

### COMMITMENT

The Ministry of Justice - Te Tāhū o te Ture (the Ministry) is committed to supporting the principles of the Public Service Act 2020 and the Official Information Act 1982 (OIA), by promoting open government and increasing the availability of information. This commitment is demonstrated by this policy and its OIA Policy.

### PURPOSE

Openness and transparency are critical drivers of public trust and confidence in government and promote active participation and engagement from the public.

The proactive release of information should be based on the guiding principle of the OIA, that information should be made available unless there are good reasons to withhold it.<sup>1</sup>

This policy confirms the Ministry's commitment to the proactive release of information and outlines its requirements and procedures.

### SCOPE

This policy applies to all Ministry employees, contractors, and consultants. It informs them of the processes and their responsibilities when creating, preparing, or reviewing documents that may be proactively released.

### CONTEXT

The Government has committed to improving practices around proactive release of information to promote good government, inform public understanding of the reasons for decisions, and facilitate informed participation in government decision making.<sup>2</sup>

Open government is one of five principles in the Public Service Act 2020 that underpins the public service as it "supports constitutional and democratic government, enables both the current Government and successive governments to develop and implement their policies, delivers high-quality and efficient public services, supports the Government to pursue the long-term public interest, facilitates active citizenship, and acts in accordance with the law".

While the Ministry has made significant progress in strengthening openness and transparency, more can be done in meeting the public's expectations around increasing access to official information. As the agency that administers the OIA, the Ministry should be an exemplar.

Through proactive release, the Ministry can release information before it is requested. We can have greater flexibility to decide when and how information is released, and what additional context to put around it to assist with a fuller understanding of the Ministry's work.

Directing requesters to information that has already been published reduces the administrative burden on the Ministry of responding to individual requests and eliminates the need for some

<sup>1</sup> [Section 5](#)

<sup>2</sup> [Commitment Two of Open Government Partnership New Zealand](#)

requests altogether. Proactive release helps information reach a wider audience and enables more consistent messaging.

Proactive release ultimately allows the Ministry to become a reliable and authoritative source for our own information.

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## **GOOD PROACTIVE RELEASE CULTURE**

The Ministry has a positive culture around the importance of the OIA and proactive release and we are mindful that we need to have strong and regular messaging from senior leadership to enhance this culture.

The Ministry's senior leaders should take the lead in developing an environment that promotes openness and transparency, champions positive engagement and enables compliance with the principle, purposes, and provisions of the OIA and proactive release.

Innovation and agility in making information available can be proactively led by all Ministry employees. Practices around proactive release of information should be embedded into all business-as-usual work. Consideration can be given to whether information should be released before it is created, or at the time it is created. Information that cannot be released should be easily identifiable, which in turn will make the redaction process easier.

By anticipating and planning the release of all information at the beginning of the process, the Ministry can shift from always being in a reactive position to a much more proactive one.

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## **GUIDING PRINCIPLES AND LEGISLATION**

The following due diligence matters should be considered by the Business Unit authoring or reviewing the material:

- the application of the principles in the OIA, the Privacy Act 2020, and the Protective Security Requirements and whether any information would be withheld if it was being considered for release under these or any other acts, regulations, and requirements;
- whether there are reasons to delay the proactive release of the information, for example, where there are sensitivities around timing;
- whether internet publication is the best means of release;
- whether there is any potential civil or criminal liability that might result from the proactive release of the information;
- whether there is a need to consult with key stakeholders (e.g., the judiciary).

### **Section 5 of the OIA**

The proactive release of information should be based on the principle of availability that underpins the OIA, namely that "Information shall be made available unless there is good reason under the Act for withholding it". This principle should always be kept in mind by Ministry staff when considering information for proactive release.

### **Section 48 of the OIA**

While we should have regard to the OIA when considering what should be released, proactively released information is not information released under the OIA. This means section 48 of the OIA, which protects Ministers and agencies from civil or criminal liability when information is released in good faith under the OIA, does not apply to information that is released proactively.

We must therefore consider any potential civil or criminal liability that might result from proactively releasing information before releasing the information and before seeking Ministerial approval (where relevant). This means it is important to have a robust process for reviewing the information for potential legal risks associated with publication, including peer-review and approval by appropriate Business Unit staff, and seeking advice from the Office of Legal Counsel if there is any uncertainty. Examples of information where release may give rise to liability include sensitive personal information or information that is commercially sensitive. Requests for coronial files, which are made under the OIA, should never be published.

This applies even where the information has been previously released under an OIA request. In some instances, it may be appropriate to release information under the OIA to a particular requester (potentially with conditions), but not to proactively release it to the general public.

### **Consultation**

When considering publishing official information, consultation with or notification to the relevant Ministers in accordance with the “no surprises” principle may be required.

If a document proposed for release includes information relating to another agency, consultation may also be required with that agency to allow it to conduct its own risk assessment.

There may also be instances where it is in the public interest to include the name of an official (typically a key decision maker) as part of an information release. In the case of a member of the Ministry’s senior management team, it can be assumed that release of the person’s name is acceptable, unless there is a reason to think that it may not be. Less senior officials, and officials from other agencies, should be consulted about release of their name.

## **WORKING WITH MINISTERIAL OFFICES**

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Where the Ministry plans to publish information that might generate wider public, political or media interest (e.g., OIA responses that contain Ministerial briefing material), under the ‘no surprises’ approach, it will notify the relevant Ministerial office(s) and where appropriate provide a copy of the information to be published.

Where the Ministry plans to publish information that touches on the Minister’s work programme or activities (e.g., briefings or aides memoire), the Ministry will consult the relevant Ministerial Office and consider any feedback provided.

The decisions on the publication of Cabinet and related material are made by the Minister in line with Cabinet Office circular CO (23) 04 - Proactive Release of Cabinet Material: Updated Requirements. In the case of joint papers, the agreement of the joint Ministers is required.

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## **WORKING WITH THE JUDICIARY**

The Ministry supports the work of the Judiciary in their constitutional role to deliver justice services. Given this important relationship, when appropriate, the Ministry informs or consults the judiciary about its intention to publish information that concerns them, and considers any feedback provided.

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Court information and judicial information (s236 and Schedule 1 of the District Court Act 2016 and s173 and Schedule 2 of the Senior Courts Act 2016 and by analogy to the other courts) is not subject to the OIA and is under the supervision of the judiciary. The Ministry does not have the authority

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## TYPES OF INFORMATION TO CONSIDER FOR PROACTIVE RELEASE

to access, use or disclose court information or judicial information unless lawfully authorised. In the case of court information this requires authorisation by either a specific legislative authority, the rules of court or at the direction of a judge. In the case of judicial information, the authorisation of the relevant Head of Bench.

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Types of information that could be considered for proactive release include:

- information about the role and structure of the agency, and the types of information it holds;<sup>3</sup>
- policies, procedures, manuals, and guidelines used by the Ministry;<sup>4</sup>
- Cabinet and related material;
- Official Information Act responses;
- briefings and related material provided to Ministers;
- information about current or planned work programmes and policy approvals;
- information about regulatory or review activities;
- minutes, agendas and papers of boards or committees;
- information about public engagement processes, including public submissions;
- statistical information;
- planning and performance information; and
- financial information relating to tendering, procurement, and contracts.

This policy discusses the three main types of proactive release: Cabinet material, general information (including briefings and advice to Ministers) and the publication of OIA requests.

### **Cabinet material**

Cabinet has agreed that Cabinet and Cabinet committee papers and minutes must be proactively released and published online within 30 business days (starting from the day the final decisions are taken by Cabinet) unless there is good reason not to publish all or part of the material, or to delay the release. This is in line with Cabinet Office circular CO (23) 04 - Proactive Release of Cabinet Material.<sup>5</sup>

All Cabinet and Cabinet committee papers and associated minutes, including any attachments or appendices to the papers must be considered for publication. Only Cabinet Appointments and Honours (APH) papers and minutes are explicitly excluded from this policy.

The information that is published must be approved by the relevant Minister and reviewed by a Ministerial office. In the case of joint papers, the agreement of joint Ministers is required.

From July 2022, Te Kawa Mataaho - Public Service Commission began reporting on the number of Cabinet papers released by agencies as part of their six-monthly OIA statistics. The information collected by Te Kawa Mataaho will cover, by portfolio:

- the number of Cabinet papers which have been approved for release by the relevant portfolio Minister;
- the number of Cabinet papers released;
- the number released within 30 business days of the final Cabinet decision.

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<sup>3</sup> [Section 20](#)

<sup>4</sup> [Section 22](#)

<sup>5</sup> [CO \(23\) 04](#)

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### **General information**

Where certain information generates or is likely to generate high levels of public interest, it may be beneficial to proactively release information on the topic. For general information releases, the Ministry has adopted a ‘publish if it is in the wider public interest’ approach. These releases can contain a variety of information, such as statistical data and external reports commissioned by the Ministry, internal reports and briefings to the Minister(s) the Ministry supports.

### **OIA responses**

In line with the Ministry’s OIA Policy, publishing OIA responses online helps in directing people to publicly available information in the first instance and reduces workload on the Business Units.

Responses to OIA requests are published with the principle of availability in mind: “that the information shall be made available unless there is good reason for withholding it”.

Priority of publication will be given to responses which are on a topic of public interest. Trends in requests are noticed during triaging and frequent reporting on requests.

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 with their personal details removed. This information is also provided in the acknowledgement of the request and in the ‘Automatic reply’ on submission of a request.

## **PROACTIVE RELEASE PROCESS**

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### **Cabinet material and general information**

All Cabinet material proposed for release must undergo a considered, reliable, robust, and thorough review process. There are two key roles internally:

1. The Business Unit responsible for the subject matter or function identifies what information should or should not be released and works with the Minister’s office to get the Minister’s approval to release the information.
2. Ministerial Relations and Services (MRS) undertakes the technical process of redacting and publishing the documents based on the instructions of the responsible Business Unit.

The key roles above also apply to the publication of general information.

Detailed guidance will be published on the Ministry’s intranet to assist business units in the publication of Cabinet material and general information.

### **OIA responses**

Publication of OIA responses is primarily driven and managed by MRS.

While a response to an OIA request will have already considered the withholding grounds in the OIA, as signalled above, the protections in section 48 of the OIA do not extend to the proactive publication of information, even if the information has previously been released to a requester.

OIA responses are assessed by MRS and approval to publish is sought from the Manager, Ministerial Relations and Services who is responsible for administering the proactive release

policy.

As part of MRS' assessment process, the following matters are considered against the principle of availability:

- suitability for publication;
- privacy interests;
- contractual obligations;
- risk of copyright infringement/defamation; and
- addition of contextual information.

If Business Units working on OIAs consider a response is not suitable for publication, this should be noted early on with the MRS drafter assigned to the OIA, along with the reasons why.

MRS will also advise business units of responses it is considering for publication and will consider any feedback provided, particularly related to any potential civil or criminal liability.

MRS will publish responses as soon as practicable following the response being provided to the requester but will provide a reasonable time for the requester to consider the response.

MRS will consider any feedback received from requesters where they are against the publishing of their request (for example, journalists may mention the article they are planning and ask for their response not to be published until the article is finished).

While a requester cannot veto the Ministry's decision to proactively release an OIA response, any concerns raised will be fairly considered. The requestor will be advised of the Ministry's decision on release and the reasons for that decision.

Detailed guidance will be published on the Ministry's intranet on the publication of OIA responses.

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## **ROLES AND RESPONSIBILITIES**

The Ministry operates a collaborative model to meet its commitment to the proactive release of information.

The **Chief Executive and Secretary for Justice** is accountable for the Ministry's performance in respect of its commitments to the principles and purposes of the OIA and to this policy.

**Strategic Leadership Team** members are responsible to the Chief Executive and the Ministers for the proactive release of information prepared and published by their Business Units.

The **Ministerial Relations and Services Team** is responsible for providing expertise on how the OIA can be applied to information prepared for proactive release. MRS assists with redactions and prepares documents for publication based on the instructions from the responsible Business Units. It leads on the publication of OIA responses.

**Business Units**, as the 'information owners', are responsible for collating the release, reviewing the content, considering any issues, assessing what needs to be withheld, and consulting with the Minister. Business units lead on the decision to publish Cabinet material and general information with support from MRS.

The **Media Team** may provide communications guidance if the proactive release of information has the potential to attract wider political, public or media interest.

The **Office of Legal Counsel** provides legal advice on any implications that may arise in the proactive release of information.

**Judicial offices** are consulted on proactive releases of Ministry information that relate to the courts

**Ministers' offices** may commission the proactive release of information from the Ministry or receive notification from the Ministry on the proactive release of information. The office may provide feedback on the information before it is published.

**Ministers** approve the proactive release of Cabinet material.

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**KEY RELATED  
POLICIES,  
LEGISLATION AND  
GUIDANCE**

- [Official Information Act Policy](#)
- [Proactive release of Cabinet material](#)
- [Strengthening Proactive Release Requirements Cabinet paper](#)
- [CabGuide](#)
- [Official Information Act 1982](#)
- [Privacy Act 2020](#)
- [District Court Act 2016](#)
- [Senior Courts Act 2016](#)
- [Public Services Commission Guidance](#)
- [Office of the Ombudsman](#)
- [Privacy Commissioner](#)

CONTACT	<i>Manager, Ministerial Relations and Services</i>	OWNER(S)	<i>General Manager, Governance and Assurance</i>
LAST REVIEWED	<i>12 July 2023</i>	NEXT REVIEW	<i>12 July 2024</i>
LAST UPDATED	<i>19 July 2023</i>	STAKEHOLDERS CONSULTED	<i>OLC, SLT</i>
APPROVAL LEVEL	<i>SLT Business Committee</i>		



## Proactive release guidance

This guidance operationalises the principles outlined in the Ministry's Proactive Release and Official Information Act policies, and the OIA itself.

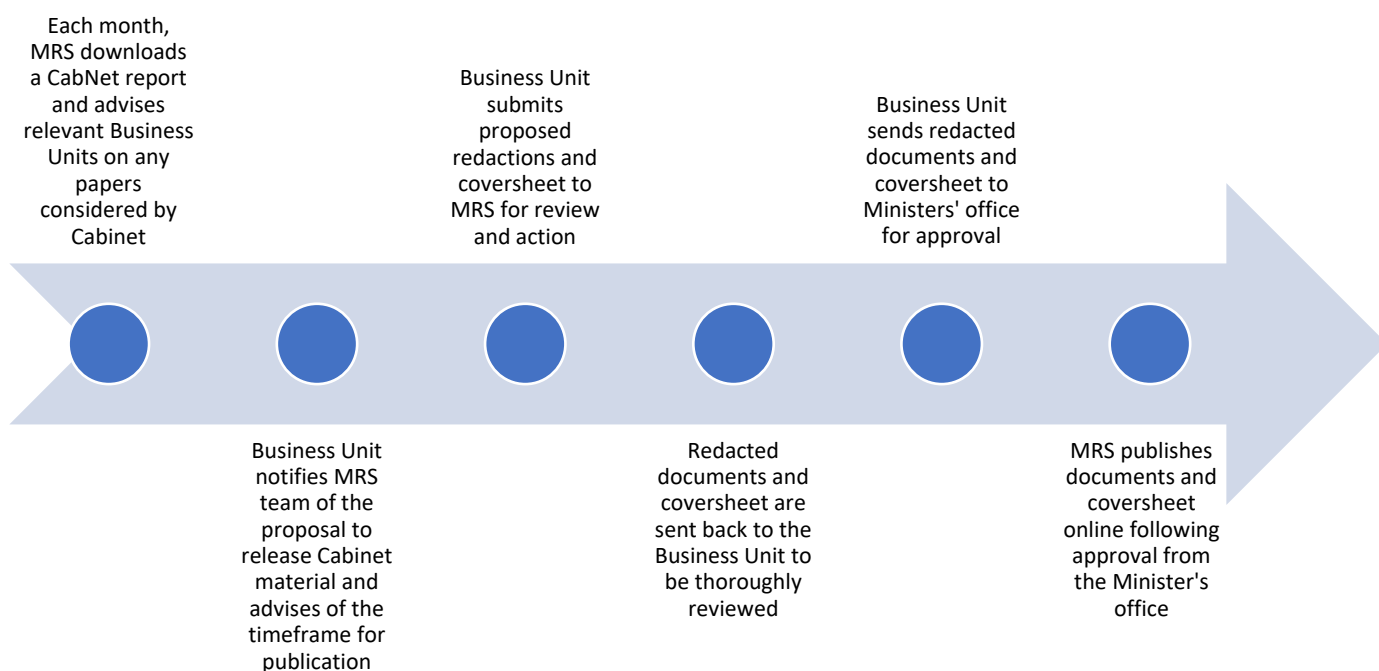
As the proactive release of information is increasingly integrated into standard business practices, the guidance outlines how the business unit that develop or manage the creation of the information for release lead on the decision to publish or proactively release it. The process highlights a shift from a predominately reactive practice to releasing information when requested and is based on the concept that proactive release should be embedded into all the Ministry's business as usual practices.

Business units lead on the decision to publish Cabinet material and general information, whilst the Ministerial Relations and Services Team leads on the publication of OIA responses. MRS provides advice to business units on redaction, including the use of Adobe redaction software, and works with Communication Services on publication.

As the Ministerial Relations and Services Team manages the response to requests under the OIA, it also leads on their publication, having consulted with business units.

## Proactive release process for Cabinet material

The below process formalises the Ministry's long-standing approach to the proactive release of Cabinet material as described in the Ministry's Proactive Release Policy.



The coversheet should clearly state who the releasing Minister is, the relevant portfolio(s), the date of issue, a list of the documents that are being released, and an explanation of the reasons for any redactions – if applicable.

## Publication

Cabinet material which has been approved for release will be published at the earliest opportunity, but

no later than 30 business days from the day the final decisions are taken to Cabinet. Cabinet material is published on the Ministry's [Cabinet and Related Material](#) webpage.

There will be some material that may not be appropriate for proactive release within the above timeframe. For example:

- advice that is still under active consideration;
- advice that relates to other decisions that are to be publicly announced, but where the announcement is scheduled to take place outside the policy timeframe.

Where a decision is taken to delay release, the decision should be communicated to the Ministerial Relations and Services Team and recorded including when the information may be released and what decisions are still pending.

## Preparing Cabinet material for proactive release



The Ministry drafts Cabinet papers on behalf of a Minister or Ministers. The relevant Minister 'owns' the paper and takes it to Cabinet, so the decision on what, if anything, should be released sits with the Minister or joint Ministers.

### Step 1: Draft the Cabinet paper

When the owner of the Cabinet paper is drafting a Cabinet paper, a section must be included in the Cabinet paper on proactive release that says whether the Minister intends to proactively release the paper in whole or in part, or to delay the release beyond 30 business days. It is the Minister's decision, so a specific recommendation is not required.

That means input is needed from the Minister (or their office) on whether the paper should be proactively released during the drafting process.

### Step 2: Cabinet considers the paper

The 30 business days for proactively releasing the Cabinet material and any key advice papers starts on the day of the Cabinet meeting at which Cabinet makes a final decision.

### Step 3: MRS downloads monthly CabNet report

Each month, the Ministerial Relations and Services Team will download a report from CabNet which confirms the submission owned by the Ministry. Where there is Cabinet material that has been considered by Cabinet, the Ministerial Relations and Services Team will notify the relevant Business Unit/s that it needs to be considered for proactive release.

### Step 4: Agree the timing for publication

Ultimately, the Minister decides when the documents will be published. It is key that the Business Unit responsible for the Cabinet paper talks to the Minister's office about the release as early as possible. This will allow the timeline for collating, reviewing, and publishing the documents to be planned out carefully. As soon as the likely timing is known, the Business Unit responsible for the Cabinet material needs to let the Ministerial Relations and Services Team know.

### **Step 5: Collate the documents**

Identify the documents to be released:

- the Cabinet paper – don't include the Cabinet summary sheet or agenda;
- any attachments and appendices to the Cabinet paper;
- the Cabinet minute; and
- any 'key advice' documents – these are papers addressed to the Minister who took the item to Cabinet, and that seek agreement from the Minister to recommendations that were subsequently decided by Cabinet.

Publishing key advice papers is optional – it is up to the Minister to decide whether they want to include it in the proactive release. It is the Ministry's responsibility to ensure we publish only the final versions of Cabinet material– that means:

- the version of the Cabinet paper approved by the Minister for lodgement in CabNet<sup>1</sup> or tabled in the meeting; and
- the minute published by the Cabinet Office on CabNet

Electronic copies of the final versions of Cabinet material can be downloaded from CabNet for the purposes of proactive release - keep the watermark. The Ministerial Relations and Services Team has access to CabNet and can assist in getting the final versions of Cabinet material.

If a key advice paper contains important handwritten information (e.g., comments from the Minister), consult the Minister on whether this can be released in a scanned version or included in the coversheet released with the documents. The proactive release coversheet template is available on the [Ministry's intranet](#).

### **Step 6: Assess the content of the documents and draft the cover sheet and approval briefing**

The Business Unit that drafted the Cabinet paper is responsible for reviewing the content, considering any issues, assessing what, if anything, needs to be withheld, and agreeing that with the Minister.

While the information is being proactively released rather than released under the OIA, the grounds that would be used to withhold information under the OIA should still be considered. The most common grounds for withholding the release of information can be found under section 6 and section 9 of the OIA.

There is no expectation that information that would not be released under the OIA should be proactively released. There is also no expectation that exploratory advice or advice generated in the early formative stages of a policy development process and intended to ensure the free and frank exchange of ideas necessary for the development of robust policy advice, should be released.

If you are not sure whether there would be grounds for withholding information under the OIA, consult with the Ministerial Relations and Services Team or the Office of Legal Counsel. If relevant, the Business Unit should also undertake consultation with other agencies or affected parties to seek feedback on the proposed release.

You may provide a link to information that has been previously released. Consider what will be easiest and most accessible.

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<sup>1</sup> For more information on CabNet go to <https://dpmc.govt.nz/publications/what-cabnet>

Once Cabinet material is published online, the security classification (e.g., 'In Confidence) of the original document may no longer apply. Unless some information has been withheld from the version that is proactively released, the security classification of the original version should be reviewed.

### **Step 7: Prepare the documents**

The electronic documents will be published in one package with a coversheet that outlines what is being released and the reasons for any redactions.

Identify within the documents any information that needs to be withheld and the appropriate withholding ground(s). Once this has received internal approval, provide the documents and draft coversheet to the Ministerial Relations and Services Team for action.

The Ministerial Relations and Services Team will apply the identified redactions, confirm the OIA withholding grounds and prepare the documents for publication based on the instructions provided by the responsible Business Unit. The Ministerial Relations and Services Team will also conduct a peer review of the documents.

### **Step 8: Review the pack**

The Ministerial Relations and Services Team will provide the document pack with the redactions marked to the responsible Business Unit to review and check. The documents are watermarked in light blue as "Proactively Released" and the OIA withholding grounds will conceal any redacted information.

Let the Ministerial Relations and Services Team know whether any changes are required – they will action any changes and confirm they've been done correctly with the Business Unit.

### **Step 9: Approval from the Minister**

The Minister (or joint Ministers) makes the final decision on what Cabinet material is released.

The relevant Business Unit is responsible for sending the coversheet and documents with proposed redactions to the Minister's office for approval. The Business Unit sets out their recommendations on what should be released and the expected timeframe for this to happen.

### **Step 10: Publish the documents**

Once the documents have been approved by the Minister, send them to the Ministerial Relations and Services Team to publish.

The Ministerial Relations and Services Team will arrange for the documents to be uploaded to the external website on the agreed date.

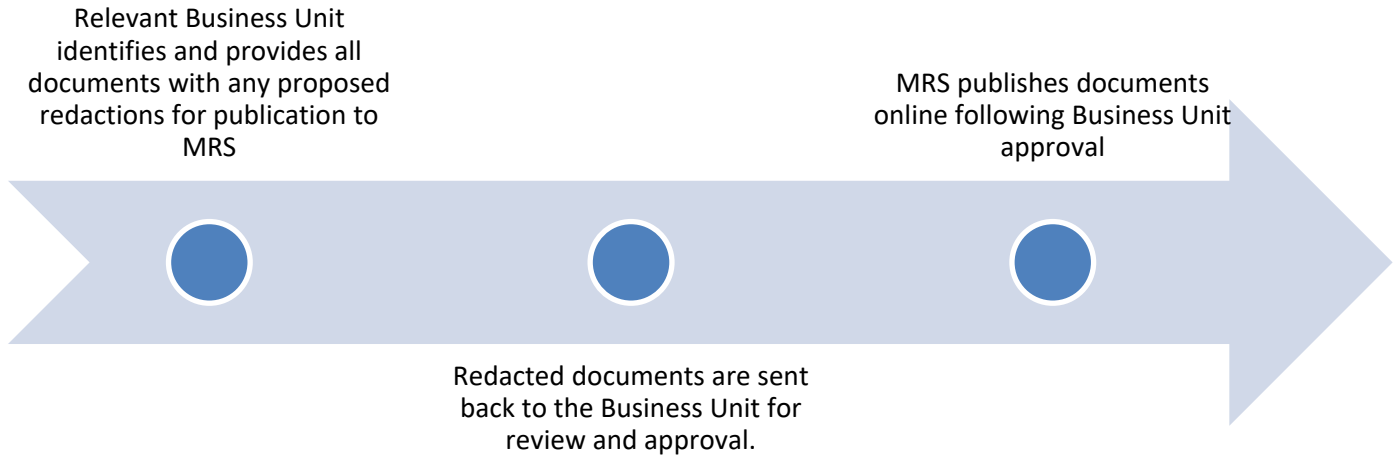
Examples of proactively released Cabinet material are available on Ministry's [Cabinet and Related Material](#) webpage.

### **Optional Step 11: Revisions to Cabinet material**

Revisions to Cabinet material may be required where a subsequent OIA has been received for an unredacted version of the Cabinet paper, or a complaint to the Ombudsman has resulted in a change to any withholding or refusal grounds used. In these instances, the Ministry needs to consider updating the version of the Cabinet paper that was originally proactively released.

## Proactive release process for general information/key documents

The below process formalises the Ministry's approach to the proactive release of general information/key documents as described in the Ministry's Proactive Release Policy.



As with Cabinet material, general documents for release are considered by the Business Unit that holds the information with support from the Ministerial Relations and Services Team.

Timeframe and sign out for the documents will be dependent on the Business Unit organising the release. Release 'as soon as reasonably practicable' is a good objective. However, if the information has already been refused under the OIA as it will be made publicly available/under section 18(d), strict timeframes apply in order to comply with legislation.<sup>2</sup> The Ombudsman has indicated that six to eight weeks is the maximum time within which section 18(d) can be applied.

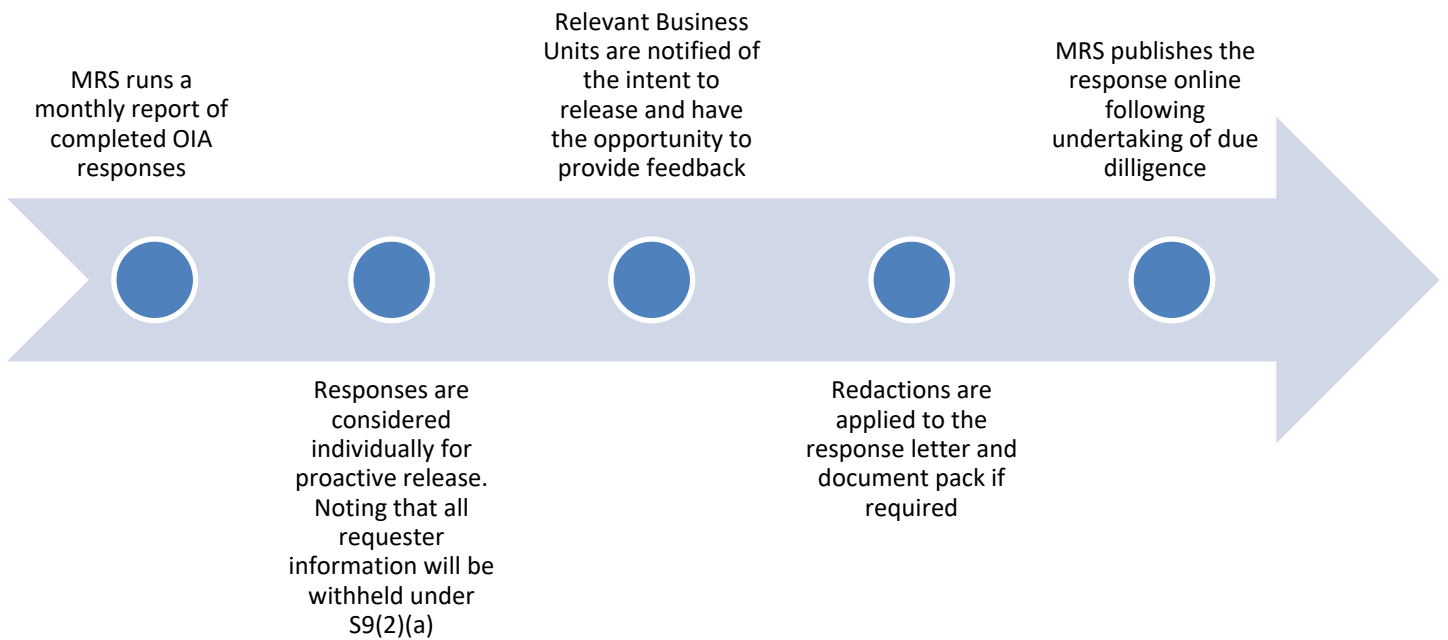
As with other proactive workflows, consideration must be given to the suitability of information for release, and any necessary consultations with external parties, including Ministers' offices

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<sup>2</sup> [A guide to section 18\(d\) of the OIA](#)

## Publication of OIA requests

The below process formalises the Ministry's approach to the publication of responses to OIA requests as described in the Ministry's Proactive Release Policy.



The publication of responses to OIA requests is primarily driven and managed by the Ministerial Relations and Services Team. Business Units are responsible for deciding whether the OIA response is suitable for publication. However, it is important to keep the principle of availability in mind, in that “information shall be made available unless there is good reason to withhold it”.

As with other proactive and publication workflows, consideration must be given to the suitability of information for release, particularly as the protection of Ministers and agencies from civil or criminal liability under section 48 of the OIA does not apply to proactively released information or published OIA responses. Detailed guidance on these issues is available on the Public Service Commission website at: [www.publicservice.govt.nz/guidance/official-information/proactive-release/](http://www.publicservice.govt.nz/guidance/official-information/proactive-release/).