

# PROACTIVE RELEASE OF OFFICIAL INFORMATION POLICY

Date | April 2021

## Purpose

This policy explains how Waka Kotahi NZ Transport Agency approaches the proactive release of official information. The policy does not direct business groups to always proactively release official information, but it encourages consideration of whether information produced by Waka Kotahi should be considered for release publicly, as part of business as usual activity, and the process that must be undertaken when doing so.

## Scope

This policy applies to all content that is produced and held by Waka Kotahi.

## Definition of terms

**Official information** means any information that the Waka Kotahi or its employees hold. It includes:

- documents, reports, memoranda, letters, texts, emails and drafts
- non-written information such as video or voice recordings
- internal policies and guidelines
- information that is known to Waka Kotahi but has not yet been written down.

**Proactive release** means making information available to the public before it has been officially requested. Information can be proactively released by:

- publishing Waka Kotahi's documents (such as annual reports, statements of intent, research reports, briefings) on our website
- publishing the same, or edited, information that we have already or are about to release to a requestor under the Official Information Act 1982 (OIA).

## Policy statements

Proactively releasing information promotes good governance, openness and transparency, and it fosters the public's trust and confidence in Waka Kotahi. It can make it easier for the public to obtain information they would otherwise seek officially and reduce the administrative burden and time delay that OIA requests can place on Waka Kotahi and requestors.

The purpose of this policy's internal protocols and practices is to:

- increase the volume of information we proactively release (including publishing appropriate responses to OIA requests in line with the OIA's purpose to make official information more freely available)
- ensure that our employees exercise caution and due diligence, and assess the potential effects of releasing official information, before they make it publicly available.

## Key principles

Waka Kotahi will:

- always as a primary consideration release information unless there are good reasons to withhold it
- observe the spirit of the OIA and comply with its requirements
- establish practices that help increase the volume of information proactively released
- undertake due diligence and assess the potential effects of releasing information (including considering effects on personal privacy) before proactively releasing official information
- ensure information released is in an accessible and usable format
- release information on a 'no surprises' basis, which means that relevant minister(s) or their office(s) are informed of releases in advance, including as applicable other government agencies.

Types of information that should be considered for proactive release

This could include:

- Information about the role and structure of Waka Kotahi, and the information it holds.
- Policies, procedures, manuals and guidelines used, including official information and proactive release policies.
- Information released in response to OIA requests.
- Strategy, planning and performance information.
- Information about expenses, tendering, procurement and contracts.
- Information about current or planned work programmes.
- Information about policy development, including Cabinet papers and advice to Ministers<sup>1</sup>.
- Information about statutory decision-making processes.
- Information about regulatory or review activities.
- Information about grants administered by the agency.
- Minutes, agendas and papers of Waka Kotahi boards or committees.
- Information about public engagement processes, including public submissions.
- Information about lists and registers maintained by Waka Kotahi.

## Key accountabilities and responsibilities

### Roles

The **business group creating** any official information is responsible for ensuring that consideration is made on whether to proactively release official information. The business group must identify the risks of releasing the information, discuss the risks with the Legal, Ministerial Services and Media teams where necessary, and make appropriate recommendations.

**Ministerial Services** is responsible for helping business groups identify and assess any risks that may arise from proactively releasing information, and for keeping a record of information that has been proactively released. They will also in collaboration with the appropriate Senior Manager have the final approval to proactively release information, including what information should be redacted. This includes notifying the Minister's office of the proactive release of material if applicable.

The **Legal team** is responsible for helping business groups identify and assess any legal and other risks that may arise from proactively releasing information.

**The business group's senior manager**<sup>2</sup> is responsible for approving that information can be proactively released.

The **Media team** is responsible for helping business groups identify any publicity risks that may arise from proactively releasing information.

The **Channels team** is responsible for uploading information to Waka Kotahi's website once the relevant manager has approved that it can be proactively released.

**Other business groups** (including Communications, Investment and Finance, Ministerial Services and the Chief Executive's office) can provide advice on any sensitivities associated with information that a business group is considering proactively releasing.

Refer to the [Proactive Release process map](#) for the process for considering information to be proactively released.

### Decision-making

Business groups producing official information should consider proactively releasing information in the following situations:

- The information tells the public about how we undertake our functions.

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<sup>1</sup> Waka Kotahi does not develop policy, however is a primary contributor to policy development with other government departments.

<sup>2</sup> Depending on the sensitivity of the material, sign out will sit with Group Managers.

- The information is about our projects, corporate functions or advice to our ministers.
- The information, or the topic it covers, has been requested more than once.
- The information would be of general interest to the public.
- The information, if made publicly available, would not create any legal risk to Waka Kotahi.

Refer to the summary of the legislative provisions and sources of information (appendix A) and other considerations (appendix B) to help you decide whether information should be proactively released.

The final decision on whether information should be proactively released must be made by a tier two manager, after consultation with the business groups identified above.

## Publishing OIA responses

All OIA responses will be considered for publishing with recommendations made as part of the final approval process. The decision to publish media OIAs will be at the discretion of the Senior Manager Media.

When deciding to publish a response to a request, relevant consideration may include:

- Whether there has been more than one request for the information, or on the topic the information covers
- Whether the information would be of general interest to the public, this may include information where a request has not previously been received
- Whether release of the information to an audience wider than the requestor would create any legal risk to Waka Kotahi.

We will advise requestors of official information that the response to them and the information we provided will be published on our website.

## Risk assessment

Proactively releasing information operates outside the OIA, so Waka Kotahi isn't protected from liability for releasing official information. Therefore, Waka Kotahi must consider potential breaches of the law and other risks before proactively releasing information.

Business groups must assess the risks of proactively releasing information before they make their recommendations. This involves:

- assessing the potential effects of releasing the information in good faith
- applying the principles of the OIA, the Privacy Act 1993, and the Government's [Protective Security Requirements](#) to the information
- considering whether the information includes any content that would be withheld if it was requested under the OIA or other legislation
- considering any potential liability (civil or criminal) that might result from proactively releasing the information (such as defamation, breach of copyright, breach of privacy or breach of contract)
- considering if the public would need access to any other information to make sense of the information being considered for proactive release.

The business group must seek the Legal team's advice if they have any doubt about whether releasing the information would pose a material risk.

## Redactions

Content from information that we proactively release can be redacted. If content is redacted under the provisions of the OIA, these redactions must be identified with the related sections of the OIA.

If, at a later date, Waka Kotahi decides to release content that was previously redacted from information that has been proactively released, the previously published information will be revised.

## Officials' personal information

The starting point of the OIA is that information should be released unless there is a good reason to withhold it. It doesn't make blanket rules about which information should be withheld.

Section 9 of the OIA says that protecting the privacy of a person can be a reason to withhold information. Our approach is to release the names, direct dial-in (DDI) numbers and work email addresses of all Waka Kotahi staff unless there is a good reason under the legislation not to. Decisions whether to release staff members' cell phone numbers should be made on a case-by-case basis; some staff use their work cell phone after hours or use their personal cell phone for work purposes.

If Waka Kotahi considers it is in the public's interest to publish the name of an official from another agency (for example, a document relating to a cross-agency work programme), it must consult with the relevant agency about this recommendation. Refer to the [Redaction of staff names policy](#).

## Consultation

The business group must ensure that they have consulted with or informed the appropriate people who were involved in creating information that Waka Kotahi is considering proactively releasing. This includes other government departments. Anyone who is named in the information should also be consulted, even if their names will be redacted.

Waka Kotahi may need to notify or consult with ministers before proactively releasing information. If the information is likely to attract public comment, we must inform the relevant minister of our plans to proactively release it at least five working days beforehand.

Waka Kotahi can only proactively release Cabinet papers with the approval of a minister.

## Recordkeeping

Ministerial Services must maintain a record of responses to OIAs that have been proactively released on the Waka Kotahi's website. The record must contain:

- the information's reference number
- a summary of the information
- the date the information was published on the website.

## Publication

When we respond to requesters of official information, we will advise them that our response, and the information we provide them, may be published on our website at a later date. However, if we do later decide to publish this information, we must remove any personal details about the requester beforehand.

Once information has been approved to be proactively released, it should be sent by email to [channels@nzta.govt.nz](mailto:channels@nzta.govt.nz) for the Channels team to publish on Waka Kotahi's website.

## Further guidance

Related policies and guidance:

- [Official Information Act \(OIA\) requests](#)
- [Personal information access](#)
- [Redaction of staff name guidelines](#)

## Relevant legislation and regulations

[Official Information Act 1982](#)

[Privacy Act 1993](#)

## Contact

For further information about this policy, email: [official.correspondence@nzta.govt.nz](mailto:official.correspondence@nzta.govt.nz).

## Appendix A: Summary of legislative provisions and sources of further information

| Official Information Act  |  |
|---|--|
| What to consider  | Supporting guidance  |
| <p>The withholding grounds in the OIA (<a href="#">section 6</a>, <a href="#">section 7</a>, and <a href="#">section 9</a>) need to be taken into account to ensure that proactively publishing information doesn't prejudice one of these interests. In general terms, the interests protected by the withholding grounds in the OIA include:</p> <p>6(a): National security or defence of New Zealand, and international relations.</p> <p>6(c): Maintenance of the law, including preventing, investigating and detecting offences, and the right to a fair trial.</p> <p>6(d): Health and safety of the public.</p> <p>6(e): Damage to New Zealand's economic interests.</p> <p>7(a): Security or defence of the Cook Islands, Niue, Tokelau and the Ross Dependency.</p> <p>9(2)(f)(iv): Constitutional conventions protecting for the time being the confidentiality of advice tendered by ministers and officials.</p> <p>9(2)(a): Personal privacy (refer to the next table on privacy).</p> <p>9(2)(ba): Confidentiality.</p> <p>9(2)(b)(ii): Commercial information.</p> <p>9(2)(h): Legal professional privilege.</p> <p>Agencies and ministers have the same rights as private organisations to legal advice. If the information that is being proposed to be proactively released may be covered by legal professional privilege, it cannot be released unless the Crown Law Office has reviewed it and the Attorney-General has approved a legal waiver of legal privilege.</p> | <p>The Ombudsman's guidance on <a href="#">Conclusive reasons for withholding official information</a> (section 6 of the OIA).</p> <p>The <a href="#">New Zealand Government Security Classification System</a>, the <a href="#">Protective Security Requirements</a> and the <a href="#">New Zealand Information Security Manual</a>.</p> <p>See national security and international relations above.</p> <p>The Ombudsman's guidance on <a href="#">The OIA and the public policy making process and Free and frank opinions</a>.</p> <p>The PSC's guidance on <a href="#">Free and frank advice &amp; policy stewardship</a>.</p> <p><a href="#">Section 6</a> and <a href="#">Part 4</a> of the Privacy Act 1993.</p> <p>The Ombudsman's guidance on the <a href="#">Confidentiality withholding ground</a> in the OIA.</p> <p>The Ombudsman's guidance on the <a href="#">Commercial withholding ground</a> in the OIA.</p> <p>The Cabinet Manual's <a href="#">Guidelines for the presentation of legal advice</a> to ensure legal advice is clearly identified and separated so it can be easily redacted.</p> <p>The Ombudsman's guidance on <a href="#">Legal professional privilege</a>.</p> |

| Public interest   |   |
|---|---|
| What to consider  | Supporting guidance   |
| <p>Before proactively releasing information, Waka Kotahi should subject it to the public interest test.</p> <p>This test involves three steps:</p> <ol style="list-style-type: none"> <li>1. Identifying the relevant public interest factors in favour of disclosure.</li> </ol> | <p>The Ombudsman's guide on <a href="#">the public interest test</a>.</p> |

|  |  |
|--|--|
| <p>2. Identifying any relevant public interest factors against disclosure.</p> <p>3. Assessing whether the public interest against disclosure outweighs the public interest in favour of disclosure.</p> |  |
|--|--|

| Privacy interest   |   |
|--|---|
| What to consider   | Supporting guidance   |
| <p>When Waka Kotahi is considering proactively releasing information, it must take the disclosure standards in the Privacy Act 1993 into account.</p> <p>We must consider if we need to redact information to protect personal privacy or whether the information should be released at all.</p> <p>We must consult with all individuals or companies named in any information that is proposed to be proactively released, even if we are not proposing to release their names.</p> <p>If we are considering proactively releasing information that contains personal information about officials (such as their name, email addresses and phone numbers), we must assess the risks of releasing this personal information and seek confirmation from the individuals that they are comfortable with their personal information being released.</p> | <p><a href="#">Section 6</a> and <a href="#">Part 4</a> of the Privacy Act 1993.</p> <p>The Office of the Privacy Commissioner <a href="#">Codes of practice that become law</a> and other guidance including <a href="#">A quick tour of the privacy principles</a>.</p> |

## Appendix B: Other considerations

The following table provides information on other risks that the Waka Kotahi may need to consider before proactively releasing information. This is not an exhaustive list, as risks can take several forms, depending on what and how the information is published.

| Key question   | What to consider  |
|--|---|
| Is there a contractual interest in the information we are proposing to release?  | Consider whether we need to redact information to protect contractual obligations or whether the information should be released at all.   |
| Is any of the information we are proposing to release subject to copyright?  | Consider if the information is the creative work of others, their trademarks, or certain confidential business information. If it is, the information's owner must give us permission to publish it.<br><br>Where the Crown holds the copyright, the information will be made available on open licensing terms (where possible).<br><br>The <a href="#">New Zealand Government Open Access and Licensing framework</a> provides guidance for releasing copyright works and non-copyright material. |
| Does the information we are proposing to release say or do something that could harm the reputation of another person, group, or organisation? | Ensure that we understand and assess any defamation risks that could arise from releasing the information. Seek legal advice if necessary.  |
| Does the material contain any information that must be withheld under the terms of any other legislation?                                      | Take other legislation into account if the information proposed to be released contains contents that must be withheld under the terms of that legislation. Seek legal advice if necessary.   |