of the Act's requirements ✓ Leaders encourage staff to identify areas for improvement and provide the means for suggesting and implementing them when appropriate ✓ Leaders make examples of good practice visible ✓ A visible and explicit statement exists about the agency's commitment to openness and transparency about its work

³¹ 'The Act' refers to the Official Information Act 1982

Elements	Things to look for (indicators)
<p>Senior leadership have established an effective official information strategic framework which promotes an official information culture open to the release of information</p>	<ul style="list-style-type: none"> ✓ The agency has a strategic framework describing how it intends to achieve: <ul style="list-style-type: none"> – Compliance with the Act – Good practice – A culture of openness and continuous improvement – Participation and access to information by the public and stakeholder groups ✓ Senior leadership takes an active role in the management of information ✓ A senior manager has been assigned specific strategic responsibility and executive accountability for official information practices including proactive disclosure ✓ Senior managers have accountabilities for compliance with the Act ✓ Appropriate delegations exist for decision makers and they are trained on agency policies and procedures and the requirements of the Act ✓ Senior leaders model an internal culture whereby all staff: <ul style="list-style-type: none"> – Are encouraged to identify opportunities for improvement in official information practice (including increasing proactive disclosure) and these are endorsed and implemented – Are trained to the appropriate level for their job on official information policies and procedures and understand the legal requirements – Have compliance with the Act in their job descriptions, key performance indicators, and professional development plans ✓ Senior leaders oversee the agency's practice and compliance with the Act, the effectiveness of its structures, resources, capacity and capability through regular reporting. Any issues identified that risk the agency's ability to comply with the Act are actively considered and addressed

Senior leadership demonstrate a commitment to proactive disclosure, and public participation with clear links to the agency's strategic plans, thereby creating a public perception, and a genuine culture of openness

- ✓ Senior leaders are committed to an active programme of proactive disclosure and stakeholder engagement where the agency seeks and listens to the public's information needs through:
 - Regular stakeholder meetings and surveys
 - Reviewing and analysing requests and media logs
 - Reviewing and analysing website searches
- ✓ There is clear senior leadership commitment to the proactive release of information resulting in the agency publishing information about:
 - The role and structure of the agency and the information it holds
 - Strategy, planning and performance information
 - Details of current or planned work programmes, including background papers, options, cabinet papers and consultation documents
 - Internal rules and policies, including rules on decision-making
 - Corporate information about expenditure, procurement activities, audit reports and performance
 - Monitoring data and information on matters the agency is responsible for
 - Information provided in response to official information requests
 - Other information held by the agency in the public interest
- ✓ The agency holds up to date information that is easily accessible (easy to find, caters for people requiring language assistance or who have hearing or speech or sight impairments) about:
 - What official information it holds
 - How it can be accessed or requested by the public and its stakeholders
 - How to seek assistance
 - What the agency's official information policies and procedures are (including charging)
 - How to complain about a decision
- ✓ The agency makes information available in different formats, including open file formats
- ✓ The agency's position on copyright and re-use is clear
- ✓ The public and stakeholders perceive the agency to be open and transparent

Organisation structure, staffing and capability

Responding to official information requests is a core function of the public sector. Therefore, it is expected agencies will organise their structure and resources to ensure they are able to meet their legal obligations under the Act considering each agency's size, responsibilities and the amount of information held.

Elements	Things to look for (indicators)
<p>Agency has the capacity to discharge its official information obligations, with clear and fully functioning:</p> <ul style="list-style-type: none"> • roles; • accountabilities; • reporting lines; • delegations; and • resilience arrangements. 	<ul style="list-style-type: none"> ✓ An appropriate, flexible structure exists to manage official information requests which is well resourced reflecting the: <ul style="list-style-type: none"> – Size of the agency – Number of requests received (and from whom, public, media, other) – Number or percentage of staff performing official information functions in the agency – Percentage of time these staff are also required to undertake other functions – Need to respond within statutory time limits – Use of staff time, specialisations, structural resilience ✓ Roles and responsibilities are clearly defined: <ul style="list-style-type: none"> – Specific responsibility exists for coordinating, tracking and monitoring official information requests and agency decisions (and ombudsman decisions) and there is the authority and support to ensure compliance³² – Decision makers are sufficiently senior to take responsibility for the decisions made and are available when required, and if not, resilience arrangements exist. – The official information function is located in an appropriate unit or area within the agency that facilitates effective working relationships with relevant business units (for example; media and legal teams)

³² This indicator is also relevant to performance monitoring and learning.

Elements	Things to look for (indicators)
Agency has the capability to discharge its official information obligations	<ul style="list-style-type: none"> ✓ Training at all levels on the requirements of the Act is provided regularly and staff are expected to attend, and to apply the knowledge acquired ✓ Training is role specific with additional training for senior managers, decision makers and staff with official information responsibilities to support their work ✓ Expectations are set by senior leaders that regular refreshers are provided to all staff ✓ Training is provided on information management and record keeping that is role-specific and includes guidance on information retrieval as well as information storage ✓ The process for staff to assess and make decisions on official information requests is clear, understood, up to date and staff apply and document the process ✓ Agency staff, including front line staff and contractors, know what an official information request is and what to do with it ✓ User-friendly, accessible resources, guidance and 'go to' people are available ✓ Staff official information capability is regularly assessed and monitored through, for example, performance reviews and regular training needs analyses ✓ Official information obligations are included in induction material for all staff ✓ The agency's internal guidance resources are accessible to all staff

Internal policies, procedures and resources

Agencies should develop or adopt policies and procedures that will assist staff to consistently apply the requirements of the Act supported by good systems, tools and resources ensuring effective processing of requests consistent with the requirements of the Act.

Elements	Things to look for (indicators)
<p>The agency has good official information policies, procedures and resources that are accurate and fit for purpose</p>	<ul style="list-style-type: none"> ✓ Good policies, procedures and resources exist for receipt and assessment of requests, which cover: <ul style="list-style-type: none"> – What is official information – Identifying the type of official information request received (Part 2, 3 or 4 of OIA) and distinguishing from Privacy Act requests – Identifying the scope of the request – Consulting with and assisting the requester – Establishing the eligibility of a requester when necessary – Logging requests for official information – Acknowledging receipt of the request – Correctly determining statutory time limits and tracking the handling of the requests – Identifying who in the agency should respond to the request – Establishing criteria for deciding whether, and if so, how a response to a request should be provided urgently – Managing potential delays (including the reasons for them, the escalation process and invoking the extension provision) ✓ Good policies, procedures and resources exist for information gathering on requests, which cover: <ul style="list-style-type: none"> – Identifying the information within the scope of the request – Searching, finding and collating the information at issue – Documenting the search undertaken for the information within the scope of the request (including time taken if charging is likely) – Transferring requests to other agencies or Minister(s) and advising the requester – Consulting officials within the agency and third parties – What to do if the information is held by a contractor covered by the Act by virtue of section 2(5) of the OIA – Engaging with Ministers on official information requests ✓ Good policies, procedures and resources exist for decision making on requests, which cover: <ul style="list-style-type: none"> – Making a decision whether to release the information

Elements	Things to look for (indicators)
	<ul style="list-style-type: none"> - Making a decision on the format in which information is released - Making a decision whether to charge for the release of information - Guidance on application of withholding or refusal grounds relevant to requests made under Parts 2, 3 and 4 - Guidance on any statutory bars on disclosure relevant to the legislation the agency administers - Imposing conditions on release where appropriate - Advising the requester of the decision - Recording reasons for each item of information withheld, and the agency's consideration of the public interest in release where required ✓ Good policies, procedures and resources exist for releasing requests, which cover: <ul style="list-style-type: none"> - Providing the information in the form requested - Preparing information for release (including redactions) ✓ The agency has tools and resources for processing official information requests, such as templates, checklists, 'go-to' people, effective tracking and monitoring systems, and redaction software and staff are trained on how to use them. ✓ The agency's official information policies, procedures and resources are regularly reviewed and up-to-date ✓ Staff find them useful and easy to access
The agency has appropriate record keeping and information management policies, procedures and resources	<ul style="list-style-type: none"> ✓ Staff are able to identify, access and collate information that has been requested under the Act ✓ The agency has accurate and comprehensive records and information management policies, procedures and resources which enable information relevant to a request to be identified and collated ✓ The policies and procedures cover aspects such as: <ul style="list-style-type: none"> - Creating, organising, maintaining and storing records - Managing and modifying records - The security of information - A guide to determining which records systems exist and what information each holds - Retaining, retrieving and disposing of records - Both manual and electronic records, including personal e mail accounts, instant messaging and text messages

Elements	Things to look for (indicators)
	<ul style="list-style-type: none"> - Assigned responsibilities and performance criteria for records and information management by staff - The provision of secure audit trails - Annual/periodic audits of records ✓ These policies and procedures are regularly reviewed and up-to-date ✓ Staff find the policies and procedures useful and easy to access
<p>The agency has accurate and comprehensive proactive release policies, procedures and resources</p>	<ul style="list-style-type: none"> ✓ The policies and procedures cover the release of such things as: <ul style="list-style-type: none"> - Information that has been released in response to official information requests - Information described in section 20 of the OIA about the agency and the information it holds - Information described in section 22 of the OIA about the agency's internal decision making rules, including its official information policies and procedures - Strategy, planning and performance information - Financial information relating to income and expenses, tendering, procurement and contracts - Information about work programmes and policy proposals - Information about public engagement processes, including public submissions - Minutes, agendas, and papers of advisory boards or committees - Information about regulatory or review activities carried out by agencies ✓ The policies and procedures include a process for identifying opportunities for proactive release, for example, where a high number of official information requests are received about a subject ✓ The policies and procedures include a process for preparing for proactive release, including managing risks around private or confidential information, commercially sensitive information and information subject to third party copyright ✓ The policies outline how and where the information should be made available for access, and if any charge should be fixed ✓ They are regularly reviewed and up-to-date ✓ Staff know about the agency's proactive release policies and procedures ✓ Staff find the policies useful and easy to access

Current practices

The effectiveness of the Act is largely dependent on those who implement it on a day to day basis and how they apply the resources available to them to manage the realities of giving effect to the Act.

Elements	Things to look for (indicators)
Official information practices demonstrate understanding, compliance, and commitment to the principle and requirements of the Act	<ul style="list-style-type: none"> ✓ The agency complies with maximum statutory timeframes to transfer, extend, decide on requests, and release official information ✓ Requests are handled in accordance with the applicable law (Privacy Act, Part 2 OIA, section 22 OIA, section 23 OIA, Part 4 OIA) ✓ The agency makes appropriate use of the withholding grounds and administrative reasons for refusal ✓ The agency makes appropriate use of the mechanisms for dealing with large and complex official information requests ✓ The agency gives proper consideration to the public interest in release of official information, and explains this to requesters ✓ The agency interprets the scope of official information requests reasonably ✓ The agency consults with, and provides reasonable assistance to requesters ✓ The agency consults appropriately with third parties ✓ Ministerial involvement in agency official information decision making is appropriate ✓ The process for escalation of issues is used where necessary and is effective ✓ Official information is released in the form requested unless there is a good reason not to ✓ Consideration is given to releasing information in accessible formats ✓ There is evidence that agency practice aligns with its policies and procedures ✓ Staff regularly use the agency's policies and procedures

Elements	Things to look for (indicators)
The agency has good record keeping and information management practices	<ul style="list-style-type: none"> ✓ The agency documents its handling of official information requests, including the steps taken to search for the requested information, the information identified as relevant to the request, and the reasons for its decisions ✓ The agency's records and information management practices facilitate official information compliance (it is generally easy to find information that has been requested under the Act) ✓ Staff regularly use the Agency's records and information management policies and procedures as described in 'The agency has appropriate record keeping and information management policies, procedures and resources' indicator under Internal policies, procedures, and resources
The agency has good proactive release practices	<ul style="list-style-type: none"> ✓ The agency's entry in the <i>Directory of Official Information</i> is full, accurate and likely to assist requesters, and is linked from, or reproduced on, the agency's own website ✓ The agency publishes useful information online including the types of information described in the 'The agency has accurate and comprehensive proactive release policies, procedures and resources' indicator under Internal policies, procedures, and resources ✓ The agency publishes information in multiple formats, and applies open use standards ✓ The agency's position on copyright and re-use is clear ✓ Staff use the agency's proactive release policies and procedures where applicable

Performance monitoring and learning

Agencies should adopt performance monitoring and learning frameworks that enable them to learn and drive performance improvement and innovation.

Elements	Things to look for (indicators)
<p>The agency has an established system for capturing and analysing data to inform meaningful and appropriate performance measures</p>	<ul style="list-style-type: none"> ✓ Performance measures include: <ul style="list-style-type: none"> – Quantity – for example the number of requests, from where and the number processed – Efficiency – for example duration of request handling, number of responses that exceed legislative maximum time limits, the reasons for any delays – Quality – for example outcome of any internal quality assurance reviews and/or external reviews of official information decisions and processes and whether or not the results of those reviews provide evidence of system wide issues – Monitoring of opportunities for proactive release – for example identifying common types of requests or a high number that indicates information that could be made available ✓ The agency collects data about its performance under the Act including such things as: <ul style="list-style-type: none"> – The number of requests – The type of request (Part 2, 3 or 4 of the Act) – The type of requester (for example; media, political researcher, corporation, individual citizen, Member of Parliament, interest group, etc.) – The information sought – The number and reason for transfers, and whether the transfer was made in time – The number, length and reason for extensions – The outcome of the request (granted in full, granted in part, refused in full, withdrawn or abandoned) – The number and amount of charges made and collected – The grounds on which information was withheld or the request refused – Whether the requester was consulted prior to any refusal under section 18(f) – Whether the Minister was consulted on the decision – Whether the decision was notified to the Minister – Whether, and which, third parties were consulted

Elements	Things to look for (indicators)
	<ul style="list-style-type: none"> - The time from receipt of the request to communication of the decision - The time from receipt of the request to release of the information - If the time limit (extended or not) was breached, the reasons for the delay - Whether the response was proactively published and if not, why - Whether the Ombudsman investigated or resolved a complaint about the request - The outcome of the Ombudsman’s investigation or involvement - The outcome of any internal quality assurance reviews of processes or decisions - Staff time spent and costs incurred in processing official information requests, including the time spent assisting in processing requests by staff who are not in core OIA roles ✓ The agency analyses this data to determine whether it is complying with its relevant performance measures ✓ The agency monitors information demand (for example, through official information requests, website use, and other enquiries) to identify opportunities for proactive release ✓ The agency monitors any difficulties in identifying and collating information that has been requested
There is regular reporting about the agency’s management and performance in respect of official information requests	<ul style="list-style-type: none"> ✓ Data about the agency’s official information performance, and information demand is regularly reported to senior leaders, and at least quarterly to the Chief Executive ✓ Reports include emerging themes or trends, opportunities for improvement and proactive release, resourcing, capacity or capability (training) issues ✓ Reporting informs planning, resourcing and capability building decisions

Elements	Things to look for (indicators)
The agency learns from data analysis and practice	<ul style="list-style-type: none"> ✓ The agency has a system for sharing official information learning and experience, such as meetings, newsletters, email or intranet updates, or official information <i>'champions'</i> ✓ The agency monitors relevant data, guidance and publications, including those produced by the Ombudsman and Public Service Commission ✓ The agency monitors the outcome of Ombudsman investigations and reports these to relevant staff, including official information decision makers ✓ The agency analyses this information to determine where it has the potential to improve official information practice, stakeholder relations, or increase opportunities for public participation ✓ The agency periodically reviews its relevant systems, structures, and compliance with policies and procedures ✓ The agency actively participates in initiatives to share and discuss best practice externally, for example through forums, interest groups, networks and communities of practice

Document ends



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