



Chief Ombudsman’s opinion under the Ombudsmen Act 1975

Legislation	Ombudsmen Act 1975, sections 13 and 22 and Official Information Act 1982, sections 4, 15, 15A, 18 and 28 (see appendix for full text)
Agency	Ministry of Social Development
Complainant	Advisor to the National Party
Complaint about	Decision to implement a framework for managing a National Party Advisor’s requests for official information
Chief Ombudsman	Peter Boshier
Case number(s)	608773
Date	20 November 2023

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Summary

A National Party Advisor, who at the time was responsible for making requests on behalf of two National Party Members of Parliament, complained to me about the Ministry of Social Development (the Ministry)'s decision to implement a framework to manage his Official Information Act 1982 (OIA) requests.

The framework combined active case management with a threshold of 40 hours per week to manage the complainant's OIA requests. If the threshold of 40 hours per week was exceeded, the Ministry would consider using the OIA's mechanisms for managing administratively challenging requests, including extending the timeframe to make and communicate a decision, fixing a charge for the provision of official information, and making official information available to the complainant in a different format (for example, through providing a summary or allowing him to inspect the information).

The complainant sought my opinion on whether the framework was consistent with the OIA, and even if the OIA permits it, whether the framework was reasonable in the circumstances.

The Ministry advised that it implemented the framework because it experienced difficulty managing the complainant's OIA requests, which were often broad and complex in nature. The Ministry estimated that the equivalent of 1.5 full-time staff were required at any one time to process the complainant's requests. It was concerned that the situation was inequitable, as it affected the Ministry's ability to attend to other OIA requests.

I assessed the Ministry's decision and considered comments from the Ministry and the complainant. I formed the opinion that the framework was not inconsistent with the OIA and that the Ministry's decision to implement the framework was not unreasonable in the circumstances.

Chief Ombudsman's role

1. Under section 13(1) of the Ombudsmen Act 1975 (OA), I have the authority to investigate the administrative acts, decisions, omissions and recommendations of the Ministry.
2. My role is to consider the administrative conduct of the Ministry, and to form an independent opinion on whether that conduct was lawful and reasonable (sections 22(1) and 22(2) of the OA refer).
3. The relevant text of these statutory provisions is set out in the Appendix.

Background

4. On 25 October 2021, the complainant made an OIA request to the Ministry for information relating to the All of Government group.
5. On 22 November 2021, the Ministry extended the timeframe to provide a response.

6. On 16 December 2021, the Ministry advised it would grant the request, but that it would take some time to prepare the information for release. It advised it intended to provide the information by 6 May 2022.
7. That same day, the complainant complained to me that the Ministry had delayed in releasing the information.¹ The complaint was resolved without formal investigation after the Ministry agreed to release the information earlier than it had originally anticipated.
8. On 28 January 2022, the Ministry wrote to the complainant about his 16 December 2021 complaint. It noted that the complainant made 55 OIA requests to the Ministry, and 77 requests the Minister for Social Development and Employment in 2021. The letter stated that the complainant's requests were often broad and complex, sometimes overlapping and creating duplication of effort. It estimated that the equivalent of 1.5 full-time staff in the Ministry's OIA Team were required at any one time to manage the complainant's requests.
9. The letter outlined the OIA's mechanisms for managing administratively challenging requests but stated that the Ministry would prefer not to resort to them. It asked the complainant to prioritise his requests, be more particular with the information he sought, and be willing to clarify or refine his requests.
10. On 11 May 2022, the Ministry wrote to the complainant for a second time. It stated that he had made 43 OIA requests since the start of 2022 to the Ministry and its Ministers, many of which were broad, requesting '*all documentation and/or advice*' on a given topic. The Ministry described the situation as '*inequitable*' as it affected its ability to attend to other OIA requests. On that basis, the Ministry advised that it was implementing a framework to manage the complainant's requests. Specifically:
 - a. up to 40 hours per week in the OIA Team would be allocated for managing his requests (excluding time spent by other business units);
 - b. two advisors and their manager would be responsible for holding his requests and assessing them weekly;
 - c. where the complainant's requests were deemed too broad, the Ministry would request amendment or clarification, and might ask him to specify particular information or documents sought, or refine date ranges;
 - d. if the complainant did not respond to a request for amendment or clarification, the Ministry would consider the original request and might refuse his request under section 18(f) of the OIA, on the basis that the information requested cannot be made available without substantial collation or research;

¹ Complaint reference: 570923. Section 28(5) of the OIA refers.

- e. if the time managing the complainant's requests exceeded 40 hours per week, the Ministry would ask him to prioritise his requests so it could prioritise making decisions on the most important requests; and
- f. for requests that could not be managed in the allocation of 40 hours per week, the Ministry would consider making an extension, charging for the provision of official information, and making information available to the complainant in a different format (for example, providing a summary or allowing him to inspect the information).

Complaint

- 11. On 10 May 2023, the complainant complained to me about the Ministry's decision to implement the framework. He submitted that there is no mechanism in the OIA that specifically permits imposition of a framework for managing future requests on the basis of an individual's past requests. He considered that the Ministry's allocation of 40 hours per week for managing his requests was an explicit and implicit self-exemption from the statutory timeframe requirements in section 15 of the OIA.
- 12. The complainant further submitted that the framework was inconsistent with the OIA's purpose, created a blanket approach to the Ministry's processing of his requests, and had negative impacts on the Opposition's ability to hold Government to account.
- 13. He sought my opinion on whether the framework was consistent with the OIA, and even if the OIA permits it, whether the framework was reasonable in the circumstances.

Investigation

- 14. On 30 May 2023, I notified the Ministry of my investigation. I requested the relevant background information and an explanation of its decision to implement the framework.
- 15. The Ministry provided its response to my investigation on 29 June 2023. It explained that the complainant's 16 December 2021 complaint highlighted wider difficulties it was encountering in managing complex and/or frequent OIA requests. Such requests often demanded significant time and therefore affected the Ministry's ability to attend to other requests. In response, the Ministry developed internal guidance for managing complex or frequent requests. The guidance led to the implementation of the framework for managing the complainant's OIA requests. Similar frameworks have also been implemented for other requesters' requests.
- 16. The Ministry submitted that its internal guidance is a '*thinking tool*' to support staff to manage the time spent on requests. This is achieved by combining active case management and the OIA's mechanisms for managing administratively challenging requests in a logical sequence. The Ministry explained that the framework is not applied in a blanket manner. It still considers each request on a case-by-case basis.

17. The Ministry considered that the framework complements its obligations under the OIA. It furnished data to support this claim. In the 2021/22 financial year, its OIA Team extended the timeframe to make and communicate a decision on 38.3 percent of requests, took an average of 31 working days to respond, and 6.5 percent of responses were late. By comparison, following the introduction of the internal guidance, in the 2022/23 financial year, the OIA Team extended the timeframe to make and communicate a decision for 34.2 percent of requests, took an average of 24 working days to respond, and 4.9 percent of responses were late.²
18. The Ministry further advised me that it ceased using the framework to manage the complainant's OIA requests on 27 February 2023, after it found that the volume of his requests reduced following his move to a different advisor role for the National Party. The Ministry did not notify the complainant of this at the time, but advised him on 11 July 2023, following notification of my investigation.
19. On 28 September 2023, I wrote to the complainant with my provisional opinion that the Ministry had not acted unreasonably in this matter. The complainant commented on my provisional opinion. He reiterated his view that the Ministry's allocation of 40 hours per week was a fixed time allocation for processing his OIA requests. He also requested my opinion on whether the equivalent of 1.5 full-time staff processing OIA requests from the National Party was excessive, and whether the Ministry was entitled to restrict its processing to the equivalent of one full-time staff member. I considered the complainant's comments before forming my final opinion on his complaint.

Analysis and findings

The timeframe for making and communicating a decision

20. The OIA requires that decisions on requests are made and communicated '*as soon as reasonably practicable*' and no later than 20 working days after the day on which the request is received.³ The decision must convey whether the request is to be granted and, if so, in what manner and for what charge (if any).⁴
21. If a decision cannot reasonably be made and communicated within the original 20 working day timeframe, the OIA permits that extensions may be made if:⁵
 - (a) *the request is for a large quantity of official information or necessitates a search through a large quantity of information and meeting the original time limit would unreasonably interfere with*

² The Ministry provided statistics for the 2022/23 financial year to 28 June 2023.

³ Section 15(1) of the OIA refers.

⁴ Section 15(1)(a) of the OIA refers.

⁵ Sections 15A(1)(a) and 15A(1)(b) of the OIA refer.

the operations of the department or the venture or the Minister of the Crown or the organisation; 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.*

22. Extensions must be communicated within the original 20 working day timeframe, and they must be for a reasonable period of time having regard to the circumstances.⁶
23. In most circumstances, there will be no reason not to provide the information at the same time as giving notice of the decision on an OIA request. Where it is not practicable to collate and prepare information for release at the time of the decision, due to the amount of work involved (for example, if a request is for a large volume of information), then a two-staged approach may be justified and reasonable. This is permissible under the OIA and there is no set timeframe for making the information available as long as it is released without 'undue delay'.⁷

Administratively challenging requests

24. The Danks Committee, which recommended the enactment of the OIA, recognised that agencies need to balance the provision of official information against their other functions. It commented:⁸

The granting of access to official information [...] cannot be an absolute priority to which all other functions of administration must yield. Especially in times of financial and staff restraints on government activities, some limitation of the resources available for providing information to members of the public is inevitable.

25. The OIA recognises that some requests will be administratively challenging and provides mechanisms for managing them. In addition to extensions, the available mechanisms include consulting the requester, fixing a charge for the provision of official information, making official information available in an alternative form, and refusing the request pursuant to section 18(f) of the OIA if the information requested cannot be made available without substantial collation or research.⁹

⁶ Sections 15A(2) and 15A(3) of the OIA refer.

⁷ Section 28(5) of the OIA refers.

⁸ Committee on Official Information, [Towards open government: Supplementary report](#), published July 1981, page 31, paragraph 4.39.

⁹ Office of the Ombudsman, [Substantial collation or research: A guide to section 18\(f\) of the OIA and section 17\(f\) of the LGOIMA](#), published March 2019, pages 15 to 27.

Is the framework consistent with the OIA?

26. The complainant considered that the framework was inconsistent with the OIA because the Ministry's 11 May 2022 letter asked him to prioritise his pending requests on the basis that they could not be processed within the allocation of 40 hours per week. His view was that the Ministry sought to exempt itself from the OIA by applying the framework.
27. The Ministry's request that the complainant prioritise his requests in the event that their management exceeded 40 hours per week was aligned with my published guidance for managing multiple requests from the same requester, which suggests that agencies may invite the requester to '*prioritise the order in which they would prefer the requests to be answered*'.¹⁰
28. Prioritisation does not allow agencies to disregard the statutory timeframe requirements for requests that the requester advises are lower priority. Rather, it allows agencies to triage their processing of requests by focusing immediate efforts on those that are of higher priority to the requester. For example, a requester may make two requests and advise the agency that one is high priority and the other is low priority. The agency can use this information to focus its resources on processing the high priority request more quickly. However, this does not mean that the low priority request will not be processed. By prioritising the requests, the agency can balance their resources in accordance with the requester's needs.
29. The use of extensions or staged approaches to communicating a decision and releasing information would, in general, likely diminish the timeliness of the complainant's access to official information. By asking the complainant to prioritise his requests, the Ministry looked to avoid resorting to such mechanisms as a matter of course. The 11 May 2022 letter was the only occasion that the Ministry asked the complainant to prioritise his requests.
30. The complainant also believed that the Ministry's 28 January 2022 letter implied he was responsible for the perceived undue delay in releasing the information that was the subject of his 16 December 2021 complaint. The letter stated that if the complainant was willing to take the steps that the Ministry suggested, it hoped to [emphasis added]:

*avoid a repeat of situations like the present, where there are **inevitable delays** in releasing the information to you.*
31. The complainant considered that the reference to '*inevitable delays*' indicated a failure to meet the statutory timeframe requirements set out in section 15. However, I do not interpret '*inevitable delays*' as referring to breaches of the statutory timeframe requirements. While it could have been communicated more clearly, I interpret '*inevitable delays*' as delays in release of official information through the use of the OIA's

¹⁰ Office of the Ombudsman, [The OIA for Ministers and agencies: A guide to processing official information requests](#), published May 2019, page 41.

mechanisms such as extensions or staged approaches to communicating a decision and releasing information. As discussed above, these mechanisms are permissible provided that they are used reasonably and with due regard to the circumstances.

32. The Ministry advised that it would allocate 40 hours per week to processing the complainant's requests, after which it would consider utilising the OIA's mechanisms for managing administratively challenging requests. The complainant interpreted the allocation of 40 hours per week as a blanket '*fixed time allocation*' beyond which the Ministry would cease processing his requests. That was not the case. The Ministry did not state that it would cease processing the complainant's requests when the weekly allocation was exceeded. Rather, the allocation of 40 hours per week provided an explicit threshold at which it would *consider* utilising other mechanisms such as extending the timeframe to make and communicate a decision on a request.
33. I do not consider that the Ministry's correspondence purported to exempt itself from the OIA's statutory timeframes. In any case, the framework did not absolve the Ministry of the requirement to adhere to the OIA's statutory timeframes. If the complainant believed that the Ministry had failed to meet the statutory timeframes on any individual request, it was open to him to complain to me. However, he did not do so.
34. The complainant's perception that the threshold of 40 hours per week was a '*fixed time allocation*' appears to have led to his concern that the framework had negative implications for the Opposition's ability to hold Government to account. This was reiterated in the complainant's comments on my provisional opinion. As the complainant noted, there is significant public interest in the Opposition's access to official information. This is reflected in the OIA's purpose, which includes promoting '*the accountability of Ministers of the Crown and officials*'.¹¹ It is important to note, however, that the threshold of 40 hours per week applied only to the complainant's requests. It did not apply to other OIA requests made by the National Party or other Opposition parties. If other National Party staff had made OIA requests to the Ministry, those requests would not have been managed via the framework as a matter of course.
35. The complainant's concern seemed to be speculative in nature. In practice, the framework did not appear to have negatively affected his access to official information. As detailed earlier, the Ministry advised that its median response time for overall OIA requests improved after it issued the internal guidance. Looking specifically at the complainant's requests, the median time response time improved by over 30 percent, and the Ministry's use of extensions reduced by 23 percent. While it is not possible to conclude with certainty that these improvements were caused by the framework, the Ministry's view is that the improvements were:

[...] due in part to having dedicated advisors familiar with the content of his past requests, and so duplications and previously released information was

¹¹ Section 4(a)(ii) of the OIA refers.

identified and managed more promptly; and refinements and clarifications were also more quickly sought.

36. If the complainant was concerned about the Ministry's use of the OIA's mechanisms for managing administratively challenging requests on any individual request, or was otherwise concerned that the framework had delayed or impeded his access to official information on any individual request, it was open to him to complain to me. Upon complaint, the Ministry would have been required to justify its approach to the specific request that was complained about. Overall, however, the framework merely provided a guide for the Ministry's case-by-case decision-making on each individual request, and directly established the point at which it would consider using the OIA's mechanisms for managing administratively challenging requests.
37. Accordingly, it is my opinion that the decision to implement the framework was not inconsistent with the OIA.

Was the decision to implement the framework unreasonable in the circumstances?

38. The Ministry explained the challenges it experienced when managing complex and frequent requests, including the complainant's, which occupied the equivalent of 1.5 staff in a total team of 11 staff.
39. In response to my provisional opinion, the complainant questioned whether the equivalent of 1.5 staff was an *'unreasonable quantum resource for the Opposition to be using'*. I note again, however, that the equivalent of 1.5 staff only related to the complainant's requests, not to any other requests made by the National Party. I do not intend to prescribe a threshold at which agencies may consider implementing similar frameworks. Such circumstances are extremely context-specific and depend on the resources of, and demand on, the agency involved. That being said, the complainant's requests were clearly administratively challenging for the Ministry, which explained that the time taken to process his requests affected its ability to attend to other requests. I am satisfied that the equivalent of 1.5 staff in a team of 11 was a substantial volume of resource for managing the OIA requests of a single National Party advisor.
40. As discussed, the framework did not appear to have any negative impact on the complainant's access to official information. In fact, the Ministry's overall timeliness improved, although I acknowledge that it is not possible to conclude with certainty that these improvements were solely attributable to the framework.
41. On the basis of the information before me, my opinion is that the Ministry's decision to implement the framework was not unreasonable.
42. In general, it seems that agencies' use of similar frameworks may not be unreasonable, so long as agencies exercise a high degree of caution and:
- a. are clear about the situations where a such a framework may be needed;

- b. do not act outside the limits of the official information legislation;
- c. do not pre-determine decision-making on future individual requests;
- d. have sufficient flexibility for exceptions from any framework;
- e. are transparent about any policy or framework being applied;
- f. carefully consider any complaints from individuals about a framework that they are affected by;
- g. advise affected individuals that it is open to them to complain to me;
- h. include a mechanism to review the application of a framework and a specific review period; and
- i. use frameworks sparingly and only when absolutely necessary.

Chief Ombudsman's opinion

43. For the reasons set out above, I have formed the opinion that the Ministry has not acted unreasonably in this matter.

Nāku noa, nā



Peter Boshier
Chief Ombudsman

Appendix 1. Relevant statutory provisions

Ombudsmen Act 1975

13 Functions of Ombudsmen

- (1) Subject to section 14, it shall be a function of the Ombudsmen to investigate any decision or recommendation made, or any act done or omitted, whether before or after the passing of this Act, relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by any of the departments or organisations named or specified in Parts 1 and 2 of Schedule 1, or by any committee (other than a committee of the whole) or subcommittee of any organisation named or specified in Part 3 of Schedule 1, or by any officer, employee, or member of any such department or organisation in his capacity as such officer, employee, or member.
- (2) Subject to section 14, and without limiting the generality of subsection (1), it is hereby declared that the power conferred by that subsection includes the power to investigate a recommendation made, whether before or after the passing of this Act, by any such department, organisation, committee, subcommittee, officer, employee, or member to a Minister of the Crown or to any organisation named or specified in Part 3 of Schedule 1, as the case may be.
- (3) Each Ombudsman may make any such investigation either on a complaint made to an Ombudsman by any person or of his own motion; and where a complaint is made he may investigate any decision, recommendation, act, or omission to which the foregoing provisions of this section relate, notwithstanding that the complaint may not appear to relate to that decision, recommendation, act, or omission...

22 Procedure after investigation

- (1) The provisions of this section shall apply in every case where, after making any investigation under this Act, an Ombudsman is of opinion that the decision, recommendation, act, or omission which was the subject matter of the investigation—
 - (a) appears to have been contrary to law; or
 - (b) was unreasonable, unjust, oppressive, or improperly discriminatory, or was in accordance with a rule of law or a provision of any Act, regulation, or bylaw or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory; or
 - (c) was based wholly or partly on a mistake of law or fact; or
 - (d) was wrong.
- (2) The provisions of this section shall also apply in any case where an Ombudsman is of opinion that in the making of the decision or recommendation, or in the doing or

omission of the act, a discretionary power has been exercised for an improper purpose or on irrelevant grounds or on the taking into account of irrelevant considerations, or that, in the case of a decision made in the exercise of any discretionary power, reasons should have been given for the decision.

- (3) If in any case to which this section applies an Ombudsman is of opinion—
- (a) that the matter should be referred to the appropriate authority for further consideration; or
 - (b) that the omission should be rectified; or
 - (c) that the decision should be cancelled or varied; or
 - (d) that any practice on which the decision, recommendation, act, or omission was based should be altered; or
 - (e) that any law on which the decision, recommendation, act, or omission was based should be reconsidered; or
 - (f) that reasons should have been given for the decision; or
 - (g) that any other steps should be taken—

the Ombudsman shall report his opinion, and his reasons therefor, to the appropriate department or organisation, and may make such recommendations as he thinks fit. In any such case he may request the department or organisation to notify him, within a specified time, of the steps (if any) that it proposes to take to give effect to his recommendations. The Ombudsman shall also, in the case of an investigation relating to a department or organisation named or specified in Parts 1 and 2 of Schedule 1, send a copy of his report or recommendations to the Minister concerned, and, in the case of an investigation relating to an organisation named or specified in Part 3 of Schedule 1, send a copy of his report or recommendations to the mayor or chairperson of the organisation concerned...

Official Information Act 1982

4 Purposes

The purposes of this Act are, consistently with the principle of the Executive Government's responsibility to Parliament,—

- (a) to increase progressively the availability of official information to the people of New Zealand in order—
 - (i) to enable their more effective participation in the making and administration of laws and policies; and
 - (ii) to promote the accountability of Ministers of the Crown and officials,—

and thereby to enhance respect for the law and to promote the good government of New Zealand:

- (b) to provide for proper access by each person to official information relating to that person:
- (c) to protect official information to the extent consistent with the public interest and the preservation of personal privacy.

15 Decisions on requests

(1) Subject to this Act, the department or interdepartmental venture or Minister of the Crown or organisation to whom a request is made in accordance with section 12 or is transferred in accordance with section 14 of this Act or section 12 of the Local Government Official Information and Meetings Act 1987 shall, as soon as reasonably practicable, and in any case not later than 20 working days after the day on which the request is received by that department or venture or Minister of the Crown or organisation,—

- (a) decide whether the request is to be granted and, if it is to be granted, in what manner and for what charge (if any); and
- (b) give or post to the person who made the request notice of the decision on the request.

(1AA) If a request (the original request) is amended or clarified after the date on which it is received, the department or venture or Minister of the Crown or organisation that receives the request may treat the amended or clarified request as a new request that, for the purposes of subsection (1), replaces the original request.

(1AB) However, subsection (1AA) does not apply if—

- (a) the original request is amended or clarified because the department or venture or Minister of the Crown or organisation to which the request was made sought an amendment to, or a clarification of, the request; and
- (b) the department or venture or Minister of the Crown or organisation did not seek that amendment or clarification within 7 working days after receiving the original request.

(1A) Subject to section 24, every department or venture or Minister of the Crown or organisation (including an organisation whose activities are funded in whole or in part by another person) may charge for the supply of official information under this Act.

- (2) Any charge fixed shall be reasonable and regard may be had to the cost of the labour and materials involved in making the information available and to any costs incurred pursuant to a request of the applicant to make the information available urgently.
- (3) The department or venture or Minister of the Crown or organisation may require that the whole or part of any charge be paid in advance.

- (4) Where a request in accordance with section 12 is made or transferred to a department or an interdepartmental venture, the decision on that request must be made by the chief executive of the department or the board of the venture or an officer or employee of the department or venture authorised by that chief executive or board unless that request is transferred in accordance with section 14 to another department or venture, a Minister of the Crown, an organisation, or a local authority.
- (5) Nothing in subsection (4) prevents the chief executive or board or officer or employee from consulting a Minister of the Crown or any other person in relation to the decision that the chief executive or board or officer or employee proposes to make on any request made to the department or venture in accordance with section 12 of this Act or transferred to the department or venture in accordance with section 14 of this Act or section 12 of the Local Government Official Information and Meetings Act 1987.

15A Extension of time limits

- (1) Where a request in accordance with section 12 is made or transferred to a department or an interdepartmental venture or a Minister of the Crown or an organisation, the chief executive of that department or board of that venture or an officer or employee of that department or venture authorised by that chief executive or board or that Minister of the Crown or that organisation may extend the time limit set out in section 14 or 15(1) in respect of the request if—
 - (a) the request is for a large quantity of official 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 department or the venture or the Minister of the Crown or the organisation; 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.
- (2) Any extension under subsection (1) shall be for a reasonable period of time having regard to the circumstances.
- (3) The extension shall be effected by giving or posting notice of the extension to the person who made the request within 20 working days after the day on which the request is received.
- (4) The notice effecting the extension shall—
 - (a) specify the period of the extension; and
 - (b) give the reasons for the extension; and
 - (c) state that the person who made the request for the official information has the right, under section 28(3), to make a complaint to an Ombudsman about the extension; and
 - (d) contain such other information as is necessary.

18 Refusal of requests

A request made in accordance with section 12 may be refused only for 1 or more of the following reasons, namely:

- (a) that, by virtue of section 6 or section 7 or section 9, there is good reason for withholding the information:
- (b) that, by virtue of section 10, the department or interdepartmental venture or Minister of the Crown or organisation does not confirm or deny the existence or non-existence of the information requested:
- (c) that the making available of the information requested would—
 - (i) be contrary to the provisions of a specified enactment; or
 - (ii) constitute contempt of court or of the House of Representatives:
- (d) that the information requested is or will soon be publicly available:
- (da) that the request is made by a defendant or a person acting on behalf of a defendant and is—
 - (i) for information that could be sought by the defendant under the Criminal Disclosure Act 2008; or
 - (ii) for information that could be sought by the defendant under that Act and that has been disclosed to, or withheld from, the defendant under that Act:
- (e) that the document alleged to contain the information requested does not exist or, despite reasonable efforts to locate it, cannot be found:
- (f) that the information requested cannot be made available without substantial collation or research:
- (g) that the information requested is not held by the department or venture or Minister of the Crown or organisation and the person dealing with the request has no grounds for believing that the information is either—
 - (i) held by another department (for itself and for a departmental agency hosted by it or an interdepartmental executive board serviced by it) or interdepartmental venture or Minister of the Crown or organisation, or by a local authority; or
 - (ii) connected more closely with the functions of another department (for itself and for a departmental agency hosted by it or an interdepartmental executive board serviced by it) or interdepartmental venture or Minister of the Crown or organisation or of a local authority:
- (h) that the request is frivolous or vexatious or that the information requested is trivial.

28 Functions of Ombudsmen

- (1) It is a function of the Ombudsmen to investigate and review any decision by which a department (for itself and for a departmental agency hosted by it or an interdepartmental executive board serviced by it) or interdepartmental venture or Minister of the Crown or organisation—
 - (a) refuses to make official information available to any person in response to a request made by that person in accordance with section 12; or
 - (b) decides, in accordance with section 16 or 17, in what manner or, in accordance with section 15, for what charge a request made in accordance with section 12 is to be granted; or
 - (c) imposes conditions on the use, communication, or publication of information made available pursuant to a request made in accordance with section 12; or
 - (d) gives a notice under section 10.
- (2) It is a function of the Ombudsmen to investigate and review any decision by which the chief executive of a department (for the department and for a departmental agency hosted by it or an interdepartmental executive board serviced by it) or the board of an interdepartmental venture or an officer or an employee of a department or venture authorised by its chief executive or board or a Minister of the Crown or an organisation extends any time limit under section 15A.
- (3) An investigation and review under subsection (1) or subsection (2) may be made by an Ombudsman only on complaint being made to an Ombudsman in writing or orally.
- (3A) A complaint made orally must be put in writing as soon as practicable.
- (4) For the purposes of subsection (1)(a), a refusal to make official information available includes, without limitation, a failure by a department or venture or Minister of the Crown or organisation to comply with section 15(1)—
 - (a) as soon as is reasonably practicable, or at the latest within 20 working days, after receiving a request; or
 - (b) within an extended time limit notified under section 15A(3) to the person who requested the information.
- (5) Undue delay in making official information available in response to a request for that information, shall be deemed, for the purposes of subsection (1), to be a refusal to make that information available.
- (6) If an Ombudsman receives a complaint that a department or venture or Minister of the Crown or organisation has refused to make official information available for any of the reasons specified in section 18(e) to (g), the Ombudsman may notify the Chief Archivist appointed under the Public Records Act 2005.