



MINISTRY OF EDUCATION
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0722125

IM60/104/57/3

27 November 2012

Alex Harris
fyi-request-631-bf19f009@requests.fyi.org.nz

Dear Alex Harris

Thank you for your email of 26 October 2012 requesting:

- *Any communications or policy from within the Ministry specifically relating to handling requests for information relating to the closure of schools in Christchurch;*
- *Any communications with the Minister's office relating to the handling of such requests.*

Your request has been considered under the Official Information Act 1982 (the Act).

The Ministry of Education (the Ministry) can confirm that there was no intention to persuade the Christchurch City Council to provide an incorrect answer to the request they had received or to respond in any way that was inconsistent with the intention and purpose of the Local Government Official Information and Meetings Act 1987.

Please find attached a copy of the Ministry's internal guidelines on the handling of Official Information Act requests (OIA requests). The Ministry has not developed a separate policy relating to the management of requests regarding the Christchurch Education Renewal Programme.

On 24 October 2012 the Ministry established a team that is responsible for preparing responses to OIA requests relating to the Christchurch Education Renewal Programme. The only communication related to the decision to set up this team is contained in an internal Ministry update from the Secretary for Education, which is also attached.

The Ministry has received a large number of OIA requests for information relating to Christchurch Education Renewal proposals. A large number of staff have been involved in providing advice and collating information to enable these requests to be responded to. This includes staff from Property Group, Regional Operations Group, the Christchurch Earthquake Recovery Team, Communications and the Ministerials Unit, as well as officials from the Office of the Minister of Education. This has generated a large number of documents relating to the proposals such as internal emails, information sheets, sign off sheets, tracking sheets as well as related memos.

I am therefore considering refusing your request for all communications within the Ministry and with the Minister's office under section 18(f) of the Act on the grounds that the information cannot be made available without substantial collation and research due to the number of staff involved.

I have considered whether fixing a charge or extending the time limit under section 15A would enable this part of your request to be granted but have decided it would not. However, if you could consider narrowing down the scope of your request please contact me by telephone on (04) 463 7593 and I would be happy to discuss with you ways that you may be able to do this.

Under sections 19 and 28(3) of the Official Information Act 1982 you have the right to ask an Ombudsman to review this decision.

You may be interested in the Shaping Education website which includes information about the Greater Christchurch Education Renewal Programme. This may be found at:

<http://shapingeducation.minedu.govt.nz/>

Yours sincerely



Jim Greening
Senior Manager – Implementation Planning
Education, Curriculum and Performance

Encls

Documents to be Released

	Title and Date	Information withheld
1	The Ministry of Education's internal guidelines for Official Information Act Requests (OIAs)	Nil
2	26 October 2012 A word from Lesley	Nil

Official Information Act Requests (OIAs)

On this page

- [Introduction](#)
- [What is Official Information?](#)
- [Ministry OIA Requests](#)
- [Minister OIA Requests](#)
- [Deadlines](#)
- [Request Clarification](#)
- [Deadline Extensions](#)
- [Ministry OIA Extensions](#)
- [Minister OIA Extensions](#)
- [Transferring Requests](#)
- [Charging for Requests](#)
- [Refusing Requests](#)
- [Consultation with Other Departments](#)
- [OIA Checklist](#)
- [Making Deletions and Alterations](#)
- [Ministry OIA Response and Memorandum](#)
- [Minister OIA Response and Report](#)
- [Copies and Collation of Papers](#)
- [Dispatching and Filing](#)

Introduction

See the [New Zealand Legislation website](#) to view the [Official Information Act](#).

The Act was intended to make government processes more transparent by enabling people to participate more effectively in making and administering laws and policies while promoting the accountability of Ministers and their officials.

The Official Information Act superseded the Official Secrets Act, the primary difference being:

- The Official Secrets Act required a good reason to release information requested
- The Official Information Act requires a good reason for withholding information requested

The Principle of Availability

The overriding philosophy of the Official Information Act is the principle of availability.

The Act states:

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

OFFICIAL INFORMATION ACT

What is Official Information?

Official information is all information held by the Minister or the Ministry. This includes information held by an independent contractor engaged by the Minister or Ministry and information held by any advisory council or committee established for the purpose of assisting or advising the Minister or Ministry.

The definition of Official Information is contained in section 2 of the Act and includes information held by the Ministry, Ministers of the Crown, or organisations.

Personal Information

Personal information is any official information held about an identifiable person.

Requests made by individuals for information about themselves are to be handled under the Privacy Act 1993. See the Privacy Act Requests page.

A request for personal information about another person is an Official Information request.

The Office of the Ombudsmen Practice Guidelines goes into more detail on what constitutes personal information.

The Practice Guidelines are also available in the Ministry Library.

Due Particularity

Section 12(2) of the Official Information Act requires that the information requested shall be specified with due particularity. If it is considered that the request is too general, e.g. "a fishing expedition", or if the actual information required cannot be identified from the terms of the request, further details should be sought from the requester. This is in line with the obligation to give reasonable assistance to a requester (Sect 13). See Request Sanitisation.

Who is subject to the Act?

- Ministers of the Crown
- Government Departments
- SOEs
- Crown agencies and OIA NGOs
- Careers Service, Teachers Council, NZQA
- School Board of Trustees/Tertiary Institutions

Who is not subject to the Act?

- School Trustees Association
- Education Unions
- SOEs
- Early Childhood Centres/Organisations
- Private Training Establishments

Is this a Request Under the Official Information Act?

A request may be written or oral. A request for information does not have to mention the Official Information Act. This effectively means any request submitted to the Ministry for information is an official information request, the real question is;

"Do we need to treat it formally under the Act?"

Formal treatment provides "protection through process" delivering assurances that:

- The request receives "due process"
- Decisions made and who made them (and consequently who is accountable) are recorded
- All appropriate personnel have contributed to decisions made
- Any risks have been mitigated
- All appropriate steps have been taken prior to completion of the response

Who can make a request for Official Information?

Official Information requests can be made by individuals or a body corporate incorporated in NZ. The requester must be a New Zealand citizen, permanent resident or be in New Zealand. This includes other Government Departments.
Requests from a staff member in an MP's office or a party research unit are to be treated as if from an MP.

Process

Letter or Email Requests

Forward the original letter to Ministerials Unit (MIU) or email the request to Ministerial Requests immediately and advise the MIU if the Business Unit (BU) that received the request is not the most appropriate to respond. A copy should be retained by the BU (if they are responding) so that work on the request can begin immediately, starting with the initial assessment.

Telephone Requests

Make a note of the following details of the request and complete the verbal OIA request form in METIS:

- Date Received
- Staff Member Recipient Name
- Requester Name
- Requester Physical / Email Address
- Request Details (as detailed as possible) NOT "request for information about education"

Even if the request is straight forward eg a copy of a named report, you should ask for the request in writing (email/letter).

Transfers within the Ministry of Education

If it is more appropriate for the reply to be drafted by a different BU, this must be ascertained straight away and written approval from that BU must be obtained (See Transfers, Extensions and Cancellations [Word; 48kb] for the Ministry policy about ministerial transfers).

Ministry OIA Requests

When the request is made directly to/received by a Ministry staff member:

- Date stamp it on day received
- The request should immediately be sent to the MU for registering
- Send out acknowledgement letter/email
- MU scans and registers the request into METIS, assigns a deadline of 20 working days from receipt in the Ministry then forwards the hardcopy (original request + Infosheet + OIA Checklist) to the appropriate BU, usually the BU that received the request
- Note that the Minister requires all OIAs to be sent to the MO for consultation at least 5 days prior to the date due for release to the requestor
- The BU Manager decides on the appropriate action required based on the findings of the initial assessment, including if it is appropriate to consult with or transfer the request to the Minister
- The involved staff members (eg Drafters, Peer Reviewers) complete the OIA Checklist and all other appropriate details as actions are completed
- Consult with Communication Group and/or Legal Services as appropriate
- Once finalised, the response must be signed out by a manager with delegations or Deputy Secretary. Note Managers will need to decide on a case by case basis whether it would be more appropriately dealt with at Secretary for Education level
- The BU Manager is responsible for ensuring the response is sent to the requester as soon as possible and no later than the deadline date
- The BU Allocator is responsible for completing the workflow in METIS in order to meet the deadline date
- A copy of the signed response (and list of documents) is scanned and attached in METIS. The hard copy is filed in the BU

Minister OIA Requests

When the request is made directly to the Minister, the Minister's Office (MO) will acknowledge it and refer it to the Ministry to prepare a draft response for the Minister's signature

- MU scans and registers the request into METIS, assigns a deadline of 15 working days from receipt in the MO then forwards the hardcopy (original request + Infosheet + OIA Checklist) to the appropriate BU
- The BU completes the initial assessment and liaises with the MO as to what actions to be taken
- The BU processes the OIA as per the above decisions made
- The involved staff members (eg Drafters, Peer Reviewers) complete the OIA Checklist and all other appropriate details as actions are completed
- Consult with Communication Group and/or Legal Services as appropriate
- Once finalised, the response must be signed out by a manager with delegations or Deputy Secretary. Note Managers will need to decide on a case by case basis whether it would be more appropriately dealt with at Secretary for Education level
- The completed hard copy draft response is forwarded to the MU for forwarding to the MO
- The Minister approves or rejects the draft response
- If approved the response is sent and the hardcopy returned to the Ministry, if rejected everything is returned to the drafting BU for redraft

- A copy of the signed response (and list of documents) is scanned and attached in METIS. The hard copy is filed in the BU

Deadlines

The deadline can be found at the top left hand corner of the information sheet attached to the request or in the document properties in METIS.

Ministry OIA Deadlines

Requests for Official Information should be dealt with, and either granted or declined, as soon as reasonably practicable. The time limit in the Act of 20 working days from receipt of the request is to be regarded as the maximum rather than the standard allowed time (Section 15). The Official Information Act defines from 25 December to 15 January in any year as non-working days.

The requester may specify that their request is urgent. Reasons for urgency must be given (Section 12(3)) but the Ministry is required, in any event, to provide the information as soon as practical. Bear in mind that any failure to provide the information by the time requested may be reviewed by an Ombudsman.

Minister OIA Deadlines

Draft responses to Official Information Act requests must be delivered to the MO no later than the 15th working day from the date the request is received in the MO. This is to allow sufficient time for the response to be considered by staff and the Minister, prior to it being signed out by the 20th working day.

Redraft (Rejected) Responses

No deadline extension is given (as the deadline is a statutory requirement). MU recommends you get these in early!

It is important that the redrafted response and report for the Minister are:

- peer reviewed and cleared by a manager with delegated authority
- checked and collated by the BU Allocator to ensure that it adheres to the format guidelines
- returned with the amended version for comparison
- processed through METIS (BU Allocator to ensure this is done to completion)
- Placed in the MU in tray for forwarding to the MO

Ministerial Mail Deliveries

Mail for the MOs must be with the MU (Level 10, SPS) by the following times:

Monday (Thursday) 11:00am 3:00pm
Friday (Monday) No afternoon bag

Note: There is no guarantee that mail received in the MU after 11:00am and 3:00pm will be processed in time to go to parliament. All such correspondence will be sent with the next mail delivery.

Style and Content

Initial Assessment

Within the first 5 days from receipt all requests should be subjected to an "initial assessment" during which the following should be determined:

- Whether the request is a Privacy Act request or an OIA request (or both)
- Whether clarification is required
- Whether a deadline extension is required
- Whether a transfer is required
- Whether a charge will be made
- Whether it is likely the request will be refused
- Whether the information requested is likely to be sensitive
- Whether consultation with other departments or agencies will be required

Once these requirements are known the appropriate action on each of these points is taken as speedily as possible, and must be completed within 10 working days from receipt.

Information on Tenders

The Ombudsman has given a general indication of how a request for tender information should be approached. This is attached as Appendix 4 [Word; 25kb].

Privacy Act Requests

Sometimes OIA requests are actually Privacy Act requests (and vice versa) and on occasion some requests are governed by both. Determining what legislation governs any particular request is very important for ensuring that action taken and responses are correct and appropriate.
[View the Privacy Act Request page for further information.](#)

Request Clarification

The exact terms of the request must be looked at carefully, and a decision made as to what information falls within the request.

If a request is too vague you should request more details. Similarly if the request covers a very large amount of information it is appropriate to discuss with the requester whether the request can be limited to avoid substantial charges or delays.

Each item of information requested must be considered separately.

Clarification is often best made by phone (followed by written confirmation) but email or standard mail is fine provided records of calls made / copies of responses sent are attached to the official file and in METS.

For Ministers's OIAs discuss clarification with MO without exception. Then if required, provide a clarification letter for the Minister's signature.

Media related requests must be discussed with the Executive Communications team before contacting the requester. It is often more appropriate for Executive

Communications team to clarify these types of requests with the requester, as they have special expertise in dealing with the media.

When the requester is sent a letter seeking clarification of their request, the request is closed. When the requester replies, clarifying their original request, a new request is registered with a new 20 working day time limit. Managers are encouraged to consider completing the new request within the original 20 working days if practicable.

Deadline Extensions

OIA deadlines cannot be extended by the MO or the MU as there are legislative requirements governing the handling of these requests.

The Act provides for deadline extensions in section 15A which states a deadline extension is authorised when:

- The amount of work required to meet the request within the original time limit would unreasonably interfere with the operations of the Ministry
- OR
- Consultations necessary to make a decision on the request cannot reasonably be made within the original time limit

The requester must be notified of the extension, the reasons for the extension, and their right to complain to the Ombudsman about the extension, within the first 5 working days.

Ministry OIA Extensions

When a letter needs to be sent to the requester advising of the extension, please email ministerial.requests@minedu.govt.nz for the appropriate METIS template. Please email ministerial.requests@minedu.govt.nz advising of the new due date and the date the extension letter was sent, and they will update the METIS record.

Minister OIA Extensions

The BU must consult immediately with the MO staff, after completing the initial assessment, on whether to extend the timeframe for responding. A decision on an extension should be made within the first 5 working days.

A new date for responding must be agreed with the MO, bearing in mind the number of other OIA requests already in the system. The extension will take into account a realistic timeframe for compiling the information by the BU, and a realistic timeframe for MO staff to carry out the assessments they are required to make prior to submitting the OIA to the Minister for sign-off.

The BU then immediately drafts an appropriate letter for the Minister's signature, advising the requester of the time extension and explaining the reasons for it. Email ministerial.requests@minedu.govt.nz for the appropriate METIS template. Please email ministerial.requests@minedu.govt.nz of the new due date and the date the extension letter was sent, and they will update the METIS record.

Transferring Requests

Requests for information are subject to the Official Information Act and the Ministry is obliged to consider release of the information directly including requests from MPs and political parties. However, a request may be transferred to another department or organisation or Minister if it is more appropriately dealt with there (section 14). The Ministry is also under an obligation to observe its constitutional duty to consult with the Minister and follow Ministerial direction.

All transfers of OIA Requests must be completed within the first 5 days of receipt.

Transfers within the Ministry of Education

When transferring an OIA within the Ministry, the responsible BU's:

- must receive agreement of transfer from the intended recipient BU
- remain responsible for the OIA until the hardcopy is received in the recipient BU

See Transfers, Extensions and Cancellations [Word: 48kb] for the Ministry's policy about ministerial transfers.

Transfers outside of the Ministry of Education

Transfers can only be made for the following reasons under section 14 of the OI Act:

- The information is not held by the Ministry (or Minister) but is believed to be held by another Minister, government agency or local authority
- The information is considered to be more closely connected with the functions of another Minister, government agency or local authority
- The information is more closely connected with the functions of the Minister

Please note that:

- If the information is partly connected, both with the Ministry and the Minister, then the appropriate part may be transferred to the Minister
- If the information is partly connected, both with the Ministry and another department (eg NZQA or TEC), then the appropriate part may be transferred to that department

Consultation with any relevant Ministers or departments should occur to ensure that the request is being transferred to the correct place.

Transfers to the Minister's Office

Transfers to the MO (and) be made in strict adherence to the Act. At no time are OIA requests to be transferred to MOs "automatically". A clear reason for transfer is required under section 14 of the Act.

It is, however, the Ministry's responsibility to consult with the MO when the content of the information requested:

- is particularly sensitive
- refers to subject matter that is controversial and likely to lead to questions of Ministers
- contains facts, opinions or recommendations which are especially quotable or unexpected
- reveals important differences of opinion among Ministers or agencies

OFFICE OF THE INFORMATION COMMISSIONER

The State Services Commission guidelines for Official Information Act requests state that:

- The Official Information Act has not removed the duty on a public servant to keep the relevant Minister fully informed. It is important to consult with Ministers where release is likely to lead to public comment on a political issue. Consultation over an Official Information Act request gives a Minister an opportunity to comment on any political issues or matters relating to government management.

The Cabinet Office Manual indicates that the general practice to be followed is that:

- A Department can consult with its Minister over the decision it proposes to make on a request for information but it must then either make the decision itself, or transfer the request to the Minister concerned.
- If, after consultation, the Minister takes the view that the information should not be released but the department believes it should be, then transfer of the request to the Minister is the only way in which the department can meet its constitutional duty to follow Ministerial direction and the obligation to comply with the Official Information Act.
- Each case of this kind needs to be carefully handled at a senior level within the department, including reference back to the Minister for further consideration if necessary.

Cabinet Office Manual, Section 6 Clause 6-34 (Section 14 Official Information Act refers).

Also see section Response Letter, Memo & Report.

Transfer Process

- All OIA transfers must be completed within 5 Days of receipt. This includes transfers within the Ministry, to the Minister and other departments/agencies
- Consultation and agreement between intended recipients must occur before a transfer takes place
- When transferring externally, the recipient (the Minister, department or agency) and the requester must be informed in writing. In most cases the recipient will already know that the request is coming
- Please email ministerial.requests@minedu.govt.nz for the appropriate transfer letter templates or METIS
- A copy of the original request must accompany the transfer letter to the recipient
- Please email ministerial.requests@minedu.govt.nz and advise of all transfers
- Requests transferred to the Minister will have a new due date (15 working days for Minister OIAs). The due date will be updated in METIS
- An OIA request transferred to the Minister will be returned to the Ministry for a response for the Minister's signature

Charging for Requests

Section 15(1) subsection (1A) provides that the Ministry may charge for the supply of official information. Section 15 (2) provides that the charge should be reasonable. It's up to managers to decide whether it is reasonable to impose a charge or not.

The Justice Department issued a set of Government approved charging guidelines for the level of charges to be made by Government Departments.

The key features for calculating a charge (including GST) are:

- The total staff time exceeding one hour spent in actioning the request, at a rate of \$38 for each half hour
- The number of A4 pages exceeding 20 at a rate of 20c a page
- Any other costs actually incurred can be passed on
- The liability of the requester to pay can be waived depending on their circumstances or the public interest

The Ministry of Justice guidelines advise that a record of all costs incurred should be kept, and where the requester is liable to pay, should be notified of the method of calculating the charge. A deposit may be required where the charge is likely to exceed \$76.

If the charge is not acceptable to the requester, Section 28(1)(b) of the Official Information Act 1982 provides for the right to appeal to the Ombudsman. This should be pointed out to the requester when they are informed of the charge.

MPs are not usually charged for Official Information as a convention.
The Ministry of Education policy is that the requester should be informed of the proposed charge as early as possible. The letter should specify that the requester's agreement to the charge is sought, before further action is taken to answer the request. Email ministerial.requests@minedu.govt.nz for the OIA Charging template in METIS. When requesters are advised that a charge applies this also becomes a de-facto extension of time until the charge is accepted by the requester. If the requester does not respond by a specified time the request is closed.

Refusing Requests

Anything less than denying with the request is a refusal under the Act and, if withholding any information, the Ministry's response to the requester must state the following:

- the reasons under the Act for the withholding of the information (including deletions)
- the reasons under the Act for not providing the information in the way preferred if applicable
- the person's right to complain to the Ombudsman, eg "under sections 19 and 28 of the Official Information Act you have the right to make a complaint to the Ombudsman concerning the decision to withhold information"
- the requester's right (if a legal entity eg a company) to request the correction of information or to require a notation to be attached in regard to information about the requester's organisation

Requests by individuals for correction of personal information are covered by the Privacy Act.

Reasons for Withholding

Information can only be withheld if there is good reason to do so. The reasons for withholding under the Act are contained in sections 6, 9, and 18. The sections, which most often apply to requests received by the Ministry, are contained in sections 9 and 18, and are all included in the "withholding response templates" in METIS.

Section 9 reasons are subject to the "public interest" balance and include protecting the privacy of individuals, protection of information for commercial reasons, where there is an obligation of confidence, legal professional privilege, free and frank expression of opinion, or where commercial activities or commercial or industrial negotiation may be prejudiced.

Under Section 18, information can be withheld that: Section 18d guidelines)

- will soon be publicly available (this reason should only be used when there are practical difficulties in providing information at the time of considering the request)
- does not exist or cannot be found
- is not held by the Ministry or any other crown agency
- cannot be made available without substantial collation and research to compile

Right of Access to Internal Rules and Reasons for Decisions

Section 22 for the Official Information Act provides that everyone has a right to access to internal Ministry guidelines in accordance with which decisions are made which affect a person or body of persons in his/her or its personal capacity. This includes any Ministry manuals, policies, principles, rules or guidelines. Internal rules may only be withheld if there is good reason under sections 6(a) to (d), 7, 9(2)(a), (b), (ba), (i) and (j) or section 10 of the Act. Section 23 gives every person a right to the reasons for decisions or recommendations made about that person, including findings on material issues of fact and a reference to the information on which the findings were based.

The reasons for decisions can only be withheld if good reason exists under sections 6(a) to (d), 7, 9(2)(b), 10 and section 27(1)(c) to (f) of the Act.

Making a Decision on Whether to Withhold Information

Basic considerations when contemplating withholding information are:

- Seek advice from the Legal Services Division
- Keep in mind the basic principle of availability contained in the Act
- Consider the implications of the release of the information (what is the predicted harm if the information is released? Is that predicted harm listed in the Act as a reason for withholding information? See sections 6, 7, and 9.)
- Consider whether documents could be released with deletions or in summary form if some information is considered sensitive
- Consult with persons who may be affected by the release

The purpose to which the requester might put the information is not relevant to your decision, neither is the possibility of embarrassment nor bad publicity. The only reasons information can be withheld are those contained in the Act.

Substantial Collation

With regard to withholding information on the grounds that it would take substantial collation and research to compile it should be remembered that there is an obligation on the Ministry under section 13 of the Act to provide assistance to persons requesting Official Information even if this takes some time and trouble.

A decision should be made within the first 5 days as to whether the request cannot be fulfilled because the information requested cannot be made available without substantial collation or research (Section 18). Alternatively the requester could be invited to be more specific in their request to reduce the need for research or collation or an extension of time limit could be imposed.

To refine a request it is often best made by phone (followed by written confirmation) but email or standard mail is fine provided records of calls made / copies of responses sent are attached to the official file and in METIS.

For Minister's OIAs discuss refining with MO without exception. Then (if required, provide a letter for the Minister's signature, asking for the request to be refined. Media related requests must be discussed with the Executive Communications team before contacting the requester. It is often more appropriate for Executive Communications team to clarify these types of requests with the requester, as they have special expertise in dealing with the media.

When the requester is sent a letter seeking a refinement of their request, the request is closed. When the requester replies, refining their original request, a new request is registered with a new 20 working day time limit. Managers are encouraged to consider completing the new request within the original 20 working days if practicable. In assessing whether a request may be refused on the basis of substantial collation and research, the following factors are relevant:

- difficulty in locating, researching and collating the information
- the amount of documentation to be considered
- the work time involved
- availability of resources in terms of money, facilities and personnel and the effect on other operations of diversion of such resources to meet the request

Contempt of Court

Information can also be withheld if releasing it would constitute contempt of court or of Parliament

Other Reasons

Less commonly used reasons for withholding information can be found in section 6, 7, 10 and 52. However, protecting the privacy of a third party (principle 11) needs to be considered in the light of Public Interest provisions.

OFFICIAL INFORMATION ACT
REQUESTED BY
PROCESSED BY
DATE

Consultation with Other Departments

When Should Departments Consult?

The Official Information Act provides [s15(5)] for consultation with Ministers or another department when reaching a decision on any request. Consultation is necessary:

- as a matter of courtesy
- to make the other department(s) aware of the request and of your proposed action
- to check whether similar requests have been made of the other department(s) so that consultation and co-ordination can occur to ensure that a stance taken by one department is not undermined by another

Consultation with other departments should normally occur when:

- a joint working party has produced some or all of the information which is the subject of the request
- another department has provided substantial or critical input into the information requested, for example, Cabinet papers often contain advice specifically proffered by another department
- the information sought contains material that relates to the activities of another department or that may result in publicity for another department
- it is clear that a request has been made to more than one department eg if addressed "All Chief Executives". (A check should then be made through the MO to see which other departments have received the request.)

The Official Information Act has not removed the duty on a public servant to keep the relevant Minister fully informed. It is important to consult with Ministers where release is likely to lead to public comment on a political issue. Consultation over an Official Information Act request gives a Minister an opportunity to comment on any political issues or matters relating to government management. It would be appropriate for departments to consult their Minister when:

- requests are received from the Opposition, the Opposition Research Unit, recognised interest groups or the news media especially where the information is particularly sensitive
- the subject matter is controversial and likely to lead to questions of Ministers facts, opinions or recommendations in the information are especially quotable or unexpected
- the information reveals important differences of opinion among Ministers or agencies

How to consult?

There is no special procedure for consulting with a Minister or another department regarding an official information request. Departments may wish to develop their own procedures for such consultation.

Practice Guidelines

The Ombudsman's Office issue periodic practice guidelines on OI issues. Hardcopies are available from the Ministry Library.

Implications of Release of Information

When releasing any information or documents you should carefully consider the implications the release of the material might have on other parts of the Ministry or other education organisations. How the information is likely to be used will also need to be considered. Consult the Communication Group as necessary. Often, responses will be on sensitive and contentious issues and the manager should discuss the matter with the relevant Deputy Secretary.

Ways of Releasing Information

Information must generally be released in the way the requester prefers. However, section 16 of the Act provides that information may be copied, made available by transcript, excerpt or summary, or described orally. Alternatively, the requester may be offered the opportunity to inspect the information. Where the information is not provided in the way preferred by the person requesting it, the Ministry must give the reasons.

Release of Cabinet Papers

When considering the release of Cabinet papers or Cabinet minutes, you must consult with the MO. When preparing a response to a Minister's OIA, where it is recommended the Minister release a Cabinet paper, you must also include a memo orandum from the Minister to Secretary of the Cabinet, informing them that a particular Cabinet paper is to be released. The Cabinet Office Circular CO (91) 29 contains the protocol for access to Cabinet records of previous Governments.

OIA Checklist

A checklist (Word) ~~that~~ has been developed with all the steps required for processing an OIA request. This checklist is supplied as part of the Information sheet. It is mandatory for the BU to complete this checklist.

OFFICIAL SOURCE INFORMATION

Preparing the Response

Best Practice

To ensure that all information is filed and withheld correctly take the following steps:

- Assemble all information related to the request and number each document. This is your "master" set
- Copy the master set. This gives you a "clean set" for forwarding to the MO, Senior Manager, Group Manager, Deputy Secretary or Secretary for Education, who is signing the OIA out
- Take the master set and mask all sections of information to be deleted with removable tape, taking note of under which grounds the deletions are being made. This is now your "masked master" set
- Copy the masked master set (with deletions) onto OIA paper with the overprint "Released Under the Official Information Act" in red or black ink. This gives you your "set for release"
- File the masked master for your record of what was released and withheld
- You should now have 3 sets of information, a masked master for filing, a clean set for forwarding to the Minister, Senior Manager, Group Manager, Deputy Secretary or Secretary for Education and a copy for release on OIA paper (with deletions)

Note that if no deletions are being made, you will need two sets of copies of the information being released.

Making Deletions and Alterations

Section 17 provides that information can be made available with deletions or alterations. The making of deletions or alterations constitutes the withholding of the information therefore good reasons must exist for doing so and the requester must be informed.

When making deletions remember:

- The Ministry requires all deleted information to be rendered illegible
- The deleted sections must be "masked", preferably with removable tape, and then photocopied for release. Pen, marker pens or twink are not acceptable
- The requester must be informed in the response letter that information has been deleted and under what applicable section of the Act
- Where more than a few lines have been deleted it is useful to cite the applicable section of the Act in the space of the deletion eg "[Deleted under section 9 (2) (i)]"

Deletion of Officials' Names

The deletion of officials' names in OIA requests is not specifically covered in the legislation.

Ministry Rule of Thumb

The "Rule of Thumb" for the deletion of officials' names is the same for both Minister and Ministry OIA Requests.

"The names of Ministry officials are not usually deleted from OIA responses excepting non-management staff and those that fall outside the scope of the request." That is, the names of Managers and their superiors (eg Deputy Secretaries) are not usually deleted unless they are not at all related to the scope of the request. The names of employees who do not hold delegated responsibilities (and are not key decision makers) usually will be deleted unless they are specifically related to the request.

For Example:

- Where the request is from a board of trustees or early childhood service and asking for information about itself, officials' names generally cannot be deleted
- Where there is a real likelihood that a Manager will be the subject of harassment if their name is released, consideration should be given to withholding their name
- Where the requester has already received documents with non-management staff names on them, releasing these names should be considered

If Ministry staff have any doubts as to whether the rule of thumb should apply they should talk to Legal Services.

Records and Filing

The masked master set and clean set of the documents (released and withheld), must be kept on file and not destroyed by the Ministry. A reasonable opportunity has been given for the requester to make a complaint to the Ombudsman, and for the Ombudsman to carry out a review.

Ministry OIA Response and Memorandum

Please use the OIA response template in METIS, which includes:

- an internal memorandum outlining background, risk, Ministry comment, etc
- a draft reply for sign off by manager with delegation
- a list of documents (if the list is long, otherwise include the short list in the response)

Should the MO wish to see a copy of the Ministry's response before release, forward a copy of the

- response (including list of documents)
- clean set of documents to be released
- marked set of documents to be released
- internal memorandum
- by no later than a minimum of 5 days before the response is due to the requester

For Minister Joyce's office, complete the standard coversheet.

Minister OIA Response and Report

Please use the OIA response template in METIS, which includes:

- an education report outlining background, risk, Ministry comment, etc
- a draft reply for the Minister's signature
- a list of documents (if the list is long, otherwise include the short list in the response)

If it is recommended that the Minister release copies of Cabinet or Cabinet Committee Papers, a memorandum from the Minister to the Secretary of the Cabinet is required, informing them that a particular Cabinet paper is to be released.
Also see section Transfers to the Ministers Office.

Listing Information Released and Withheld

A list of all information released and withheld must be included with the response letter. If the list is short, include in the body of the response. If the list is long, create a separate document.

This list should be in the form of a table as in the example outlined below:

Doc No	Date	Description	Released/Withheld/Deleted
1.	1/3/2011	Cab Paper - "OIA adjustments"	Withheld under Section 9(2)(f)(iv)
2.	2/4/2011	POL (97) 12	Released
3.	3/5/2011	Email sent between the Ministry and Joe Bloggs regarding his contract work	Part's deleted under Section 9(2)(f)(iii)

Contextual Statement

Information can be released with a contextual statement that puts the information in perspective where there is a concern that release of certain information may be misleading because it is incomplete, outdated, inaccurate, etc.

The statement must be in the attachment with the released information not in the response letter or list of documents.

Signing Out

Official Information Act requests are to be signed by a manager with relevant delegations. All responses for the Minister are to be signed out by a Deputy Secretary or Group Manager. The Deputy Secretary has given the Group Manager the delegation. Ministry responses can be signed out by specific delegated Senior Managers (if the Deputy Secretary/Group Manager has given that person the delegation).

Note: managers will need to decide on a case by case basis whether it would be more appropriately dealt with at the Deputy Secretary or Secretary for Education level and/or whether it would be appropriate to consult the Executive Communications Group and/or Legal.

Copies and Collation of Papers

Refer to the [Ministerial Collation Guide](#) [Word; 38kb]

Dispatching and Filing

Ministry OIA Response

The signed and dated letter plus any attachments must be sent to the requester by the BU directly.

A signed copy plus any attachments (masked master (released) and clean (withheld) sets) are to be filed in the BU.

Minister OIA Response

Once the reply has been signed by the Minister, it is sent to the requester by the MO. A copy of the signed response, Education Report and all of the original documentation is returned to the MU for housekeeping in METIS. Once this has been completed all of the documentation is returned to the BU for scanning into METIS and filing on their official files.

Note: The masked master and clean sets must be kept on file and not destroyed by the Ministry, until reasonable opportunity has been given for the requester to make a complaint to the Ombudsman, and for the Ombudsman to carry out a review.

RELEASED UNDER
OFFICIAL INFORMATION ACT

Official Information Guidelines

General Approach to Tender Information Issues

A general belief that certain information is commercially confidential is not sufficient ground, on its own, for withholding information under the Official Information Act. The approach consistently taken by the Ombudsman is that ss9(2)(b)(ii), (ba)(i) or (ba)(ii) of the Act do not protect commercial information supplied to a department or organisation simply on the basis of an understanding of confidentiality; a realistic assessment needs to be made of the likely consequences of disclosure and of whether those consequences come within the ambit of the specific interests protected by the Act's withholding provisions. This approach was found to be correct (in respect of corresponding provisions of the Local Government Official Information and Meetings Act) by the High Court in the Wyatt Company decision.

In assessing whether ss.9(2)(b)(ii), (ba)(i) or (ba)(ii) apply in a particular case (or s9(2)(i) where it is believed that disclosure would prejudice or disadvantage the department's own commercial activities), the Ombudsman has found that the best starting point is to establish: the particular market activity to which the information relates; the characteristics of that market activity eg. the number of competitors and degree of competition; the criteria on which the tender contracts are awarded and how the information at issue relates to those criteria, and the degree to which the information could be said to reveal a tenderer's marketing/pricing strategy which a competitor, if he or she knew it, would be able to use to obtain a competitive advantage.

This information then assists the assessment of: the precise nature of the prejudice or disadvantage which the department or organisation predicts would result from disclosure, and the likelihood of such a prejudice or disadvantage occurring.

On a general level, it is accepted that where disclosure of pricing information would be likely to reveal a tenderer's pricing/market strategy in a competitive market, then such information is protected by s.9(2)(b)(ii). However, in respect of requests for total tender prices (as opposed to details of how the total price is made up) and identities of successful and how the total price is made up) and identities of successful and unsuccessful tenderers, the Ombudsman would have to be persuaded in a particular case that such information requires protection under the Act. Certainly, in previous cases to date, the Ombudsman has not been so persuaded.

In respect of s.9(2)(b)(ii) an issue which often arises is how one assesses the likelihood and nature of prejudice to a third party's commercial position. In the Ombudsman's view, a simple assertion by the holder of the information that such prejudice would be likely is insufficient. It is considered that direct consultation either by the department or organisation or the Ombudsman is necessary. Such consultation can be either by letter or orally. In following consultation, the third party advises it has no objections to disclosure then there would seem to be no grounds for withholding under s.9(2)(b)(ii). The requirements of the withholding provision must be met.

OFFICIAL INFORMATION ACT

Transferring, Cancelling, Extending and Combining Ministerials

This document outlines the processes and requirements for Transferring, Cancelling and Extending the deadlines of ministerial correspondence received in the MoE and details the cases where Combination is required.

Ministerial Transfers

The only acceptable reason for transferring ministerials is that it is most appropriate for another team/division or agency to respond. This is not always easy to determine and if you experience difficulty in transferring a ministerial have your manager discuss the matter with the manager of the intended recipient division.

Note

When contacting Ministerial Requests about any particular ministerials, always include any METIS numbers and any other pertinent details.

Internal Transfers

When transferring a ministerial to another team or division within the MoE:

- Arrange the transfer by discussion with the intended recipient.
- Deliver the ministerial to the recipient (prior approval by intended recipients must be gained).

- Allocators will need to notify the Ministerials Unit about transferred correspondence thru METIS. This is done at the original Allocator stage by selecting "No", filling in the transfer details (see below) and completing the task.
- If you have pushed the task past the original Allocator stage, have the recipient advise the Ministerials Unit (MU) of the transfer by email; the MU will then action the transfer in METIS. It must be the recipient that advises the MU of the transfer in order to prevent the distribution of unexpected correspondence).

Note

- Business Units (BUS) remain responsible for ministerials until the time they are received in the new BU.
- See the Allocator Contact List for staff responsible for ministerials in each division of the Ministry.
- Ministerial Coordinators transferring docs between teams within their area of responsibility need not get prior approval from recipient BUS.

External Transfers

When transferring a ministerial to another agency/ministry:

- Arrange the transfer by discussion with the appropriate Minister's Office.
- Email Ministerial Requests with proof of transfer confirmation (MO approval); MU will action the transfer in METIS.
- Send the ministerial back to the minister's office (MO) via the MU with a note of explanation to ensure speedy action.

Note

- The MO is within its rights to approve or decline a transfer request as they see fit, MOE must abide by their decision.
- Technically, an External Transfer is a Cancellation of a ministerial (since no further action is required from the MOE). In light of this, when making requests for transfers or cancellations, be clear what is happening to the ministerial to ensure that the MU takes the correct action.

Ministerial Cancellations

Ministerials may need to be cancelled for a myriad of reasons but generally they will fall into one of the following categories:

- Duplicate correspondence
- Overtaken by events
- Minister's Office Direction

Duplicate Correspondence

Correspondents often send letters to more than one minister. This raises the possibility that, later on, the Minister may receive more copies of the exact same letter referred to him from those other ministers. In these cases the duplicate ministerials may be cancelled by the MU without further consideration or approval from the Minister's Office.

Note

- This must be an EXACT duplicate, verbatim, not a near approximation or simply a letter from the same correspondent on the same topic, though similar action **may** be taken in these cases. Discuss with MU.
- On occasion, you may receive correspondence from an MP requesting a copy of the MOE response to a correspondent. See the combination section for the process for this.

Overtaken by Events

Circumstances may change and render a ministerial response irrelevant, inappropriate or unnecessary, this ministerial is "overtaken by events" and cancelled.

Minister's Office Direction

If the MO directs that a ministerial is to be cancelled for any reason then it is cancelled.

Cancellation Process

To cancel any ministerial:

- Contact the appropriate Minister's Office for approval.
- Email Ministerial Requests with proof of cancellation confirmation (MO approval).

Note

- Proof of MO approval is required for all “non-duplicate” cancellations.
- OIA and Ombudsmen Correspondence cannot be cancelled by anyone other than the requestor.

Ministerial Extensions

Extensions to deadlines are only granted in exceptional circumstances. The standard timeframes for response are deemed adequate for the majority of correspondence. If, however, you require an extension, for any reason, you generally must request one from the Minister’s Office.

To extend the deadline of a ministerial:

- Discuss with the Minister’s Office and gain approval.
- Forward proof of approval with email advice to MU.

Note

- Request extensions as early as possible, the MO does not like to receive requests for extension the day the ministerial is due (or even the day before).
- Lack of drafters to draft and lack of managers to sign drafts off are NOT valid reasons for requesting extensions. Managers are responsible for ensuring that there are adequate drafters to handle the workload and for delegating authority for signing ministerials out.
- OIA requests and Ombudsman Correspondence have their own processes for extension.

Combining Ministerials

On occasion it may be necessary to combine ministerials, usually because they are letters from the same correspondent on the same issue that were sent in short succession.

To combine ministerials:

- Email Ministerial Requests with the appropriate details
- Include the METIS numbers of each ministerial and reasons for combining

Both ministerials will then likely be bound together under the earliest ministerial METIS number (or the ministerial with the earliest deadline):

Note

Identical letters will not be combined. The duplicate with the latest deadline will generally be cancelled.

Transferring, Cancelling, Extending and Combining Ministerials

This document outlines the processes and requirements for Transferring, Cancelling and Extending the deadlines of ministerial correspondence received in the MOE and details the cases where Combination is required.

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- Arrange the transfer by discussion with the intended recipient.
 - Deliver the ministerial to the recipient (prior approval by intended recipients **must** be gained).
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- If you have pushed the task past the original Allocator stage, have the recipient advise the Ministerials Unit (MU) of the transfer by email; the MU will then action the transfer in METIS. It **must** be the recipient that advises the MU of the transfer in order to prevent the distribution of unexpected correspondence).

Note

- Business Units (BUs) remain responsible for ministerials until the time they are received in the new BU.
- See the Allocator Contact List for staff responsible for ministerials in each division of the Ministry.
- Ministerial Coordinators transferring docs between teams within their area of responsibility need not get prior approval from recipient BUs.

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- Arrange the transfer by discussion with the appropriate Minister's Office.
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Minister's Office Direction

If the MIO directs that a ministerial is to be cancelled for any reason then it is cancelled.

Cancellation Process

To cancel any ministerial:

- Contact the appropriate Minister's Office for approval.
- Email [Ministerial Requests](#) with proof of cancellation confirmation (MIO approval).

Note

- Proof of MO approval is required for all "non-duplicate" cancellations.
- OIA and Ombudsmen Correspondence cannot be cancelled by anyone other than the requestor.

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Note

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Official Information Act Request Checklist

1. Immediate Attention

	Priority	Urgent
a) Are you the most appropriate team to respond to this OIA?	Yes	No – Transfer

2. Initial Assessment

a) Is this a Privacy Act request?	Yes – Apply Privacy Act criteria	No
b) Has the request been specified with sufficient clarity?	Yes	No – Clarify with requestor
c) Will the request require substantial collation and/or research? Can narrow or reduce the scope of the request?	Yes – Clarify and consider changing, declining or extending deadline	No
d) Does the request include a high volume of information? Is it appropriate to charge the requestor for staff time and/or copying costs involved?	Yes – Use the METIS OIA charging template and contact requestor	No
e) Are contributions required from business units or agencies?	Yes – Identify and request within 3 working days	No
f) Is an extension to the deadline required?	Yes – Explain Overleaf	No
g) Are there any reasons to refuse part or all of the request?	Yes – Explain Overleaf	No
h) Is the information requested likely to be sensitive? List any risks associated with the release of information in the risk assessment box (below right)	Yes – Consult Senior Manager/Complex Legal Minister	No

3. Response Preparation

<input type="checkbox"/> a) Information to be released has been assembled & reviewed for consultation needs, content sensitivity & release impact has been addressed	LOW	MEDIUM	HIGH
<input type="checkbox"/> b) Legal has provided advice on information to be withheld	Details:		
<input type="checkbox"/> c) The Senior Media Advisor has been alerted (as appropriate)			
<input type="checkbox"/> d) A communications plan has been established (as appropriate)			
<input type="checkbox"/> e) The draft response has been prepared			
<input type="checkbox"/> f) Covering memo/report prepared for the Dep Sec / GM / Minister			
Released information in attachment on OIA Overprint and all guidelines were followed (required)			
All attachments are listed numerically and all guidelines were followed (required)			
Manager Signature: <u> </u> / <u> </u> / <u> </u>	Name:	Sig:	

4. Finalisation

a) Specify and confirm that all consultation required is complete	List		
b) A communications plan has been completed (as appropriate)	_ / _ / _		

5. Final Review and Approval

Drafter (check spelling and grammar)	_ / _ / _	Name:	
Local/Regional Office Manager	_ / _ / _	Name:	
Peer Review (check content and format)	_ / _ / _	Name:	
Legal (if appropriate < 1 day)	_ / _ / _	Name:	
Media Advisor (if appropriate < 1 day)	_ / _ / _	Name:	
Operational Policy Manager	_ / _ / _	Name:	
Senior Manager (not drafter - check all)	_ / _ / _	Name:	
Dep Sec / GM / CEO (1 day)	_ / _ / _	Name:	
Hardcopy sent to MU	_ / _ / _	Name:	
1a) Transfers	_ / _ / _	Name:	

Transferring Business Units (BUs) must receive agreement of transfer from the intended recipient BU. Transferring BU's remain responsible for the OIA up until the time that the hardcopy is received in the recipient BU. Recipient BU's must inform the Ministerials Unit (MU) of the transfer once completed.	
i) To the Ministers Office or another Ministry	

BU's must contact and receive agreement of transfer from the intended recipient.
 BU's must draft, register and send transfer letters to the requestor and the recipient Ministry or Ministers Office immediately.
 See the Intranet Guidelines on OIA's for Transfer to Ministers Office Guidance.

2a) **How to Identify Privacy Act Requests**

If the request is for information about the requestor and about a natural person (as opposed to a company for example) then the Privacy Act applies rather than the Official Information Act. In all other cases the OI Act Applies. Contact Legal for further clarification.

2b) Has the request been specified with sufficient clarity?

Requests must be specific to avoid time wasting, improve service to requestors and limit misuse of the Act such as "fishing" for information. Such cases need to be speedily identified and clarification sought. Focus should be on service.

Clarification contact must be made by senior MOE staff for Ministry OIAs and MO staff for Minister OIAs.

2c) Will the request require substantial collation or investigation?

Anything that takes one person more than 1 Hour is considered substantial, if this is exceeded a charge may be applied. Since requestors may not want to pay for the information they receive it is important to clarify the request with the requestor in order to reduce the scope if possible.

2d) Does the request include a high volume of information?

High volume is defined as over 20 pages, if this is exceeded a charge may be applied. Since requestors may not want to pay for the information they receive it is important to clarify the request with the requestor in order to reduce the scope if possible.

The requestor's agreement must also be sought if a charge is to be imposed.

20c may be charged for every page after the first 20.

\$38 may be charged for every half hour spent on the request after the initial hour.

Use the charging or "All in One" template in METIS and consult the Ministry of Justice website for charging information.

2e) Are contributions required?

Identify, contact and begin enquiries with any other Divisions, Ministers or Ministries that may need to be consulted within 3 days of receipt. See the Allocator Contact and Parliamentary Contact Lists on the Intranet.

2f) Grounds for Time Extensions

When extending a request the applicable section of the act must be quoted in the response letter.

See the Intranet OIA Guidelines for detailed reasons to extend a request.

Detail any reasons for extension in the box on the right.

2g) Grounds to refuse part or all of a request – anything less than complying is a refusal. Always consult Legal for advice.

When refusing a request or deleting part of the information the applicable section of the Act must be quoted in the response letter.

See the Intranet OIA Guidelines for detailed reasons to refuse a request.

Detail any reasons for declining in the box on the right.

2h) Is the information requested likely to be sensitive? Things to consider:

Is it a current issue/hot topic? Have coordinated requests been made to other government departments? Is it likely release of the information requested will result in public comment on a political issue?

3a) Implications of release

What will the impact be of releasing this information? Who needs to be consulted or advised of the release of this information?

Answers to these questions should not impact the decision to release or withhold information but may indicate other action required to be taken.

3b) Is information to be withheld? Always consult Legal for advice

Deleted information must be rendered illegible. The requestor must be informed in the response letter that information has been deleted or withheld, under what applicable section of the Act and where in the document the deletions have been made.

3c) Has the Senior Media Advisor been alerted?

The Senior Media Advisor should be made aware of all OIA requests from the media and politicians and be given an opportunity to see all draft responses before the information is released (but does not have to see all OIA draft responses). The Senior Media Advisor should also be alerted to any OIA requests from others that may attract media interest.

3d) Has a communications plan been established?

The purpose of a communications plan is to ensure the Ministers/Ministries prepared for any eventualities arising from the release of information. See the Ministry's communication policy in the "Communications Toolkit" on the intranet for detailed information.

3e) The draft response has been prepared

No information is to be released in the response letter. All information is to be released as an attachment on OIA Overprint including a list of information released. Guidelines on OIA and Draft Reply formatting are available on the Intranet.

3f) The covering memo/report has been prepared for the Deputy Secretary / Minister

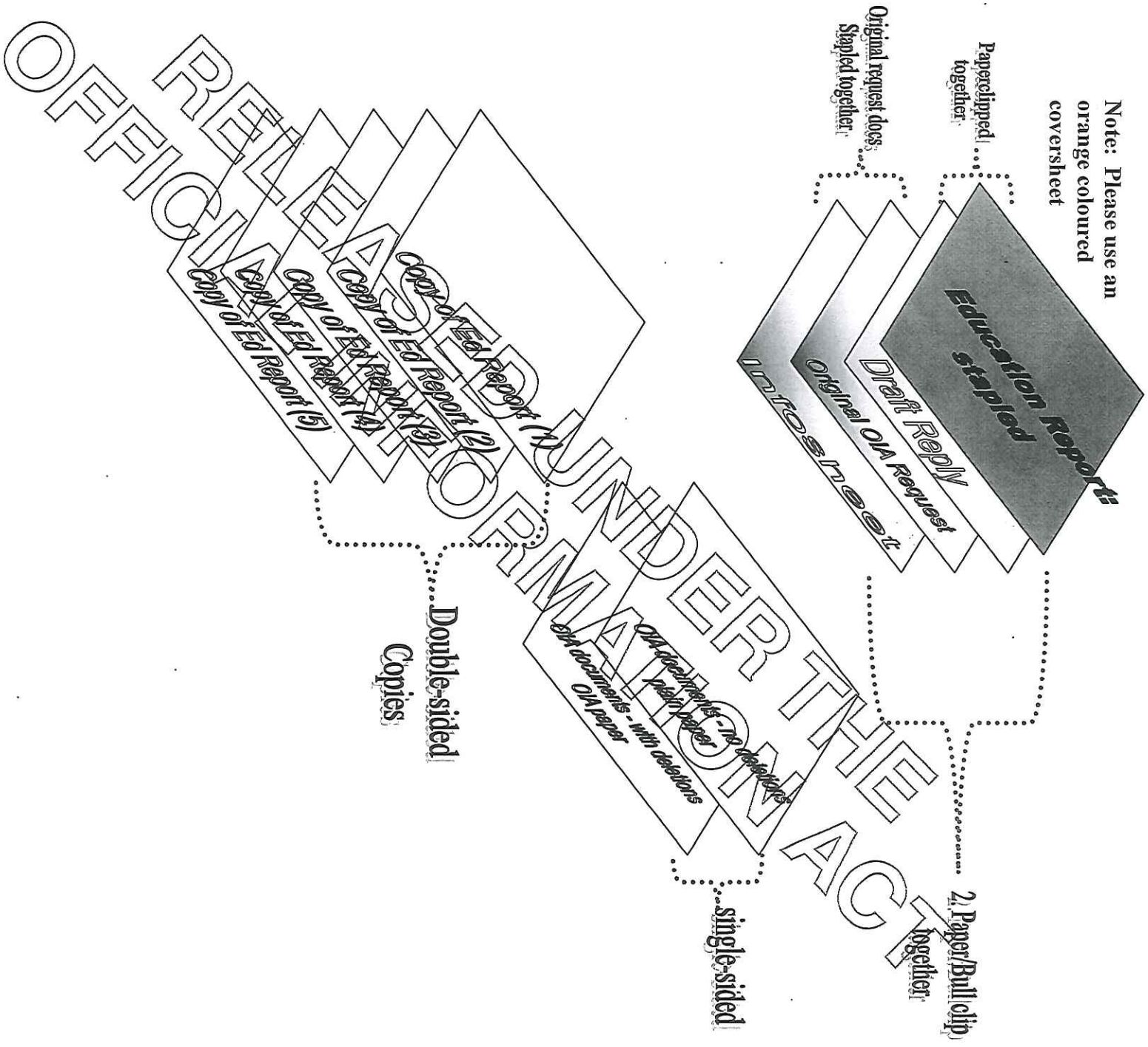
The purpose of a memo/covering report is to draw attention to any risks or issues surrounding the information being considered for release. Guidelines on OIA-memo and cover report formatting are available on the Intranet.

Notes:



OIA and Ombudsman Collation

Order of papers to MU



Te Tāhuhu

Home > News and events > A word from Lesley > 26 October 2012

News and events

26 October 2012 - a word from Lesley

Kia ora koutou,

Short weeks are always a challenge aren't they – five days work into four!

An important job for me this week was signing a Memorandum of Understanding (MoU) with Child, Youth and Family. This formalises work we've already been doing to ensure vulnerable children and young people are protected, safe and able to learn. We must be very mindful of having careful and appropriate controls on the information we share, but working together does achieve results. For example our 'Gateway Assessments' have already identified over 1,000 children and young people whose learning has been impacted by serious health issues. These learners have now been successfully referred to health providers.

The power of working together was also the theme of a Nelson Principals' Association conference I attended this week. This group had developed a provocative and reflective list of questions to debate over the course of their day-long conference. It was good to be able to share my vision, and that of the Minister, to put that debate in context.

Yesterday we sent a letter to all principals updating them on our work to resolve ongoing Novopay issues. I was able to confirm to them the vast majority of people are being paid correctly. However, we acknowledged there are issues and we're working closely with the provider to sort those out. Given the ongoing media interest in the topic we also released a media statement.

The item on Campbell Live last night reminds us how important advocacy and care in responding to questions are.

We have taken steps to tighten this process. Each day a team from Legal, Ministerials, Property and Regional Operations has been meeting to triage Chrischurch related questions and OIA requests. This group applies their respective expert skills to ensure the requests can be rapidly assigned and answered. In addition, National and Regional Office staff meet each week to share the latest information and ensure we've all got the most accurate facts to respond with.

This is an excellent example of working as one Ministry and the Minister has appreciated this support. This week, she noted that response letters developed by Marilyn Scott's team in Regional Operations, National Office were not only being developed in a timely way, but that they were very sensitive to the issues raised about potential school reorganisations and provided appropriate information. Well done to all the staff who contributed to this feedback.

Have a great weekend.
Rowena on behalf of Lesley

Content updated 29 October 2012



MINISTRY OF EDUCATION

Te Tihanga o te Mātauranga