



## Official Information Act (OIA) Policy

<b>Version:</b>	1.0	<b>Contact:</b>	Anna Whiskin, Gareth Hancock
<b>Status:</b>	Final	<b>Approved by:</b>	Executive Leadership Team
<b>Date for Review:</b>	October 2015	<b>i-Manage:</b>	3035339 at AGS-3-9-6-2

### Sign off:

Anne Shaw	Director Office of the Chief Executive	28/10/2014
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Name	Role	Signature	Date
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### Objective:

All DPMC staff understand their obligations under the Official Information Act 1982 (OIA), and know how to get advice from within DPMC to comply with the OIA.

Everyone in DPMC follows the same process when responding to requests made under the OIA.

DPMC's processes deliver timely responses, with each response checked by a DPMC Legal Adviser, and authorised for release by the Chief Executive or their ELT delegate.

### Principles:

DPMC endorses the spirit of and complies with the requirements of the OIA.

Each DPMC business unit is responsible for identifying and answering requests assigned to it.

The Chief Executive, or their ELT delegate, retains the responsibility for decisions to release information under the OIA. Releases of sensitive information or non-routine are made on a "no surprises" basis, which means that the Prime Minister or Minister of Civil Defence (or the relevant Ministerial Office on their behalf) should be informed of the release in advance.

### Applies to:

This policy applies to everyone in DPMC, including seconded staff and contractors.

## Official Information Act Requests

### **Process**

The main points of DPMC's response process are listed below. If you are preparing a response to an OIA request and need more detail about what to do, please read DPMC's Official Information Act and Privacy Act Guidelines [DPMC Step by Step Guide](#). If you are in any doubt you should consult the OIA Co-ordinator or Ministerial Co-ordinator in Office of the Chief Executive (OCE), or the relevant DPMC legal adviser for further advice.

### **What is official information?**

"Official information" can mean any information held by a department or Minister (with some exceptions), and includes such information as policy documents, financial information and correspondence. Any person can submit an OIA request to any DPMC point of contact. An OIA request does not need to refer to the Act itself – any request from any individual or group for 'official information' is an OIA request.

### **The clock is ticking**

When you receive a request, send it straight to the OIA Co-ordinator or Ministerial Co-ordinator in the Office of the Chief Executive (OCE). The timeframes for transferring a request (10 working days) or responding to it (20 working days) start as soon as DPMC receives the request. The clock starts ticking from the moment the request is received (ie an email lands in an inbox, or a phone message is left), and not from when someone in DPMC sees it. Checking for OIA requests every day is a core part of DPMC business and we can make the best use of the limited time available for replying.

### **Requests to Ministers**

DPMC also has a role in preparing responses to OIA requests on behalf of the Prime Minister's Office or Minister of Civil Defence when directed to.

### **Who answers**

OCE will assign requests to the relevant DPMC business unit or make a recommendation that the request be transferred to a more relevant government department or agency for response.

### **Scoping**

The DPMC unit responsible for the response will scope the amount of material likely to be involved, and assess the information for potential release, or agree the request should be transferred to another government department or agency for response. If material exists and is being withheld under the OIA, the potential grounds for withholding or refusal need to be justified.

### **Check again who answers**

After initial scoping work and assessment whether information exists and should be potentially released or is being withheld, the unit will consult back with OCE to check whether a) the unit will draft a response to the request, or b) will draft a transfer to another agency or department for answering (all or in part).

### **Approving the**

When the response is ready, before it is sent back to the requester,

**response**

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the response must be a) reviewed by a DPMC Legal Adviser, who will check that the OIA has been properly applied; and b) approved by an ELT member, ideally the ELT member responsible for the unit which has written the response. An ELT member may decide to get a response approved and signed by the Chief Executive if it is a matter which the ELT member thinks requires this, or the Chief Executive may ask to review or sign a response. Any necessary consultation would have also been conducted with other agencies or government departments before a response is approved.

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**Final signature**

Once a DPMC (including MCDEM and Cabinet Office) response has been approved, a signed copy of the response will be returned to OCE for filing and noting the response has been sent. For PMO or Minister of Civil Defence requests, OCE or MCDEM will submit the response to the relevant Minister's Office for consideration and signature. OCE and MCDEM will look over the response to see if it is consistent with expectations that may have been communicated to them by the Minister's Office.

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**"No surprises"**

DPMC releases sensitive or non-routine information on a "no surprises" basis. In practice this means that the DPMC Chief Executive, or their ELT delegate, is responsible for approving the release of information, and DPMC will inform the relevant Minister's Office about sensitive information being released when needed. Similarly, although information relating to the Governor-General is generally not subject to the OIA, there may be occasions where information is to be released and the Governor-General needs to be briefed in advance.

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**Any Questions?**

If you have any questions, read DPMC's more detailed guidance [DPMC Step by Step Guide](#), or contact the OIA Co-Ordinator or Ministerial Co-ordinator in OCE.

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**FOR ELT REPLY [PLANNED FORMAT]**

Reference: OIA-2016/17-XXX

Dear

**Official Information Act request relating to XXX**

I refer to your Official Information Act 1982 (the Act) request received on [date]. You requested the following:

“XXX.”

**[Check: Was the request clarified/revised by requestor?]**

On [DATE] you refined your request as follows:

*11 font in italics*

**[Check: Was any part of the request transferred?]**

On [DATE] the following part of your request was transferred to [AGENCY NAME]:

**[Check: Was the time limit extended?]**

The time frame for responding to your request was extended under section 15A of the Act by an additional [DAYS] because the request required a search through a large quantity of information.

or

The time frame for responding to your request was extended under section 15A of the Act by an additional [DAYS] because the request required a search through a large quantity of information and extensive consultation.

or

The time frame for responding to your request was extended under section 15A of the Act by an additional [DAYS] because the request required extensive consultation.

**Information being released**

I have decided to release the [relevant parts] of the documents listed below, subject to information being withheld as noted. The relevant grounds under which information has been withheld are:

**[Check: Do section 6 or 9 grounds apply?]:**

- section 9(2)(a), to protect the privacy of individuals
- section 9(2)(b)(i), to prevent disclosure of a trade secret
- section 9(2)(b)(ii), to protect the commercial position of the person who supplied the information, or who is the subject of the information
- section 9(2)(ba)(i), to protect the supply of similar information in the future
- section 9(2)(ba)(ii), to prevent damage to the public interest

- section 9(2)(c), to protect the health or safety of members of the public
- section 9(2)(d), to protect the substantial economic interests of New Zealand
- section 9(2)(e), to protect or mitigate material loss to members of the public
- section 9(2)(f)(i), to protect the confidentiality of Sovereign communications
- section 9(2)(f)(ii), to maintain collective and individual ministerial responsibility
- section 9(2)(f)(iii), to maintain the political neutrality of officials
- section 9(2)(f)(iv), to maintain the confidentiality of advice tendered by or to Ministers and officials
- section 9(2)(g)(i), to maintain the effective conduct of public affairs through the free and frank expression of opinion
- section 9(2)(g)(ii), to prevent improper pressure or harassment
- section 9(2)(h), to maintain legal professional privilege
- section 9(2)(i), to protect the Crown's commercial activity
- section 9(2)(j), to enable negotiations to be carried on without prejudice or disadvantage
- section 9(2)(k), to prevent disclosure or use for improper gain or advantage

Item	Date	Document Description/Subject
1.		
2.		

#### Information publicly available

The following information is also covered by your request and is publicly available on the [\[Beehive or other\]](#) website:

Item	Date	Document Description	Website Address
1.			
2.			

Accordingly, I have refused your request for the documents listed in the above table under section 18(d) of the Act – the information requested is or will soon be publicly available.

**[Check: has relevant information been removed from published documents? If so:**

**Some relevant information has been removed from documents listed in the above table and should continue to be withheld under the Act, on the grounds described in the documents.]**

#### Information to be withheld

There is additional information covered by your request that I have decided to withhold in full under the following sections of the Act:

**[Check: Do section 6 or 9 grounds apply?]**

- section 9(2)(a), to protect the privacy of individuals
- section 9(2)(b)(i), to prevent disclosure of a trade secret
- section 9(2)(b)(ii), to protect the commercial position of the person who supplied the information, or who is the subject of the information
- section 9(2)(ba)(i), to protect the supply of similar information in the future
- section 9(2)(ba)(ii), to prevent damage to the public interest
- section 9(2)(c), to protect the health or safety of members of the public
- section 9(2)(d), to protect the substantial economic interests of New Zealand
- section 9(2)(e), to protect or mitigate material loss to members of the public
- section 9(2)(f)(i), to protect the confidentiality of Sovereign communications
- section 9(2)(f)(ii), to maintain collective and individual ministerial responsibility
- section 9(2)(f)(iii), to maintain the political neutrality of officials
- section 9(2)(f)(iv), to maintain the confidentiality of advice tendered by or to Ministers and officials
- section 9(2)(g)(i), to maintain the effective conduct of public affairs through the free and frank expression of opinion
- section 9(2)(g)(ii), to prevent improper pressure or harassment
- section 9(2)(h), to maintain legal professional privilege
- section 9(2)(i), to protect the Crown's commercial activity
- section 9(2)(j), to enable negotiations to be carried on without prejudice or disadvantage
- section 9(2)(k), to prevent disclosure or use for improper gain or advantage

In making my decision, I have taken the public interest considerations in section 9(1) of the Act into account and am satisfied that the reasons for withholding information as set out above is not outweighed by those considerations.

**[Check: delete the above if no information has been withheld under section 9.]**

You are entitled to ask the Ombudsman to review this response under section 28(3) of the Official Information Act. You can contact the Ombudsman online via the Ombudsman website, by email ([info@ombudsman.parliament.nz](mailto:info@ombudsman.parliament.nz)) or by post to The Ombudsman, PO Box 10152, Wellington 6143. Further details can be found on the Ombudsman website at: [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz).

Yours sincerely

# Processing a basic Official Information Act request

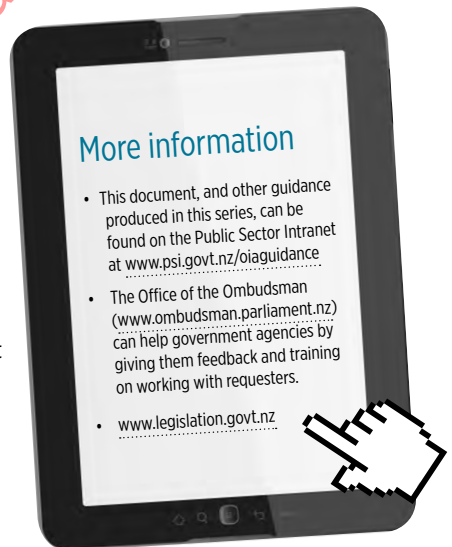
## PUBLIC SECTOR GUIDANCE

This guidance contains a breakdown of all the tasks involved in processing an OIA request, and provides administrative hints and tips to help you complete them. It also provides advice about when these steps need to be completed by to enable agencies to meet their obligations within the maximum statutory time limits in every case. However, it's important to remember that the legal obligation is to make and communicate a decision on a request for official information *as soon as reasonably practicable*. **If a request can be processed faster than the timeframes indicated here, it should be.**

This guidance also provides you with links to other valuable guidance resources that exist across the public sector. For example, Office of the Ombudsman guidance and other guidance resources produced in this series. In this way, this guidance, especially in its digital format, aims to provide you with easy access to all the information you need to process official information responses in a consistent, timely and efficient manner.



You must respond to a request for official information ***as soon as reasonably practicable***. You must not take more than 20 working days



THERE ARE SOME CIRCUMSTANCES WHERE THE TIME LIMIT CAN BE EXTENDED  
- SEE STEP 8.

- 1 Confirm the request and acknowledge receipt
- 2 Decide who in your organisation is responsible for answering the request
- 3 Consider whether the request should be transferred
- 4 Scope the response
- 5 Create a timeline to make sure the request is answered within 20 working days
- 6 Gather relevant documents
- 7 Analyse all the information you've collected and consult with others
- 8 Extend the time limit, if necessary
- 9 Draft the response
- 10 Get internal approval to refer draft to Minister, if appropriate
- 11 Get approval from your organisation & send the response

AIM TO COMPLETE  
THE FIRST 6 STEPS  
WITHIN 5 DAYS





1

## Confirm request and provide receipt

### What you need to know

- *All information* held by a department, or Minister of the Crown in his or her official capacity, or organisation subject to the OIA, is official information.
- A request for official information does not need to refer to the OIA.
- Requests made by or on behalf of natural persons for personal information about themselves must be considered under the Privacy Act 1993 rather than the OIA. (See Information Privacy Principle 6 and Part 4 of the Privacy Act.)
- Send an email or letter to the requester, acknowledging that you have received the request. You don't have to do this, but the Law Commission recommends it.
- If a request is amended or clarified after the date it is received, that request may be treated as a new request and the time limit for the response refreshed. However, this does not apply if your agency or Minister seeks the amendment 7 working days after receiving the original request. See section 15(1AA) and 15(1AB).

### Note

These steps may only apply to the administrative staff who receive and record requests and management who allocate responsibility for processing the request.

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## Allocate responsibility

**Responsibility for a request** should be allocated to the actual person who is going to collate and draft the response by the second working day at the latest.





This should be done by the end of day 2

## 3

## Identify which agency should respond

You have an obligation to transfer a request to your Minister or another agency in certain circumstances.

A transfer must be completed within  **10** working days of an agency receiving the request. See section 14 of the OIA for more detail (available at [www.legislation.govt.nz](http://www.legislation.govt.nz)). 

A transfer must be made in two circumstances:

- where your agency doesn't hold the information, but another Minister or agency does
- where the information is more closely connected with another Minister's or agency's functions.

### If a request is seeking information your organisation doesn't hold

You may need to phone or email around to find out where the information is held, and whether a transfer is necessary.

Another organisation, or even multiple organisations, may be required to respond to some parts of a request. If so, you will need to partially transfer the request.

### If a request is seeking information your organisation does hold

You need to confirm it is an agency request or whether the request more closely relates to information held by the Minister's office, or the functions of the Minister.

When considering transferring to the Minister's office, think about things like:

- authorship, such as for Cabinet papers
- whether the information relates to the Minister's decision-making functions (and release could prejudice the Minister's ability to perform that function).

## 4

## Scope the response

### Identify the information you need

1. Read the request carefully and identify anything that seems unclear.
2. If there is any ambiguity, consider consulting the requester. That will save time and effort in the long run.
3. Think about the context. Use this to think about what the requester may want to know, and why.
4. Identify and consult with key personnel who are likely to know what information exists and may be captured by the request (and where it is likely to be held).

It's a good idea to share the scope of your response with the requester. This can be an opportunity to explain the volume of the information requested (if it's large) and identify things that they might not need or want to receive.

Upon scoping, it may be the case that a response requires substantial collation and/or research. A request may be refused on this ground. See section 18(f) of the OIA ([www.legislation.govt.nz](http://www.legislation.govt.nz)).

However, before doing so you must consider whether the request could be processed with a reasonable extension of the time limit, fixing a charge, or consulting with the requester to help them make a request that would not involve substantial collation or research.

For more advice, see guidance in this series on how to deal with large or broadly defined requests.

### DUE PARTICULARITY

By this stage, you will know whether the request has been specified with due particularity. If it has not, **you must help the requester to make their request in a way that enables your organisation to identify the information the requester is seeking.**

'Due particularity' means a request has enough detail to enable an organisation to identify the information requested. Organisations should not have to make any unsupported assumptions about the information the requester wants.

Note that this doesn't include requests for a large amount of information. The legislation has other ways to deal with these requests.

### TIPS

Don't hesitate to get guidance or advice from the Office of the Ombudsman (available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz)).

Get early management approval of the scoping for agency requests OR early ministerial approval for ministerial requests.

## 5

## Establish a timeline

### Developing your timeline

Work backwards from the final 20-day due date, leaving a buffer of at least 2 days in case there are delays. But remember, while the time limit is 20 working days, *your obligation is to respond as soon as reasonably practicable.*

#### Be flexible

Steps 4, 5 & 6 all impact on each other. You may find you need to revisit previous steps in light of what emerges later.

Use the Ombudsman's response time calculator (available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz)) to help plan your timeline.



Your timeline will depend on whether you are responding on behalf of an agency or Minister

#### Agency response timeline

- Get documents (step 6)
- Analyse documents & consult with others – including Minister, if appropriate (step 7)
- Draft response (step 9)
- Provide draft to Minister, if appropriate (step 10)
- Agency approval (step 11)

#### Ministerial response timeline

- Confirm approach with Minister's office (this should have been done during scoping – step 4)
- Get documents (step 6)
- Analyse documents & consult with others (step 7)
- Draft response (step 8)
- Provide draft to Minister for consultation (step 10)
- Provide final copy to Minister if changes made to draft (step 11)
- Minister's office sends response

## 6

## Get documents

Canvass relevant physical and electronic locations. Don't hesitate to get specialist help from records or IT staff.

Confirm whether internal and external stakeholders have any relevant information within scope. Note that information held by external contractors is considered to be held by the contracting department or organisation. See section 2(5) of the OIA (at [www.legislation.govt.nz](http://www.legislation.govt.nz)).

Identify papers that may need consultation (that is, papers that other organisations have written or helped write, or are affected by). Get a headstart on the next step by sharing them as soon as possible.



As you collate the documents, insert them into a table to help stay organised and to include in the response, if appropriate.

Consider keeping a record of your searches. In the event that no relevant information is held, it may be helpful to record that all reasonable efforts have been made to locate the information, in case the Office of the Ombudsman ends up investigating a complaint.

### TIPS

If you're not using redaction software, make three copies of each document: a clean copy, a mark-up copy and a redaction copy.

If you're using redaction software, you may still want to print two copies of each document: a mark-up copy and a clean copy for when you present the redacted version for review or approval.

## 7 Analyse & consult

In consultation with relevant colleagues, decide if the request for official information may be refused or if any of the information should be partly or fully withheld. **However**, remember that the OIA is based on the principle of availability:

*Official information shall be made available unless there is a good reason for withholding it.*

You should have already shared papers that need consultation with other organisations. This will help determine what information falls within scope and whether any of the information within scope should be withheld under OIA provisions.

Look at the criteria for refusing or withholding official information. They can be found in sections 6, 7, 9 and 18 of the OIA ([www.legislation.govt.nz](http://www.legislation.govt.nz)).

### TIPS

Involve a senior or experienced team member throughout the process.

As you analyse the documents, write next to any potential redactions the grounds under which you are considering withholding. Leave this text next to any information ultimately withheld, for the requester's reference.

Look at previous OIA responses from your team or organisation for guidance.

If in doubt about anything, get a peer review from your legal team.

If you still have doubts, the Office of the Ombudsman is there to help. Contact them on 0800 802 602 or [info@ombudsman.parliament.nz](mailto:info@ombudsman.parliament.nz). Explain that you work for a government organisation and you need advice on how to deal with an OIA request. The Ombudsman's Advisory Group provides advice and guidance to organisations.

### The public interest test

- **Remember**, decisions to withhold under section 9 must be subjected to a public interest test.
- In order to determine whether good reason exists under section 9 to withhold information, an organisation must identify and weigh the competing considerations, raised by the particular circumstances of the case, that favour release.
- Multiple considerations may favour the release of information in the public interest.

The Office of the Ombudsman provides detailed advice on how to apply the withholding grounds and the public interest test ([www.ombudsman.parliament.nz/system/paperclip/document\\_files/document\\_files/172/original/part\\_2c\\_other\\_reasons\\_for\\_refusing\\_official\\_information.pdf?1344201712](http://www.ombudsman.parliament.nz/system/paperclip/document_files/document_files/172/original/part_2c_other_reasons_for_refusing_official_information.pdf?1344201712)).

### Requests for Cabinet material

(see paragraph 8.30 of the Cabinet Manual – [www.cabinetmanual.cabinetoffice.govt.nz/8](http://www.cabinetmanual.cabinetoffice.govt.nz/8))

All Cabinet material produced for the incumbent minister should be considered the property of the minister, and any requests to organisations for that Cabinet material should be transferred to the minister's office, or at the very least, the minister's office needs to be consulted before its release.

As Cabinet material is considered the property of the minister, when a request for Cabinet material of a previous administration is received, the Cabinet Office should be advised as soon as possible. The Cabinet Office, on behalf of the Prime Minister, will then consult with the Leader of the Opposition about the proposed release. In this situation, you may want to extend the time limit for decision-making on the request.

## 8

### Extend the time limit, if necessary

If extensive retrieval of documents or consultation requirements are making the 20-day time limit unachievable, extend the time limit.

- You can extend the time limit at any point before the original 20 days end. However, unless it is obvious at the start, *it is best practice not to extend until you have already, in good faith, tried to process the request*. This way you will have a good idea of how long to extend the time limit.
- The OIA states that a request can be extended if:
  - the request implicates such a large quantity of official information that meeting the original time limit would unreasonably interfere with an organisation's operations, or
  - consultations needed to make a decision mean a proper response cannot be made within the original time limit.
- You **must** inform the requester when extending the time limit. Your letter must:
  - state the period of extension, which must be reasonable for the circumstances
  - give the reasons for the extension
  - tell the requester they have a right to complain.

## 9

## Draft response

A letter must accompany all information that is released



Be upfront about the parameters you set during scoping.

If you're withholding or refusing information,

list the reasons why, referring to the relevant withholding and/or refusing grounds.

You need to tell the requester that they have the right to complain to the Ombudsman if they're not happy with your response.

You could also explain any relevant context, which may help minimise any risks associated with the release of information. Be sure to photocopy the redacted copies of any documents onto paper with a 'released under the OIA' watermark.



### Timeline check-in

When you're drafting the letter, make sure you include time for peer review, management approval, possible minister notification, sign-out etc

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## Get internal sign-off before Ministerial notification, consultation or approval

Depending on whether it is an agency or ministerial OIA request, the response *may* have to be sent to the Minister's office for notification, consultation or approval. Generally, a Minister's office requires 5 days to look at a proposed response, but check how it works in your organisation.

- Notifying the Minister should be reserved only for requests where ministers can expect to be kept informed so they can conduct their affairs with 'no surprises'

At this stage, you may wish to discuss with relevant parties, including your Minister, the option of making the information released to the requester publicly available.

Not all responses are sent to the Minister's office.

Paragraph 8.41 of the Cabinet Manual draws a relevant distinction between "consulting" and "advising": *A department may consult its Minister about any request for official information it receives. A department should consult its Minister if the request relates to Cabinet material, because this material relates to his or her activities as a Minister. A department should advise its Minister if it intends to release any information that is particularly sensitive or potentially controversial. The decision on how to respond to the request must nonetheless be made by the department, in accordance with the*



OIA. ([www.legislation.govt.nz/act/public/1982/0156/latest/DLM64785.html](http://www.legislation.govt.nz/act/public/1982/0156/latest/DLM64785.html))

- Due to its workload, you need to be prepared for the Minister's office to take longer than expected. You also need to make sure you will have enough time to make any changes the Minister asks for (if it's a Ministerial request) or to consider changes (if it's an agency request), without breaking the statutory time limit.
- If possible, organisations should avoid the requirement for a proposed response to be accompanied by a briefing.
- Check in on progress with the Minister's office after a couple of days.

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## Get organisational sign-off and send response

Be sure you have factored into your timeline your agency's sign-out process.

Your agency is also likely to have a specific process for sending responses that you will need to be familiar with.



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# Responding to large and broadly defined requests

## PUBLIC SECTOR OIA GUIDANCE

A large and broadly defined request can be one of two things:

- either a specific request that requires substantial collation of documents or research
- or a broadly defined request that potentially covers a prohibitively large number of documents.

### OMBUDSMAN GUIDANCE

See page 9 of the Ombudsman's guide *How the Official Information Legislation Works* at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) for factors they've identified as relevant to whether a request involves *substantial collation or research*.

- 1 Consider the request – is it valid?
- 2 Contact the requester
- 3 Scope the request
- 4 Consider whether you are the right agency to respond
- 5 Consider consulting the requester
- 6 Consider extending the maximum timeframe
- 7 Consider charging
- 8 Refuse the request

## 1

# Consider the request – is it valid?

Before processing a request, you need to confirm the request has been made with ‘due particularity’, in accordance with section 12(2) of the OIA.

‘Due particularity’ means sufficient detail must be provided to enable the agency to identify the information requested. Agencies should not have to make any unsupported assumptions about the information being sought.

While a broadly defined request may also be duly particular, it is good to confirm this.

For more information about “due particularity” see the basic guidance in this series (at [www.psi.govt.nz/OIAGuidance](http://www.psi.govt.nz/OIAGuidance)) and section 12(2) of the OIA (at [www.legislation.govt.nz](http://www.legislation.govt.nz)).

**20** Until a request is specified with due particularity, it is not valid and the 20 working day time limit is yet to apply.

Section 15(1) of the OIA refers (see [www.legislation.govt.nz](http://www.legislation.govt.nz)).

## 2

# Contact the requester

**If you receive a request that is not specified with due particularity, you then have a duty to assist the requester to make a valid request.**

*When you do, try to understand the requester’s needs:*

- What is the purpose of the request?
- Are there specific types of documents the requester is looking for, and that they perhaps are not aware of?
- Does the requester have any time pressures, or are they time flexible? (If so, you may be able to negotiate to stage the response.)

For more information, see the guidance in this series on contacting people who have requested information under the Official Information Act at [www.psi.govt.nz/OIAGuidance](http://www.psi.govt.nz/OIAGuidance)

**Help them by providing background or context. Don’t assume they know exactly what they were requesting, or what might be available.**

*Reasonable assistance may include things like:*

- Providing an outline of the different kinds of information which might meet the terms of the request
- Providing access to catalogues, indexes or lists to help the requester understand the nature and extent of information held by the agency
- Providing a general response to the request, setting out options for further information which could be provided on request
- Giving the requester a reasonable opportunity to consult with a contact person

## 3 Scope the request

Once the request has been made with due particularity, you'll need to scope the request to identify what information needs to be provided.

- A request may be specific yet upon scoping may still indicate a large amount of information to be collated.
- Proper scoping of a request will set you up to engage in meaningful consultation with the requester.



Also see the State Services Commission's advice on dealing with OIA requests for draft reports, correspondence and advice at [www.ssc.govt.nz](http://www.ssc.govt.nz)



## 4 Consider whether you are the right agency to respond

When you have a clear idea of the information that has been requested, and before you start collating it, you need to carefully consider whether your agency is best placed to respond. It may be that the information requested, or part of it, is held or more closely connected with the functions

of another agency, or a Minister's office.

If so, section 14 states you must transfer the request no later than **10** working days after receiving the valid request.

**10**

For more information, see the basic guidance in this series at [www.psi.govt.nz/OIAGuidance](http://www.psi.govt.nz/OIAGuidance)



## 5

## Consider consulting the requester



Once you've received a valid request and accurately scoped it, the request may still require the collation of a prohibitively large amount of information.



Section 18(f) (available at [www.legislation.govt.nz](http://www.legislation.govt.nz)) states that a request may be refused if the information requested cannot be made available without substantial collation or research. However, section 18B



([www.legislation.govt.nz](http://www.legislation.govt.nz)) states that if a request is likely to be refused for this reason, you have a duty to consider consulting with the requester to help them narrow the scope of the request to make a response achievable.

***The purpose of consultation is to explain to the requester the difficulty involved in meeting the request as it is currently framed, and the implications this might have in terms of the need to extend, charge, or ultimately refuse the request.*** Contact with the requester often results in requests being refined, transferred or even cancelled. This is mutually beneficial – giving the requester information that's more useful and reducing the administrative burden.

### THE DUTY TO CONSIDER

The duty in section 18B is only to consider consulting the requester. However, the Law Commission states it is 'unreasonable for an agency to refuse a request outright under section 18(f) if they have made no effort to consult the requester'. Therefore, serious consideration should be given to consultation as a means of managing large and broadly-defined requests. There won't be many situations in which it is obviously and objectively pointless to attempt consultation.

For more information, see the guidance in this series on contacting people who have requested information under the Official Information Act at [www.psi.govt.nz/OIAGuidance](http://www.psi.govt.nz/OIAGuidance)



## TIPS FOR CONSULTING ON LARGE AND BROADLY DEFINED REQUESTS

- Clarify what you want to say to the requester. It may be a good idea to seek advice or assistance from those around you.
- If necessary, you may wish to discuss with a senior colleague what specifically you need to ask, and discuss the parameters of what you will and will not talk about with the requester.
- Email the requester first: explain the situation and provide options about how the request could be narrowed. For example, they could:
  - refine the time period covered (if they still want the entire time period, you could note that the response could be staged according to different time periods)
  - refine the types of document.

## THINGS TO KEEP IN MIND

- There can be some benefits in consultation being undertaken by senior and experienced staff. There's no reason why a junior advisor shouldn't be capable of contacting a requester. However, they should first be given advice and guidance on how to do that effectively and manage risks, and consider their own agency's policies.
- Follow your department's procedures (if any) on contacting certain requesters (eg media, MPs or interest groups). In many agencies, it's the responsibility of media or communications teams to contact requesters from the media.
- Be mindful of what might be legally privileged or commercially sensitive information. If you think this sort of information is implicated in the request, get legal advice before contacting a requester.
- Be mindful of whether you might need to consult the Minister before releasing any of the information.
- Also be mindful of information the release of which might need to be consulted on with the Minister as part of the 'no surprises' policy.
- Keep records of your consultation and confirm any modifications in writing back to the requester.
- If the requester isn't comfortable talking to you, don't push them. They may prefer contact in writing. If a requester refuses to engage with your attempts at consultation, proceed with the request as-is.

### What is legal professional privilege?

Legal professional privilege is a term that applies to the protection of communications between legal practitioners and their clients from being disclosed under compulsion of court or statute. The basis for the privilege is to protect the need for full and unreserved confidence between a legal practitioner and their client, which is vital for professional legal assistance to be effectively given and received.

### What is commercially sensitive information?

Commercially sensitive information is information that, if released, would prejudice or disadvantage the commercial activities of your agency, or of a third party about which your agency holds information. The Office of the Ombudsman considers that for information to justifiably be withheld under one of the commercial withholding grounds in the OIA – sections 9(2)(b)(ii) or 9(2)(i) (available at [www.legislation.govt.nz](http://www.legislation.govt.nz)) – the information must relate to activities carried out for the purpose of making a profit.

## 6

## Consider extending the maximum timeframe

**If, after contacting a requester, the amount of information requested remains too large to collate within the time limit without impairing efficient administration, you must consider whether an extension of the time limit would enable the request to be granted.**

- Think carefully about how much time you will need to provide the requester with what they want. Even a long extension will be consistent with the OIA's principle of availability, provided it's reasonable.

### Show good faith with the requester:

- maintain contact so they don't think the request has entered a black hole
- consider providing the information in stages.



You can only extend a timeframe within 20 days of receiving a request.

For more details see section 15A at [www.legislation.govt.nz](http://www.legislation.govt.nz)



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## 7

## Consider charging

As well as considering an extension, you must consider whether fixing a charge will offset the administrative burden that will result from responding to the request. Departments are entitled to make reasonable charges for the supply of official information and you should check if your department has a policy.

Where an agency decides the information requested can be made available, but that it will impose a charge (which has been assessed in accordance with the Government guidelines) the agency should formally advise the requester of:

- the estimated amount of (and basis for) any proposed charge; and
- the right to seek a review by the Ombudsman of the estimated charge.

However, you should consider a waiver or reduction of a proposed charge where, for example:

- there is applicant hardship
- it would assist with the department's work or public relations
- it is in the public interest (eg it would contribute significantly to public understanding or promote effective participation in government activities)

For more information on charging, see the Ministry of Justice Charging Guidelines at [www.justice.govt.nz/publications](http://www.justice.govt.nz/publications). The Guidelines include advice on:

- what charges can be fixed (activities and materials)
- what charges cannot be fixed
- the charge-out rate for staff time
- requests from MPs and parliamentary research units
- what to advise the requester when charges are being levied.

For Ombudsman advice on the charging guidelines, see pages 12–14 of their guide *How the Official Information Legislation Works* at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz)

## 8

## If appropriate, refuse the request

You can refuse a request on the grounds that the information cannot be made available without substantial collation or research if:

- you have considered all of the above, and
- responding to the request continues to require the collation of information to such an extent that it would impair efficient administration.

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# Contacting people who have requested information under the Official Information Act

## PUBLIC SECTOR GUIDANCE



It can be a good idea to get in touch with a requester when responding to an Official Information Act (OIA) request. [<http://www.legislation.govt.nz/act/public/1982/0156/latest/DLM64785.html%23DLM65394>] Contact with the requester may result in requests being refined, transferred or even cancelled. This is mutually beneficial. You'll be able to give the requester information that's more useful and reduce the administrative burden for you and your agency.

The first part of this guidance sets out information about the types of situations where it may be helpful to contact a requester. The second part sets out the best way to get in touch with the requester and how to handle OIA-related phone calls.

## WHEN TO CONTACT A REQUESTER

**You should contact a requester if you need to:**

- 1. clarify the wording or scope of a request**
- 2. ensure due particularity**
- 3. narrow a broadly framed request**
- 4. look into extending the timeframe or giving them the response in stages.**

## 1

## Ensuring due particularity

Requests need to have enough detail so you can identify what information the person needs. If you get a request that is not specified with due particularity, then you have to help the requester make a valid request.

Try to find out:

- what is the purpose of the request
- what specific types of documents the requester is looking for or perhaps isn't aware of
- what time pressures the requester has (you might be able to send them the response in stages).

**More information about due particularity** can be found in the basic guidance in this series. [<https://psi.govt.nz/OIAGuidance/Basic%20OIA%20guidance/Forms/AllItems.aspx>] This is the main guide in the Official Information Act series and breaks down all the tasks involved in processing an OIA request. It also has tips to help you complete the tasks and links to other valuable resources.



## 2

## Narrowing a request

Requests need to have enough detail so you can identify what information the person needs. If you get a request that is not specified with due particularity, then you have to help the requester make a valid request.

The purpose of consultation is to explain to the requester the difficulty involved in meeting the request as it is currently framed, and the implications this might have for how this is handled.

Talk to the requester and ask if they can narrow their request. If they can't, let them know that you may need to ask for more time, charge them or refuse the request.

For further advice, see the **managing large and broadly defined requests**

[<https://www.psi.govt.nz/OIAGuidance/Managing%2520large%2520and%2520broadly%2520defined%2520requests/Forms/AllItems.aspx>] guidance in this series.

**Section 18(f)** [<http://www.legislation.govt.nz/act/public/1982/0156/latest/DLM65600.html>] states that

a request may be refused if the information requested cannot be made available without substantial collation or research.

However, **Section 18B** [<http://www.legislation.govt.nz/act/public/1982/0156/latest/DLM65606.html>] states that if a request is likely to be refused for this reason, you have a duty to consider consulting with the requester to help them narrow the scope of the request to make a response achievable.

## 3

## Extending a timeframe or staging a response

If you think it will be difficult to respond to the request by the due date, you can:

- notify the requester of an extension and the reasons for it
- ask the requester to prioritise certain parts of the request.

Even if the agency ends up in breach of the maximum statutory timeframes, making contact with the requester and keeping them informed of progress may help to avoid a complaint being made to the Ombudsman.

## HOW TO CONTACT A REQUESTER

### GETTING PREPARED

Clarify what you want to say to the requester. You can get advice or help from your colleagues. For example, you could talk with a senior about what specifically you need to ask the requester, and the parameters of what you will and will not talk about with the requester.

Also check if your agency has some standard talking points to help with this process, or wants to put some together.

### Keep in mind

- Follow your agency's procedures on contacting requesters.
- Less experienced staff can contact requesters. You just need to make sure you've talked to more-experienced colleagues first, so you know how to make contact effectively and manage the risks.
- It's often the responsibility of the media or communications teams to contact requesters from the media or MPs or interest groups.
- If you think the request involves legally privileged information, get legal advice before contacting the requester.
- You may need to let your Minister know about the request as part of the 'no surprises' policy.

### WHAT IS LEGAL PRIVILEGE?

Legal privilege is a rule of law protecting communications between legal practitioners and their clients from being disclosed under compulsion of court or statute. This means clients can be open and honest with their lawyer, and the lawyer can give them free and frank advice.

## TALKING TO A REQUESTER

It may be best to email the requester before calling them. Explain the situation and provide options to narrow the request. For example, the requester could:

- refine the time period covered (if they still want the entire time period, you could note that the response could be staged according to different time periods); or
- refine the types of documents.

When you call the requester, you should:

- **explain** why you are calling
- **summarise** their request
- **tell them** the limits or difficulties with responding to their request
- **listen** to their comments or suggestions
- **suggest** a solution
- **repeat** back to them what is going to be done and follow up in writing.

### Provide context

Help the requester by providing background or context. Don't assume they already know exactly what they were requesting, or what might be available.

You could:

- outline the different kinds of information that might meet the terms of the request
- give the requester access to catalogues, indexes or lists to help them understand the sort of information held by the agency
- give a general response to the request, and tell them what other information you could give them if they ask.

#### CALL OR EMAIL?



Calling is generally more effective than email:

- it's faster
- it's more personal
- it can reassure the requester that their request is being dealt with as efficiently as possible
- it can foster a positive relationship.

But if the requester isn't comfortable talking to you, don't push them into it. They may prefer you to write or email.

It is important to show empathy.

Remember that requesters may fear being ignored or not understood.

They may find dealing with a government agency intimidating or confusing. It's important to treat them with empathy, attention and respect.

While it is important to reassure the requester, keep the tone of your discussion professional and avoid volunteering to 'fix' the situation.

## DEALING WITH DIFFICULT REQUESTERS

Sometimes a requester's behaviour may be challenging. In these cases:

- stay calm and matter-of-fact when they get angry
- listen closely but briefly
- respond with empathy, attention and respect
- have clear boundaries
- focus on tasks, choices and consequences
- be consistent and predictable
- praise them for some positive efforts or skills
- be as non-threatening as possible
- be reassuring but don't expect them to trust you
- explain that policies or the law require you to do certain things (so it feels less personal)
- respect the fact that the person may want you to contact them through another means.

## FOLLOWING UP CONSULTATION

- Keep records of your consultation.
- Confirm any changes to the request in writing back to the requester.
- Summarise your discussion in an email to a senior or manager if required.

