

Failure by Minister to respond to three OIA requests within the statutory timeframe

Legislation	Official Information Act 1982, ss 15(1), 28(1)(a), 28(5), 30(1)(b), 32(2); Ombudsmen Act 1975, s 22(1)(a)
Agency	Minister for Māori Development
Ombudsman	Peter Boshier
Case numbers	587032, 591938 and 592835
Date	September 2022 and December 2022

Failure by Minister for Māori Development to respond to three separate requests for official information within the maximum statutory timeframe - Ombudsman recommended that Minister make a decision on outstanding requests and review internal processes – in one case, Minister failed to meet public duty to observe Ombudsman recommendation within 21 days – Ombudsman advised Minister that the handling of that complaint was unacceptable – Minister apologised to requesters and to the Ombudsman and implemented recommendations

Background

The Chief Ombudsman dealt with three separate complaints in the second half of 2022 concerning delay by the Minister for Māori Development (the Minister) in responding to requests for official information under the Official Information Act 1982 (OIA).¹ The Ombudsman’s approach to delay complaints highlights the importance of compliance with the statutory timeframes.²

Complaint A

On 7 June 2022, the Minister received an OIA request for copies of relevant documents pertaining to ministerial exemptions under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 for several financial entities.

¹ Section 15(1) of the OIA requires that decisions on requests for official information are made and communicated ‘as soon as reasonably practicable’ and no later than 20 working days after the request is received.

² <https://www.ombudsman.parliament.nz/resources/ombudsmans-approach-delay-complaints-0>.

On 29 June 2022, the requester emailed the Minister about the lack of response to his request. The requester sent one further email to the Minister on 8 July 2022 on the same subject. On 11 July 2022, the requester complained to the Ombudsman.

Complaint B

On 30 May 2022, Te Puni Kōkiri received an OIA request for information about an appointment to the technical working group on the UN Declaration of the Rights of Indigenous People. On 10 June 2022, the request was transferred to the Minister's office. On 11 July 2022, an extension to the maximum time limit for making a decision and communicating it to the requester was made until 22 August 2022.

On 13 September 2022, the requester complained to the Ombudsman that they had not received a response to the request.

On 27 September, a decision on part of the request was made and communicated outside the extended statutory timeframe of 22 August 2022. (The decision covered the relevant documents but did not include emails within scope of the request.)

Complaint C

On 18 July 2022, the Minister received an OIA request for information relating to the 2018 Māori Media Sector Shift Review.

On 26 September 2022, the requester complained to the Ombudsman that a response had not been received.

Preliminary inquiries and investigation

Complaint A

The Minister was required to make and communicate a decision concerning **complaint A** by **Wednesday 7 July 2022**, at the latest.

On 5 August 2022, the Ombudsman made preliminary inquiries with the Minister's office, but received no response.

On 5 September 2022, the Ombudsman invited the Minister's comment on his provisional opinion that he had failed to comply with the requirement under section 15 of the OIA to make a decision and communicate it to the requester as soon as reasonably practicable (and no later than 7 July 2022). The Minister did not provide any response or explanation to the Ombudsman by the requested date of 19 September 2022. Nor did the Minister make and communicate a decision to the complainant.

On 28 September 2022, the Ombudsman finalised his opinion that the Minister had failed to meet the relevant statutory obligations under the OIA. The Ombudsman highlighted the failure to make and communicate a decision to the complainant, and the absence of any response or explanation for what had occurred.

In response, the Minister apologised for not responding to correspondence. The Minister stated that the information requested was straightforward and there was no reason for the delay other than staff failed to follow OIA processes.

Complaint B

The Minister was required to make and communicate a decision concerning **complaint B** by **22 August 2022** at the latest.

As noted above, the Minister made a decision and communicated his decision to requester on part of the request on 27 September 2022.

On 14 October 2022, the Ombudsman made preliminary inquiries with the Minister's office. In response, the Minister's office explained that the delay in making a decision on the request was due to a staffer failing to follow its OIA processes. In addition, the OIA processes were reviewed and an apology provided to the requester.

On 20 October 2022, the Ombudsman invited the Minister's comment on his provisional opinion that he had failed to comply with the requirement under section 15(1) of the OIA to make a decision and communicate it to the requester as soon as reasonably practicable (and no later than 22 August 2022. At this stage, the Ombudsman was under the misapprehension that a full decision on the request had been made since the initial complaint (dated 13 September 2022) but the information not released in its entirety.³

On 28 October 2022, after it became evident to the Ombudsman that the Minister had not in fact made a decision on the remainder of the request, the Ombudsman made further inquiries with the Minister about the ongoing delay. On 16 November 2022, in the absence of any communication in response from the Minister, the Ombudsman issued a second provisional opinion and advised the Minister of his proposed recommendation that the Minister make a decision on the remainder of the request as a priority.

In response, the Minister's office stated that the response to the first part of the request had been signed by the Minister and ready to send out on 1 September 2022 (after the due date of **22 August 2022**). However, it was not sent until 27 September 2002 due to human error. The response to the other part of the request was delayed due to the need to undertake consultation and would be finalised as soon as practicable. The Minister's office advised that all OIA responses had since been moved to a digital platform that enabled tracking to prevent recurrences of this type of issue.

The Ombudsman finalised his opinion that the Minister failed to meet the relevant statutory obligations under the OIA.

Complaint C

³ In light of the current approach to delays, the Ombudsman considered it necessary to proceed with the investigation.

A decision on **complaint C** was required to have been made and communicated by **15 August 2022** at the latest. On 19 October 2022, the Ombudsman made preliminary inquiries with the Minister's office, but received no response.

On 11 November 2022, the Ombudsman invited the Minister's comment on his provisional opinion that he had failed to comply with the requirement under section 15(1) of the OIA that he make a decision and communicate it to the requester as soon as reasonably practicable (and no later than 15 August 2022).

In response, the Minister's office stated that the delay was due to staff not processing the OIA request. The Minister confirmed that he had apologised to the requester for the failure to respond in a timely manner. (The Minister subsequently confirmed to the Ombudsman that a decision on the request had been made).

The Ombudsman finalised his opinion that the Minister failed to meet the relevant statutory obligations under the OIA.

Outcomes

In relation to all three complaints, the Ombudsman formed the final opinion that the Minister failed to meet the relevant timeliness obligations under the OIA.⁴ The Minister failed to make and communicate a decision on the requests as soon as reasonably practicable and no later than 20 working days after the requests were received, as required by section 15(1) of the OIA. The failure to meet these statutory obligations was contrary to law (section 30(1)(b) of the OIA and section 22(1)(a) of the Ombudsmen Act 1975 refer).

In relation to **complaint A**, the Ombudsman recommended that the Minister make a decision and communicate it to the requester as a priority, review his office's OIA procedures, and remind his staff of the statutory obligations under the OIA. The failure to observe the Ombudsman's recommendations by **28 October 2022** meant that the Minister did not meet the public duty to observe the recommendations of the Ombudsman under section 32(2) of the OIA within 21 days. As such, the Ombudsman informed the Minister of his intention to refer the case to the Solicitor-General for consideration and that he would publish a case note.

In early November 2022, the Minister's office apologised, provided a response to the requester,⁵ and confirmed that OIA processes had been reviewed. In light of this subsequent action, the Ombudsman decided not to refer the matter to the Solicitor-General. However, the Ombudsman stated that the handling of **complaint A** had been '*unacceptable*' and requested that his concerns were drawn to the Minister's attention.

⁴ Although ministerial staff were involved in preparing responses to all three OIA requests, the Minister was responsible for discharging the relevant OIA obligations.

⁵ The Minister declined the request under section 18(g) of the OIA, on the basis that the information was not held by the Minister (or his Department).

In relation to **complaint B**, the Ombudsman recommended that the Minister make a decision on the remainder of the request as a priority. In response, the Minister acknowledged that his office failed to meet the statutory obligations of the OIA and implemented the recommendation. The Ombudsman did not make a specific recommendation regarding **complaint C** as the information had already been released.

The Ombudsman wrote directly to the Minister, confirming that public attention would be drawn to cases where there was demonstrable non-compliance with OIA obligations. The Ombudsman expressed concern that there had been a trend of human error causing delays in responding to OIA requests in the Minister's office. He also noted that there had been a consistent lack of responses to correspondence. Overall, the Ombudsman emphasised that the lack of compliance with the statutory criteria in the cases was unacceptable.

The Minister expressed his apologies, on behalf of his office, to all three requesters, and to the Ombudsman for failing to process and provide official information in a timely manner.

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