



# FAQs: official information requests during a general election period

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## The ‘general election period’

### What does the ‘general election period’ mean?

For the purposes of this FAQs, the ‘*general election period*’ refers to the period from the commencement of ‘pre-election’ to the last date that the House of Representatives can meet, following the establishment of a New Government. The 2023 General Election will be held on Saturday 14 October 2023.

### What is the timeline for the 2023 ‘general election period’?

The tentative timeframe for the 2023 general election period is:

Date	General election event
19 January 2023	Prime Minister announced that the 2023 General Election will be held on Saturday 14 October 2023
14 July 2023	Regulated period for election advertising expenses begins
8 September 2023	The 53rd Parliament (House of Representatives) is dissolved.
10 September 2023	<ul style="list-style-type: none"> <li>Writ day – Governor-General issues formal direction to the Electoral Commission to hold the election;</li> <li>Last day to ordinarily enrol to vote (late enrolments must cast special votes); and</li> <li>Official campaigning begins; radio and television advertising begins.</li> </ul>
27 September 2023	Overseas voting begins.
2 October 2023	Advance voting begins.
13 October 2023	<ul style="list-style-type: none"> <li>Advance and overseas voting ends;</li> <li>Last day to enrol to vote (except in-person at polling places); and</li> <li>The regulated election advertising period ends; all election advertising must be taken down by 11:59pm.</li> </ul>
14 October 2023	<ul style="list-style-type: none"> <li>Election Day; and</li> <li>Preliminary election results released progressively after 7:00pm.</li> </ul>
3 November 2023	Official election results declared.
9 November 2023	Last day for return of the writ

Following the announcement of the results, a caretaker government will be put in place until the New Government is sworn in. Prior to this, politicians will decide on the formation of the New Government and announce the Ministerial List.

## Tools and strategies for managing requests

### What are some of the tools and strategies for managing official information requests during the general election period?

Some of the tools and strategies for managing official information requests at this time include:

- **Communicate with the general public** about how your agency is handling official information requests at this time. A good place to do this is on the agency's webpage;
- Consider **proactively publishing** information that is likely to be in demand over the general election period. Proactively publish official information request responses that are likely to be in the wider public interest;
- Ensure **proper triage and scoping** of requests as soon as possible after they are received. This will set you up for clear and effective communication and consultation with requesters;
- As part of the triage process, identify those requests that warrant **urgent or priority** treatment, such as requests for information about topical issues;
- Ensure that **records** created or received by agencies and ministers in the conduct of their affairs are handled in accordance with the **Public Records Act 2005**.<sup>1</sup>
- **Communicate promptly and clearly with individual requesters** about any difficulties you are experiencing in processing their request, and the implications for your response time;
- Effective **consultation with requesters** will enable you to gain a proper understanding of what is sought and how it can be provided without an unnecessary or unreasonable amount of work;
- Seeking early **amendment or clarification** of broad or unclear requests (within the first seven days), will mean the amended or clarified request can be treated as a new one, for the purpose of calculating the response time;
- Consider **alternative ways of meeting the request** where it is not possible to provide exactly what has been requested, in the way preferred by the requester. This could include:
  - releasing a subset or sample of the information at issue;
  - releasing other information;
  - releasing the information in an alternative form (like a summary); or

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<sup>1</sup> The [Public Records Act 2005](#) establishes the regulatory framework for information and records management throughout the public sector. "Public records" are information that is compiled, recorded, or stored in any form that are created or received by public offices, including ministers, in the conduct of their affairs.

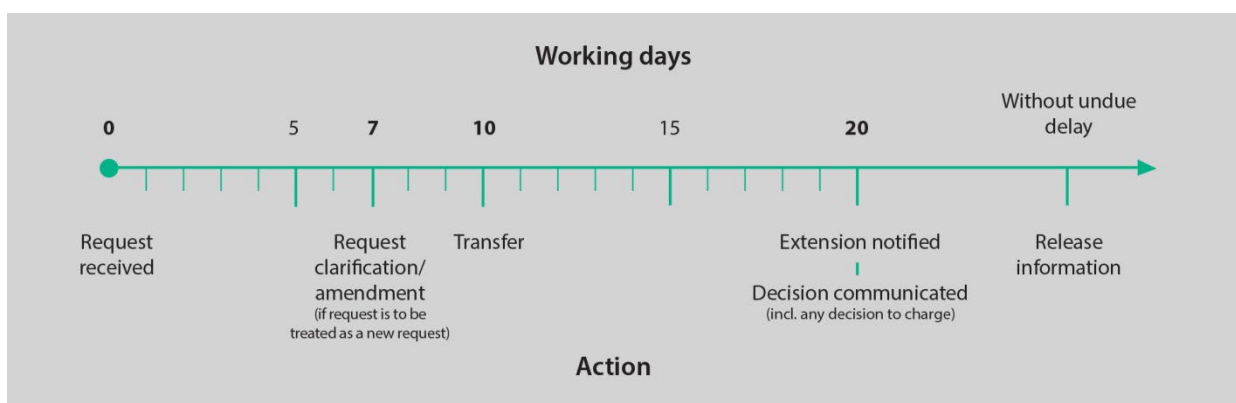
- releasing the information on conditions.

See more information about these options in our [Substantial collation and research guide](#).

- Consider whether charging would enable you to meet requests that would otherwise need to be refused because of the amount of work that would be required. See more information our [Charging guide](#).

## Key timeframes

### What are the timeframes under the OIA during the general election period?



All official information timeframes remain the same during the general election period.

Individual requesters should also be kept up to date about their requests, particularly if there are any unavoidable delays.

An agency's legal timeframe requirements for responding to requests for official information are to:

- make a decision and communicate it to the requester *'as soon as reasonably practicable'* and no later than 20 working days after the request is received; and
- make available any official information it has decided to release without *'undue delay'*.

These legal timeframes will be viewed by the Ombudsman within the general election context. For example, requesters may genuinely be seeking information before the general election, and this should be taken into account in considering any request for urgency. Where necessary in a particular case, additional timeframe requirements are to:

- request clarification of a request within 7 working days, if the amended request is to be treated as a new request;

- transfer a request to another agency promptly, and no later than 10 working days, after the request is received;
- extend the maximum time limits to make a decision or transfer a request, within 20 working days after the day on which the request was received.

## **The requester has asked for an urgent response, what do we need to do?**

A requester may ask that a request be treated as urgent, and if so must give the reasons for seeking the information urgently.<sup>2</sup> An agency should consider any request for urgency, and assess whether it would be reasonable to give the request priority. A key issue to be aware of is whether the requestor is seeking the information prior to the General Election date to help inform the electorate.

Notwithstanding a request for urgency, the agency's legal obligations remain the same:

- to make and communicate the decision on the request as soon as reasonably practicable and no later than 20 working days after the day on which the request was received; and
- to release any official information without undue delay.

However, a genuine and legitimate need for urgency may affect when it is '*reasonably practicable*' to make a decision on the request, and what would constitute '*undue delay*' in releasing the information.

Things that might warrant a request being given more urgent treatment at this time include information needed allow the electorate to cast an informed vote, decisions that involve public health and safety, or those that affect someone's financial circumstances, housing situation or family circumstances.

If there is an administrative burden in making information available urgently, an agency may wish to consider fixing a charge. Section 15(2) suggests that any charge fixed on supplying information can include 'any costs incurred pursuant to a request of the applicant to make information available urgently'. However, any decision to charge should consider whether reduction or waiver of any proposed charge may be appropriate having regard to the circumstances of the requester and the public interest in release of the information.

## **What if we cannot answer a request on time during the general election period?**

If you are still within the original 20 working day period, consider whether an extension is warranted. See '[Extensions](#)' for further information on the criteria for extensions.

If it looks like you will be unable to meet the original or extended time limit, consider contacting the requester to let them know the current state of play and reasons for the delay.

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

Requesters will appreciate being kept informed, and may be more understanding if the agency ends up in breach of the timeframe requirements.

Another option is to provide a staged reply. If part of the response is ready to go, there is often no need to hold that up in order to deal with the remaining issues. This approach may be especially relevant over the general election period where information may have a high public interest attached, for instance.

Requesters are entitled to complain to the Ombudsman if they do not receive the decision on their request within the original or extended time. The Chief Ombudsman will take the current general election period and associated circumstances into account when deciding how to deal with complaints about delays or extensions.

### **Is proactive release a good option during the general election period?**

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

Proactive release of information to the public promotes good government, openness and transparency and fosters public trust and confidence in agencies. It also has administrative benefits for the agency, including by reducing requests for information which is already publicly available, and allowing for greater ease of handling of the requests that are received.

See the Ombudsman's [Proactive release guide](#), and [Publicly available information guide](#) for more information.

### **Can we refuse a request on the basis that we are planning to proactively publish the information?**

An agency may choose to proactively publish information that is likely to be the subject of requests during this period. If agencies can identify that the specific information that has been requested is or will soon be publicly available, section 18(d) of the OIA (section 17(d) of the LGOIMA) allows an agency to refuse the request.

The discretion to refuse a request on this basis must be exercised reasonably, with regard to the particular circumstances of each case. It is important during an election period to give consideration to whether the requester is seeking the information to help inform the electorate, and, if so, whether the information could be made available sooner than the planned release date. In such cases, it may not be reasonable to refuse the request on the basis that the information will be soon be publically available.

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

## Requests for official information to Ministers

### Are former Ministers still subject to the OIA?

No. Current Ministers are subject to the OIA, but only information held in their official capacity is ‘official information’.<sup>3</sup> This generally includes:

- briefings, reports and ministerial communications (including emails, text messages and various other formats)
- cabinet material
- portfolio information and other assignments.

Under the Public Records Act 2005, Ministers must create full and accurate records of their ministerial affairs, in accordance with normal, prudent business practice. All information created or received by a minister in their official capacity during their ministerial tenure must be treated as a public record in accordance with the Public Records Act. This includes text messages and instantaneous communication mechanisms.<sup>4</sup>

‘Official information’ does not include information that is held by a Minister:

- in their private capacity;
- in their capacity as an MP (electorate information); or
- in their capacity as a member of a political party (caucus information).

These are not public records, and as such they are not covered by the Public Records Act.

Once an individual ceases to be a Minister, they are no longer subject to the OIA in their own right. Information that was held by former Ministers will only be subject to the OIA if it is held by a current Minister or agency subject to the OIA

On leaving office, Ministers are required to return all internal agency material to the originating agency. Other information may be deposited with Archives NZ, or elsewhere.<sup>5</sup> An OIA request may therefore be made for this information. Alternatively, ministerial information may be disposed of under Chief Archivist guidelines.<sup>6</sup>

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<sup>3</sup> See paragraph (a) of the definition of ‘official information’ in s 2 OIA.

<sup>4</sup> Archives NZ guidance on managing digital communications can be found on the [Archives NZ](#) website.

<sup>5</sup> Guidance on ministerial recordkeeping, including retention and disposal of public records, can be found in section 8 of the [Cabinet Manual 2017](#).

<sup>6</sup> See [Archives New Zealand](#) guidance on disposal of records.



## At what point does ‘pre government’ information become information held by the New Government?

‘Official information’ is defined in section 2(1) of the OIA as including any information held by a Minister of the Crown ‘in his [or her] official capacity’. Information may be created in this capacity, or it may be held in other capacities<sup>7</sup> and later become ‘official information’ if it is subsequently used for official Ministerial purposes.

Information may be created following the dissolution of a government, and prior to the formation of a new government. When considering whether such information held by a Minister is ‘official information’ there are four key considerations:

- a. the purpose of the information;
- b. the nature and content of the information;
- c. the context in which it came to be held; and
- d. the use to which it has been put.

These factors should be considered to determine whether information is held or deemed to be held by a Minister in such a way that it becomes ‘official information’ for the purposes of the OIA.

Information held by agencies will be ‘official information’.

For more information see the Ombudsman’s case note for cases 467651 and 467523: [Request for document related to coalition negotiations between Labour and New Zealand First](#).

## How should we respond to requests for Briefings to the Incoming Ministers (BIMs)?

BIMs are official information and are subject to the OIA. The government may choose to proactively publish the BIMs produced by agencies for its new Ministerial List.

Agencies should consider any request for BIMs as a typical official information request and respond accordingly. The Ombudsman considered complaints about requests for BIMs following the 2017 election. See [cases 466794 and 467630](#) for more information.

## How should we respond to a request made to a former Minister where no decision was made before the Minister changed?

Once an individual ceases to be a Minister, they are no longer subject to the OIA in their own right and under no further obligation to respond to an official information request. This is because private individuals are not subject to the OIA.

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<sup>7</sup> Such as in their private capacity, in their capacity as an MP or a member of a political party.

Information that was held by former Ministers will only be subject to the OIA if it is held by a current Minister or agency subject to the OIA. (It is very important that Ministers meet their obligations under the Public Records Act to ensure that official information remains accessible before leaving office.)

Where the former Minister did not make and communicate a decision on the request before leaving office, and the information at issue is held by the new Minister, the new Minister should generally complete the process of dealing with the request.

The first issue to be determined is whether the information requested is held by the new Minister in their official capacity. If it is, then the request should continue to be progressed as normal. If it is not, then the Minister should consider whether to transfer the request to another agency or minister subject to the OIA or LGOIMA,<sup>8</sup> or refuse the request under sections 18(e) or (g) of the OIA (because the requested document does not exist, or the information is not held).

### **If a request is made to a current Minister for information held by a former Minister, can the current Minister's office transfer it to my agency to answer?**

If the current Minister receives a request for official information, and does not hold the information but the agency does, then the transfer obligations will apply to the current Minister.

### **What happens if the Ombudsman has an investigation currently open concerning a former Minister?**

If the Ombudsman has a complaint on hand about a decision made by a former Minister on an official information request, the new Minister will be provided with an opportunity to consider whether they agree with the former Minister's decision or propose to release the information. If the new Minister agrees with the decision of the former Minister, the investigation will likely continue. If the new Minister makes a new or amended decision, the Ombudsman will decide whether to continue with the investigation.

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<sup>8</sup> On the basis the information requested is believed to be held by or more closely connected with the functions of another agency.

## Extensions

### Can we extend the timeframe for responding because of the general election period?

Agencies may only extend the maximum response timeframe for the reasons set out under the OIA.

The permissible reasons for extension are where:<sup>9</sup>

- (a) *the request is for a large quantity of information or necessitates a search through a large quantity of information **and** meeting the original time limit would unreasonably interfere with the operations of the agency; or*
- (b) *consultations necessary to make a decision on the request are such that a proper response to the request cannot reasonably be made within the original time limit.*

At least one of these factors (volume or consultations required) must be present in a particular case in order to justify an extension. You might need to consult with the requester, internal agency staff, or any interested third parties to make a decision, and these people may not be readily available or reachable over this period.

Provided the extension is for a permissible reason, the impact of the general election period (including any reasons for dealing with the request urgently) could be a relevant factor in deciding whether *'meeting the original time limit would **unreasonably** interfere with the operations of the agency'* or whether *'a proper response to the request cannot **reasonably** be made within the original time limit'*.

There is also scope to consider the impact of the general election period in setting the period of the extension. Extensions must be *'a reasonable period of time having regard to the circumstances'*.<sup>10</sup> See [How long is 'a reasonable period of time' for extensions during the general election period?](#)

An agency will be expected to justify this to an Ombudsman on complaint.

### Can we extend the timeframe for responding to requests because our Minister is no longer available for consultation?

The fact that Ministers may not be readily available during the election period is not a reason to delay processing requests for information. The information itself should still be able to be considered by the agency. If an extension is to be made on the grounds of Ministerial consultation, an explanation given as to why consultation (as distinct from applying the 'no

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<sup>9</sup> See s 15A(1)(a) and (b) OIA and s 14(1)(a) and (b) LGOIMA.

<sup>10</sup> See s 15A(2) OIA and s 14(2) LGOIMA.

surprises' policy) is considered necessary before a decision can be made. The OIA does not require an agency to consult a Minister before responding to a request for official information.

### **Can we do a blanket extension for all the requests we are currently dealing with?**

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

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

### **How long is '*a reasonable period of time*' for extensions during the general election period?**

A '*reasonable period of time*' is not defined in the OIA—what amounts to a reasonable period of time for an extension will depend on the circumstances of the particular case.

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

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

## **Transfers**

### **Can we transfer a request to another Minister or agency that may hold the requested information?**

The requirement to transfer arises only where the information:<sup>11</sup>

- is not held by the agency, but is believed by the person dealing with the request to be held by another agency; or
- is believed by the person dealing with the request to be more closely connected with the functions of another agency.

Where the above circumstances only apply to part of the information requested, only the relevant part of the request should be transferred, rather than the request in its entirety. The

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<sup>11</sup> See s 14 OIA and s 12 LGOIMA.

transfer should make it clear what parts of the request are being retained by the original agency, and what parts are being transferred.

Any decision to transfer a request to another agency for response must be made promptly and no later than **10 working days** after the agency received the request (unless a valid [extension](#) of that time limit is made within 20 working days of the original request).<sup>12</sup> The requester must be informed that the request has been transferred.

## Advice for requesters

### Can I still request official information during the general election period?

Yes. Official information requests are important during an election period. It pays to have in mind some strategies for making your request in a way that ensures the agency can meet it. For instance:

- Be as specific as you can be;
- Refining the types of document covered by the request. You may be happy to accept key documents (such as final papers/reports, or reports/briefings to Ministers or Cabinet).
- Asking for a list of the documents that are potentially in scope of the request.
- Asking for the information at issue in an [alternative form](#) (such as a summary) or subject to conditions.

For further advice on making requests, please refer to [Making official information requests: A guide for requesters](#).

### The agency keeps telling me it's too busy to respond to my request, what should I do?

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

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

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

- a decision to refuse (or partially refuse) a request for information;
- delays in making a decision or in releasing information;
- a decision to extend any of the maximum time limits;

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

- a decision to charge for supplying information;
- the way in which information has been made available; and
- conditions imposed on the release of information.

The Chief Ombudsman's expectation is that individual requesters should be kept up to date about their requests, particularly if there are any unavoidable delays.

## **Can an agency ask me for more information or to change or clarify my request?**

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

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

Clarification or amendment of your request can result in it being treated as a new request that replaces the original one, except if the agency sought your clarification more than 7 working days after receiving your original request.<sup>13</sup>

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

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

- you;
- the agency's in-house policy or legal team, external legal advisors, a particular staff member, the chief executive or relevant Minister for their comments on the proposed response;
- external third parties who supplied or are the subject of the requested information (to see if they have any concerns about disclosure, for example in relation to privacy issues, understandings of confidentiality or commercial sensitivities); and
- any other agency with an interest in the information.

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

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

## Previous election-related cases

Previously, the Ombudsman has completed urgent election-related investigations into:

- [Student loans policy](#). This investigation concerned a request by The Office of the Leader of the Opposition for costings for Labour's interest-free student loan policy. The request was refused under section 9(2)(g)(iv) of the OIA. The Ombudsman recommended that the information be released.
- [The government's proposed mixed ownership programme](#). This investigation concerned three complaints about decisions by the Minister of Finance and the Treasury to refuse requests under sections 9(2)(f)(iv) and 9(2)(g)(i) the OIA. The Ombudsman found that the decisions were open to the Minister and Treasury.

## Further information and help

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

These FAQs will be updated as new issues arise or any advice changes.

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

### For people wishing to make a complaint

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

### For agencies

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