



Guide to Official Information Act and Privacy Act Requests for Waka Kotahi Staff

Ministerial Services

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Version 2

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More information

Waka Kotahi NZ Transport Agency

If you have further queries, call our contact centre on 0800 699 000 or write to us:

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This document is available on Waka Kotahi NZ Transport Agency's website at www.nzta.govt.nz

Contents

Copyright information.....	2
Disclaimer	2
More information	2
INTRODUCTION	5
Principle of availability	6
Access to personal information	6
Defining official information and personal information	6
WHICH ACT APPLIES?.....	7
Requests made under the OIA and Privacy Act.....	8
Who can make an OIA request?	9
Who can make a Privacy Act request?	9
RECEIVING AN OFFICIAL INFORMATION REQUEST	10
Privacy Waiver	10
Official information format	10
“Due particularity”: a requester’s obligation	11
Information not held by Waka Kotahi.....	11
Is a formal OIA/Privacy Act response necessary?	11
Requests from journalists/reporters to the Media team (media queries).....	12
KEY LEGISLATIVE TIMEFRAMES	13
How to count time	13
Key Waka Kotahitimeframes.....	14
RESPONDING TO REQUESTS	15
Clarifying requests	15
Transferring a request	15
Extensions of time	16
Failure to meet the maximum time limits.....	17
Requests for urgency	17
MAKING A DECISION	18
Considering whether to grant the request.....	18
Deciding how to release information	19
Keeping records	19
PREPARING A RESPONSE	20
Information gathering	20
Consultation.....	20
Consulting requesters.....	21
Consulting third parties	21
Consulting Ministers	22

Grounds for withholding information under the OIA.....	23
Special considerations for withholding names and contact details of Waka Kotahi staff.....	25
Special considerations for refusing under substantial collation and research.....	26
Public interest considerations.....	27
Relevant considerations.....	27
Irrelevant considerations.....	29
Other ways of getting the balance right.....	29
Common withholding provisions under the Privacy Act.....	30
RELEASING INFORMATION IN RESPONSE TO A REQUEST.....	32
Decisions on request.....	32
Releasing documents as attachments.....	32
Charging.....	32
REQUESTS FOR INTERNAL DECISION-MAKING RULES (SECTION 22).....	34
REQUESTS FOR STATEMENTS OF REASONS (SECTION 23).....	34
REQUESTS BY CORPORATE ENTITIES TO PERSONAL INFORMATION ABOUT THEMSELVES (PART 4 REQUESTS).....	36
Right to request correction.....	36
Reasons for refusing Part 4 requests.....	36
Complaints to the Ombudsman.....	36
PUBLICATION OF INFORMATION.....	36
GOOD FAITH PROTECTION.....	37
FURTHER GUIDANCE FROM THE OMBUDSMAN.....	38
COMPLAINTS: OIA.....	39
COMPLAINTS: PRIVACY.....	39

Introduction

This document is intended to set out **Waka Kotahi NZ Transport Agency's** process for replying to requests made under the **Official Information Act 1982** (OIA) and the **Privacy Act 2020**.

The Ministerial Services team is responsible for preparing OIA responses and memos, together with business units deciding on redactions, marking redactions in information to be released, consulting with third parties and obtaining legal advice, providing OIA-related advice, ensuring that correct consultation and sign-off processes are followed, and OIA responses are of high quality and are dispatched on time.

Business Units are responsible for gathering all relevant information and documents in scope, working together with Ministerial Services on what redactions are necessary, ensuring all information is factually correct and has been signed-out at the appropriate level.

The OIA imposes important statutory obligations on Ministers, and government departments and agencies, including **Waka Kotahi**. Those obligations are considered to be “core business”.

Information requests are, because of the legislative timeframe, priority tasks.

Additional guidance for processing OIA and Privacy Act requests is available on the Ombudsman's website, [Resources and Publications](#) page.

Principle of availability

The **OIA** allows people to ask for any information to be made available from government ministers, government departments, crown entities, state-owned enterprises, organisations or commissions involved with upholding, managing or administering New Zealand legislation – basically most organisations that are publicly funded.

The guiding principle of the OIA is that information should be released unless the holder has a good reason to withhold it.

This principle is set out in **section 5** of the OIA and must be kept in mind when considering how best to respond to a request.

Access to personal information

Information privacy principle 6 of the Privacy Act allows for individuals to request confirmation of the existence of information held about them and access to that information.

Defining official information and personal information

*Requests for **official information*** are dealt with in accordance with the **OIA**. The purpose of the OIA is to facilitate open government, and therefore the presumption is that Government agencies will be as open as possible.

*Requests for **personal information*** are dealt with in accordance with the **Privacy Act**. The Privacy Act gives individuals a right to access personal information about themselves that is held by an agency.

Which Act applies?

There are different rules that apply to different types of requests. It is important to be aware of which rules to apply, in order to ensure that the right decision is made.

OIA:

Part 2: General requests for access to official information that is not about the requester (or otherwise described below).

Part 3: Requests under section 22 for access to an agency's policies, principles, rules or guidelines for making decisions or recommendations in respect of any person.

Part 3: Requests under section 23 for a written statement of reasons why a decision or recommendation was made about the requester.

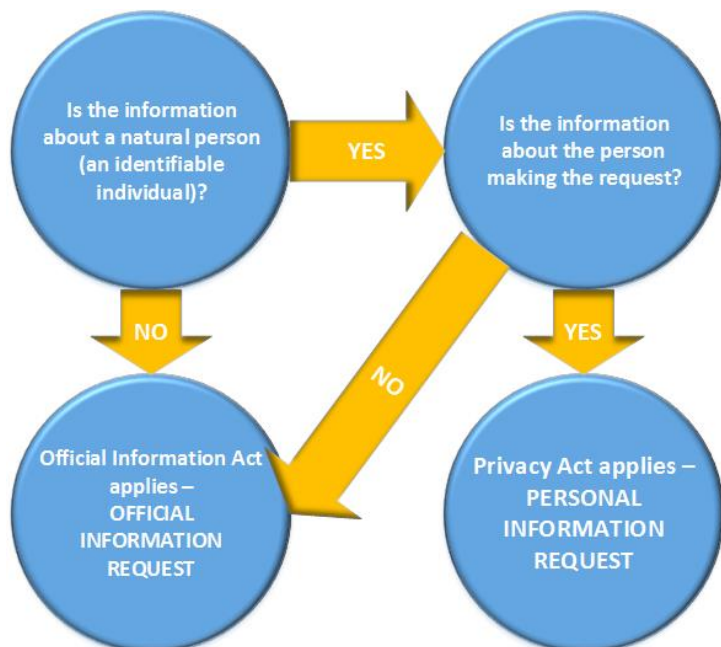
Part 4: Requests by a corporate entity for information about itself.

Privacy Act:

Requests by an individual natural person (or that person's authorised agent) for personal information about themselves.

Requests made under the OIA and Privacy Act

Before any response is prepared, the person managing the request needs to determine whether the OIA or the Privacy Act is to be used and seek assistance from the **Privacy Officer** if required. The flowchart below provides an easy means of determining the appropriate governing statute.



A request by a company (or other entity that is not a natural person) for information about that company or entity is considered under the OIA, as is any request by a person for information about another person.

Any information a natural person requests about themselves is considered under the Privacy Act.

A request for information may have parts that must be considered under the OIA and other parts that must be considered under the Privacy Act.

Who can make an OIA request?

Any person is entitled to make a request under the OIA who is:

- a New Zealand citizen
- a permanent resident of New Zealand
- a person who is in New Zealand
- a body corporate which is incorporated in New Zealand
- a body corporate which is incorporated outside New Zealand, but which has a place of business in New Zealand, or
- a duly appointed agent acting on behalf of any of the above.

If a request is made by email or over the internet, system verification may be required to confirm eligibility. If you are still uncertain as to whether the request is valid or not, you are entitled to ask reasonable questions to check whether the person is eligible to make a request. If you do wish to query eligibility, please do so promptly so as to not unnecessarily delay the processing of a valid request.

Even if a person is not eligible to make a request for official information under the OIA (for example, a person who is overseas and not a New Zealand citizen or resident), they can still ask an agency for the information they are seeking. Although Waka Kotahi is not required to respond in accordance with the requirements of the OIA, we should still deal with the request for information in an administratively reasonable manner. If the person has any concerns about the response that they receive, then they can complain to the Ombudsman under the Ombudsmen Act 1975.

Who can make a Privacy Act request?

Any person is entitled to make a request under the Privacy Act for information about themselves. Such requests can be made by a duly appointed agent.

Receiving an official information request

Information requests will arrive either in the official.correspondence@nzta.govt.nz email inbox, through the post or through contact with a Waka Kotahi staff member. Once received, a request **must** be given to Ministerial Services to log. The request together with commissioning email will then be allocated to a Ministerial Services staff member who will be responsible for preparing a response in collaboration with subject matter experts.

In general, any request for information held by Waka Kotahi is an OIA or Privacy Act request.

- A request can be made in any form and communicated by any means (including orally, via social media, such as Twitter and Facebook).
- The requester does not need to mention that it is an OIA or Privacy Act request.
- The requester does not need to give reasons why they need/want the information.
- The request can be made to any person in Waka Kotahi.

If a request is made orally, we may ask the requester to put it in writing if that's "*reasonably necessary*" to clarify the request. If the requester declines or is unable to do so, then we should record our understanding of the request and provide a copy of that record to the requester before we start collating information.

The working-day count will start the day after the requester confirms or clarifies whether Waka Kotahi understanding of the request is correct.

Privacy Waiver

We **do not** need a signed Privacy Waiver when **a lawyer** has stated in their request under the OIA that they act for the person the information is about. This is because lawyers already have professional obligations to provide correct information, and it would be a breach for them to claim to represent someone they do not.

If **someone other than a lawyer** (like an insurance company) asks for information about their client under the OIA, then they **DO** need a privacy waiver signed by the client.

If in doubt, you can search the internet and see if the requester is a lawyer or speak to Waka Kotahi Privacy Officer.

Official information format

Official information includes material held in **any format**, such as:

- **written documents** including reports, memoranda, letters, notes, emails, and attachments—even text messages and draft documents
- **non-written documentary information**, such as material stored on or generated by computers, including databases, storage devices e.g. video or audio recordings
- **information that is known to Waka Kotahi**, but which has not yet been recorded in writing or otherwise (including knowledge of a particular matter held by an employee in their official capacity)

- **documents and manuals** that set out the policies, principles, rules or guidelines for decision-making by Waka Kotahi
- **the reasons for any decisions** that have been made about a person.

With the exception of providing a response to a request for a statement of reasons, there is **no obligation on Waka Kotahi to form an opinion or create new information** to answer an OIA request. However, there is nothing to prevent Waka Kotahi from creating information in response to a request, if we choose to do so and the agency must act in good faith.

“Due particularity”: a requester’s obligation

To be a valid request, the information sought must be ‘*specified with due particularity*’. This means that Waka Kotahi must be reasonably able to identify what information is being requested.

If there is any doubt about the scope of the information requested, you will need to clarify this with the requester as soon as possible and within **7 working days** from receiving the request.

Information not held by Waka Kotahi

If a request is made for information that is not held by Waka Kotahi, you need to consider:

- whether a valid request has in fact been made under section 12 of the OIA
- whether to transfer the request to another agency subject to the OIA or the Local Government Official Information and Meeting Act 1987, or
- whether to refuse the request under sections 18(e) or 18(g) of the OIA (because the requested document does not exist, or the information is not held).

Is a formal OIA/Privacy Act response necessary?

For Waka Kotahi to meet its obligations under the OIA and Privacy Act, every information request must be accurately recorded and counted.

Waka Kotahi regularly receives requests for information through a variety of channels: phone, email, letters etc. At times, it is not easy to decide if the request is an official request that requires consideration and a formal response under the OIA or Privacy Act.

If any one of the above applies, then the request must be recorded by Ministerial Services and counted to avoid the risk of Waka Kotahi not complying with the OIA/Privacy Act requirements.

The underpinning principle for deciding which requests should be logged is:

A request for official information will be logged when it requires **considered application** of the provisions of the OIA.

Which requests are **not logged** will vary depending on the specific context of each agency, but could include:

- not logging requests for publicly available information;
- not logging requests where we are being asked for comment (media);
- not logging requests where the information is provided immediately and in full.

Logged requests can include those where:

- the request is for information that may need to be withheld, in whole or part
- the request is for a large volume of information that needs to be read and reviewed before a decision on release can be made
- consultation (internal, with other agencies, or with affected third parties) is likely to be required before a decision on release can be made
- the request could impact on the interests of a Minister or Ministers, who may need to be consulted or made aware of the decision that is taken.

If you are not sure, please contact Ministerial Services as soon as possible by email at official.correspondence@nzta.govt.nz.

Requests from journalists/reporters to the Media team (media queries)

Technically, all requests, including media queries, are requests for official information. However, requests the Media team receives from journalists and reporters which can be dealt with quickly do not need to be processed using the formal OIA process.

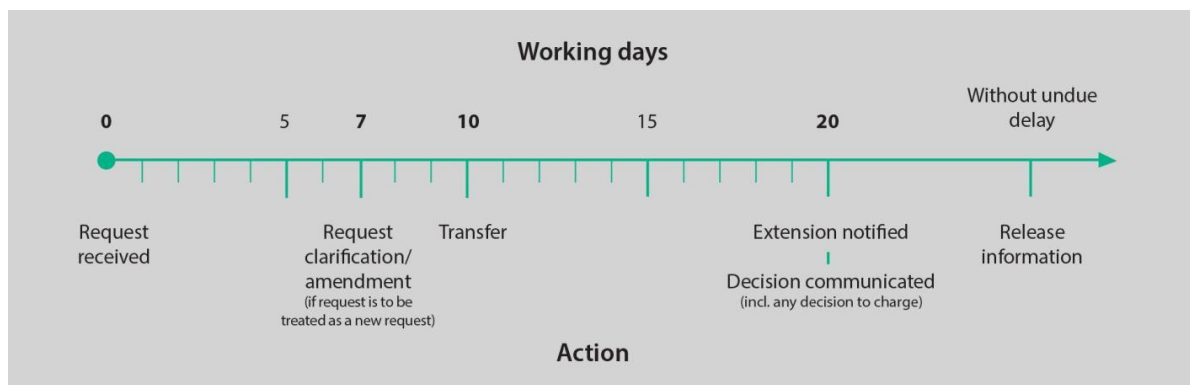
If, as part of their response the Media team releases any previously unpublished or unreleased documents or reports in full (without any redactions), the relevant communications, including the request and Media team's response, are forwarded to Ministerial Services for our records so that it can be captured in our OIA statistical reporting.

If requests to the Media team meet the criteria for logging outlined in the [previous section](#), they must be forwarded to Ministerial Services for processing. In such cases Ministerial Services will be responsible for the entire request from start to finish but will consult with the Media team on the response.

If the Media team is responding to a request, and only a part of the information requested needs to be withheld, it can be responded to as a media query, but the Media team must ensure that the following requirements under section 19 of the OIA are met:

- reasons for refusal are given by quoting the relevant withholding grounds under the OIA
- the requestor is provided with information about complaining to the Ombudsman to seek an investigation and review of the refusal
- the relevant (substantive) communications, including the request and Media team's response, are forwarded to Ministerial Services for our records so that it can be captured in our OIA statistical reporting.

Key legislative timeframes



Waka Kotahi legal timeframe requirements for responding to requests for official information are to:

- **make a decision and communicate it** to the requester “as soon as reasonably practicable” and no later than **20** working days after the request is received, and
- **make available** any official information it has decided to release without ‘undue delay’.

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

- **request clarification** of a request within **7 working days**, if the amended request is to be treated as a new request
- **transfer** a request to another agency promptly, and no later than **10 working days**, after the request is received, and
- **extend** the maximum time limits to make a decision or transfer a request, within **20 working days** after the day on which the request was received.

How to count time

A tool to automatically calculate response times is available on the Ombudsman’s website at www.ombudsman.parliament.nz.

When counting working days, day one is the first working day after the day on which Waka Kotahi receives the request.

“Working day” means any day of the week other than Saturday and Sunday and excludes national public holidays: Waitangi Day, Good Friday, Easter Monday, Anzac Day, Queen’s Birthday, Labour Day, and from 25 December to 15 January inclusive.

A regional anniversary is a working day.

A working day **is not** limited to 9am to 5pm. Therefore, if a request is received by email or other electronic means outside business hours, it will still be counted as being received on that day, and the count will start on the next working day.

Key Waka Kotahi timeframes

While the legislation allows 20 working days to respond to requesters, business units have only **7 working days** to gather the information and provide it to Ministerial Services together with their recommendations on redactions.

Ministerial Services have **5 working days** to draft a response and covering memo, consult as necessary, and mark up redactions as necessary. By day 15, these documents must be reviewed, signed out, and sent to the Minister's Office for noting or consultation (if appropriate). The documents must be finalised for release (applying watermark and redactions) and dispatched as soon as they are noted, and no later than day 20 of the OIA request.



The dates corresponding with each step of the process above are calculated and included in the commissioning email to Ministerial Services advisors.

After receiving the commissioning email, the Ministerial Services advisor should get in touch with the business unit contact to discuss the request. For very large and/or complex requests, a scoping meeting may be required to determine next steps. Also, things like clarification, transfer, extension, charging, and any consultation required (with third parties or legal) can be discussed and actioned at this point.

Responding to requests

Clarifying requests

Waka Kotahi must provide reasonable assistance to help the requester refine the request so that it is specific enough to allow the information to be identified. We must ask the requester to clarify their request **within 7 working days**.

The best approach is to ring/email the requester and help them identify exactly what information they want by:

- providing an outline of the different kinds of information which might meet the terms of the request
- helping the requester understand the general nature and extent of information held by Waka Kotahi (at a high level)
- providing a general response to the request, setting out options for further information which could be provided on request, and
- giving the requester a reasonable opportunity to consult with a contact person

It is expected that there will be a record of contact with the requester. So, it is recommended that any phone conversation is followed up with an email that confirms the outcome, agreement or understanding reached, so that both parties can be clear. It is important to document the request if it is revised or narrowed.

Responsibility for sending a clarification email/letter rests with **Ministerial Services**. However, any background to the issue and the substance of clarification letter must be provided by the **business unit contact**. If the phone call clarifying the request is appropriate, then the business unit contact may choose to make the phone call.

Transferring a request

Timeframes for transfers

Waka Kotahi **must** transfer a request (or part of the request) to another agency **within 10 working days** if some or all of the information requested:

- is not held by Waka Kotahi, but is believed by the person dealing with the request to be held by another agency, or
- is believed to be more closely connected with the functions of another agency.

The obligation to transfer is not discretionary, but a **mandatory requirement** in circumstances either of the above two criteria are fulfilled.

Transfers can be made between any agencies subject to the OIA or Local Government Official Information and Meetings Act 1987, including Ministers, central government agencies and local government agencies.

Consultation about transfers

It may be a good idea to consult the requester and/or the other agency before transferring a request.

The requester can clarify why they made the request to Waka Kotahi, and what information they hoped to obtain. They may be interested in knowing what Waka Kotahi holds in connection with its functions, and not what the “lead agency” on a particular issue holds.

Consulting with the **other agency** will enable you to make appropriate arrangements for the transfer and will minimise the risk of “bounce-backs”, where the other agency disagrees that the information is more closely connected with its functions and returns the request to Waka Kotahi.

Responsibility for sending a transfer email/letter rests with **Ministerial Services** after discussion and on advice of the **business unit contact**.

Transfers between Ministers and agencies

In determining whether information is more closely connected with a Minister’s or an agency’s functions, it can be helpful to consider the role of the Minister.

Ministers:

- take significant decisions and determine government policy collectively, through the Cabinet decision-making process
- exercise statutory functions and powers under legislation within their portfolios, within the collective Cabinet decision-making context
- determine both the policy direction and the priorities for their departments, and
- have a political role in maintaining government stability, which requires maintaining close working relationships with all other parties as issues arise.

If the information relates to executive government decision-making functions, and release could prejudice Cabinet’s or the Minister’s ability to perform those functions, then transfer to the Minister may be justified. If the information relates more closely to operations and policy implementation, then the agency should probably be responsible for deciding on the request.

Even if a transfer is not warranted, there is nothing to prevent an agency consulting its Minister (see the [Consulting Ministers](#) section).

In any case, it is important that the transfer of the request does not have the effect of narrowing its scope or excluding relevant information. The agency that received the request should identify the relevant information first and, if necessary, transfer that information along with the request.

Extensions of time

Waka Kotahi may extend the maximum time limits for making a decision and communicating it to the requester and also for transferring a request.

Extending the time limit of a request can only be done once, and only for a ‘*reasonable*’ period of time, ‘*having regard to the circumstances*’.

Extensions can only be granted due to one or both of the following reasons:

- The request is for a large quantity of information, or, necessitates a search through a large quantity of information; and/or
- Consultations are necessary to make a decision on the request, and these cannot reasonably be done within the original time limit.

In general, if we are contemplating extending on the grounds that the request is for a large quantity of information, then we ought to first consider narrowing the scope of the request (see [Clarifying Requests](#)).

The decision to extend the maximum time limit must be communicated to the requester **within 20 working days** after the day on which the request was first received by Waka Kotahi.

When making an extension, Waka Kotahi must advise the requester in writing:

- specifying the period of the extension (such as the date the response is now due)
- giving the reasons for the extension
- stating that the person who made the request for the official information has the right, under section 28 of the OIA and section 44 of the Privacy Act, to make a complaint to an Ombudsman or the Privacy Commissioner about the extension
- contain other information as necessary.

Responsibility for sending an extension email/letter rests with **Ministerial Services** after discussion and on advice of the **business unit contact**.

Failure to meet the maximum time limits

If it looks like it will not be possible to meet either the original or extended maximum time limit, Waka Kotahi should consider contacting the requester to let them know the current state of play and reasons for the delay. Requesters will appreciate being kept informed and may be more understanding if Waka Kotahi ends up in breach of the timeframe requirements.

Another option is a staged reply. If most of the decision on a request is straightforward and ready to go, there is often no need to hold that up in order to deal with a few remaining issues.

However, failure to comply with a time limit may be the subject of a complaint to the Ombudsman.

Requests for urgency

A requester may ask that a request is treated as urgent, and if so must give the reasons for seeking the information urgently.

There are no statutory requirements for urgent requests. When responding to an urgent request, the Ombudsman's guidelines suggest that agencies consider:

- the reasons for urgency

- the volume of information to be considered
- the nature of the information requested and how it is held
- whether consultations are needed before a decision can be made, and
- whether according priority to an urgent request would unreasonably interfere with the operations of the agency involved.

Notwithstanding a request for urgency, Waka Kotahi legal obligations remain the same

– in other words, to:

- make and communicate the decision on the request as soon as reasonably practicable and no later than 20 working days after the day on which the request was received, and
- release any official information without undue delay.

Making a decision

Considering whether to grant the request

The guiding principle of the OIA is that information should be released unless the holder has a good reason to withhold it.

When making a decision on an OIA request, Waka Kotahi must decide:

- whether the request will be granted, and if so
- what will be released
- what will be withheld and under which sections of the OIA
- for what charge (if any).

Decisions should be clearly worded and sensitive to any particular needs the requester may have.

If the decision is to **refuse** the request, reasons must be given for that decision. This means that you must refer to the particular section under the OIA or Privacy Act (as applicable) to refuse the request.

Every decision to refuse a request must advise the requester of the right to complain to the Ombudsman or the Privacy Commissioner (as applicable) and to seek an investigation and review of Waka Kotahi decision. Refer to the template letter(s) for communicating a decision to the requester.

Deciding how to release information

There are a number of different ways to make information available. Waka Kotahi can:

- give the requester a reasonable opportunity to inspect the information
- release a hard copy of the information
- release the information in electronic form or by electronic means
- provide a written transcript of the information
- provide partial disclosure of the information, for example, redacted document, summary, an excerpt from the document provide the requester with an oral briefing.

Keeping records

It is very important that all research, correspondence (including emails with SMEs, legal, and any external consultations), documents and a summary of any decisions made in relation to the request are filed in **InfoHub** to ensure a clear picture of the decision-making process can be seen by anyone who should need to understand it. (This may include the Ombudsman or Privacy Commissioner if a complaint is made about any Waka Kotahi response.)

When preparing documents that will have information redacted (withheld), you must have three copies of each document on file:

- a clean copy
- a marked-up copy (that shows which parts of the document will be withheld or released and why)
- the final, redacted copy (with information blacked out). The redacted copy will be sent to the requester.

Your communications that show how and why a particular decision has been made and any consultations with internal and external parties must be reflected in the OIA's Memo. It is also important to have a record of any searches that have been undertaken when gathering information (including email sweeps, checking InfoHub records and requesting information from our contractors).

Preparing a response

In preparing a response to a request the **Ministerial Services Advisor** must:

- work with business units to identify **all** information/documents that falls within the scope of the request and list them in the **Covering Memo** table (each item must be numbered for reference and dated if appropriate)
- work with business units to determine whether any of the information that falls within the scope of the request needs to be withheld
- in the covering memo table, clearly document whether any item is either being “released in full” or, if it fully or partially withheld - the reasons for any decision to withhold information, including the relevant section of the OIA
- prepare a response to the requester for the relevant business unit’s approver’s signature, following sign-off protocols within Waka Kotahi.

For information that must be included in the Covering Memo, OIA response and Privacy Act request response please refer to the templates which are available OnRamp.

Information gathering

To determine whether information needs to be withheld, it is necessary to first conduct a search of all information repositories to determine what information is held that is within scope of the request. This may include a search through documents, a helpdesk call, asking business units related to the information, or a registry search. A helpdesk call will include a search of all Waka Kotahi databases where information may be stored about the request.

If an email sweep is required, Ministerial Services advisor must complete an email request form, and have it approved by Ministerial Services Manager and Deputy GM Engagement and Partnerships.

Consultation

Waka Kotahi may consult before making a decision on an official information request. You may need to consult with:

- the requester
- relevant business areas within Waka Kotahi, such as the Legal team, Communications or the Chief Executive
- externally, such as third parties, e.g. those who originally provided the requested information to Waka Kotahi, or whom the information is about, and
- any other agency with an interest in the information, including Ministers.

Any consultations should be necessary for Waka Kotahi to make a proper decision on the request. If there are unnecessary consultations and sign-offs taking place, this could give rise to a complaint that Waka Kotahi has failed to make and communicate its decision on a request 'as soon as reasonably practicable'.

Consulting requesters

Consulting requesters can be very useful when considering a request. The reasons for consultation can include:

- confirming the exact nature of the information requested
- explaining any difficulties Waka Kotahi is having in processing the request (for example when there is a large amount of information at issue), and allowing the requester to consider amending or refining the scope of the request, and
- informing the requester if there are likely to be any delays in processing their request.

Waka Kotahi can consult with requesters for any reason. However, the OIA specifically requires agencies to consider consulting the requester **before refusing a request** on the basis that the information does not exist or cannot be found, or the information cannot be made available without substantial collation or research.

Consultation with a requester may result in an amended or clarified request. The implications of this for our statutory obligations are discussed above, under [Clarified Requests](#).

Consulting third parties

There is no requirement under the OIA for agencies to consult external third parties before making a decision on a request. However, we should consider whether it is necessary to do so if:

- the information is about the third party
- the information was supplied by the third party, and/or
- release could adversely affect the third party.

This will often be relevant if we are proposing to release information that may raise privacy, confidentiality or commercial concerns.

The OIA provides protection for agencies that **release information in good faith** in response to a request. However, a complaint may potentially be made to the Ombudsman under the Ombudsmen Act that an agency has acted unreasonably in either omitting to consult an external third party, or in how they went about that consultation, or in deciding to release the information notwithstanding consultation.

Consulting Ministers

The Ministerial Services team is responsible for co-ordinating communication between Waka Kotahi and the Minister's offices. **Ministerial Services** is the first point of contact for advice and guidance on contacting a Minister.

OIAs for Noting – 'no surprises' principle

These are OIAs the Minister's Office should be aware of, but we do not require the Office to provide any comment.

The Minister's Office will receive the finalised response and any documents at the same time the OIA is dispatched to the requestor. When sending your OIA to be dispatched please advise coordinators whether it also needs to be sent to the Office for noting.

OIAs for Consultation

These are OIAs where we have identified that the Minister's Office needs to be consulted, especially in instances where the information we are releasing concerns Minister's correspondence and/or documents or projects that are Crown funded. The Manager Ministerial Services will review all new OIA requests and provide a list of OIAs requiring consultation with the Office.

The time given for consultation will be based on the complexity of a particular OIA and the volume of documents being released but will be no longer than 5 days (this can be extended if the circumstance requires). This will be managed by the Advisor managing the OIA request.

If we haven't heard from the Office by the timeframe requested, we will release the information as it has been prepared for in consultation.

Grounds for withholding information under the OIA

It is important to understand the scope of a request to correctly apply the withholding provisions. To do this, you will need to analyse each individual item of information and consider whether to withhold any information based on the withholding criteria. Application of a “blanket approach” does not comply with the OIA.

Consider whether any of the following commonly used withholding grounds under [the OIA](#) apply.

Consideration	OIA reference
The release could prejudice the maintenance of the law.	section 6(c) – disclosure would prejudice the maintenance of the law.
The release would provide personal information about other individuals . This section cannot be used to withhold names of Waka Kotahi and other public sector employees; instead, we should use section 9(2)(g)(ii) in such instances. However, we can use this ground when withholding public sector employees’ DDI and mobile phone numbers.	section 9(2)(a) – to protect the privacy of natural persons, including deceased persons.
This section is directed at protecting the commercial interests. It mainly applies to third parties (for example, either the supplier or the subject of the information) but can also apply to Waka Kotahi. The commercial interests of Waka Kotahi as holder of the information are also catered for in section 9(2)(i).	section 9(2)(b)(ii) – to protect the commercial position of the person who supplied the information or who is the subject of the information.
This applies to information supplied to Waka Kotahi by third parties and disclosure would prejudice the ongoing supply of information that is in the public interest.	section 9(2)(ba) – to protect information which is subject to an obligation of confidence.
This ground applies when the information/documents requested are still actively considered by Ministers and/or Cabinet and no decisions have been made. For active consideration within Waka Kotahi and/or its Board we should use section 9(2)(g)(i).	section 9(2)(f)(iv) – to maintain the current constitutional conventions protecting the confidentiality of advice tendered by Ministers and officials.

<p>The release would prevent the free and frank expressions of opinions.</p> <p>This ground also applies when the information/documents are under active consideration by Waka Kotahi and/or its Board.</p>	<p>section 9(2)(g)(i) – to maintain the effective conduct of public affairs through the free and frank expressions of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any department or organisation in the course of their duty.</p>
<p>This ground is used for withholding public sector employees’ names and contact details in certain circumstances when the release is likely to result in improper pressure or harassment.</p> <p>Please see special considerations for withholding names and contact details.</p>	<p>section 9(2)(g)(ii) – to maintain the effective conduct of public affairs through the protection of such Ministers, members of organisations, officers, and employees from improper pressure or harassment.</p>
<p>The information requested is legally privileged.</p>	<p>section 9(2)(h) – to maintain legal professional privilege.</p>
<p>This section protects the commercial interests of the holder of the information (Waka Kotahi). Commercial activities are defined as being carried out for the predominant purpose of generating profit or gain.</p>	<p>section 9(2)(i) – to enable a Minister of the Crown or any public service agency or organisation holding the information to carry out, without prejudice or disadvantage, commercial activities.</p>
<p>Negotiations mean dialogue between two or more parties intended to reach an understanding or resolve a point of difference. The other party may be a private individual or entity, or another agency.</p> <p>Common types of negotiations include tender negotiations, contractual negotiations, wage bargaining, and the resolution / settlement of disputes and grievances.</p>	<p>section 9(2)(i) – to enable a Minister of the Crown or any public service agency or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).</p>
<p>An administrative reason for refusing a request for information.</p> <p>To use this ground, the information requested should be publicly released within three months.</p>	<p>section 18(d) – the information requested is or will soon be publicly available.</p>
<p>We can’t be sure the information exists or know where it is.</p> <p>This section applies to documents containing information.</p> <p>For information in general that Waka Kotahi does not hold, we should use section 18(g).</p>	<p>section 18(e) – the document alleged to contain the information requested does not exist or cannot be found</p> <p>[note that you should check section 18B if you intend to withhold information under section 18(e)].</p>

<p>The release requires substantial collation or research.</p> <p>Please see special considerations and required steps before this section can be applied.</p>	<p>section 18(f) – the information requested cannot be made available without substantial collation or research</p> <p>[note that you check section 18A and 18B if you intend to withhold information under section 18(f)].</p>
<p>This section should be used when the information requested is not held by Waka Kotahi.</p>	<p>section 18(g) – the the information requested is not held by the department or venture or Minister of the Crown or organisation and the person dealing with the request has no grounds for believing that the information is either—</p> <p>(i) held by another department; or</p> <p>(ii) connected more closely with the functions of another department.</p>

Special considerations for withholding names and contact details of Waka Kotahi staff

In April 2020 the Ombudsman has issued a new guideline [Names and contact details of public sector employees](#). The Ombudsman’s general position is that staff names should generally be released when they are part of information that has been requested under the OIA. Names should not be withheld just because the staff are ‘junior’, or not the ‘decision maker’.

However, there are some circumstances where withholding is justified.

<p>Safety section 6(d)</p>	<p>There must be a real and objective risk to a person’s safety, as a result of disclosure of their name to the requester. Look for information to support the likelihood of harm such as actual threats, or facts supporting a reasonable perception of a threat, like a history of physical violence or harassment by the requester, or others to whom there is a reasonable chance the information may be disclosed.</p>
<p>Improper pressure or harassment section 9(2)(g)(ii) OIA</p>	<p>There must be a reasonable expectation that disclosing the name would lead to improper pressure or harassment that would have a detrimental impact on the relevant staff, and therefore the agency’s ability to do its job.</p>
<p>Privacy section 9(2)(a) OIA</p>	<p>It is not usually necessary to withhold staff names in order to protect their privacy. However, the privacy withholding ground may apply in limited circumstances, where disclosure would reveal something private or personal about the employees, or intrude on their privacy (for example, by affecting their mental or emotional wellbeing or damaging their reputation).</p>

Waka Kotahi guideline regarding [Redaction of staff names in OIA requests](#) is available OnRamp.

Special considerations for refusing under substantial collation and research

Refusing a request under the substantial collation and research ground ([section 18\(f\)](#) of the OIA) can only be used **as a last resort**, once we have attempted or at least considered attempting all the other mechanisms that are available to manage an administratively challenging request.

Before a request for information can be refused under the substantial collation and research ground, we must:

1. Consult with the requestor and ask them to refine and narrow down their request to make it manageable, which would remove the reason for the refusal (pursuant to [section 18B](#)).
2. Consider fixing a charge under [section 15](#) of the OIA (pursuant to [section 18A](#)).
3. Consider extending the time limit under [section 15A](#) of the OIA (pursuant to [section 18A](#)).

It is very important that we scope the request and have a good understanding of:

- a) what information has been requested
 - consult with the business units and clarify with the requestor as necessary
- b) volume of the information held
 - search through email and document management systems using appropriate search terms to estimate the total number of potentially relevant documents in both electronic and hard copies
- c) what would be involved in providing it.
 - carry out a sample exercise in order to be able to generate a reasonable estimate of the amount of work involved.

If, after steps 1-3 above have been considered and/or taken, and the volume of the information remains such that it cannot be provided without substantial collation and research, we can refuse the request under section 18(f).

Our reasoning for refusal **must** be based on the information gathered as part of steps (a) – (c) above. This information will also be necessary if a requestor makes a complaint to the Ombudsman.

Public interest considerations

The OIA is based on the **principle of availability**, which means official information must be made available on request unless there is *'good reason'* to withhold it.

Some reasons are *'conclusive'* – if they apply, the information can be withheld. These reasons are outlined under section 6 of the OIA.

Reasons outlined under section 9 of the OIA are subject to a *'public interest test'* – if they apply, we **must** consider whether the need to withhold is outweighed by the public interest in disclosure. If the public interest in disclosure is stronger, the information must be released. If it is not, then there is *'good reason'* to withhold. This is what we call the *'public interest test'*.

Public interest does not mean 'interesting to the public'. It means the issue is one of **legitimate public concern**.

Relevant considerations

Transparency

There is a general public interest in promoting the transparent conduct of public affairs.

Participation

There is a public interest in disclosure of information that enables people to:

- understand and debate issues, and
- participate in decision making processes which affect them. These decision-making processes may be in respect of the individual requester, a section of the public, or the public more generally.

Considerations of participation commonly arise in the context of decision-making processes, public consultation and submission processes, public hearings and inquiries, parliamentary select committee processes, and general elections.

Accountability

Accountability in this context means Ministers, agencies and people working in central or local government being responsible for how they:

- make decisions and perform their functions;
- spend public money; and
- take appropriate action when things go wrong.

Administration of justice

There is a public interest in release of official information to:

- enable individuals to pursue or defend their legal rights and remedies

- to promote procedural fairness. 'Procedural fairness' means that agencies must follow a fair and proper procedure when making decisions that impact on a person's rights, interests or legitimate expectations.

Health, safety and environment

There is a public interest in keeping the public adequately informed of:

- any risk or danger to public health or safety, or the environment; and
- any measures to promote public health or safety, or protect the environment.

People may be entitled to this information so that they can make informed decisions about the degree of risk or danger that they find acceptable, and can then take steps to manage or mitigate any personal risks or dangers

Factors to consider include:

1. the significance of the subject
2. the number of people affected
3. the level of interest or debate
4. the level of disquiet, speculation or controversy
5. the extent of information in the public domain
6. the need to provide the 'full picture', or to correct inaccurate, incomplete or misleading information
7. the amount of public money involved
8. the nature and seriousness of the 'wrongdoing' or what went wrong
9. the seniority of the individuals involved
10. the age, currency and relevance of the information at issue
11. the timing of the request
12. the purpose of the request
13. other means of obtaining the information
14. other means of scrutiny or regulation.

Irrelevant considerations

The following considerations are not relevant in assessing whether there is a need to withhold the information or in conducting the public interest test.

- Potential embarrassment to the Government or an agency.
- The fact that the information is technical or could be difficult to understand.
- The likelihood that the information will be seen out of context, misunderstood or misinterpreted.
- The likelihood that release will result in confusion or unnecessary debate.

Where an agency is concerned that the information may be misunderstood, it can always release other information and / or an explanatory statement to put what has been requested in context, and to help the reader understand and interpret it.

Other ways of getting the balance right

The result of the public interest test may not always be **full and unrestricted** disclosure of the **actual information** sought by the requester. The other ways that the competing interests favouring withholding and disclosure can be met are:

1. Releasing information with deletions.
2. Releasing key documents only.
3. Providing excerpts and/or summaries instead of full documents.
4. Releasing information in a particular manner, such as:
 - a. Allowing the requestor to inspect the information at our offices
 - b. Providing an oral briefing to the requestor
 - c. Releasing the information to a trusted third party instead of the requestor
 - d. Providing the information subject to certain conditions (for example, requirement to keep it confidential, and not distribute or publish it).
5. Releasing other information instead or in addition to the information requested.
6. Releasing the information later, after the harm in release has abated, and when the public interest balance lies more clearly in favour of disclosure.

More information on the public interest is available the [Public Interest](#) guide available on the Ombudsman's website.

Common withholding provisions under the Privacy Act

Waka Kotahi is subject to the information privacy principles in the Privacy Act. [Principle 6](#) provides that where an agency holds personal information in a form that is readily retrievable, individuals are entitled to have access to information relating to them.

Waka Kotahi may refuse to disclose information requested in certain circumstances. Reasons for refusal to supply information are outlined below with the relevant links to the [Privacy Act](#) pages.

Consideration	Privacy Act 2020 reference
The information requested is not readily retrievable.	<p><i>No section for refusal.</i></p> <p>The agency must notify the requestor pursuant to section 44(2)(a) of the Privacy Act that it does not hold personal information in a way that enables the information to be readily retrieved.</p>
The information requested is not held by Waka Kotahi and the person dealing with the request has no grounds for believing the information is held by another agency.	<p><i>No section for refusal.</i></p> <p>The agency must notify the requestor pursuant to section 44(2)(b) of the Privacy Act that the agency does not hold any personal information about the requestor.</p>
The release is likely to put a person in danger.	<p>section 49(1)(a) - the disclosure of the information would:</p> <ul style="list-style-type: none"> (i) be likely to pose a serious threat to the life, health, or safety of any individual, or to public health or public safety; or (ii) create a significant likelihood of serious harassment of an individual; or (iii) include disclosure of information about another person who <ul style="list-style-type: none"> A. is the victim of an offence or alleged offence; and B. would be caused significant distress, loss of dignity, or injury to feelings by the disclosure of the information.
The information requested is evaluative material that is held in confidence.	<p>section 50(1)(a) - the information is evaluative material and the disclosure of that information or of the information identifying the person who supplied it would breach an express or implied promise:</p> <ul style="list-style-type: none"> (i) that was made to the person who supplied the information; and (ii) that was to the effect that the information or the identity of the person who supplied it, or both, would be held in confidence;

<p>The release is likely to unreasonably prejudice the commercial position of the person who supplied the information or who is the subject of the information</p>	<p><u>section 52(1)(b)</u></p> <p>Making the information available would be likely to unreasonably prejudice the commercial position of the person who supplied the information or who is the subject of the information, and, in accordance with section 52(2) of the Privacy Act, Waka Kotahi does not consider that the withholding of that information is outweighed by other considerations that would make it desirable, in the public interest, to make the information available.</p>
<p>The information does not exist or cannot be found.</p>	<p><u>section 53(a)</u></p> <p>The information does not exist or, despite reasonable efforts to locate it, cannot be found.</p>
<p>The release would provide personal information about other individuals.</p>	<p><u>section 53(b)</u> – information must be withheld to prevent the unwarranted disclosure of the affairs of:</p> <ul style="list-style-type: none"> (i) another individual; or (ii) of a deceased individual.
<p>The release could prejudice the maintenance of the law including the detection, investigation or prosecution of offences.</p>	<p><u>section 53(c)</u> - the disclosure of the information would be likely to prejudice the maintenance of the law by any public sector agency, including</p> <ul style="list-style-type: none"> (i) the prevention, investigation, and detection of offences; and (ii) (ii) the right to a fair trial.
<p>Legal privilege.</p>	<p><u>section 53(d)</u> – the disclosure of the information would breach legal professional privilege.</p>

Releasing information in response to a request

The OIA requires that information must be made available without “*undue delay*”. Generally, when a decision is made to grant a request for information, whether in full or in part, the decision and the information should be provided to the requester at the same time.

Decisions on request

However, there may be times when this is not possible. For example, when the request is for a large amount of information and although Waka Kotahi has reached a decision to grant the request, it will still take further time to prepare the information for release.

Provided that there is no undue delay, the information may be provided to the requester at a later stage, after the decision has been made and communicated. In these circumstances, the notice of the decision should clearly indicate that the information will be provided, with an estimated timeframe for the release. If some of the information is to be withheld, the notice should also advise this and state the reasons for refusing that part of the request.

A later release of information may also be appropriate when a decision has been made to charge for providing the information. Waka Kotahi may require all or part payment of the charge in advance, before the work is undertaken to prepare the information for release. (See the “Charging” section.)

Awaiting the requester’s response to know if they are prepared to be charged for the information will not generally be considered to be an undue delay in making the information available.

Releasing documents as attachments

Documents in scope of the request that are being released must be released in the manner preferred by the requestor.

Usually, the documents will be released in the PDF format, which must be **fully searchable**. However, supporting documentation can also be provided in any other format, for example, as excel spreadsheet. Both, electronic and printed form can be used, depending on the requestor’s preference.

Charging

Public sector agencies cannot charge for responding to a Privacy Act request.

Part of making a decision on a request under the OIA includes whether to charge. Any decision to charge must be notified to the requester at the same time as the requester is advised of the decision to release information, of:

- the decision to charge
- the maximum amount of the charge
- how the charge has been calculated
- whether all or part payment of the charge is required in advance of release of the information, and
- that the requester has the right to complain to the Ombudsman about the decision to charge.

Charges can be made for making the information available, including time spent retrieving and collating the information, and preparing it for release. However, charges cannot be made for the time spent or any expenses incurred in deciding whether or not to release the information.

It may not be reasonable to charge for locating or retrieving information if there are poor record-keeping practices in place that mean the information is not stored where it should be (in accordance with Waka Kotahi normal business practice).

More information on charging is available in the Ombudsman's guide:

Charging: A Guide to charging for official information under the OIA and LGOIMA.

Requests for internal decision-making rules (section 22)

Section 22 applies to requests for:

...any document (including a manual) which is held by [an agency] and which contains policies, principles, rules, or guidelines in accordance with which decisions or recommendations are made in respect of any person or body of persons in [their] personal capacity.

These requests are usually made in the context of a person trying to understand how an agency reached a decision or why it took the decision it did. Example scenarios in which a person might make a section 22 request include:

- a request by a job applicant for an agency's human resources policy; or
- a request for the criteria an agency uses to determine applications for a grant or benefit.

The decision or recommendation needn't affect the requester themselves. It's sufficient that the decision affects **any** person or group in their personal capacity.

The processing requirements for section 22 requests are largely the same as they are for ordinary official information requests.

However, for section 22 requests, information **cannot be withheld** under section **9(2)(g)(i)** – free and frank opinions, and **9(2)(h)** – legal professional privilege.

If a requester is unhappy with the decision on their section 22 request, they can complain to the Ombudsman. However, investigations are required to be undertaken by the Ombudsman under the Ombudsmen Act 1975, rather than the OIA. This means any recommendations by the Ombudsman will not be binding.

Requests for statements of reasons (section 23)

Section 23 of the OIA provides a **right** to a written statement of reasons for a decision or recommendation made about the requester by the agency (the **reasons why** a decision or recommendation has been made in respect of them).

Example scenarios in which a person might make a section 23 request include:

- a requester wants to know **why** an agency rejected their application for appointment or promotion;
- a requester wants to know **why** an agency decided not to renew their contract;
- a requester wants to know **why** an agency declined their application for a permit, grant or benefit.

The decision or recommendation must be made **with reference to the requester** and not some other person or class of persons more generally.

The right to request for a written statement of reasons must be exercised within a *'reasonable time'* of the decision or recommendation at issue.

A written statement of reasons should be full and comprehensive in explaining the decision-making process, and must include the following elements:

- the findings on material issues of fact
- a reference to the information on which the findings were based, and
- the reasons for the decision or recommendation.

Waka Kotahi may already hold a written statement that contains all the elements listed above. If not, we will need to create such a statement.

The processing requirements for section 23 requests are largely the same as they are for ordinary official information requests.

However, for section 23 requests, information that would form part of a section 23 statement cannot be withheld under section **9(2)(g)(i)** – free and frank opinions, and **9(2)(h)** – legal professional privilege.

Requests by corporate entities to personal information about themselves (part 4 requests)

Under the OIA, Part 4 requests can **only** be made by corporate entities which:

- are incorporated in New Zealand; or
- have a place of business here.

A corporate entity may be a company, an incorporated society, or any other body recognised as such by statute. To find out whether a requester is a company, search the [companies register](#). To find out whether a requester is an incorporated society, search the [register of societies and trusts](#).

The processing requirements for Part 4 requests are largely the same as they are for ordinary Part 2 requests. However, there are two main differences as outlined below.

Right to request correction

When a Part 4 request is granted, we must tell the requester of their right to request correction of the information if they believe that it is inaccurate, or incomplete and misleading. The agency must inform the requester of the action taken as a result of any such request. If the agency declines to correct the information, the requester may require that a note be attached to the information indicating the nature of the correction sought but not made.

Reasons for refusing Part 4 requests

Part 4 withholding and refusal grounds are largely the same as for requests from any person (Part 2 requests).

However, the main difference is that Part 4 requests **cannot be refused** on the grounds that release would prejudice the effective conduct of public affairs through the free and frank expression of opinions (section 9(2)(g)(i) of the OIA).

Complaints to the Ombudsman

If a requester is unhappy with the decision on their Part 4 request they can complain to the Ombudsman. However, Part 4 investigations are slightly different in that they are required to be undertaken by the Ombudsman under the Ombudsmen Act 1975, rather than the OIA. This means any recommendations by the Ombudsman will not be binding.

Publication of information

An agency may, whether proactively or in response to a request, choose to publish information as it sees fit. For example, an agency may decide to make information generally available to the public on its website.

Proactively releasing information to the public promotes good government, openness and transparency and fosters public trust and confidence in agencies. Proactively releasing information also has administrative benefits for the agency, such as reducing numbers of requests for information where the requested information is already publicly available and allowing for greater ease of handling of the requests that are received.

Some of the Waka Kotahi responses to OIA requests are published on our [external website](#).

[Waka Kotahi proactive release of official information policy](#) is also available online.

Note that responses to requests made via the FYI website www.fyi.org.nz are published online on that site.

Good faith protection

Occasionally, an agency may be reluctant to make official information available for fear that release of the information could expose the agency to litigation.

However, releasing information in good faith in response to a request made under the OIA will not expose an agency to civil or criminal proceedings. The OIA explicitly states:

Where any official information is made available in good faith pursuant to this Act no proceedings, civil or criminal, shall lie against the Crown or any other person in respect of the making available of that information, or for any consequences that follow.

This means that, as long as an agency releases information in the honest belief that the OIA requires disclosure (which may be demonstrated by the agency having made reasonable efforts to identify the interests requiring protection as well as any public interest in release, and to consider those interests in good faith), no civil or criminal proceedings will lie against the agency. This section effectively protects the Crown from any defamation or breach of confidence proceedings, or complaints to the Privacy Commissioner under the Privacy Act, in respect of information which is made available in good faith under the OIA.

Some protection is also afforded to the author or supplier of the information. However, such protection does not extend to publication of the information by the requester or subsequent parties, such as a newspaper.

The good faith protection under the OIA is also not available when an agency decides to proactively release information, rather than releasing information to a requester in response to an OIA request.

Even when an agency does release information in good faith under the OIA, a complaint to the Ombudsman under the Ombudsmen Act 1975 may still be made by any person affected by the release, if it is considered that the agency has not acted in an administratively reasonable manner. For example, by not taking due care when making deletions to information, or not affording them a reasonable opportunity to comment before release.

Further guidance from the Ombudsman

Separate guidance is available on making a decision whether or not to grant a request, in relation to particular sections of the OIA and specific subject areas.

The Ombudsman's website contains searchable case notes, opinions and other material relating to past cases considered by the Ombudsman: <https://www.ombudsman.parliament.nz/resources> .

The Ombudsman's staff can provide general advice to agencies on the processing of an official information request, including the current interpretation of the OIA and how it has been applied in similar fact situations in the past. You can email info@ombudsman.parliament.nz or freephone 0800 802 602.

Complaints: OIA

Complaints about OIA decisions

Requesters have the option of raising any concerns about their OIA decision with the Office of the Ombudsman www.ombudsman.parliament.nz.

All Ombudsman investigations are analysed and shared with Waka Kotahi business units involved in the initial decision-making process for performance monitoring and learning purposes.

Complaints: Privacy

Complaints about Privacy Act decisions

Requesters who have concerns about their Privacy Act decisions should contact the Privacy Commissioner at www.privacy.org.nz.