

OIA timeliness obligations:  
Compliance and practice in  
**Kainga Ora**  
**Housing New Zealand**



OIA timeliness obligations: Compliance and practice in Kāinga Ora | Homes  
and Communities

Final opinion of the Chief Ombudsman

October 2024

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# OIA timeliness obligations: Compliance and practice in Kāinga Ora | Homes and Communities

Opinion of the Chief Ombudsman

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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.<sup>1</sup>

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 don't 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.<sup>2</sup> The OIA also requires that, if the agency decides to release some or all of the requested information, it must do so promptly.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup> The statistics also show a continued upward trend since the first reporting year, 2015/16, when agencies reported meeting OIA timeliness obligations was only 87.6 percent of the time.<sup>6</sup> The publication of OIA statistics makes agencies publicly accountable for their results, which has

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<sup>1</sup> Initiated under section 13(1) and 13(3) of the [Ombudsmen Act 1975](#).

<sup>2</sup> See section 15(1) of the [Official Information Act 1982](#).

<sup>3</sup> See section 28(5) of the [Official Information Act 1982](#).

<sup>4</sup> Link to Ombudsman report [Ready or not?](#), September 2022.

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

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

driven performance improvement in the reported criteria. The Public Service Commission'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 Public Service Commission 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,<sup>7</sup> 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 Public Service Commission.

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

## 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 (OA).<sup>8</sup> 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;
- Health New Zealand | Te Whatu Ora;
- Kāinga Ora | Housing New Zealand;
- The Pharmaceutical Management Agency | Te Pātaka Whaioranga
- Transpower New Zealand Limited; and
- 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 in the 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 of the Ombudsmen Act.<sup>9</sup>

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’;

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

<sup>9</sup> See sections 13(1) and 13(3) of OA.

- 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.

My 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 the Ombudsman;
- 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; and
- the Chief Executive of each agency.

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 agency's practice during the period in which my investigation took place, being December 2022 to August 2024.<sup>10</sup>

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

## My opinion

I commenced this investigation because of concerns raised by some that the OIA is a bureaucratic tool, used to stifle the flow of information, and a growing perception that official information requests are not processed in a timely manner.

Based on my review of Kāinga Ora's official information practices and processes, I see no evidence of Kāinga Ora misusing the OIA. I was pleased to find that Kāinga Ora has recognised extensions as an area to work on having had the highest percentage of extensions of all entities reported to PSC in the period July to December 2022. I commend the agency for working towards improving its practices around extensions and significantly decreasing its use of extensions – from 51 percent in the July to December 2022 period down to 25 percent of all OIA requests received by the agency during the July to December 2023 period. A number of other measures have also been implemented by the agency towards improving its OIA practices, such as conducting a roadshow for its staff titled *'Being a Public Servant'*, developing new OIA and proactive release guidance and introducing an automated workflow tool for tracking OIA requests.

However, the investigation also revealed some opportunities for Kāinga Ora to improve its OIA practices. These include expanding senior leaders' messaging for staff on the importance of the OIA and robust record keeping, increasing OIA training for staff and amending OIA policies and procedures to include more information on various OIA aspects (e.g. distinction between consultation and notification when interacting with the Minister's office on departmental OIA requests, dealing with frivolous, vexatious or trivial requests, and the agency's obligation under the OIA to make and communicate its decisions on OIA requests *'as soon as reasonably practicable'* and provide information *'without undue delay'*).

Overall, I have made one recommendation and suggested 26 action points to improve Kāinga Ora's official information practice and processes.

Formal recommendations under the OA are only made if I form an opinion that a decision, recommendation, act, or omission was contrary to law, unreasonable, based on a mistake, or wrong under section 22(1) of the OA. My suggested action points are designed to help Kāinga Ora to further improve its practice and processes.

Kāinga Ora was provided the opportunity to comment on my provisional opinion and I have taken its comments into consideration in forming my final opinion. Kāinga Ora advised that it accepted *'by and large the vast majority of the recommendations and findings'* and the agency is putting together a *'detailed work programme to ensure the recommendations and findings identified in your report are acted upon and fully implemented'*.

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

Peter Boshier  
Chief Ombudsman



## Summary

### Leadership and culture

Kāinga Ora's Chief Executive told me that the agency has worked hard on embedding a culture of public service including promoting the availability of official information. Building this culture is particularly important for Kāinga Ora because the agency often takes on employees whose previous experience was in the private sector and who may lack familiarity with public service tenets. I was pleased to see that, to help build staff's knowledge about working in the public sector, Kāinga Ora recently conducted a roadshow on *'Being a Public Servant'* across the country. I encourage the agency to build upon this foundation, by expanding on the roadshow content, and considering incorporating elements from the road-show into induction training for all staff.

In addition, I suggest that Kāinga Ora expand its current messaging to staff to promote the OIA as a core part of New Zealand's constitutional and democratic framework, not merely a compliance activity. This should be communicated by senior leaders through clear and consistent messaging to staff, both overtly and tacitly (e.g. senior leaders participating in OIA training or swiftly and efficiently handling OIA requests).

Kāinga Ora has recently introduced tools to manage official information requests which will enable it to significantly improve reporting and analysis. I encourage Kāinga Ora to consider expanding the range of data it collects and analyses with a view to how this can best be used to drive OIA performance improvement.

#### Action points

Expand on the public service roadshow content, to highlight:

- the principle and purposes of the OIA;
- the agency's OIA timeliness obligations; and
- responding to OIA requests as a core part of New Zealand's constitutional and democratic framework, not just a compliance activity.

Consider adopting the public service roadshow as induction training for all staff.

Ensure that all staff are aware that processing OIA requests is core business through clear and consistent messaging from senior leaders.

Consider expanding the range of OIA data collected and analysed to drive OIA performance improvement and ensure OIA handling functions are appropriately resourced.

### Ministerial interactions

Kāinga Ora provided several pieces of policy and guidance on its interaction with Ministers on 'departmental' OIA requests, which in my view contained some useful instructions, but also included messages that may lead to confusion for staff. While I was pleased to see the agency

using guidance published by my office, I suggest that it does so by providing a link to my guidance to ensure that staff access the most current version.

In Kāinga Ora's sample OIA files from 2022, I saw that whenever the agency interacted with its Minister's office on an OIA response, the response was provided five working days before the final 'due' date to the requester. In a number of examples, the Minister was asked to both 'note' the response and to 'note that Kāinga Ora seeks your comment' thus sending a confusing message to the Minister's office. However, the agency has affirmed that it addressed the issues I identified throughout the course of my investigation, and that the examples of interactions with the Minister's office I saw in my review of sample files from 2022, no longer reflect its current practice.

I also saw in the above examples that the responses to OIA requests were always provided to the Minister's office in full. I encourage Kāinga Ora, when informing the Minister of a departmental OIA response, to seek out opportunities where its 'no surprises' obligation can be fulfilled by providing the topic of the request or a short summary to the Minister's office.

Kāinga Ora's OIA guidance and policy should be updated to make clear the distinction between consultation and notification and under which circumstances each may be appropriate. The guidance should clearly convey that neither notification nor consultation is in any sense an approval process by the Minister.

### Action points

Where guidance from my office is used as a resource, provide links to this rather than local copies to ensure staff access the most current version.

Seek opportunities where the agency's 'no surprises' obligation can be fulfilled by providing the topic of the request or a short summary to the Minister's office.

Review and update guidance and policy relating to OIA requests involving Ministers in line with my suggestions above, taking particular care to ensure that information about consultation with Ministers and notifying Ministers on departmental OIA requests is clear and consistent.

## OIA team – structure and practices

I was pleased to find that, to help improve the efficiency of some aspects of OIA processing, Kāinga Ora recently introduced scoping meetings which include early identification of opportunities to assist requesters to clarify or refine their requests. To help further improve OIA practices around assisting requesters, I suggest that Kāinga Ora amend its OIA guidance to include more information about the agency's obligation under section 13 of the OIA to assist requesters; and the ability for the agency to consider an amended or clarified request as a new request, if the amendment is sought within seven days after receipt of the request, under section 15(1AA) of the OIA. In addition, OIA guidance should make it clear that, where the agency is considering refusing the request on the basis that the information requested cannot be made available without substantial collation or research, the agency must consider extending the timeframe to respond to the request and/or fixing a charge for the supply of the information.

My review of sample OIA files identified some opportunities to improve the quality of OIA responses. I suggest that Kāinga Ora amend its OIA processing templates to ensure that, when making decisions on OIA requests, it considers the specific public interest factor(s) in releasing information where appropriate under the OIA.

During my review of sample OIA files, I also found instances where information was withheld by the agency without explaining the requester's right to complain to my Office. This constitutes a breach of section 19(b) of the OIA. Accordingly, it is my opinion that Kāinga Ora appears to have acted contrary to law in those cases. I have not made a recommendation in this instance as the agency has outlined the measures it has taken to ensure it adheres consistently with section 19(b) of the OIA, where this is applicable.

To help improve the quality of Kāinga Ora's responses to OIA requests and identify where additional resourcing is needed, I suggest that the agency consider implementing a quality assurance process involving the regular review of a sample of completed OIA responses.

Kāinga Ora's recently developed *Kāinga Ora OIA procedures* provides instructions on processing OIA requests with urgency. However, I suggest that guidance around urgent requests is expanded, included in OIA training to be delivered to staff agency-wide, and published on the agency's external website to help promote transparency of its OIA processes.

As part of Kāinga Ora's ongoing efforts to improve its practices around extensions of OIA requests, the agency recently introduced a process whereby a memorandum is submitted for the approval of the Manager of the Government Relations Team (GRT), outlining the rationale for seeking an extension, along with a timeline estimating the number of days required for the extension. I am also pleased that the agency's guidance helps promote the principle of *'as soon as reasonably practicable'* by instructing staff to consider extensions early in the OIA process and to *'send extension if required'* on days ten to eleven after receiving an OIA request.

I note, however, some vulnerabilities in Kāinga Ora's practices around extensions. Several members of staff advised during meetings with my investigators that, with some exceptions, the agency's practice has been to apply a standard extension of 20 working days, without giving case-by-case consideration of how long it might reasonably take to fulfil the request. The sample OIA file review also showed that the majority of extended OIA requests were extended for 20 working days. It is my opinion that Kāinga Ora has been unreasonable in its practice of generally applying a standard 20 working days extension of OIA time limits. However, I have not made a recommendation in respect of Kāinga Ora's practice as it appears the agency is already addressing this, based on its implementation of the extension approval process and the newly developed OIA guidance which highlights that extensions must be for a reasonable period of time having regard to the circumstances. I will suggest, however, that the agency amend its guidance and templates to help ensure that decisions on the length of an extension are always made on a case-by-case basis.

I am pleased that extensions has been identified by the Chief Executive as an area for improvement and that the agency has been decreasing the use of extensions as evidenced by the OIA timeliness statistics. To continue to improve practices, I suggest that Kāinga Ora implement measures to ensure that extensions are made in accordance with section 15A of

the OIA. The agency should provide appropriate and ongoing training for staff in relation to extending the timeframe to respond to OIA requests.

In my review of the agency's OIA sample files I saw an example of Kāinga Ora prematurely communicating its decision on an OIA request to the requester. It did so even though it had not completed the steps necessary to make a decision on the request. Concurrently with this self-initiated investigation, I also received a complaint where Kāinga Ora communicated its 'decision' even though the decision was not made by an authorised decision maker. It appears that Kāinga Ora has, on two occasions that I saw, misapplied the provision in the OIA which allows agencies to communicate a decision to requesters in advance of providing the information. It is my opinion that in the example I saw in this investigation, Kāinga Ora has acted contrary to law by communicating a decision on an OIA request when it was not open for it to do so. I recommend that the agency reviews its practices around communicating decisions on OIA requests in advance of providing the information, and ensure that its OIA guidance makes clear the steps that should have taken place before it can be considered to have made a decision on an OIA request. Kāinga Ora has accepted my recommendation.

Finally, I was pleased to find that Kāinga Ora's sign-out and review processes were described by staff as not overly long and were said not to hinder the agency's ability to adhere to its timeliness obligations under the OIA. My review of sample OIA files also showed that in most instances signatories of responses to OIA requests were swift to complete sign-out processes.

### Recommendation

Review practices around communicating decisions on OIA requests in advance of providing the information, and ensure that OIA guidance clearly outlines the steps that should take place before Kāinga Ora can be considered to have made a decision on an OIA request.

### Action points

Amend OIA guidance relating to contacting requesters in line with my suggestions.

Amend OIA templates in line with my suggestions above to ensure that public interest factor(s) are always considered by decision makers on OIA requests, where this is required under the OIA.

Consider implementing a post closure quality assurance process for completed OIA responses.

Update guidance for processing urgent OIA requests in line with my suggestions.

Publish information on OIA requesters' right to request urgency (including the criteria for deciding whether, and if so, how a response to an OIA request should be provided urgently) on Kāinga Ora's website.

Amend OIA guidance and templates relating to extensions to clearly state that decisions on the length of extensions are to be made on a case-by-case basis, and should be calculated based on a reasonable assessment of the time it will take to process the request.

### Action points

Improve practice to ensure extensions are sought, where appropriate, in accordance with section 15A of the OIA.

Ensure appropriate and ongoing training is available for staff in relation to extending the timeframe to respond to OIA requests.

## OIA handling by media team

I was pleased to find that Kāinga Ora's Media team generally provides quick responses to information requests as the agency appears to have fostered a strong culture around the importance of timely responses to media information requests. Some examples of positive practices around processing media information requests include regularly alerting key staff to the receipt of requests and using a 'portfolio' approach to assigning and handling information requests.

It appeared from the files I reviewed that media information requests are not always viewed by Media Team as OIA requests. The Media Team should communicate with requesters in a way that does not reinforce a misperception that the OIA does not apply to media requests for information. I suggest that appropriate training is regularly delivered to staff in the Media Team.

Kāinga Ora's Media Team is sometimes involved providing advice and input on OIA requests assigned 'medium' risk or higher. I was pleased to see that in the majority of files I reviewed the Media Team were swift to respond when contacted by the GRT. However, in one instance it took the GRT repeated attempts, over 15 working days, to get an answer from the Media Team. I encourage Kāinga Ora to ensure that Media Team's input does not unduly impact the agency's ability to respond to the requester as soon as reasonably practicable.

### Action points

Ensure communications with media information requesters do not reinforce a misperception that the OIA does not apply to media requests for information.

Media Team to receive regular OIA training appropriate to their role.

Ensure that input on OIA responses from the Media Team does not unduly impact the timeliness of responses.

## Information management and record keeping

Based on my review of the agency's sample OIA files, there appeared to be some missing records of correspondence with requesters, as well as gaps in records of the agency's internal consultations and discussions. Therefore, to help improve OIA practices and promote compliance with section 17(1) of the Public Records Act 2005 (PRA), I encourage Kāinga Ora to ensure that relevant correspondence and discussions pertaining to OIA requests are retained on file, in order to adequately capture the rationale behind decision making on OIA requests,

including any public interest considerations in releasing information, and how this was weighed against reasons under section 9(2) of the OIA to withhold it. Where appropriate, the agency should also document administrative steps taken in relation to processing OIA requests, such as recording the search terms used to find information.

I also suggest that Kāinga Ora update its OIA guidance to clearly convey the importance of compliance with the PRA, and the expectation that all staff create and maintain adequate records of the OIA handling process where appropriate. Training for staff involved in OIA request handling should also highlight the requirements of the PRA.

In addition to the above measures, I suggest that senior leaders promote a culture of robust record keeping practice generally, through regular messaging about staff's obligations, including, for example, using appropriate naming conventions and storing information in such a way that it facilitates its retrieval.

At the time of writing this report, I was advised by Kāinga Ora that it had implemented an automated workflow tool to track OIA requests. This is a great initiative as it replaces a spreadsheet that may have been unwieldy given the volume of OIA requests received by Kāinga Ora. I encourage the agency to ensure that the new workflow tool is supported by 'backstop' systems for ensuring timeliness, such as regular OIA reporting to senior leaders to help identify OIA requests that are at risk of being delayed.

### Action points

Amend the GRT's record keeping practices to ensure full and accurate records are created and maintained in an accessible form, including:

- substantive correspondence with requesters (including telephone conversations, meetings and verbal discussions);
- material internal discussions; and
- the rationale behind OIA decision making, including section 9(1) public interest considerations, where relevant.

Update OIA guidance to state that correspondence and discussions about OIA requests must be retained in accordance with the provisions of the Public Records Act 2005; and ensure OIA training also reflects this requirement.

Senior leaders to increase messaging to promote sound information management and record keeping practices generally.

## Organisation resilience, resources and training

I was pleased to find that Kāinga Ora has recently implemented and published its OIA and proactive release policies. A draft OIA guidance document has also been developed which, at the time of writing this report, is being reviewed by my staff to provide feedback to the agency. While I commend Kāinga Ora for these measures, I note an opportunity to improve the draft guidance by including more information on dealing with frivolous, vexatious or trivial requests.

Having reviewed Kāinga Ora's OIA training for its staff, it appears that the agency does not conduct formalised OIA training for members of the GRT. A number of Kāinga Ora staff also spoke about the need to deliver more training to SMEs and decision makers. I suggest that Kāinga Ora expand and formalise OIA training, ensuring that specialised training is delivered to GRT, senior managers, OIA decision makers, and subject matter experts with refreshers available at appropriate intervals.

More opportunities to improve practices have been revealed by the review of Kāinga Ora's sample OIA files, as it appeared that the requirement under the OIA to communicate decisions '*as soon as reasonably practicable*' is not routinely referenced in the agency's internal and external correspondence when processing OIA requests. In my view, Kāinga Ora should amend its OIA guidance and templates to clearly convey its obligation under the OIA to make and communicate its decisions on OIA requests '*as soon as reasonably practicable*' and provide information '*without undue delay*'. I further suggest that the senior leaders increase messaging to the broader agency to promote OIA timeliness including the concept of '*as soon as reasonably practicable*'.

Finally, Kāinga Ora should strengthen its capability and allow staff to cope with increased OIA workloads by ensuring there are appropriate resilience measures in place including (but not limited to) training and mechanisms such as 'OIA champion' systems. Tracking time taken by staff to process OIA requests can help inform Kāinga Ora's training and resourcing decisions.

### Action points

Amend draft OIA guidance to include guidance for staff on dealing with frivolous, vexatious or trivial requests.

Expand OIA training, ensuring that regular, in-depth OIA training is delivered to GRT, senior managers, OIA decision makers and subject matter experts, with refreshers available at appropriate intervals.

Amend OIA guidance and templates to clearly convey Kāinga Ora's obligation under the OIA to make and communicate its decisions on OIA requests '*as soon as reasonably practicable*' and provide information '*without undue delay*'.

Senior leaders to increase messaging to the broader agency to promote the OIA's timeliness requirements, including the concept of '*as soon as reasonably practicable*'.

Ensure resilience measures exist to allow the agency to cope with increased OIA workload and continue to meet OIA timeliness obligations.

## About Kāinga Ora

Kāinga Ora | Homes and Communities was formed on 1 October 2019 following the merger of Housing New Zealand Corporation, HLC, and Kiwibuild.<sup>11</sup> It is a Crown entity<sup>12</sup> responsible for delivering the government’s public housing and urban development policies,<sup>13</sup> as directed by the responsible ministers, primarily the Minister of Housing and the Minister of Finance.

Kāinga Ora is governed by a board of up to 10 members appointed by, and directly accountable to, the responsible ministers.<sup>14</sup>

Kāinga Ora’s executive leadership team comprises the Chief Executive, five deputy chief executives, and eight general managers.<sup>15</sup> In 2022/23 it had 3,305 full-time equivalent employees, with a head office in Wellington and staff operating from 12 locations nationwide.<sup>16</sup>

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<sup>11</sup> Kāinga Ora was set up under the Kāinga Ora – Homes and Communities Act 2019. See Kāinga Ora [Annual report 2022-23](#), p 116, for more detail.

<sup>12</sup> Specifically, Kāinga Ora is a ‘Crown agent’ and must give effect to government policy when directed by the responsible Minister (see Schedule 1 Part 1, and s7(1)(a), Crown Entities Act 2004).

<sup>13</sup> See Kāinga Ora [Briefing to the incoming Minister](#), 2023, p 3.

<sup>14</sup> Section 10, Kāinga Ora-Homes and Communities Act 2019.

<sup>15</sup> See Kāinga Ora web page [Our structure](#), retrieved 28 May 2024.

<sup>16</sup> See Kāinga Ora [Briefing for the incoming minister](#), 2023, p 58 and [Statement of intent 2022-26](#), p51.



## 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
- OIA 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

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, 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 recently been published by PSC. Kāinga Ora responded ‘on time’ to 98.1 percent of OIA requests received in that six month period. The agency’s results for the full, 2023 calendar year are 98.3 percent, higher than the average reported ‘on time’ responses across all 27 Crown agents at 97.2 per cent. However, Kāinga Ora also made more extensions on average than other Crown agents (30.5 percent compared with 14 percent for all Crown agents). Kāinga Ora took longer to respond to OIA requests, on average, in 2023 than other Crown agents (23.2 working days compared with the average of 15.7 working days).

I note that the number of OIA requests the agency received doubled from 342 in 2020, the first full calendar year of its operation, to 698 in 2023.<sup>17</sup>

### Ombudsman complaints statistics

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 and/or the public genuinely wanting to test the integrity of the decision on a request with the independent Officer of Parliament. Where complaints data **can** indicate issues with agencies’ OIA handling, is when those complaints result in a finding against the agency.

In the 2023 calendar year, Kāinga Ora had 11 complaints made against it in relation to its OIA timeliness, representing only 1.6 percent of the total number of requests it completed. I found against the agency in three cases. In two of these, I found there was an undue delay by the

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<sup>17</sup> Kāinga Ora was established in October 2019.

agency in providing information to requesters; in one, I found that the agency misapplied the provision in the OIA to extend the timeframe for responding to a request.

## Leadership and culture

### Senior leader messaging about the OIA

#### 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 primary requirement of the OIA to make and communicate a decision '*as soon as reasonably practicable*'.

Words, however, are not enough. 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 timely 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

Kāinga Ora's Chief Executive told me:

*(t)he agency has worked hard over the past few years...to develop and embed a culture of public service and recognition of our roles and responsibilities as public servants to the public and Ministers. A key part of this is our responsiveness to information requests and the availability of our information.*

I am pleased that Kāinga Ora has a focus on building a strong culture of public service within the organisation, and that it recognises the importance of making available information about the work it does. In relation to the OIA, in particular, the Chief Executive said:

*I am committed to ensuring Kāinga Ora meet 100 percent of request[s] being decided and responded to on time...My expectation is that OIA requests are responded to in a timely manner in accordance with the timeframes specified in the OIA...I have emphasised and reinforced the importance of this to my direct reports.*

This commitment is demonstrated by a pattern of improvement in Kāinga Ora's recent OIA timeliness statistics relating to the agency's use of extensions, which I will discuss further under [OIA reporting to improve performance and inform strategy](#).

Staff members pointed out that, due to the nature of its business, Kāinga Ora often takes on employees whose previous experience is in the private sector. There is a risk that staff with a private sector background lack a grounding and familiarity with public service tenets, which

makes it even more important to place a focus on building and maintaining a strong culture around openness and transparency.

To build knowledge within the agency about the obligations and responsibilities of working in the public sector, in mid-2022 Kāinga Ora conducted a roadshow titled *‘Being a Public Servant’* which was delivered to staff across the country. The roadshow was delivered by the Director of Governance and the Manager of Government Relations. I commend the agency for this as it is important that senior leaders are involved in actively, visibly promoting a positive culture around OIA compliance and transparency.

Some of the key messages from the brief section of the roadshow that focused on the OIA were:

- the importance of communicating professionally with colleagues in light of the fact that any information held by the agency—this includes text messages, emails, and messages delivered via online instant messaging platforms used by the agency—can be requested under the OIA; and
- the types of information that can be requested/accessed, such as non-written information and the agency’s guidelines for decision making.

Kāinga Ora’s roadshow should be considered a foundation to be built upon rather than a one-time occurrence. The agency could consider incorporating this slide show or elements of it into induction training for all staff. It would be highly beneficial for staff entering Kāinga Ora from the private sector to receive this primer on the basics of public service, and a good reminder for those coming from the public service.

If Kāinga Ora’s existing roadshow material is used in induction training or if the roadshow is conducted on an ongoing basis, messaging about the OIA should be expanded upon. While the public service roadshow highlighted the agency’s *‘legal requirement to respond to OIA requests’*, it missed an opportunity to promote the OIA as a core part of New Zealand’s constitutional and democratic framework. For instance, it could include information about the OIA being a key mechanism by which members of the public can exercise their fundamental human right, reflected in section 14 of the New Zealand Bill of Rights Act 1990,<sup>18</sup> to seek and receive information of any kind in any form. The public’s ability to access information is also fundamental to government accountability through transparency; and it enables informed participation in democratic processes. Induction information given to staff about the OIA should also highlight the principle and purposes of the OIA, and the agency’s OIA timeliness obligations.

I saw other examples of messaging to staff about Kāinga Ora’s approach to the OIA and to transparency more generally. In an article attributed to the Director of Governance, posted to Kāinga Ora’s intranet following PSC’s publication of OIA timeliness and complaints data, the work of the GRT is lauded, and the article states *‘we are living up to the vision of being an open and transparent public agency’*. This type of message provides a clear, guiding signal to staff

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<sup>18</sup> See [Bill of Rights Act 1990, s 14](#).

about how the agency intends to operate in terms of transparency, and how it wishes to be perceived.

However, as the Chief Executive said:

*Much progress has been made but there is always more to do.*

I saw some indications that more can be done to promote a culture where all staff are aware of the importance of the OIA and the part they play in making available information to the public, even if they do not hold a dedicated OIA role. A staff member in the Government Relations Team (GRT) noted:

*Our team...can be seen as a bit of an annoyance, sometimes there's a lot of nagging. Some parts of the organisation don't see the importance of what we do... We get a lot of people who aren't familiar with the public service, that come into the public sector for the first time...*

It is up to leaders to ensure that all staff are aware that processing OIA requests is core business for everyone, not a low-priority compliance activity that can be set aside when staff are busy with other tasks. This should be communicated to staff through clear and consistent messaging. I note that messaging does not always have to be overt. Senior leaders give tacit messages to staff about the importance of the OIA through, for example, their participation in OIA training; and how swiftly and efficiently they handle OIA requests that require their participation through internal consultation, decision making and sign-out processes.

Several staff members spoke of the high level of reputational risk awareness in Kāinga Ora and the impact this can have on OIA processing. It is important and necessary for agencies to be cognisant of reputational risk, however, this should not impede the timeliness of OIA responses. Nor should concerns about reputational risk result in information being withheld in response to OIA requests unless there is good reason under the OIA for withholding information, which is not outweighed by public interest considerations in its release. I will discuss Kāinga Ora's approach to risk management and the potential impacts on OIA timeliness further under [Sign-out practices](#), [Organisation resilience, resources and training](#) and [OIA handling by media team](#).

### Action points

Expand on the public service roadshow content, to highlight:

- the principle and purposes of the OIA;
- the agency's OIA timeliness obligations; and
- responding to OIA requests as a core part of New Zealand's constitutional and democratic framework, not just a compliance activity.

Consider adopting the public service roadshow as induction training for all staff.

Ensure that all staff are aware that processing OIA requests is core business through clear and consistent messaging from senior leaders.

## OIA reporting to improve performance and inform strategy

### My expectations

Senior leaders should have clear oversight of their agency's OIA compliance and practice, and 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, the 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 also 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 data<sup>19</sup> ensures senior leaders recognise and /or address:

- 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

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<sup>19</sup> 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);
- 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.

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

In its response to my agency questionnaire, the agency originally advised me that *'Kāinga Ora does not do regular analysis of OIA data or OIA performance reporting beyond what we report to the PSC.'*

I note, though, that the Chief Executive told me he receives a weekly list of *'high risk'* OIA requests and participates in *'a weekly context meeting which details OIA (requests)'* and *'tracks trends so we are prepared'*. Tracking trends on OIA requests is a facet of OIA reporting that allows the agency to recognise where OIA resources should best be directed. It can also identify where the proactive release of information might help to reduce OIA demand on high-interest topics. Further, the Chief Executive advised that the agency *'has been focusing on decreasing the use of extensions'* and noted that these had reduced from 51 percent in the July to December 2022 period down to 25 percent of all OIA requests received by the agency during the July to December 2023 period. This suggests that some data analysis is occurring to allow the agency to recognise whether its use of extensions is trending up or down.

I was pleased to see that in its response to my provisional opinion Kāinga Ora stated that recently introduced tools to manage official information requests (Te Rere Mahi workflow and Power BI reporting) *'will enable us to significantly improve our reporting and analysis'* and *'trends and insights garnered will contribute to improved performance and services'*. I look forward to receiving updates from Kāinga Ora on its progress in this area of practice.

Kāinga Ora has also advised that live reports are available to managers and staff, there is quarterly reporting to the Minister on the timeliness and quality of Ministerial OIAs, and quarterly reporting will be extended to senior managers on departmental OIAs.

Based on the above, it appears that OIA reporting and analysis is occurring but this could be expanded on. OIA reporting can be used as a tool to improve OIA performance through identifying, for example, how much time different business units spend handling OIA requests; in what circumstances and by which business units, refusals and extensions (among other provisions) are being used; and from this, where additional OIA training or resourcing may need to be directed. It can also drive accountability by highlighting to senior leaders which OIA requests are being handled by their directorates, allowing them to intervene when OIA requests appear to be delayed or may become overdue.

I encourage Kāinga Ora to consider expanding the range of data it collects and analyses with a view to how this can best be used to drive OIA performance improvement.

**Action point**

Consider expanding the range of OIA data collected and analysed to drive OIA performance improvement and ensure OIA handling functions are appropriately resourced.



## Ministerial interactions

### My expectations

My investigation focused on OIA requests made to agencies, termed ‘departmental OIA requests’<sup>20</sup> (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).<sup>21</sup>

In addition, the *Cabinet Manual* recognises that the relationship between Ministers and chief executives should be guided by the ‘no surprises’ principle.<sup>22</sup> 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

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<sup>20</sup> While Kāinga Ora is a Crown agency and not a department, the use of the term ‘departmental OIA request’ here distinguishes OIA requests made to the agency, from OIA requests made to the Minister.

<sup>21</sup> See section [15\(4\) of the OIA](#).

<sup>22</sup> See section 3.22 of the [Cabinet Manual](#)

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.<sup>23</sup> However, I accept that in some cases a short period of advance notice may be required to enable the Minister to be properly 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:<sup>24</sup>

*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 departmental OIAs.

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.<sup>25</sup> The use of my model protocol is endorsed in the *Cabinet Manual*.<sup>26</sup> 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

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<sup>23</sup> Link to [Ombudsman case note on Ministerial notifications and the obligation to communicate decisions 'as soon as reasonably practicable'](#)

<sup>24</sup> Link to [Not a Game of Hide and Seek](#) report at page 113

<sup>25</sup> Link to [Model protocol on dealing with OIA requests involving Ministers](#)

<sup>26</sup> See section 8.53 of the [Cabinet Manual](#)

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 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.<sup>27</sup> 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;

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<sup>27</sup> 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.

- *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.

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.<sup>28</sup>

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

Kāinga Ora provides its Minister’s office with a list of newly received OIA responses on a weekly basis—this is the same list the Chief Executive receives, discussed earlier under [OIA reporting to inform performance and strategy](#). I consider this a good practice as it allows for the Minister’s office to discuss with the agency, at an early stage, whether it considers consultation may be appropriate, based on the topic of the request; or whether it considers Kāinga Ora should inform the Minister about a proposed OIA response on an FYI basis under the ‘no surprises’ principle. Advising the Minister’s office of the topic of the request may, in some instances, be considered sufficient to fulfil the agency’s ‘no surprises’ obligation to its Minister. Sharing relevant information with the Minister’s office at an early stage in the OIA process may ultimately lead to more timely decisions being communicated to requesters.

In response to my agency questionnaire, Kāinga Ora provided me with several pieces of policy and guidance which direct staff on how to interact with Ministers on ‘departmental’ OIA requests. These contained somewhat different messages about some key aspects of the agency’s process, which may lead to confusion for staff.

The recently implemented *Government Relations Team – Guide to procedures* states, in relation to ‘specific deadlines’ for OIA requests:

*...an OIA that relates to Government policy may need to go through a Minister’s office for consultation (allow a minimum of 5 days) or notification (the same day as the release of information)*

I am pleased that the agency states its expectation that notification should take place at approximately the same time as the release of information to the requester. However, this document provides no detail about the distinction between consultation and notification and under which circumstances each may be appropriate. I suggest it would be helpful to include information about this in the agency’s OIA guidance.

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<sup>28</sup> See section 8.55 of the [Cabinet Manual](#)

Later in the same document, a 10-stage process for drafting documents produced by the GRT is outlined, which includes OIA responses. The '10-step drafting' section references consultation and notification in step one of the drafting process. Staff are advised to determine at an early point in the OIA drafting process whether consultation or notification with the Minister's office is appropriate and, if it is determined that consultation may be necessary for the agency to make a decision, this should happen at the earliest possible stage. I agree.

Consultation, but not notification, is referenced again, later in the '10-step drafting' section, under step nine – 'Sign out':

*If you need to consult the Minister's office, you'll need to forward all material to the Minister's office for consultation at least 5 working days before it is to be released.*

*Send the:*

- *documents to be released*
- *any documents / segments to be withheld (if required)*

...

*This consultation will need to be built in to your timeframes, so allow a minimum of 5 days for the Minister and staff to review the material before it is released.*

I consider this may cause confusion, as it appears to conflate consultation with notification. Consultation with the Minister, where needed, should take place early in the OIA handling process in order to inform the agency's decision making on an OIA request. However, this excerpt of Kāinga Ora's guidance refers to documents to be released or withheld, implying that a decision on the OIA request has already been made. If the agency has made its decision on an OIA request then *consultation* with the Minister, if required, should have already occurred. Once the agency has made its decision, it may choose to *notify* its Minister on a 'no surprises' basis.

It is notification, rather than consultation, that I would expect to occur at, or around, the 'sign out' phase of the OIA handling process, immediately before the tenth stage ('dispatch to the requester'), as per Kāinga Ora's guidance. However, it should rarely require five days for the Minister to be informed of the agency's decision on an FYI basis. As Kāinga Ora's own guide stated earlier, notification should typically take place on or about 'the same day as the release of information'.

Kāinga Ora also provided me with copies of its *Protocol on dealing with OIA requests involving Ministers*, and its *OIA policy*. These include information on the agency's approach to interacting with its Minister on 'departmental' OIA requests. The former is based on the *Model protocol on dealing with OIA requests involved Ministers*, published by my office. This document clearly distinguishes between Ministerial consultation and notification. In it, Kāinga Ora states that:

*Notification to the Minister will be done at the same time the decision is communicated to the requester. It will be for the Minister's information only.*

Kāinga Ora has confirmed that the protocol has now been agreed with the Minister's office.

Kāinga Ora's OIA policy touches on the agency's approach to interacting with Ministers on departmental OIA requests. It notes that:

*(u)nder the 'no surprises' convention, Kāinga Ora must advise the Minister about any 'matters of significance' inclusive of any request for official information that is 'particularly sensitive or potentially controversial' Refer to Cabinet Manual 2023*

Although the policy refers to the Cabinet Manual, I suggest it may be of benefit to highlight some relevant details within the policy. In particular, Kāinga Ora should consider amending its OIA policy to clarify that:

- the 'no surprises' principle does not override the requirements for disclosing information under the OIA;
- the importance that any FYI process is not to be taken as consultation with the Minister; and
- the FYI to the Minister should be at the same time or shortly before the response is sent to the requester.

The agency also provided me with a copy of a document titled 'Work sheet for dealing with OIA requests that involve Ministers'. This was a version of a worksheet published by my office. While it is pleasing to see Kāinga Ora using my guidance, it may be best to link to my published guidance rather than saving a local copy. My guidance is updated periodically, so referencing it via a link will ensure staff access the most current version.

In my review of Kāinga Ora's sample OIA files from 2022 I saw a confused approach to consultation and notification which bore out my concerns about the different messages regarding Ministerial interactions in Kāinga Ora's written guidance.

In all cases I reviewed where Kāinga Ora interacted with its Minister's office on an OIA response, the response was provided in full, five working days before the final 'due' date to the requester,<sup>29</sup> and was accompanied by a memo to the Minister containing information about the proposed response (including, for example, descriptions of each document proposed to be included in the response, details of any relevant withholding grounds the agency had applied, and an assessment of the risk of providing the proposed response).

In a number of examples, Kāinga Ora's recommendation to the Minister was to 'note' the response, but also to 'note that Kāinga Ora seeks your comment'. In each case, the agency gave a five working day timeframe for the Minister to review the response and provide comment. This appeared to be a confusing message, which suggested both that the response was being sent for FYI/notification purposes, while also requesting that the Minister's office provide comment on the response. This could give the incorrect impression that an OIA

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<sup>29</sup> That is, five working days before maximum timeframe of 20 working days after the date the request was received, unless the timeframe had been extended by the agency. In the latter case, the agency would be provide its Minister's office with the proposed response five working days before the new, extended 'due' date. I note that responses to OIA requests are, in fact, due as soon as reasonably practicable.

decision made by the agency required Ministerial ‘approval’ before it can be sent to the requester.

I did not see evidence of any inappropriate input on departmental OIA requests by the Minister or the Minister’s office.

Having identified practice issues in my review of the sample OIA files from 2022, I was pleased to see Kāinga Ora’s response to my provisional opinion where the agency advised that it has addressed these issues, and the practice I saw in my review of its sample files from 2022, does not reflect its current practice. The agency stated:

*We have not been operating a blanket five-day rule across both consultation and notification processes...since following the model protocol from January 2023.*

*... We have reviewed the 395 departmental OIA requests processed by Kāinga Ora in the six months from 1 January 2024. Of these 35 were provided to the Minister’s Office, seven were provided for up to five days for consultation purposes together with a supporting memo, 28 responses were sent FYI for notification purposes and all were notified on the same day the decision was sent to the requester.*

*... It seems two factors may have impacted the formation of your provisional opinion... First, the relatively small sample size from some time ago has produced uncommon examples, and the wording of our policy and guidance documents could be much tighter in this area and, as you suggest, may result in confusion for the reader. We will address these matters promptly.*

I am pleased Kāinga Ora has addressed its practice around Ministerial interactions on departmental OIA requests through the agreement and implementation of a Ministerial protocol. I also acknowledge the agency for its commitment to further refine its OIA practice by enhancing its policy and guidance documents in line with my suggestions. I look forward to following the agency’s progress in this area.

In some of the cases I reviewed (in the sample OIA files from 2022), the memo to the Minister accompanying OIA responses for review stated clearly that the OIA response would be sent to the requester if comment had not been received by a given date. This is good practice which ensures the notification process does not operate, nor could be perceived as operating, as an approval process by the Minister. However, this was not done in all cases I reviewed. I encourage the agency to ensure that its OIA guidance and policy makes it clear that neither notification nor consultation is in any sense an approval process by the Minister; the agency is the decision maker on departmental OIA requests.

I saw no evidence of Kāinga Ora fulfilling its ‘no surprises’ obligation on OIA requests in any other way than to provide the OIA response, in full, to its Minister’s office. I encourage Kāinga Ora to seek opportunities where its ‘no surprises’ obligation can be fulfilled by providing the topic of the request or a short summary to the Ministers office. I note that its memo to the Minister includes an overview of the response and that this may suffice as notification in many cases, while assisting the agency to adhere to its OIA timeliness obligations.

At the time of writing this report, Kāinga Ora provided me with an additional piece of draft guidance it has developed, titled *Kāinga Ora OIA Procedures*. The agency advised that this is intended to be read alongside the document *Government Relations Team – Guide to Procedures*. I am pleased the agency has developed specific OIA guidance and I will discuss this more fully under [Organisation resilience, resources and training](#). However, in relation to Ministerial interactions on agency OIA requests I note that this draft document, like the existing *Guide to Procedures*, also appears to conflate consultation and notification processes. In particular, the draft document includes this sentence:

*(Decide) if consulting the Minister’s office is necessary to maintain a ‘no surprises’ approach and in accordance with the protocol for consulting the Minister.*

The draft document also guides staff to ‘consult’ with the Minister’s office *after* the agency has made its decision and prepared its response to the requester. This shows that the distinction between consultation and a ‘no surprises’ notification is not understood by the agency, which is of great concern to me. I reiterate that ‘consultation’ with the Minister’s office to assist the agency in making a decision may be appropriate when, for example, the Minister supplied the information or it is about their functions or activities. If consultation is considered necessary, it should take place before the agency has formed its decision on the OIA request, because consultation is part of the decision making process. By contrast, an FYI notification to the Minister would take place where the agency considers it is appropriate to keep the Minister apprised of a decision it has made.

I encourage the agency to review and update its guidance and policy, including its draft guidance, relating to OIA requests involving Ministers in line with my suggestions above, taking particular care to ensure that information about consultation with Ministers and notifying Ministers on departmental OIA requests is clear and consistent.

### Action points

Where guidance from my office is used as a resource, provide links to this rather than local copies to ensure staff access the most current version.

Seek opportunities where the agency’s ‘no surprises’ obligation can be fulfilled by providing the topic of the request or a short summary to the Minister’s office.

Review and update guidance and policy relating to OIA requests involving Ministers in line with my suggestions above, taking particular care to ensure that information about consultation with Ministers and notifying Ministers on departmental OIA requests is clear and consistent.



## OIA team – structure and practices

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

### My findings – OIA team – structure and practices

The Government Services team is responsible for processing OIA requests in Kāinga Ora, among other functions. The team's responsibilities are extensive and are outlined in the agency's *'Government Relation Team – Guide to procedures'*:

*We cover the whole range of government relations work including responding to official correspondence, Parliamentary questions, Official Information Act requests (OIAs), Ministers' office enquiries, briefings, weekly reports, and select committee support.*

In 2022-2023, the team was named the Government Relations Team (GRT) and sat within the Governance Directorate, with its Director reporting to a member of the Executive Leadership Team, i.e. General Manager – People Governance and Capability. The Manager, Government Relations reported to the Director Governance, a tier three manager, as part of the People, Governance and Capability Group. The Government Services team has now moved to the newly created Government and Sector Relationship Group, led by the new Deputy Chief Executive role for Government and Sector Engagement. Kāinga Ora described its reasoning for these changes as follows:

*...we now have a senior leader and team completely focused on delivery of enhanced performance and outputs regarding our core government functions, responsibilities and obligations such as the OIA and Ministerial Services. The Government Relations team has been renamed Government Services to recognise this commitment to improved services and performance.*

I commend Kāinga Ora for these positive measures and look forward to seeing further improvement in the performance of its OIA functions.

For the purposes of this report the Government Services team will continue to be referred to as 'GRT' throughout this document.

Kāinga Ora employs a mixed model for handling OIA requests where the processing of OIA requests is mostly coordinated by the GRT, with significant input on the content of OIA responses from subject matter experts (SMEs). The different roles and responsibilities of the GRT, SMEs and other Kāinga Ora staff in relation to OIA handling are clearly assigned and outlined in the agency's recently implemented '*Official Information Act Policy*'. OIA requests are typically processed as follows:

- OIA requests are received by the GRT's email inbox through various channels, such as the Minister's Office, the Media Team (discussed in [OIA handling by media team](#)), or other business units within the agency.
- Requests are logged into Kāinga Ora's information management and record keeping system, *Objective* (discussed in [Information management and record keeping](#)), and assigned to a GRT Advisor based on the subject matter of the request and the workloads of GRT Advisors.
- After being assigned a request, the GRT Advisor will work with the relevant SME within the responsible business unit to scope the OIA request and determine whether the requester needs to be contacted in order to clarify or refine the request.
- The SME will then search and collate information within the scope of the OIA request, propose redactions and forward the completed materials to the GRT Advisor for review. The GRT Advisor will conduct any internal and external consultations, where appropriate.
- The response to the OIA request is drafted jointly by the GRT Advisor and the SME. Agency staff advised my investigators during meetings that GRT Advisors will work with SMEs to ensure that the provisions of the OIA (including withholding grounds) are applied correctly.
- The proposed OIA response is peer reviewed by a GRT Advisor, the SME and other staff involved in the OIA process.
- The response is signed by relevant staff in accordance with Kāinga Ora's *Risk Management Policy* (discussed in [Sign-out practices](#)) and sent to the requester.

For OIA requests assigned 'medium' or 'high' risk rating (discussed in [Sign-out practices](#)), there may be additional steps in the process such as notifying the Minister's Office, the agency's Media Team and/or the Office of the Chief Executive.

Until recently the GRT used a spreadsheet to record the OIA requests it received, and track progress. A report was manually produced daily for the GRT identifying where in the process each request was, and highlighting OIA requests past the due date, due immediately, due in five working days, or in two weeks. Staff informed me that the accuracy of this report was dependent on all staff regularly and accurately updating the spreadsheet, which left room for human error. In my review of OIA sample files, I saw several examples of requests sitting for periods of up to two weeks with no evident progress made because staff had gone on leave without re-assigning the request to another staff member, or simply overlooking the OIA request. This may have resulted in the agency breaching its obligation to respond to OIA requests '*as soon as reasonably practicable*' and could be avoided if the agency has a workflow

system that sent reminders to relevant staff, or simply allowed better visibility of where OIA requests are in the OIA handling process. Kāinga Ora advised me that it has now implemented an automated workflow tool, which should help ensure that OIA responses are not delayed due to human error. I will discuss this further under [Information management and record keeping](#).

As discussed in [PSC timeliness data](#), the number of OIA requests received by the agency doubled between 2020 and 2023. While the size of the GRT did not increase commensurately, it did expand from 17.5 average full time employees (FTE) in 2019/20, to 21 FTE in 2022/23. Some staff also gave their view that OIA requests became more detailed and complex during that time. This highlights the importance of ensuring that the OIA handling function is appropriately resourced, and that sufficient resilience exists in the organisation to adhere to obligations under the OIA even during spikes in the number of OIA requests received. I will discuss this further under [Organisation resilience, resources and training](#).

In spite of the increase in the volume and complexity of requests, Kāinga Ora's 'on time' responses as reported to PSC has remained relatively high—the lowest percentage of reported 'on time' responses being 95.9 in January to June 2022. In the period July to December 2022, the agency extended the timeframe to respond on 51.4 percent of requests, the highest of all entities which reported to PSC in that period. To its credit, the agency has recognised this as an area to work on, as I discuss under [OIA reporting to improve performance and inform strategy](#) and [Extensions](#).

Staff meeting attendees and the Chief Executive said the agency had identified that it needed to improve the efficiency of some aspects of its OIA handling process to ensure it could adapt to the increased volume of OIA requests while adhering to its obligations under the legislation, including timeliness obligations. An example of this is the 'scoping meeting' recently introduced into the OIA process. GRT advisors are now responsible for arranging and conducting scoping meetings with the relevant subject matter experts early in the OIA process. The meetings are to set processing timeframes; establish early in the process which business unit or units holds information relevant to the request; and focus on approaching the request in a way that will enable its timely processing.

The scoping meeting is also an opportunity for the agency to identify whether there is an opportunity to assist the requester to clarify or refine their request. As noted above, some staff were of the view that OIA requests have become increasingly complex. Contacting requesters at an early stage in the OIA handling process to assist them to clarify or refine their request can assist the agency's timeliness by removing the need for extensions to be made. It may also reduce requests being refused on the basis of substantial collation and/or research.

Although I saw evidence of staff contacting requesters to clarify their requests, the agency guidance has little detail about this. For example, a brief reference to assisting requesters appears in an OIA checklist in an appendix to the guidance titled 'Government Relations Team – Guide to procedures'. It states that:

*If the request is for a large amount of information, you may wish to consider whether...it would be helpful to consult with the requester to try to narrow or refine the request.*

I suggest that Kāinga Ora amend its OIA guidance to include more complete information about the agency's obligation under section 13 of the OIA to assist requesters; and the ability for the agency to consider an amended or clarified request as a new request, if the amendment is sought within seven days after receipt of the request, under section 15(1AA) of the OIA. In addition, OIA guidance should make it clear that, where the agency is considering refusing the request on the basis that the information requested cannot be made available without substantial collation or research, it **must** consider extending the timeframe to respond to the request and/or fixing a charge for the supply of the information. I discuss OIA guidance in more detail in [Organisation resilience, resources and training](#).

My review of sample OIA files identified further opportunities for improvement to the quality of OIA responses. For example, in three OIA files, information was withheld under section 9(2) of the OIA, yet the details of any considerations of the countervailing public interest in releasing the information was not expressed to the requester.

Kāinga Ora should ensure that its template for responses to OIA requests includes a section where the decision maker on a request can identify and articulate, where appropriate, the specific public interest factor(s) Kāinga Ora considered when making its decision. In order to embed consideration of the public interest in Kāinga Ora's OIA process, it may also be helpful to ensure that all memoranda (cover sheets) accompanying proposed responses to OIA requests include public interest considerations, where applicable.

In several OIA files I reviewed in which the agency withheld information from its response under section 9(2) of the OIA, the agency did not explain the requester's right to complain to my office. This constitutes a breach of section 19(b) of the OIA. Accordingly, it is my opinion that in these cases Kāinga Ora appears to have acted contrary to law. However, I have not made a recommendation in this instance because the agency has outlined the measures it has taken to ensure it adheres with section 19(b) of the OIA. In its response to my provisional opinion, Kāinga Ora stated that the recently introduced Te Rere Mahi automated workflow system includes automated template response letters to OIA requests and this should help ensure that the requirements of section 19(b) of the OIA are consistently met in future.

The agency also stated that measures are being taken to ensure that the Media team's responses to media information requests are compliant with section 19(b) of the OIA whenever information is being refused or withheld. I commend Kāinga Ora for the steps already taken and look forward to receiving updates on its progress in due course.

Although Kāinga Ora has peer review and sign out processes, I suggest that it consider implementing a quality assurance process. This would involve the regular review of a sample of completed OIA responses. A quality assurance process can help to ensure high standards are maintained, and drive better OIA performance. A quality assurance review of OIA responses may include such factors as:

- ensuring the decision making process is adequately documented, including relevant public interest considerations;
- ensuring relevant contextual information to assist requesters is included in the response;

- ensuring all relevant records are kept, including details of material internal discussions; and
- the quality of response letters.

Establishing a system of post closure quality assurance could also help to identify where additional resourcing, training or other support may be needed.

### Action points

Amend OIA guidance relating to contacting requesters in line with my suggestions.

Amend OIA templates in line with my suggestions above to ensure that public interest factor(s) are always considered by decision makers on OIA requests, where this is required under the OIA.

Consider implementing a post closure quality assurance process for completed OIA responses.

## Requests for urgency

### My expectations

A requester may ask that a request be treated as urgent, and must give the reasons for seeking the information urgently.<sup>30</sup> An agency should consider any request for urgency, and assess whether it would be reasonable to give the request priority.

If urgency is requested, the agency's legal obligations remain the same:

- to make and communicate the decision on the request as soon as reasonably practicable and no later than 20 working days after the day on which the request was received; and
- to release any official information without undue delay.<sup>31</sup>

However, what is considered 'as soon as reasonably practicable' in the particular circumstances may be heavily influenced by the reasons for urgency. It is therefore good practice to discuss an urgent request with the requester. This may enable:

- agencies to clarify the competing priorities that would need to be side-lined in order to accord urgency to the request;
- requesters to clarify the reasons for urgency, in light of these competing priorities; and
- requesters to clarify the intended scope of their request, or to prioritise particular information, allowing decisions on certain information to be made sooner rather than later.

<sup>30</sup> See [section 12\(3\) OIA](#).

<sup>31</sup> Agencies should be aware that [section 15\(2\) of the OIA](#) allows for a reasonable charge to fixed, having regard to the cost of labour and material involved in making the information available, and to any costs incurred pursuant to a request to make the information available urgently.

I then expect agencies to:

- assess the requester's reasons for seeking urgency (do they impact on the assessment of when it is *reasonably* practicable to make information available and/or merit the request being accorded priority over other work, including other official information requests?);
- decide whether to accord urgency to the request and record that reasoning contemporaneously; and
- advise the requester of this decision, and (if applicable) provide an indicative timeframe for response.

I expect agencies to establish guidance for deciding whether and, if so, how a response to a request should be provided urgently, and publish this on the agency's website. Publishing the criteria on the agency's website ensures the process for making decisions on requests for urgency is transparent to requesters.

Requesters can of course also seek a review by the Ombudsman as to how their request was considered (which may also be done under urgency). A contemporaneous record of the agency's assessment will not only promote accountability and transparency of the decision but also enable a swift Ombudsman review process for all parties.

## My findings

Kāinga Ora's recently developed draft internal guidance— *Kāinga Ora OIA procedures* (discussed in more detail in [Organisation resilience, resources and training](#))— includes some information about processing OIA requests with urgency. It notes that requesters can ask for their request to be treated with urgency, and they must provide their reasons for seeking the information urgently, in line with section 12(3) of the OIA. The draft guidance also reminds staff to '*keep good notes about the decision you made and how it was made*', which I consider to be good practice. I suggest the draft guidance is expanded to include information on the following issues:

- the process for consulting the requester and assessing the requester's reasons for seeking urgency, i.e. whether there is merit in the OIA request being accorded priority over other work, including other official information requests;
- the process of deciding whether to accord urgency to the OIA request;
- how the OIA handling process will be expedited and/or prioritised; and
- advising the requester of this decision, and (if applicable) providing an indicative timeframe for response.

Once updated, the process around handling urgent OIA requests should be included in OIA training and shared with staff agency-wide, in particular those whose role in the OIA process might be impacted, such as subject matter experts and staff who sign out responses to OIA requests.

I note that Kāinga Ora’s OIA webpage<sup>32</sup> currently does not include information for OIA requesters on their right to request urgency. I suggest that this information is published on the webpage, including the criteria for deciding whether a response to an OIA request should be provided urgently. Publishing the criteria on the webpage ensures that the process for making decisions on requests for urgency is transparent to requesters.

### Action points

Update guidance for processing urgent OIA requests in line with my suggestions.

Publish information on OIA requesters’ right to request urgency (including the criteria for deciding whether, and if so, how a response to an OIA request should be provided urgently) on Kāinga Ora’s website.

## 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 and inform strategy](#).

<sup>32</sup> Link to Kāinga Ora’s [Make an Official Information Act \(OIA\) request](#) webpage.

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.

Further, 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 statistics<sup>33</sup> as a missed due date – not as an extension.

## My findings - extensions

Kāinga Ora's practices around extensions are outlined in its recently developed draft OIA guidance document—*Kāinga Ora OIA Procedures*. The GRT Advisor responsible for processing the OIA request is required to prepare a memorandum outlining the rationale for seeking an extension, along with a timeline estimating the number of days required for the extension. The memorandum is then submitted for the approval of the Manager of the GRT. Staff said this process was introduced recently, in order for senior leaders to have greater oversight of the use of extensions (as discussed in [OIA reporting to improve performance and inform strategy](#)). I commend Kāinga Ora for recognising its use of extensions as an area for improvement and striving to do so.

I am pleased *Kāinga Ora OIA Procedures* instructs staff to consider extensions early in the OIA process, i.e. during the scoping stage. In addition, a flowchart titled '*OIA process*' states that staff are to '*send extension if required*' on days ten to eleven after receiving an OIA request. This is earlier than the 20 working days stipulated in the OIA as the maximum timeframe for communicating a decision on a request and, as such, helps promote the agency's adherence to its obligations under the OIA to respond to requesters '*as soon as reasonably practicable*'.

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<sup>33</sup> This refers to internal reporting, and the agencies timeliness statistics as reported to PSC.



While I acknowledge the positive aspects of the guidance around extensions, I note that the draft document *Kāinga Ora OIA Procedures* contains an instruction that may require clarification:

*Extensions must be for 'a reasonable period of time having regard to the circumstances'. The circumstances include the other work that Kāinga Ora has on hand at the time, and that will be unreasonably impacted upon, should it be required to meet the original 20 working day maximum timeframe.*

*An extension enables Kāinga Ora to fit the work required in order to respond to a request in with its other work, so that one need not be sacrificed to the other. It can enable us to spread the work required to process the request over time.*

I suggest that Kāinga Ora amend the above paragraphs as they may lead staff to believe that workload pressures can be cited as the reason for extending the maximum time limits to respond to requests. While competing work priorities may be relevant if extending under section 15A(1)(a) of the OIA,<sup>34</sup> the extension would only align with the Act if each 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 guidance.

I am also concerned that several meeting attendees advised that, with some exceptions, the agency's practice has been to apply a standard extension of 20 working days, without giving case-by-case consideration of how long it might reasonably take to fulfil the request. This accords with the sample OIA file review conducted by my investigators, which showed that the majority of extended OIA requests were extended for 20 working days. I consider these standard 20 working day extensions to be evidence of 'blanket' extensions of the OIA timeframe. My view on blanket practice in relation to OIA requests is clear; agencies should not adopt this approach and it is not supported under the OIA.

Therefore, on the information before me, my opinion is that Kāinga Ora has been unreasonable in its practice of generally applying a standard 20 working days extension of OIA time limits. However, I have not made a recommendation because it appears Kāinga Ora is already addressing this issue, based on changes it has made in its guidance and practice around extensions. Its newly developed OIA guidance states that extensions must be for a reasonable period of time based on the circumstances. In addition, the agency has incorporated an extension approval form into its OIA process which requires each extension (including the length of the extension) to be approved by the Manager of the GRT.

However, I suggest that Kāinga Ora bolster the content of its guidance and extension approval form in order to further ensure sound practice around extensions.

I suggest Kāinga Ora amend its draft OIA guidance pertaining to extensions to make it clear that decisions on the length of an extension are to be made on a case-by-case basis, and should be calculated based on a reasonable assessment of the time it will take to process the request. The guidance should also include information on how such an assessment should be

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<sup>34</sup> Link to [section 15A OIA](#).

made, and it should highlight that staff should record details of how the timeframe for extension was assessed. This will help ensure extensions are reasonable, and make it easier for the agency to respond to queries from my office in the event of an investigation of a decision to extend the timeframe on an OIA response.

Further, I suggest Kāinga Ora amend its extension approval form to add a field for staff to enter details around their determination of how many days to extend the timeframe for response.

My review of OIA files also revealed an instance where an extension was not notified to the requester. Documents in the OIA file indicate that Kāinga Ora responded to the requester on the 41<sup>st</sup> working day after receiving the OIA request, i.e. well outside of the statutory 20 working day time limit for making and communicating a decision. A memorandum included in the file states that *'due to an oversight'* the requester was not notified of the request being extended.

Overall, and by its own admission, the use of extensions appears to be an area for ongoing improvement for Kāinga Ora. I am pleased the Chief Executive stated in correspondence to my Office that the agency has been *'focusing on decreasing the use of extensions'* and Kāinga Ora is working towards improving its practices in this area. I note that, based on the OIA timeliness statistics for the July to December 2023 period of the seven agencies included in this investigation, Kāinga Ora—in spite of improvements it has made—still has the highest percentage of extensions (I discuss reported OIA timeliness in [PSC timeliness data](#)). This indicates that extensions are an important area of Kāinga Ora's OIA practice. Therefore, the agency should take particular care to ensure staff are knowledgeable about the use of extensions, and that extensions are made in accordance with the OIA. I suggest that Kāinga Ora implement measures to ensure that section 15A of the OIA is adhered to in all instances. These measures might include providing ongoing refresher training for staff which highlights the agency's practice and the obligations in the OIA around extensions, as well as bolstering the information available to staff in written guidance.

### Action points

Amend OIA guidance and templates relating to extensions to clearly state that decisions on the length of extensions are to be made on a case-by-case basis, and should be calculated based on a reasonable assessment of the time it will take to process the request.

Improve practice to ensure extensions are sought, where appropriate, in accordance with section 15A of the OIA.

Ensure appropriate and ongoing training is available for staff in relation to extending the timeframe to respond to OIA requests.

## Communicating a decision on a request

### My expectations

The OIA states that agencies must make and communicate a *decision* on an OIA request as soon as reasonably practicable and not more than 20 working days after the date the request

is received. This allows for a decision on the request to be made within statutory timeframes, and then the actual information to be provided at a later date if necessary. This would generally only be necessary where time is needed to prepare the information for release. The Act is clear that although information may be released after a decision on the request is made, the information must be reviewed and a decision must be made on whether or not to release within the statutory timeframes, and there should also be no undue delay in releasing the information after the decision is made. In most cases, the information should be able to be released on the same day as the decision is made. This provision should not be used to buy extra time to respond to the request when a decision has not, in fact, yet been made.

In order for an agency to validly claim it has made a *decision* on a request, it should be able to show that it has:

- collated and reviewed all the information within the scope of the request;<sup>35</sup>
- identified any information that it considers should be withheld and the reasons under the OIA for refusing it, balanced against any countervailing reasons in the public interest to release the information; and
- completed all necessary reviews, internal and external consultations, and approvals that are required before confirming the decision.

## My findings

In my review of the agency's OIA sample files I saw an example of Kāinga Ora communicating its decision to a requester, stating '*Kāinga Ora has made the decision under the Act to provide you with copies of emails/email trails and documents in scope of your request.*' However, its records showed that internal and external consultations about whether and what information should be withheld from the response continued, subsequent to the communication of the decision. Kāinga Ora's claim to have made a decision was premature, because the agency had not completed the steps necessary to make a decision. As stated above in [My expectations](#), all necessary consultations should have taken place in order for an agency to assert that it has made a decision.

Concurrently with this self-initiated investigation, I received a complaint from an OIA requester about an undue delay in Kāinga Ora providing information after communicating its 'decision' to the requester and assuring them the requested information would follow. Through the course of that investigation, Kāinga Ora advised that it had not completed collating the information when the decision was made and communicated to the requester. Therefore, it was not open to the agency to communicate the decision before all the information was collated and reviewed, and a decision was made by an authorised decision maker.

Based on the evidence outlined above, it appears that Kāinga Ora has, on two occasions that I saw, misapplied the provision in the OIA which allows agencies to communicate a decision to requesters in advance of providing the information. It is my opinion that in the example I saw during this investigation Kāinga Ora has acted contrary to law by communicating a decision on

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<sup>35</sup> Unless the agency intends to refuse the request on administrative grounds, in which case the agency should keep records to demonstrate the appropriate process has been followed as it relates to each ground.

an OIA request when it was not open to the agency to do so. Accordingly, I recommend that the agency review its practices around communicating decisions on OIA requests in advance of providing the information, and ensure that OIA guidance clearly outlines the steps that should take place before it can be considered to have made a decision on an OIA request. Kāinga Ora has accepted my recommendation. I look forward to following its progress in this area.

### Recommendation

Review practices around communicating decisions on OIA requests in advance of providing the information, and ensure that OIA guidance clearly outlines the steps that should take place before Kāinga Ora can be considered to have made a decision on an OIA request.

## Sign-out practices

### My expectations

Agencies' OIA Teams typically require all OIA responses to go through a process of peer review and 'sign out'. This usually begins with a peer review of the draft of the response reviewing the response for format, spelling and grammar; proceeding to principal advisors, managers, subject matter experts and general managers in accordance with the agency's requirements. The more complex or 'sensitive' a response is considered to be, the more likely it is to also be reviewed by Legal and/or Media Teams, and to pass through multiple levels of review before eventually being signed out. 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.

By contrast, Media Teams often have far fewer hurdles to clear to provide a response, and often staff at an Advisor level are empowered to send responses directly to media requesters with minimal, if any, review steps.

In order to meet the requirements of section 15(4) of the OIA, in the interests of accountability, and to ensure transparency for the requester in relation to who the decision maker was,<sup>36</sup> the signatory to OIA responses should be that of an authorised decision maker. Alternatively, it should be made clear that the email is sent on behalf of the authorised decision maker, with an appropriate record kept of the decision maker's approval. I expect the roles and responsibilities of decisions makers to be clearly defined and well understood.

Agencies must ensure that their sign-out procedures achieve a balance between OIA decision makers being suitably senior, and agencies not being at risk of breaching timeliness obligations under the OIA, including the requirement to make and communicate a decision as soon as reasonably practicable. Excessively stringent and multi-layered sign-out procedures may:

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<sup>36</sup> In *The Chief Executive of the Ministry of Social Development v L* [2018] NZHC 2528 [26 September 2018], the High Court found that anonymous decisions were contrary to principles of natural justice, as people could not detect or challenge bias if they did not know who the decision makers actually were.

- increase pressure on staff required to complete OIA responses in a compressed timeframe;
- put agencies at risk of breaching their obligation to make and communicate a decision to the requester as soon as reasonably practicable, and to provide information to the requester without undue delay; and
- impact the quality of OIA responses, as staff have less time to consider the relevant issues and compose a response.

I expect agencies to scrutinise their sign out process and establish practices which are flexible and proportionate, and do not threaten the agency's ability to make and communicate a decision as soon as reasonably practicable

## My findings

According to Kāinga Ora's *'Reputation Risk Assessment Table'*, responses to OIA requests are reviewed and signed in accordance with *'risk ratings'* assigned to individual OIA requests based on the likelihood and amount of *'adverse publicity'*, *'negative political and media scrutiny'*, and *'loss of confidence in [the agency]'*. The agency's guidance, *'Reputational Risk Management'*, states as follows:

*The Government Relations team considers whether there is a reputation risk and if there is, what should be done. Actions could include anything from editing and providing context around an issue (our role), who should be informed of any concerns: eg responsible business unit Manager, CELT, Board, Communications Team, Ministers' offices (our role), to instigating a full inquiry (CELT's role).*

Both guidance documents stipulate that OIA requests are to be signed out as follows:

- Very low risk OIA requests (*'[u]nlikely to have any risk'*) – responses to these requests are signed by Government Relations Team Leader.
- Low risk (*'[t]here may be a small risk to the Kāinga Ora's reputation'*) – responses are typically signed by Government Relations Manager.
- Medium risk – signed out by a Deputy Chief Executive or General Manager. In addition, the Chief Executive and Board Chair are informed of any issues likely to attract media interest.
- High or critical risk – signed out by the Chief Executive. The Minister and Board Chair are informed under the *'no surprises'* principle (discussed in more detail in [Ministerial interactions](#)).

Under the agency's guidance, *Government Relations Team – Guide to procedures*, medium and high risk OIA requests are signed out with the use of a memorandum prepared by the GRT and presented to the relevant signatories outlining risks, any information proposed to be withheld and the names of staff members who have reviewed the proposed response (such as members of the Media Team).

Prior to sign-out, the proposed responses are reviewed by the relevant subject matter experts and members of the GRT to ensure compliance with the OIA.

Staff meeting attendees were asked for their views on sign-out and review practices, in respect to OIA timeliness obligations. Some meeting attendees spoke favourably of these practices and thought that the sign-out and review processes were not overly long and, as such, they did not hinder the agency's ability to adhere to its timeliness obligations under the OIA. The swiftness of OIA responses being reviewed and signed was said to be enabled by staff's awareness of OIA timeliness obligations and processes such as sending weekly newsletters to members of the ELT alerting them in advance of any OIA requests that may require their or their business units' involvement. Indeed, the review of sample files showed that in most cases, signatories were swift to complete sign-out processes (often within the course of just one day), which demonstrates their commitment to adherence with OIA timeliness obligations.

## OIA handling by media team

### My expectations

A request to an agency for information the agency holds<sup>37</sup> is, by definition, an official information request.<sup>38</sup> 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, the 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. As I stated above, 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.<sup>39</sup> It does, however, require that staff in Media teams must be sufficiently trained and competent in the OIA to allow them to identify information requests and to be aware of the obligations under the OIA 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.<sup>40</sup> 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.

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<sup>37</sup> 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.

<sup>38</sup> 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.

<sup>39</sup> See Office of the Ombudsman [Requesting official information – a brief guide for media \(September 2021\)](#)

<sup>40</sup> Link to [s12 of the OIA](#)

Requesters should be as specific as they can to 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

Speaking broadly, agencies I investigated tend to have separate paths for handling information requests. 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. Kāinga Ora employs this model.

My investigators reviewed a sample of information requests from the media, handled by Kāinga Ora's Media Team and spoke to staff in the Media Team about the agency's practices. I also posted an online survey targeting media information requesters to seek their views on Kāinga Ora's OIA practices.

Kāinga Ora advised me that it receives, on average, around 80 media requests a month.<sup>41</sup> Just over half of the sample files of information requests I reviewed were completed on the same day, or the day after the request was received. I was impressed at how quickly senior leaders reviewed or approved proposed responses—taking on average an hour and, in some cases, setting time aside in their diaries for this purpose. Subject matter experts were equally prompt, often providing requested information within a couple of hours. It seems evident that Kāinga Ora has fostered a strong culture around the importance of timely responses to media information requests.

The Media Team regularly alert key staff (including the private secretary in the Minister's office) to the receipt of information requests soon after they are received, using a 'Media Notification' email distribution list. This practice may partly contribute to the Media Team's generally quick responses to information requests as key people are forewarned and able to allocate time to assist the Media Team.

The Media Team use a 'portfolio' approach to assigning and handling information requests, where advisors are allocated requests based on their topic. According to staff, this facilitates the swift handling of information requests. This approach allows staff to develop their knowledge and expertise in specific areas of the business, which can expedite their ability to respond to information requests. The Media Team also maintain a central 'message bank' of previous responses and key messages. Having this resource saves time, and ensures consistent messaging. This is an excellent initiative, and it is pleasing that this resource—according to staff—can also be accessed by the GRT team to assist them in drafting responses. Overall, the Media Team does an exemplary job of responding to information requests '*as soon as reasonably practicable*', offering responses within only hours or days.

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<sup>41</sup> This number includes information requests—which are OIA requests—and requests for comment or for an interview. These are *not* OIA requests because they are not for information already held by the agency.



However, the language used in the files I reviewed suggest that media information requests are not always viewed by Media Team as OIA requests, and there appears to be little technical understanding of the OIA and how it applies to their work. In one example, a team member told a journalist that Kāinga Ora should be able to get the information to them '*without going through the OIA process*'. In another example, a team member asks the OIA team to advise on the consequences of putting a media information request '*through as an OIA*'.

I consider that the language used by Kāinga Ora's Media Team may contribute to a perception among journalists that 'media information requests' are not OIA requests and that the OIA is a barrier to the provision of information, rather than its facilitator. The language used implies that the OIA does *not* apply to information requests handled by the Media Team, which is simply wrong. Where Kāinga Ora's Media Team pass media information requests to its GRT, it should communicate this to media requesters in a way that does not reinforce a misperception that the OIA does not generally apply to media requests for information.

As I discussed earlier, under [Sign-out practices](#), the Media Team is sometimes involved in providing advice and input on OIA requests which are considered by the agency to be 'medium risk' or higher. It is common practice across many agencies for communications/media teams to be involved in contributing contextual comments to OIA responses to assist requesters' understanding of information, and to ensure information released by the agency remains consistent between different requesters and business units.

In the majority of cases I saw, the Media Team were swift to provide relevant supporting information when requested to by the GRT. However, in one file I reviewed the Media Team were asked by the GRT if it should include any context with the information it proposed to release, and to identify anything that may be of interest to the media. The request was extended by 20 working days for '*internal consultation*' and I note it took the GRT repeated attempts, over 15 working days, to get an answer from the Media Team. In this instance, Kāinga Ora had extended the timeframe to respond to the request due to the requirement for internal consultation with several parties. Because information and input was being sought by GRT from multiple business units, including the Media Team, it is difficult to discern whether the time taken by the Media Team to respond to GRT ultimately had a detrimental impact on the agency's ability to respond to the requester as soon as reasonably practicable. However, it is clear that taking 15 days to provide information could negatively impact timeliness.

As I stated in my [Introduction](#) and in my expectations on [Leadership and culture](#), agencies' primary timeliness obligation under the OIA is to make and communicate a decision '*as soon as reasonably practicable*'. I consider it is generally good practice to include contextual information with OIA responses to aid requesters' understanding of a topic. However, this should not impede agencies' timeliness obligations. When including contextual information in its responses to OIA requests, this must be a secondary consideration to answering the specific request. I encourage Kāinga Ora to ensure that input on OIA responses from the Media Team does not unduly impact the timeliness of responses.

I consider that the Media Team may benefit from more support to understand its obligations under OIA. I note that the Media Team does not receive targeted OIA training. As I discussed in

Organisation resilience, resources and training, I suggest relevant staff undergo regular OIA training, appropriate to their role.

Action points
Ensure communications with media information requesters do not reinforce a misperception that the OIA does not apply to media requests for information.
Media Team to receive regular OIA training appropriate to their role.
Ensure that input on OIA responses from the Media Team does not unduly impact the timeliness of responses.

## Information management and record keeping

### My expectations

I expect agency chief executives to ensure information management (IM) systems are fit for purpose, to enable effective capture, maintenance and retrieval of all agency information in a form that is readily accessible. This includes system design, training for staff, and use in practice. As stewards of their agencies' IM practices, chief executives and senior leaders must promote a culture of robust record keeping and compliance with the Public Records Act 2005 (PRA). This is critical for facilitating the timely release of information.

Along with good processes for responding to requests for information and for proactive disclosure of information, it is essential that agencies have sound IM practices to enable them to readily identify, retrieve and make a principled and timely decision about information that has been requested. Good record keeping is fundamental to the practice of any public organisation, and it is the bedrock on which sound OIA practice is based. Information requested under the OIA can only be made available if it has been created and maintained in a way that enables ready identification and retrieval.

Specifically, the PRA obliges all public sector entities to create and maintain accessible records '*in accordance with normal, prudent business practice*'.<sup>42</sup> My expectations in respect of an agency's records and IM practices are no more onerous than the statutory requirements of the PRA. I expect agencies to:

- document handling of official information requests, including the steps taken to search for the requested information, the information identified as a result, and the reasons for decisions on that information; and
- ensure records and information management practices facilitate official information compliance, by ensuring it is generally easy to search for and find requested information.

Ideally, all agencies would have fit-for-purpose IM systems which are user friendly and which facilitate easy storage, organisation, and retrieval of information held by the agency. I understand that agencies are constrained by budgets and that upgrading or transitioning to a new information system is far from an overnight process. In this context, it is especially important that agencies ensure there is enough guidance and training available for staff that emphasises robust record keeping practices and mitigates known vulnerabilities in an agency's IM systems.

### My findings

Kāinga Ora has a single document management system—*Objective*—used agency wide to store information. Kāinga Ora staff advised me that the agency has a suite of policies covering

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<sup>42</sup> Public Records Act 2005, s 17(1)

information and records management, records retention and disposal, and acceptable use of ICT policies, and provides guidance for managing information, all available on its intranet.

However, meeting attendees said that, in practice, record keeping discipline across the agency could be improved. I was advised that staff have '*different ways of saving*' information and often relevant emails were not saved in Objective, but kept in individual email inboxes. Poor and/or inconsistent record keeping practice impacts agencies' ability to respond to OIA requests in a timely way, and there is a risk it can result in OIA requests being refused if information cannot be located. I was told by GRT staff that it can be time-consuming to search both Objective, and the agency's email system (sometimes with the assistance of the IT team), as well as talking to subject matter experts to locate information requested under the OIA. I was therefore pleased that Kāinga Ora has advised Objective Gov365 was implemented in June 2024, which will automate and significantly improve how important documents and information are stored and saved.

Senior leaders should promote a culture of robust record keeping practice through regular messaging about the obligations all staff have to consistently adhere with record keeping policy. This includes using appropriate naming conventions and storing information in such a way that it facilitates its retrieval. Kāinga Ora advises it is developing communications and messaging with senior leaders to promote good information management and record keeping. The agency should also ensure that regular training is available to staff. I will discuss this further under [Organisation resilience, resources and training](#).

Based on my review of the agency's sample OIA files, there appeared to be some missing records of correspondence with requesters, such as records of contacting the requester to clarify their request, or to advise them their request had been transferred. There also appeared to be gaps in records of internal consultations and discussions, such as verbal conversations or communications made via telephone or Microsoft Teams.

Failure to keep adequate records may breach section 17(1) of the PRA that requires agencies to '*create and maintain full and accurate records of (its) affairs*'. It can lead to suspicion about the integrity of decision making, and who or what has influenced the decision. Keeping a comprehensive record around the agency's decision making on OIA requests will make it easier and quicker to deal with future requests on the same subject matter and respond to an Ombudsman in the event of an investigation.

Therefore, I encourage Kāinga Ora to ensure that relevant correspondence and discussions pertaining to OIA requests are retained on file, in order to adequately capture the rationale behind decision making on OIA requests. This should include details about section 9(1) public interest considerations where these are relevant. Where appropriate, the agency should also document administrative steps taken in relation to processing OIA requests, such as recording the search terms used to find information.

I suggest Kāinga Ora update its OIA guidance to clearly convey the importance of compliance with the PRA, and the expectation that all staff create and maintain adequate records of the OIA handling process where appropriate. Training for staff involved in OIA request handling should also highlight the requirements of the PRA, regardless of what team they are in. I discuss training in more detail in [Organisation resilience, resources and training](#).

As I discussed earlier, under [OIA team – structure and practices](#), Kāinga Ora has historically not had a workflow tool to guide OIA requests through the handling process, relying instead on a spreadsheet to track and manage its OIA requests. Given the volume of requests the agency receives—nearly 700 in the 2023 calendar year—this seemed an unwieldy system to rely on. I was therefore pleased to be advised by the Chief Executive through the course of my investigation:

*We are investing in a new workflow tool to log and track our Ministerials and government services work, in particular our official information requests. We are currently building and user testing this tool and plan to have it fully implemented by 1 July 2024.*

At the time of writing this report, I was advised by Kāinga Ora that the workflow tool has been implemented, with the effect that:

*All emails, documents and other information are automatically filed and stored by the system as our people progress their OIA work. People no longer have to manually select and store information. We are also working with our people to ensure that good records of conversations or discussion and decisions for example are properly recorded, and then stored in the system...*

This is a great advance for the agency and I am pleased to see it prioritising and implementing tools that will facilitate compliance with the OIA. I note, though, that no system is flawless, and the agency should ensure it has ‘backstop’ systems for ensuring timeliness. Regular OIA reporting to senior leaders is one method the agency might use to help identify, in advance, OIA requests that are at risk of being delayed. I discuss OIA reporting in [OIA reporting to improve performance and inform strategy](#).

I commend Kāinga Ora for continuing to improve its OIA practices and look forward to receiving updates on its progress in due course.

### Action points

Amend the GRT’s record keeping practices to ensure full and accurate records are created and maintained in an accessible form, including:

- substantive correspondence with requesters (including telephone conversations, meetings and verbal discussions);
- material internal discussions; and
- the rationale behind OIA decision making, including section 9(1) public interest considerations, where relevant.

Update OIA guidance to state that correspondence and discussions about OIA requests must be retained in accordance with the provisions of the Public Records Act 2005; and ensure OIA training also reflects this requirement.

Senior leaders to increase messaging to promote sound information management and record keeping practices generally.

## Organisation resilience, resources and training

### 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 and inform strategy](#), 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 (and its local government counterpart, the Local Government Official Information and Meetings Act 1987), 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 relation to Kāinga Ora’s OIA guidance and training, the Chief Executive outlined the ongoing work in this area:

*We...continue our work to embed the right culture and practices so all managers and staff see the Official Information Act and its obligations as a core part of their responsibilities as public servants. Over the last two years we have done much to increase the agency’s awareness and understanding of the OIA. We have developed an OIA module that all staff are required to complete, we have held annual Public Services Integrity weeks and shared information and guidance about the OIA. We are planning an Official Information week, and we are providing training sessions to teams across the country.*

I was pleased to be advised by Kāinga Ora that the OIA and proactive release policies have now been implemented, and published internally and externally. As I discussed earlier, under [Ministerial interactions](#), Kāinga Ora has recently developed a draft OIA guidance document,

which is intended to supplement the more generic GRT Procedures document, providing more targeted advice on the application of the OIA. I am pleased the agency has taken this step, although it is disappointing that it had operated without specific OIA guidance since its inception in 2019. At the time of writing this report, my office is reviewing the draft guidance and will provide fuller feedback to the agency separately, although I have suggested some amendments, where relevant, within this report. I commend Kāinga Ora for developing the guidance and taking steps to improve OIA practices and ensure compliance with the OIA.

I note that Kāinga Ora's draft OIA guidance does not include advice for staff on dealing with frivolous, vexatious or trivial requests. During meetings with my investigators, several Kāinga Ora staff expressed frustration with some OIA requests they viewed as vexatious, with a disproportionate amount of time spent on supplying information to a small number of requesters whose requests were 'swamping' staff. Under section 18(h) of the OIA, a request can be refused if it is frivolous or vexatious, or the information requested is trivial. There is a high threshold for declaring a request frivolous or vexatious; requesters should not be unfairly denied the opportunity to make genuine requests. However, section 18(h) of the OIA provides a necessary ability for agencies to refuse requests that would amount to an abuse of the right to access official information. I suggest that Kāinga Ora consider amending its draft OIA guidance to include guidance for staff on dealing with requests of this type.<sup>43</sup>

Kāinga Ora's OIA training was described in response to my questionnaire as follows:

*We carry out regular OIA training and awareness sessions throughout the organisation; have developed an online OIA learning module; post information about the OIA on our intranet; and have a dedicated role "Principal Advisor" who provides advice and training on the OIA to the Government Relations Team (responsible for managing OIA requests) and the broader organisation.*

Kāinga Ora has further advised that the online OIA module was compulsory for all staff to complete this year in the annual Public Service and Integrity Week, and staff have been asked to declare that they have read and understood the OIA and Privacy policies. An OIA workshop has also been held with the Kāinga Ora Board.

While the outlined measures are positive, the agency does not conduct formalised OIA training for members of the GRT, with staff describing training for GRT advisors as 'on the job'. During meetings, a number of Kāinga Ora staff spoke about the need to provide more targeted training for GRT, SMEs and decision makers. I agree with this suggestion and I strongly encourage Kāinga Ora to expand and formalise its current OIA training.

Regular, formalised, in-depth OIA training should be delivered to members of the GRT, with refreshers available at appropriate intervals, to ensure the central OIA processing function is working effectively. In addition, specialist training for senior managers, decision makers and subject matter experts should be delivered on a regular basis. OIA performance data and quality assurance data (discussed in [OIA reporting to improve performance and inform strategy](#) and [OIA team – structure and practices](#)) can be used to identify where and on which topics, enhanced OIA training may be most valuable and should be prioritised. This will help ensure

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<sup>43</sup> Link to my guidance [Managing unreasonable complainant conduct](#).



good practice continues, even in the face of staff attrition and/or, increases in OIA and ‘business as usual’ workloads.

The need to improve and broaden OIA training was further evidenced by the results of my sample OIA file review. The review revealed that the requirement under the OIA to communicate decisions ‘*as soon as reasonably practicable*’ is infrequently referenced in internal and external correspondence when processing OIA requests.

While I strongly encourage Kāinga Ora to highlight the obligation to make and communicate a decision to OIA requesters ‘*as soon as reasonably practicable*’ in its guidance and templates, I am also aware that it takes more than this to embed the concept into agency culture. OIA practitioners in GRT have a role to play here in promoting the concept of ‘*as soon as reasonably practicable*’ with the broader agency. They should be supported through messaging from senior leaders—through their words and their actions—which promote both aspects of the OIA’s timeliness requirements. I discussed senior leaders’ role in promoting a robust culture around OIA compliance under [Senior leader messaging about the OIA](#).

I encourage Kāinga Ora to continue to ensure there are appropriate resilience measures in place to strengthen capability and allow it to adhere with OIA obligations in the event of staff attrition or spikes in the volume and/or complexity of OIA requests. The doubling of the OIA requests received by Kāinga Ora between 2020 and 2023—discussed in [PSC timeliness data](#)—demonstrates that the volume of requests can increase precipitously in a short time. These measures can include (but are not limited to) training and mechanisms such as ‘OIA champion’ systems to help develop OIA expertise outside the GRT. As discussed earlier, under [OIA reporting to improve performance and inform strategy](#), tracking the time taken by staff to process OIA requests can help inform Kāinga Ora’s training and resourcing decisions, which will aid resilience.

### Action points

Amend draft OIA guidance to include guidance for staff on dealing with frivolous, vexatious or trivial requests.

Expand OIA training, ensuring that regular, in-depth OIA training is delivered to GRT, senior managers, OIA decision makers and subject matter experts, with refreshers available at appropriate intervals.

Amend OIA guidance and templates to clearly convey Kāinga Ora’s obligation under the OIA to make and communicate its decisions on OIA requests ‘*as soon as reasonably practicable*’ and provide information ‘*without undue delay*’.

Senior leaders to increase messaging to the broader agency to promote the OIA’s timeliness requirements, including the concept of ‘*as soon as reasonably practicable*’.

Ensure resilience measures exist to allow the agency to cope with increased OIA workload and continue to meet OIA timeliness obligations.

