



OIA POLICY

Date of Issue	Review Date
01/03/2018	30/06/2019
08/03/2019	01/03/2020
15/03/2020	30/06/2021

Purpose

The OIA Policy describes for all Agency staff (including contractors) the policies and procedures for receiving, considering and responding to requests for official information, which are governed by the Official Information Act 1982 (**OIA**). The Act can be viewed [here](#).

The Policy also implements the directions of Cabinet relating to the proactive disclosure of Cabinet papers and key advice, as also reflected in the Agency's approach to proactive disclosure of information generally.

Scope

Part One of this Policy applies to any requests for official information that may be received by anyone in the Agency or anywhere in the Agency, including requests received by –

- email
- letter
- text message
- through social media
- someone asking at reception
- phone call or
- any other form.

Requests for information about another person are OIA requests.

Requests by a person for information about themselves must be dealt with in accordance with the Privacy Act 1993.

Part Two of this Policy contains the Agency's approach to the proactive release of information in accordance with the Government's commitment to the Open Government Partnership National Action Plan and the directions contained in Cabinet Circular CO (18) 4 *Proactive Release of Cabinet Material: Updated Requirements* (23 October 2018).

People who can make an OIA request, s 12(1)

Only the following people or body corporates can make a request under the OIA –

- New Zealand citizens or permanent residents
- any person in New Zealand
- any body corporate which is incorporated in New Zealand
- any body corporate incorporated outside New Zealand which has a place of business in New Zealand.

If you cannot ascertain the requester's eligibility, you can request evidence of status.



Request for information that is publicly available

If you receive a request for official information that is freely available on the Agency's website or in any other publicly available publication, you can simply direct the requestor to the relevant website page or publicly available source to obtain the information. The request does not need to be dealt with as an OIA request because requests for information that are already publicly available may be declined under s 18(d) of the OIA.

Help

Should you require help or information about this policy please contact the Chief of Staff for assistance.

Definition of terms

The following definitions are relevant to this Policy (the complete definitions can be found in s 2 of the OIA):

information – is not defined in the OIA but includes –

- written material
- video or audio tapes
- photos
- information stored in computers
- information that is not recorded but is 'held' in the memory of an officer of the Agency.

official information – includes

- any information held by the Agency
- any information held by a contractor engaged by the Agency

personal information – means information about an identifiable person

working days – any day excluding Saturday, Sunday, Good Friday, Easter Monday, ANZAC Day, Labour Day, Queen's Birthday, Waitangi Day, and any day from 25 December to 15 January

Key Accountabilities and Responsibilities

Role	Description of responsibility
Chief Executive	Approves Policy Signs out OIA responses
Chief of Staff	Assists with scoping OIA requests Assists with public interest assessment Advises whether consultation is required with Minister's Office Signs out OIA responses Reviews information proposed for proactive release



	Reviews Policy annually Reviews Policy as appropriate if the Ombudsman does not uphold the Agency's decision on an OIA response
Advisor	Monitors OIA email box and actions any requests in email box
Advisor Private Secretary / Senior	Transfers Ministerial OIAs to Agency, as appropriate
All Managers and staff	Aware of the Policy and apply its procedures when considering and responding to OIAs

Related policies and documents

- Office of the Ombudsman, Official Information Legislation Guides, available [here](#).
- State Services Commission, OIA Guidance for Agencies, available [here](#).
- State Services Commission, Standards of Integrity and Conduct, 2007, available [here](#).

Relevant legislation and regulations

- Official Information Act 1982, available [here](#).
- Local Government Official Information and Meetings Act 1987, available [here](#).

Measures of the success of the Policy

The success of this policy will be measured by the Compliance Management process establishing that –

- requests are responded to within the 20 working day time limit
- no breaches of this Policy are identified
- the Ombudsman upholds the Agency's decisions in any complaint.

Consultation processes in developing or reviewing this Policy

This Policy has been approved by the Chief Executive and must be reviewed at least annually to ensure any organisational changes are accounted for.

Compliance Management

To ensure compliance with this policy the Agency will:

- have a central register to record OIA requests and the length of time it takes to respond (The HIVE – supported and maintained by MBIE)
- annually review compliance with this Policy by reviewing randomly selected OIA responses
- review and amend this Policy as appropriate if the Ombudsman does not uphold the Agency's decision on an OIA response.

Training and Communication

All staff should have access to this Policy either by being referred to a hardcopy held on site, to the document management system (MAKO) or via the intranet.



Part One – Requests for information

Two types of OIA

Most OIA requests will be received through the Agency’s OIA email box ويا@pikeriverrecovery.govt.nz . The Advisor will monitor and action any requests to this email box.

There are two types of OIA. Both require you to respond to a request for official information as soon as is reasonably practicable and you must not take more than 20 working days.

(1) Agency OIA

When an OIA request seeks information relating to the Agency and/or requests information held by the Agency this is an Agency OIA. All information held by the Agency is official information and subject to the OIA. A request for official information does not need to refer to the OIA.

The OIA request needs to be logged, acknowledged and given its identifier tracking number.

(2) Ministerial OIA

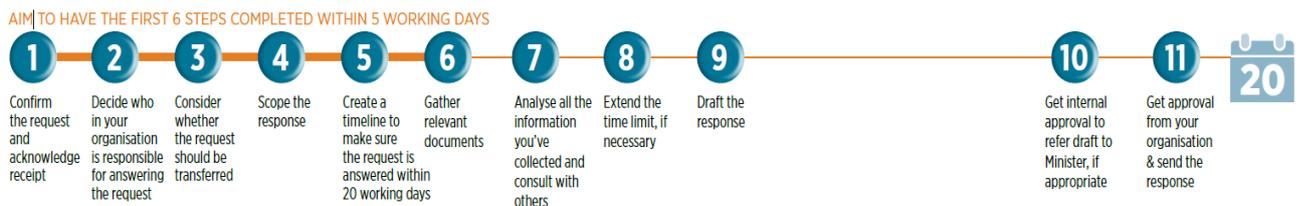
When a request is made to the Minister Responsible for Pike River Re-entry, the Private Secretary will acknowledge receipt. If the request is too broad, the Private Secretary will go back to the requester to amend or clarify the request. If it appears that all or part of the Ministerial OIA should be transferred to the Agency, consultation should be undertaken by the Private Secretary with the Chief of Staff. A letter of transfer will be signed by the Private Secretary.

The OIA needs to be logged and its identifier tracking number recorded in the Agency system for tracking and filing purposes.

All information held by the Minister of the Crown in his/her official capacity is subject to the OIA and is official information.

The process for receiving, considering and responding to an OIA

A breakdown of all the tasks involved in processing an OIA request is shown in the table below.



Scoping the OIA request

Scoping the request is one of the most important things to do at the beginning of preparing a response to an OIA.

- Read the request carefully and identify anything that seems **unclear**. If there is any ambiguity, consider consulting the requester. That will save time and effort in the long run.
- Think about the **context**. Use this to think about what the requester may want to know, and why.
- 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).



- **Confirm** that the information is held by the Agency or consider transferring the request to another Department (see below).

A scoping meeting/discussion with the Chief of Staff should be arranged within three days of the OIA request being received by the Agency and held as soon as possible. This will ensure that you have all the relevant information you need for a quality answer that meets the 20 working day or extended time requirement.

Due particularity, s 12(2)

Has the request 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. The Agency should not have to make any unsupported assumptions about the information the requester wants. Note that this does not include requests for a large amount of information. The OIA has other ways to deal with these requests.

Transferring a request, s 14

Any decision to transfer a request to another Department must be made no later than 10 working days after the Agency received the request (unless a valid extension of that time is made within 20 working days of the original request). However, a delay in transferring the request will not invalidate the transfer. Even if a transfer is made out of time, it will still have the effect of shifting the responsibility for reaching a decision on the request to the most appropriate Department.

You must transfer a request to another agency if some or all of the information requested is:

- not held by the Agency but is believed by the person dealing with the request to be held by another Department; or
- believed by the person dealing with the request to be more closely connected with the functions of another Department.

Transferring part of a request

Where the above circumstances only apply to part of the information requested, only the relevant part of the request should be transferred, rather than the whole request. The transfer should make it clear what parts of the request are being retained by the Agency and what parts are being transferred.

Check that the Department to which you want to transfer the request is subject to the OIA or the Local Government Official Information and Meetings Act 1987 (see Schedule 1 of the [OIA](#) or [Ombudsman Act](#)).

Transferring a request to the Minister (Ministerial OIA)

You need to confirm whether the request is an Agency OIA 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; and whether the information relates to the Minister’s decision-making functions (and release could prejudice the Minister’s ability to perform that function).

Ways of responding to an OIA request

The supply of copies of documents is not the only way of complying with an OIA request. Other



methods of complying with a request include –

- allowing the requestor to inspect documents or view a videotape or listen to a recording
- providing a summary of the contents of a document
- advising the requestor orally about the contents of a document.

Timeline for responding to an OIA request, s 15(1)

Develop a timeline for responding to the OIA request. Ensure you have a buffer of at least 2 days at the end in case there are delays.

The 20 working days can be calculated using the OIA Response Calculator tool on the Ombudsman website: <http://www.ombudsman.parliament.nz/>

The Agency must make a decision and communicate it to the requester “as soon as reasonably practical” and no later than 20 working days after the day on which the request was received.

Remember while the time limit is a maximum of 20 working days unless it is extended, your obligation is to respond as soon as reasonably practicable.

Locating the ‘in scope’ documents

Canvass the relevant physical and electronic locations. Do not hesitate to get specialist help from 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.

Identify papers that may need consultation (that is, papers that other organisations have written or helped write, or are affected by). Get a head start 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.

If you are using redaction software, you may 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.

Analyse and Consult

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.

Section 9 withholding grounds

The most common grounds for withholding information are set out in s 9 of the OIA. In summary, these allow the withholding of information where it is necessary to protect –

- the privacy of natural persons
- a trade secret or a commercial position
- confidential information
- the health and safety of members of the public
- economic interests of New Zealand



- against material loss to members of the public
- the constitutional conventions relating to the confidentiality of advice to the Sovereign and Ministers, collective and individual Ministerial responsibility, political neutrality of officials
- free and frank advice to Ministers or other Departments
- Ministers, officials and others from improper pressure or harassment
- legal privilege
- commercial activities or negotiations
- against the use of official information for improper gain or improper advantage.

For further information regarding the application of these grounds look at previous OIA responses from the Agency for guidance.

Overriding public interest in release of information, s 9(1)

If information is being withheld under section 9 of the OIA, a statement about public interest considerations is needed. This requires an assessment of whether there are public interest considerations that outweigh the withholding of the information and would make it desirable to release the information.

Section 6 withholding grounds

There are also grounds for withholding information in s 6 of the OIA that are easier to satisfy because they concern matters of defence, foreign relations, and New Zealand's economic interests. The two withholding grounds in s 6 that could apply to information held by the Agency concern situations where the release of information would be likely to –

- prejudice the maintenance of the law, including the prevention, investigation and detection of offences and the right to a fair trial; or
- endanger the safety of any person.

Further assistance on the application of the withholding grounds

The Ombudsman's [website](#) contains useful guides to the application of the withholding grounds and procedural issues.

Consult the Chief of Staff or a legal advisor if you have any queries regarding the application of the withholding grounds above or the public interest assessment.

If you still have doubts, the Office of the Ombudsman is there to help. You can contact them on 0800 802 602 or 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.

Extend the time limit if necessary, s 15A

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 requestor must be advised of any extension, the reasons for the extension, and advised they have the right to make a complaint to the Ombudsman regarding the decision to extend the time limit for responding.



Refusal where request would require substantial collation or research, s 18(f)

Requests for large amounts of information can impose a significant burden on a Department, particularly a small Department such as the Agency. Requests can be refused because they would involve substantial collation and research, but there are some procedural requirements that must be satisfied first –

- you must consider whether consulting the requestor would assist them to make the request in a way that could be responded to, for example, by narrowing the request to more specific documents or a more specific time period, s 18B
- you must consider whether charging would allow you to respond to the request, s 18A(1)(a)
- you must consider whether extending the time limit would allow you to respond to the request, s 18A (1) (b).

Charging, s 15(1A)

The Agency may charge for the supply of information, however, it will not generally be appropriate to charge for responding to simple requests. The Agency may require the charge to be paid in advance of supplying the information. The Ombudsman has issued guidance on charging, available [here](#). Charges can be made for –

- searching, retrieving, collating information
- redacting, scanning, copying

Charges cannot be levied for –

- deciding whether to release information
- deciding whether to charge for information
- looking for information when it can't be found because it isn't where it should be
- drafting a response letter

The Ministry of Justice has issued guidelines for charging that allow for –

- \$72 per hour of staff time (the first hour is free)
- \$0.20 per page photocopying in excess of 20 pages.

Any charge must be reasonable, and the Ombudsman has held this means an agency must consider whether there are any reasons why a charge should be waived, for example, there is a public interest in the release of the information, or the information is particularly relevant to the requestor. The generally accepted approach is that MPs, parliamentary research units and the news media are not charged for requests, unless the requests are particularly large or time-consuming.

A requestor can make a complaint to the Ombudsman regarding the level of a proposed charge.

Draft a decision or covering letter

A letter must accompany all information that is released.

The main components when drafting a reply are –

- the decision or covering letter
- the information to be released, with or without redactions or both
 - be sure to photocopy the redacted copies of any documents onto paper with a 'released under the OIA' watermark.

The covering letter should–



- state when the request was received
- repeat the request
- state if it was extended, if applicable
- state whether the request has been refused in whole or in part
- state if information has been withheld, under what grounds it has been withheld
- contain the following wording:
 - “Please note that this letter (with your personal details removed if you have made this request as a natural person) and enclosed documents may be published on the Agency’s website.”
- be signed out by the Chief Executive or Chief of Staff.

If you are withholding or refusing information, list the reasons why, referring to the relevant withholding and/or refusing grounds.

You could also explain any relevant context to assist the requester to understand what has been provided, which may help minimise any risks associated with the release of information.

Right to complain to the Ombudsmen

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

Redacting information

If you need to withhold any information follow these steps:

- photocopy and scan all original documents (do not write on or amend originals)
- save the scan and file the hard copy as your **clean copy** using the document naming conventions. **Do not staple documents.** Use paper clips and/or clear filing pockets
- redact using appropriate redaction software or mark up a copy of the documents to indicate which parts you want to withhold
- obtain legal advice on complex and high or critical risk requests
- redact the information
- save a **redacted copy** of the information and an **audit or marked up copy**. The latter will be useful if the response is subject to an OIA complaint to the Ombudsman.

Redactions should be made using appropriate redaction software such as Adobe Acrobat or PDF docs and the withholding provision must be indicated. Redacting software provides a professional and standard look, saves paper and can easily be printed onto OIA imprinted paper. If you do not have access to redacting software, contact IT to apply for a licence.

Print the redacted scan or photocopy or the hand redacted version onto OIA imprinted paper. Then scan again to make the release set and file copy. This is referred to as the “**Redacted copy**”.

Reviewing Responses and Documentation

Depending on the size of the OIA response and the material for release, you can either provide an email or hard copy of the OIA folder for review. The OIA folder should be accompanied by a hard copy sign-out sheet, for each reviewer to sign, which is necessary for the Chief of Staff sign-out.

Peer review – This is typically a quality review and sense check from a fellow team member, and may include editing, formatting, and proofreading.



Communications review – This review is an opportunity for the Communications team to provide feedback on the response letter; the wording used and if further context is required. Depending on the risk profile of the OIA, Communications may also decide to prepare reactive talking points and a communications plan.

Prepare file for review

You will need to collate the following documents to make up the **full OIA folder** in the document management system:

- a copy of the draft response (letter) to the requester
- a document table/schedule if applicable
- a copy of the briefing or coversheet, which may include the risk impact and sign-off sheet
- a copy of the working documents about the request, for example, the original request, significant relevant emails relating to the request
- a **clean copy** original set in hard copy (clipped together and/or in a sleeve) of all information in scope of the request
- a **redacted copy** set in hard copy on OIA paper (clipped together and/or in a sleeve) of all information in scope of the request, with relevant information redacted and appropriate OIA provisions identified. Information released under the OIA should be provided on OIA imprinted paper and documents numbered
- an electronic copy of the approved and signed response.

Keep the folder tidy and all sets of papers in the same order. This will make it easier if you have to make changes, or need to list the documents being released or withheld. It will also make it easier to refer back to the folder if there is an Ombudsman complaint, a subsequent request for the same information, or a request from the same person about the same issue.

Consider consulting the Minister's office

The need for ministerial consultation will be identified by the Minister's Office or relevant Manager. Even if it is not flagged, discuss with the Chief of Staff whether consultation or notification is necessary. He/she will decide on a case-by-case basis if consultation is needed to maintain a "no surprises" approach.

Save records before sending response

Before you send the response letter and all the information to be released to the requester make sure you have scanned as a PDF all documents generated by the request. This should include:

- the original request
- acknowledgement letter
- a **clean copy** original set of all information in scope of the request to be released
- an **audit or marked up** copy set of all information in scope of the request with relevant information deleted/redacted
- all briefings to the Minister or Minister's Office including copies of all information sent with the briefing. The most important version of the briefing to scan and save is the one that comes back signed or cleared by the Minister or his/ her office. You may also wish to scan and save the briefing as sent to the Minister
- final signed response letter to the requester including the **redacted copy** set of information. Depending on the amount of information, you may wish to scan and save documents separately, together or in batches



- any other correspondence relating to the request, for example, letters requesting transfer, time extensions
- any other significant documentation relating to the request such as emails or checklists.

Check covering letter

Check that the covering letter has been signed and is consistent with the letter that was approved. The covering letter must be a locked PDF.

Check information to be released

Check that the information to be released is the right version of information and that the relevant redactions have been made. The information to be released must be a locked PDF.

Send the response

Departmental

Either send the response to the requester or forward the response to the generic email mailbox for dispatch. The document management system needs to be updated and date of sending recorded. This information is essential for performance reporting and audit.

Ministerial

Send the response letter and associated documents proposed for release (redacted and OIA watermarked) on or before due date to the Private Secretary at the Office of the Minister Responsible for Pike River Re-entry.



Part Two – Proactive release of information

The Agency proactively releases information in accordance with the Government’s commitment to the Open Government Partnership National Action Plan. Further information on the Government’s policy is available on the State Services Commission’s website [here](#).

The Agency also proactively releases Cabinet papers and key advice, in accordance with the Cabinet Circular CO (18) 4. The Cabinet Circular may be accessed here [insert hyperlink to dpmc.govt.nz/publications/co-18-4-proactive-release-cabinet-material-updated-requirements.]

The Cabinet Circular contains requirements in relation to due diligence before any Cabinet material is made proactively available. This policy adopts those requirements for all forms of proactive release.

Regular proactive release of information and copies of OIA responses

Every couple of weeks the Agency will prepare a bundle of recent information for proactive release on the Agency’s website. This includes responses to requests for information under the OIA.

Responses to selected OIA requests received by the Agency will be published on its website after the requestor has received their response from the Agency. The reply letter from the Agency to the requestor explains what information, if any, has been withheld under the OIA and under which grounds.

The requestor’s name and address will be removed where the requestor is a natural person.

Section 48 of the OIA provides the Agency with protection from liability when releasing information. However, this protection does not apply to the proactive release of information. Therefore, care needs to be taken to ensure that information is not proactively released that might affect the rights and interests of third parties. See the due diligence requirements, below.

Review of information and OIA responses to be proactively released

Any proposed information or OIA responses to be released will be reviewed by the Chief of Staff and the Agency’s legal advisors, before being forwarded to the Minister’s Office for approval to release.

Under the Cabinet Circular, a due diligence process is required before any Cabinet paper or key advice is made available proactively. The process must involve a “considered, reliable, robust, and through review”. The matters that must be considered under the Circular are:

- Whether there is anything in the paper that could be withheld under the OIA, or that requires withholding under other legislation.
- Application of the Privacy Act principles.
- Consideration of national security.
- Consideration of potential legal liability (e.g. defamation, privacy, copyright, legal privilege, breach of contract or other law).
- Any need to delay release.

This reinforces the need for particular care to be taken in respect of the proactive release of Agency information. The documentation relating to the proactive release should record the due diligence and any issues noted. The advice to the Minister in relation to the proactive disclosure should note the due diligence that has been undertaken, consistent with the requirements applicable to Cabinet material.

Legal advice should be sought if there is any uncertainty about the possible effects of proactively



releasing the following types of information –

- confidential information
- information that is subject to copyright or other intellectual property rights
- information that concerns third parties
- information that concerns other agencies
- information that concerns commercial negotiations or activities
- personal information about a natural person
- legal advice
- information that concerns any dispute or legal proceeding.

When proactively releasing information, ensure any personal details (including cellphone numbers of named officials) are removed.

If the proactive publication of information or OIA response may be considered misleading or untimely, consider the publication of additional information that places that information in context, or delaying the publication until any uncertainty about the appropriateness of disclosure may have been resolved.

Proactive release of Cabinet material

The Cabinet Circular applies to all Cabinet and Cabinet Committee papers and minutes (including attachments).¹ These must be proactively released and published online within 30 business days of final decisions being taken by Cabinet, unless there is good reason not to publish all or part of the material, or to delay the release beyond 30 business days.

All Cabinet papers must contain a proactive release section, stating whether or not the Minister agrees to proactive release. If the paper is not intended to be proactively released, the reason why must be explained.

Ministers may also decide to release related key advice papers.

The Circular requires a due diligence process to be undertaken by the Minister's office or by the relevant department before release (see an outline of the due diligence requirement above, but for details refer to paragraph 34 of the Circular. **It is the responsibility of the publisher of the material (in our case, the Agency if its website is to be used) to confirm that the quality assurance steps have been undertaken before the material is proactively released and published online.**

In the normal course of events, the Minister's office will take responsibility for advising the Minister in respect of proactive release involving Cabinet material (as opposed to other material held by the Agency such as weekly reports). However, it is essential that the Agency official responsible for transmitting the draft Cabinet paper or advice liaises with the Minister's office staff about this.

Legal advice must be sought in any case of doubt, per the previous section of this policy.

¹ Cabinet Appointments and Honours Committee (APH) material is expressly excluded from this requirement.