



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
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Policy for Official Information Act 1982 Requests

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Ministerial Services
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Purpose

This policy explains how to respond to requests made for official information. It provides a step-by-step overview of the process and offers guidance for each step in the process, including templates and checklists. Following these steps will help you to ensure the Ministry meets its obligations under the Official Information Act 1982 (OIA).

The Official Information Act 1982 is a statute of constitutional importance. As was said by Cooke P in *Commissioner of Police v Ombudsman* 1 NZLR [1988] 385 at page 391, "the permeating importance of the Act is such that it is entitled to be ranked as a constitutional measure".

Background

A background to the OIA can be found at the back of this policy document (see page 32).

Scope

This policy must be followed by staff, including contractors, both on and off-shore who respond to any request for official information on behalf of the Ministry. Refer to the relevant [How Do I](#) and [OIA process description](#) to determine whether a request for official information can be responded to as business as usual or needs to be put into the formal OIA process and logged by Ministerial Services.

Requests can be made in any format including verbally, although they are most often made in writing. The request does not have to mention the OIA, or be worded in a specific way. If the request asks for information held by us that is not already freely available on our website or in our publications or cannot be made available quickly as part of business as usual, it must be handled according to the OIA process.

"Official information" is held in a variety of forms, and includes internal rules and policies, emails, meeting notes, and employee recollections.

This policy covers two types of OIA request process:

- 1 Departmental OIA requests** – These relate to a request made directly to the Ministry. Follow [PROCESS 1](#) (page 12 onwards). Green folders should be used for hard copies of departmental OIAs and they are available from Ministerial Services.
- 2 Ministerial OIA requests** – The request is made to one of our Ministers. In this case the Private Secretary will refer the request to us to prepare a draft response or advice for the Minister. Follow [PROCESS 2](#) (page 26 onwards). Blue folders should be used for hard copies of Ministerial OIAs and they are available from Ministerial Services.

Business groups

You should consult your business group and Ministerial Coordinator or relevant ODCE advisor to determine which approach is the most appropriate to take in responding to an OIA request you have received where you are unsure about the correct process to follow.

Key points

- All departmental OIAs should be processed using an appropriate covering memo unless they require Ministerial consultation or decision. Departmental OIAs requiring Ministerial consultation must use the Briefing or Aide Memoire template depending on a Minister's preference. Ministerial OIAs must use the Ministerial OIA Briefing template.
- To meet the requirements of the OIA, the Ministry must make and communicate its decision on the request *"as soon as reasonably practicable"* and **no later than 20 working days** after the day the request was received. Extensions can be made within the original 20 working day timeframe.
- Extensions must be advised to the requester within 20 working days of the request. If it is a Ministerial OIA a decision on this must be made in consultation with the Minister's Office and an extension letter provided by the 15th working day. In exceptional circumstances an extension can be notified up to and including the 20th working day to ensure compliance with the law.
- Depending on the business group, Deputy Chief Executives have delegated OIA sign off to either Tier 3 or Tier 4 Managers. Managers are responsible for the content of the response so it is important that a Manager has reviewed the response, including any decisions made on information being withheld.
- Ministers or their Offices should be provided with a noting briefing on all departmental OIAs where it is determined they have an interest in the Ministry's intended response (five full working days before any official information is intended to be released). This ensures a *"no surprises"* reaction from the Minister's Office as a result of any media articles or public statements following the release of information.
- Under *"no surprises"* the Ministry should advise our relevant Minister about any request for official information that is *"particularly sensitive or potentially controversial"*. This would cover all requests made by opposition MPs, opposition political parties, journalists, bloggers and special interest groups. The decision on how to respond to the request is made by the Ministry in accordance with the OIA.
- If a departmental OIA subject to consultation requires substantial work or a number of related requests have been received from the same requester or group of requesters, please contact the Minister's Office within five working days of receipt to inform them about the number of requests and how they are to be managed.
- The Minister for Economic Development's Office is to be provided with a noting briefing on all departmental ownership OIAs received by the Ministry. Departmental ownership OIAs relate to cross Ministry information, for example, staffing, consultants, contractors, international travel, industrial relations, and gift expenditure.
- Transfers must be advised to the requester within 10 working days unless this timeframe is extended – for Ministerial OIAs the Minister's Office must be alerted to the possibility of a transfer within the first five working days.

- All Corporate Services and Strategy and Governance OIA Briefings to Ministers must be signed off by Ministerial Services before they are signed out to Ministers.
- Links to external guidance and advice can be found on pages 48 and 49.
- Sample letters can be found in the appendices at page 50 onwards.

Policy Owner

Ministerial Services is the owner of the MBIE OIA Policy.

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Step-by-step daily guide

1A Departmental OIA request (no Ministerial consultation)		
Day	Step	Notes/considerations
Day 1	<p>Receipt and acknowledgement</p> <ul style="list-style-type: none"> Request received by the Ministry. Acknowledgement letter sent by Ministerial Services. The Ministry decides whether the request, or parts of it, needs to be transferred to another government agency or Minister. Request is entered into Ministerial database by Ministerial Services and allocated to the appropriate Business Group to action. The Business Group allocates it to an analyst or writer. 	<p>A transfer <u>must</u> be made within 10 working days (section 14) and <u>must</u> be processed through the Ministerial Services database system.</p>
Day 2-11	<p>Scope request and draft reply</p> <ul style="list-style-type: none"> The analyst or writer and team leader/manager discuss the scope of the request and determine the approach. Consult subject experts and peer reviewer early in the process. Draft the response based on appropriate scoping and consultation. Legal Services <u>must</u> be consulted on major releases or if you are proposing to withhold information regarding complex requests, or high or critical risk requests. Communications <u>must</u> be consulted on all requests from the media. If the information requested belongs to another agency, you <u>must</u> consult that agency on the proposed approach. A Memo to the Tier 3 General Manager or Manager signing out the response should be prepared, if a Minister is not being consulted. 	<p>This could be started on Day 1. Check if there are previous OIA requests from the requester and whether they relate.</p> <p>Check if there are previous OIA requests on the same topic and what the approach to that request was.</p> <p>To identify information within the scope of the request, you may need to check:</p> <ul style="list-style-type: none"> emails (inbox and sent items) physical and electronic files Ministry or Business Group weekly reports information held by the Minister's Office meeting notes (held by Ministry/Business Group or Minister's Office). <p>Also check with the subject expert that you have identified all information within scope of the request.</p>
Day 12-13	<p>Peer review</p> <ul style="list-style-type: none"> Draft response (and Memo) is provided to peer reviewer or reviewers for comment or amendment. 	<p>Initial consultation with peer reviewer should occur at the beginning of the process. Use the OIA Memo template. Include spaces for Legal Services or Communications in the sign-off list if they have been consulted.</p>
Day 14-17	<p>Sign-out</p> <ul style="list-style-type: none"> Response (and Memo) is finalised for Business Group sign-out. 	<p>If information is to be withheld, clean copies of the full document or documents must be included in the file for comparison.</p>
Day 18-19	<ul style="list-style-type: none"> Business Group sign-out. 	<p>The appropriate Business Group Manager must have two days for consideration and sign-out. Advise the PA if it is late.</p>
Day 20	<p>Send response to requester</p> <ul style="list-style-type: none"> The decision must be communicated by the Ministry. 	<p>OIAs should be processed as quickly as reasonably practicable. These guide timeframes are the maximum permissible, unless a request is extended.</p>

1B Departmental OIA request (Ministerial consultation)

Day	Step	Notes/considerations
Day 1	<p>Receipt and acknowledgement</p> <ul style="list-style-type: none"> Request received by the Ministry. Acknowledgement letter sent by Ministerial Services. The Ministry decides whether the request, or parts of it, needs to be transferred to another government agency or Minister. Request is entered into Ministerial database by Ministerial Services and allocated to the appropriate Business Group to action. The Business Group allocates it to an analyst or writer 	<p>A transfer <u>must</u> be made within 10 working days (section 14) and <u>must</u> be processed through the Ministerial Services database system.</p>
Day 2-6	<p>Scope request and draft reply</p> <ul style="list-style-type: none"> The analyst or writer and team leader/manager discuss the scope of the request and determine the approach. Consult subject experts and peer reviewer early in the process. Draft the response based on appropriate scoping and consultation. Legal Services <u>must</u> be consulted on major releases and if you are proposing to withhold information regarding complex requests or, high or critical risk requests. Communications <u>must</u> be consulted on all requests from the media. If the information requested belongs to another agency, you <u>must</u> consult that agency on the proposed approach. A Briefing/Aide Memoire to the appropriate Minister(s) on the proposed response is required if the request relates to: Opposition MPs and Researchers, Political Parties, Media, Bloggers, Special Interest or Lobby Groups, Unions. 	<p>This could be started on Day 1. Check if there are previous OIA requests from the requester and whether they relate.</p> <p>Check if there are previous OIA requests on the same topic and what the approach to that request was.</p> <p>To identify information within the scope of the request, you may need to check:</p> <ul style="list-style-type: none"> emails (inbox and sent items) physical and electronic files Ministry and Business Group weekly reports information held by the Minister's Office meeting notes (held by Ministry/Business Group or Minister's Office). <p>Also check with the subject expert that you have identified all information within scope of the request.</p> <p>Immigration New Zealand provides an Aide Memoire for the purposes of Ministerial consultation.</p>
Day 7-8	<p>Peer review</p> <ul style="list-style-type: none"> Draft response (and Briefing) is assigned to peer reviewer for comment/ amendment. 	<p>Initial consultation with peer reviewer should occur at the beginning of the process. Use the Departmental OIA Briefing template or Aide Memoire OIA template. Include spaces for Legal Services or Communications in the sign-off list if they have been consulted.</p>
Day 9-12	<p>Sign-out</p> <ul style="list-style-type: none"> Response (and Briefing) to the OIA is finalised for Business Group sign-out. 	<p>If information is to be withheld, clean copies of the full document must be included in the file for comparison</p>
Day 12-13	<ul style="list-style-type: none"> Business Group sign-out. 	<p>The appropriate Business Group Manager must have two days for consideration and sign-out. Advise the PA if it is late.</p>
Day 14	<p>Brief Minister</p> <ul style="list-style-type: none"> Response (and Briefing) to the OIA request 	<p>This allows five full days for the Minister's Office to process and consider the reply the Ministry intends releasing. All copies are made by the Business Group. Remember to</p>

	is delivered to Ministerial Services and sent to the relevant Minister's Office or Ministerial Offices for consideration by midday on day 14.	keep a copy in the Ministry/Business Group.
Day 19	<i>Feedback from Minister's office</i> <ul style="list-style-type: none"> The Minister's Office or Ministerial Offices must return the signed, seen or cleared briefing to the Ministry for processing by the relevant Business Group. 	Make sure that questions or requests for more information from Ministerial Offices are responded to as quickly as possible to ensure an OIA is not held up.
Day 20	<i>Send response to requester</i> <ul style="list-style-type: none"> The decision must be communicated by the Ministry. 	

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2 Ministerial OIA request

Day	Step	Notes/considerations
Day 1	<p>Minister's Office acknowledgement</p> <ul style="list-style-type: none"> Request received and acknowledged by the Minister's Office. Minister's Office and Ministry decide whether the request, or parts of it, needs to be transferred to another Minister or government agency. Request is entered into Ministerial database by Ministerial Services and allocated to the appropriate Business Group to action. The Business Group allocates it to an analyst or writer. 	A transfer <u>must</u> be made within 10 working days (section 14) and <u>must</u> be processed through the Ministerial Services database system
Day 2-6	<p>Scope request and draft reply</p> <ul style="list-style-type: none"> The analyst or writer and team leader/manager discuss the scope of the request and determine the approach. The team leader/manager will discuss and confirm the proposed approach with the Minister's Office. Consult subject experts and peer reviewer early in the process. Draft the response based on appropriate scoping and consultation. The Minister's Office <u>must</u> be consulted on the proposed approach. Legal Services <u>must</u> be consulted on major releases and if you are proposing to withhold information regarding complex requests, or high or critical risk requests. Communications <u>must</u> be consulted on all requests from the media. If the information requested belongs to another agency, you <u>must</u> consult that agency on the proposed approach. 	<p>This could be started on Day 1.</p> <p>Check if there are previous OIA requests from the requester and whether they relate.</p> <p>Check if there are previous OIA requests on the same topic and what the approach to that request was.</p> <p>To identify information within the scope of the request, you may need to check:</p> <ul style="list-style-type: none"> emails (inbox and sent items) physical or electronic files Ministry or Business Group weekly reports information held by the Minister's Office meeting notes (held by Ministry/Business Group or Minister's Office). <p>Also check with the subject expert that you have identified all information within scope of the request.</p>
Day 7-8	<p>Peer review</p> <ul style="list-style-type: none"> Draft response is assigned to peer reviewer for comment/ amendment. 	Initial consultation with peer reviewer should occur at the beginning of the process. Use the Ministerial OIA Briefing template .
Day 9-12	<p>Sign-out</p> <ul style="list-style-type: none"> Response to the OIA is finalised for Business Group sign-out. 	If information is to be withheld, clean copies of the full document must be included in the file for comparison.
Day 12-14	<ul style="list-style-type: none"> Business Group sign-out. 	The appropriate Business Group Manager must have two days for consideration and sign-out. Advise the PA if it is late.
Day 15	<p>Recommend response to Minister</p> <ul style="list-style-type: none"> Response to the OIA request is delivered to Ministerial Services. The OIA request is delivered to the 	This allows five full days for the Minister's Office to process and consider the reply. All copies are made by the Business Group. Remember to keep a copy in the Ministry/Business Group. Make sure that questions or requests for more information from Ministerial Offices are responded to as

	Minister's Office for consideration and action.	quickly as possible to ensure an OIA is not held up.
Day 20	<i>Minister's Office sends response to requester</i> <ul style="list-style-type: none"> • The decision must be communicated by the Minister's Office to the requester. 	

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Process 1A and 1B – Departmental OIA requests

1 *OIA request received*

OIA requests may be received anywhere in the Ministry, by email, by letter, by someone asking at reception, or by phone call or in any other form. If you get a request for information that is not freely available on our public websites or in any other publications and cannot be made available quickly as part of business as usual, process it in accordance with this procedure.

Consider whether the requester is eligible to make a request under the OIA. Only the following may do so:

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

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

2 *Send to Ministerial Services*

As soon as the OIA request is received, send it to [Ministerial Services](#). Ministerial Services are the central point for all Ministry OIAs and must be notified. The email address is uia@mbie.govt.nz.

3 *Receive, log and acknowledge request*

Ministerial Services will log the request, and they will send acknowledgement of receipt to the requester.

If the scope of the request covers the whole Ministry, for example, the Ministry's four-year plan or use of contractors or consultants, Ministerial Services will coordinate and complete the request.

If the scope of the request is not Ministry-wide, Ministerial Services will allocate the request to an appropriate business group based on the content of the request.

Note - If you receive a request and the information is not held by your team, contact your business group ODCE and Ministerial Services straight away so it can be reallocated and dealt with within the 20 working day timeframe.

To help you answer the OIA, the allocation email will include an OIA tracking number. This number must be quoted on all documentation and in all correspondence with Ministerial Services to ensure there is no confusion between similar requests or frequent requesters. Ultimately the request will be filed (electronically and in hard copy) using this OIA tracker number, for example OIA 0123.

4 Transferring a request

If all the information is held by another party that is also subject to the OIA, or is more closely connected with the functions of another party, you must transfer the request. You can also transfer part of the request if needed. Or, if some information will come from another party, you may choose to coordinate the response. Your Manager must make the final decision about the appropriate course of action.

If you choose to coordinate the response, the timeframes set out in the OIA apply: a decision must be made and communicated to the requester on the request within 20 working days of the Ministry's receipt of the request. If you transfer part of the request to another organisation the timeframes will reset: a decision must be made and communicated within 20 working days of that organisation receiving the request from the Ministry.

Check that the agency you want to transfer the request to is subject to the OIA or the Local Government Official Information and Meetings Act 1987 (see Schedule 1 of the [OIA or OA](#)). Use the transfer letter template to transfer the request and send a copy to Ministerial Services. If you think more time is needed, go to Step 5.

If you transfer all or part of the request, you must do this promptly and **within 10 working days after receipt of the request** (section 14). **This timeframe can be extended.** Use the [transfer letter template]. Send a copy of the letter to Ministerial Services.

5 Scoping a request

Scoping the request is one of the most important things to do at the beginning of preparing a response to an OIA. This will ensure that you have all the relevant information you need for a quality answer that meets the 20 working day requirement.

To start with you will need to conduct a preliminary assessment to find out:

- Whether the requester is eligible to make an OIA (see section 10(a) below)
- Whether the request is urgent (see below)
- If the information requested exists already (see below)
- How long you estimate it will take to gather, process and copy the information
- Who you need to consult with in order to respond to the OIA
- A tentative plan which includes timings for consultation, preparation of the documentation, sign-off process and sign-out.

Also consider these questions when scoping the request.

Has the requester asked for an urgent response?

A requester may ask for the request to be treated as urgent if they give a reason (see section 12(3)). If a reason has not been provided you can ask for one. You are not obliged to treat any request urgently but you must assess the request (on a case-by-case basis) and respond appropriately.

All requests must receive a response as soon as reasonably practicable and within 20 working days of receipt unless an extension is notified (see step 6 below).

Tell the requester as soon as possible if you think the urgent timeframe cannot be met and tell them why for example, the practicalities of collating information from multiple work groups. You can provide your reasons by phone, email or formal letter. Remember to keep good notes about the decision you made and *how* it was made. Seek advice from your Manager, Legal Services or Ministerial Services if needed.

You may also consider releasing some information as a matter of urgency and providing the remainder within the normal time limits.

Note - The OIA does not authorise the investigation by an Ombudsman of complaints about failure to accord urgency. However, such complaints could be investigated under the Ombudsmen Act 1975. Therefore it is important that the Ministry acts reasonably in relation to any requests for urgency.

What is the request *literally* asking for? Do you need to ask for further clarification?

Do not guess or assume. If the request is unclear the OIA (see sections 12(2) and 13(b)) allows you to ask the requester for clarification. Get Managerial approval before engaging directly with a requester. Contact should be made by phone or email. If by phone, follow this up with written confirmation to the requester of the discussion. If the request is potentially high risk, consult Communications, Legal Services or Ministerial Services as well.

If you can narrow down the nature of the request, the requester will receive the specific information he or she is seeking and may receive a faster response. It may also avoid the need to charge the requester (see step 7 for more information about charging). Briefly document all discussions with the requester and the outcome.

Liaise with Communications, Legal Services or Ministerial Services early on as needed on procedures (particularly for whole of MBIE and Minister-referred requests). Early engagement is particularly important where information will be withheld or refused for any reason under the OIA, or where a charge for releasing information may apply.

If the request cannot be narrowed down you can:

- Request a time extension (see step 5)
- Charge for the request (see step 7)
- Refuse the request, but only under section 18 (see step 10).

Does the request involve multiple work groups?

If the request involves information held across work groups make sure a Manager or, if appropriate, a staff member is coordinating the response. If it will involve extensive collaboration, consider holding a meeting (actual or virtual) of all the parties involved to discuss the scope and timeframes.

If you think it is a whole of MBIE request, refer it back to Ministerial Services. If other government agencies are involved, you may need to transfer all or part of the request (see step 5 below).

Does the information requested exist?

If it does not exist, you do not have to create it just to respond to the request. It may be that there was no need to report on the activity or that it was not recorded in a way that could easily be reported.

Check with your Manager and note the following:

- A request may be refused on the grounds “that that the document alleged to contain the information requested does not exist or cannot be found” (see section 18(e)); and
- If this is the case, you must consider consulting with the requester so they can narrow or clarify their request (see section 18B).

Does the information requested involve researching lots of information or need a large amount of collation?

The requester may be unaware of the amount of information in the scope of their request. It is acceptable to ask for clarification about the information requested. If you need clarification, get Managerial approval before contacting the requester. While section 18(f) does allow for refusal “because the information request cannot be made available without substantial collation or research”, you **cannot** refuse a request on these grounds if asking the requester for clarification (see section 18B) would remove the issue.

Before refusing under section 18(f), you must also consider whether charging for the information (see section 15) or extending the timeframe (see section 15A) would be an appropriate course of action (see also steps 6 and 7 below).

Is the information requested already publicly available or soon to be released?

If this is the case for some or all of the information, you can refuse the whole request or just the publicly available aspect of the request (see section 18(d)). You should provide the requester with details of how and where to access the information wherever possible, for example, a hyperlink (see also step 9 below).

Is it a Privacy Act request?

The OIA deals with *any* official information, including that about a company or other body of persons¹. There are special rules in the OIA governing:

- Requests to bodies corporate for personal information about themselves (see OIA Part 4)
- Requests for internal rules affecting decisions (see OIA section 22)
- Requests for a statement of the reasons for a decision or recommendation affecting the requester.

The Privacy Act 1993 deals with information about any identifiable natural person, other than a deceased natural person.²

If someone requests information about themselves, this should be considered for release under the Privacy Act, not the Official Information Act. Some requests may fall under both Acts. Contact Legal Services or Ministerial Services for advice on Privacy Act releases or if you are unsure which Act applies.

Is it a request from the Media?

You must involve Communications at an early stage and they should review all releases. Communications staff may be the key relationship manager with the requester.

¹ Body politic, corporate or collegiate and any company, fraternity, fellowship or society of persons whether corporate or not

² A real human being, rather than a legal person, which may be a private (i.e. business entity) or public (i.e. government) organisation.

Is it for information held by the Minister?

Consider whether the request, or part of it, should be transferred to the relevant Minister's Office. Ask Ministerial Services for advice if needed. If you do not transfer the request, adopt a "no surprises" approach and keep the Minister's Office informed at all stages as appropriate (see page 45).

How much time is needed?

See Step 5 below for further details.

Has the request also been made elsewhere?

Some requests will be made across multiple parties (including to the Minister and other government departments or agencies). If you know or suspect this is the case, discuss it with your Manager or Ministerial Services at the earliest possible opportunity. This will ensure that the response is handled in a coordinated and consistent way

6 Extending a request

The requester must receive a decision on whether the information will be released or withheld within 20 working days of receipt of the request. The information requested should be released at the same time as the decision. If it is released later, the time frame must be reasonable and must be signalled in the decision letter.

Note – You can check the deadline for 20 working days using the OIA Response Calculator on the front page of the [Ombudsman's website](#). Scroll down to bottom the left-hand side of the webpage for the calculator and enter the received date.

If a decision cannot be made within the original 20 working day timeframe, section 15A allows for one or more extensions within the original 20 working days. You must inform the requester about an extension using the extension letter template (letter to include all the information required as per section 15A). Any new timeframe must be reasonable and appropriate to the circumstances.

An extension under section 15A is only allowed if:

- the request is for a large amount of information or requires a search through a large amount of information and meeting the 20 working day timeframe would unreasonably interfere with Ministry operations; or
- consultations needed to make a decision about the request are such that a proper response cannot be reasonably made within the original time limit.

Make sure you are realistic about the timeline, particularly if the Minister's Office, other work groups or other agencies are involved, or if the request requires substantive collation and research. If the time limit is exceeded, it is generally treated as a refusal of the request and may be the subject of an Ombudsman complaint.

How much time will I need?

Consider the timeframes for preparing your OIA response and whether you will need an extension. Things to think about:

- Is it going to need to go to the Minister for consultation? **5 working days minimum.** Check when the courier bags go to the Minister's Office to make sure you can make it in time. OIAs are due in the Ministerial Offices at midday.
- How long will your Manager need to review the draft? **Minimum 2 working days.** Does it need to go to Legal Services? **Minimum 2 working days.** You should take advice from Legal Services or Ministerial Services if you need to withhold or refuse all or part of a request. However, they will not usually perform a QA of the whole response/file unless agreed to by prior arrangement.
- Review by Communications. **Minimum 2 working days.** All responses need to be run past the Lead Communications Advisor before going to the Minister's Office. This will be noted on the response.
- Who will do your peer review? How long will they need?
- How long will you need to pull the information together, copy it, and redact/delete any information that needs to be withheld? It is preferable to extend when in doubt rather than provide a response a few days late.
- Do you need to consult anyone else to release any of this information? (If this is a third party consultation)
- How long will preparing the final response take? (Normally this would take as little as a couple of hours, but if it is a large document and significant scanning is required it can be more).

7 Charging for a request?

Charging for information is not a step that should be taken lightly and the decision to charge must only be made with the involvement of **Senior Management**.

We can charge for providing official information if "reasonable" costs can be identified. This includes charging for any labour and/or materials involved in making the information available (see section 15(2)). However, if the decision to charge would cause the requester financial hardship or if there is public interest in releasing the information you must not charge the requester. We cannot charge for time spent deciding whether or not to release information.

Use [the Ministry of Justice guidelines](#), clearly document any recommendation and take advice from Legal Services, your ODCE and Ministerial Services. Confirm the decision with senior management through your Manager before you inform the requester.

If senior management agree to charge, you must inform the requester of the charge before starting work on the preparing the information to be supplied. Include the following as appropriate:

- An estimate of the charge
- Whether the whole or any part of the charge needs to be paid in advance and when the remainder is due
- A request for written confirmation that the requester is willing to pay the charge (in advance if needed) and they understand that the process will continue on this basis
- A Ministry contact for the requester to discuss the charges if he or she wishes to
- Details of the right to seek an Ombudsman review of the estimated charge
- Information about how the charge may be reduced

- Information about payment options if the charge is substantial.

Do not start preparing the information for release until the requester has confirmed whether they are willing to accept the charge. They may refuse to accept the charge, or change the scope of the request, which would mean time and resources spent preparing the initial response would be wasted.

Note - We must not charge for requests from Members of Parliament, including political parties, and should not charge reporters or journalists.

8 Collating and analysing information

Organise meetings and any discussions regarding approaches to the collation of the material, including coordination/liason across the business unit and/or group, the Ministry, the Minister's Office and other agencies or third parties as appropriate.

Document all decisions with respect to the response (for example, around criteria for making decisions, the decision itself and who was involved in the decision).

Note any risks or perceived risks in the Briefing and take appropriate action (for example, engagement with Communications or obtaining legal advice from Legal Services).

Note – Assessing risk profile of a release or response

Is the request from an opposition MP, political party, journalist or lobby group? Is the subject current or sensitive or has the potential to be controversial? Does the content or documents to be released contradict government policy or statements on the topic? Is a large amount of information being withheld?

Business as usual responses can usually be assessed as **low or medium risk**, for example, where basic factual or statistical is being requested. **High risk** information would be highly controversial or have the potential to be so upon release, and should be signed out by a Tier 3 General Manager or Deputy Chief Executive. Information or a response that has the potential to damage the reputation of the Ministry is deemed a **critical risk** and must be signed out by a Deputy Chief Executive or the Chief Executive.

If in doubt about the risk profile of the request you are dealing with, consult a Lead Communications Advisor, Legal Services or Ministerial Services.

Track all deliverables against the time frames and escalate as necessary.

Remember to save all documentation relating to the request. Ministerial Services will set up an electronic folder for all OIAs that it allocates. Save the documents to that folder. If a folder needs to be set up contact Ministerial Services first. Save documents using appropriate names and details. Refer to the section on naming conventions for guidance on how to name your documents.

9 Inclusion of Cabinet Papers

Cabinet Papers from the current Government

If the scope of the request includes Cabinet Papers, transfer that part of the request to the Minister's Office. Request for Cabinet or Cabinet committee agendas must be transferred to Cabinet Office.

Cabinet Papers from a previous Government

If the papers are from a previous Government, a transfer may not be required, but you must check with your Manager, Office of the Deputy Chief Executive, and the relevant Minister's Office first.

Before releasing these documents you must consult the Opposition via the Cabinet Office and also the Minister's Office. For more information consult the Cabinet Manual Convention on access to Cabinet records of a previous administration at [here](#).

Where documents covered by the convention are requested and are required to be released by law, the convention requires that the Opposition be consulted about the proposed release, so that they can contribute their views (for example, as to whether there is good reason for withholding the documents). The following procedure must be observed in this situation.

- When a Minister's office or a government department receives an OIA request for Cabinet records dating from a previous opposition administration, or is considering releasing such documents for some other reason (for example, a select committee request), the Cabinet Office should be advised as soon as possible.
- The Minister's office or department should give the Cabinet Office a copy of the request and copies of the papers requested, together with the views of the Minister or department concerned on whether there is any reason for withholding the papers sought.
- The Cabinet Office, on behalf of the Prime Minister, will then consult the Leader of the Opposition about the proposed release in accordance with procedures agreed between the Prime Minister and the Leader of the Opposition.
- The Leader of the Opposition will have an opportunity to express any concerns about the proposed release, in terms of the OIA or any other relevant laws or rules. The Cabinet Office will pass on the concerns (if any) to the relevant Minister or department, so that they can be taken into account when the Minister or department decides whether or not to release the information.
- The Minister or department that is considering the release should not release the relevant documents until the Cabinet Office has completed consulting the Opposition, unless required to release the documents by law. If necessary, the time limit for responding should be extended on the basis that consultation necessary to make a decision on the request has yet to be completed.

Note – The Cabinet Office advise that the following information should not be proactively published by government agencies: summaries, which do not provide information additional to that contained in Cabinet papers and/or minutes; distribution lists on Cabinet and Cabinet committee minutes; names and signatures of Cabinet Office committee secretaries; or CAB100 consultation forms that accompany Cabinet Papers. You may wish to take this into account when considering a request for Cabinet

material held by the Ministry under the OIA. Consultation with or transfer to the Cabinet Office may be appropriate when considering such material.

10 Deciding whether to release, withhold or refuse information

There must be good reason to refuse all or part of a request. These reasons have been tested in many cases and precedents set. All grounds for refusing requests are set out in section 18 of the OIA.

Familiarise yourself with section 18 and the [Ombudsmen Practice Guidelines](#) (see Part 1C) before you decide whether to refuse the request. Some key reasons for refusal are listed below.

Before withholding information under section 9(2) you must consider whether there is a public interest in releasing the information that outweighs the reasons for withholding it (section 9(1)).

The decision to refuse or withhold all or part of a request must be approved by your Manager. Legal Services or Ministerial Services should be consulted. Legal Services must be consulted on high or critical risk requests.

Note - A decision to refuse or withhold information can be subject to a complaint under the OIA or Ombudsmen Act. Document all decisions, including sign-offs, approval and sign-out and record them on the risk impact and sign-off sheet.

Key reasons for refusal or withholding information are listed below in summary form. You must read and consider the relevant provisions in the OIA before withholding or refusing information.

Administrative reasons (section 18)

These include reasons such as:

- The information is or will soon be publically available, does not exist or cannot be found
- Release would be contrary to a specific enactment or constitute contempt of court or of the House of Representatives
- The information requested cannot be made available without substantial collation or research
- The information is not held by the Ministry and the request cannot be transferred to another organisation
- The request is frivolous or vexatious or the information requested is trivial.

Conclusive reasons (section 6)

These include reasons such as:

- Release would be prejudicial to the security or defence of New Zealand or the New Zealand Government's international relations
- Release would prejudice the entrusting of information to the New Zealand Government on a confidential basis by other governments or international organisations
- Release would prejudice the maintenance of the law
- Release would endanger the safety of a person

- Release would seriously damage the New Zealand economy.

Other substantive reasons (section 9(2))

These include reasons such as:

- Relating to privacy of natural persons
- Release of the information would disclose a trade secret or prejudice the commercial position of the person who supplied the information
- Release may impact on constitutional provisions which protect ministerial responsibility, the political neutrality of officials and the confidentiality of advice from Ministers or officials
- Release may impact on the ability of officials and Ministers to express opinion freely and frankly
- Withholding the information may be necessary to protect Ministers or officials from improper pressure or harassment
- The information released may be used for improper gain or advantage
- Withholding the information is necessary to maintain legal professional privilege
- Release may prejudice or disadvantage commercial activities
- Release may prejudice negotiations including commercial or industrial negotiations.

11 Withholding information

Create a table of the proposed information to be withheld and/or refused and the reasons for withholding/refusing the information under the OIA. A template table is included in the briefing report templates. Consideration can also be given to including a simplified table in the actual response letter if a large number or complex set of documents are within scope.

Decisions on withholding or refusing information will be made on a case-by-case basis. Legal Services or Ministerial Services should be consulted before editing or redacting any information. Legal Services must be consulted on high or critical risk requests.

Note - Employee names and contact details

Previous practice has been to withhold all staff contact details (phone, email etc.) and the names of all staff below Tier 4. However, current legal advice is that all names should be considered for release unless there is a likelihood of harm such as harassment or threatening behaviour against staff. Final decisions should be made on a case-by-case basis, and if in doubt consult Legal Services or Ministerial Services.

12 Editing information (redaction³)

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

³ Redaction is the act or process of editing or revising a piece of writing and preparation it for publication.

- Redact using appropriate redaction software or mark up a copy of the documents to indicate which parts you want to withhold.
- Get Legal Services 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.

If you do not have access to redacting software, contact Ministerial Services. Redacting software provides a professional and standard look, saves paper and can easily be printed onto OIA imprinted paper. Ministerial Services holds licences for Adobe Acrobat redaction software.

You can also contact Ministerial Services for training or support for this step.

If you are redacting electronically use the scanned copy of your documents. Remember to save it with a different name so you keep a clean copy of the documents. Refer to the naming conventions for more details.

If you are redacting by hand on hard copies, use OIA tape or blank paper taped over the information. White is generally preferable. Remember to keep all your papers in date order. Staff are strongly encouraged to use redaction software.

Print the redacted scan or photocopy 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**'.

Note - If you withhold information you must note using the redaction software against each deletion which section of the OIA applies, even if for the whole response only one section is used. If you are deleting because the information is out of scope of the request, then redact/delete and include "Out of Scope". If several pages are to be deleted under the same ground, just include one page with the withholding provision clearly identified in the **Redacted copy**.

Never send the PDF version with live redacting as it can be undeleted.

You should now have:

- A **Clean copy** set (electronic scan and hard copy) of all information in scope of the request.
- An **Audit or Marked up copy** set of all information in scope of the request with relevant information deleted/redacted, either as a scan or in hard copy
- A **Redacted copy** set of information (electronic scan and hard copy) on OIA paper with all relevant information deleted/redacted.

13 Preparing the response and information

Each release must be accompanied by a response letter to the requester noting all the information released, withheld and/or otherwise refused, and which sections of the OIA apply. Use the appropriate templates to draft the letter and briefing or memo with risk impact and sign-off sheet. The letter must be signed by a manager with appropriate delegation (see section 14 below).

At this point you should have a **full OIA folder** made up of:

- A hard copy of the draft response (letter) to the requester
- A copy of the Briefing or Memo including the Risk Impact and Sign-Off Sheet
- A hard 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 deleted/redacted and appropriate OIA provisions identified. Information released under the OIA should be provided on OIA imprinted paper.

Keep the file 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 file if there is an Ombudsman complaint, a subsequent request for the same information, or a request from the same person about the same issue.

14 Manager sign-out

Managers signing out OIA responses to Ministers or the requester are responsible for the content of the response. You should make sure a manager has reviewed all relevant information material to the requests – he or she will own the decisions made on the release of information. Letters to requesters and Memos (or if required) Briefings to Ministers must be signed out by a Manager with appropriate authority. If there is any uncertainty, confirm that the Manager has appropriate authority before a response is signed and sent.

Note - Depending on the business group, Deputy Chief Executives have delegated OIA sign off to either Tier 3 or Tier 4 Managers.

15 Ministerial consultation

The need for Ministerial consultation may be identified by a Minister's Office or business group. Even if it is not flagged, discuss with your manager whether consultation is necessary. He or she will decide on a case-by-case basis if consultation is needed to maintain a "no surprises" approach. The State Services Commission guidelines on Ministerial consultation are available [here](#). Also refer to the part of this policy headed "No Surprises" (page 45).

Note - Consultation is required with the Minister for Economic Development's office on all MBIE ownership type OIAs. Briefings, attaching the response, need to be provided to the Minister's Office at least five full working days prior to the OIA being released. All briefings need to be run past the Lead Communications Advisor before going to the Minister's Office.

OIAs that need Ministerial consultation or sign out must be with the Minister **at least 5 working days before the 20 working day deadline** for the response to the requester. If the response is complex or a large amount of information is involved, consider extending the timeframe.

Follow these steps if you need to consult with a Minister:

- Prepare a Briefing or Aide Memoire.⁴ Briefing requirements may vary slightly different for each Minister or Minister's office. Use the right template. Contact Ministerial Services for advice.
- Attach the full OIA information set (as outlined in Step 12 above).⁵
- Send the file containing the Briefing and Aide Memoire together with the relevant documents and information to the Minister's Office and wait for a response (if multiple Ministers need to be consulted, make sure they all receive a copy). Do this through your ODCE and Ministerial Services, who will give you details of timings for Ministers' bags. You may also wish to email a copy.⁶
- Consider the response from the Minister's Office and get final signature from your Manager on the response if the request is completed.
- If changes are necessary or more information is needed arrange this and return the papers or provide the information to the Private Secretary.⁷
- The Minister's Office will return the file with the signed briefing to Ministerial Services who will provide it to you to obtain the final signature and send to the requester.
- Notify Ministerial Services as soon as an OIA response and been sent by emailing them and providing, as evidence, a link to the scanned response in MAKO.

Note - Most Ministers like papers to be tagged for ease of reference. Check the Ministers requirements with Manager or contact the Private Secretary. Briefings and papers must be singled sided, and usually unstapled.

16 Saving electronic records

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

- the original request (if this is an email Ministerial Services will have done this)
- acknowledgement letter (supplied to you by Ministerial Services who scan the letter also)
- a **Clean copy** original set of all information in scope of the request to be released
- an **Audit copy** 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 or 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.

⁴ If you want the Minister to sign a noting recommendation, use the Briefing template. If you want the Minister's office to see a response, use the Aide Memoire template.

⁵ If no information was withheld you only need to send the release set.

⁶ If your OIA includes a large amount of documents it may be too big for the bags. Take advice from Ministerial Services on alternative delivery methods.

⁷ Make changes to the marked up set – it is much quicker to make changes and reprint onto OIA paper (and scan).

- any other significant documentation relating to the request such as emails or checklists.

Ensure all the documents are filed on MAKO and send a closure email to oia@mbie.govt.nz together with a link to the scanned final response in MAKO.

Note - It is in your best interests to scan ALL documents. If a complaint is made to the Ombudsman, or a file needs to be reviewed (for example, a further request by the same requester in relation to a closed request), it is easy to search the scanned records. Otherwise you will have to manually search hard copies of the files, which may already have been archived (see below). Refer to the section on naming conventions for how to name documents appropriately (page 29) to make identification and searching easier and effective.

17 *Send to requester and file*

Send the response letter and all the information to be released to the requester and file a hard copy of the request.

Ministerial Services holds the electronic copy as the formal copy of the request. The hard copy is the National Office record and, under the Public Records Act 2005, must be retained. It is up to you and your Office of the Deputy Chief Executive or Manager whether you keep the files in your office, or send them to Records as an archive for storage. Ministerial Services recommends that be retained for a brief period after any story or article is produced based on the information released or reply given.

File all documents using the following naming conventions (see below).

Note - You should usually provide information to the requester in the form in which they made the original request. For example, if the request was made by email, send electronically (but in PDF format). Make sure you send the electronic version of the redacted copy set of information. This will ensure that no electronic redacting is 'live' in the document.

The requester may also specify how they want the information to be made available to them and this must be respected, unless it would impair efficient administration, or for any of the other reasons set out in section 16(2).

Process 2 - Ministerial OIAs

1 *Ministerial OIA request received*

An OIA request is received by the Minister. The Private Secretary will acknowledge receipt. If the request is too broad the Private Secretary will go back to the requester to narrow or clarify the request.

2 *Send to Ministerial Services*

The Private Secretary will, as soon as the OIA request is received, send it to [Ministerial Services](#). Ministerial Services are the central point for all MBIE related Ministerial OIAs and must be notified.

3 *Receive and log request*

Ministerial Services will log the request. Please note that the acknowledgement will have been sent by the Private Secretary in the Minister's Office.

If the scope of the request covers the whole Ministry – Ministerial Services will coordinate and complete the request.

If the scope of the request is not Ministry-wide, Ministerial Services will allocate the request to an appropriate manager based on the substantive content of the request.

Ministerial Services will also send a copy of the request to the Communications Branch. If the lead communications advisor sees any particular problems they will contact the receiving manager. All responses need to be run past the lead communications advisor before going to the Minister's Office.

Note - The request will be emailed to you. The email will include a Ministerial OIA tracking number. This number must be quoted on all documentation and in all correspondence with Ministerial Services to ensure there is no confusion between similar requests or frequent requesters. Ultimately the request will be filed (electronically and in hard copy) using this tracker number.

4 *Transferring a request*

If it appears that the all or part of the Ministerial OIA should be transferred, consultation should be undertaken with the Private Secretary, Ministerial Services and the Manager currently handling the Ministerial OIA. A letter of transfer would be signed by the Private Secretary.

5 *Scoping a request*

Scoping the request is as per Process 1 (page 11).

6 *Extending a request*

The timing is consistent with Process 1. A minimum of five full working days needs to be allowed for the Private Secretary, Political advisor and the Minister to check the material on a case by case basis.

Therefore you must, at the very latest have the material to the Minister's office by midday on the 14th working day.

7 Charging for a request

Charging is as per Process 1 (page 16), but any discussions need to include the Private Secretary. Ministers are highly unlikely to want to be seen charging for official information.

8 Collating and analysing information

Organise meetings and any discussions regarding approaches to the collation of the material, including coordination/liaison across the business unit and/or group, MBIE, the Minister's Office and other agencies/third parties as appropriate.

Document all decisions with respect to the response (for example, around criteria for making decisions, the decision itself and who was involved in the decision).

Note any risks or perceived risks on the Risk Impact Sheet and in the Briefing and take appropriate action (e.g. engagement with Communications/take Legal Advice).

Track all deliverables against the time frames and escalate as necessary.

Remember to save all documentation relating to the request. If an electronic folder has already been set up by Ministerial Services, save the documents to that folder. Otherwise ask Ministerial Services to set up a folder in MAKO as soon as possible.

9 Inclusion of Cabinet Papers

If Cabinet Papers are included in a release, please note the Cabinet Office's advice regarding publication of Cabinet material. Take account of these considerations when determining Cabinet material held by the Ministry for release under the OIA.

10 Deciding whether to release, withhold or refuse information

As per Process 1 (page 18).

11 Withholding information

Create a table of the proposed information to be withheld and/or refused and the reasons for withholding/refusing the information under the OIA. This will form part of the Ministerial OIA Briefing and file.

You must get advice from Legal Services before editing or redacting any information regarding complex release and high or critical risk requests. Decisions on withholding any information will be made on a case-by-case basis.

12 *Editing information (redaction)*

As per process 1 (page 20).

13 *Preparing the recommended response and information*

Each release must be accompanied by a briefing to the relevant Minister's Office. The main difference between a departmental and Ministerial OIA briefing, is that with latter the Ministry is recommending to the Minister what information should be released or withheld. The final decision rests with the Minister as the OIA is addressed to them and relates to information he or she or their Office holds.

Attached to the briefing must be a draft copy of the letter to the requester noting all the information to be released, withheld and/or otherwise refused, and which sections of the OIA apply. Use the appropriate briefing and letter templates to draft these documents.

At this point you should have a **full Ministerial OIA information set** made up of:

- A draft response letter to the requester. Please note this will be in the format appropriate for your Minister's Office.
- A **Briefing** to the relevant Minister outlining what is recommended to be released under the OIA, and where appropriate, noting any risks, including the Risk Impact and Sign-Off Sheet.
- A **Clean copy** original set on plain paper (clipped together and/or in a sleeve) of all information in scope of the request.
- A **Redacted copy** set on OIA imprinted paper (clipped together and/or in a sleeve) of all information in scope of the request, with relevant information deleted/redacted.
- The working documents about the request, for example, the original request, relevant emails relating to the request, a list of any documents being refused release.

Keep the file 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 file if there is an Ombudsman complaint, a subsequent request for the same information, or a request from the same person about the same issue.

If amendments are to be made either Private Secretary will make or will send back to the Manager on a case by case basis.

14 *Manager sign-out*

Managers signing out on the Briefing and draft response to the Ministerial OIA are responsible for the content of the response. You should make sure a Manager has reviewed all prepared responses to requests – he or she will own the decisions made on the release of information. Send the hard copy of the file to the Minister's Office (and copies to Ministerial Offices if more than one Minister is involved). You should also email a scan of the Briefing and associated response and information.

Briefings to Ministers must be signed by a Manager.

Note - Depending on the business group, Deputy Chief Executives have delegated OIA sign off to either Tier 3 or Tier 4 Managers.

15 Send electronic record to Ministerial Services

Once the Ministerial OIA has been signed off on by the Minister, the Private Secretary will return a full set of the documentation to MBIE – it is important that a complete copy of this is provided to [Ministerial Services](#) for the central MAKO file. Ministerial Services will save and scan the returned briefing as this will have the Minister's agreement to any recommendations, as well as any notes or comments made by the Minister. Ministerial Services will also scan and save separately a copy of the response letter and information released. The hard copy will then be returned to the relevant Manager.

16 Send to requester and file

The Private Secretary sends the OIA response directly to the requester and provides a copy to Ministerial Services for storage in MAKO and future reference.

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

OIA Document naming conventions

Individually name documents

All “*scan to me*” documents must be individually named when they are saved into MAKO so that they can easily be located and identified if required later on and for audit purposes, either internally or by the Audit Office. The naming conventions also apply to draft or final version word documents, although without date or signed references.

Naming guidance

Please see below for guidance on expected naming and terminology of documents in MAKO OIA folders. For more information please contact Record Services or Ministerial Services.

Type of document	Recommended name	Guidance
Briefing or Aide Memoire to Minister (sent copy)	<ul style="list-style-type: none"> OIA [number] [requester name] - Briefing to Minister [name] - [sent date] OIA [number] [requester name] Aide Memoire to Minister [name] - [sent date] 	Avoid using “ <i>Signed</i> ” for a sent report as this can be confused with the recipient having signed a report. The copy signed by the recipient is the most significant version. Use as the sent date, the date the briefing is sent to the Minister, and not the date the document is saved into MAKO.
Examples	<ul style="list-style-type: none"> OIA 123 Richard Bicknell - Briefing to Minister Joyce - 01 July 2014 OIA 123 Richard Bicknell - Aide Memoire to Minister Woodhouse - 01 July 2014 	
Briefing or Aide Memoire to Minister (returned copy)	<ul style="list-style-type: none"> OIA [number] [requester name] – Briefing to Minister signed by Minister - [name] [signature date] OIA [number] [requester name] – Briefing to Minister cleared by office [name] - [marked cleared date] OIA [number] [requester name] – Aide Memoire to Minister seen by office [name] - [marked seen date] 	Not all reports are signed by a Minister. It is useful to indicate and confirm the level of scrutiny or authorisation.
Examples	<ul style="list-style-type: none"> OIA 123 Richard Bicknell – Briefing to Minister Joyce signed by Minister - 01 July 2014 OIA 123 Richard Bicknell – Briefing to Minister Joyce cleared by office - 01 July 2014 OIA 123 Richard Bicknell – Aide Memoire to Minister Woodhouse seen by office - 01 July 2014 	
Letter to the requester/extension letter/Transfer letter	<ul style="list-style-type: none"> OIA [number] [requester name] - Signed Response - [date] OIA [number] [requester name] - Signed Interim Response - [date] OIA [number] [requester name] - Extension Letter - [date] 	Include Interim in the name if it is a partial response, with a further response to come, or an invitation to narrow or clarify a request.

Examples	<ul style="list-style-type: none"> • OIA 123 Richard Bicknell - Signed Response - 01 July 2014 • OIA 123 Richard Bicknell - Signed Interim Response - 01 July 2014 • OIA 123 Richard Bicknell – Extension Letter - 01 July 2014 • OIA 123 Richard Bicknell – Transfer Letter to Requester - 01 July 2014 	The PDF of the response may include the information released also. If this is the case a separate PDF of the redacted or released information is not necessary.
Information released or withheld	<ul style="list-style-type: none"> • OIA [number] [requester name]- Document/s (or information) (or document name) - Redacted copy - [response date] • OIA [number] [requester name]- Document/s (or information) - Clean copy - [response date] • OIA [number] [requester name]- Document/s (or information) (or document name) - Audit or Marked Up copy - [response date] 	<p>Best practice is to store three versions of information within the scope of a request.</p> <ol style="list-style-type: none"> 1. The released or redacted copy is the actual information given to the requester. 2. The clean copy is the information in its original form. 3. The audit or marked up copy is where the withheld information is partially legible or physically indicated prior to full redaction.
Examples	<ul style="list-style-type: none"> • OIA 123 Richard Bicknell - Information - Redacted copy - 01 July 2014 • OIA 123 Richard Bicknell – Information - Clean copy - 01 July 2014 • OIA 123 Richard Bicknell – Documents pt 3 – Redacted copy - 01 July 2014 • OIA 123 Richard Bicknell - Documents pt 3 - Clean copy - 01 July 2014 • OIA 123 Richard Bicknell - Report on Crown Minerals Act dated 23 May 2011 – Redacted copy - 01 July 2014 • OIA 0123 Richard Bicknell – Report on Crown Minerals Act dated 23 May 2011 - Clean copy - 01 July 2014 	<p>If documents have specific names, especially high risk releases, include those name.</p> <p>If documents are released in bundles or batches use pt 1, pt 2 etc.</p> <p>Indicate the date of the release at the end of an item name to indicate the date the information was sent to the requester.</p> <p>If a number of documents are involved, list them individually as document 1, document 2 etc under each category (Released, clean, and Audit). Audit versions are used by the Ombudsman when investigating complaints about OIA releases.</p>
Actual request for information via either letter, email or other form and acknowledgment	<ul style="list-style-type: none"> • OIA [number] [requester name] - Information Request - [date] • OIA [number] [requester name] - Acknowledgement Letter - [date] 	These conventions can be applied to other forms of information held on the file such as Legal Advice, Memos or significant emails.
Examples	<ul style="list-style-type: none"> • OIA 123 Richard Bicknell – Information Request - 01 July 2014 • OIA 123 Richard Bicknell – Acknowledgement Letter - 01 July 2014 	

Key

Dates

Show dates as day, month and year, for example 01 July 2014. The date used must be the exact date a document is sent to a Minister or requester and should correspond with the date on the PDF of the signed report or signed letter. Word documents do not have to be dated

Briefing signed by Minister	The PDF version of the briefing signed by the Minister
Briefing cleared by office	The PDF version of the brief as cleared by advisors. These are advisors in the Minister's office and will write this clearance of the report
Aide Memoire seen by office	The PDF version of the Aide Memoire marked or stamped as seen by the Minister's Office
Interim Response	An interim response could be a partial response and release of information with another response to come to close the request, or a letter asking the requester to narrow their request
Clean copy	Original copy of document or information with no deletions
Redacted copy	The copy of the information provided to the requester with any withheld information not shown and any withholding provisions clearly shown on the information as appropriate. Use the term 'Redacted copy' when naming a file
Audit or Marked up copy	Redaction software often allows an audit copy to be created where the withheld information is legible but in a different shade or colour. The withholding provisions are also indicated. Marked up copies are PDFs of hand written or indicated redactions, prior to redaction. Retaining copies of these versions of information are important if the release becomes subject to a complaint to the Ombudsman. Use 'Marked up copy' for copy of a handwritten redaction and "Audit copy' for copy of software based redaction.

RELEASED UNDER THE OFFICIAL INFORMATION ACT

Background to the OIA

The Official Information Act 1982

The purposes of the OIA are set out in section 4(a) and reads:

"4 Purposes

The purposes of this Act are, consistently with the principle of the Executive Government's responsibility to Parliament,—

(a) To increase progressively the availability of official information to the people of New Zealand in order—

(i) To enable their more effective participation in the making and administration of laws and policies; and

(ii) To promote the accountability of Ministers of the Crown and officials,—

and thereby to enhance respect for the law and to promote the good government of New Zealand."

Note - The OIA in its operation is of particular significance in contributing to transparency and accountability in the State sector. It provides a process that contributes to public accountability by government organisations and public officials.

The OIA aims to increase the availability of information to the people of New Zealand, so that they can effectively participate in the making and administration of law and policies, and to hold Ministers and officials accountable for their actions. It is anticipated that this will enhance respect for the law and will promote the good governance of New Zealand.

The key principle guiding the Act is the "*principle of availability*". Section 5 of the OIA states:

"The question whether any official information is to be made available ... shall be determined ... in accordance with the purposes of this Act and the principle that the information shall be made available unless there is good reason for withholding it."

The OIA, however, recognises that not all official information should be made available, providing for its protection when that is necessary, for example, in the public interest or to protect personal privacy.

Who can make an OIA request?

Anyone who is a New Zealand citizen or permanent resident, anyone currently in New Zealand, a body corporate incorporated in New Zealand, or an overseas body corporate with a place of business in New Zealand.

If a person making a request does not fall within any of those categories then the statutory timeframes and processing requirements of the OIA will not apply to their request.

In such cases, it is still necessary to provide a reasonable response and explain the reason for refusing the request. Even in such situations we are obliged to advise the requester of their right to seek a review of the refusal by the Ombudsman. It is open to staff to provide information to a person not covered by the OIA if it is in the interests of the Ministry to do so, for example a research project by an overseas academic.

What is official information?

It is defined as any information held by the Ministry. It also includes information held by independent contractors who are working on our behalf. The OIA covers information, not just documents.

Examples of official information include but are not limited to:

- Reports, memos, letters and other documents
- Emails, social media messages and texts
- Draft documents
- Voicemail and other audio
- Video and images
- Financial information
- External and internal information
- Handwritten notes
- Recollections or memory.

What about the Privacy Act?

Requests for personal information about an individual are covered by the Privacy Act, rather than the OIA (unless it is a request for a statement of the reasons for a decision or recommendation about the individual – see below). These requests usually take the form of an individual asking for information held on them by a department. If you are uncertain about under which Act a request should be processed, ask Legal Services or Ministerial Services for advice. Sometimes a requester will mention one or both of these Acts in the request. That is not definitive. It is our duty to decide which Act is properly applicable.

The OIA deals with any official information, which includes information about a company or other body of persons. A request for information by a company for information about itself is dealt with under the OIA (Part of the OIA sets out the requirements for processing these requests). A request by a person for personal information about another person also falls under the OIA. A request by a person for a statement of the reasons for a decision or recommendations made about them is dealt with under the OIA whether it comes from an individual or a company.

The Privacy Act deals with information about any natural person, other than a deceased natural person. A request by a natural person for personal information about themselves is always dealt with under the Privacy Act.

But one request may require some aspects to be dealt with under the OIA and some under the Privacy Act. For example, a business person might ask for a copy of a report of an interview they had with an official (Privacy Act – information about them) and the Ministry's file on another firm in the same line of business (OIA – information about a company).

Refusal of requests – Administrative reasons

Introduction

Section 18 of the Act sets out most of the reasons that are available for refusing an official information request.

The first of those - section 18(a) - relates to the substantive reasons for withholding (sections 6 and 9) that are dealt with in Part F of this policy.

This part of the policy deals with the other reasons for refusal, which are collectively referred to as Administrative Reasons.

Note - When any of these administrative reasons are used to refuse a request the requester must still be told that they can seek a review by the Ombudsman of that refusal.

Neither confirm nor deny

Section 18(b) relates to the power in section 10 for an agency to neither confirm nor deny the existence or non-existence of the information requested.

This reason for refusal is used extremely rarely and in the Ministry may only be used if the Chief Executive or a direct report of the Chief Executive agrees. Legal advice is necessary.

Contrary to an enactment

Section 18(c)(i) allows refusal of a request on the basis that releasing it would "be contrary to the provisions of a specified enactment".

For the Ministry, this is likely to be applicable in either of the following circumstances:

- Dealings with refugee claimants – section 151 of the Immigration Act 2009 requires this information to usually be kept confidential.
- Provision of mediation services – section 148 of the Employment Relations Act 2000 specifically excludes the application of the OIA to information generated in the course of mediation.

Where either of these sections applies the appropriate wording for the refusal letter is that "the request is refused under section 18(c)(i) because to release the information would be contrary to section 151 of the Immigration Act 2009 or section 148 of the Employment Relations Act 2000".

Note - There are also some enactments which require release of information, despite what the Official Information Act might say.

Contempt of Court or Parliament

Section 18(c)(ii) deals with this possibility which could arise for example if there is a Court Order preventing release of the information. If you think this provision might be relevant discuss the matter with Legal Services.

Public availability

Section 18(d) allows a request to be refused if *“the information requested is or will soon be publicly available”*.

If you are proposing to rely on this reason for refusal you should:

- Advise the requester how to access that public source of the information.
- Consider whether the publicly available source is readily accessible and not unreasonably expensive.
- Be sure that, for information soon to be available, there is some certainty about when that will be – tell the requester the date it will be available.
- Not use this provision as a means of delaying the release of the information – the public release should usually have been planned before this request was received.

Situations where this section might be applicable are:

- Where a speech containing the information is about to be delivered.
- Where a report or document is being printed for publication.
- Where documents or information are about to be, or have already been, put up on a website for public access.
- Where the information is already published or available publically, for example in a public library.

Information does not exist

Section 18(e) allows refusal of a request if the information requested does not exist.

This might seem an obvious reason – you cannot give someone something that you do not have. Section 18(e) provides the legal basis for making that refusal.

Information cannot be found

Section 18(e) also allows refusal of a request if the information requested cannot be found.

This will be relevant where you know or believe that the Ministry does hold documents which contain the information requested, but you can't locate them after a diligent search.

From time to time files do get misplaced, particularly when they have to be moved between offices or sections. If the information really can't be located, the requester should be told this when the refusal is made.

A request being refused on this ground must be reported in writing by the authorised decision maker to that person's manager. This is to ensure that action to find the file remains on the agenda.

Substantial collation or research

Section 18(f) allows a request to be refused on the basis that “*the information requested cannot be made available without substantial collation or research*”.

This may come into play if the request is a large one or a broadly defined one or one that is vague or sweeping. It is to help manage the administrative burden of such requests where there may not be other reasons for refusing.

If this section appears to be applicable, the first step should be to contact the requester to see whether the request can be re-specified and narrowed. Contact can be via telephone or in writing (see template letters).

Whether section 18(f) does apply will depend on the particular case. You should only rely on section 18(f) if the amount of information sought is very large or you are not able to reasonably extend the time limit or to reasonably charge for time spent.

Collation and research does not include the task of assessing the information once it is assembled to see whether it can be released or not. Collation and research is to do with the process of assembling the information in one place in the form sought by the requester.

The requirement is substantial collation or research. The Ombudsman has identified the following factors as being relevant to assessing whether this test has been met:

- The amount of work involved in determining what information is covered
- The degree of difficulty in locating, researching, or collating it
- The number of documents involved
- The nature of the resources and personnel available to handle the request
- Any effect on other operations or the potential diversion of resources.

Relying on section 18(f) will mean that, having weighed up all those matters in the particular circumstances, you think that “*substantial collation or research*” is involved.

Information not held

Section 18(g) deals with the situation where we do not hold the information but also do not know who does hold it. So it is different from section 18(e) where we are saying it does not exist. And it is different from a transfer situation where we are saying we know who does hold it.

Frivolous or vexatious

Section 18(h) allows refusal of a request that is “*frivolous or vexatious*”. This expression is a legal one and not necessarily one that takes an everyday meaning. Put another way, this is quite a high test. To be applicable you must be able to say that you have grounds for believing that the requester is abusing the rights granted by the legislation rather than exercising those rights in good faith. No reasonable person would see the request as having been made in good faith.

Very few cases will meet this test. It is not enough, for example, that the requester has already made numerous, time consuming requests. Those previous interactions may be relevant to a judgement about this issue but will not be determinative. Each request (rather than each requester) must be looked at on its own merits.

Trivial

Section 18(h) also allows a request to be refused on the basis that *"the information requested is trivial"*. This section might, for example, be used to refuse aspects of a request that deal with administrative arrangements (for example, meetings) related to the subject matter of the request.

Refusal of requests

Introduction

This Part of this Policy does not set out to deal with all the substantive withholding reasons in detail. This is because the Practice Guidelines on the Ombudsman's Website already contain such detail. In addition, Legal Services or Ministerial Services are available to provide advice.

This Part deals generally with the approach to withholding under section 6 and section 9 and then deals briefly with those particular withholding reasons that commonly arise in the course of OIA requests to this Ministry.

For each of the withholding reasons, including those not dealt with directly in this Policy, the Appendix contains copies of the Ombudsman's Summary Sheet which takes the user through the logical steps in each case of deciding whether the particular section applies.

In all cases the exercise of deciding whether withholding reasons apply involves considering what prejudice or harm would result if the information were released and then how that prejudice or harm is protected or prevented by any particular withholding provision. For section 9 (but not section 6) it also involves considering the public interest factors, and whether they override what otherwise might be good reason to withhold.

Conclusive reasons for withholding

Section 6 deals with a series of reasons that if they apply will be sufficient basis in themselves for withholding. This contrasts with section 9 where each reason must be balanced against an overall *"public interest"* assessment.

In practice, two questions need to be asked under section 6:

- How would disclosure prejudice the interests protected by subsections 6(a) to 6(e)? This requires identification of the nature of the prejudicial effect in this particular case and explanation of how it is anticipated it will occur.
- Would that predicted prejudice be *"likely"* to occur? *"Likely"* means that there is a real and substantial risk that it will occur.

A number of section 6 reasons commonly arise in the context of this Ministry's operations.

Security or defence of New Zealand

Section 6(a) provides there is good reason to withhold if the release would be *"likely to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand"*.

Confidentiality of information

Section 6(b) provides there is good reason to withhold if the release would be *“likely to prejudice the entrusting of information to the Government of New Zealand on the basis of confidence by –*

- (i) The Government or any other country or any agency of such a Government; or*
- (ii) Any international organisation”.*

Parts of MBIE such as Immigration New Zealand for example often receive information from foreign governments or agencies on a confidential basis and the release of such information would inhibit the provision of such information in the future.

Maintenance of the law

Section 6(c) says there is good reason to withhold if the release 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”.*

This situation tends to arise where we are investigating possible criminal activity and have not reached the stage of laying charges. But it will only provide a reason to withhold if release is likely to undermine or compromise the investigation process and thus potentially the prosecution for breach of the law.

It can also apply (in the context of the detection of offences) to protect an informant’s identity.

Danger to safety

Section 6(d) provides good reason for withholding where the release is *“likely to endanger the safety of any person”.*

This can, for example, apply in an immigration context, particularly where a person has had a history of violence against their partner and is seeking information about what their partner has said to the Immigration Service about the person’s application.

Substantive reasons for withholding

Section 9 describes a series of reasons for withholding information that, if they apply, must then be judged against any relevant public interest considerations to see whether those outweigh the reason for withholding.

For each of the reasons in section 9 to be applicable, the withholding must be **necessary** to protect the relevant interest.

If the public interest considerations outweigh the reason in section 9 for withholding the information should be released.

The public interest

“Public interest considerations” are not the same as considerations of what issues the public may be interested in. What is *“in the public interest”* are the consideration of matters that promote the overall public good.

These include, but are not limited to, some of the matters identified in the purposes of the Act – more effective participation by the public in the making and administration of laws and policies or promotion of the accountability of Ministers and officials. But equally they might include situations where, if the information was not released, the public would be left with an incorrect understanding of an issue. Also, ensuring maintenance of the law generally or of an individual's right to fairness may be public interest factors.

Each situation will be different and will be influenced by such things as the content of the information, the context in which that information was created and now sits, and any known purpose behind the request.

Protection of privacy

Section 9(2)(a) allows withholding of information (subject to the public interest test) to protect the privacy of natural persons (including dead persons). A "natural person" is a human being, not a company or a trust.

Parts of the Ministry hold significant amounts of information that relate to individuals, and that automatically raises privacy questions.

Section 9(2)(a) applies only if the information identifies a particular person or can easily be connected with a particular person. There must be some privacy interest in the content of the information. The names of officials should, in principle, be made available when requested. All such information discloses is the fact of an individual's employment and what they are doing in that role. However, anonymity will be justified if a real likelihood of harm can be identified. Also, staff who make an important contribution to the decision making process may be considered to have a lower privacy interest than their more junior colleagues, who generally would be entitled to a degree of anonymity.

Personal information about employees (such as phone numbers or home addresses) will be generally be withheld, irrespective of the person's seniority within the Ministry.

Sometimes there will be a privacy interest but the individual concerned may not wish to protect it. That is why we should generally seek to consult the person concerned.

Consent to release by the individual will be enough to mean you cannot rely on section 9(2)(a). But on the other hand the individual's view that the information should be withheld cannot be treated as a veto on release – that (and their reasoning) is one factor to weigh up.

Also, on occasion there may have been an implied waiver of privacy interests where the individual, or their representative, has discussed the information publicly. This may mean withholding is not necessary to protect the individual's privacy interests. You should not assume, though, that because a person has placed some of their personal information into the public arena, they have implicitly authorised us to release all the personal information that we hold about them.

Alternatively the information may already have been placed in the public arena in some other way. Remember too that not all of the information relating to the individual will attract privacy interests – for example, an employment agreement may contain not only personalised terms and conditions, but also quite generic and common terms, in which there can be no privacy interest.

Commercial sensitivity

Section 9(2)(b)(ii) prevents unreasonable prejudice to the commercial position of third parties.

This section is especially relevant when the Ministry holds information about the commercial activities of a company. In such a case it is often useful to seek the company's views, so that we can then decide if releasing the information really would prejudice their commercial position.

Remember though, that we must make that decision, and should not just accept the company's views – they cannot veto the release of the information.

Obligation of confidence

Section 9(2)(ba)(i) protects information which:

- Is subject to an obligation of confidence or
- Any person has been compelled to provide under the authority of an enactment if
- making the information available is likely to prejudice the supply of information from the same source or of similar information

and

- it is in the public interest that such information should continue to be supplied.

Some of our Acts allow us to compel people to provide information. Also, this may be another reason (to accompany section 6(c)) for protecting information from informants about illegal activity.

Confidentiality of advice

Section 9(2)(f)(iv) protects information in order to maintain the constitutional convention which protects the confidentiality of advice tendered by Ministers and officials. This does not automatically protect any briefing or advice to Ministers.

The advice must be about a possible course of action, not just factual information. Forecasts, for example, do not always form part of advice on possible action but instead seek to predict a future situation. But in some situations a forecast may be an integral part of advice which in itself would indicate the content of the advice.

In general terms, the section is often relevant where there is concern that release will prejudice the ability of Ministers to **consider** advice. This is sometimes referred to as allowing "*undisturbed consideration*" of advice when decisions have not yet been made. But the longer the decision takes, or once the decision has been made, the less likely this section will be applicable.

Free and frank opinions

Section 9(2)(g)(i) protects information where it is necessary to "*maintain the effective conduct of public affairs through the free and frank expression of opinions*" by or between or to Ministers or officials.

Because free and frank opinions are an expected part of the job of public servants, this is not designed to protect all such opinions. The key additional element for protection is that protection must be necessary for maintaining the effective conduct of public affairs.

Some specific harm to "*the effective conduct of public affairs*" would need to flow from the particular release anticipated.

One such harmful effect might be where it is generally in the public interest for free and frank opinions to be proffered but release of them would inhibit future advice in similar situations. This will not be the norm – officials are presumed to be not likely to readily forsake their obligation to give free and frank opinions.

Section 9(2)(g)(i) does cover expression of such opinions to Ministers or officials so it can include opinions conveyed by members of the public or on behalf of an organisation.

Legal professional privilege

Section 9(2)(h) protects information in order to maintain legal professional privilege. In a general sense, the recipient of legal advice is entitled to decide whether anyone else should have access to it. The Ministry holds a significant amount of information that is legal advice, so careful judgement has to be made about whether it might be in the public interest to release it. Legal professional privilege not only applies to legal advice you have received, but also to your communications with a lawyer for the purposes of seeking legal advice. It also applies to information gained in preparation for proposed litigation.

You must always seek legal advice before releasing anything that might be covered by legal professional privilege. A decision must be made on whether to waive legal professional privilege before it can be released.

Release of such advice could compromise the position the Ministry seeks to take on a particular issue, or put a Court case or contract at risk. That needs to be weighed against the public interest.

Note – It is for the Attorney-General to determine whether to release Crown Law or other legal advice that has been provided to the government, or refer to the content of that advice, and waive (or potentially waive) legal privilege. The process for seeking the Attorney-General's consent to release legal advice is detailed in Cabinet Office Circular CO(05)5 of 15 April 2005, and the Cabinet Manual 2008 at 4.65 – 4.68 (see below). If contemplating this step, Legal Services must be consulted.

Release of legal advice provided to the government

4.65 As part of the Attorney-General's constitutional role, the Attorney-General represents the Crown in the courts and provides legal advice to the government. Day-to-day instructions to legal advisers are usually provided by departments, agencies, or other Ministers under the authority of the Attorney-General. Nevertheless, the constitutional responsibility of the Attorney-General remains. The Attorney-General has the right to:

- a. obtain copies of all legal advice provided to the Crown (from whatever source);
- b. determine whether to release that advice;
- c. instruct all lawyers acting for the Crown.

4.66 When determining whether to release legal advice that has been provided to the government, or to refer to the content of that advice, and waive (or potentially waive) legal privilege, there is a need to:

- a. ensure a coordinated government approach to release;
- b. avoid any adverse impact of a release on current or potential legal proceedings; and
- c. ensure that no single release will create an undesirable precedent.

- 4.67 Where a Minister or a government department considers that it is necessary to release legal advice or refer to the content of that advice, the matter must first be referred to the Crown Law Office. The Crown Law Office will in turn refer the matter to the Attorney-General's office for approval.
- 4.68 Where a request is made under the Official Information Act 1982, the decision on release must be made by the Minister or chief executive who received it. The Attorney-General (through the Crown Law Office) should be consulted about the request.

Requests by companies for information about themselves

If a company asks for information about itself it should to be dealt with under sections 24 to 27. Section 27 incorporates, as potential reasons for withholding information, most of the section 6 reasons and section 9(2)(b), as well as legal professional privilege. But on top of those there are two additional reasons that apply in this situation:

- Disclosure would involve the unwarranted disclosure of the affairs of another person.
- Disclosure would breach an express or implied obligation of confidence in relation to evaluative material (in short, this is material about suitability of a person for a contract, award, other benefit, or insurance).

The importance of recognising when section 27 applies (instead of the direct application of section 6 or section 9) is that where a company is seeking information about itself all of the other section 9 reasons (other than the ones mentioned above, i.e., section 9(2)(b) and section 9(2)(h)) cannot be applied. In other words, companies have stronger rights to information about themselves than any third party might have.

Unacceptable reasons for withholding

The following things are **not** reasons in themselves for withholding information:

- That the information requested is a draft paper
- That the information was created by, or provided to the Ministry by, a third party
- That release of the information might be embarrassing for the Minister or the Ministry
- That the information is politically sensitive
- That another government agency has vetoed its release for reasons we do not accept as valid under the OIA
- That the information has been marked 'confidential' or 'commercially sensitive', although current status should be carefully assessed.

Requests for reasons – Section 23

Introduction

Section 23 of the Official Information Act establishes a separate code for disclosure to individuals of reasons for decisions that an agency such as ours may have made about them.

The reasons that they are able to access are in the form of:

- The findings on material issues of fact
- A reference to the information on which those findings were based
- The reasons for the decision or recommendation.

Unlike other parts of the OIA, section 23 actually entitles the requester to require us to create information in a particular form.

If we do not hold the information in the form described in the previous paragraph then we are required to assemble it or write it down in that form.

Who can ask for reasons?

The starting point is that there must have been a **decision** or **recommendation** made by the Ministry about the person.

Secondly, the person must be either:

- (a) a New Zealand citizen;
- (b) a permanent resident;
- (c) an individual who is currently in New Zealand;
- (d) a body corporate incorporated in New Zealand; or
- (e) a body corporate incorporated outside New Zealand but which has a place of business inside New Zealand.

Departmental Obligations

The Ministry still owes the duty of assistance to the requester. Talk to the requester if you are not clear about what decision or recommendation they are talking about.

Transfer rules and timing obligations also apply as normal to section 23 requests.

As well, if we refuse to answer the request in any way (see below) we must give reasons for that and must notify the requester of the right to seek a review of our refusal by the Ombudsman.

Ability to refuse request

Some particular reasons for refusing to provide one aspect of the reasons (the information on which the decision or recommendation was based) can apply by virtue of section 23(2A).

This subsection is quite detailed, but in summary the reasons for refusal include:

- That there would be a breach of confidentiality around evaluative material (being material about suitability for employment or about the awarding of contracts or other benefits).
- That after medical advice, we are satisfied that releasing the information would be likely to prejudice the physical or mental health of the requester.
- For a person under 16, that disclosure would be contrary to their interests.
- For a convicted or detained person, that disclosure would be likely to prejudice the safe custody or rehabilitation of the person.

Manner of conveying information

A request under section 23 should be answered in the format shown in the template below.

Legal advice

You are likely to receive a request under section 23 when the requester is considering whether to challenge your decision or recommendation in some way. This will often mean that some manner of legal proceedings is being contemplated against the Ministry.

In such circumstances it is advisable to seek legal advice about the way you are proposing to answer the section 23 request, even if no refusal of information is involved. This is because what you say in your reasoning will become the basis for challenging your decision, particularly if it doesn't match what else is already on your file about the decision.

Review by the Ombudsman

Please refer to the Review by the Ombudsman Policy (under development).

Charging

Charging for information is not a step that should be taken lightly and the decision to charge must only be made with the involvement of **Senior Management**.

Section 15 allows agencies to fix a charge for the release of official information. Any such charge "*shall be reasonable and regard may be had to the cost of the labour and materials involved in making the information available*". Any costs incurred in order to meet a request for urgency can also be recovered.

You must not charge for information without advising the requester ahead of time that this is to be done. First, it is poor public relations to charge without notice. Secondly, if the person decides not to pay, then time and other resources may have been wasted. All advice about the charge should explain how it is estimated or calculated.

You should not charge more than any estimated charge you advised in advance. You must also inform the requester of the right to complain to the Ombudsman about the charge or estimated charge.

You cannot advise that the charge **will be made** unless and until you have decided that at least some information will be released. That is because the legal authority to charge in section 15 is limited to actual and reasonable costs of making information available. You can and should, however, indicate early on that a charge **may** be made and wait for the respondent's decision before proceeding.

As an alternative to charging, you could also consider providing the information in an alternative form (for example, giving electronic copies by email or disk) or allowing the requester to inspect the original documents, if providing copies of the documents would require a lot of photocopying.

Note - We can refuse to provide information in the form sought (for example, copies) if to do so would "*impair efficient administration*".

You may also want to consider if the charge should be waived or reduced, for example if to do so would be in the public interest. The Ministry of Justice guidelines on charging for official information provide more detail about when to charge and how to notify a requester of the costs.

No Surprises

The Cabinet Manual provides that a Ministry or department may consult a Minister on “any” departmental OIA. Paragraph 8.41 refers:

“A department may consult its Minister about any request for official information it receives ... A department should advise its Minister if it intends to release any information that is particularly sensitive or potentially controversial. The decision on how to respond to the request must nonetheless be made by the department, in accordance with the Official Information Act 1982.”

See below for the full text of this part of the Cabinet Manual 2008 at 8.39 – 8.42.

The State Services Commission has developed criteria regarding the circumstances under which a department should consult its Minister on a departmental OIA. This guidance applies to the Ministry. The State Services Commission says that “It would be appropriate for departments to consult their Minister when:

- requests are received from the Opposition, the Opposition Research Unit, recognised interest groups or the news media especially where the information is particularly sensitive;
- the subject matter is controversial and likely to lead to questions of Ministers;
- facts, opinions or recommendations in the information are especially quotable or unexpected;
- the information reveals important differences of opinion among Ministers or agencies.”

Note - If you are in doubt about whether to brief a Minister on an OIA or if further advice is needed you should contact a senior manager or Ministerial Services for assistance.

Some Ministers’ Offices prefer to receive an Aide Memoire rather than a noting Briefing they are expected to sign. Confirm with your Minister’s Office how they wish to be advised about a departmental OIA response before sending a report and proposed reply.

Consultation by departments

8.39 The State Services Commission has issued guidelines on the need for coordination and consultation between government departments about requests for official information. The document Release of Official Information: Guidelines for Coordination is available on the State Services Commission website, www.ssc.govt.nz. This document states that a department should consult another department when the information sought:

- a. was produced with substantial or critical input from that other department; or
- b. contains material that relates to the activities of that other department.

8.40 Departments must advise the Cabinet Office as soon as possible of any requests for Cabinet documents dating from a previous opposition administration, to allow the Cabinet Office sufficient time to undertake consultation.

8.41 A department may consult its Minister about any request for official information it receives. A department should consult its Minister if the request relates to Cabinet material, because this material relates to his or her activities as a Minister. A department should advise its Minister if it intends to release any information that is particularly sensitive or potentially controversial. The

decision on how to respond to the request must nonetheless be made by the department, in accordance with the Official Information Act 1982.

- 8.42 On being consulted, the Minister may take the view that information, which the department considers should be released, should not be released. In such a case, transferring the request to the Minister may be an appropriate way forward, if the requirements of section 14 of the Official Information Act 1982 can be satisfied. Each case of this kind needs to be carefully handled at a senior level within the department, with reference to the Minister if necessary.

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

External Guidance

While this policy document sets out the internal OIA process for the Ministry, there is broader guidance material on the provision of official information that is available through the following links:

- [Official Information Act 1982](#)
- [Ombudsmen Act 1975](#)
- [Ombudsman Guide](#) - Comprehensive guide to the OIA legislation and use of withholding provisions (see below for full index with hypertext links)
- Ombudsman Guide – [Chief executive expenses](#)
- Ombudsman Guide - [Official information requests made by twitter and facebook](#)
- Ombudsman - [Recent opinions of Ombudsman on high profile OIA complaints](#)
- Ombudsman - [Official Information case notes](#)
- Ombudsman - [Ombudsman Quarterly Review \(OQR\) articles](#) – Guidance and advice on official information issues with a searchable index
- [Cabinet Office Manual](#) - Detailed guidance for Ministers on the operation of the OIA and the release of official information including Cabinet Papers – See Chapter 8: Official Information
- Cabinet Office Manual - [Consultation by Departments](#) - Guidance on when a “no surprises” briefing of a Minister or Ministers is appropriate
- Cabinet Office - [CO Notice 09/5 – Approval process and requirements for publishing Cabinet material on the web](#)
- Cabinet Office Circular - [CO \(12\) 7 – Guidelines for dealing with inside information about public issuers](#)
- Cabinet Office Circular - [CO \(08\) 12 – Access to information of a previous administration](#)
- State Services Commission - [Release of Official Information: Guidelines for Co-ordination](#) - These guidelines provide chief executives with guidance in making decisions on whether and when it is appropriate to consult with other departments or Ministers of the Crown
- State Services Commission - [SSC Guidance: Official Information Act requests for draft reports, correspondence and advice](#)
- Privacy Commissioner - [Guidance on the relationship between the OIA and the Privacy Act 1993 with respect to personal information held by government agencies](#)
- [New Zealand data and information management principles, including the Guidelines for Protection of Official Information.](#)

Index of Ombudsman OIA legislation guides

How the official information legislation works - [Download PDF](#) | [Download DOC](#)

Principles and purposes of the OIA - [Download PDF](#) | [Download DOC](#)

Responding to a request for official information - [Download PDF](#) | [Download DOC](#)

Charging for the release of official information - [Download PDF](#) | [Download DOC](#)

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Countervailing public interest considerations - [Download PDF](#) | [Download DOC](#)

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Requests for reasons for decisions - [Download PDF](#) | [Download DOC](#)

Releasing official information in good faith protection - [Download PDF](#) | [Download DOC](#)

Common misconceptions: These misconceptions tend to create false expectations and complicate the processing of otherwise simple requests - [Download PDF](#) | [Download DOC](#)

Appendices - MBIE OIA sample letters

Acknowledgement of OIA Request – Template 1

[Date dd/mm/yy]

Mr/Ms/Mrs/Dr Name of Requester
Title (if available)
Organisation (if available)
Address Street/PO Box
Address Suburb/Town
City/Region and Postcode

Ref: OIA XXXX

Dear Mr/Ms/Mrs/Dr Last Name

Thank you for your letter/email [Delete one] of [Date] requesting, under the Official Information Act 1982, the following information:

“Exact wording of the request.”

Your request is being processed in accordance with the Official Information Act. If you have any enquiries regarding your request, you may contact us via email at oia@mbie.govt.nz or:

Alan Witcombe
Manager, Ministerial Services
Ministry of Business, Innovation and Employment
PO Box 3705
WELLINGTON 6140

Your letter/email [Delete one] was received on [Date] and a response will be sent to you as soon as possible.

Yours sincerely

[Name]
Manager, Ministerial Services
Organisational Strategy and Support
Ministry of Business, Innovation and Employment

To narrow or clarify the scope of the request: section 18(e) – Template 2

Note – Consultation with the requester is optional – see section 18B Duty to consider consulting person if request likely to be refused under section 18(e) or 18(f)

[Date dd/mm/yy]

Mr/Ms/Mrs/Dr Name of Requester
Title (if available)
Organisation (if available)
Address Street/PO Box
Address Suburb/Town
City/Region and Postcode

Ref: OIA XXXX

Dear Mr/Ms/Mrs/Dr Last Name

Thank you for your letter/email [Delete one] of [Date] requesting, under the Official Information Act 1982, the following information:

“Exact wording of the request.”

[Explain why the information does not exist or cannot be found.]

It is likely that the Ministry will refuse your request under section 18(e) of the Official Information Act, that the information requested does not exist/cannot be found [Delete one], unless you can make the request in a form that would remove the reason for the refusal.

Yours sincerely

[Name]
[Title]
[Branch]
Ministry of Business, Innovation and Employment

To narrow or clarify the scope of the request: Section 18(f) – Template 3

[Date dd/mm/yy]

Mr/Ms/Mrs/Dr Name of Requester
Title (if available)
Organisation (if available)
Address Street/PO Box
Address Suburb/Town
City/Region and Postcode

Ref: OIA XXXX

Dear Mr/Ms/Mrs/Dr Last Name

Thank you for your letter/email [Delete one] of [Date] requesting, under the Official Information Act 1982, the following information:

“Exact wording of the request.”

[Explain why the request is too broad.]

It is likely that the Ministry will refuse your request under section 18(f) of the Official Information Act, that the information requested cannot be made available without substantial collation or research, unless you can narrow your request [specify element/s requiring narrowing if possible and/or suggest a possible scope]. The Ministry invites you to narrow or clarify your request.

Yours sincerely

[Name]

[Title]

[Branch]

Ministry of Business, Innovation and Employment

Advise time extension under the OIA – Template 4

[Date dd/mm/yy]

Mr/Ms/Mrs/Dr Name of Requester
Title (if available)
Organisation (if available)
Address Street/PO Box
Address Suburb/Town
City/Region and Postcode

Ref: OIA XXXX

Dear Mr/Ms/Mrs/Dr Last Name

Thank you for your letter/email [Delete one] of [Date] requesting, under the Official Information Act 1982, the following information:

“Exact wording of the request.”

I am writing to advise you that the Ministry will provide a response but needs to extend the time available to answer your request. The Ministry’s response will be with you no later than [Date].

EITHER [Delete one]

The reason for the extension is that consultations necessary to make a decision on the request are such that a proper response to the request cannot be made within the original time limit.

Or

The reason for the extension is that your request is for a large quantity of information and meeting the original time limit would unreasonably interfere with the operations of the Ministry.

You have the right to seek an investigation and review of our decision to extend the time limit by the Ombudsman, whose address for contact purposes is:

The Ombudsman
Office of the Ombudsman
PO Box 10-152
WELLINGTON 6143

I will respond to you sooner if I am able to.

Yours sincerely

[Name]
[Title]
[Branch]
Ministry of Business, Innovation and Employment

Letter to accompany release under the OIA: No information withheld – Template 5

[Date dd/mm/yy]

Mr/Ms/Mrs/Dr Name of Requester
Title (if available)
Organisation (if available)
Address Street/PO Box
Address Suburb/Town
City/Region and Postcode

Ref: OIA XXXX

Dear Mr/Ms/Mrs/Dr Last Name

Thank you for your letter/email [Delete one] of [Date] requesting, under the Official Information Act 1982, the following information:

“Exact wording of the request.”

[Include contextual information or explanation if appropriate].

[Explanation of information being released, if no documents are being released]

[List what is being released, if documents are being released]

I trust that you find the information helpful.

If you wish to discuss any aspect of your request or this response, or if you require any further assistance, please contact [Name], [Title], [Branch] at [email address] (if different to writer).

Yours sincerely

[Name]

[Title – Tier 4 or above]

[Branch]

Ministry of Business, Innovation and Employment

**Letter to accompany release under the OIA: Some/most information withheld – Template
6**

[Date dd/mm/yy]

Mr/Ms/Mrs/Dr Name of Requester

Title (if available)

Organisation (if available)

Address Street/PO Box

Address Suburb/Town

City/Region and Postcode

Ref: OIA XXXX

Dear Mr/Ms/Mrs/Dr Last Name

Thank you for your letter/email [Delete one] of [Date] requesting, under the Official Information Act 1982, the following information:

“Exact wording of the request.”

[Include contextual information or explanation if appropriate].

[List the documents that are being released, if documents are being released.]

[You may also list the documents that are being withheld, if documents are being withheld. This is not a legal requirement.]

[For all parts of the request being withheld or refused, specify the information and cite the relevant section of Act spelling out the reason and any particulars regarding the item concerned.]

[Reason - For example] I am withholding some information under section 9(2)(a) of the Official Information Act to protect the privacy of natural persons. [You may wish to explain further]. I do not consider that the withholding of this information is outweighed by public interest considerations in making the information available. [You may wish to explain in more detail].

I trust you find the information helpful. You have the right to seek and investigation and review of my response by the Ombudsman, whose address for contact purposes is:

The Ombudsman
Office of the Ombudsman
PO Box 10-152
WELLINGTON 6143

If you wish to discuss any aspect of your request or this response, or if you require any further assistance, please contact [Name], [Title], [Branch] at [email address] (if different to writer).

Yours sincerely

[Name]

[Title – Tier 4 or above]

[Branch]

Ministry of Business, Innovation and Employment

Letter to advise decision to refuse: Section 9 substantive reasons – Template 7

[Date dd/mm/yy]

Mr/Ms/Mrs/Dr Name of Requester
Title (if available)
Organisation (if available)
Address Street/PO Box
Address Suburb/Town
City/Region and Postcode
Ref: OIA XXXX

Dear Mr/Ms/Mrs/Dr Last Name

Thank you for your letter/email [Delete one] of [Date] requesting, under the Official Information Act 1982, the following information:

“Exact wording of the request.”

[Include contextual information or explanation if appropriate]

[Reason - For example] I am refusing your request under section 9(2)(j) of the Official Information Act to enable the Ministry of Business, Innovation and Employment to carry on, without prejudice or disadvantage, commercial negotiations. I do not consider that the withholding of this information is outweighed by public interest considerations in making the information available. It is in the public interest that MBIE gets the best price for the tender and any negotiations with participants or prospective participants must be conducted in confidence to ensure this objective is met.

You have the right to seek and investigation and review of my response by the Ombudsman, whose address for contact purposes is:

The Ombudsman
Office of the Ombudsman
PO Box 10-152
WELLINGTON 6143

If you wish to discuss any aspect of your request or this response, or if you require any further assistance, please contact [Name], [Title], [Branch] at [email address] (if different to writer).

Yours sincerely

[Name]
[Title – Tier 4 or above]
[Branch]
Ministry of Business, Innovation and Employment

Letter to advise decision to refuse: Section 18 administrative reasons – Template 8

[Date dd/mm/yy]

Mr/Ms/Mrs/Dr Name of Requester
Title (if available)
Organisation (if available)
Address Street/PO Box
Address Suburb/Town
City/Region and Postcode
Ref: OIA XXXX

Dear Mr/Ms/Mrs/Dr Last Name

Thank you for your letter/email [Delete one] of [Date] requesting, under the Official Information Act 1982, the following information:

“Exact wording of the request.”

[Include contextual information or explanation if appropriate].

[Reason - For example] I am refusing your request under section 18(f) of the Official Information Act as it would require substantial collation. The Ministry of Business, Innovation and Employment has given you a reasonable opportunity to narrow or clarify your request. No correspondence or communication has been received from you regarding your request. The information requested is held on a large number of individual files. To provide you with copies of the information would require staff to manually review each file. Providing this information would remove Ministry staff from their core duties and therefore the greater public interest in the effective and efficient administration of the public service would not be served. I have considered whether the Ministry would be able to respond to your request given extra time or the ability to charge for the information requested. I have concluded that, in both cases, the Ministry's ability to undertake its work would still be prejudiced.

You have the right to seek and investigation and review of my response by the Ombudsman, whose address for contact purposes is:

The Ombudsman
Office of the Ombudsman
PO Box 10-152
WELLINGTON 6143

If you wish to discuss any aspect of your request or this response, or if you require any further assistance, please contact [Name], [Title], [Branch] at [email address] (if different to writer).

Yours sincerely

[Name]
[Title – Tier 4 or above]
[Branch]
Ministry of Business, Innovation and Employment

Transferring a request: Letter to requester – Template 9

[Date dd/mm/yy]

Mr/Ms/Mrs/Dr Name of Requester
Title (if available)
Organisation (if available)
Address Street/PO Box
Address Suburb/Town
City/Region and Postcode
Ref: OIA XXXX

Dear Mr/Ms/Mrs/Dr Last Name

Thank you for your letter/email [Delete one] of [Date] requesting, under the Official Information Act 1982, the following information:

“Exact wording of the request.”

This letter is to advise you that your request has been transferred to [Name and title of Minister or Name of Government Agency].

EITHER [Delete one]

This is because the information you have requested is not held by the Ministry of Business, Innovation and Employment. Section 14(b)(i) of the Official Information Act allows me to transfer any request where the information is not held, but is believed to be held by another department, organisation or Minister of the Crown.

OR

This is because your request is more closely aligned with the functions of the [Minister or Government Agency]. Section 14(b)(ii) of the Official Information Act allows me to transfer any request that is believed to be more closely aligned with the functions of another department, organisation or Minister of the Crown.

If you wish to discuss any aspect of your request or this response, or if you require any further assistance, please contact [Name], [Title], [Branch] at [email address] (if different to writer).

Yours sincerely

[Name]
[Title]
[Branch]
Ministry of Business, Innovation and Employment

Transferring a request: Letter to transferee – Template 10

[Date dd/mm/yy]

Mr/Ms/Mrs/Dr Name of Minister or Chief Executive
Title (if available)
Organisation (if available)
Address Street/PO Box
Address Suburb/Town
City/Region and Postcode
Ref: OIA XXXX

Dear Mr/Ms/Mrs/Dr Last Name

Transfer of Official Information Act request

On [Date] I received a letter/email [Delete one] from [Name of Requester] requesting, under the Official Information Act 1982, the following information:

“Exact wording of the request.”

EITHER

I am transferring this request to you, under section 14(b)(i) of the Official Information Act, as I believe that this information is held by another department, organisation or Minister of the Crown.

OR

I am transferring this request to you, under section 14(b)(ii) of the Official Information Act as I believe it to be more closely aligned with the functions of your department/your function as Minister of/for XXXX.

[Name of Requester's] request and a copy of my letter advising him/her of this transfer are attached for your information.

If you wish to discuss any aspect of your request or this response, or if you require any further assistance, please contact [Name], [Title], [Branch] at [email address] (if different to writer).

Yours sincerely

[Name]
[Title]
[Branch]
Ministry of Business, Innovation and Employment

Letter to advise reason for refusal: Section 23 request – Template 11

[Date dd/mm/yy]

Mr/Ms/Mrs/Dr Name of Requester
Title (if available)
Organisation (if available)
Address Street/PO Box
Address Suburb/Town
City/Region and Postcode
Ref: OIA XXXX

Dear Mr/Ms/Mrs/Dr Last Name

Thank you for your letter/email [Delete one] of [Date] requesting, under the Official Information Act 1982, the following information:

“Exact wording of the request.”

You have requested, under section 23 of the Official Information Act 1982, the reasons for the following decision or recommendation made by the Ministry of Business, Innovation and Employment about you:

[Describe the general nature of the decision or recommendation referred to in the request.]

Below are set out the various elements of these reasons, as required by section 23(i) of the Official Information Act:

The findings on material issues of fact:

[List factual findings that were relevant to your decision, i.e. the facts that you took into account.]

The information on which those findings were based:

[List the places or sources from where you got the facts listed in (a).]

The reasons for the decision or recommendation:

[Here set out how, when you applied the relevant law or policy or criteria to the factual findings, you reached the decision or recommendation you did.]

You have the right to seek an investigation and review of this response by the Ombudsman, whose address for contact purposes is:

The Ombudsman
Office of the Ombudsman
PO Box 10-152
WELLINGTON 6143

If you wish to discuss any aspect of your request or this response, or if you require any further assistance, please contact [Name], [Title], [Branch] at [email address] (if different to writer).

Yours sincerely

[Name]

[Title]

[Branch]

Ministry of Business, Innovation and Employment