



21 JUL 2017

Dear Ben

I refer to your request dated 26 June 2017, pursuant to the Official Information Act 1982, seeking

*“Copies of the current policy, procedure, manual or other process document that records the Ministry's process or processes for handling and deciding requests under the OIA; and \* Any diagram or flowchart of the Ministry's process or processes (if any have been created); \* Copies of any template response letters that form part of the Ministry's process or processes (if any have been created).”*

The following documents fall within the scope of your request and are enclosed:

**Table 1: List of documents**

Document Number	Document	Reason for withholding or refusing the request
1	Minister OIAs – Timeline and Process	Released in full
2	Chief Executive OIAs - Timeline and Process	Released in full
3	Introduction	Released in full
4	Clarifying the request and assembling the information	Released in full
5	How long have I got	Released in full
6	Transferring an OIA request	Released in full
7	Guide to charging	Released in full
8	Refusal of requests	Released in full
9	A review of an OIA request by the Ombudsman	Released in full
10	Legal FAQs	Released in full
11	Minister OIAs – Background information and processing instructions	Released in full
12	Chief Executive OIAs - Background information and processing instructions	Released in full
13	Useful Links	Released in full
14	Consultation with other parties	Released in full
15	Letter and Memo templates	Released in full

Yours sincerely

Andrew Wilson  
Acting General Manager Organisation Development

## 'MINISTER' OIAs – TIMELINE AND PROCESS

### What is a Minister OIA?

A 'Minister' OIA is an OIA request sent directly to the Minister of Transport for response. The Minister's office will allocate the request to MoT (or the relevant Transport agency) for processing/collation. This is different from a 'Chief Executive' OIA, which is an OIA that is sent directly to the Ministry of Transport to answer. For instructions on how to process a 'Chief Executive' OIA [click here](#).

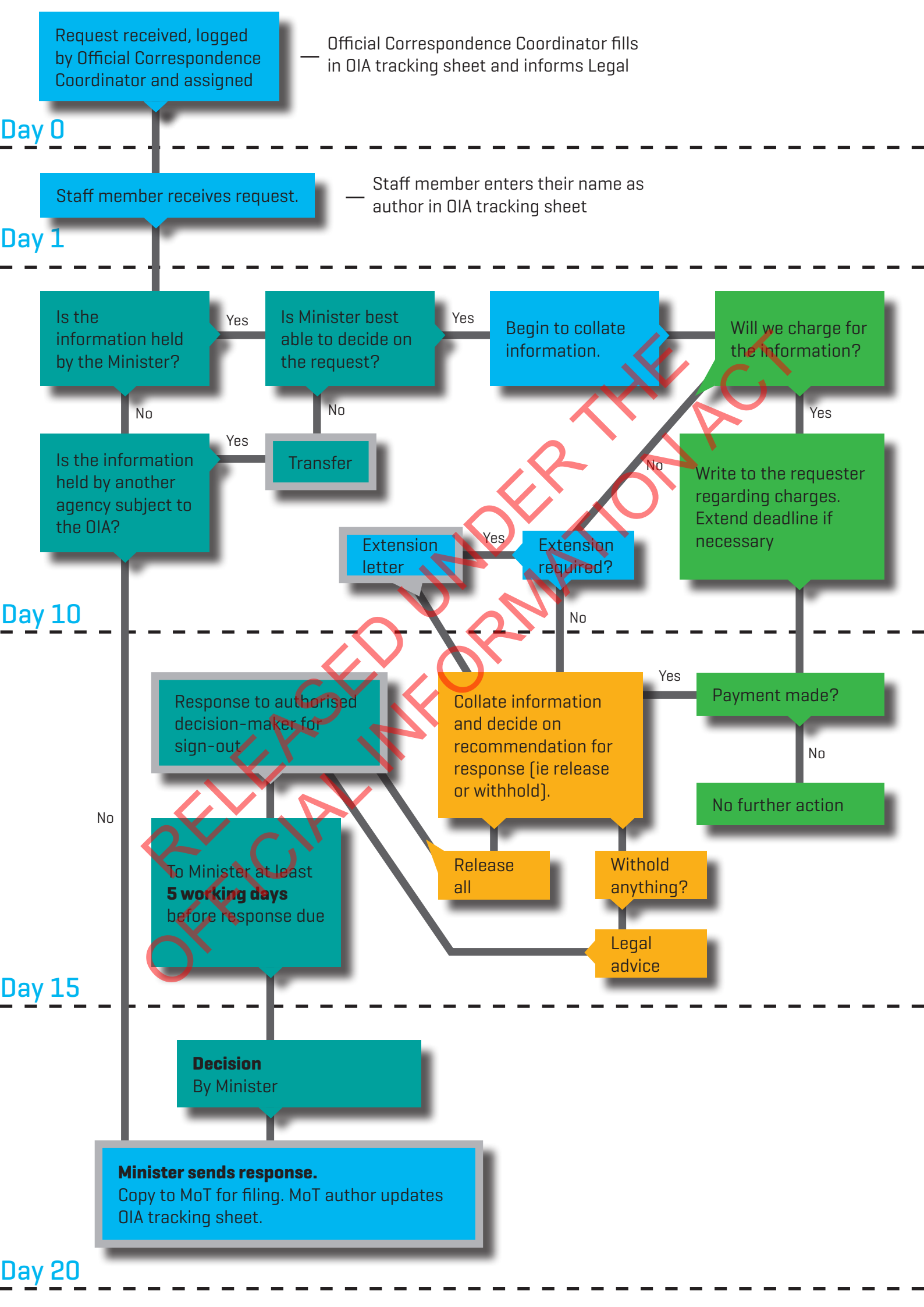
The Official Correspondence Team is responsible for registering the receipt of OIA requests and for tracking their progress and timing. The Ministry maintains a central OIA tracking sheet operated by the Official Correspondence team. This is in an Excel file in Athena, which can be found [here](#).

This section sets out the documentation required to complete a response to a 'Minister' OIA request and the administrative procedures that must be followed for approval and sign-out.

The draft response to a 'Minister' OIA is due with the Minister's Office for consideration on the 10<sup>th</sup> working day. Delays in sign-off processes within the Ministry is not an acceptable reason for not meeting the deadline. If a response is going to be delayed for any reason, the Ministry must discuss this with the relevant Private Secretary in the Minister's office as soon as possible.

Following the receipt of a draft OIA response in the Minister's office, ministries/agencies need to be able to respond promptly (generally within 24 hours) to any queries raised or requests for additional work to ensure the 20 working day deadline is met.

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## **‘CHIEF EXECUTIVE’ OIAs – TIMELINE AND PROCESS**

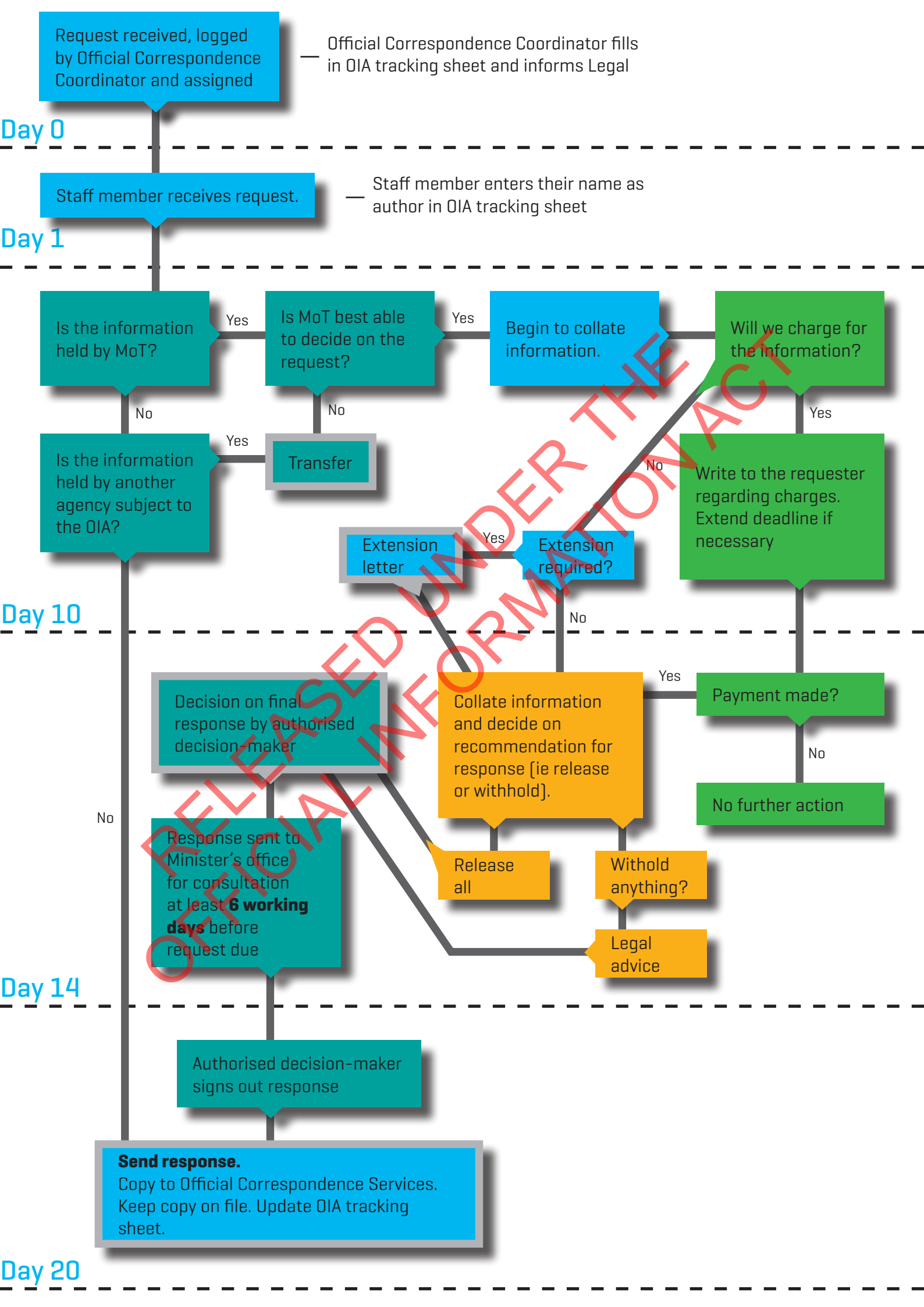
### **What is a Chief Executive OIA?**

A ‘Chief Executive’ OIA is an OIA request sent directly to the Ministry of Transport for response. This is different from a ‘Minister’ OIA, which is a request sent directly to the Minister or Associate Minister of Transport for response and allocated to MoT for drafting. For instructions on how to process a ‘Minister’ OIA [click here](#).

The Official Correspondence Team is responsible for registering the receipt of OIA requests and for tracking their progress and timing. The Ministry maintains a central OIA tracking system operated by the Official Correspondence Team. This is in an Excel file in Athena, which can be found [here](#).

This section sets out the documentation required to complete a response to a ‘Chief Executive’ OIA request and the administrative procedures that must be followed for approval and sign-out.

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Request received, logged by Official Correspondence Coordinator and assigned

— Official Correspondence Coordinator fills in OIA tracking sheet and informs Legal

Day 0

Staff member receives request.

— Staff member enters their name as author in OIA tracking sheet

Day 1

Is the information held by MoT?

Yes

Is MoT best able to decide on the request?

Yes

Begin to collate information.

Will we charge for the information?

No

No

Yes

Is the information held by another agency subject to the OIA?

Yes

Transfer

Extension letter

Extension required?

Yes

No

Write to the requester regarding charges. Extend deadline if necessary

Day 10

Decision on final response by authorised decision-maker

Collate information and decide on recommendation for response (ie release or withhold).

Yes

Payment made?

No

No

No further action

Response sent to Minister's office for consultation at least **6 working days** before request due

Release all

Withhold anything?

Legal advice

Day 14

Authorised decision-maker signs out response

**Send response.**

Copy to Official Correspondence Services. Keep copy on file. Update OIA tracking sheet.

Day 20

## INTRODUCTION

The Official Information Act 1982 (the Act) is an important piece of legislation applying to government departments and other government agencies, including the transport Crown entities. The Act was designed to make government activities more open and transparent. Ministry of Transport staff have responsibilities under the Act.

As the Act states, its purpose is to “increase progressively the availability of official information in order to:

- “enable people to participate more effectively in the making and administration of laws and policies
- “promote the accountability of Ministers and their officials; and
- “provide for proper access by each person to official information relating to that person”. *(However, this is now principally achieved under the Privacy Act.)*

The Act recognises that not all official information should be made available, and provides for its protection when necessary — for example, if it is in the public interest or to protect personal privacy.

### What is an OIA request?

Essentially any request for information received or forwarded to the Ministry (whether by ministerial, regular mail, phone, fax or email) should be treated as an OIA request, and processed in accordance with the Act to decide whether it is an OIA or a Privacy Act request. A ministerial that also contains a request for official information may need both a response to the ministerial and a separate response for the OIA request.

However, there is a practical need to distinguish between routine requests for published information (e.g. Ministry publications like the Annual Report, statistical reports or copies of legislation) and formal requests. Routine requests do not usually warrant being formally recorded as OIA requests, even if the request specifically refers to the Official Information Act.

Staff must treat OIA requests as core business. They are of equal importance to other work and because of the statutory timeframes they will often have to take priority over other tasks.

As a public service agency the Ministry has a statutory responsibility to meet the requirements of the Act. We must regard these obligations as a service to the public, and we should take pride in meeting them.

## Choosing the right Act - Information Act or Privacy Act?

When you get a request for information you must decide whether it is an official information request or a privacy request. This difference is important because separate rules apply.

The Privacy Act deals with individuals' rights of access to information about themselves.

The Official Information Act deals with access by third parties to information held by government departments, Ministers and organisations, including information about a company or other body of persons.

***NOTE:** As the Ministry holds very little personal information, requests where the Privacy Act applies are rare. However, if you do receive a request from someone seeking information about themselves, the request will need to be dealt with under the Privacy Act. You should consult the Legal team about how to proceed.*

## Who can make an Official Information Act request?

The following persons are entitled to make an OIA request:

- New Zealand citizens (whether in New Zealand or not)
- permanent residents of New Zealand (whether in New Zealand or not)
- any other person who is actually in New Zealand
- bodies corporate (e.g. a company, trust or incorporated society) that are incorporated in New Zealand or that have a place of business in New Zealand.

If a person making a request does not fall into any of these categories, she/he is not entitled to make the request, and the Ministry has no obligation to provide any information.

## What information is 'official information'?

Essentially, *any* information the Ministry has created or holds, or which is held on our behalf. Official information is all information held by:

- a government department
- a Minister in his or her official capacity
- an organisation subject to the Official Information Act (as defined in Part 2 of Schedule 1 of the Ombudsman Act 1975 or Schedule 1 of the OIA).

This means it covers everything on our paper filing and electronic systems, and in archive storage. It also covers information in the memory of officials that is not otherwise stored in a physical form (to the extent that it can be accurately remembered).

*NOTE: No categories of information or document are excluded.*

Essentially all information we have is 'official information'. For example, drafts of papers or letters (if still held), emails, notes of meetings, information held by a contractor working on the Ministry's behalf, verbal advice, documents not on letterhead, recollections of meetings, tapes (video and audio) and computer disks.

It is important to note the Act only applies to information that is 'held'. It does not require the creation of new information. You may respond that the information "does not exist" ([section 18\(e\)](#)).

## Who makes decisions on OIA requests and signs letters to requesters?

The Act requires that any decision to withhold or release information, or to extend time, be made by the Chief Executive or a "decision-maker authorised by the Chief Executive to make such decisions".

*NOTE: The Ministry also requires that transfer decisions be made by such authorised persons.*

The Chief Executive has authorised the following Ministry staff to make decisions on OIA requests:

- Deputy Chief Executive
- General Managers.

These people must sign any letter going to the requester that:

- releases or withholds information
- extends the time frame for responding
- transfers the request
- proposes a charge for responding.



They are responsible for ensuring that the requirements of the Act, and of this policy, have been met.

Generally, the General Manager of the team to which the OIA request was assigned should sign any letter going to the requester. An exception can be made if, for instance, a different team within the Ministry handles the request, or if the relevant General Manager is away.

## Principle of availability

The 'principle of availability' (see [section 5](#) of the Act) underpins the whole Act.

It states that: "information shall be made available unless there is good reason for withholding it".

All decisions on whether to release information must be made with this in mind.

When in doubt about whether to make information available, you should carefully review your reasons for withholding it and consult with the Legal Team or a Manager if necessary.

However, a balance must be struck between the 'principle of availability' and the need to protect official information in a way that is consistent with the public interest and the preservation of personal privacy.

## The Ombudsmen

People unhappy with a decision made under the Act, can complain to the Ombudsman for a review (see ['Review by the Ombudsman'](#) section).

## Where to go for further guidance

This OIA Hub does not cover every eventuality. Further relevant material can be found at:

- <http://www.ombudsman.parliament.nz/>. This site contains the [Ombudsman's Practice Guidelines](#). These guidelines are comprehensive and provide more complete information than this policy. They contain detailed guidance about specific issues arising under the Act.
- [www.justice.govt.nz](http://www.justice.govt.nz). This site contains the Ministry of Justice's [Charging Guidelines for Official Information Act 1982 Requests](#).
- [www.dpmc.govt.nz](http://www.dpmc.govt.nz). [Chapter 8 of the Cabinet Manual](#) contains useful information about how Cabinet documentation should be treated.
- [www.ssc.govt.nz](http://www.ssc.govt.nz). State Services Commission's [Release of Official Information: Guidelines for Coordination](#). These guidelines assist with decision-making on when it is appropriate to consult other departments or Ministers about an OIA request.

## Link to the Official Information Act 1982

The Act itself can be accessed at:

<http://www.legislation.govt.nz/act/public/1982/0156/latest/DLM64785.html?src=qs>

## CLARIFY SCOPE/CONTENT WITH REQUESTER IF NECESSARY

If the request is vague or difficult to understand, you should consider asking the requester person to put the request in writing, ideally within 7 days of receiving a request as it will reset the time limit from the date the clarification is received. If the person declines or is unable to put the request in writing, you must record your understanding of the request and provide a copy of the record to the person. Discuss with your Manager who is the most appropriate person to contact the requester.

If the request is very large and 'catch all' consider asking the requester to be more precise (see [Duty to provide assistance](#) heading in the 'Background' section of this guidance. Ask and/or help the requester to clarify the scope and content of their request. To do this you could:

**Note:** Minister OIAs:

Ministry staff **should not be** contacting the requestor to clarify the scope of a request. The Minister's office Ministry staff will be doing it for the Author.

**Note:** CE OIAs:

Ministry staff should consult **legal/manager before contacting** the requestor to clarify the scope of a request.

### [Assemble all information](#)

- [Where to look](#)
- [Who to ask](#)
- [How to ask](#)

### [Consultation with other parties required?](#) (content updated)

### **Assemble all information**

Once you have clarified the request you will need to begin assembling the relevant information. Locate the material that falls within the scope of the request and commence your assessment as to whether it should be released. Where there are more than a few documents, it is useful to list them all in a table.

Finding and assembling the information will be a different experience each time, depending on the nature of the information sought. Sometimes the information will already be assembled because it will all be stored in one location or within one work group. But sometimes it may be held in a number of places or groups, and you need to be able to identify where or who they might be.

Unless the magnitude of the task of assembling the information requested would in itself provide a good reason to withhold, it is not possible to make a proper decision about whether to release or withhold any information without having it all in front of you to assess. This means that you should always start by assembling all the information that is sought by the requester.

To assemble the information you need to know where to look, who to ask and how to ask. If you are not familiar with the type of information requested you should seek advice from your Manager. It may be that it is more appropriate for someone else to action the request.

**Where to look** – electronic or hard copy files located in the central filing system are obvious, but don't forget email and other electronic document storage places e.g. shared drives for older

material. Staff may also have their own files of information before it gets put into the central filing system.

**Who to ask** – you need to think about whether colleagues in other areas may have related information. Don't assume you're the only source.

**How to ask** – you should not use a scatter-gun approach, but email can often be the most effective way to get to a diverse group of people. *Be sure to quote the request, rather than paraphrasing it in your own words.*

Make sure you ask people to give you a 'nil return' where appropriate so that you can be sure the request has been actively considered.

Sometimes we know the information exists but we just can't find it. This is usually a case of the hard copy file having been misplaced. The Act envisages this situation and provides a basis (see [section 18\(e\)](#)) for refusing that part of the request, because the document that is alleged to contain the information cannot be found (see ['Information cannot be found'](#) section of this document).

A request may cover information that has not yet been written down, but which an official remembers. In such a case it is often easiest to ask the official to write it down so that it can be assessed.

Discuss your preliminary conclusions about the release of information with your Manager.

### **Consultation with other parties required?**

You will also need to consider whether third parties should be consulted if they have provided the document or have some other association with it. These may include private individuals, companies, departments or Crown entities. If you think that consultation with other parties is required, please discuss this with your Manager and the Legal Team, who can provide guidance on how to consult with other parties. There is no requirement to consult with the Department of Prime Minister and Cabinet over papers of the current administration. The Cabinet Office is available for general guidance.

**Note:** Do not refer to individual agencies in Minister OIA responses. The OIA is to the Minister so instead of 'the Ministry of Transport has identified no documents within scope' it should be 'I have identified no documents within scope'.

## HOW LONG HAVE I GOT

The Act contains requirements about how quickly any request must be answered, and when other actions need to occur. These statutory obligations should always be kept in mind when responding to an OIA request.

***NOTE:** The general statutory obligation is to answer all requests “as soon as reasonably practicable”.*

- [20 working days](#)
- [Extensions](#)
- [Request for urgency with timing obligations](#)
- [How to count time](#)
- [If unsure seek guidance](#)

### Twenty working days

The specific statutory obligation is to answer the request by giving or posting the answer to the person within **20 working days**. However, check the green OIA coversheet to determine the deadlines to the Minister and/or the authorised decision-maker (General Manager), which will be several days earlier than 20 working days. This will allow time for consideration of the final decision/response.

### Extensions

*The processes for transferring a Chief Executive OIA and a Minister OIA are separate, so please refer to the relevant section of the OIA Guide for instructions on how to transfer each of these OIAs.*

#### For CE OIAs

If you need more time and have to extend the response timeframe, the Act allows 20 working days to notify the requester of this extension and the new timeframe. However, this should be done as soon as possible.

*You can only extend an OIA request once.* So, when you are thinking about how long to extend the time to respond to an OIA request keep in mind that any extension must be for a reasonable period having regard to the circumstances. It is better to overestimate and deliver early, than underestimate and deliver late.

Once you have begun to assemble the information that falls within the scope of the request, you should be able to gauge whether you will need extra time to locate material or conduct consultations. Discuss your preliminary conclusions about the need for an extension of time with your Manager.

Under [section 15A](#), the 20 working days time limit for actioning a request or the 10 working days time limit for transferring a request may be extended if:

- the request is for a large quantity of information, or a large quantity of information must be searched, *and* meeting the original time limit would unreasonably interfere with other work, or
- any consultations (e.g. with external agencies or a Minister) necessary to make a decision on the request cannot reasonably be made within the original time limit.

Any extension must be “for a reasonable period of time having regard to the circumstances”.

Although the Act provides that it must be made by giving or posting notice of the extension to the requester within 20 working days of the original request, it is preferable that decisions about the need for an extension be made as soon as possible.

Notification of time extensions must specify:

- the length of the extension
- reasons why the deadline is being extended
- the right to complain to the Ombudsmen about the extension.

Make sure that the extension will allow you sufficient time to collate the information and undertake all necessary consultation.

***NOTE:** if you have decided to release the information and have notified the requester of your decision, then your obligation to meet the 20 day time limit is discharged at that point. Therefore, the time waiting for the requester to pay the charge does not count towards the 20 day time limit.*

### **Request for urgency with timing obligations**

If a requester indicates that the request is urgent you are entitled to ask for supporting reasons. These reasons need to be assessed on a case-by-case basis to determine how the needs of the requester can be met.

In such cases it is important to remember that the obligation is to answer the request “as soon as *reasonably practicable*”.

In deciding what is ‘reasonable’, we must take into account both the practicalities for the Ministry and the needs of the requester. If we can’t meet the urgent timeframe expected by the requester we should explain why.

Alternatively, you may want to consider splitting the response. This entails releasing some information as a matter of urgency, and following up with the remainder of the Information within the normal time limits.

### **How to count time**

Time limits are expressed in ‘working days’, that is, any day that is not a Saturday, a Sunday, a public holiday or any day between 25 December and 15 January inclusive.

To count the working days available: day one is the first working day after the day the request was received by the Minister or the Ministry. For example, if a request is received on a Monday, the last and 20th working day available to send out the response is the fourth Monday after that (unless a public holiday or the Christmas holiday period adds some time to the deadline).

If a request has been made verbally, then later confirmed in writing, you must count the working days from the date of the verbal request, not from the receipt of the written confirmation.

### **If unsure seek guidance**

Because the Act requires a case-by-case approach, the general points made in this policy may not apply in all cases.

For more comprehensive information, consult the practice guidelines produced by the Office of the Ombudsman at: <http://www.ombudsman.parliament.nz/>.

If you are in ever doubt about how to proceed when handling a request, you should seek the assistance of your Manager, colleagues and/or the Legal team.

**NOTE:** *If you are proposing to refuse a request, or withhold any information, you must check with the Legal team first.*

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## TRANSFERRING AN OIA REQUEST

If you are going to transfer the request to another agency or to a Minister, you have a statutory maximum of **10 working days** to notify the requester of this decision.

If you receive a request that was transferred from another agency or a Minister, you have a maximum of **20 working days** (from when the Ministry receives the request on transfer) to respond.

### Transferring a request (or part of it)

Within the first few days of receiving an OIA request you should establish what information is needed and whether the Ministry of Transport holds it.

If you consider that another public organisation, for example one of the transport Crown entities holds all or some of the documents/information requested, you should consider transferring the request (or part of it) to that organisation.

[Section 14](#) of the Official Information Act provides that requests may be transferred where the information is either:

- not held by the department (or the Minister), but is believed to be held by another Minister, government agency or local authority; or
- the request appears to be more closely connected with the functions of another Minister, government agency or local authority.

[Section 14](#), together with the 'duty of assistance' means that you should *always* transfer the request when the Ministry does not hold the information requested but believe it may be held by another party who is subject to the Official Information Act.

You have a maximum of 10 working days under the Act to notify the requester that the request is being transferred.

Under [section 15A](#), the 10 working day limit can be extended in certain circumstances where there is a large quantity of information or a need to consult other parties. However, for any extension to the time for transfer, notification must take place within the original 10 working day time limit.

**NOTE:** *This is separate from the 20 working day time limit for an extension on the actual response*

In the initial stages you should determine, through consultation, who is going to accept responsibility for responding to the request. For example, is it more appropriate for the request to be answered by the Ministry, the Minister or one of the transport Crown entities?

In the case of requests to the Minister, often the information wanted is not physically held by the Minister at all, and is being worked on by the Ministry or a transport Crown entity. In most cases, it is appropriate for such requests to be transferred to the Ministry or the relevant transport Crown entity.

The Ministry currently consults with the Minister's office on most 'Chief Executive' OIA requests (OIA requests addressed to the Ministry). This is important — especially for requests that are politically sensitive or potentially controversial. The Minister's Office will

advise the Official Correspondence team (on a weekly basis) which 'Chief Executive' OIA requests they wish to see.

***NOTE:** It is advisable to have an early phone conversation with the Minister's office on potentially controversial requests.*

Where a request covers information generated by several agencies, it is common practice for the Ministry to respond in relation to information it has generated, and to transfer the request in relation to information generated by other agencies. To avoid unnecessary confusion the transfer letter should clearly identify the information, or the part of the request, that the other agency must respond to.

For a request to the Ministry, the decision on whether to transfer a request (or part of a request) is the Ministry's. No other agency can require us to transfer the request if we don't believe there are valid reasons for doing so under the Act.

Requests should usually be transferred when:

- the Ministry holds documents that were authored in another agency or which are properly the information of such an agency and have been given to us by that agency. Again, you may wish to consult with the original agency as to which agency should progress the request.
- the Ministry holds information that it believes to be more closely connected with the functions of the Minister.

Sometimes the information requested may be a mixture of the above.

**Instructions on how to transfer a 'Chief Executive' OIA request can be found [here](#).**

**Instructions on how to transfer a 'Minister' OIA request can be found [here](#).**

### **Possible Scenarios**

- If the information is more closely connected with the Ministry, the Ministry must answer the request (but may consult with the Minister or another agency).
- If the information is partly connected with the Minister and partly connected to the Ministry, the part of the request that is connected to the Minister must be transferred to the Minister (on the same basis as above).
- If the information is more closely connected with another government agency, the Ministry should transfer the request (or part of it) to that agency.

If in doubt about whether a request or part of it should be transferred, consulting with relevant Ministers or agencies will normally resolve the issue quickly.

If there is a complaint to the Ombudsman for a request transferred to the Minister, the Minister (with our assistance if requested) deals with the Ombudsman's office.



## Notifying of transfer

[Section 14](#) requires that when you transfer a request, you must:

- notify the requester that their request (or part of it) has been transferred (see example of a '[Letter to requester transferring request](#)'); and
- notify the person or agency to whom the request is being transferred (see example of a '[Letter to transferee](#)').

## Implications of transfer decision

If the request is transferred to another government agency, our responsibilities in respect of that request will generally then cease (although we may sometimes be consulted as the request is progressed).

If a request is transferred to a Minister:

- the Ministry must provide support and advice to enable the Minister to respond to the request
- the Minister is the one who decides whether to withhold or release the information.

**NOTE:** Your transfer letter should be checked by the Legal team.

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# GUIDE TO CHARGING

## Charging for the release of information

You will need to consider whether a charge should be applied for any of the material to be released. [Section 15](#) of the Act allows agencies to fix a charge for the release of official information.

Charging may be an option if you have a request that will involve a substantial amount of time and work to respond to, particularly if you are considering declining the request on the grounds that it would require substantial collation and research ([s18\(1\)\(f\)](#)).

[What can we charge for?](#)

[What is chargeable?](#)

[Fixed charges for staff](#)

[Photocopying](#)

[Other costs](#)

[Remission of charges](#)

[Payment/Deposits](#)

[Review of decisions by Ombudsman](#)

The Ministry of Justice's [Charging Guidelines for Official Information Act 1982 Requests](#) provide details about charging for services and should be followed in all cases unless good reason exists for not doing so. If you are considering proposing a charge you should discuss with your Manager and consult the 'Guide to charging for the release of information' section of this document.

Before deciding to charge you should consider what other options are available as an alternative to charging.

- Consider asking the requester to specify the request in order to narrow down its scope and thereby reduce staff time and effort in responding.
- Transfer the request, where appropriate, which may enable the request to be dealt with more efficiently.
- Release summaries of information.
- Provide the information in an alternative form (e.g. sending electronic copies by email or disk).
- Allow the requester to inspect the original documents themselves if providing copies of the documents would require a lot of photocopying.

Note that we can refuse to provide information in the form sought if doing so would “impair efficient administration” (see [section 16\(2\)\(a\)](#)). You may also want to consider if the charge should be waived or reduced (e.g. if to do so would be in the public interest).

**NOTE:** *You must not charge for information without advising the requester (and supplying an estimate) ahead of time. You should not charge more than any estimated charge you advised in advance.*

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

There is a protocol that charges are not made for responding to a request by, or on behalf of, a Member of Parliament (MP). But if MPs make large and expensive requests, you should seek to ensure the request is made with ‘due particularity’ (see [Duty to provide assistance](#) section of this document) and if the request remains large the reasonable charge may be levied.

### **What can we charge for?**

A government department can charge for:

- staff time
- the amount of photocopied material
- any other cost incurred in responding to an OIA request.

### **Staff time**

#### **What is chargeable?**

A charge can be made for staff time spent:

- searching and retrieving information
- providing transcripts
- supervising access to the information
- searching an index to establish the location of information
- locating (physically) and extracting the information from the place where it is held
- reading or reviewing the information
- editing of information to be withheld
- compiling the information.

### **Fixed charges for staff time**

- The first hour spent on a request is to be free of charge.
- Staff time exceeding one hour spent in actioning the request is chargeable.
- Staff time in excess of one hour should be charged out at a rate of \$38.00 (including GST) per half hour or part thereof. This rate applies regardless of the seniority of the staff member handling the request.

The charge should not include any allowance for:

- time spent considering whether to withhold or release information and in what form — that is, assessing the information
- extra time spent locating and retrieving information that is misplaced.

### **Photocopying**

The first 20 pages of photocopying or printing on standard A4 or foolscap paper is free of charge. Subsequent pages are chargeable at a rate of 20 cents per page.

### **Other costs**

Any other direct costs incurred (e.g. copying of maps/plans or any other documents larger than foolscap size, videos, computer time/disks, etc) may be charged up to their actual cost. This includes the retrieval of information offsite, reproducing audio or visual recordings and other situations where a direct charge is incurred.

### **Remission of charges**

The liability to pay any charge may be modified or waived at the discretion of the department or organisation receiving the request if, for example, it would be in the public interest to do so. The Ministry of Justice's [Charging Guidelines for Official Information Act Requests 1982](#) provide more detail about what considerations may be relevant in deciding whether to modify or waive any charge.

### **Payment/Deposits**

Where a charge in excess of \$76.00 is likely to be levied, or where some assurance of payment is required to avoid waste of resources, a deposit may be requested. A deposit can only be requested after a decision has been made to make the information available.

The applicant should be notified of the amount of deposit required, the method of calculating the charge and the likely final amount to be paid.

Work on the request may be suspended until receipt of the deposit or agreement to pay the charge and the 20 working day limit is extended accordingly.

### **Review of decisions by Ombudsman**

An Ombudsman may investigate and review any decision to charge for official information. You must inform the requester of the right to complain to the Ombudsman about the charge or estimated charge.

## REFUSAL OF REQUESTS – ADMINISTRATIVE REASONS

OIA requests can be refused for two reasons - administrative or substantive. Administrative reasons for withholding are contained in section 18 of the Act. Substantive reasons for withholding information are contained in [section 6](#) and [section 9](#) of the Act.

For each of the withholding reasons, including those not dealt with directly in this guidance, there are references to the Ombudsman's Summary Sheets, which take 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 was 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 (see "Consideration of the "public interest" section of this document).

### Administrative

[Section 18](#) of the Act provides several administrative grounds for refusing an OIA request.

- The information is, or will soon be, publicly available ([18\(d\)](#)).
- The document alleged to contain the information requested does not exist or cannot be found ([18\(e\)](#)).
- The information can not be made available without substantial collation and research ([18\(f\)](#)).
- The information is not held by the Ministry and we don't know who holds it ([18\(g\)](#)).
- The request is frivolous or vexatious or the information requested is trivial ([18\(h\)](#)).

These grounds are discussed in more detail below.

[Public availability](#)

[Information does not exist](#)

[Information cannot be found](#)

[Substantial collation or research](#)

[The information is not held](#)

[Frivolous or vexatious](#)

[Trivial](#)

There are additional administrative grounds in [section 18](#) of the Act for refusing a request (summarised below). These reasons are less likely to arise in this Ministry.

However, if you think they apply, discuss the matter with the Legal team.

- *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 certain information the release of which would prejudice certain interests related to security, defence and international relations.
- *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”.
- *Contempt of Court or Parliament* – [section 18\(c\)\(ii\)](#) deals with this possibility, which could arise if, for example, there is a court order preventing release of information.

**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.

### 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 on 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 certain documents or information are about to be, or have already been, put up on a website for public access
- where the information is already available in a public library.

## Information does not exist

[Section 18\(e\)](#) is relevant where a requester has sought information contained in a specified document. If the document does not exist or the agency is unable to find the document after a reasonable effort has been made to locate it, a request for this document may be refused.

Before declining under this provision, you should consider whether it would be appropriate to consult with the requester. Because of insufficient knowledge, a requester may have been unable to correctly name the document that he or she is seeking. In such cases, it may be reasonable to clarify the request with the requester by actually identifying the documents that do exist.

## 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 that contain the information requested but you cannot 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 cannot be located, the requester should be told this when the refusal is made.

## 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 large, broadly defined, vague or sweeping. This ground should not be used as a matter of course. It is only likely to apply in unusual cases. The Law Commission has suggested that it is a provision of the “last resort”. Generally the better approach is to ask the requester to specify what he or she requires with more particularity.

If this section appears to be applicable, the first step is to contact the requester to see whether the request can be re-specified and narrowed.

You should consider whether the setting of reasonable charges, granting reasonable extensions of time limits or considering alternative forms of disclosure would help manage the request. You should only rely on [section 18\(f\)](#) if none of these options provide a reasonable means of dealing with the request.

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 have 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.

### The information is not held

[Section 18\(g\)](#) deals with the situation where we do not hold the information and we do not know who holds it.

Once you have established that the Ministry does not hold the information you must consider whether:

- (i) the information requested is held by another department, Minister of the Crown, organisation or local authority; or
- (ii) the information requested is connected more closely with the functions of another department, Minister of the Crown, organisation or local authority.

If you have no grounds for believing that either (i) or (ii) above apply, then the request may be refused under [section 18\(g\)](#) of the Act.

If, however, you do have grounds for believing that either (i) or (ii) above apply, the request should be transferred in accordance with [section 14](#) of the Act (see [‘Transferring a request’](#) section of this document).

### Frivolous or vexatious

[Section 18\(h\)](#) allows refusal of a request that is “frivolous or vexatious”. This expression is a legal one. To be applicable you must be able to say that you have grounds for believing that the requester is *patently abusing* the rights granted by the legislation, rather than exercising those rights in good faith.

**NOTE:** *Very few cases will meet this criteria.*

It is not enough that the requester may have 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 be used to refuse aspects of a request that deal with administrative arrangements (e.g. meetings) related to the subject matter of the request.

The question of whether the information is trivial is a judgement to be made taking into account the circumstances of a particular case. Information which may appear trivial may be particularly relevant to the purpose for which a requester is seeking information.

### Additional Administrative Grounds



There are additional administrative grounds in [section 18](#) of the Act for refusing a request (summarised below). These reasons are less likely to arise in this Ministry. However, if you think they apply, discuss the matter with the Legal team.

- *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 certain information the release of which would prejudice certain interests related to security, defence and international relations.
- *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".
- *Contempt of Court or Parliament* – [section 18\(c\)\(ii\)](#) deals with this possibility, which could arise if, for example, there is a court order preventing release of information.

**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.

## Substantive

This section of the guidance does not set out to deal with all the substantive grounds for withholding information in detail. That is because the [Practice Guidelines](#) on the Ombudsman's website already contain such detail. The Legal team are also available to provide advice and must be involved before a decision to withhold is finalised (see '[Get legal advice if withholding](#)' section of this document).

This part of the guidance 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.

The Refusal of requests - substantive section has been split into two parts:

### [Section 1:](#)

- [Conclusive reasons for withholding](#)
- [Other good reasons for withholding](#)
- [Consideration of the "public interest"](#)
- [Privacy](#)
- [Commercial information](#)
- [Prejudice to commercial position](#)
- [Commercial activities](#)

### [Section 2:](#)

- [Obligation of confidence](#)
- [Negotiations](#)
- [Confidentiality of advice](#)
- [Free and frank expressions of opinion](#)
- [Legal professional privilege](#)
- [Unacceptable reasons for withholding information](#)
- [List of standard descriptions for withholding sections](#)

## Conclusive reasons for withholding

[Section 6](#) of the Act contains a number of conclusive reasons for withholding information. These reasons relate to “national interest”. Information may be withheld under [section 6](#) if the release of the information would:

- prejudice the security or defence of New Zealand or international relations
- prejudice the entrusting of information to the government on the basis of confidence
- prejudice the maintenance of the law
- endanger the safety of any person
- seriously damage New Zealand’s economy.

***NOTE:** If any [section 6](#) grounds apply, they will be sufficient basis for withholding information. You do not need to consider whether there is a countervailing public interest. This contrasts with [section 9](#) where each reason must be balanced against an overall “public interest” assessment.*

In withholding information under [section 6](#), you must be able to identify:

- *how disclosure would prejudice the interest in [section 6](#) that should be protected.* This requires identification of the nature of the prejudicial effect in the particular case and an explanation of how it is anticipated it will occur, and
- *whether that predicted prejudice is likely to occur.* “Likely” means more likely than not — that is there is a real and substantial risk that it will occur.

## Other good reasons for withholding

[Section 9](#) describes a series of other reasons for withholding information. These reasons are more likely to arise in the context of this Ministry’s work. These reasons can be grouped under the following headings:

- privacy
- commercial information
- confidentiality
- negotiations
- constitutional conventions
- free and frank expressions of opinion
- improper pressure or harassment
- legal professional privilege
- improper gain or advantage.

In applying any of the grounds in [Section 9](#), you are required to consider whether there are any “public interest considerations” that outweigh the reason for withholding and make it desirable for the information to be released.

For each of the reasons in [Section 9](#) to be applicable, the withholding must be *necessary* to protect the relevant interest. This is a high standard — not just desirable but necessary, i.e. if the information is released the interest protected by the relevant subsection *will* be prejudiced.

If the public interest considerations outweigh the reason in [Section 9](#) for withholding, the information should be released.

### **Consideration of the “public interest”**

“Public interest considerations” are not the same as considerations the public are interested in. Things that are “in the public interest” promote the overall public good.

These include, but are not limited to, some of the things identified in the purposes of the Act — more effective participation by the public in the making and administration of laws and policies, and promotion of the accountability of Ministers and officials. Equally, they might include situations where, if the information was not released, the public would be left with a harmful and incorrect understanding of an issue. Also, ensuring maintenance of, and respect for, the law and 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.

### **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.

This Ministry does not hold a great deal of information that relates to individuals, but examples of information that would raise privacy questions include information about individuals’ employment conditions or remuneration, or disciplinary matters.

[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 public servants on documents such as emails or memos generally cannot be withheld. This is because the public interest in the accountability of public servants overrides any privacy interest associated with their activities as a public servant. There may be exceptions, especially where the relationship between the citizen and the public sector organisation or official concerned is unreasonably strained. In these circumstances, consideration should be given to withholding the identity of the public official concerned for the reason of protecting such officials from improper pressure or harassment (see [section 9\(2\)\(g\)\(ii\)](#)).

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\(2\)\(a\)](#). However, the individual's view that the information should be withheld cannot be treated as a veto on release. That is just one factor to weigh.

Also, on occasion there may have been an implied waiver of privacy interests where the individual or their representative has discussed the information publicly. However, you should not assume 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 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.

Summary sheet for [Section 9\(2\)\(a\)](#) available at: [www.ombudsmen.govt.nz](http://www.ombudsmen.govt.nz)

### **Commercial information**

[Section 9\(2\)](#) of the OIA sets out certain specific grounds for withholding information that may be commercial in nature. These provisions are directed at protecting the position of third parties where government holds information relating to those parties. Commercial information cannot automatically be withheld so you need to consider this carefully and consult the Ombudsmen's guidelines.

[Section 9\(2\)\(b\)\(i\)](#) provides good reason for withholding information if the withholding of information is "necessary" to prevent the disclosure of a trade secret. As with all grounds under [section 9](#), the interest in favour of withholding the information is not "outweighed by other considerations which render it desirable in the public interest to make the information available".

In order to decide whether it is necessary to withhold the information at issue to prevent the disclosure of a trade secret, you will need to consider whether that information amounts to a trade secret, and whether it is necessary to withhold the information to prevent the disclosure of that trade secret.

The Ombudsman's guidelines refer to criteria laid down by the Australian courts for determining whether information amounts to a trade secret. Factors to be considered are:

- the extent to which the information is known outside of the business
- the extent to which it is known by employees and others involved in the business
- the extent of measures taken to guard the secrecy of the information
- the value of the information to affected parties and contemporaries
- the amount of effort or money expended in developing the information
- the ease or difficulty with which the information could be properly acquired or duplicated by others.

You do not need to describe or prove the particular harm to the business interests of the person who supplied, or who is the subject of, the information at issue. Rather, it is assumed that any disclosure of trade secrets is in itself damaging.

Summary sheet for **section 9(2)(b)(i)** available at: [www.ombudsman.parliament.nz/](http://www.ombudsman.parliament.nz/).

### **Prejudice to commercial position**

[Section 9\(2\)\(b\)\(ii\)](#) provides for the withholding of information where making that information available would be likely to unreasonably prejudice the commercial position of the person who supplied, or is the subject of, the information.

In order to answer this question, you will need to take a number of steps including considering whether the information at issue relates to the “commercial position” of the person who is the subject of the information or who supplied the information. The Ombudsmen are of the view that to be “commercial” activities they must be undertaken for the purpose of making a profit.

You will also need to consider whether the person who supplied the information has a “commercial position” and identify the prejudice that would likely result to that “commercial position” if the requested information were to be made available. You will need to establish why that prejudice would be unreasonable and explain why disclosure of the requested information would be so likely to cause the predicted prejudice that it is necessary to withhold it (see *Ombudsman’s Guidelines* for further assistance).

It may be useful to seek the company’s views to help 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.

Summary sheet for [section 9\(2\)\(b\)\(ii\)](#) available at: [www.ombudsman.govt.nz](http://www.ombudsman.govt.nz).

### **Commercial activities**

[Section 9\(2\)\(i\)](#) enables information to be withheld if it is necessary for a Minister or any department or organisation holding the information to carry out, without prejudice or disadvantage, commercial activities — and this interest is not outweighed by other public interest considerations.

You will need to:

- identify the prejudice or disadvantage that might result to those commercial activities if the information were to be made available
- assess how likely it is that the disclosure of the requested information would cause the predicted prejudice or disadvantage to occur
- explain why disclosure of the requested information would be so likely to cause the predicted prejudice or disadvantage that it is necessary to withhold it
- assess whether the interest in favour of withholding the information is outweighed by other considerations which render it desirable, in the public interest, to make that information available.

Summary sheet for [section 9\(2\)\(i\)](#) available at: [www.ombudsman.parliament.nz/](http://www.ombudsman.parliament.nz/).

## Obligation of confidence

[Section 9\(2\)\(ba\)\(i\)](#) enables information to be withheld if the information was:

- supplied under an obligation of confidence; *or*
- the person was compelled under statute to provide it; *and*
- the release would prejudice the supply of similar information, and it is in the public interest that the information continue to be supplied.

This provision can apply to all information, but this section often arises in the context of commercial information. This may be supplied to the Ministry under an obligation of confidence to help with policy analysis. In those cases this section is used as the basis of withholding the protected information.

A useful starting point is to consult the suppliers of information for their views about release. While the suppliers are not entitled to veto the release of information, their views are likely to be relevant in assessing whether the future supply of information is at risk.

You must be able to establish that information is subject to an obligation of confidence. There must generally be a mutual understanding between the supplier of the information and the agency receiving the information that it is subject to an obligation of confidence. Each case must, therefore, be considered on its own merits.

Summary sheet for [section 9\(2\)\(ba\)\(i\)](#) available at: [www.ombudsman.parliament.nz/](http://www.ombudsman.parliament.nz/).

### Section 9(2)(ba)(ii)

If an agency considers that disclosure of the information would be likely to result in a different harm or prejudice from that outlined above (i.e. supply of information) the agency may wish to consider whether [section 9\(2\)\(ba\)\(ii\)](#) applies.

[Section 9\(2\)\(ba\)\(ii\)](#) enables information to be withheld if the information was supplied under an obligation of confidence, or if a person has been or could be compelled to provide information under the authority of any enactment where the making available of the information *would be likely otherwise to damage the public interest*.

Summary sheets for section [9\(2\)\(ba\)\(i\)](#) and [9\(2\)\(ba\)\(ii\)](#) available at: [www.ombudsman.parliament.nz/](http://www.ombudsman.parliament.nz/).

## Negotiations

[Section 9\(2\)\(j\)](#) enables information to be withheld to enable the organisation holding the information to carry out negotiations, including commercial and industrial negotiations.

[Section 9\(2\)\(j\)](#) does not provide good reason to withhold all information relating to particular negotiations. It only protects information that, if disclosed, would be so likely to prejudice or disadvantage the agency in their negotiations, that it is necessary to withhold the information.

Whether such prejudice or disadvantage will occur will very much depends on:

- the precise nature of the information at issue

- the relevance of that information to the actual issues under negotiation.

**NOTE:** The agency must be able to explain precisely how the prejudice will occur. Summary sheets for [section 9\(2\)\(j\)](#) available at: [www.ombudsman.parliament.nz/](http://www.ombudsman.parliament.nz/).

### Confidentiality of advice

[Section 9\(2\)\(f\)\(iv\)](#) enables information to be withheld to maintain the constitutional convention that protects the confidentiality of advice tendered by Ministers and officials.

This section protects advice that has been tendered or given. It does not automatically protect any briefing or advice to Ministers.

The advice must be about a possible course of action, not just factual information. One example of the convention in practice is the protection of draft answers to Parliamentary questions.

The Ombudsmen have recognised that various purposes of the convention include protecting the ability of:

- Ministers and Cabinet to consider advice, where release of the advice will prejudice the ability to decide what course of action to take
- coalition partners to conduct negotiations regarding policy issues, where release of the advice may prejudice such negotiations
- a Minister to consider draft answers to Parliamentary questions, in order that he/she may decide precisely how to respond and take individual responsibility for the answer actually given.

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. The wording of [section 9\(2\)\(f\)\(iv\)](#) suggests that in certain circumstances the convention allows advice tendered to Ministers to be kept confidential. It is generally considered that such protection is necessary in order to enable the process of government to operate in an effective and orderly manner.

But the longer the decision takes, or once the decision has been made, the less likely this section will be applicable.

In many cases (though not for Parliamentary questions) the information may be released after the government has made its decision.

Summary Sheet for [section 9\(2\)\(f\)\(iv\)](#) available at: [www.ombudsman.parliament.nz/](http://www.ombudsman.parliament.nz/).

### Free and frank expressions of opinion

[Section 9\(2\)\(g\)\(i\)](#) has similarities with [section 9\(2\)\(f\)\(iv\)](#) discussed above. Information may be withheld if 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.

It is usually relevant where concerns about releasing the information relate to the ability of Ministers or officials or others to:

- *generate* opinions in the future (as such opinions are frequently the basis upon which advice is given)
- *express* such opinions in a free and frank manner in the future (as the way in which information is expressed can be an important means of communicating the significance of issues).

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

Consider the overall process of which the information forms part — for example, whether it is part of a considered consultative process of the early stage of developing policy options. If the information at issue forms part of an early stage of policy development, it can be expected that it is more of a ‘free and frank’ nature.

Consider whether the information could be described as an opinion and whether that opinion is expressed in a ‘free and frank’ manner.

Often information of a background or factual nature can be separated from that which contains expressions of opinion.

Information is able to be released when the interest is no longer compromised by the information being available.

[Section 9\(2\)\(g\)\(i\)](#) does cover expressions of free and frank opinions to Ministers or officials, so it can include opinions conveyed by members of the public or on behalf of an organisation.

Summary sheet for [section 9\(2\)\(g\)\(i\)](#) available at: [www.ombudsman.parliament.nz/](http://www.ombudsman.parliament.nz/).

### **Legal professional privilege**

Legal professional privilege is a public policy privilege designed to protect confidential communications between solicitor and client. It is based on the impossibility of conducting legal business without professional assistance, and the need for full and unreserved confidence between adviser and client in order to receive that assistance effectively.

It is well established that agencies and Ministers have the same rights as private organisations to obtain legal advice. For the purposes of the application of legal professional privilege, it is immaterial whether the lawyer providing the advice is in independent practice or is employed in house.

Under [section 9\(2\)\(h\)](#) legal advice that we generate and receive is able to be withheld and it is the government’s wish that we protect this privilege.

Often release might compromise the position a department 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:** *You must always seek legal advice before releasing anything that might be covered by legal professional privilege.*

Summary sheet for [section 9\(2\)\(h\)](#) available at: [www.ombudsman.parliament.nz/](http://www.ombudsman.parliament.nz/).

### **Unacceptable reasons for withholding information**



The following are not reasons in themselves for withholding information:

- the information requested is a draft paper
- the information was created by, or provided to the Ministry by, a third party
- release of the information might be embarrassing for the Minister or a department
- the information is politically sensitive
- another department or a Minister has vetoed its release for reasons we do not accept as valid under the Act.

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT

## List of standard descriptions for withholding sections

The following descriptions are for use in the 'Template 5 Letter withholding information' template in the OCS, in order to inform requesters better and consistently about the nature of the withholding section being relied on.

***NOTE:** Those sections in bold are those most relevant to requests processed by the Ministry.*

OIA Section	Description
Section 6(a)	relates to prejudice to the security or defence of New Zealand or the international relations of the New Zealand Government
Section 6(b)	relates to prejudice to the confidential entrusting of information to the New Zealand Government by other governments or by international organisations
Section 6(c)	relates to prejudice to the maintenance of the law
Section 6(d)	relates to the safety of a person being endangered
Section 6(e)	relates to serious damage to New Zealand's economy by premature disclosure of policy decisions
Section 9(2)(a)	Relates to the privacy of natural persons
Section 9(2)(b)(i)	relates to trade secrets
Section 9(2)(b)(ii)	relates to unreasonable prejudice to the commercial position of a person
Section 9(2)(ba)(i)	relates to confidential information and prejudice to its future availability
<b>Section 9(2)(ba)(ii)</b>	<b>relates to confidential information and damage to the public interest</b>
Section 9(2)(c)	relates to the protection of the health and safety of members of the public
Section 9(2)(d)	relates to the substantial economic interests of New Zealand
Section 9(2)(e)	relates to measures preventing or mitigating loss to the public
Section 9(2)(f)(i)	relates to the constitutional conventions protecting the confidentiality of communications with the Sovereign
Section 9(2)(f)(ii)	relates to the constitutional conventions protecting collective and individual ministerial responsibility
Section 9(2)(f)(iii)	relates to the constitutional conventions which protect the political neutrality of officials
<b>Section 9(2)(f)(iv)</b>	<b>relates to the constitutional conventions which protect the confidentiality of advice tendered by Ministers or officials</b>
<b>Section 9(2)(g)(i)</b>	<b>relates to the effective conduct of public affairs</b>

	<b>through the free and frank expression of opinion by Ministers or officials</b>
Section 9(2)(g)(ii)	relates to the effective conduct of public affairs through the protection of Ministers and officials from improper pressure or harassment
<b>Section 9(2)(h)</b>	<b>relates to the maintenance of legal professional privilege</b>
<b>Section 9(2)(i)</b>	<b>relates to enabling commercial activities to be carried out without prejudice or disadvantage</b>
<b>Section 9(2)(j)</b>	<b>relates to negotiations being carried out without prejudice or disadvantage</b>
Section 9(2)(k)	relates to preventing the disclosure or use of official information for improper gain or advantage
Section 18(b)	we can neither confirm nor deny the existence or nonexistence of the information requested
Section 18(c)(i)	releasing the information requested would be contrary to the provision of the [insert name of Act]
Section 18(c)(ii)	releasing the information requested would constitute contempt of court/the House of Representatives
<b>Section 18(d)</b>	<b>the information requested is, or will soon be, publicly available</b>
<b>Section 18(e)</b>	<b>the document that contains the information requested does not exist/cannot be found</b>
Section 18(f)	the information requested cannot be made available without substantial collation or research
<b>Section 18(g)</b>	<b>the information requested is not held, and I do not believe the information is held by, or is more closely connected with the functions of, any other department or Minister</b>
Section 18(h)	the request is frivolous or vexatious
Section 18(i)	the information requested is trivial.

## A REVIEW OF AN OIA REQUEST BY THE OMBUDSMAN

A requester has a right to ask the Ombudsman to investigate and review a decision made under the Act. Requesters have the right to complain to the Ombudsmen about:

- any **refusal to release** official information (which may also arise where a response is perceived by the requester to be incomplete)
- the fact, and amount, of **any charge** for releasing official information
- a **decision to extend** the time available for responding to a request, including the length of the extension
- a **failure to comply with time limits**, which is deemed to be a refusal to release
- a **decision to impose conditions** on the use, communication or publication of information made available under the Act
- the **form in which information has been released** to the requester – that is, if we have not provided the information in the manner requested.

*NOTE: Generally the Legal team will coordinate the process where a complaint is made to the Ombudsmen.*

Ministry staff involved with any Ombudsman's review must give full cooperation to the Ombudsman, and should do so in the quickest practicable time.

### Ombudsman's process

When an Ombudsman receives a complaint she/he then writes to the Chief Executive of the relevant agency outlining the nature of the complaint.

The Ombudsman will then usually ask for information from the Ministry. This could include copies of all the information requested (i.e. anything released or withheld in response to the request), copies of any papers/information relevant to our initial decision on the request, an explanation about the basis for any decision made in relation to the request and details of any consultation that occurred.

Usually the Ombudsman expects to receive copies of information requested as soon as practicable, but will specify **a maximum of 20 working days**. If an extension is required (e.g. where the issues are complex and/or require further consultation), this should be sought before the expiration of the maximum timeframe. The same procedural requirements as those for extensions of OIAs apply.

The Ombudsman has an *absolute right* to see all the information that is covered by the request. Because this should have been assembled in order to answer the request (unless the release was refused because of "substantial collation or research") it should be readily available.

*NOTE: No relevant information should be withheld from the Ombudsman.*

## Provisional opinion

The Ombudsman will prepare a provisional opinion. If that opinion suggests that the Ministry has made an error, the provisional opinion will be sent to the Ministry for comment. We will have a nominated number of working days to respond. Failure to meet the time limits for responding to the Ombudsman during any such review can result in the failure being formally reported to Parliament.

The Ministry should reconsider the basis for its original decision and either ensure it is robust and correct, or determine whether to adjust or reverse its earlier decision. Obtaining legal advice should be part of this process.

If the preliminary opinion is persuasive, we should move to act in accordance with it rather than wait for the final opinion.

## Final opinion

After receiving any final comments from the Ministry or the complainant, the Ombudsman will then prepare his/her final opinion on the matter and convey that to both parties.

If the Ombudsman decides that the request should not have been refused or that the decision was unreasonable or wrong, s/he may form a final opinion, but consider that making a recommendation is unnecessary or unwarranted.

If the Ombudsman makes a recommendation that the Ministry release information, this will become binding 21 days later unless:

- the Governor General, by Order in Council, otherwise directs; or
- the Ministry, or another party, brings judicial review proceedings against the recommendation.

In certain circumstances the Ombudsman may recommend only that further consideration be given to the making available of the information. These circumstances are where making the information available would be likely to prejudice New Zealand's security, defence or international relations, or in cases of any interest protected by [section 7](#) of the Act, or in those of the prevention, investigation or detection of offences.

In these cases, a certificate by the Prime Minister or the Attorney-General is required. If the Ombudsman's recommendation is not complied with within 20 working days, a statutory duty to comply with the recommendation is imposed on the Minister or the Chief Executive, unless the Governor General makes an Order in Council overriding the Ombudsman's recommendations.

## **Review of ministerial decisions**

Most of the above process will be relevant to a review of a decision on a request made, or transferred to a Minister. Our role will be to support the Minister's handling of the complaint to the extent required. This may involve administrative support and advisory support, including legal advice as necessary.

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## LEGAL - FAQs

The general points made in these FAQs may not apply in all cases as each Official Information Act (OIA) request must be considered on a case-by-case basis.

When considering an OIA request it is important to ascertain the scope of the request. The following are some issues to consider when determining scope.

- Who is the request addressed to, the Minister or the Chief Executive?
- What is the wording of the particular request? This can make a big difference to what may or may not fall within scope e.g. a request for 'information on x topic' may contain different documents than a request for 'documents with information on x topic'.
- If the request is vague or difficult to understand, you should consider asking the requester to clarify as we are not supposed to assume what the scope of the request is. This should ideally be done within the first few days of receiving it.

List of frequently asked questions below:

- [How do I deal with withholding names under an OIA request?](#) (new content)
- [If a document or information has been released previously is it likely that no grounds exist for withholding it in a subsequent OIA request?](#)
- [Do draft documents fall within the scope of a request when drafts are not expressly requested?](#)
- [What do I do if a lot of information in a document is outside the scope of the request?](#)
- [Can the Minister's hand written comments on briefings be withheld under the OIA?](#)
- [How do I deal with a request that requires substantial collation of information?](#)
- [How should I treat Weekly Reports?](#)
- [Do ministerials and public submissions need to be released under an OIA request?](#)
- [What happens if a document I am releasing is written by someone else who is stating that the document is confidential?](#)
- [Does it make a difference if the document is labelled confidential?](#)
- [Can advice be withheld because it is misleading, and does not represent Government policy or the Government's view?](#)
- [If I am considering withholding comments on the basis they are free and frank, what should I consider?](#)
- [If an OIA request asks for copies of previous OIA requests, can they be released?](#)
- [Can officials' names be released under the Official Information Act?](#)
- [Can I withhold information under the OIA on more than one ground?](#)
- [Can I extend the time for responding to an OIA request more than once?](#)

## **How do I deal with withholding names under an OIA request?**

We will continue to address the withholding of names on a case by case basis. There is likely to be a greater privacy interest for staff below manager level when accountability sits with the manager.

## **If a document or information has been released previously is it likely that no grounds exist for withholding it in a subsequent OIA request?**

Probably, but in some situations it may be appropriate to withhold e.g. if it was released by accident or if it was released on a confidential basis.

## **Do draft documents fall within the scope of a request when drafts are not expressly requested?**

In principle yes, they do fall within scope. Feel free to discuss with the Legal team for guidance.

## **What do I do if a lot of information in a document is outside the scope of the request?**

You can consider doing one of the following:

- provide an extract by cutting and pasting information that is within scope
- provide summaries of information
- delete the information outside of scope
- consider release if there is no reason to withhold.

## **Can the Minister's hand written comments on briefings be withheld under the OIA?**

If the comments are in the nature of an opinion and expressed in a free and frank manner, then yes.

## **How do I deal with a request that requires substantial collation of information?**

First you should consider:

- consultation with the requestor to narrow the scope of the request
- extending the timeframe for the response
- charging for the request.

As an alternative to extending time limits or fixing charges, consideration may also be given in appropriate circumstances to alternative forms of disclosure e.g. release of summaries or excerpts which may avoid the need to peruse large volumes of information.

If the request still requires substantial collation of information then it can be declined.



## **How should I treat Weekly Reports?**

We generally withhold the whole document because it is a free and frank expression of opinion. If we were to release information in the Weekly Report, it would restrict the ability of Ministry officials to express opinions in a free and frank manner in the future. However, consideration should be given to excluding factual or statistical information from the Weekly Report, as there is a possibility that this may need to be released.

Although withholding to maintain the constitutional convention that protects the confidentiality of advice tendered by Ministers and officials is relevant where there is a concern that the release will prejudice the ability of decision makers to consider advice, in many cases, once a decision has been made there may be no need for ongoing protection of the advice on which that decision was based. Therefore, it is unlikely to provide lasting protection for the Weekly Report.

## **Do ministerials and public submissions need to be released under an OIA request?**

Yes, provided any personal information relating to the writer of the ministerial request is withheld or the person has consented/agreed to their personal information being released.

## **What happens if a document I am releasing is written by someone else who is stating that the document is confidential?**

Declaring information to be confidential is not sufficient to establish that an obligation of confidence exists. What is required is an understanding between the parties that the information is subject to an obligation of confidence. Regard must be had to both the nature of the information requested and the full circumstances of its supply.

## **Does it make a difference if the document is labelled confidential?**

Stamping a document with 'confidential' is not necessarily sufficient. This may be evidence of such an understanding between the parties but is not, in itself, conclusive.

## **Can advice be withheld because it is misleading, and does not represent Government policy or the Government's view?**

The fact that there is potential for the advice to be misunderstood by the public is not a good enough reason to withhold it under the Act. In this case, you have the option of explaining to the requestor the current status of the advice in terms of Government policy.

**If I am considering withholding comments on the basis they are free and frank, what should I consider?**

It is not sufficient to simply assert that the information is free and frank, and should be withheld. Before information can be withheld under this ground, there must also be a sufficient basis to consider that:

- (a) disclosure of the information requested would be likely to inhibit the future free and frank expression of opinions
- (b) such free and frank expressions of opinion are necessary in the future to maintain the effective conduct of public affairs
- (c) there are no countervailing public interest considerations favouring release of the information which outweigh the need to withhold.

**If an OIA request asks for copies of previous OIA requests, can they be released?**

Yes, provided any personal information relating to the requestor is withheld or the person has consented/agreed to their personal information being released.

**Can officials' names be released under the Official Information Act?**

In principle yes, public officials' names should be available when requested. Anonymity of public officials should be reserved for special circumstances, such as where the safety of individuals is at issue.

**Can I withhold information under the OIA on more than one ground?**

Yes, if more than one ground applies. It is good practice to list all possible grounds for refusal, particularly if the request is of sensitive nature.

**Can I extend the time for responding to an OIA request more than once?**

Yes, as long as it is within 20 working days of the original request. Once you have used up your extended time, you cannot extend the time limit again. When you are thinking about how long to extend the time to respond to an OIA request keep in mind that any extension must be for a reasonable period of time having regard to the circumstances. It is better to overestimate and deliver early, than underestimate and deliver late.

## 'MINISTER' OIAS

A 'Minister' OIA is an OIA request sent directly to the Minister of Transport for response. The Minister's office will allocate the request to MoT (or the relevant Transport agency) for processing/collation. This is different from a 'Chief Executive' OIA, which is an OIA that is sent directly to the Ministry of Transport to answer. For instructions on how to process a 'Chief Executive' OIA [click here](#).

This section sets out the documentation required to complete a response to a 'Minister' OIA request and the administrative procedures that must be followed for approval and sign-out.

- [Timeline for responding to requests to the Minister](#)
- [Processing a 'Minister' OIA request](#)
- [Transferring OIA requests to another agency/department](#)
- [Extending the due date of an OIA Request](#)
- [Additional Information:](#)
  - [Managing large or complex OIA requests and multiple requests](#)
  - [Requests for Cabinet papers and minutes](#) (content updated)
  - [Draft responses](#) (content updated)
  - [Number of copies](#) (content updated)

The Official Correspondence Team is responsible for registering the receipt of OIA requests and for tracking their progress and timing. The Ministry maintains a central OIA tracking sheet operated by the Official Correspondence team. This is an Excel file in Athena, which can be found [here](#).

The draft response to a 'Minister' OIA is due with the Minister's Office for consideration on the 10<sup>th</sup> working day. Delays in sign-off processes within the Ministry are not an acceptable reason for not meeting the deadline. If a response is going to be delayed for any reason, the Ministry must discuss this with the relevant Private Secretary in the Minister's office as soon as possible.

Following the receipt of a draft OIA response in the Minister's office, ministries/agencies need to be able to respond promptly (generally within 24 hours) to any queries raised or requests for additional work to ensure the 20 working day deadline is met.

## Timeline for responding to requests to the Minister

Working Day	Details
<b>Working day 1</b>	<ul style="list-style-type: none"> <li>Request received and acknowledged</li> </ul>
<b>Working days 1 - 7</b>	<ul style="list-style-type: none"> <li>Refine scope if need be. Gather material, consult with Ministry staff and external agencies if need be, and draft response</li> </ul>
<b>Working day 7</b>	<ul style="list-style-type: none"> <li>Legal and communications advice should have been completed by now (allocate a day for this)</li> </ul>
<b>Working day 8</b>	<ul style="list-style-type: none"> <li>General Manager needs response by now, to provide feedback and to make changes (allocate 2-3 days for this)</li> </ul>
<b>Working day 10</b>	<ul style="list-style-type: none"> <li>Draft OIA response should be received by the Minister's office by this time. <b>This deadline should not be missed.</b> The Minister's office will need to be advised if the response is behind schedule.</li> </ul>
<b>Working day 10 – 19</b>	<ul style="list-style-type: none"> <li>Minister's office checks material, and often requests further information/changes. Be prepared to respond as needed. The Minister will sign the letter to the requester releasing/withholding information.</li> </ul>
<b>Working day 20</b>	<ul style="list-style-type: none"> <li>Minister's office release OIA request. The Minister's office will send the green sheet and a hard copy of the briefing and response back to the Ministry for OCU to file. You need to update the tracking sheet.</li> </ul>

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## Processing a 'Minister' OIA request

Upon receipt of an OIA request - review it to establish the following:

- Does MoT hold the information being requested, or does it need to be transferred (partially or in full) to another agency?

*Note: If the Minister's office have not already identified that a transfer in respect of a particular OIA request is necessary, the Ministry should make contact with the Minister's office to discuss this within the first five working days.*

- Is it a large or complex OIA – i.e. you will be able to compile it within 20 working days, or is an extension required?

*Note: If an extension is required, please see the section titled ["Extending the due date of an OIA Request"](#)*

- Does the scope of the request need to be clarified with the requester?

*Note: please see the section titled ["XXXXXX"](#)*

- Is consultation with other departments required?

*Note: please see "Consultation with Third Parties" in the section titled ["XXXXX"](#)*

### Steps

1. Open the [OIA Tracking Sheet](#) and add your name to the 'Author' column.
2. Create a new record in the OCS, selecting the relevant OIA templates. For instructions on how to create an OC record click [here](#).
3. Draft the relevant documentation – which consists of:
  - a covering briefing for the Minister, which should include:
    - A risk assessment, highlighting items in the papers proposed for release that should be brought to the Minister's attention. These will be items that the Ministry may reasonably expect the Minister may have a concern about – whether for policy reasons or because the items may be of interest to the media or are sensitive.
    - A summary of documents proposed for release.
    - An indication of whether any of the information has been previously released, and to whom.
    - Sign-off details of:
      - who drafted/compiled the OIA reply, and relevant ministry/agency
      - the manager who signed off the OIA reply

- details of Legal sign-off, if appropriate
- a letter to the requester, advising what information is being released or withheld. The letter will be signed out by the Minister of Transport  
*Templates: 'OIA (5) Letter withholding information' or; 'OIA (6) Letter releasing information'*

*Note: Any information to be released should be in release-ready format, and on OIA paper. If information is to be withheld, a 'clean' copy of the document/s, or parts of the document/s, in question are to also be provided on plain paper. The withheld information should be clearly labelled/highlighted. The document/s should be clearly separate from the information to be released.*

- a memo to your General Manager, outlining who the request is from, what it's about, what you are proposing be released (or withhold) and why, and any other relevant information,  
*Template: 'OIA (8) Memo to Authorised Decision Maker'*

**Note: Please follow the Minister's Office preferences sheet when drafting documents**

4. Print a copy of the briefing for the Minister (on plain paper), the letter to the requester (on the relevant Minister's letterhead) and the memo to your General Manager (on plain paper).
5. Submit all documentation to Legal and Communications teams for approval
6. Once Legal and Communications teams has signed out the OIA, you will then need to put the OIA through your General Manger for approval, compiled in the following order:
  - the memo to your General Manager
  - the briefing for the Minister
  - the letter to the requester
  - any information you are proposing to release (printed on to OIA paper) and/or withhold (on plain paper)
  - the original OIA request/green OIA coversheet (tagged with a 'Sign Here' sticker, as your General Manager will need to sign the green OIA coversheet too).
7. Once the OIA has been through the complete sign-out process at MoT:
  - upload copies of any documents being released to the OC record. For instructions on how to upload documents to an OC record click [here](#).
8. The OIA can now be sent to the Minister's Office for consideration, via the Ministers bag on Level 6.
9. Start the 'approval' workflow for the OC record clicking on the 'Start Approval Workflow' button in the OC record.

10. Update the following columns in the [OIA Tracking Sheet](#):

- 'Date sent to Minister's Office'
- Status/Comments/Reason for Delays (if relevant, otherwise it's fine to leave this blank)
- Link to Document in Athena/OCS (please record the OC number and provide a link to the OC document in this column).

11. The Minister's office will let you know if any changes are required. If not, they will approve the OC record once the Minister has signed the request out. They will send the documents to the requester and advise the MoT author and the Official Correspondence team that the request is complete.

12. The MoT author fills out the 'Date Sent to Requester' column of the OIA Tracking sheet.

13. The OIA is now complete.

14. The Minister's office will sometimes send the original request and copies of any letters etc back to the MoT author. If this happens, please pass it back to the Official Correspondence Team for filing.

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## Transferring OIA requests to another agency/department

The Official Information Act allows **10 working days** from date of receipt to transfer an OIA request. If you are working on a request to the Minister that needs to be transferred you must have all the necessary documentation to the Minister's office within **five working days** of receiving the request. This is to allow the Minister time to consider and send the response within **10 working days**.

If you think a 'Minister' OIA request should be transferred to another department or agency, please consult with the relevant Private Secretary in the Minister's Office, to determine if he/she agrees that a transfer is necessary. If the answer is yes, please follow the steps below.

### Steps

1. Consult with the relevant person at the department or agency you intend to transfer the request to, to ensure that they are comfortable with accepting the transfer.
2. Prepare a letter to the requester from the Minister's Senior Private Secretary advising that the request is being transferred, and print the letter onto the relevant Minister's letterhead.  
*Template: OIA (2) Letter to requester transferring request*
3. Prepare a letter to the Chief Executive of the department or agency to which the request is being transferred advising of the transfer, and print the letter onto the relevant Minister's letterhead.  
*Template: OIA (3) Letter to transferee*
4. Prepare a short memo to the relevant Private Secretary outlining why the request is being transferred, and outlining the consultation that has been undertaken with the department/agency the request is being transferred to.

#### Order of documents:

- pink sheet
  - original letter from requester
  - letter to requester advising of transfer
  - letter to department or agency to which request is being transferred.
5. The following people must sign the pink sheet *in this order*:
    - The General Manager(s), other than your own, of any other team(s) for whom the OIA has implications
    - The lawyer assigned to the OIA (if you have sought advice on the transfer)
    - Authorised decision-maker (usually your General Manager) signing-out the response.
  6. Once your General Manager has signed the pink-sheet, forward a hard copy of the bundle of documents (original plus one copy) to the Minister's office via the ministerial bag within **five working days** of the date of receipt of the request to allow the Minister time to sign the transfer and send it within the statutory 10 working-day limit for transfer.



7. Once hard copies of the documents have been placed in the ministerial bag, forward the OIA response letters *electronically* through the OCS system, by clicking on the 'Start Approval Workflow' button in the OC record.
8. If the Minister's office is happy with the transfer correspondence, they will send the letters to the requester and the transferee, and send copies of the letters, along with the green OIA coversheet back to the Official Correspondence team for filing.

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## Extending the due date of an OIA Request

Some requests received under the Official Information Act can require a very substantial amount of work, and result in a huge volume of papers. This means that ministries/agencies may be unable to meet the 10 working day deadline, and it also means that staff in the Minister's office may be unable to process the OIA in the remaining time, resulting in the OIA being late.

Where an OIA request covers a large amount of information or is complex, for example, it will require significant consultation, a decision should be made early on to extend the timeframe for responding.

The Ministry must consult immediately with staff in the Minister's office on whether to extend the timeframe for responding, after having carried out an appraisal of the work involved. Ideally a decision on an extension should be made within the first 5 working days, although an extension can be sought up to **20 working days** from the date of receipt.

A new date for responding must be agreed with the Minister's office, bearing in mind the number of other large OIA requests that may already be in the system. This should take into account a realistic timeframe for compiling the information by the Ministry, and a realistic timeframe for Minister's office staff to carry out the assessments they are required to make prior to submitting the OIA to the Minister for sign-off.

### Steps

1. Create a new OC document (unless you have already created an OC record for this OIA), and prepare a memo to the Minister, recommending that the due date of the request be extended, and explain why.  
*Template: OIA (10) Memo to Minister's office*
2. Prepare a letter to the requester from the Minister advising that the request is being extended, and print the letter onto the relevant Minister's letterhead.  
*Template: OIA (4) Letter extending response time*
3. The memo to the Minister and the letter to the requester must receive internal sign-off using the pink-sheet process before they are sent to the Minister's office. A copy of the original OIA request should also be included in the following bundle of documents that require internal sign-off.

#### Order of documents:

- pink sheet
  - memo to Minister
  - original letter from requester
  - letter to requester advising of extension
4. The following people must sign the pink sheet *in this order*:
    - The General Manager(s), other than your own, of any other team(s) for whom the OIA has implications
    - The lawyer assigned to the OIA (if you have sought advice on the transfer)
    - Peer reviewer (quality assurance)
    - Authorised decision-maker (usually your General Manager) signing-out the response.

5. Once your General Manager has signed the pink-sheet, forward a hard copy of the bundle of documents (original plus one copy) to the Minister's office via the ministerial bag within **five working days**.
6. Once hard copies of the documents are sent to the Minister's office, forward the OIA extension letter and memo to the Minister's office *electronically* through the OCS system, by clicking on the 'Start Approval Workflow' button in the OC record.
7. If the Minister's office is happy with the extension letter, they will send the letters to the requester and send copies of the letter, along with the green OIA coversheet and the memo to the MoT author.
8. The MoT author will need to green OIA coversheet and original request, to attach the draft OIA response once it's compiled.
9. The MoT author updates the 'Date Extended To' column of the OIA Tracking Sheet.

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## Additional Information

### Managing large or complex OIA requests and multiple requests

Following discussion between the Ministry and the Minister's office, in cases where the nature of an OIA request meets the due particularity requirement of section 12 (2) of the OIA but is nevertheless very broad, the requestor may be advised that considerable time will be needed to respond (and a time extension will be made accordingly); or the Minister will decide to refuse the request under section 18 (f) of the OIA on the grounds that the information requested cannot be made available without substantial collation or research. This will enable the requestor, at an early stage, to narrow the scope of the request if they want to receive it more quickly than the revised timeframe (or at all if it's likely to be refused). The Ministry has a valuable role to play in proactively bringing such cases to the attention of the Minister's office at an early stage. Ideally this will occur within the first 5 working days.

Following discussion between the Ministry and the Minister's office, in cases where a number of OIAs have been received from the same requestor or group of requestors, contact may be made with the requestor to ascertain which particular requests they regard as being of the highest priority.

If the OIA request has been made by an MP or parliamentary party's research unit, it is the responsibility of the Minister's office to make contact. Minister office staff will make contact to narrow the scope for Minister OIAs.

The processes outlined above do not apply to routine OIA requests which should continue to be processed within the standard **10 working day** turnaround; rather, they apply to large, complex OIAs that will require an equally complex reply.

### Requests for Cabinet papers and minutes

The Cabinet Office has previously advised that a request for a Cabinet paper should be taken to not include the Cabinet Office "top" and the CAB 100 form. It is a request for the paper only, unless one of these other documents is specifically asked for (in which case there needs to be consultation with Cabinet Office). Only the submission itself should therefore be considered for release.

The Cabinet Office has also previously advised that any Cabinet minutes proposed for release should withhold, under section 9 (2) (a) of the Official Information Act, the name and signature of the Cabinet Office secretary signing the minute.

The Cabinet Office has released guidance on publishing Cabinet material on the web - publication requirements and approval processes. [Read the Cabinet Office Notice \(09\) 5 on the PSI](#)

Any OIA request which includes a request for Cabinet papers or minutes from a previous administration will most likely require an immediate extension. This is to allow for appropriate consultation with the relevant party in government at the time, which is undertaken by the Cabinet Office. Details of requirements and processes can be found in Cabinet Office Circular CO (08) 12 which is available on the [Public Sector Intranet](#).

## Draft responses

All draft responses must be provided to the Minister's office as 'release ready'. This means that all information that should not be released has been deleted and, where necessary, legal checks have been made. It is not the role of the Minister's office to undertake detailed checks of draft responses to ensure that information that should be withheld is not being released.

Staff processing OIA requests in ministries/agencies should be familiar with the Treasury's 2007 report on the inadvertent release of information: <http://www.treasury.govt.nz/publications/informationreleases/oiarequest3136>.

The Minister's office operates a central register of OIA requests that covers all portfolios. For this reason the OIA requests received by any one ministry/agency will not necessarily be numbered consecutively.

**Note:** It is expected that the Ministry will keep on file a full copy of the information to be released. If any changes are made to the information being released in the Minister's office, then the Minister's office will supply a full copy back to the Ministry.

## Number of copies

- originals, plus 1 copy

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## 'CHIEF EXECUTIVE' OIAS

A 'Chief Executive' OIA is an OIA request sent directly to the Ministry of Transport for response. This is different from a 'Minister' OIA, which is a request sent directly to the Minister or Associate Minister of Transport for response and allocated to MoT for drafting. For instructions on how to process a 'Minister' OIA [click here](#).

[Timeline for responding to Chief Executive OIA requests](#)

[Processing a 'Chief Executive' OIA request](#)

[Transferring OIA requests to another agency/department](#)

[Extending the due date of an OIA Request](#)

The Official Correspondence Team is responsible for registering the receipt of OIA requests and for tracking their progress and timing. The Ministry maintains a central OIA tracking system operated by the Official Correspondence Team. This is an Excel file in Athena, which can be found [here](#).

This section sets out the documentation required to complete a response to a 'Chief Executive' OIA request and the administrative procedures that must be followed for approval and sign-out.

**Note:** Within the transfer window (10days):

- Authors need to let the Minister's Office know immediately if a Cabinet paper is in scope of a Ministry OIA request.
- At the same time, authors should prioritise assessing the Cabinet Paper for what should be withheld/released and advise the Minister's Office.

If the Minister wants further redactions, the Cabinet paper should then be transferred to the Minister within the transfer window.

## Timeline for responding to Chief Executive OIA requests

Working Day	Details
Working day 1	<ul style="list-style-type: none"> <li>Request received and acknowledged</li> </ul>
Working days 1 - 10	<ul style="list-style-type: none"> <li>Gather material, consult with Ministry staff and external agencies if need be, and draft response</li> </ul>
Working day 11	<ul style="list-style-type: none"> <li>Legal and communications advice should have been completed by now (allocate a day for this)</li> </ul>
Working day 12	<ul style="list-style-type: none"> <li>Manager needs response by now, to provide feedback and to make changes (allocate 2-3 days for this)</li> </ul>
Working days 12 - 15	<ul style="list-style-type: none"> <li>Manager checks material, and often requests further information/changes. Be prepared to respond as needed. The Manager will sign the letter to the requester releasing/withholding information.</li> </ul>
Working day 15	<ul style="list-style-type: none"> <li>OIA response is often sent to Minister's office for consultation. Changes might be required.</li> </ul>
Working day 20	<ul style="list-style-type: none"> <li>Ministry release OIA request. <b>This deadline cannot be missed.</b> The green sheet and a hard copy of the briefing and response should be sent to OCU to file. You also need to update the tracking sheet.</li> </ul>

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## Processing a 'Chief Executive' OIA request

Upon receipt of an OIA request - review it to establish the following:

- Does MoT hold the information requested, or should it be transferred (partially or in full) to another agency?

*Note: if a transfer is required, please see the section titled "XXXX".*

- Will you will be able to compile it within 20 working days, or is an extension required?

*Note: if an extension is required, please see the section titled "XXXX".*

- Does the scope of the request need to be clarified with the requester?

*Note: please see the section titled "XXXXXX".*

- Is consultation with other departments required?

*Note: please see the section titled "XXXXXX".*

### Steps

1. Open the [OIA Tracking Sheet](#) and add your name to the 'Author' column.
2. Create a new record in the OCS, selecting the relevant OIA templates (for instructions on how to create an OC record [click here](#)).
3. Draft the relevant documentation – which consists of:
  - a letter to requester, advising what information you are releasing or withholding, which will be signed out by your General Manager  
*Templates 'OIA (5) Letter withholding information' or 'OIA (6) Letter releasing information'*
  - a memo to your General Manager, outlining who the request is from, what it's about, what you are proposing to release (or withhold) and why, and any other relevant information, such as whether the Minister or Associate Minister's Office wishes to see the OIA before it's released to the requester (see the section titled [Consultation with Minister's Office](#))  
*Template: 'OIA (8) Memo to Authorised Decision Maker'*



**Note: Please follow the Ministry style guide when drafting documents**

4. Print a copy of the letter to the requester (on MoT letterhead) and the memo to your General Manager (on plain paper).
5. Submit all documentation to Legal and Communications teams for approval
6. Once Legal and Communications teams has signed out the OIA, you will then need to put the OIA through your General Manger for approval, compiled in the following order:
  - the memo to your General Manager
  - the letter to the requester (undated, and tagged with a 'Sign Here' sticker)
  - any information you are proposing to release (printed on to OIA paper) and/or withhold (on plain paper)
  - the original OIA request (tagged with a 'Sign Here' sticker, as your General Manager will need to sign the green OIA coversheet too).
7. Submit your OC record electronically to the General Manager for sign-off. For instructions on how to submit an OC record for approval [click here](#).
8. Once considered and approved, the General Manager will sign the letter to the requester and the green OIA coversheet, and will also approve the record electronically in the OCS and return the paperwork to you.
9. You will then need to put the OIA through the sign-out process for all other relevant parties listed on the green OIA coversheet – for example the Legal and Communications teams.

**Note: If the Minister's Office has asked to see the OIA before it's released to the requester, please read the section titled Consultation with Minister's Office and follow the instructions.**

10. Once the OIA has been through the complete sign-out process:
  - date stamp the letter with the current date
  - upload copies of the signed and dated letter, and copies of any documents being released to the OC record. For instructions on how to upload documents to an OC record [click here](#).
11. The OIA can now be sent to the requester – but should only include the following:
  - the letter to the requester, signed by your General Manager and date stamped with the current date
  - any documents being released.

**Note: The green OIA coversheet or the memo to your General Manager should not be sent to the requester.**

12. Please keep a copy of all documentation and attach to the green OIA coversheet, including a print out of the email if you are sending a response to a requester electronically.
13. Update the following columns in the [OIA Tracking Sheet](#):
  - 'Date sent to requester'

- Statutory Timeframe Met (Yes or No)
- Status/Comments/Reason for Delays (if relevant, otherwise it's fine to leave this blank)
- Link to Document in Athena/OCS (please record the OC number and provide a link to the OC document in this column).

14. Return the original OIA (with green coversheet) and copies of all letters, memos and information withheld or released to the Official Correspondence Team for filing.

**Transferring OIA requests to another agency/department**

**Steps**

1. Create a new record in the OCS (unless you already have an OC record for this OIA), selecting the relevant OIA templates.
2. Draft the relevant documentation – which consists of:
  - a letter to requester, advising that you are transferring his/her request to another agency (which will be signed out by your General Manager)  
*Template: 'OIA (2) Letter to requester transferring request'*
  - a letter to the agency you are transferring the request to  
*Template: 'OIA (3) Letter to transferee'*
  - a memo to your General Manager, outlining who the request is from, what it's about, who you are proposing to transfer the request to, and why  
*Template: 'OIA (8) Memo to Authorised Decision Maker'*

**Note: Please follow the Ministry style guide when drafting documents**

3. Print a copy of each of the letters to the requester and the letter to the transferee (on MoT letterhead) and the memo to your General Manager (on plain paper).
4. Submit all documentation to your General Manger for approval, in the following order:
  - the memo to your General Manager, signed by you
  - the letter to the transferee (undated and tagged with a 'Sign Here' sticker)
  - the letter to the requester, advising of the transfer (undated and tagged with a 'Sign Here' sticker)
  - the original OIA request (tagged with a 'Note' sticker)
5. Submit your OC record electronically to the General Manager for sign-off. For instructions on how to submit an OC record for approval [click here](#).
6. Once considered and approved, the General Manager will sign the letter to the requester, the letter to the transferee and the green OIA coversheet. The General Manager will also approve the record electronically in the OCS and return the paperwork to you.
7. Date stamp the transfer letters with the current date

8. Upload copies of the signed and dated letters to the OC record. For instructions on how to upload documents to an OC record [click here](#).
9. The transfer letters can now be sent to the requester, and the original OIA request and letter to the transferee can be sent to the agency. When sending to the agency, please include the following:
  - the letter to the transferee, signed by your General Manager and date stamped with the current date
  - a photocopy of the (date stamped and signed) letter to the requester
  - the original OIA request.

**Note: The green OIA coversheet and the memo to the General Manager should not be sent to the requester or the agency you are transferring the request to.**

10. Please keep a copy of all documentation and attach to the green OIA coversheet, including a print out of the email if you are emailing the transfer letters a requester and/or the agency.
11. Update the following columns in the [OIA Tracking Sheet](#):
  - 'Date Transferred'
  - Statutory Timeframe Met (Yes or No)
  - Status/Comments/Reason for Delays (please use this column to note which agency the request was transferred to, and why)
  - Link to Document in Athena/OCS (please record the OC number and provide a link to the OC document in this column)
12. Return the original OIA (with green coversheet) and copies of all letters, memos and any other information to the Official Correspondence Team for filing.

## Extending the due date of an OIA Request

### Steps

1. Create a new record in the OCS (unless you already have an OC record for this OIA), selecting the relevant OIA templates.
2. Draft the relevant documentation – which consists of:
  - a letter to requester, advising that you are extending the response time for the request. The letter will be signed out by your General Manager.  
*Template: 'OIA (4) Letter extending response time'*
  - a memo to your General Manager, outlining who the request is from, what it's about, and why you require more time to answer the request  
*Template: 'OIA (8) Memo to Authorised Decision Maker'*

**Note: Please follow the Ministry style guide when drafting documents**

3. Print a copy each of the letter to the requester (on MoT letterhead) and the memo to your General Manager (on plain paper).
4. Submit all documentation to your General Manger for approval, in the following order:
  - the memo to your General Manager, signed by you
  - the letter to the requester (undated and tagged with a 'Sign Here' sticker)
  - the original OIA request (tagged with a 'Note' sticker)
5. Submit your OC record electronically to the General Manager for signoff. For instructions on how to submit an OC record for approval [click here](#).
6. Once considered and approved, the General Manager will sign the extension letter and the green OIA coversheet. The General Manager will also approve the record electronically in the OCS and return the paperwork to you.
7. Please date stamp the extension letter with the current date.
8. Upload copies of the signed and dated letter to the OC record. For instructions on how to upload documents to an OC record [click here](#).
9. The letter can now be sent to the requester.

**Note: The green OIA coversheet does or the memo to your General Manager should not be sent to the requester**

10. Please keep a copy of all documentation and attach to the green OIA coversheet, including a print out of the email if you are sending a transfer letter to a requester electronically.
11. Update the following columns in the OIA Tracking Sheet:
  - 'Date Extended'

- 'Status/Comments/Reason for Delays' (please use this column to note that the OIA request was transferred, and the date the extension letter was sent)
- Link to Document in Athena/OCS (please record the OC number and provide a link to the OC document in this column)

12. Complete the OIA as per the normal OIA process, following steps 2 – 12 in the ['Processing a Chief Executive OIA request'](#) section.

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## USEFUL LINKS

Links to documents you may need to use when answering an OIA request

[Green OIA Coversheet – CE OIAs](#)

[Green OIA Coversheet – Minister OIAs](#)

[OIA Tracking Sheet](#)

[OCS User Guide](#)

[OCS 'Quick Steps' Guide \(condensed version of OCS User Guide\)](#)

**Tips for printing documents to be released under the Official Information Act**

[Printing on OIA Watermark paper](#)

[Printing the OIA Watermark](#)

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## CONSULTATION WITH OTHER PARTIES

### 'Chief Executive' OIAs

#### Is consultation with other parties required?

You will also need to consider whether third parties should be consulted if they have provided the document or have some other association with it. These may include private individuals, companies, departments or Crown entities. If you think that consultation with other parties is required, please discuss this with your Manager and the Legal Team, who can provide guidance on how to consult with other parties. There is no requirement to consult with the Department of Prime Minister and Cabinet over papers of the current administration. The Cabinet Office is available for general guidance.

#### When to consult:

- When the information is generated by someone else
- When information generated by MoT mentions other parties/agencies – especially if the information is sensitive, or where someone reading the information released may want to contact the individual or company for further information.

The Cabinet Office needs to be consulted *only* if Cabinet papers of a previous government are covered by the request. Refer to *Cabinet Office Manual*, paragraphs 6.68 and 6.69, (<http://www.dpmc.govt.nz/cabinet/manual/index.html>) for process and format.

The purpose of such consultation is to hear the views of the person or agency approached, so that should be clear when you approach them. They should not be given the impression that they have any opportunity to veto the release of any information. Their views will be considered in making a final decision.

The point of such consultation is to ensure that all relevant factors have been taken into account when the final decision on the request is made. It recognises that we may not always have all the relevant information within the Ministry.

#### Consulting with the Minister's office

We often consult with the Minister's office on OIA requests, either on a "no surprises" basis or if they have a particular interest. If, after consultation with the Minister's office, the Minister's office is of the view that the information should be withheld, but the Ministry believes it should be released, the Ministry retains the right to make the final decision for CE OIAs. The OIA may be transferred to the Minister's office but only if it meets the relevant criteria provided by the Act. Because the general rule is that transfer must happen within 10 working days, it is advisable to have an early phone conversation with the Minister's office on potentially controversial requests. You should also discuss any grounds for transfer with the Legal team.

After the consultation, decide whether any change to your preliminary recommendation is necessary.

Record all these steps and your preliminary recommendation for the final decision-maker to consider.

**Note:** Within the transfer window (10days):

- Authors need to let the Minister's Office know immediately if a Cabinet paper is in scope of a Ministry OIA request
- At the same time, authors should prioritise assessing the Cabinet Paper for what should be withheld/released and advise the Minister's Office. This must be done before the end of the transfer window.

If the Minister wants further redactions, the Cabinet paper should then be transferred to the Minister within the transfer window

#### 'Minister' OIAs

If you think that a Minister or other agency or individual might have an interest in the way you are answering the request, you should consult them about your proposed response to the official information request. This should occur as soon as you reach your preliminary recommendation.

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## LETTER AND MEMO TEMPLATES

All of the OIA templates can be accessed through the OCS. For any queries please contact the Official Correspondence Coordinator.

1. Acknowledgement letter (by Official Correspondence Co-ordinator)
2. Letter to requester transferring request (by Official Correspondence Co-ordinator)
3. Letter to transferee (by Official Correspondence Co-ordinator)
4. Letter extending response time
5. Letter withholding information
6. Letter releasing information
7. Contents of letter relating to charging
8. Memo to authorised decision-maker (for requests to the Ministry only)
9. Memo to the Minister's office (for requests to the Ministry only)

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**1. Acknowledgement letter (by Official Correspondence Co-ordinator)**

Dear

I acknowledge your request dated [xx], pursuant to the Official Information Act 1982, seeking [...*quote from the requester's letter*].

We will consider your request and respond appropriately as set out in the Official Information Act 1982.

Yours sincerely

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**2. Letter to requester transferring request (by Official Correspondence Co-ordinator)**

Dear

I refer to your request dated [xx], pursuant to the Official Information Act 1982, seeking [...*quote from the requester's letter*].

This letter is to notify you that the Ministry is transferring your request to [xx].

Accordingly, your request is being transferred pursuant to section 14 of the Official Information Act:

Further correspondence on this request will therefore come to you from [xx]. Note that the time limit for responding will be 20 working days from when [xx] receives this transfer from us.

Yours sincerely

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### 3. Letter to transferee

Dear

#### TRANSFER OF OFFICIAL INFORMATION ACT REQUEST

Please find attached the following:

- A request dated [xx], pursuant to the Official Information Act, from [xx] seeking [*quote from requester's letter*].
- Our letter dated [xx] notifying [xx] that the request is being transferred to you for response.

This letter serves as a formal transfer of this request under section 14 of the Official Information Act.

Please handle the request accordingly.

Yours sincerely

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#### 4. Letter extending response time

Dear

I refer to your request dated [xx], pursuant to the Official Information Act 1982, seeking [...*quote from the requester's letter*].

This letter is to notify you that the Ministry is extending the 20 working days available to it to respond to your request pursuant to section 15A of the Official Information Act. The Ministry requires an additional [specify number of additional days, weeks required] to respond to your request. Therefore you can expect to receive a response by [date].

The reason for the extension is that:

You have the right under section 28(3) of the Official Information Act to make a complaint about the extension to the Ombudsman.

Yours sincerely

#### 5. Letter withholding information

Dear

I refer to your request dated [xxx], pursuant to the Official Information Act 1982, seeking [...*quote from the requester's letter*].

The following documents fall within the scope of your request and are enclosed: .

Certain [or all] information is being withheld in reliance on section [insert relevant references to withholding provisions including a brief description of what the provisions relate to. For some standard descriptions of that nature refer to Appendix 3].

[Insert as necessary any further explanation of the grounds for refusal]

You have the right under section 28(3) of the Official Information Act to make a complaint about the withholding of information to the Ombudsman.

Yours sincerely

## 6. Letter releasing information

Dear

I refer to your request dated [xxx], pursuant to the Official Information Act 1982, seeking [...*quote from the requester's letter*].

The following documents fall within the scope of your request and are enclosed:

Yours sincerely

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## 7. Contents of letter relating to charging

File Number: [Number]

[Date]

[Address]

**[Subject]**

Dear

I refer to your official information request dated [xxx] relating to [*nature of information requested*].

This letter is to notify you that because of the scope of information covered by your request, it will be necessary to impose a charge for making the requested information available.

It is estimated that the amount of the charge will be \$[0.00]. This amount has been calculated as follows:

We will therefore not continue to process your request until you have [xxxx]

You have the right under section 28(3) of the Official Information Act to make a complaint about the decision to charge for information to the Ombudsman.

Yours sincerely

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8.

<b>To:</b> <b>From:</b> <b>CC:</b> <b>Date:</b> <b>Through:</b>	<b>MEMORANDUM TO AUTHORISED DECISION- MAKER</b>
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**Subject:**

**OFFICIAL INFORMATION ACT REQUEST**

**Purpose**

**Background**

What has been requested

A brief background/ summary of the issue

Brief summary of the information being released or withheld (including, if information is being withheld, the section of the OIA that is being relied on to withhold)

Highlight contentious issues (if any)

Analyse the risks (if any) associated with releasing or not releasing the information (for example, negative publicity, timing in relation to other proposed announcements, etc)

Any other information you think the decision maker should be aware of.

What has been requested

Why the request should be transferred

Who it should be transferred to.

The proposed period of the extension

Reasons why the extension is necessary.

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9.

<b>To:</b> <b>From:</b> <b>CC:</b> <b>Date:</b> <b>Through:</b>	<b>MEMORANDUM TO THE MINISTER'S OFFICE</b>
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**Subject:**

**OFFICIAL INFORMATION ACT REQUEST**

**Purpose**

I would appreciate your consideration of the attached response to an OIA request to the Ministry of Transport from [name of requester and if you know it, the person's organisation and role] by [insert date].

**Background**

What has been requested

A brief background/ summary of the issue

Brief summary of the information being released or withheld (including, if information is being withheld, the section of the OIA that is being relied on to withhold)

Highlight contentious issues (if any)

Detail about engagement with stakeholders (if any)

Analyse the risks (if any) associated with releasing or not releasing the information (for example, negative publicity, timing in relation to other proposed announcements, etc)

Any other information you think the Minister's office should be aware of.

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