

Ministerial and Executive Services

Process Manual

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

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6. Official Information Act

The principle of the Official Information Act (the Act) is *availability* meaning that information should be made available unless there is a good reason not to. Key purposes of the OIA are to:

- progressively increase the availability of official information to the people of New Zealand, and
- protect official information to the extent consistent with the public interest and the preservation of personal privacy.

There is a range of helpful guidance available on the Ombudsman's website regarding how to respond to OIA requests, timeframes and withholding grounds at the following link: www.ombudsman.parliament.nz/sites/default/files/2019-08/The%20OIA%20for%20agencies%20August%202019.pdf.

Further guidance can be sought by way of a key word search at the following link: www.ombudsman.parliament.nz/agency-assistance/resources-agencies.

The below guide outlines the standard process for OIA requests to the Chief Executive and to the Minister. Most OIA requests are made to the Chief Executive. Where the process for Ministerial OIA requests differs from the Chief Executive process, notes are added to clarify the difference.

6.1 Purpose

Requests to the Chief Executive:

Chief Executive OIA requests relate to information which is operational in nature and falls under the responsibility of the Ministry.

If an OIA request should be processed as a Ministerial request (eg. request for information only held by the Minister's office), it will need to be transferred to the Minister's office. The transfer resets the 20-working day response period.

Requests to the Minister:

Ministerial OIA requests relate to information that has a specific connection to the Minister, their work, or their portfolio. The following checks help to decide whether an OIA request should be processed as a Ministerial request:

Subject of the information: Does the information relate to the Minister's functions or activities, for example, government policy or decision-making processes, or the exercise of a statutory power or function by a Minister?

Impact of release of the information: Could release of the information impact on the Minister's functions or activities, including the orderly and effective conduct of government policy or decision-making processes, and relationships and negotiations with other political parties?

Author of the information: Did the Minister generate the information, or was it generated on their behalf (for example, Cabinet papers, ministerial correspondence, or answers to parliamentary questions)?

Nature of the information: Is the information sensitive or controversial, and

therefore likely to attract public or political commentary to which the Minister may be required to respond?

Likelihood of publicity: Is the information likely to be published in the news media or debated in the House, raising the possibility that the Minister may be required to respond? This is likely to include requests that are made by MPs and parliamentary research units, and members of the news media.

6.2 Timeframes

Requests to the Chief Executive:

Under section 15 of the Act, agencies are required to respond to OIA requests as soon as reasonably practical and must provide a **decision** to the requestor no later than 20 working days after the request is received by the agency.

The notification of decision must convey if the request will be granted in full, in part, or refused, and an outline of what information will be released.

The notification of decision does not have to provide the requestor with the information requested. The purpose of the notification is to provide the requestor with a response within the 20-working days period so that the requestor knows what information they can expect. The actual information can be sent to the requestor at a later time, if required.

Requests to the Minister:

Please note that the process regarding Ministerial OIA requests partially differs from the process for OIA requests made to the Chief Executive of the Ministry. While the latter works to a 20-working day timeframe to provide a decision (see left column), the process for ministerial OIA requests usually works to a 20-working day timeframe to provide a complete **response** to the requestor.

This distinction is not a legislative requirement; however, it is the Minister's preference that a fulsome response, rather than a decision, is provided within 20 working days. Therefore, it is important to note that 'notifications' are preferably not used with Ministerial OIAs.

However, with large or more complex OIA requests which require external consultation or involve multiple business units, you are able to seek an extension of the response period from the Minister's office under section 15A of the OIA. The Minister's office is not required to accept the extension request, however, if you are not able to provide a response within the requested timeframe, the Minister's office will generally approve your request.

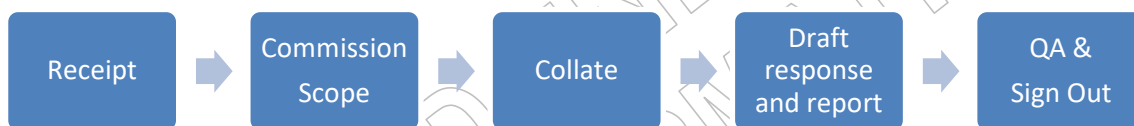
The Ombudsman's website provides a calculator to determine the end of the 20-working day period which is available here: www.ombudsman.parliament.nz/agency-assistance/oia-calculator. Please note that the Christmas and New Year holiday period and public holidays are not counted in the 20-working day timeframe. This means that the 20-working day period is halted during the Christmas holiday period and during each public holiday. This has been incorporated in the calculator.

Where necessary in a particular case, additional legislative timeframe requirements are to:

- **transfer** a request to another agency promptly and no later than 10 working days after the request is received (section 14 of the Act; the transfer resets the 20-working day response period);
- **request clarification** of a request within seven working days (section 15(1AA) and 15(1AB) of the Act). If the requestor clarifies the request, the amended request can be treated as a new request, which means that the 20-working day period is reset;
- **extend** the maximum time limit to make a decision or transfer a request, within 20 working days after the day on which the request was received (section 15A of the Act).

6.3 Stages

Responding to an OIA request is a 5-part process that is broken down into the following stages:



Throughout the process, it is integral that:

- the advisor ensures that all relevant correspondence is saved in Objective
- the appropriate boxes and status updates in Objective are accurate

6.4 Receipt

The usual process is as below. Please note that the below is a guide only and the timeframes are not legislative timeframes unless expressly stated.

Day 1:

- The administrator:
 - logs in Objective all OIA requests received by creating an OIA file in Objective and allocates a unique OIA reference number. The 'date received' is the date on which the OIA request was received by any staff member of the Ministry or the Minister's Office, not the date on which the request was forwarded to MaES. It is, therefore, important that incoming OIA requests are forwarded to MaES as quickly as possible.
 - sends an acknowledgment email (or letter in some cases) to the requestor
 - In cases where the information is likely to contain Ministry employee names and/or contact details, the acknowledgment includes wording on whether the requestor needs the names of Ministry employees who are below tier 4 and/or who are not decision-makers.
- [Specific to Ministerial OIA requests:](#)

[The administrator is not required to send an acknowledgment to the requestor, as the request is to be acknowledged by the Minister's Office.](#)

- The Advisor who has been allocated the request will be forwarded the request by OIA_Requests@msd.govt.nz.
- Specific to Ministerial OIA requests:

A Ministerial OIA will be forwarded to OIA_requests@msd.govt.nz by a Private Secretary from the Minister's Office. At this stage, it may be established that the request needs to be transferred to the Ministry to respond to (become a CE request), rather than the Minister. If this is the case, the Private Secretary will draft the transfer letters and send them from the Minister's Office to both the requestor and the Ministry.

Please note:

- Any request for information received by the Ministry can be considered a request under the OIA. Requests can be received via email, letter, social media, www.fyi.org.nz, orally (for example, via telephone) or transfer from another agency.
- Requests are generally made by members of the public, media, opposition MPs, interest or lobby groups, students, researchers, or other individuals.
- In order to be eligible to make a request under the Act, a person needs to be in New Zealand or be a New Zealand citizen or resident (section 12 of the Act). Depending on the request, and in order to be transparent, the Ministry may provide the requested information even if the requestor is not eligible.
- On some occasions, under section 18A(2) of the Act, if a requestor makes several OIA requests in short succession on the same subject, these may be merged.

6.5 Commission and scope

Days 2 to 5:

Commissioning email

- The request is commissioned with the relevant business unit(s) as soon as the advisor is able.
- Please note that depending on the information sought, multiple business units may need to be involved.
- In the commissioning email, the advisor will provide the business unit(s)
 - with information about the requestor,
 - the likely reason for the request (including media attention, or previous media queries),
 - and previous relevant requests.

This information will help the business unit(s) to determine the consequence of the release of information, for instance, whether a media article will result from the OIA response. It is also advisable to check whether recent correspondence relates to this request, and whether the Ministry has answered relevant parliamentary questions.

- Please contact the business units at the email addresses listed within the key contacts list found here: <https://objective.ssi.govt.nz/documents/fA1620275>

Allocation in the business unit

- Within each business unit involved, the request may usually be allocated to an advisor who will be the main contact regarding this request.

Commissioning meeting

- If required, the OPI advisor will schedule and hold a scoping call with relevant business units, including the subject matter experts, to determine:
 - how to interpret the request
 - what information falls within scope of the request
 - any complications that may exist in compiling the relevant information.
- At the scoping meeting, the advisor will establish the timeframe for the business unit(s) to provide a response. This timeframe will depend on the amount of information in scope of the request, and the complications involved in providing the information. The timeframe should generally be five working days for data related requests. OIA requests involving documents may take longer, as people need to identify the documents in scope, identify which content requires redactions and complete a risk assessment.

Refinement/Clarification

- Following the commissioning meeting, the advisor should contact the requestor if the request needs to be refined or if the advisor needs to clarify the request.
- Please note, under section 15(1AB) of the Act, if the original request is amended or clarified *by the agency* within seven working days, the timeframe can be reset. This means that the 20-working day period starts again on the day the Ministry receives the amendment or clarification.
- Specific to Ministerial OIA requests:
Following the scoping meeting, should the request need to be clarified or refined, the advisor needs to advise the Minister's Office that clarification/refinement is required. The office will contact the requestor.
- Under section 15(1AA) of the Act, if the requestor amends or clarifies the request *spontaneously, i.e. without being asked* at any time after their original request, the amended or clarified request should be treated as a new request and the timeframe should be reset. The 20-working day period starts again on the day the agency receives the spontaneous amendment or clarification.

Transfer

- During the commissioning and scoping stage, it may be established that the request needs to be transferred to another agency ([for Ministerial OIA requests: to another Minister](#)). Under section 14 of the Act, the agency ([for Ministerial OIA requests: the Minister](#)) has 10 working days to transfer requests to another agency. Prior to formally transferring, the advisor ([for Ministerial OIA requests: the Private Secretary](#)) needs to consult with the relevant agency to confirm whether they will accept the transfer. Following transfer, the timeframe is reset. This means that the 20-working day period restarts on the day the other agency receives the transferred request.

Risk assessment

- MaES provides business unit(s) with a risk assessment template. This must be done for all requests that involve the release of documents and is best practice for all other requests. The Risk Assessment enables the business unit to inform MaES of the risks associated with releasing the information.

6.6 Collate

Days 5 to 10:

Assessment of information received

- On receipt of information, the MaES advisor needs to assess the information/data provided by the business unit to see if it answers the question, and if further information is required.
- The advisor needs to check if the withholding and refusal grounds outlined by the business unit are in line with legislation.
 - Withholding grounds can be found in sections 6, 7 and 9 of the Act.
 - Refusal grounds can be found in section 18 of the Act.

It is the responsibility of the advisor to ensure that legislation is applied correctly. The Office of the Ombudsman provides guidance on its website on the interpretation of most withholding and refusal grounds.

Contextual information

- The advisor may need to identify if any further contextual information is required to enable requestors to appropriately interpret the information received. Contextual information can also be provided to mitigate the risks posed in providing the information. On some occasions, the advisor will need to go back to the business unit to clarify.

Change of timeframe

- The timeframe for receiving the information in scope of the request will depend on what was agreed in the scoping meeting. During the collation stage, this timeframe may change due to further complications being discovered.

Consultations

- In some cases, other agencies need to be consulted on the proposed release of the information. This is the case if other agencies contributed to the information or own it (typically when documents, such as reports, are to be released containing references to other agencies, or were jointly written with another agency).
- Usually, the advisor conducts the consultation. However, consultations can also be conducted by the business unit if they have direct contacts with the other agency.
- If the advisor conducts the consultation, please proceed as follows:
 - Send the information to be released to the other agency for review. If information is to be withheld, the documents should be marked up with working redactions the Ministry intends to apply.
 - It may be useful to highlight the parts of the documents that relate to the other agency, to expedite their response.
 - Review period: Usually five working days or shorter (if little content). However, under legislation, agencies who are being consulted can seek more time to review their content.
 - If the other agency has jointly written the document with the Ministry, the other agency needs to review the entire document.
 - Once the other agency has responded, the Ministry considers the feedback, especially the other agency's preferences to withhold information. The final decision remains with the Ministry. It is best practice to advise the other agency if the Ministry plans to deviate from the feedback.

Day 7:

Refinement

- If it becomes apparent that the Ministry is unable to respond to the request, or it would require substantial manual collation to respond to the request, the advisor is required to consider whether refining the request would enable the Ministry to provide a response and meet the intent of the request. This can include:
 - narrowing the subject of the request
 - narrowing the time period covered by the request (e.g. if the request covers documents from a certain period)
 - excluding certain categories of information, e.g. emails
 - excluding certain owners of relevant information, e.g. excluding certain business units, teams, or Ministry staff members, e.g. if emails have been requested on a certain subject
 - in rare cases, charging for the information requested.

The advisor would be required to contact the requestor directly at this point ([for Ministerial OIA requests: The Private Secretary will need to contact the requestor](#)) if there is the option of amending the request.

- Day 7 is the last day to refine the request directly with the requestor if a reset of the 20-working day period is intended. Any refinement after the 7-day-period cannot restart the timeframe, and an extension must be sought if further time is required to respond.
- [Specific to Ministerial OIA requests: Attempts to amend the request should be discussed with the Private Secretary and if agreed, facilitated by the Minister's Office.](#)

Day 10:

Transfer

- Day 10 is the last day to transfer the OIA request to another agency. Please note that prior to transferring the request, the advisor ([for Ministerial requests: the Private Secretary](#)) needs to consult with the other agency to determine if they would accept the transfer.

Extension

- Around day 10, it may already become evident that an extension may be required.
- Under section 15A of the Act, the agency may extend the time limit to make a decision on the request where:
 - the request is for a large amount of information, or requires a search through a large amount of information is necessary; or
 - consultations are necessary to make a decision on the request and cannot reasonably be made within the 20-working day timeframe.
- An extension email can be sent at any point until the end of the 20-working day period. It is up to the advisor to determine when the email is sent. The email should be sent once the advisor has assessed how much additional time is needed to complete the request. The advisor may need to consult with the business unit(s) to determine how long it will take to collate the information and progress this through sign out. It is important that the new due date is realistic, and consideration is taken into account whether there could be unexpected delays.

- [Specific to Ministerial OIA requests:](#)

Any extension should be discussed with the relevant Minister's Office. It is the office's responsibility to send the extension email.

6.7 Compile Response

Day 10 to 15:

Start drafting

- Once all information has been received from the business units, the advisor can begin drafting the response and OIA assessment report ('the report') with information provided by the business unit.
- The report is for internal circulation and its purpose is for MaES to identify risks and outline any potential consequences of releasing this information.
- [Specific to Ministerial OIA requests:](#)

When working on Ministerial OIA requests, the advisor has less time to compile the response as the response and report are due to the Minister's Office on day 15. Therefore, the response and report should be completed by day 10, if possible.

At this point, if you have not received the information from the business unit, contact the appropriate Private Secretary to outline the situation and explain that you would like to seek an extension.

The report should be addressed to the Minister and should contain analysis and content which is appropriate for the Minister's audience.

Use standard lines and previous responses and reports

- In cases where previous OIA requests on the same or a similar subject have been processed, for reasons of consistency and to expedite a response, it is advisable to copy relevant wording from previous responses when drafting the new response. The same applies to drafting the report. Previous reports on the same subject often contain worthwhile information.
- If withholding or refusal grounds apply, please use MaES' standard lines as outlined in the template in Objective.

Provide contextual information

- It is best practice to provide context alongside the information being released so that the requestor (and members of the public that view the response once published) can better interpret the information provided. If available, please include contextual lines from previous relevant requests.

6.8 Quality Assurance (QA) and Sign Out

Day 15 to 20:

- Once the response and report of a CE OIA request have been compiled, the OIA request enters the sign out process, ideally from day 15-20 or earlier.
- [Specific to Ministerial OIAs requests:](#)

The Ministry sign out process must be completed between day 10-15.

MaES Sign Out

- The sign out process begins within MaES.
- First, the response and report are sent through the QA process in MaES:
 - A peer review (QA – Quality Assurance) is to be completed by an OIA team member. The peer reviewer checks for the quality of the response and confirms that the response addresses each question of the request. If the response is of very low risk, the MaES sign out process ends here, and the peer reviewer signs the report.
- All responses of at least low risk must be seen by the OPI manager.
- All responses of high or very high risk must be seen by the MaES General Manager.

Business Unit Sign Out

- Once sign out within MaES is complete, the response and report will be sent to the business units that have been involved in compiling the response. Each business unit must confirm via email whether they agree with their content in the draft response. If the response contains information from various business units, each business unit only needs to confirm their own information.
- Business units have a maximum of **five working days** to approve the response.
- In many cases, only one business unit owns the information provided in the response. If that is the case, the business unit will sign the response letter (e-signature). If the response includes information from several business units, MaES may be best placed to sign the response letter. The advisor needs to decide this on a case-by-case basis.
- If the OIA request is refused in full, the response will usually be signed by MaES.
- Special processes for certain business units:
 - Business Intelligence ('Data')
 - When you have a data set or multiple data tables in an OIA response, please send an e-copy of the response, report and excel spreadsheets to (s9(2)(a) OIA) and cc in the iMSD email address:
 - To: (s9(2)(a) OIA)
 - cc: Out of scope
 - The data e-sign out can occur concurrently with the Service Delivery sign out. Service Delivery signs out all OIA requests that contain data that is related to the Service Delivery portfolio.
- During the sign out stage, it may be necessary to amend the response. MaES should maintain version control of the documents.

OCE, Minister's Office and Media Team

Once the response has been approved by each relevant business unit, it may need to be sent as an FYI or for consultation to the **Office of the Chief Executive (OCE)**, the **Minister's Office**, and the **Media Team**.

- **Office of the Chief Executive (OCE):**
 - The OCE needs to be notified of any OIA responses of medium risk or above.
 - An extension of the OIA response for the purpose of receiving a reply from the OCE is not permitted.

- Please give the OCE at least two working days to review an OIA request.
- **Minister's Office:**
 - The Minister's Office needs to be provided an FYI under "no surprises" regarding
 - any OIA response of medium risk or above, or
 - if the content of the OIA response *impacts on their Office*, or
 - if the response is seen as being connected to the *reputation of the Minister*.
 - Please allow the Minister's Office five working days to review an OIA response.
- **Media Team:**
 - The Media Team need to be consulted on any OIA response which
 - has been made by someone connected to the media (main media companies, such as Stuff.co.nz and the New Zealand Herald; people with an online blog; a person with a Twitter account who has written about the Ministry in the past), or
 - has been made by members of the Opposition, or
 - is at least medium risk.
 - Consulting means that the Media Team must be given the opportunity to provide input. Please allow the media team two working days to review an OIA request.
 - The Media team's inbox is Out of scope.
 - Label the subject line as per the below and send an e-copy of the report and response: OIA FOR REVIEW – SUBJECT OF OIA.
 - If the media team need not be consulted (low risk OIAs not made by a journalist or politician, for example), please send media copies of all sent OIA responses on a FYI basis (e-copy of the response that was sent to the requestor) – Label the subject line as per the below: SENT OIA (FYI) – SUBJECT OF OIA.
 - The subject line is very important as it will help the media team to easily identify what requires action.
 - [Specific to Ministerial OIA requests:](#)

The Minister's Office has its own media advisors and Ministerial OIA responses do not need to be seen by the Ministry's Media Team.

Day 20:

Sending the decision/the response

- Day 20 is the last day to provide the requestor with the decision on the request or to extend the time available to make a decision.
- However, if you know you need to notify or extend the request, it is best practice to advise the
 - [Specific to Ministerial OIA requests:](#)
 - The Minister's Office is given **five working days** to sign out the response, and then send the response to the requestor.
 - The Ministry's reporting Key Performance Indicator for

requestor as soon as you can and prior to day 20.

- Please note that if a request is extended, this extends the time available to *make a decision*. This means that once the requestor has been provided with a decision through notification, an extension cannot be made. A notification may follow an extension, but an extension may not follow a notification.
- If an OIA request has been notified, the Ministry is required to provide a response no later than the date specified in the notification, or it will be marked as overdue.
- Once the response has been signed by the signatory, approved by the final business unit, and run past the OCE, the media team, and the Minister's office (if required), it can be sent out. The advisor can ask the administrator to send the response to the requestor or can send it themselves.
- It is the responsibility of the advisor to ensure that
 - the boxes are ticked in Objective with the correct dates
 - and that everything relevant to the request is saved in Objective.
- The following boxes must be ticked and filled with a date in Objective, if applicable:
 - Date Commissioned
 - Date Info received from business unit
 - Extended Date Due to Requestor
 - Date Decision Communicated (i.e., date of notification sent)
 - Date signed out by business unit
 - Date sent to OCE
 - Date sent to Minister's office

Ministerial OIA responses is 100 per cent on time.

- Please note that for reporting purposes, a Ministerial response is considered on time if it is provided to the Minister's Office **by day 15** of the 20-working day timeframe (if an extension was not granted).
- Sending the response is then the responsibility of the Minister's Office. If a response is not sent to the requestor by the Minister's Office before day 20, but the Ministry provided a response to the Minister's Office within 15 working days, it is still considered on time for the Ministry's reporting.
- Once the response is sent by the Minister's Office, they will provide the advisor with a copy of the final response.

- Date sent to media team
- Date response sent to requestor (if this box is not ticked, the OIA may be counted as 'late').
- The Ministry's reporting Key Performance Indicator for CE OIA responses is 95 per cent on time.

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