

OIA timeliness obligations:
Compliance and practice in
**Department of
Internal Affairs
Te Tari Taiwhenua**



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Final opinion of the Chief Ombudsman

August 2024

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Introduction

I initiated this investigation into agencies' compliance with Official Information Act 1982 (OIA) timeliness obligations, in part, because of concerns that were raised with me—especially from journalists—that the OIA is being used as a bureaucratic tool to stifle the flow of information.¹

The OIA exists to promote transparency and accountability and to enable the public to participate in government decision making. It is a critical measure that protects our democracy by enabling the people of New Zealand to access information in order to understand what its government is doing, or planning to do, and as a result have the opportunity to influence government thinking. It also provides a means for people to understand why the government has made certain decisions or recommendations. An informed and participatory citizenry understands, and is able to trust, its elected officials and government agencies – even if they do not necessarily agree with every action and decision that is made.

Timely access to information about the plans, actions and decisions of a Government is essential in a democracy, and without it, trust and confidence in a Government can quickly be eroded. To this end, in New Zealand our OIA requires agencies to make decisions on requests for official information as soon as reasonably practicable—and no later than 20 working days from the day after the request is received.² The OIA also requires that, if the agency decides to release some or all of the requested information, it must do so promptly.³

As a pillar of New Zealand's constitutional framework, it is crucial the OIA is working well—and that it is perceived to be working well. Public trust in our access to information systems is important, and a perception that the legislation is not fit-for-purpose may erode that trust. In my report *Ready or Not?* published in September 2022, I concluded that the OIA itself is fundamentally sound and that the core public service is increasingly transparent and open.⁴ Essentially, the problems I identified in that report stemmed from the administrative arrangements that had been put in place to respond to information requests, rather than the provisions of the Act itself.

Concerns about delays appear to be at odds with the data reported by the Public Service Commission | Te Kawa Mataaho (PSC) on agencies' OIA timeliness compliance. The most recent statistics (1 July – 30 December 2023) show that, on average, core public sector agencies met the maximum statutory time limit over 98 percent of the time.⁵ The statistics also show a continued upward trend since the first reporting year, 2015/16, when agencies reported meeting OIA timeliness obligations only 87.6 percent of the time.⁶ The publication of OIA statistics makes agencies publicly accountable for their results, which has driven

¹ Initiated under section 13(1) and 13(3) of the Ombudsmen Act 1975.

² See section 15(1) of the Official Information Act 1982.

³ See section 28(5) of the Official Information Act.

⁴ Link to [Ready or not? Thematic report of the Chief Ombudsman \(Office of the Ombudsman, September 2022\)](#).

⁵ Link to Public Service Commission [Latest OIA statistics 13 March 2024](#).

⁶ Link to Public Service Commission [Latest OIA statistics released 4 September 2019](#).

performance improvements in the reported criteria. The PSC's regime of OIA data publication is extremely valuable for this reason.

However, as with all data, it has limitations. The statistics typically measure when a decision is made and communicated to a requester but not necessarily when information is provided to the requester. For example, an agency may inform a requester of its decision, or extend the deadline for making its decision, within the required 20 working days but provide the information at a later date. In these cases, agencies will be able to report an 'on time' response, but the PSC reporting does not reveal whether or not the agency provided the information to the requester promptly.

Current OIA statistics reporting may have some perverse effects on agency behaviour. The focus on reporting against a 20 working day 'target' may be overshadowing the primary obligation, which is that agencies respond to requesters '*as soon as reasonably practicable*'. Twenty working days is a limit,⁷ not a target. Collecting data on whether or not a decision has been made within 20 working days is straightforward for the agency to calculate and track. What amounts to '*as soon as reasonably practicable*' requires consideration of all the surrounding circumstances on a case-by-case basis, so it's not surprising the 20 working day measure is being used. Nevertheless, agencies must adhere to the primary obligation to make a decision as soon as reasonably practicable.

My investigation explored whether there is veracity to journalists' claims that the OIA is not working as intended, to ensure that official information is made available in a timely manner. I also explored a little deeper how agencies were managing their processes in terms of the OIA statistics that are reported to and published by the PSC.

Background

In December 2022, I notified the chief executives of seven public sector agencies of the commencement of my self-initiated investigation under the Ombudsmen Act 1975.⁸ The agencies are:

- Department of Internal Affairs | Te Tari Taiwhenua;
- Department of Prime Minister and Cabinet | Te Tari o te Pirimia me te Komiti Matua;
- Kainga Ora | Housing New Zealand;
- The Pharmaceutical Management Agency | Te Pātaka Whaioranga
- Health New Zealand | Te Whatu Ora;
- Transpower New Zealand Limited; and

⁷ Unless a valid extension of the time limit is made by the agency, pursuant to section 15A of the OIA.

⁸ See also Ombudsman's [media statement announcing investigation](#) on 5 December 2022 and the [terms of reference](#).

- Treasury | Te Tai Ōhanga.

They represent a variety of agency types and functions. Some agencies are involved in high profile public policy reforms and some have received high public and media interest. The selected agencies range in size and number of OIA requests received.

The Ombudsman has jurisdiction to investigate *'any decision or recommendation made, or any act done or omitted'* by public service agencies or organisations named in [Parts 1 to 1C](#) and [2](#) of Schedule 1.⁹

The purpose of this investigation was to examine the practices and processes agencies use to meet their overarching obligations under the [Official Information Act 1982](#) to:

- make a decision on requests for information *'as soon as reasonably practicable, and in any case not later than 20 working days after the day on which the request is received'* (s 15(1)); and
- release information without undue delay (s 28(5)).

This included examining the following practices and processes related to this overarching timeliness obligation:

- the use of extensions;
- transfers of requests;
- the approach to urgent requests;
- refusals of requests for the reason that the information *'is or will soon be publicly available'*;
- sign out processes;
- involvement of media and/or communication teams in requests, and their processes and practices;
- interactions with Ministers' offices on departmental requests;
- the duty on agencies to give reasonable assistance; and
- any impact of the application of the Government's proactive release policies to decisions on individual access requests.

The investigation involved consideration of the agencies' supporting administrative structures, leadership and culture, policies, processes, practices, decision making and record keeping. My investigation included a review of:

- publicly available material;
- relevant complaints to my Office;

⁹ See sections 13(1) and 13(3) of the OA.

- OIA timeliness statistics published by the Public Service Commission;
- an agency questionnaire seeking internal documents and commentary relating to official information processing and practice;
- a sample of OIA request files; and
- a sample of media information request files.

In addition, I undertook an online survey of the public.

My investigation included meetings with a number of key people to assist my understanding of each agency's OIA culture, processes, and practices:

- a selection of staff and managers in different departments/teams involved in making decisions about, and preparing responses to, official information requests;
- a selection of staff from Ministers' offices; and
- the Chief Executive.

Over the course of this investigation, there was a change in government. The discussion in this report relates to past and present Ministers from different administrations. My opinion relates only to the Department of Internal Affairs (the Department's) practice during the period in which my investigation took place, being December 2022 to July 2024.¹⁰

My opinion

I commenced this investigation because of concerns that the OIA is a bureaucratic tool, used to stifle the flow of information, and a perception that OIA requests are not processed in a timely manner. Concerns about delays appear to be at odds with data reported by the PSC, which shows year-on-year improvements to OIA timeliness. Timeliness statistics tell an important part of the story, but not the whole story, which is more complex and nuanced than is often recognised by the media and the public.

The staff my investigators met with were overwhelmingly positive about the OIA. It was apparent that many staff, especially those in OIA teams, advocate for OIA requests to be processed in a timely and quality manner. In such a large organisation, many components need to work together for OIA requests to be processed in a proportionate and efficient way.

While I did not find evidence of the Department purposefully using the OIA to stifle the flow of information, or presenting falsely positive timeliness statistics, there were examples of extensions sought for reasons other than those stipulated in the OIA. I am concerned that a small number of extensions were sought because of administrative errors that had caused delays. By extending incorrectly, the number of overdue OIA requests may be underestimated

¹⁰ On occasions, I may look at material from outside the investigation period where particular issues warrant further investigation.

to senior leaders (and the public via the PSC), and an accurate picture of vulnerabilities is important to drive improvement in OIA practice.

It is my opinion is that the majority of issues identified are likely the result of insufficient OIA resourcing to ensure consistent practice across the OIA branches. I did not find that the misuse of extensions was a systematic or deliberate misuse of the OIA. As outlined below, I did find there to be a lack of consistency of practice between OIA branches, which if addressed, will likely improve weaknesses in the Department's OIA systems and processes. I have made six recommendations and suggested 25 action points to address my concerns.

The Department was provided the opportunity to comment on my provisional opinion and I have taken its comments into consideration in forming my final opinion. The Department advised that it accepts my findings, and has either made changes to its processes to address my concerns, or are working on changes.

I would like to extend my thanks to all of the staff who participated in my investigation. I greatly value their contribution to my investigation. I look forward to following the Department's progress on my action points and recommendations over the next year, during which time I will seek updates periodically.

Peter Boshier
Chief Ombudsman

Summary

The Department is a large agency comprising seven different branches and an Office of the Chief Executive. There is a [Central OIA team](#) that has a number of responsibilities and most branches have independent OIA teams to process requests.

Leadership and culture

Although effective leadership is important in all agencies, it is crucial in one with such broad functions such as the Department. While I am pleased the Department's organisational strategy includes transparency and accountability as foundational principles, I note that there is not currently a high-level OIA strategy or plan. Development of a high level OIA strategy would assist the Department to move towards consistent, principles-based practice. While most staff meeting attendees said they felt supported by senior leaders, I encourage leaders to regularly seek out and take advantage of opportunities to promote the importance of the OIA, including the importance of on-going OIA training.

Leaders of larger agencies face a challenge to ensure the tone they set from the top permeates through all layers of the organisation. They are reliant on managers for conveying their

commitment to the OIA and expectations to staff. Processing OIA requests in an agency as large as the Department requires a whole-system approach. All staff need to understand the OIA and be committed to delivering their part of the process when required. A number of staff meeting attendees said subject matter experts (SMEs) were difficult to engage, which can contribute to delays. I acknowledge there may be a tension between the OIA, which starts with the premise that information be released, and a particular reason why an official may not agree. Escalating these difficult conversations may be necessary. I suggest the Department consider ways to improve wider staff attitudes to the OIA such as additional OIA training for SMEs.

A number of staff meeting attendees said they considered the Department has developed a more risk adverse OIA culture over the last 10 years or so. An excessively risk adverse culture may prevent OIA requests from being completed *‘as soon as reasonably practicable’*. I encourage the Department to review OIA practice in all branches to ensure additional unnecessary steps have not been added to OIA processes, which adds time. A change in culture like this takes direction from senior leaders.

The Chief Executive receives regular reporting on volumes, timeliness and extensions of OIA requests. However, senior leaders should also monitor OIA response quality and be aware of resourcing or capacity issues that might be impacting on timeliness. The Department should implement a practice of random quality assurance of completed OIA requests, and report outcomes to senior leaders. In addition, more data on the handling of OIA requests should be collected and reported, including information about time spent on OIA processing across the Department. Without accurate information about the time spent processing OIA requests it will be difficult for senior leaders to make appropriate decisions about staffing levels, and to determine what resilience measures should be in place.

Action points
Prioritise the development of a high level OIA strategy or plan, with associated responsibilities and accountabilities at the senior leadership level, and promote it to all staff.
Senior leaders should regularly seek out and take advantage of opportunities to promote the importance of the OIA, including the importance of on-going OIA training.
Consider ways to improve staff attitudes to the OIA such as additional OIA training for SMEs, particularly targeting the branches that have reported a lack of engagement from SMEs.
Review OIA practice in all branches to ensure there is not an excessively risk adverse culture in relation to OIA requests and additional unnecessary steps have not been added to OIA processes.
Implement a practice of conducting random quality assurance of completed OIA requests, and report outcomes to senior leaders.
Collect, analyse, and report to senior leaders more data on the handling of OIA requests, including information about time spent on OIA processing, in line with my suggestions.

Ministerial interactions

My investigation considered interactions between Ministers and the Department on departmental OIA requests. The law is clear about who is responsible and accountable for OIA decisions made by the Department. There is no requirement in the OIA for agencies to advise their Ministers about departmental OIA requests received and decisions made. However, both the OIA and the Cabinet Manual make provision for agencies to consult their Minister prior to a decision being made where reasonably necessary. Whether consultation has occurred or not, the decision on departmental OIA requests is still the Departments to make. Agencies may instead choose to inform the Minister of an OIA decision through an FYI or notification process.

My investigators requested the Department's policies, procedures and protocols regarding Minister's office involvement with departmental OIA requests. The evidence indicates some inaccurate guidance or, at the very least, a lack of clarity about the differences between consultation and notification (FYI) on departmental OIA requests. I am concerned that the guidance does not clearly set out a process for staff about how to deal with ministerial feedback on departmental OIA responses. A clear message of this type was not seen in departmental guidance or understood by staff in meetings with my investigators.

I am also concerned that the timeframe for OIA requests to be notified to Ministers' offices is, in essence, a standard five working days. There are pockets of reported good practice, and some OIA teams are pushing back on excessive timeframes for Minister's office notification. However, this approach is not consistent across all branches. It is my opinion that the Department has acted unreasonably by generally allowing Ministers' offices five working days as a standard to review FYI notifications of departmental OIA decisions under the 'no surprises' principle. Therefore I recommend:

- All OIA teams cease the practice of giving Ministers' offices a standard five working days as an FYI notification of all departmental OIA responses before sending them to requesters.
- The Department review and amend all of its guidance to ensure the FYI process does not unreasonably impact on timeliness in advising a requester of the OIA decision.
- Training is provided to all staff working with OIA requests to ensure practice is aligned with its guidance when interacting with Ministers' offices and all staff understand the difference between consultation and notification (or FYI) of a decision.

A number of staff meeting attendees expressed concern about the feedback they get from Ministers' offices and said it is not always escalated to senior staff to deal with. I understand it may be impractical for senior staff to become involved in lower risk OIA requests or where the feedback or questions do not change the departmental decision. However, if there are concerns with changes suggested from the Minister's office, the Department should ensure there are internal escalation support measures for staff to ensure appropriate decisions are made by sufficiently senior staff.

I understand the difficulty staff and senior leaders face navigating this terrain. However, there are actions the Department can take to further support staff. For instance, a clear,

documented escalation procedure would reduce the risk of varied practice throughout this large organisation. In addition, I encourage the Chief Executive and senior leaders to advise staff that ministerial feedback on departmental OIA responses should not automatically be adopted; a record should be kept; and the interaction should be reported to senior leaders. There is also a draft ministerial protocol, which I encourage the Department to finalise and communicate to all staff.

Recommendations

Review and amend the notification (or FYI) process in relation to departmental OIA requests, ensuring that:

- All OIA teams cease the practice of giving Ministers' offices a standard five working days as an FYI notification of departmental OIA responses before sending them to requesters.
- The Department review and amend all of its guidance to ensure the FYI process does not unreasonably impact on timeliness in advising a requester of the OIA decision.
- Training is provided to all staff working with OIA requests to ensure practice is aligned with its guidance when interacting with Ministers' offices and all staff understand the difference between consultation and notification (or FYI) of a decision.

Action points

Chief Executive and senior leaders to advise staff that ministerial feedback on departmental OIA responses should not automatically be adopted; a record should be kept; and the interaction should be reported to senior leaders.

Develop clear guidance on managing ministerial office feedback on departmental OIA responses for both consultation and FYI, including an escalation process for staff.

Finalise the ministerial protocol and communicate its content to all staff.

Organisation structure and resourcing

All OIA requests received by the Department pass through a central OIA function (the Central OIA team). The Central OIA team allocates OIA requests to the appropriate branch's OIA team for processing.

The Central OIA team performs a wide variety of tasks, such as allocating OIA requests, logging and tracking requests, processing some requests, transfers, training and more. However, until around late 2023 the Central OIA team was reliant on one FTE staff member. When resources are tight and priorities need to be established, it is critical that the Department's ability to respond to official information requests is not put at risk. Resourcing should be a priority given the Department's size, remit, and its OIA processing model. The detrimental impact on OIA practice due to under resourcing has been significant, and it is deeply concerning to me.

For the Department's partly centralised OIA model to work well, all staff (especially SMEs) need to have a good knowledge of the Department's obligations under the OIA. This requires consistent support structures such as training, policies, guidance and expertise, which could be provided by the Central OIA team if it was adequately resourced. While I am pleased the Department has taken some steps to improve the resilience of its system by adding staffing resource to the central function, I do not think it is enough within the current structure to ensure all of the [Branch OIA teams](#) are performing consistently, meeting timeliness obligations and otherwise adhering to the OIA. The Central OIA team needs staff to not only manage the email inbox, but further technical expertise is required to deliver training, draft and review guidance, conduct quality assurance and perform other necessary tasks to ensure OIA requests are completed in a timely and high quality manner.

It is my opinion that the Department has acted unreasonably by not providing sufficient resourcing to the Central OIA team to ensure it can deliver on its numerous assigned responsibilities. I find this concerning, and it may negatively affect transparency and accountability within the Department. Therefore, I recommend that the Department undertake a review to ensure its structure has:

- adequate oversight of departmental OIA requests; and
- adequate resourcing and technical expertise to ensure OIA requests are processed consistently, accurately and in a timely manner.

I would like the Department to report to me in six months on the review outcome and implementation.

Given the size and diverse remit of the Department, it is appropriate for OIA teams to work within particular branches and have specialised expertise. However, in a partially centralised system, teams should not be operating in isolation. There needs to be some standardisation in the way staff apply the OIA. I consider that the under-resourcing of the Central OIA team has also had an impact on the overall connectedness of the branches. I strongly encourage the Department to consider ways to increase connectedness between the branch OIA teams, such as having a community of practice for OIA practitioners. The Department should consider utilising cross-agency OIA networks to connect with other agencies of similar size as to how they have organised themselves internally.

Accurate OIA guidance is also important for consistency of practice. The Department has a number of whole-of-organisation guides available on the intranet, and there are some OIA team specific guides as well. However, the guidance could better reflect the importance of making and communicating decisions on OIA requests *as soon as reasonably practicable*. There were some inconsistencies identified in the team-specific guidance. I suggest the [Central OIA team](#) ensure it is checking OIA team guidance for accuracy and alignment with the OIA and that the team has the resource to enable this.

Recommendation

Undertake a review to ensure the Department's structure has:

Recommendation

- adequate oversight of departmental OIA requests; and
- adequate resourcing and technical expertise to ensure OIA requests are processed consistently, accurately and in a timely manner.

Report to me in six months on the review outcome and implementation.

Action points

Consider ways to increase connectedness between branch OIA teams, such as having a community of practice for OIA practitioners, and action the improvements identified.

Review and update *DATA to support your OIA* section of the SDO Official Correspondence team guidance to ensure it accurately reflects provisions of the OIA.

Amend guidance timelines and flowcharts where relevant to reflect the importance of making and communicating decisions on OIA requests as soon as reasonably practicable.

Central OIA team to ensure it checks branch OIA guidance.

OIA handling by the Communications team

A request for information must be handled in accordance with the OIA, irrespective of whether it is handled by the Communications Team, an OIA Team, or any other part of the agency.

Overall, the Communications team does an exemplary job of responding to requests '*as soon as reasonably practicable*', offering responses within only hours or days. I am pleased that staff also provide good assistance to requesters. However, there are areas that could be improved. The '*Media 101*' guidance document should be updated to include more detail on OIA and PRA obligations.

In addition, a number of practice issues were identified when a small sample of media information requests were reviewed. While the majority of requests were answered in full, a small number were not answered in full. In one case, a request was refused as the information was not held by the Department (section 18(g) of the OIA). Although a plain English explanation was given to the requester for not providing the information, I am concerned that the reason and ground under the OIA were not provided. Further, the requester was not informed of their right to complain to me. These are legal requirements under the OIA when refusing requests.

Another compliance issue was identified in relation to the transfer of information requests to other agencies. These examples of compliance issues indicate there could be a lack of technical OIA knowledge in the Communications team. This issue could be addressed by either leveraging off the expertise in the Central OIA team, or upskilling staff in the Communications team on the OIA. The Department should also consider introducing a quality assurance practice, where a sample of media information requests are checked by an OIA specialist to ensure they are adhering to the OIA.

Action point

Update the *Media 101* guidance document to include more detail on OIA and PRA obligations.

Ensure the reason for refusing information is given to a requester by the Communications team, as well as the ground in support of the reason (if they request it), and details of the requesters right to complain to the Ombudsman.

Ensure the Communications team transfers requests in accordance with section 14 of the OIA.

Consider introducing a quality assurance practice so that a sample of media information responses are checked by an OIA specialist to ensure they are adhering to the OIA.

OIA team practice

Official information requests completed by OIA teams tend to go through a process cycle. My investigators conducted a review of sample OIA files and identified that:

- In an organisation with such broad functions, there can be delays with the Central OIA team or branch OIA teams receiving an OIA request. Staff outside of OIA teams may not be aware of the Department's OIA handling process, or requesters may send requests to email inboxes that staff do not regularly monitor. It puts the OIA team, SMEs and stakeholders under additional pressure to respond to the request in a timely manner. A co-ordinated, cross-department approach would be beneficial to address this issue.
- While most OIA teams do triage requests, I encourage OIA teams to document initial triage and planning to help with fast processing of OIA requests and ensure consistency. I note that currently, the Department does not appear to have a formalised process for 'fast tracking' certain OIA requests. I encourage the Department to keep considering where there are opportunities to shorten the response time to requesters without compromising quality decision making.
- OIA teams from across the Department spoke about the benefits of clarifying OIA requests with requesters. At times, staff had trouble when attempting to provide assistance as requesters did not always respond promptly (or at all) to emails seeking clarification. I am pleased that I have seen some good practice in OIA teams, but the Department should ensure this practice is encouraged across all teams and is included in guidance documents as a key part of the OIA process.
- Staff meeting attendees from across OIA teams discussed how difficult or frustrating it can be to engage staff from other parts of the organisation, in order to receive the information they need to process OIA requests. I encourage the Department to consider how it can improve the relationships between SMEs and OIA teams across all branches of the Department and develop a process to manage SMEs that delay OIA responses.
- An agency may extend the maximum time limits for both transferring a request and making a decision and communicating it to the requester—but only if certain criteria are met. I am pleased the Department has processes in place to check whether OIA teams

are using extensions appropriately, but I encourage OIA teams to be transparent about all of the factors that lead to requests for extensions. I am concerned that an OIA case showed a request was extended because of an earlier administrative error. In my opinion, the Department has acted contrary to law by seeking extensions for reasons other than those stipulated in section 15A of the OIA.¹¹ If this were a wider practice, I would be concerned that it is masking poor practice and inappropriate delays. I recommend the Department improve its practice to ensure extensions are only made for the reasons outlined in the OIA.

- Another issue was identified in relation to extensions. It appears the Department has a practice of applying standard extensions of 40-60 working days on OIA requests for former Minister's email correspondence (termed FMRs or former Minister's records). While I acknowledge these are challenging requests for a number of reasons, my opinion is that the Department has been unreasonable in its application of standard 40-60 day extension of OIA requests for former Ministers' records. I recommend the Department cease the practice of applying standard extensions to OIA requests for FMRs. I encourage the Department to consider further actions that will allow staff to complete OIA requests for FMRs within the statutory timeframe. If this is not possible, and an extension is required, it must be done on a case-by-case basis, in accordance with the OIA.
- There were also timeliness issues with a small number of transfers. In one case, the Department sent an email to the other agency requesting a transfer on working day 10. The agency did not accept the transfer until the 13th working day, and it was transferred. It is my opinion that the Department has acted contrary to law in relation to section 14 of the OIA, by failing to transfer a request to the other agency within 10 working days of the request being made. However, in this instance, I have not made a recommendation as I believe the issue is connected to the ability of the Central OIA team to maintain oversight and coordination of OIA requests.

Recommendations

Improve practice to ensure extensions are only made for the reasons in section 15A(1) of the OIA.

Cease the practice of applying standard extensions to OIA requests for former Minister records.

Action point

Consider adding 'urgency' category to allocation emails.

Consider a more straightforward OIA process for low risk requests.

Encourage OIA practitioners to contact OIA requesters to assist with their request.

¹¹ Section 15A Extension of time limits. [Link](#) to the OIA.

Action point
Develop a process to manage SMEs that delay OIA responses.
OIA teams to consider providing contextual information where relevant to extension approvers as part of the reasons why they are seeking an extension.
When extending OIA requests, ensure requesters are notified of their right to complain to the Ombudsman about the extension.
Consider further actions to allow staff to complete OIA requests for former Minister records within the OIA statutory timeframes.
Ensure transfers are completed within 10 working days of receiving requests and inform requesters accordingly.

OIA timeliness and complaint statistics

The Public Service Commission (PSC) and the Ombudsman publish OIA performance data about government agencies every six months. Respectively, these are:

- OIA request timeliness statistics collected by the agency and reported to PSC; and
- complaints data reported by the Ombudsman relating to the number and type of OIA complaints made against agencies, and the results of those complaints.

PSC timeliness data

The Public Service Commission (PSC) has been reporting [OIA timeliness statistics](#) since 2015. For the purpose of the PSC reporting regime, an ‘on time’ response is one in which the agency ‘*made and communicated a decision*’ to the OIA requester not more than 20 working days after the day the request is received, or transferred the request to another agency not more than ten days after the day the request is received. It is important to note that ‘*communicating a decision*’ to the requester does not necessarily mean that requested information is provided on that date. For example, an agency could decide to extend a request, or decide to decline it in full, or decide to grant a request with release of the information at a later date, and communicating this to the requester within 20 working days is reported as an on-time response.

At the time of writing this report, the OIA timeliness statistics for the July to December 2023 period, have been published by PSC. The Department responded ‘on time’ to 97.9 percent of OIA requests received in that six month period. Extensions were sought on 14.6 percent of OIA requests for the period and the average working days to respond was 19. The Department has consistently responded to over 95 percent of OIA requests ‘on time’, apart for the December 2022 year where the result dropped to 94.8 percent. The average of reported ‘on time’ responses across public service departments is 97.5 percent.

Complaints to the Ombudsman

I publish complaints data on the same schedule as PSC's timeliness data. The existence of a complaint against an agency should not, of itself, be considered evidence of the agency having done anything wrong. Similarly, an agency receiving a high number of complaints is not necessarily meaningful – this may simply be a factor of the agency receiving a high number of OIA requests. However, complaints data can indicate issues with agencies' OIA handling when those complaints result in a finding against the agency.

For the time period 1 October 2022 – 25 October 2023, there were 32 OIA complaints to my Office about the Department. Six of those complaints were relevant to timeliness. Of the six relevant complaints, four were regarding the Water Services Reform branch. Two were delayed due to IT error and one delayed due to resource constraints in the Water Reform team. One complaint was not sustained and another withdrawn.

Leadership and culture

My expectations

It is my expectation that leaders make clear, regular statements to staff and to the public in support of the principle and purposes of official information legislation, and the importance of openness more generally.

An agency's culture around transparency and openness, and the strength of its OIA practices flows from the attitudes, messaging and actions of its senior leaders and, in particular, those of the Chief Executive. In terms of timeliness I expect chief executives to communicate clearly that compliance with the OIA is not only about achieving 'on time' compliance with the quantitative, 20 working day timeframe on which agencies must report to PSC, but also the qualitative requirement of the OIA to make and communicate a decision '*as soon as reasonably practicable*'.

Words, however, are not enough. Public service staff receive signals from senior leaders not only through overt messaging but through their actions. However, vocal leaders may be about the importance of openness and compliance with the OIA, the message is diluted if they do not also role model openness, and provide staff with the systems, resources and support to facilitate the timely release of information.

My findings

Messaging about the OIA from senior leaders

The OIA is mentioned in the Department's organisational strategy, *Ā Mātau Mahi*. In response to my agency questionnaire, the Chief Executive stated:

Ā Mātau Mahi is based around a series of outcomes, including 'New Zealand is a well-functioning democracy across central and local government'. This outcome is

focused on ensuring government is accountable and transparent. There is a direct link to the OIA – by increasing the availability of official information to New Zealanders, we promote accountability and enable more effective public participation.

I am pleased the Department's organisational strategy includes transparency and accountability as foundational principles, and recognises that the OIA plays an important role in this. However, when asked if the Department has any high-level strategies or plans for meeting its OIA obligations, the Department said:

DIA does not have a current high level OIA strategy or plan, however we hope to be in a position to develop this in the 2023/24 financial year.

I expect agencies to have an overarching strategic framework that identifies how it intends to achieve OIA timeliness compliance and foster a culture of openness and transparency across all parts of the agency. I encourage the Department to consider developing high-level strategies or plans that specifically include how to improve its overarching OIA function. A strategic OIA plan would describe how various OIA branches connect through to the Central OIA team (see [Central OIA team](#) and [Branch OIA teams](#), below), and help the Department move towards consistent, principles-based practice.

My investigation sought documents and commentary relating to official information processing and practice. When asked if the Department communicates its commitment to openness, transparency and the OIA, I received the following response:

This information is readily available to OIA practitioners and stakeholder business groups via the intranet. In addition, these principles are also championed in a range of other documents and communications that are not specifically related to OIA management.

The Department said that when the central OIA function was better resourced, staff received regular communications about the OIA via *'the intranet, weekly updates, and direct emails to the OIA cohort'*. However, at the time of writing, *'resource pressures and changes in the information appetite of stakeholders... had an impact on communications'*. While targeted communications were being sent to *'the OIA cohort'*, the Department was not actively publishing OIA-related stories on the main intranet page.

I acknowledge staffing pressures can negatively impact on the provision of strategic OIA work. When staff are struggling to meet statutory obligations, important tasks on broader OIA obligations (for instance updating guidance or providing training) may not be prioritised. I encourage the Department to maintain adequate communications that encourage transparency, openness and adherence to the OIA despite staffing pressures. These messages should come from senior leaders and be delivered to staff and the public.

My investigators met with a number of staff members throughout the Department. Generally, staff were positive about senior leaders and said they were supportive of the OIA. When asked if they felt supported by senior leaders in relation to OIA requests, one staff meeting attendee said *'absolutely, meeting OIAs is taken very seriously at all levels in the Department'*, and

another advised '*absolutely, there hasn't been an issue around OIAs being pushed aside for other things.*' Another staff member said they feel supported by senior managers and that, on occasion, a General Manager assists if there is an influx of OIA requests. It is encouraging that staff meeting attendees were positive about the support they receive from senior leaders and that they show support for the OIA.

I expect OIA implications to be front and centre during the development of new teams and projects. Some staff meeting attendees suggested that consideration of the OIA was an afterthought when the Water Services Reform project was established. A staff meeting attendee said '*the initial steps seem to have been ad hoc. There wasn't anything formal and for a while it was run by someone out of the comms [Communications] team.*' However, they said practices improved approximately a year later when people with OIA experience were employed. I remind the Department that the OIA is a critical measure in our democracy. It is a core function of every New Zealand government agency and should be considered in detail prior to forming new teams or beginning projects. A strategic framework outlining how the Department intends to achieve consistent practice and compliance with the OIA would ensure the OIA is a central consideration in the development of new teams or work streams. A strategic framework should also outline the responsibilities and accountabilities of senior leaders.

Action points

Prioritise the development of a high level OIA strategy or plan, with associated responsibilities and accountabilities at the Senior Leadership level, and promote it to all staff.

Senior leaders should regularly seek out and take advantage of opportunities to promote the importance of the OIA, including the importance of on-going OIA training.

Organisation culture

Leaders of larger agencies face a challenge to ensure the tone they set from the top permeates through all layers of the organisation. While leaders may have the best intentions, messages can become diluted when there is a large number of staff who may not be at one central location. The services delivered by the Department are wide-ranging and diverse. It has many groups and functions, some include: the National Library, Archives, Local Government, Racing, Births Deaths and Marriages, Citizenship and Passports.

I consider staff members' attitudes to the OIA to be an indication of an agency's overall culture. One indication of a healthy OIA culture is when OIA work is prioritised by teams wider than those directly responsible for processing them. When staff across the organisation have a positive attitude about the OIA, and understand the underlying principle of availability, the OIA system is healthier and requests are processed more efficiently.

As set out in [OIA team practice](#), processing OIA requests in an agency as large as the Department requires a whole-system approach, where all staff understand the OIA and are committed to delivering their part when required. One request might need several people in different parts of the organisation to be involved before a substantive decision on a request is

made. At the Department, subject matter experts (SMEs) are responsible for searching for information and providing advice about the context or risks of releasing material. SMEs should review information with the *'principle of availability'* in mind,¹² They should understand that information should be made available to the requester, unless there is a good reason to withhold it. If an OIA request is delayed by a SME, it could be because they have a high volume of work, or the matter might be particularly complicated and any potential harm with release needs careful consideration. Delays could also indicate a low prioritisation of OIA work by SMEs.

I am pleased that some staff meeting attendees demonstrated a good understanding of the principle of availability and discussed the importance of transparency in a broader sense. A staff meeting attendee said they had begun to raise awareness of the OIA with other officials by educating wider staff about the Act. This started because they were *'chasing'* SMEs and were frustrated at a lack of communication. Another staff meeting attendee concurred, stating the *'single hardest thing is getting SMEs to engage'*. In their view, this was due to SMEs being *'over worked and under resourced'*, and OIA requests not being prioritised above other work. This issue, and the consequences of this de-prioritisation, are discussed further below in [Engagement with SMEs](#).

The reasons given for staff resistance to the OIA are varied. One staff member was of the view that resistance is stronger in areas where many employees have come from the private sector, which does not have the same ethos in regard to transparency and public accountability. They said:

... fundamentally part of the culture problem is private vs public. There are a lot of people that operate in the public sector or do business in the public sector that think they are above the public sector requirements.

If this perception is correct, it could be addressed by consistent induction and training.

Inconsistent engagement with the OIA is an organisational culture issue. Positive engagement with the OIA requires all senior leaders and managers to work together to promote a culture of positive compliance. This must be led from the Chief Executive and does not only come from messaging; it also requires role modelling, the provision of adequate resources, and having adequate staff capacity to ensure adherence to the OIA.

Another staff meeting attendee said they considered the Department has developed a more risk adverse OIA culture over the last 10 years or so, stating they find it *'frustrating and annoying'* that there is now more *'risk aversion'*. They considered the shift in attitude toward risk might be due to technological advances and social media enabling requesters to publish

¹² Link to the [OIA](#). Section 5 Principle of availability:

The question whether any official information is to be made available, where that question arises under this Act, shall be determined, except where this Act otherwise expressly requires, in accordance with the purposes of this Act and the principle that the information shall be made available unless there is good reason for withholding it.

OIA material on the internet. The meeting attendee said wider implications of information release are now considered as they are not just releasing to *'Jo Blogs on the corner'*.

However, an excessively risk adverse culture may prevent OIA requests from being completed *'as soon as reasonably practicable'*. As an agency's OIA practices develop, additional steps may be added to an OIA process to minimise risk.¹³ While I am sure this happens in good faith, when it becomes disproportionate, it can result in extra processes being added to some OIA requests, which may not be necessary in all cases.

While the review and sign out processes at the Department did not appear overly convoluted in most branches, there was a staff perception of risk aversion in some areas. Staff meeting attendees from the Water Reform Team said they considered there were *'too many [layers]'* in the sign out process. It may be because this is an area of significant media and political interest. They said there can be up to seven layers of sign out before the request is either sent to the requester, or to the Minister's office for their *'two cents worth'*, which can be *'significantly challenging'* and take up a *'huge chunk'* of the 20 working day maximum statutory time period. It is easy to see how agencies' sign out procedures can add significant time to the OIA process, particularly if these steps occur consecutively rather than concurrently. I note that these steps are not a requirement of the OIA; they are self-imposed by each agency.

Although I do not want to incentivise quick and superficial responses to OIA requests, there is a perception from the public and media that the OIA is a bureaucratic tool used by agencies to deliberately slow down the process of providing information. Agencies should be aware of this, and ensure only the steps absolutely necessary are included, as appropriate in the circumstances of each case.

A staff meeting attendee said they considered a *'lack of trust'* in staff can add time to responding to a request because more people within the Department want to see the response. The meeting attendee said in some cases, the public service has made a *'rod for its own back'*, but on a good day, they feel they can *'cut through that'*, without compromising on quality and helpfulness. They like to *'work with the requester'* to clarify their request, which as discussed in [Providing assistance to requesters](#), can help with timeliness.

Another indication of a healthy OIA culture are OIA teams that are empowered to push back if they receive pressure to withhold information without an adequate reason under the OIA. Resistance to release information may come from a variety of places such as the Minister's office, the Communications team, subject matter experts (SMEs) or managers. I acknowledge that there may be a tension between the OIA, which starts with the premise that information be released, and a particular reason why an individual may not agree. Escalating these difficult conversations may be necessary. As one staff meeting attendee said *'it is unavoidable for there not to be conflict in some fashion between transparency and an agency's reputation.'* As discussed in [Ministerial interactions](#), there are going to be *'tough conversations'*, but it is important for staff and senior leaders to ensure compliance with the Act.

¹³ Steps such as multiple people signing out the request, or responses going to Ministers' offices before being released to the requester.

A proportionate and tailored response may mean, in some cases, it is appropriate to remove steps in the OIA process such as excessive sign outs. A change in culture like this takes direction from senior leaders - to identify where layers may be reduced proportionate with the level of risk, and which additional practices can be discontinued. I consider a more consistent approach should be established across the Department overseen by senior leaders. A cultural shift also requires buy in from staff and a low-to-no-blame culture because staff may be less willing to take responsibility for decision making if they feel they will be personally blamed if things go wrong. In this way, bureaucracy can be reduced and OIA requests responded to as soon as reasonably practicable.

Action points

Consider ways to improve staff attitudes to the OIA such as additional OIA training for SMEs, particularly targeting the branches that have reported a lack of engagement from SMEs.

Review OIA practice in all branches to ensure there is not an excessively risk adverse culture in relation to OIA requests and additional unnecessary steps have not been added to OIA processes.

OIA reporting to improve performance

My expectations

Senior leaders should have clear oversight of their agency's OIA compliance and practice, the effectiveness of its OIA structures, resources, capacity and capability through regular performance reporting, just as they would any other aspect of the agency's core business.

OIA performance reporting to an agency's chief executive and senior leaders should focus on more than just reported timeliness. Timeliness is important, but not at the expense of poor quality decisions, or if it drives the reporting of a 'rosy' picture masking capability and capacity issues. Efficiency is also important, and reporting should capture the duration of request handling, number of responses that exceed legislative maximum time limits and the reasons for any delay.

Meeting the timeliness measure does not necessarily mean that requesters receive information within 20 working days of their request. It does not reveal to what extent agencies are meeting their primary timeliness obligation of responding '*as soon as reasonably practicable*.'

Collection and analysis of a range of OIA performance data¹⁴ ensures senior leaders recognise and / or address:

¹⁴ OIA performance data agencies should collect and analyse includes, for example:

- the number, length and reason for extensions;
- the outcome of the request (granted in full, granted in part, refused in full, withdrawn or abandoned);

- emerging themes or trends in information requested;
- OIA response quality;
- opportunities for proactive release of information;
- resourcing or capacity issues; and
- capability issues and opportunities to upskill/train staff.

Analysis of this information should be used to inform an agency's strategic framework describing how it intends to achieve OIA compliance, good practice, and a culture of openness and transparency.

Responding to OIA requests and proactively releasing information is part of an agency's core business. OIA compliance does not happen by accident. Just like any other aspect of performance, agencies must have a strategy to help ensure they achieve their objectives relating to transparency and OIA compliance. As an accountability measure, an agency's strategy around OIA compliance and the proactive release of information should feature in public-facing corporate documents.

I suggest agencies include media information requests in the data they report to the Public Service Commission | Te Kawa Mataaho, to reinforce that these requests are subject to the OIA and to present a truer picture of an agency's OIA workload and performance.

My findings

The Chief Executive advised that he has good visibility of OIA requests. He receives a weekly report that includes information on volumes, timeliness and extensions at branch and departmental level in addition to a full list of OIA requests in progress. The Chief Executive discusses the report with the Executive team in a weekly meeting. However, it was not clear from the information I saw whether the quality of OIA responses is also being monitored by the Executive team. While I am pleased that the Chief Executive receives regular reporting on volumes, timeliness and extensions, OIA reporting should not only be about timeliness.

The Chief Executive said that all OIA responses are checked by the Central OIA function. However, while OIA outcomes are recorded on an OIA register, a quality assurance process is not currently being undertaken. Random quality assurance, conducted by staff who have not been involved in processing the request, on a sample of completed OIA responses from OIA teams¹⁵ and the Communications team, would help identify practice issues such as those outlined in [OIA handling by the Communications team](#), [Transfers](#), and [Extensions](#). The outcome of quality assurance checks should be reported to senior leadership. As discussed in [Ministerial](#)

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- the grounds on which information was withheld or the request refused; and
 - staff time spent processing official information requests, including the time spent assisting in processing requests by staff who are not in core OIA roles.

More information about OIA data collection is available in my [OIA self-assessment tool](#) for agencies.

¹⁵ Including the Central OIA team.

[interactions](#), the Department should also consider reporting staff interactions with Minister's offices to senior leaders.

Resourcing gaps or capacity issues should also be reported to the Chief Executive. The Chief Executive said that if a report shows a branch or business unit is '*drowning in volumes and not coping*', they can bring in people from other areas of the Department. However, I am concerned that the current reporting model does not provide adequate visibility of resourcing issues. As discussed below, the [Central OIA team](#) was understaffed for a significant period of time, for some time there was only one staff member. In addition, meeting attendees said historically the Water Reform team did not have adequate staff numbers. A complaint to my Office received in 2023, also revealed significant staff turnover in mid-2022, which was '*disruptive to best practice*'.

I consider the lack of staff in both of these areas would have had a significant impact on both OIA timeliness and quality. While more resources are now committed to the Central OIA team and the Water Services team, consideration should be given to organisational resilience in the future. I expect the Chief Executive to monitor the Department's performance to ensure reporting identifies any capacity, resourcing, capability or practice issues.

For example, the Department should consider implementing a method to determine how much time branches spend processing OIA responses. This could be as simple as asking relevant staff to tally or estimate their time spent on OIA responses weekly or monthly, and reporting this to senior leaders. Without accurate information about the time spent processing OIA requests it will be difficult for senior leaders to make appropriate decisions about staffing levels, and to determine what resilience measures can be put in place during busy periods where increased workloads threaten the agency's ability to adhere to OIA timeliness obligations. This is discussed in more detail under [Organisation structure, resourcing and training](#).

Action point

Implement a practice of conducting random quality assurance of completed OIA requests, and report outcomes to senior leaders.

Collect, analyse, and report to senior leaders more data on the handling of OIA requests, including information about time spent on OIA processing, in line with my suggestions.

Ministerial interactions

My expectations

My investigation focused on OIA requests made to agencies, termed 'departmental OIA requests' (as opposed to Ministerial OIA requests, which are those for information held by, or more closely connected to, the Minister). There is no requirement in the OIA for agencies to advise their Ministers about departmental OIA requests received and decisions made.

However, both the OIA and the *Cabinet Manual* make provision for agencies to consult their Minister prior to a decision being made where reasonably necessary, for instance when the requested information is of concern to the Minister because, for example, they supplied the information or it is about their functions or activities. The decision maker on departmental OIA requests remains the chief executive (or an official of the agency whom the chief executive has duly authorised).¹⁶

In addition, the *Cabinet Manual* recognises that the relationship between Ministers and chief executives should be guided by the ‘no surprises’ principle.¹⁷ This principle is defined in the *Cabinet Manual*, and states that:

As a general rule, [officials] should inform Ministers promptly of matters of significance within their portfolio responsibilities, particularly where these matters may be controversial or may become the subject of public debate.

Agencies’ interpretation of the ‘no surprises’ principle—as it pertains to preparing responses to departmental OIA requests—can impact their ability to comply with their legal obligations under the OIA, which include timeliness obligations. When interacting with Ministers’ offices on departmental OIA requests and responses, it is essential that agencies differentiate between:

- consultation with the Minister which the OIA provides for – where the Minister’s input on a departmental OIA request is required to assist the agency to make a decision; and
- notification or ‘FYI’ to the Minister of the agency’s decision on a departmental OIA request, in accordance with the ‘no surprises principle’ in the *Cabinet Manual*.

An appropriate timeframe to consult or notify on an OIA response is dependent on the individual circumstance of each case:

- When consultation is required, the Minister’s office should be afforded a reasonable period of time within which to provide appropriate comment in relation to the proposed decision. Once comment is received the agency may proceed to make a decision. If no comment is received within the agreed period, the agency will need to consider its options to extend the timeframe for responding to the request, or to transfer the request to the Minister, or make a decision without the Minister’s comment.
- Notification or FYI decisions should, where possible, be notified to the Minister at the same time as they are communicated to the requester, as this has no bearing on the substantive decision already made by the agency.¹⁸ However, I accept that in some cases a short period of advance notice may be required to enable the Minister to be properly

¹⁶ See section [15\(4\) of the OIA](#).

¹⁷ See section 3.26 of the [Cabinet Manual](#).

¹⁸ Link to [Ombudsman case note on Ministerial notifications and the obligation to communicate decisions ‘as soon as reasonably practicable’](#).

briefed so that they are able to respond appropriately to any public enquiries and legitimate scrutiny that is expected.

In either case, agencies' interactions with Ministers must be configured in such a way that the agency is generally able to meet the OIA requirement to make and communicate the decision on a request as soon as reasonably practicable and no later than 20 working days. I expect agencies to identify opportunities where a brief summary, or even just the topic of the response can be provided to a Minister to fulfil the 'no surprises obligation', rather than providing the full response to the Minister as a default in all cases.

An agency's notification or 'FYI' process with Ministers' offices is not about seeking clearance, approval, or sign-off from the Minister. As my predecessor, Chief Ombudsman Dame Beverley Wakem, commented:¹⁹

Seeking clearance or approval from a Minister on responses to requests for official information is an abdication of the agency's responsibilities and accountabilities under the OIA and would be in breach of section 15(4) [of the OIA].

Public sector chief executives have to manage the relationship with their Ministers and be cognisant of the political landscape within which they work. This is a reality for chief executives and, of course, I acknowledge it. However, my expectation is that both chief executives and Ministers maintain their obligation to uphold the law.

To ensure the maintenance of good working relationships while also fostering public trust, it is important that agency chief executives and Ministers are clear with each other and open with the public as to how they deal with agency OIA requests.

I encourage all agencies to develop a written policy or agreement, which reflects the process that has been agreed with their Minister's office, and which sets out their mutual understanding and intentions when engaging with each other on OIA requests. This may be based on or guided by the matters covered by *the Model protocol on dealing with OIA requests involving Ministers*, I have published.²⁰ The use of my model protocol is endorsed in the *Cabinet Manual*.²¹ Once settled, I would also strongly encourage this to be published so it is transparent to everyone; enables trust in the process for handling a request; and clarifies the situations in which the agency may seek legitimate input from a Minister (consultation), and when comment is not being sought (FYI).

I must acknowledge the reality that feedback on OIA responses is sometimes given to agencies by Ministers' offices even where the response is sent purely on an FYI basis. I recognise that what may be sent as an FYI may raise issues which the agency may not have been aware of and which may justify a different approach being taken on a response. This can create a murky, but sometimes legitimate middle ground between FYI and consultation. It should be the exception, not the rule, and this means it is important for agencies and Ministers' offices to develop and

¹⁹ Link to Chief Ombudsman Dame Beverly Wakem [Not a Game of Hide and Seek](#) (Office of the Ombudsman, 8 December 2015) at 113.

²⁰ Link to [Model protocol on dealing with OIA requests involving Ministers](#).

²¹ See section 8.53 of the [Cabinet Manual](#).

maintain clear boundaries and processes for the matters on which Ministers are likely to need to comment, and to document relevant decision making.

If a Minister suggests changes on a departmental OIA request, the changes should not automatically be made. Under the law, the decision remains with the Department. A request from a Minister for changes should be escalated to the appropriate senior leader and consideration given to whether the changes should be made or not.

As stated above, I expect the majority of FYI notifications to be sent to Ministers' offices at the same time or shortly before the response is sent to the requester; and, for agencies to identify opportunities where the response in full need not be sent. This should ensure a balance between providing timely responses to requests while still enabling Ministers to prepare for public commentary around release in appropriate cases.

However, in those cases—which should be exceptional—where the agency considers its Minister's office needs several days to review and absorb the content of the response, the timeframe should be confirmed with the Minister's office and the agreed timeframe should be recorded. Otherwise, it becomes more likely that the Minister's office may believe it is able to provide feedback under the no surprises/FYI notification process. This creates several risks:

- a potential impact on timeliness – if the response sits with a Minister's office for an excessive period of time, the agency risks breaching its obligation to make and communicate a decision '*as soon as reasonably practicable*'; and
- the potential for the Minister's office to be perceived as unlawfully interfering with the decision of the agency on the OIA response, and politicising the release of information.

If a Minister's office, after considering the decision under the 'no surprises' FYI notification process, wishes to offer information or context to the agency that may warrant the agency reconsidering the decision it has made on the request, this is not necessarily inappropriate.²² In fact, in order for the OIA to operate effectively, this additional information should be provided so that the right decision in law is made by the agency. However, I expect that any advice or feedback in these circumstances:

- must be made in line with the reasons for refusing requests under OIA;
- *should not* be communicated as a directive from the Minister or from the Minister's office, as this would be an inappropriate interference, creating doubt about who is the decision maker on the request; and
- *should be* scrupulously recorded by the agency in a manner that facilitates retrieval, for example, in the event of an investigation by an Ombudsman.

²² For example, the Minister's office may wish to offer a view that requested information which is proposed to be released is likely to result in a harm protected under the OIA, or the agency appears not to have understood either the weight of the harm, or the countervailing public interest in releasing the information.

The Cabinet Manual states that, in the event of a disagreement between an agency and a Minister about a decision on an OIA request, it may be appropriate for the agency to transfer the request to the Minister, providing certain criteria are met.²³

Agencies should not rely on their private secretary in the Minister's office being a routine step in their review process for OIA requests. Responses provided to the Minister on an FYI basis should be full, final and signed before being sent to their Minister's office.

My findings

The majority of the Department's OIA requests fall under the Internal Affairs portfolio. However, there are six Ministers who may be included in departmental OIA requests. Over the course of this investigation, there was a change in government. The discussion in this report relates to past and present Ministers from different administrations.

The Department states that OIA requests are triaged by the OIA practitioner leading the response. If they consider the information will likely generate public attention or comment, or the material is likely to impact the Minister's portfolio, the OIA request may be signalled in the Minister's status report. This is to provide a 'heads up' that the Minister will receive a 'no surprises' notification of the decision. As outlined in [My expectations](#), when interacting with Ministers it is essential that agencies differentiate between consultation necessary prior to the Department making an OIA decision, and notification (or FYI) of a decision the Department has made and is about to send to the requester.

My investigators requested the Department's policies, procedures and protocols regarding Minister's office involvement with departmental OIA requests. The evidence indicates some inaccurate guidance or, at the very least, a lack of clarity about the differences between consultation and notification on departmental OIA requests. As set out in [Ministerial protocol](#) below, work has been underway for some years to finalise a ministerial protocol, which has not been agreed or signed by a Minister since 2017. Some meeting attendees were also unclear about the differences between consultation and notification.

One branch's OIA request guidance document states that if the Minister's office have any 'questions or concerns regarding this response please let me know'. I am concerned that this creates a perception that the agency is giving the Minister's office an opportunity to provide comment on FYI notification of decisions on departmental OIA requests. However, as outlined in [My expectations](#), if the OIA response is sent on a purely FYI basis, comments should only be provided in appropriate cases.

Another branch has a flow chart mapping the departmental OIA process. I am concerned that within the chart, the following question is asked: 'Does the Minister want changes?'. If yes, it states 'make changes'. It is not clear from the flow chart whether they are referring to an FYI notification or consultation. I can only assume the document refers to FYI because the step is at the latter end of the OIA process (i.e. after a decision has been made). Regardless of whether Ministers provide comment following consultation or notification, this guidance is

²³ See section 8.55 of the [Cabinet Manual](#).

incorrect - if a Minister suggests changes on a departmental OIA request, the changes should not automatically be made. Under the law, the decision remains with the Department. A request from a Minister for changes should be escalated to the appropriate senior leader and consideration given to whether the changes should be made or not. As outlined in [Feedback from Ministers' offices](#) below, I acknowledge that chief executives have to manage the relationship with Ministers and be cognisant of the political landscape within which they work, but I expect agency chief executives and Ministers to maintain their obligation to uphold the law.

A number of staff meeting attendees were unsure about what to do if the Minister's office suggested changes to a departmental OIA request, as it did not happen very often. One staff meeting attendee said on occasion they have to weigh up the impact of 'doing the right thing' in terms of the principle of availability and 'upsetting the Minister's office'.

I am concerned that the guidance does not clearly state that feedback received from Ministers' offices on FYI notified decisions on departmental OIA requests should not automatically be adopted by the Department. A clear message of this type was not seen in departmental guidance, or understood by all of the staff my investigators met with. I found that this has created ambiguity, which has made the Department vulnerable to poor practice and may result in it abdicating its decision making function under the OIA.

I am also concerned that the timeframe for notification of OIA requests to go to Ministers' offices is, in essence, a standard five working days. In relation to FYI notification, the whole-of-organisation OIA request guidance states:

This is to ensure that the Minister is aware of OIA responses going out from the Department and has 'no surprises'. Generally, Ministers' offices require five working days to review a departmental OIA request.

Staff from the vast majority of OIA teams confirmed that Ministers' offices expect OIA requests to be provided to them five working days before it is sent to the requester. One staff meeting attendee said:

The standard consultation time is five days... it gets sent as quote 'FYI' but is still waiting for ministerial approval effectively. As general rule, five days.

The Private Secretaries my investigators met with concurred with this, stating that the Department provides five working days for the Minister to look at departmental OIA requests. When asked if five days was needed in all cases, they said it was required for larger OIA requests and high-risk requests. An official from a Minister's office said five working days are useful as the parliamentary sitting calendar can delay OIA requests being seen by the Minister. They said that 'non-sitting weeks can be an issue' if the Minister is not based in Wellington and preferred printed copies of OIA requests. Another official from a Minister's office said the Minister's office does not always require five working days.

There was some reported good practice in this area. One OIA team said the Minister does not get five working days to look at departmental OIA requests, and the difference between consultation and FYI is clear. A staff meeting attendee said the Minister's office generally gets

three working days for consultation, whereas for notification (or FYI) the office receives the response at the same time as the requester.

A staff meeting attendee from a different OIA branch said there are also changes occurring in their area. They said an earlier practice involved giving Ministers' offices five working days to look at departmental OIA requests, *'which is a big chunk'* of the 20 working day statutory timeframe and obviously impacts on the department's ability to adhere to the requirement to make a decision *'soon as reasonably practicable'*. However, the manager has been trying to change the practice. They are now providing progress updates to the Minister's office to *'bring them along'*, but they said they are *'not slowing down'* for the Minister's office. They reported that the Minister's office now only gets five working days if they are consulting on the OIA request, in which case they may need more time. I am encouraged by this practice and suggest other OIA branches consider implementing practices to ensure OIA responses are dealt with efficiently by Ministers' offices.

I am pleased there are pockets of reported good practice, and some OIA teams are pushing back on excessive timeframes for Minister's office notification of responses. However, this approach is not consistent across all branches and it should be. It appears individuals or team managers have been responsible for pushing back on excessive timeframes, rather than a co-ordinated drive from the Chief Executive. This has led to inconsistent practice across the Department.

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'*. I am concerned that meeting attendees and guidance documents indicate that most Ministers' offices are given a standard five working days to review OIA requests sent to Ministers as a notification before they are sent to requesters.

It is my opinion that the Department has acted unreasonably by enabling a general practice of allowing Ministers' offices a standard five working days to review FYI notifications of departmental OIA requests under the 'no surprises' principle. A short period of advance notice may be required to ensure a Minister is properly briefed on a matter and to prepare for public and media commentary, but this should not be routine. Giving Ministers' offices five working days as a standard timeframe to review departmental OIA responses may lead to the Department failing to make and communicate the decision *'as soon as reasonably practicable'*. I recommend that:

- All OIA teams cease the practice of giving Ministers' offices a standard five working days as an FYI notification of all departmental OIA responses before sending them to requesters.
- The Department review and amend all of its guidance to ensure the FYI process does not unreasonably impact on timeliness in advising a requester of the OIA decision.
- Training is provided to all staff working with OIA requests to ensure practice is aligned with its guidance when interacting with Ministers' offices and all staff understand the difference between consultation and notification (or FYI) of a decision.

While it is permissible for agencies to provide some departmental 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), it should not interfere with timeliness requirements. In most cases, the obligation to provide an FYI to 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.

Recommendations

Review and amend the notification (or FYI) process in relation to departmental OIA requests, ensuring that:

- All OIA teams cease the practice of giving Ministers' offices a standard five working days as an FYI notification of departmental OIA responses before sending them to requesters.
- The Department review and amend all of its guidance to ensure the FYI process does not unreasonably impact on timeliness in advising a requester of an OIA decision.
- Training is provided to all staff working with OIA requests to ensure practice is aligned with its guidance when interacting with Ministers' offices and all staff understand the difference between consultation and notification (or FYI) of a decision.

Feedback from Ministers' offices

The Chief Executive has worked under the different administrations that this investigation covered. He said his experience is that Ministers seek to amend or delay responses to departmental OIA requests approximately once or twice a year. He said there is often a '*settling in*' period for new Ministers to understand the difference between ministerial OIA requests and departmental OIA requests. He said that inevitably a pattern develops where Ministers are comfortable with receiving a '*quick snapshot*' of requests, rather than seeing everything. I was pleased the Chief Executive said he is clear that Ministers are not decision makers on departmental OIA requests, but they are a key stakeholder and he must maintain a good working relationship. This means that, for instance, it may be a '*slow dawning realisation*' for a Minister that information is being released. However, managing this relationship can take time, which is limited when trying to meet statutory timeframes.

I acknowledge that feedback on OIA responses may be given to agencies by Ministers' offices, either when requests are sent purely on an FYI basis or as part of a consultation process. However, such practices could lead to a perception of political interference in departmental OIA responses. This might affect public trust and confidence in an agency's adherence to the OIA.²⁴ Ministerial input may vary over time, and the need to consult or notify Ministers of

²⁴ Discussed in Report of Chief Ombudsman Dame Beverly Wakem, [Not a game of Hide and Seek](#) (Office of the Ombudsman, 8 December 2015).

departmental OIA requests could lessen as trust between the Department and its Ministers develops.

A complaint to my Office involving this Department identified at least one instance where a response to a departmental OIA request was delayed because a Minister requested information be withheld. Although the delay occurred because the Department was consulting the Minister, rather than providing notification (or FYI) of a decision, I formed the opinion that the Department should not have refused the request. Although consultation might have been appropriate in this case, it was the Department that was responsible for making the decision on this request. I appreciate the relationship between an agency, its Chief Executive and its Ministers must be one of trust and confidence. This includes how OIA decisions are handled and how the Minister is kept appropriately informed.

During a consultation phase, it remains the Department's decision to make on the OIA (for which the Chief Executive is ultimately accountable), unless or until it is formally transferred to the Minister for response. However, there is no doubt that the relevant Minister may also be asked to explain and comment on the decision. I accept this is the reality for Ministers. If the Department does not agree with the Minister's advice, it does not mean the request be delayed longer than absolutely necessary. The Chief Executive discussed this case in my meeting with him. He said strengthened messaging to Ministers about their role on departmental OIA requests would be helpful so they can be clear on roles and responsibilities.

A small number of staff said they do not have concerns about receiving feedback from the Minister's office. One staff meeting attendee said they do sometimes get feedback on departmental OIA requests that were sent to the Minister's office for FYI, but *'a lot of it is just ignored'*. Other staff meeting attendees expressed concern about the feedback they get from Ministers' offices. One said that on occasion Ministers' offices may suggest *'little tweaks'*. Another staff meeting attendee said the Minister's office wanted a *'couple'* of extra things redacted from one of the departmental OIA requests they were processing. They ended up working with another team to handle the feedback. Redactions were made and a senior leader signed out the OIA request. It may be that the changes were helpful and justified, but they delayed the OIA response. If the Department needed feedback from the Minister, it should have considered consulting earlier in the OIA process, for instance before a decision was made. In that way, if additional time was required an extension could be sought.

Although the meeting attendee said their manager and director were very supportive, I am concerned that requests such as these are not automatically escalated to senior staff to deal with. An official from a Minister's office said that if they have feedback or questions they would usually talk to the relevant departmental OIA official in the first instance. I understand it may be impractical for senior staff to become involved in lower risk OIA requests at an early stage, or in cases where the feedback or questions are not leading to a change in the original decision. However, some departmental officials seemed reluctant to express concerns with changes proposed by a Ministers' office. Ultimately, the Chief Executive is responsible for departmental OIA requests. If there are concerns with changes suggested from the Minister's office, the Department should provide internal escalation support measures for staff to ensure appropriate decisions are made by sufficiently senior delegated staff.

That said, I am aware that senior staff do become involved in some instances. For example, a senior leader spoke of being involved in a high-risk OIA request that was receiving pushback. They said *'I have had some very difficult conversations with my Minister's office and it hasn't been easy'*. More could be done to support leaders in senior roles to be ready and equipped to have those conversations (if required) ahead of time. They said *'you have to maintain your integrity'*, which can be difficult when trying to maintain a relationship.

I understand the difficulty staff and senior leaders face navigating this terrain. However, there are actions the Department can take to support staff further. For instance, a clear documented escalation procedure would reduce the risk of varied practice throughout this large organisation. There should be a clear documented process to guide staff when the Minister's office provides feedback on departmental OIA requests, this should include whether it was sent to the Minister for consultation or notification. Guidance should be clearly communicated to all branches. In addition, as discussed below in [Ministerial protocol](#), my [Model protocol on dealing with OIA requests involving Ministers](#) is designed to support this relationship and can provide a framework for interactions between staff and Ministers' offices.

A record of any exchange between the Department and the Minister's office should also be kept. These interactions should be reported to the Senior Leadership team in order to identify patterns, which would show where boundaries might need to be re-established.

I am pleased a meeting attendee said there has been some training with Private Secretaries about the OIA framework and the *'need to be careful about DOIAs [departmental OIA requests]'*. Despite some staff saying they felt pressured to make changes suggested by the Minister's office, an official from a Minister's office said there is no expectation that the Department would amend requests due to their feedback. Another spoke of the importance of OIA teams being *'quite firm'* and said one team in particular was inclined to push back *'which is great'*, but not all teams do that. In relation to push back from the Department, the meeting attendee said:

In my role I need that, because if you don't get push back you assume it's all good and you rely on that advice.

Another Minister's office official concurred, saying *'absolutely. Ultimately, they're accountable. They have to meet all the requirements of the OIA.'* This is why, as I discuss in [Organisation culture](#), OIA teams need to be able to express their concerns about feedback and suggestions where they see the need. This empowerment is a culture issue and would come from support from leadership, clear guidance and, ideally, a written agreement that expressly recognises these times may arise. I discuss this further below in the [Ministerial protocol](#) section. In my view, further engagement in this regard will enhance the trust relationship that each party wants to preserve and protect.

Staff reported that if significant changes were suggested to a departmental OIA request after being sent to the Minister's office, it would go through the OIA sign out process again. However, all of this takes time, and impacts on the Department's ability to meet statutory timeframes. As outlined in [My expectations](#) above, responses should be full, final and signed before being sent to the Minister's office via the Private Secretary as an FYI. The Department's

OIA processes are rigorous, and notification to the Minister's office is not the avenue for seeking advice on the direction of an OIA. If that is necessary, comments should be sought earlier, as part of consultation on the request.

I am concerned that some of the views from meeting attendees, and the issues identified with the guidance, indicate a permissive attitude towards Ministers' offices suggesting changes. Messaging from senior leaders re-establishing boundaries (which I discuss below under [Ministerial protocol](#)), roles and responsibilities, a clear process, accurate recording of these interactions, and reporting feedback to the Senior Leadership team, would mitigate some of these risks and empower staff.

Action points

Chief Executive and senior leaders to advise staff that ministerial feedback on departmental OIA responses should not automatically be adopted; a record should be kept; and the interaction should be reported to senior leaders.

Develop clear guidance on managing Ministerial office feedback on departmental OIA responses for both consultation and FYI, including an escalation process for staff.

Ministerial protocol

A number of staff talked about how important it is to establish clear boundaries when dealing with the Minister's office on departmental OIA requests. One staff meeting attendee said they have worked with a number of different ministerial staff members, and that while they are comfortable having more difficult discussions now, they may not have been in the past. They considered more training and support would be good to 'systematise' practice.

Meeting attendees from Ministers' offices agreed that the differentiation between consultation and notification (or FYI) could be clearer. One way to obtain this clarity is by having a written policy, which is agreed between the Minister's office and the Department, outlining expectations. For instance, my ['Model protocol on dealing with OIA requests involving Ministers'](#), can be used to agree on clear and transparent processes for dealing with OIA requests of this nature.

In 2017, the Internal Affairs Minister signed a copy of the protocol, which was based on my Model Protocol and outlined the difference between notification and consultation as well as a number of other points. However, it appears the Department has not engaged with any Ministers on a protocol since this time.

A number of staff were aware of a draft protocol that was going through internal consultation but there was not a clear sense of a timeframe for completion. The Department has advised that the Ministerial and Official Correspondence team is completing this work. I urge the Chief Executive to ensure this work is given priority and a protocol agreed and signed by all relevant Ministers as soon as possible. This will help ensure expectations, roles, responsibilities and practices in this area are consistent across the organisation.

Action points

Finalise the ministerial protocol and communicate its content to all staff.

Organisation structure and resourcing

My expectations

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 complying with that law. Official information practices should demonstrate understanding, compliance, and commitment to the principles and requirements of the OIA and related legislation, including the PRA.

Compliance with the OIA is not a ‘nice to have’. It is a legislative requirement and is core business for any government agency in our democracy, no matter the policies or other priorities of the government of the day. I expect agencies to organise their structure and resources to ensure they are able to meet their legal obligations under the OIA considering each agency’s size, responsibilities and the amount of information held. This should include appropriate staff capacity to handle the OIA workload.

Agencies should also have resilience measures in place, which allow them to cope with surges in demand for OIA requests, or staff absences. As I discussed earlier in [OIA reporting to improve performance](#), agencies’ OIA reporting should allow them to identify any capacity or capability issues, and actively monitor the agency’s ability to meet its statutory timeliness obligations.

I appreciate the increasing challenges that all agencies face in managing limited funds and the corresponding impact on staff numbers. I can only reiterate that maintaining compliance with OIA obligations is a legal requirement and core business. The OIA is a fundamental part of New Zealand’s democratic and constitutional framework and the importance of complying with this legislation should be reflected in the resources and training assigned to it.

I expect that:

- agencies have the *capacity* to meet official information obligations with clear and fully functioning roles, accountabilities, reporting lines, delegations and resilience arrangements; and
- agencies have the *capability* to meet official information and record keeping obligations with user-friendly, accessible resources and guidance supported by regular training.

I expect agencies’ OIA handling processes to be agile and flexible enough to operate efficiently and remain a priority, even in circumstances such as the significant workforce reductions that are taking place in the public sector this year and are likely to continue. During such times, it could be tempting to dismiss the OIA as a low-priority, compliance activity. However, effective administration of the OIA, as well as a strong focus on the proactive release of information, is

never more important than in times of stress and uncertainty. It is crucial that the information on which impactful decisions are based is available to, or can be requested by, the public so the rationale for decision making is transparent and open to scrutiny by those whom the decisions affect. This proved true during the challenges of the 2020 COVID pandemic.

Every public servant has a role in making information accessible – whether directly as a member of an OIA or media team or indirectly by creating and storing information in a way that facilitates its later access. All staff need to understand their agency’s legal obligations to ensure compliance with OIA and record keeping requirements appropriate to their role and responsibilities. This should include ensuring that staff have access to, and attend, ongoing training in these areas. Record keeping training should convey the importance of the retention and free flow of information for New Zealand’s democratic process, as well as highlighting the link between good record keeping and the agency’s ability to fulfil its OIA obligations in a timely way.

Training is vital and should encompass the following:

- training at induction (including training on information management and recordkeeping);
- introductory basic awareness of key OIA and record keeping principles;
- advanced courses for specialists covering, for example;
 - proper application of the public interest and harm tests;
 - dealing with urgent requests;
 - dealing with requests the agency deems ‘sensitive’;
 - dealing with broad, complex requests;
 - managing consultations with third parties and Ministers;
- additional training for senior managers and decision makers; and
- refresher courses and seminars.

My findings

In late 2016, the Department moved from a fully distributed OIA processing system to the partially centralised model it retains today. The Department’s decision to change its model was influenced by my predecessor Dame Beverly Wakem’s 2015 report [*Not a game of hide and seek*](#), which recommended ‘agencies should review their OIA organisational model and ensure any risks are mitigated’.²⁵ In the wake of the above report, the Department launched an OIA capability update programme.

²⁵ Dame Beverly Wakem *Not a game of hide and seek* (Office of the Ombudsman, 8 December 2015) at 68, as quoted in Department of Internal Affairs | Te Tari Taiwhenua *Memo to ELT: Update on OIA work across the Department: period ending 31 December 2015* (29 March 2016) at 13.

The 2016 OIA capability update programme aimed to ‘strengthen OIA practice in the Department [through] taking a more joined up and standardised approach with much clearer roles and responsibilities’.²⁶ OIA branches would continue to handle their own information requests; however, a central function with oversight of all incoming and outgoing OIA requests would ensure the Department was taking a consistent approach to OIA processing.

Central OIA team

All OIA requests received by the Department pass through a central OIA function, termed the OIA Performance and Practice function (the Central OIA team). The Central OIA team allocates OIA requests to the appropriate branch’s OIA team for processing. From there, OIA teams start to work on answering the information request.

Up until recently, the Central OIA team was responsible for acknowledging receipt of each OIA request to the requester. A staff meeting attendee said the high workload of the Central OIA team meant that there were occasional delays with acknowledging OIA requests and allocating them to branch OIA teams. In order to relieve pressure on the Central OIA team, branch OIA teams are now responsible for contacting the requester to acknowledge their OIA request.

The role of the Central OIA team is important to ensure consistent practice that is both timely and high quality. The team is responsible for the following areas of OIA practice:

- checking the OIA email inbox and forwarding requests to the correct OIA branch to deal with;
- logging and tracking OIA requests and proactive release documents in the central register;
- OIA performance reporting;
- providing technical advice to other parts of the office about the OIA;
- working on complex OIA requests and transfers;
- limited quality assurance;
- OIA guidance and resources; and
- training.

The Central OIA team tracks individual information requests in an OIA register created in Microsoft Excel. There is an expectation that branch OIA teams will notify the Central OIA team when they acknowledge, extend, make and communicate a decision and take any other action that changes the status of an information request. The Central OIA team uses data from the OIA register to produce performance and other reporting – see [OIA reporting to improve performance section](#).

²⁶ Department of Internal Affairs | Te Tari Taiwhenua *Memo to ELT: Update on OIA work across the Department: period ending 31 December 2015* at 6.

Branch OIA teams can ask the Central OIA team for specialist assistance with OIA requests. A staff meeting attendee said staff are encouraged to ask the Central OIA team for advice on handling a 'tricky' request for information as and when needed.

The Chief Executive stated '*[a]s part of continuous improvement, all OIA responses are checked by the [Central OIA team], and if any issues are identified these are raised with the relevant OIA drafter to consider changes*'. The Central OIA team has some oversight of each response sent out and records the outcome of information requests in the central OIA register. However, as mentioned prior in [OIA reporting to improve performance section](#), the team does not routinely examine the whole OIA process cycle that is followed by the OIA practitioner.

The Department provided me with a range of training material and guidance developed by the Central OIA team, including proactive release guidance available to staff on the Department's intranet. See [OIA guidance](#) for further information on OIA guidance.

The Central OIA team arranges off-site OIA training *Making Friends with the OIA* for new staff around once per year. The team also delivers in-person or virtual training to staff handling OIA requests, including staff in the Communications team. I am concerned that, at the time of my investigation, a staff meeting attendee said resourcing pressures meant that the Central OIA team was unable to provide OIA training to staff. Aside from the Central OIA team, other experts in the Department offer training on the OIA on an as-needed basis. For instance, as I discuss in [Ministerial interactions](#), a staff meeting attendee advised that an OIA team delivered training in OIA request handling to Private Secretaries.

As stated in [OIA reporting to improve performance section](#), until around late 2023 the Central OIA team was reliant on one FTE staff member. It is noteworthy that meeting attendees from multiple branches expressed their appreciation for the institutional knowledge and expertise of the staff member. However, staff meeting attendees also commented on the high workload of the team and risks associated with having a '*single point of failure*' as part of the Department's partially centralised model. For this model to work well, all staff (especially SMEs) need to have a good knowledge of the Department's obligations under the OIA. This requires support structures such as training, policies, guidance and expertise that are currently provided by the Central OIA team.

I discuss some of the repercussions of under-resourcing the Central OIA team in several sections including [OIA handling by the Communications team](#) and [Transfers](#). The detrimental impact on the Department's OIA practice due to under resourcing of the Central OIA team, given its assigned responsibilities, is significant and deeply concerning to me. It puts the branch OIA teams at risk of not adhering to their legal obligations under the OIA – either through inconsistency of practice, not meeting the timeliness provisions set out in the OIA (discussed in [Transfers](#)), or incorrectly applying the OIA (as seen in [OIA handling by the Communications team](#)).

At the time of my investigation, a staff meeting attendee advised that the Central OIA team was training four staff to manage the team's email inbox. Staff will manage OIA request logging and tracking in the central inbox for four days per week. I understand that this change will

allow the Central OIA team to dedicate more time toward developing OIA policy and lifting staff capability in handling OIA requests.

However, while I am pleased the Department has taken some steps to improve the resilience of its system by adding staffing resource to the central function, I do not think that it is enough to ensure all of the [Branch OIA teams](#) are performing consistently, meeting timeliness obligations and otherwise adhering to the OIA. The Central OIA team needs staff to not only manage the email inbox, but it requires further technical expertise to deliver its assigned responsibilities of training, draft and review guidance, conduct quality assurance and perform other necessary tasks to ensure OIA requests are completed in a timely and high quality manner.

It is my opinion that the Department has acted unreasonably by not providing sufficient resourcing to the Central OIA team to ensure it can deliver on its numerous responsibilities. I recommend that the Department undertake a review to ensure its structure has:

- adequate oversight of departmental OIA requests; and
- adequate resourcing and technical expertise to ensure OIA requests are processed consistently, accurately and in a timely manner.

I would like the Department to review and report back to me in six months on the review outcome and implementation.

As previously envisioned by the OIA capability update programme, the Central OIA team is key to realising most of the benefits of having a partially centralised OIA processing system. However, the Department should also be mindful that adding resource to one function may not entirely address system vulnerabilities as this requires strong senior leadership, training, good quality guidance and policies.

Recommendation

Undertake a review to ensure the Department's structure has:

- adequate oversight of departmental OIA requests; and
- adequate resourcing and technical expertise to ensure OIA requests are processed consistently, accurately and in a timely manner.

Report to me in six months on the review outcome and implementation.

Branch OIA teams

The Department is composed of seven different branches and an Office of the Chief Executive. Most branches have teams that process OIA requests:²⁷

²⁷ See also [Appendix 1. Department OIA teams and practitioners as at 8 June 2023](#).

- the Ministerial and Official Correspondence team (MinAdvice team) is based in Toi Hiranga | Regulatory and Policy, and processes its branch's OIA requests along with the majority of those received by Te Kōtui Whitiwhiti | Digital Public Service;
- the Service Delivery and Operations Official Correspondence team (SDO Official Correspondence team) handles OIA requests in Kāwai ki te Iwi | Service Delivery and Operations;
- the Ministerial Services Water Reform Programme team (Water Reform team) processes Ue te Hīnātore | Local Government OIA requests;
- three teams in Te Haumi | Enterprise Partnerships deal with OIA requests – the Ministerial and Secretariat Services team (MaSS team), Office of the National Librarian and Office of the Chief Archivist;
- the Central OIA team is based in He Pou Aronui | Organisational Capability and Services; and
- the Communications team sits within Te Urungi | Māori, Strategy and Performance.

OIA teams have more or less staff depending upon the volume and complexity of the OIA requests they handle.

Given the size and diverse nature of the Department, it is appropriate for OIA teams to work within particular branches and have specialised expertise. However, in a partially centralised system, teams should not be operating in isolation. There needs to be some standardisation in the way staff apply the OIA. I consider the under-resourcing of the Central OIA team has had an impact on the overall connectedness of the branches and consistency of practice.

Currently, OIA managers meet each month to discuss challenges and learnings within their teams. However, in the past, the Central OIA team held wider community of practice events involving OIA teams and other parts of the Department that dealt with official correspondence. A key purpose of the events was to shift the view that teams were *'unrelated'* and functioning independently to *'seeing them as a clear family... which regularly impact[ed] one another and [could] mutually benefit from greater alignment'*.²⁸ Resourcing constraints meant that events became intermittent and were eventually discontinued.

In his 2024 letter to me, the Chief Executive advised that the Department is planning to restart the OIA community of practice. I encourage this and suggest the Department involves a variety of OIA practitioners, including Senior Advisors, in the community of practice. There would be benefit in giving wider staff the opportunity to build networks, share ideas and ensure consistency across the differing teams. The Department should also consider utilising cross-agency OIA networks to connect with other agencies of similar size as to how they have organised themselves internally.

²⁸ Department of Internal Affairs | Te Tari Taiwhenua *Official Correspondence Project Brief* (10 September 2020) at [3].

I note that a fulsome quality assurance process, training and clear, up to date guidance are also important tools that help standardise process. My comments on the Central OIA team's capacity to engage in quality assurance and training are also discussed in [OIA reporting to improve OIA performance](#) and [Central OIA team](#) respectively. I discuss guidance below.

Action points

Consider ways to increase connectedness between branch OIA teams, such as having a community of practice for OIA practitioners, and action the improvement identified.

OIA guidance

The Department provided me with a range of guidance materials developed for staff dealing with OIA requests, including:

- guides available on the Department's intranet such as an overview of the *Official Information Act OIA*;
- various legacy documents;
- Ombudsman guidance;
- whole-of-organisation guidance such as the *2020/21 DIA Guide to Processing Official Information Act Requests*; and
- OIA team-specific guidance currently in use.

In the Department's various current guidance documents, I was pleased to see reference to scoping, meeting with SMEs and working with the requester. OIA team-specific guides show that teams have good processes in place for tracking milestone dates.

However, I also observe that guidance could better reflect the importance of making and communicating decisions on OIA requests *as soon as reasonably practicable*. For example, the SDO Official Correspondence team's guidance states that, among other things, when requesting data from internal business intelligence teams '*[a]sk them to let you know if they're swamped, and need an extension*'. The guidance also contains a template email for the OIA team to use which includes '*please let me know if you[r] current workload is high and that you would recommend that we extend the OIA due date in order for you to have more time to prepare the data*'.

As set out in [Extensions](#), there are specific reasons in the OIA to extend a request, and '*being swamped*' is not one of them. While competing work priorities may be relevant if extending under section 15A(1)(a) of the OIA,²⁹ the extension would only adhere to the Act if each

²⁹ Section 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

requirement of that provision were also satisfied. Namely, the request must be for a large quantity of information (or necessitates a search through a large quantity of information), and meeting the time limit would interfere with operations. This distinction should be clarified in the Department's guidance.

Although I acknowledge that workload pressures can have an impact on staff and the sometimes delicate relationship between SMEs and OIA teams, extensions are not an appropriate tool to use to manage general workload pressures. This guidance is incorrect and needs to be changed. The Department should ensure that it is prioritising its obligation to respond to OIA requests '*as soon as reasonably practicable*'. I suggest the Department re-examine the *DATA to support your OIA* section of the SDO Official Correspondence team guidance.

Most OIA team guidance incorporates timelines and flowcharts tracking the OIA request handling process. I suggest that the Department ensure timelines and flowcharts make it clear that 20 working days is the very latest date at which the Department makes and communicates a decision to the requester (unless the OIA request is extended). Some of the documents incorporate a standard 2-5 working days for no surprises notification to the relevant Minister – I addressed this further in the [Ministerial interactions](#).

Overall, I suggest that the [Central OIA team](#) ensure it is checking OIA team guidance for accuracy and alignment with the OIA and that the team has the resource to enable this. It is understandable that teams wish to produce their own resources to assist with OIA processing in their specific branch. However, guidance should always describe practice that complies with the OIA.

Action points

Review and update *DATA to support your OIA* section of the SDO Official Correspondence team guidance to ensure it accurately reflects provisions of the OIA.

Amend guidance timelines and flowcharts where relevant to reflect the importance of making and communicating decisions on OIA requests as soon as reasonably practicable.

Central OIA team to ensure it checks branch OIA guidance.

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...

OIA handling by the Communications team

My expectations

A request to an agency for information the agency holds³⁰ is, by definition, an official information request.³¹ This means the request for information must be handled in accordance with the OIA, irrespective of who is making the request or whether it is submitted to the Media team, an OIA team, or any other part of the agency.

For the sake of clarity, I want to state unequivocally that media information requests *are* OIA requests, with the core legislative obligations those confer. So that agencies and the media do not misunderstand my expectations, I want to be equally clear about what this does *not* mean: I do not expect that all requests for information must be transferred to OIA teams to be processed. The OIA does not require a ‘formal’ process for the handling of requests.

My expectation, simply, is that the same OIA obligations must be met for information requests handled by media teams as for information requests handled by OIA teams, including:

- timeliness (including the requirement to respond *as soon as reasonably practicable*);
- providing assistance to requesters;
- providing reasons for refusal; and
- informing the requester of their right to complain to me about a refusal.

These requirements are not onerous, do not require complex processes, and do not need to impede the efficient and timely handling of media information requests.³² It does, however, require that staff in media or communication teams must be sufficiently trained and competent in the OIA to allow them to identify OIA requests and to be aware of the obligations they must adhere to when responding to them. In particular, these staff need to ensure responses to information requests adhere to OIA timeliness obligations and, where any aspect of the request is refused, they must adhere to the agency’s obligations under section 19 of the OIA to give the requester the reason for its refusal and to advise them of their right to make a complaint to me.

The OIA places obligations on requesters, as well as on agencies. Requesters must specify with ‘due particularity’ the information they wish to access.³³ I expect requesters to do so, and to engage with agencies’ OIA systems in a manner that recognises that agencies’ resources are finite and shared among all New Zealanders. Requesters should be as specific as they can to

³⁰ Media Teams also field requests for an agency to generate fresh comment on an issue, and requests to interview officials. Requests of this type are *not* covered by the OIA as they are not requests for information *already held* by the agency.

³¹ With some exceptions detailed in section 2 of the OIA; and information requests for personal information made by that person or their authorised representative, which are considered under the Privacy Act 2020.

³² Link to [Requesting official information – a brief guide for media](#).

³³ Link to [section 12 of the OIA](#).

identify the information they are seeking and be open to communicating with agencies to refine or clarify their request if required. Broad and unclear requests can result in delays. It is in the requester's best interest to work with the person who is answering the request to understand what is being sought and consider narrowing the request if it is too broad.

My findings

Agencies typically have an OIA team (or teams) which handle requests for information received from the public and a separate team responsible for communicating with the news media, including responding to media requests for information. At the Department, the team that deals with media information requests is the Communications team.

My investigators reviewed a sample of information requests handled by the Department's Communications team, and spoke to staff in the Communications team. I also posted an online survey targeting media information requesters to seek their views on the Department's OIA practices.

All of the responses sampled were completed within the 20 working day maximum statutory timeframe, and several were responded to within two working days. The Department's media log for the 2022/23 financial year shows the majority of information requests from journalists were answered on the same day. A staff meeting attendee said they attempt to complete media information requests within a day because they are '*really conscious*' of the deadlines that journalists are under – '*especially these days with everything being online*'.

The number of requests received from journalists is variable. One staff meeting attendee said '*we might get half a dozen a day*' and the request subject matter varies, which adds complexity. Although there are a small number of staff who deal with media information requests, meeting attendees did not think there was an issue with business continuity. A staff meeting attendee said they have made a '*concerted effort*' to have back up and depth in the team.

When a request is received from a journalist, it generally goes to a SME to draft a response. The SME sends the request back to the Communications team for checking and sign off before it is sent to the requester. Although there is variation in the way each branch manages the requests, there is a guide to managing the Department's 'media desk' called '*Media 101*'.

Staff meeting attendees suggested a number of reasons why the Communications team is able to complete requests for information so quickly, including:

1. Media enquiries are usually more specific, whereas many OIA requests received from the public are '*almost like a fishing expedition*'. The Communications team may clarify the request if it is unclear, or work with the requester to break up the request. The meeting attendee said:

We just try to be as open and upfront as we can as early as we can. If something is going to be complex or take longer, we are up front.

The specificity of media requests, combined with early clarification and a willingness to engage with the requester, helps ensure a requester's deadline is at the centre of the Department's response.

2. The Communications team uses good relationship management to hasten responses from SMEs. If there is a delay, meeting attendees considered it was usually due to SMEs in certain branches. They consider they have '*chasing people up*' down to an '*art form*'. For instance, they may have to text to follow up, or '*pay them a visit at their desk*'.
3. The sign off process is shorter. Although the *Media 101* guide states that Deputy Chief Executive approve responses for most areas, staff meeting attendees did not think this part of the process was time consuming. A staff meeting attendee said '*sometimes we've had to chase people. It did take us until 8 o'clock to track someone down for sign off, but that's a rarity*'. On occasion the Chief Executive might be included in the sign out process, but this is rare and '*usually about an issue that he has flagged already... his sign off is usually very fast, usually under an hour*'.

If a response goes to the Minister's office for FYI, they are sent close to the time it is sent to the requester. A staff meeting attendee said they are sent within '*half an hour, fifteen minutes or it might be after the fact*'. While there does not appear to be a culture of Press Secretaries from Ministers' offices trying to change responses, a staff meeting attendee said it happens '*very occasionally*'. It does not seem to be an issue, and again there are likely to be good lessons from this arrangement that could be used to enhance OIA teams' processes.

4. Senior staff answer requests and there is guidance to aid consistency. The *Media 101* guide includes information and relevant contacts to answer requests quickly. All advisers have access to the document and one staff meeting attendee said they are told '*it is the Bible, know it*'.

I am pleased the *Media 101* guide clearly states:

We are transparent and provide responses to media within their deadlines whenever possible. We provide the information needed and don't obfuscate.

The *Media 101* guide advises users to '*treat every enquiry with a sense of urgency*' and to pass the request to the SME straight away, to maximise the time they have to work on the response. I was also pleased that a staff meeting attendee confirmed that the Communication team's '*philosophy*' is that '*the media has the right to ask and we have a responsibility as a government department to answer*'. This is a good building block for answering requests in the most timely and fulsome way possible.

Overall, the Communications team does an exemplary job of responding to information requests '*as soon as reasonably practicable*', offering responses within only hours or days. I am pleased that staff also provide good assistance to requesters. However, there are areas that could be improved. Several meeting attendees thought the Communications team could better balance '*instantaneous responses*' with OIA compliance. See [OIA compliance issues](#) below for suggested actions to improve this area.

In addition, the *Media 101* guide does not stipulate that media information requests are official information requests. While it states *'if we are declining to provide the information requested, the reason must align with the OIA'* and refers the reader to the Central OIA team, it does not state that the requester must be given information concerning their right to complain to the Ombudsman. I suggest the guide is updated with this information.

Sound record keeping is also essential in order to comply with the Public Records Act 2005 (PRA), to aid consistency and timeliness. The *Media 101* guide states that the Communications team *'file and track media responses'* and has a section outlining the importance of keeping the media log up to date. Keeping adequate records of all interactions, including phone conversations is also essential. A staff meeting attendee was asked if keeping records adds time or is onerous. They said they had *'no time for those arguments'* and while staff are *'really busy'* they still keep a record as it is official information. I suggest the *Media 101* guide is updated to ensure that adequate records are kept.

I encourage OIA teams to apply some of the practices of the Communications team, especially when it comes to the speed at which they are able to respond to the majority of information requests.

Action point

Update the *Media 101* guidance document to include more detail on OIA and PRA obligations.

OIA compliance issues

Section 19 of the OIA states that if a request is refused, the agency shall give the reason for its refusal and grounds to support the reason. It also states that the requester be advised of their right to complain to the Ombudsman.

Staff meeting attendees said the Communications team do not refuse information very often. One meeting attendee said *'we very rarely decline to provide anything. I can't remember the last time we said no'*. However, there are occasions when they may not provide information (for instance, if there is an active investigation underway). They said when they do not provide information they always provide a reason why.

As stated earlier, to gain an understanding of the Department's processing of media information requests, a small sample of media request documents were reviewed. While the majority of requests were answered in full, a small number were not answered in full. In one case, a request was refused as the information was not held by the Department (section 18(g) of the OIA). Although a plain English explanation was given to the requester for not providing the information, I am concerned that the reason and ground under the OIA were not provided. Further, the requester was not informed of their right to complain to me.

While only one clear example of a breach of the Act was identified, I am concerned that this case may signal a lack of technical OIA knowledge in the Communications team. When asked if they give the section under the Act for refusing requests, one said they have started the process of including this information by *'putting the more formal section from the Act'* under

the plain English reason for the refusal. I am encouraged that this practice is starting to emerge, and remind the Department that referring requesters to me when information is refused is also a statutory requirement.

Another compliance issue was identified in relation to the transfer of information requests to other agencies. Section 14 of the OIA states that if a request is received which is more closely connected with the functions of another agency, it *'shall promptly'* (not later than 10 working days after the request was received), be transferred to the other agency and the requester be informed accordingly. However, the sample media request responses show that this practice may not be occurring. In one case, a requester was told that another agency would be more likely to hold the information, but a formal OIA transfer did not occur. While the Communications team informed the requester of where they thought the information was held, they did not inform the other agency of the transfer.

Again, this indicates a gap in technical OIA knowledge within the Communications team. Some meeting attendees were concerned that they did not want media information responses to be overly *'bureaucratic'*. A trusting relationship between staff and the journalists requesting information is a one reason why media responses are so timely. This trust relationship is an important part of the dynamic, but it should not come at the cost of adhering to the OIA.

This issue could be addressed by either leveraging off the expertise in the Central OIA team, or upskilling staff in the Communications team on the OIA. Staff meeting attendees said a closer collaboration with the Central OIA team would be beneficial to ensure compliance with the OIA. As discussed in [Organisation structure and resourcing](#), if the Department ensured that it had the capability and resourcing in the Central OIA area, it could provide more support and oversight of these types of responses. For instance, having a quality assurance practice would help identify responses that are not answered in full and/or where further team development is required.

Action point

Ensure the reason for refusing information is given to a requester by the Communications team, as well as the ground in support of the reason (if they request it), and details of the requesters right to complain to the Ombudsman.

Ensure the Communications team transfers requests in accordance with section 14 of the OIA.

Consider introducing a quality assurance practice so that a sample of media information responses are checked by an OIA specialist to ensure they are adhering to the OIA.

OIA team practice

My expectations

Regardless of its size, an agencies' OIA structure and processes must be sufficiently flexible to enable a response within legislated OIA timeframes. I expect that agencies' OIA handling

processes, particularly relating to sign-out and peer review, do not interfere with timeliness obligations under the OIA. Agencies should also have a process for identifying and handling urgent requests.

The OIA must be adhered to in every respect, including the appropriate use of transfers, extensions, providing reasonable assistance, and provisions for withholding and refusing information.

Given the importance of the information access to New Zealand's democratic process, I consider that OIA awareness and compliance should be specifically included in staff performance objectives.

My findings

Official information requests completed by OIA teams tend to go through a process cycle. This cycle includes steps such as acknowledgement, triage, allocation, clarifying or refining, information search and collation, consultation, application of the withholding grounds, applying redactions, decision making, drafting letters, review and sign out. There are additional steps in the process, for instance if the request is extended or transferred. The whole OIA cycle can involve many people who need to complete their part in a timely manner.

A request may also require several different parts of the agency to complete information searches or provide advice on what information to withhold. At the Department, there is an interplay between the Central OIA area and the branches, which is evident when an OIA request is received. A number of channels or email addresses can receive OIA requests, and the system relies on those checking email addresses to forward the request to the correct channel to start the OIA process. My investigators conducted a review of sample OIA files to consider processing arrangements.

Receiving a request

Due to the size of the Department and variety of work undertaken, occasionally parts of the Department receive an OIA request but delay sending the request to the Central OIA team and relevant branch OIA team. Staff meeting attendees advised that staff were not always familiar with the Department's OIA handling process, or requesters sent OIA requests to email inboxes that staff did not regularly monitor. A staff meeting attendee said that initial delays cause a '*ripple effect*' on OIA processing. It puts the OIA team, subject matter experts and stakeholders under additional pressure to respond to the request in a timely manner.

In my small sample file review, I found several instances of early delays. In one case, an OIA request took eight working days to reach the central inbox. This OIA request was subsequently extended and is discussed further in [Extensions](#). In another case, an administrative error led to a gap of 22 working days before the Central OIA team and Branch OIA team received the request. In this instance, staff did not extend the request but contacted the requester to apologise for the late OIA response. I was pleased staff were open with the requester about the administrative error that led to the delay, and did not attempt to incorrectly extend the request.

I understand that administrative errors such as this will occur on occasion, and I was pleased the Department apologised to the requester, but consideration should be given to reducing this type of administrative error in future. There was some indication that individual teams had taken steps to raise awareness about their OIA teams amongst wider stakeholders within the Department. One advised that the SDO Official Correspondence team had prepared a presentation for new staff about the team's functions. I am pleased that staff are proactively thinking of ways to ensure that all staff are aware of their role in the OIA process cycle.

However, a co-ordinated, cross-department approach would be beneficial to address this issue. For instance, additional training to all staff may be required, so they are aware of OIA timeliness obligations, can identify an OIA request and immediately know where to direct the request. As discussed in [Central OIA team](#), the Department should ensure the Central OIA team is able to provide additional training and advice to all staff. In addition, as discussed in [Organisation culture](#), further messaging from senior leaders about the OIA to all staff would raise awareness across the Department. It is up to leaders to champion the OIA and to take steps to develop the culture within the Department so that staff prioritise OIA requests.

Triage and allocation

The Central OIA team conducts an initial triage after it receives OIA requests into the central inbox. The Central OIA team views each OIA request and decides to allocate the request to a certain branch. It also separates out and handles OIA requests that ask for information held by multiple branches.

A number of staff meeting attendees advised that triage in OIA teams took place at the same time advisers, senior advisers or managers allocated out OIA requests:

- The SDO Official Correspondence team triages incoming requests based on urgency and subject matter. The senior advisers in the SDO Official Correspondence generally handle the 'trickier', more complex OIA requests.
- In the MinAdvice team, senior advisers monitor the team's email inbox and distribute OIA requests to team members as soon as possible. Senior advisers assess who to allocate OIA requests to by considering the complexity of the request, as well as team members' work capacity and familiarity with the subject matter. The team might also create a project plan for complex OIA requests.
- The MaSS team may have a triage discussion about an OIA request once it comes into the team's email inbox. A meeting attendee advised that certain topics such as requests for information about named individuals constitute an 'alert', as the team will likely need to consult with the person in question. Consultation can add to the processing time of an OIA request.
- The manager in the Water Reform team allocates requests as quickly as possible. In response to a complaint I received, in early 2023 the team introduced twice-weekly scoping and triage meetings where senior advisers break down the different elements of an OIA request and identify which SMEs to involve.

OIA teams can also use regular team meetings to triage the OIA requests they are working on.

I encourage OIA teams to document initial triage and planning to help with fast processing of OIA requests and ensure consistency if the Department receives a similar request in the future. Clear, helpful allocation emails sent out by the MinAdvice team were identified in the OIA file review, which set out key details of the OIA request (portfolio, type, requester, request title, OIA processor, due date) and potential SMEs. I suggest that it might also be useful to add an OIA request 'urgency' category to allocation emails.

In relation to the prioritisation of OIA requests, the Chief Executive advised:

In terms of improvements, I would like to see a reduction in the average request duration. There are still too many requests which are answered in the fourth week. I would like to consider how simpler requests could be fast-tracked so that they do not face delays due to competing, more complex, requests.

I note that currently, the Department does not appear to have a formalised process for 'fast-tracking' certain OIA requests. In response to my agency questionnaire, it advised that all OIA requests currently 'go through the same consideration and approval process'. The Department has also stated that there are no formal policies for responding to OIA requests based on level of risk to the organisation.³⁴ As outlined in [Organisation culture](#), there is a perception that some branches have an excessively risk adverse culture, which has led to additional steps in the OIA process and adds unnecessary time.

As set out in [OIA handling by the Communications team](#), I understand that some teams may have informal arrangements with senior managers where some OIA requests can be signed off quickly. One staff meeting attendee said that, although the Department does not officially have an 'easy track' that they can direct OIA requests down, sometimes readily answerable requests can be responded to as 'business enquiries' by areas of the Department relatively quickly. They advised that, on occasion, the Central OIA team might also draft a response to a straightforward request immediately.

A meeting attendee from one of the branches told my investigators:

I think we need to get better at saying no quickly if you know when [the OIA request] comes in that you don't hold something...

I encourage the Department to keep considering where there are opportunities to shorten the response time to requesters without compromising quality decision making. Potentially, there may be an opportunity for the Department to consider how the Central OIA team could take on a greater role as an initial triage mechanism.

Action point

Consider adding 'urgency' category to allocation emails.

³⁴ Governance and Administration Committee *Department of Internal Affairs Annual Review 2022/23. Volume 1: Responses to written questions (1 – 46)* (submitted 16 February 2024) at 73.

Action point

Consider a more straightforward OIA process for low risk requests.

Providing assistance to requesters

My expectations

The OIA specifically requires agencies to *consider* consulting requesters before refusing a request on the basis that the information does not exist or cannot be found, and when the information cannot be made available without substantial collation or research. However, agencies can consult with requesters for any reason, and this can be an extremely useful step in the OIA process for both parties. Consultation can help:

- the agency confirm the exact nature of the information the requester wants;
- explain to the requester any difficulties the agency is having in processing the request and how it keeps information, allowing the requester to consider amending or refining the scope of their request;
- inform the requester if there are likely to be any delays in processing their request; and
- to facilitate discussion on whether information can be provided to the requester in tranches and, if so, which information to prioritise (once a decision has been made and communicated to grant the request).

Consultation with a requester may result in an amended or clarified request. If a request is amended or clarified after it is made, it can be treated as a new request, which replaces the original one. This voids the agency's obligation to respond to the original request, and re-starts the maximum statutory time limit for responding to the new one. However, this will not apply where the amendment or clarification was sought by the agency more than 7 working days after receiving the original request.

I expect agencies to keep full and accurate records of any consultation with requesters including, where applicable, its reasons for *not* consulting with a requester in a circumstance where the OIA requires that this be considered.

My findings

OIA teams from across the Department spoke about the benefits of clarifying OIA requests with requesters. For instance, a staff meeting attendee advised that exchanging information with requesters helps OIA teams better understand the purpose of the OIA request and pinpoint the information the requester is after. The more specific the requester is about the information they require, the better the Department can satisfy their OIA request.

Contacting the requester early also gives OIA teams the opportunity to explain the possible resourcing and time implications of their OIA request. Another staff meeting attendee said that sometimes requesters are unaware that their OIA request is asking for a substantial amount of documents, and may or may not be interested in obtaining the entire volume of information.

At times, staff had trouble when attempting to provide assistance. Requesters did not always respond promptly (or at all) to emails seeking clarification. A staff meeting attendee advised that, if they had not heard back from the requester, they followed up more than once. In some cases, OIA teams informed the requester that they would either reframe or refuse the request if there was no response. If the requester was unhappy, they could submit a new OIA request. I remind requesters that engaging with agencies can help facilitate the fast processing of OIA requests.

In my file review, I saw some examples of good practice involving engagement with requesters. In one case, the person processing the OIA request emailed a requester to ask for their telephone number on the day the OIA team received the request. I encourage OIA teams to contact requesters as early in the process as possible.

In another case, staff met with a requester in-person to discuss the scope of the request and agreed upon amendments to refine the request. I encourage OIA teams to consider all of the options available to them in contacting requesters. Although it is not always possible, talking to requesters over the telephone may sometimes resolve issues quicker than through email.

I am pleased that I have seen some good practice in OIA teams. The Department should ensure this practice is encouraged across all teams and included in guidance documents as a key part of the OIA process. I note that the Department provided me with sound documents containing a checklist of OIA request scoping prompts that all staff have access to on the agency's intranet. As only one staff meeting attendee referred to this checklist during a discussion with my investigators, it may not be widely used across all branches. Guidance such as this supports requests being responded to '*as soon as reasonably practicable*'; staff across all branches should be encouraged to use it.

Action point

Encourage OIA practitioners to contact OIA requesters to assist with their request.

Engagement with subject matter experts (SMEs)

SMEs play an important role in the OIA process as they search for material and often provide context on information. In some branches, SMEs provide advice on what information to withhold under the OIA.

As stated in [Organisation culture](#), staff meeting attendees from across OIA teams discussed how difficult it can be to engage staff from other parts of the organisation to receive the information they need to process OIA requests. One staff meeting attendee said the '*corralling of people*' was the most frustrating part of the process. Another advised that OIA practitioners have to be accommodating in circumstances where they need a SME's assistance with a time consuming request, and it is important for SMEs and OIA practitioners to have a good working relationship in order to obtain information efficiently.

I am troubled that some OIA practitioners have reported difficulty receiving information from SMEs to complete OIA requests as soon as reasonably practicable. Staff should be empowered

by senior leaders to do their job in the most efficient manner possible. If individuals or work groups are delaying OIA responses, there should be a clear and robust way to resolve this.

OIA staff said they thought many of the frustrations are due to SMEs being '*absolutely bonkers busy*' and OIA requests are extra work for them. However, I remind the Department that as outlined in [Organisation structure and resourcing](#), compliance with the OIA is a legal requirement and core business.

There are varying practices across branches that may contribute to delays. For instance, SMEs in one branch highlight relevant information for redaction as they have technical expertise on the subject matter. However, when assessing material as part of an OIA response, there should be a balance between OIA expertise and subject matter expertise. If SMEs are conducting OIA assessments on material, they should be adequately trained to apply withholding grounds correctly and balance public interest considerations. They should also have sound policy and guidance material, and be seeking expert advice on the application of the OIA. I am pleased steps are being taken to change this practice because of the additional time it takes for SMEs to complete such a detailed assessment.

I note that a small number of staff meeting attendees considered their relationships with SMEs worked well overall. The teams that reported better relationships with SMEs had made some effort to improve relationships, which helped increase OIA practitioners' influence. In one case, the OIA team had a session about strategies to '*pull information.*' They outlined ways to obtain information from SMEs such as sending the SME an email, a meeting invite to step them through the OIA or pick up the phone to discuss. The final step in the process was including a manager in exchanges. Another team reported having '*regular outreach*' to new personnel within the Department. Meeting attendees stressed the importance of the '*human element*' in engaging with SMEs. I am pleased that pockets of the organisation have made some headway on improving relationships between SMEs and OIA teams.

A number of staff meeting attendees suggested educating SMEs further about their obligations under the OIA and PRA would help. I encourage the Department to consider how it can improve the relationships between SMEs and OIA teams across all branches of the Department. As outlined in [Central OIA team](#), having adequate resourcing and technical expertise in the Central OIA function could help in this regard.

Action points

Develop a process to manage SMEs that delay OIA responses.

Extensions

My expectations

An agency may extend the maximum time limits for both transferring a request and making a decision and communicating it to the requester—but only if certain criteria are met. These are:

- there must be a valid reason for the extension, either:

- 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
- 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.
- the extension must be for *'a reasonable period of time having regard to the circumstances'*; and
- the decision to extend the maximum time limit must be communicated to the requester within 20 working days after the day on which the request was first received by the agency.

In terms of reported timeliness through the PSC, an OIA request is considered to be 'on time' if a valid extension is communicated to the requester within 20 working days. Agencies should not be tempted to gain credit for an 'on time' response by communicating an extension to a requester where the reason is not a valid one under the OIA.

To use the extension provisions of the OIA incorrectly in order to bolster timeliness statistics is a breach of the legislation. It is also a missed opportunity to report honestly to senior leaders on the agency's performance. Senior leaders will only become aware of capacity or capability issues that need improvement through honest and clear reporting, as I discussed earlier under [OIA reporting to improve performance](#).

Agencies may not extend response times just because an influx of requests or a lack of resource or planning has slowed response times for individual requests, or where an administrative error has delayed consideration of a request.

Furthermore, section 15A(1)(b) of the OIA only permits an extension for the reason of consultation, if necessary consultations are such that a proper response cannot reasonably be made within the original time limit. The multiple elements in this section must all be made out in each case. It will generally be hard to show that internal consultation within an agency, or peer review and sign-out processes, justify an extension under this ground. An agency is expected to know what information it holds, and to know its business well enough to be able to understand the impact of releasing that information, within the usual maximum timeframe for making a decision on a request. Nor is any 'FYI' process with Ministers considered to be 'consultation'.

I expect agencies to integrate into their OIA process an early, initial check that identifies those requests that are likely to require an extended timeframe for making and communicating a decision on a request, along with communicating this to the requester as soon as possible. An early check will help identify time pressures which helps avoid OIA breach, such as the improper use of the extension provisions. It also allows the agency to consider other options which may allow it to fulfil its timeliness obligations without relying on an extension, such as contacting the requester to assist them to narrow or refine their request.

If a statutory deadline is – or will be – missed due to error, a high number of requests, or mismanagement of competing workloads, I consider it good practice for the agency to contact the requester as soon as possible to inform them of the missed deadline, provide a new deadline, and apologise for the delay. I expect agencies to record these instances in OIA timeliness statistics³⁵ as a missed due date – not as an extension.

My findings

My investigators reviewed the Department’s guidance for extending OIA requests. Whole-of-organisational guidance covers how and when to determine the length of an extension period. It also breaks down the two different extension grounds and provides a checklist of elements based off section 15A(4) of the OIA to include in the notice effecting the extension. Although most OIA team-specific guidance refers to extensions, as noted previously in [OIA guidance](#), not all documents describe best practice. I reiterate my suggestion that the [Central OIA team](#) ensure that OIA teams are using consistent guidance and, in the absence of their own team-specific documents, are referring to whole-of-organisation guidance.

The Department has a process where some OIA teams seek approval from senior leaders to extend OIA requests. The SDO Official Correspondence team and MinAdvice team are required to provide a written rationale for any extension they wish to make to their responsible Deputy Chief Executive. The Deputy Chief Executive approves or declines the extension on a case-by-case basis. I am pleased this is happening in some OIA teams, and I am encouraged that decisions on extensions are taken this seriously.

In the Water Reform and MaSS teams, it appears that the Manager and General Manager respectively approve extensions. Staff meeting attendees advised that the above-mentioned teams also provide reasons as to why an extension is required.

I am pleased the Department has processes in place to check whether OIA teams are using extensions appropriately. In saying this however, I also encourage OIA teams to be transparent about all of the factors that lead to requests for extensions. Extension approvers ought to be aware of any relevant delays, errors or issues preventing the Department from answering the OIA request within 20 working days.

I am concerned that evidence suggests that on occasion, extensions are being sought for reasons other than those stipulated in the OIA. A staff meeting attendee advised my investigators that OIA teams were motivated to complete OIA requests on time, and may seek an extension if they were running late. Another said that OIA requests were quite frequently extended due to consultations, *‘as a way of covering off not enough time to get work done’*. In my file review, I saw instances where OIA teams extended information requests for consultations after delays occurred during OIA request processing. However, record keeping gaps meant that it was difficult to discern why delays took place and whether they were the primary reason for the extension. In addition, extension rationales did not refer to delays.

³⁵ This refers to internal reporting, and the agencies timeliness statistics as reported to PSC.

An OIA case included in my sample appeared to show the Department extended the OIA request because of an earlier administrative error. In this case, another part of the Department took eight working days to send the OIA request to the appropriate OIA team. Evidence indicates that, at allocation stage, the OIA team and a SME suggested an extension might be necessary due to the lost time. The information request was eventually extended for five working days on the basis that it required searching through a large quantity of information.

I remind the Department that extending an OIA request because it was not provided to the correct branch in a timely manner is not a valid reason for an extension. If there is an initial error, the Department needs to accept responsibility and contact the requester to apologise for missing the maximum time limit. They should be honest about the reason why there was a delay and treat the error as a learning opportunity. Furthermore, in this case, the requester was not advised that they had a right to make a complaint to the Ombudsman about the extension. I remind the Department that it is a statutory requirement to include this information pursuant to section 15A(4)(c) of the OIA.

I am concerned that it appears there are pockets of practice where extensions are sought incorrectly and this may conceal administrative errors. There is a risk with this type of practice that the number of overdue OIA responses are underestimated, and senior leaders are not aware of issues that are causing delay. An accurate picture of vulnerabilities is what will drive improvement in OIA practice.

I was pleased that there were also examples of good practice in the sample OIA files, where the Department contacted requesters to apologise for late OIA requests. In two files, staff were open with the requester about the administrative errors that lead to the delayed responses.

However, on balance, taking into account comments from staff meeting attendees, documentary evidence and examples from the sample OIA file review, it is my opinion that the Department has acted contrary to law by using the extension provisions for reasons other than those stipulated in section 15A of the OIA.³⁶ If this were a wider practice, I would be concerned that it is masking poor practice and inappropriate delays. I recommend the Department improve its practice to ensure extensions are only made for the reasons outlined in the OIA.

Another issue was identified in relation to the timeframe for extensions. A number of staff meeting attendees advised my investigators that OIA teams determine the number of days

³⁶ Section 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.

required for an extension on a case-by-case basis. In their view, the Department did not apply blanket extensions or extend OIA requests by a set number of days. However, evidence suggests that it is the Department's practice to apply standard extensions of 40-60 working days on OIA requests for former Ministers' email correspondence (termed FMRs or former Ministers' records). One letter from the MaSS team to a requester regarding an FMR OIA request states:

*The Department will extend its response timeframe to 60 working days... **This time extension is standard for requests for former Ministers' records.** The Department will however endeavour to provide a response to your request as soon as practicable [emphasis added].*

Another letter details:

Due to the potential large volume of information to be searched and reviewed, and consultation required with the former Minister, it is generally not possible for the Department to respond to an information request within the twenty working day time limit set out in the Act. An extension of at least 60 days or longer is generally required under section 15A of the Act... Any decision on timeframes is considered on a case-by-case basis.

I understand that the reasons for the lengthy extensions include:

- The Parliamentary Service (PS) stores FMRs on the parliamentary server. PS uses a product that requires 'keywords', meaning that the Department must identify single words that relate to the OIA request such as 'science' or 'technology'.
- PS searches for the keyword within a date range on its server. A staff meeting attendee said that it can take up to one hour per search term to produce results. PS transfers the search results to a USB stick.
- The Department contacts the relevant former Minister and asks who they would like to review the emails PS located. The purpose of the review is to examine whether the former Minister sent or received the emails in their capacity as a Minister of the Crown (official information within the scope of the OIA).
- The Department, PS or the former Minister's nominated person reviews the information. A staff meeting attendee said that this is a manual exercise and can involve examining over 100 emails.
- PS conducts one search at a time. If there are multiple OIA requests about FMRs, the Department waits until PS sends back information relating to the first OIA request before it sends across the second OIA request. Extension periods 'stack up' – if the Department extends the first OIA request by 60 working days, the second OIA request might be extended by 65-70 working days.

I acknowledge there are challenges for the Department in responding to OIA requests for FMRs and recognise the effort of the OIA team in processing these requests. However, although the Department calls these '*standard*' extensions, I consider them to be blanket extensions of the

OIA timeframe. My view on blanket practice in relation to OIA requests is clear; agencies should not adopt this approach because it is not supported under the OIA.

Therefore, on the information before me, my opinion is that the Department has been unreasonable in its application of standard 40-60 day extension of OIA requests for former Ministers' records. I recommend the Department cease the practice of applying standard extensions to OIA requests for FMRs. I encourage the Department to consider further actions that will allow staff to complete OIA requests for FMRs within the statutory timeframe. If this is not possible, and an extension is required, it must be done on a case-by-case basis, in accordance with the OIA.

I acknowledge staff efforts in this difficult area. I am also pleased that a staff meeting attendee advised that the Department is focusing on introducing new technology that will improve FMR data capture and search, which will help the Department answer future OIA requests about FMRs in a timely manner. However, in the meantime, the Department should consider how it can further improve timeliness on OIA requests for FMRs.

Recommendations

Improve practice to ensure extensions are only made for the reasons in section 15A(1) of the OIA.

Cease the practice of applying standard extensions to OIA requests for former Minister records.

Action points

OIA teams to consider providing contextual information where relevant to extension approvers as part of the reasons why they are seeking an extension.

When extending OIA requests, ensure requesters are notified of their right to complain to the Ombudsman about the extension.

Consider further actions to allow staff to complete OIA requests for former Minister records within the OIA statutory timeframes.

Transfers

My expectations

An agency must transfer a request to another agency if some or all of the information requested:³⁷

³⁷ Link to section 14 of the [OIA](#).

- 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.

This is not a discretion, but a mandatory requirement in circumstances where the person dealing with the request has a genuine belief that the information is either held by another agency, or more closely connected with its functions.

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).³⁸ The requester must be informed that the request has been transferred. If the agency identifies the need to transfer all or part of a request outside the 10 working days (or extended time period), I expect the agency to contact the requester to explain the reason for the delay and the need for the transfer.

My findings

I am concerned that there were potential timeliness issues with a small number of transfers. In one case, an email was not sent to the agency requesting a transfer until the ninth working day. In that case, the other agency accepted the transfer quickly and the OIA request was transferred within the 10 working day statutory timeframe.

However, in another case the Department sent an email to the other agency about the transfer on working day 10. The agency did not accept the transfer until the 13th working day, and it was transferred. It is my opinion that the Department has acted contrary to law in relation to section 14 of the OIA, by failing to transfer a request to the other agency within 10 working days of the request being made. However, in this instance, I have not made a recommendation as I believe the issue is connected to the ability of the Central OIA team to maintain oversight and coordination of OIA requests which I discuss in [Central OIA team](#).

Currently, it appears that all OIA transfers are completed by the Central OIA team, which (as outlined in [Central OIA team](#)), was reliant on one FTE staff member up until late 2023. I also note that of the seven agencies included in this investigation, the Department has the second highest number of transfers. While this is likely due to the type of work completed by the Department, it does indicate that transfers are an area that should be completed in accordance with the OIA. As outlined in [Organisation structure and resourcing](#), I consider the Department has acted unreasonably by not providing sufficient resource to the Central OIA team.

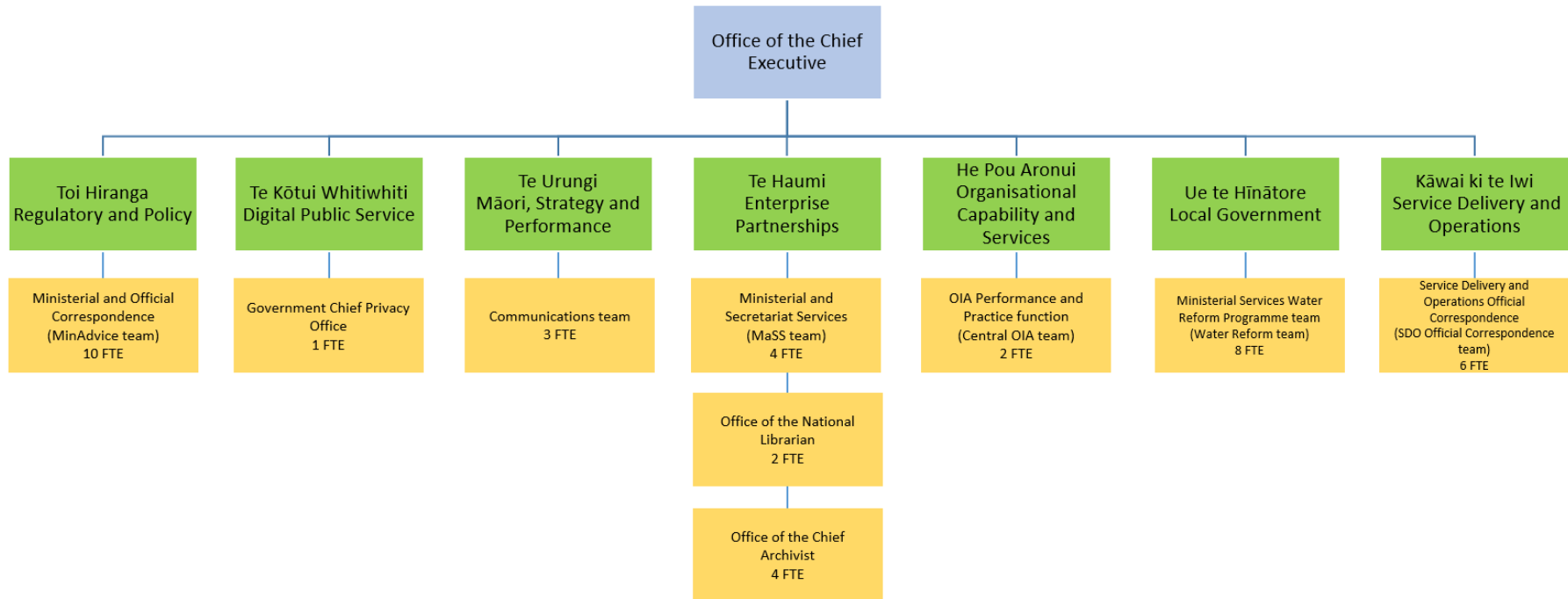
Action point

Ensure transfers are completed within 10 working days of receiving requests and inform requesters accordingly.

³⁸ See sections 14 and 15A of the [OIA](#).



Appendix 1. Department OIA teams and practitioners as at June 2023





 **Ombudsman**

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