

PURPOSE

The purpose of the Official Information Act Policy is to:

- Reinforce the commitment of Te Tāhu o te Ture – the Ministry of Justice to the principles and purposes of the Official Information Act 1982 (the Act) and its significance for the Ministry as administrator of the Act;
- Provide guidance to Ministry employees, contractors and consultants about their obligations and responsibilities in responding to requests for official information;
- Provide guidance on the relationship between the Ministry and relevant Ministers and their offices when handling requests under the Act;
- Provide guidance on the relationship between the Ministry, the judiciary and their offices when handling requests under the Act about the courts or judicial functions;
- Commit the Ministry to publishing official information responses; and
- Provide guidance on charging for responding to requests under the Act.

SCOPE

This policy applies to all Ministry employees, contractors and consultants and informs them of their responsibilities under the Act when handling requests to the Ministry for official information and drafting responses to requests on behalf of Ministers. The Ministry is bound by the Act and the Act prevails if there is any inconsistency between this policy and the Act.

CONTEXT

The Act is an important part of New Zealand’s constitution and gives New Zealanders the legal right to ask for official information so that they can more fully participate in their democracy and to hold governments and Public Sector agencies to account. When New Zealanders ask for information, government agencies need to assist and be responsive, and approach requests in line with the principle of availability. The Act also recognises there may be good reasons to withhold information, but that those reasons are usually weighed against the public interest.

All requests for information are potentially requests for official information, including requests for publicly available and previously released information. “Official information” means any information held by an agency that is subject to the Act and includes documents, emails, drafts, notes, diaries, recordings, videos, texts, usb and other portable storage devices and can also include information in officials’ memories. An “agency” includes Ministers acting in their official capacity and government departments and organisations like the Ministry of Justice.

However, the Act only binds the executive arm of government (e.g., Ministers and Government agencies). It does not apply to the judicial arm of government (courts and tribunals) as they are excluded from the definition of “agency”.¹

As the agency that administers the Act, the Ministry should be an exemplar.

¹ Section 2(6) of the Act

PRINCIPLES

The guiding principle of the Act is that information should be made available unless there are good reasons under the Act to withhold it.² The Ministry is required to:

- Deal with requests for official information carefully, conscientiously, and in accordance with the law.³
- Recognise that a request may be made in any form and communicated by any means (including orally) and does not need to refer to the Act.⁴
- Reach a decision on all requests as soon as practicable, and always within statutory time frames.⁵
- Assist requesters, directing them to publicly available information, clarifying their requests, and transferring requests to relevant agencies where appropriate within statutory timeframes.⁶
- Co-operate fully with any investigation by the Office of the Ombudsman into a decision made by the Ministry under the Act.⁷

The Ministry will also:

- Inform or consult with third parties about requests for official information that concern them where appropriate, and consider any feedback provided.
 - Inform relevant Minister(s) of requests for official information it receives and, where appropriate, provide copies of responses to the relevant Minister's office in accordance with the 'no surprises' approach.
 - Consult Minister(s) on any requests to the Ministry that relate to their functions or involve Cabinet material and consider any feedback provided.
 - Inform the appropriate judicial offices of requests for official information about the courts that the Ministry receives and, where appropriate, provide copies of responses to the appropriate office on a 'no surprises' basis.
 - Consult the appropriate Head of Bench and/or their office on any requests to the Ministry that specifically relate to judicial functions and consider any feedback provided.
 - Publish responses to requests for official information to make information more available and assist in public understanding of justice issues.
 - Review and monitor its performance in responding to requests.
 - Provide information about the importance of the Act to employees, and specific training to employees with responsibilities under the Act.
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² Section 5

³ Cabinet Manual section 8.30 dpmc.govt.nz/our-business-units/cabinet-office/supporting-work-cabinet/cabinet-manual/8-official-information-2

⁴ Section 12(1AA)

⁵ Section 15 and Cabinet Manual section 8.32 dpmc.govt.nz/our-business-units/cabinet-office/supporting-work-cabinet/cabinet-manual/8-official-information-2

⁶ Section 13

⁷ Cabinet Manual section 8.60 dpmc.govt.nz/our-business-units/cabinet-office/supporting-work-cabinet/cabinet-manual/8-official-information-2

WORKING WITH THE REQUESTERS

It is the duty of every agency subject to the Act to provide reasonable assistance to requesters.⁸ The Ministry does this by directing requesters to publicly available information and clarifying⁹ and transferring requests¹⁰ to other agencies where appropriate. It will also publish information on its website to guide requesters in making requests to the Ministry.

The Ministry will promptly acknowledge receipt of a request and communicate its decision whether to grant a request for official information as soon as reasonably practicable, and no later than 20 working days (unless extended).¹¹

The Ministry will clearly communicate with requesters when seeking to rescope or clarify a request, and any decisions to extend the timeline or transfer requests to another agency. The Ministry will advise requesters of their right to ask the Ombudsman to review any decisions made in handling a request.

CHARGING

Requesters may ask for official information to be provided urgently but need to provide reasons why their request should be treated as urgent. Where appropriate the Ministry may consider charging to recover costs.

The Act allows agencies to charge for official information. The decision to charge is the responsibility of the Deputy Secretary, Strategy, Governance and Finance, following consultation with the Office of Legal Counsel.

After all reasonable steps have been taken to respond to a request, the Ministry may recover some of the costs associated with requests for information that would require considerable labour and materials. This will usually occur in instances where a request would otherwise be refused under section 18(f) of the Act because the information cannot be made available without substantial collation or research.

Charges can be made for making the information available, including time spent retrieving and collating the information, and then preparing it for release. Charges cannot be made for the time spent or any expenses incurred in deciding whether to release the information, or for locating information where poor record keeping means the information is not stored where it should be.

The Ministry will also consider whether reduction or waiver of any proposed charge may be appropriate having regard to the circumstances of the requester and the public interest in release of the information.

A requester will be given an opportunity to refine the scope of the request to reduce or remove the need to charge. The Ministry will wait until the requester has accepted the charge, and paid any amount required to be paid in advance, before undertaking the necessary work to make the information available.

All charges will be made in accordance with the Charging Guidelines for the Public Service.

⁸ Section 13

⁹ Section 15(1AA)

¹⁰ Section 14

¹¹ Sections 15 and 15A

WORKING WITH MINISTERS' OFFICES

Informing the Minister's office about requests to the Ministry

Under the 'no surprises' approach, the Ministry notifies the relevant Minister's office of requests for official information it receives that might attract wider public, political or media interest. The Ministry will also advise the Minister if it intends to release any information that is particularly sensitive or potentially controversial. A notification for this purpose is not the same as consultation and should not unduly delay the release of information.¹²

Consulting a Minister on a request to the Ministry

The Ministry will consult the relevant Minister if the request relates to the Minister's functions or Cabinet material, because such material relates to their activities as a Minister.¹³ In instances involving the Minister's functions or Cabinet material, it may be appropriate to transfer the request to the Minister.¹⁴

The Ministry will be clear it is consulting rather than providing the request for the Minister's information, and enough time will be given for the Minister's office to raise any concerns about the proposed decision. The Ministry will have regard to any feedback, but the decision on how to respond to the request will be made by the Ministry in accordance with the Act.¹⁵

Ministerial OIA requests

The Ministry may, at the request of a Minister's office, prepare draft responses for requests to a Minister for official information. The draft response will be provided within timelines set by the Chief Executive and the relevant Minister's office.

WORKING WITH THE JUDICIARY

The Ministry supports the work of the courts and tribunals in their constitutional role to deliver justice services. Given this important relationship, on a "no-surprises basis" the Ministry shall advise the appropriate judicial office of requests related to the operation of the courts and, if appropriate, a copy of the final response.

When appropriate, the Ministry will consult the judiciary and/or their office about requests for official information that directly concern them, and consider any feedback provided. The Ministry will have regard to any feedback, but the decision on how to respond to the request will be made by the Ministry in accordance with the Act.

The courts, and tribunals in their judicial functions, are not subject to the Act¹⁶ and any information held by them is not "official information" for the purposes of the Act. Schedule 1 of the District Court Act 2016 and schedule 2 of the Senior Courts Act 2016 provide guidance on the distinction between Ministry-held information (which is subject to the Act) and court information (which is subject to the relevant court rules) and judicial information.

Requests for official information that touch on the work of the Senior Courts should be directed to Te Tari Toko i te Tumu Whakawā – The Office of the Chief Justice. Those related to the District Court (and the Youth and Family courts) should be directed to the Office of the Chief District Court Judge. Requests related to other courts or tribunals should be directed to the appropriate Head of Bench or their Office.

¹² Cabinet Manual section 8.53 dpmc.govt.nz/our-business-units/cabinet-office/supporting-work-cabinet/cabinet-manual/8-official-information-2

¹³ Cabinet Manual section 8.50 dpmc.govt.nz/our-business-units/cabinet-office/supporting-work-cabinet/cabinet-manual/8-official-information-2

¹⁴ Cabinet Manual section 8.51 dpmc.govt.nz/our-business-units/cabinet-office/supporting-work-cabinet/cabinet-manual/8-official-information-2

¹⁵ Cabinet Manual section 8.52 dpmc.govt.nz/our-business-units/cabinet-office/supporting-work-cabinet/cabinet-manual/8-official-information-2

¹⁶ Section 2(6)(a) and (b)

PUBLICATION OF RESPONSES

Under its Proactive Release Policy, the Ministry publishes responses to requests for official information on its website to make information more available and to assist in public understanding of justice issues. Proactive release of responses promotes good government, openness, and transparency, and fosters public trust and confidence in agencies.

The Act protects agencies from any criminal or civil proceedings arising from the release of official information under the Act if it is released in good faith.¹⁷ These protections do not apply to information that is proactively released and not released in response to a request under the Act. Before publication, careful consideration is given as to whether such responses should be released, or whether additional information might need to be withheld (e.g., information of a personal nature or is commercially sensitive).

The Ministry will always withhold the names and contact details of requesters whose responses are published. Letters responding to requests will advise requesters that their response may be published, and the Ministry will consider any feedback received.

ROLES AND RESPONSIBILITIES

To meet its statutory obligations, the Ministry operates a centralised and collaborative model for managing and preparing responses to requests for official information.

The Ministry administers the Act and is responsible for the legislation and its policy framework. This includes supporting any potential review of the Act in the future.

The **Secretary for Justice and Chief Executive** is accountable to the **Public Service Commissioner** for the Ministry's performance in respect of the Act and this policy.

Strategic Leadership Team (SLT) members are responsible to the Chief Executive for all responses prepared by their Business Groups and, unless delegated, approve all Ministry responses to requests for official information. They also approve all draft responses prepared for Ministerial requests.

The **Deputy Secretary, Strategy, Governance and Finance** is the SLT member with overall responsibility for the management of the Ministry's correspondence, including responses under the Act. This manager decides whether the Ministry should charge for responding to a request.

Ministerial Relations and Services (MRS) in the Governance and Assurance business group is responsible for managing requests from end-to-end, preparing response letters and document bundles, providing expertise on the Act, and undertaking necessary clarifications, extensions, transfers, and internal and external consultation. It undertakes reporting and training on the Act and maintains detailed guidance on handling requests, including keeping abreast of relevant Ombudsman guidance. MRS also logs inquiries from the Ombudsman about complaints under the Act and forwards them to the Office of Legal Counsel to be actioned. It also updates the Directory of Official Information.¹⁸

Business Groups as the 'information owners' are responsible for providing the information required to respond to a request and final approval of a response at the appropriate management tier. When they hold relationships with stakeholders, business units will often undertake external consultation with third parties. Where necessary, and after consultation

¹⁷ Section 48

¹⁸ www.justice.govt.nz/about/official-information-act-requests/directory-of-official-information/

with MRS, business groups may prepare responses to information requests.

The **Media Team** in Communication Services reviews all draft responses to reporters, bloggers and public websites, issues final responses to them and deals with any subsequent questions from the requester. It also provides communications guidance if a response may attract wider political, public or media interest.

The **Office of the Chief Executive** reviews responses that might attract wider political, public or media interest, particularly those provided to a Minister's office either for information or consultation.

The **Office of Legal Counsel** provides legal advice on the Act and responds to complaints to the Ombudsman.

Ministers' offices receive notification of responses provided to them for their information under the 'no surprises' approach. They provide feedback on proposed responses to requests to the Ministry that are sent to them for consultation. Ministers' offices also provide feedback on any draft Ministerial responses that the Ministry has been asked to prepare.

Ministers approve any responses to requests for official information directed to them.

The **Ombudsman** reviews and investigates complaints by requesters about the handling of their requests, particularly refusals to supply information.

The **Public Service Commission – Te Kawa Maataho** is the lead agency for New Zealand's membership of the Open Government Partnership. It regularly publishes comprehensive statistics on the number of OIA responses completed, timeliness and the number of complaints notified to the Office of the Ombudsman. Under the Public Service act 2020 and a memorandum of understanding wherein the Secretary of Justice delegated responsibilities related to section 46 of the OIA to the Commission,¹⁹ the Commission publishes guidance to agencies in meeting their responsibilities under the Act.

**RELATED POLICIES,
PROCEDURES AND
LEGISLATION**

- [Official Information Act 1982](#)
- [Privacy Act 2020](#)
- [Cabinet Manual](#)
- [Senior Courts Act 2016 \(schedule 2\)](#)
- [District Courts Act 2016 \(schedule 1\)](#)
- [Media Policy](#)
- [Code of Conduct](#)
- [Public Service Commission Guidance](#)
- [Ombudsman Guidance](#)

¹⁹ PSC-MOJ Memorandum of Understanding: www.justice.govt.nz/assets/Uploads/Signed-MOU-MoJ-PSC-s46-OIA.pdf

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APPROVER	Senior Leadership Team		