

Summary of feedback from OI Forum workshop 13 August 2019

Review of the policy on the proactive release of Cabinet papers

Cabinet asked for the policy on the proactive release of Cabinet papers, commencing 1 January 2019, to be reviewed, with input from agencies, including whether:

- the objectives of the policy are being met
- changes are required to improve the effectiveness and clarity of the policy and the supporting procedures, and
- the policy should be broadened in any way.

Following the review, an ongoing monitoring regime and reporting of proactive release statistics is to be formalised.

Objectives of the policy

- To establish a process for the proactive release of more government information (to increase its availability, enable more effective public participation and promote the accountability of Ministers and officials)
 - ensuring New Zealand does not fall behind other jurisdictions on proactive release practices
 - reducing or changing the nature of OIA requests
 - enhancing New Zealand's reputation for being transparent and open

In the workshop, we asked:

- Has it resulted in any policy or process changes in the way your agency prepares or proactively releases information?
- Has your agency seen a change to the number or nature of OIA requests received?
- What challenges have you experienced in meeting the release expectations of the policy?
- Is there any additional guidance or support required?
- Are there any areas where the policy needs to be changed, or you could see it being extended?

What agencies told us (see the appendix for the full set of comments)

Policies and processes

They have been updating their policies and processes, and applying concepts of proactive release across types of documents i.e. OIA responses, Cabinet papers, and other types of documents.

Those who had existing policies for publishing OIA responses have been able to build on that.

This has included looking at their tracking/workflow systems or tools.

The practice is generally seen as positive, although the lack of protection for proactively released documents, and the related due diligence considerations, mean there is a naturally more conservative approach to release.

Some agencies report some pragmatic changes to the way they structure their documents to make proactive release more straightforward, for example placing information that may need to be redacted in separate sections.

Changes to number or nature of OIA requests?

The Cabinet paper policy obviously does not impact on agencies that produce few or no Cabinet papers. These agencies are not seeing any changes in the nature or number of requests over and above the general upward trend in OIA requests.

There has been some benefit for other agencies in being able to either refer OIA requestors to published documents, or to advise that they will soon be publicly available, however this appear to have been marginal.

There have also been additional requests following on from proactively released material.

Some have found the move towards proactive release has increased requesters' expectations of openness, including from Ministers.

Challenges

The release of Cabinet papers also requires a new way of working with Ministers' offices, as agencies can only advise regarding release, and the Minister makes the final call (albeit this is a similar process to Ministerial OIAs prepared by agencies).

The 30-day timeframe can be challenging, especially when consultation with legal teams or other agencies is required, as well as allowing for publication resourcing within agencies. Giving the standard capacity pressures within a minister's office, getting ministerial approval in a timely way can also be difficult, especially if more than one minister is involved, and/or there are competing priorities.

Agencies are also finding Ministers may change their minds re the timing of the paper's release between its consideration and the scheduled publication date. As the release is at ministers' discretion, this is allowed for in the policy. However, it can mean agencies and ministers' offices are working to different timelines, and can cause difficulties for the publishing agencies, for example getting decisions made in a timely way so they have sufficient notice/lead time to allow for their internal publishing processes to be followed.

Travel papers, drafted in the Minister's office, are being prepared for release by agencies. Unlike above, agencies will not have had direct input into the drafting, are reliant on advice from the office, and still need to publish on agency websites. Consultation with other agencies, including with MFAT where required, eats into the time. However, Ministers can choose to release the travel paper and report together, which has a number of benefits. Agencies are encouraged to have these conversations with their Ministers' offices.

Agencies also need to build capability in this area. This is a new environment and set of practices that bring a different skill set, and new knowledge beyond the OIA when it comes to "due diligence" considerations and protecting agencies and ministers against liabilities. This has meant more involvement by legal team than might have occurred previously.

The policy also increases capacity pressure in an area that is already commonly stretched, especially in small- to mid-sized agencies.

It also requires staff to think and sometime write, or at least structure, their documents in different ways.

Some of these challenges have been exacerbated by the limitations of document management systems or workflow tools in some agencies.

Note there is some new CabNet reporting being developed the Cabinet Office that should help agencies track the progress of Cabinet items through the system, which will in turn assist with publication planning and tracking.

Additional guidance or support

The biggest gain look like it will come from agencies sharing tools, policies and procedures.

Reporting

There is general view that centralised reporting of proactive release is preferable. This provides structure and consistency around reporting, as has largely occurred with the OIA statistics. This also increases the visibility of this practice, and potentially the utility of proactively released material by creating a centralised resource that points to proactive release pages on agency websites (noting that not all agencies have this.)

The general view was to capture this information six-monthly along with the OIA statistics, balancing transparency with managing the burden on agencies.

With regard to what measures should be used, the most common suggestion was the total number of Cabinet papers released in full, and with redactions.

Measurement of the timeliness of release in relation to the policy would see the reprinting of a percentage and/or number released within the 30 days or according to the stated intention in the paper.

This aspect considered harder due to the dependence/discretion of minister with regard to release, and that this may not reflect the work put in by agencies.

The suggestions were mostly related to measuring the release of cabinet papers. The measurement of other proactive release is more difficult, partly due to the issue of “what do we count, and how to we apply this consistently across agencies”, and partly the question of “what are we trying to show/demonstrate/achieve by measuring this?”

Appendix: compiled comments from 13 August

Changes to policies and processes?

Sensitive information that may need to be withheld is being “clumped” in documents and labelled to speed up review and redaction (where necessary)

A register of proactive releases is being kept

Following similar principles in briefings, seeking agreement to publish on agency website

Agencies are using proactive release positively

Some agencies it is now the default to put the OIA response online e.g. Pharmac

Some very limited release already in place, but have had to develop new policy/process

Some policy change to rest of proactive release processes, e.g. s 18(d) OIA

MBIE has developed policy and procedures for PR due to volume.

Now getting on the radar for other agencies

Basic tracking information in workflow systems/spreadsheets.

Categorise/quantitative narrative – paper types – information/agency types

Yes - PR policies and process in place, training and guidance

Generally as for OIA process

Sometimes may err on the side of caution with regard to due diligence (in which case not using the OIA related text in OIA cover page)

Starting to work with Minister’s office on releasing travel papers

Changes to number or nature of OIA requests?

More requests, some more specific, some for “more of the same”

Seen more OIAs – more blanket requests from media

General expectation that more information will be released

Some OIAs have been able to be referred to Cabinet releases

No noticeable changes to OIA requests

Some requests are being refused under 18(d) in that they will soon be publicly available

Number: no, Nature: yes. Education now publishes list of tables, now see fewer filing OIAs

Have not noticed a change in number or nature of OIAs

Yes and no – more requests for correspondence/supporting material to PR material – politicians and media asking mostly.

More requests for former Minister’s material

Challenges?

Agreeing timelines can be challenging, especially where other agencies are involved, and needing to factor in the time at the Minister's office

Managing differences with what has been released previously

Coming at the same time as the release of ministerial diaries

Struggling to meet 30 working days – is the timing realistic? Possible review?

Joint reports – new policy developed, but agencies are at different places

Determining how to incorporate Cabinet papers into existing process has been a challenge

Biggest challenge has been the bottleneck of the Minister's office – limited physical resource in the Parliamentary Office

Do need to give material for proactive release a careful review – another step in the process

Added secrecy provision in legislation – added dimension for some agencies. Not so relevant to Cabinet Paper, but OIA releases

What is soon? Ombudsman - 8 weeks – no guidance from Speaker

Challenge embedding culture of PR. Very limited prior experience

IT challenges – website, workflow monitoring. Differentiation in purely transitional OIAs

At time of OIA preparation and delivery, Education OIA advisors prep a response to proactively release

Overarching information management issues are a key operational challenge for several agencies. Document management is very tough

Meeting timeframes, getting papers across the line, people following the instructions

Travel papers – approval paper and report back should be a package – very inefficient do as two releases

Some Ministers delay publication [note – this is allowed for in the policy]

It will vary and outside our control

Distributed agency will need centralised team – large number of portfolios

Need to develop resources for legal

No workflow tool

Urgent timeframes hard to meet with current resourcing

Additional guidance or support?

Request for agencies to share tools, policies and procedures

Changes to the policy?

Issues more around guidance, consistency, sharing best practice (for example releasing travel papers and reports back as a “set” rather than two individual releases).

Reporting

Link to proactive release sites on agency websites (where applicable – some proactively release in dispersed, subject matter specific way)

High value types [appears to relate to what is reported]

Collect centrally to allow comparison

Volumes still slow

Recording for withheld material

Balancing ministerial expectations

Should have published vs what was published is known

Smaller agencies or agencies with low volumes life is easier

What the goal – what do the numbers tell us vs assurance to public that agencies are proactively releasing “properly” i.e. what is the public interest, yardstick etc.

Agree with central periodic reporting – wrap Cabinet papers into that

Capture number of papers released in full and number of those with redactions

MBIE captures number of papers subjected to release, number released on time, delayed in Minister’s office or subject to announcement

Frequency – six monthly (with OIA Stats)

Not the number, maybe the percentage released within 30 days/due date (of those that have been agreed for release)

Can give total number published and redactions made

Good to report released in full, released in part, not released

We do not know what we do not know due to self-reporting model

SSC should collect all OIA stats

Timeliness important – 30 working days

Portfolio numbers and total papers overall

Verbal comments in final discussion - not recorded on feedback sheets:

Measuring volumes is good, but timeliness is harder, and is a ministerial measure rather than an agency one

Timeliness reflects ministerial discretion and will not reflect the work done by agencies

Records types of papers

More time is needed for this to come BAU, for agencies and the interactions with Minister’s offices