

Ombudsman's OIA probe uncovers significant gaps

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The Chief Ombudsman says his investigation into Official Information Act practices has identified significant gaps in the way agencies are responding to journalists, training staff and keeping records.

Peter Boshier has just tabled a report in Parliament called *Ready or Not?* which looks at how well a dozen core government agencies are complying with the Official Information Act.

“It is 40 years since the Official Information Act was passed by Parliament. The OIA is such an important part of New Zealand’s constitutional framework, I wanted to get a sense check of how the law is being put into in practice. I was particularly keen to see how well agencies performed under the pressure of the pandemic.”

Mr Boshier says the investigation is a follow up report to *Not a Game of Hide and Seek* published by his predecessor, Dame Beverley Wakem in 2015.

“Overall my investigation has found the core public service is increasingly transparent and open.”

“Senior leaders are signalling their commitment to these principles and making them more visible on their websites, a far cry from five years ago.”

“Agencies are increasingly taking the initiative and proactively releasing information to the public as part of their normal business practice.”

However, Mr Boshier says chief executives and other senior leaders still need to make sure their agencies have the resources and systems in place to handle their OIA workloads.

Mr Boshier says most agencies have set up media teams to respond to queries from journalists but these teams do not seem to apply the law.

“There appears to be a widespread misapprehension that many media information requests don’t fall under the OIA, and that applying the law is difficult and complicated. These perceptions are false.”

Mr Boshier discovered multiple examples of media teams within agencies breaching section 19 of the OIA.

“Media teams are failing to give journalists a reason when they refuse to provide information or inform them of their right to complain to me.”

“This misconception about journalists’ queries is fuelling the growing mistrust within news organisations about the way agencies are managing requests for information. It is also leading to the view that agencies are using the OIA to undermine transparency.”

“I am growing increasingly concerned about the experiences journalists are reporting and the apparent dismissal by some agency media teams of the OIA legislation which underpins their work.”

“In fact, the processes adopted by the agencies have little or nothing to do with the law itself and I intend to consider this matter further.”

Mr Boshier found that training was another vulnerable area for many agencies.

“I gave nine out of the 12 agencies action points suggesting improvements in this area. For example, many agencies did not give targeted training to their decision makers, their media teams, nor to staff seconded to Ministers’ offices as private secretaries.”

Mr Boshier was also concerned about the blanket approach some agencies took when it came to informing Ministers about OIA responses to fulfil their ‘no surprises’ obligations.

“I found a number of agencies were routinely giving their Minister’s offices a heads up three to five days before the date they were due to respond to a requester. In cases where this is necessary, it should happen either just before or at the same time to avoid any delay.”

Mr Boshier says he found gaps in all 12 agencies in terms of their record keeping and Information Management systems, with several agencies breaching the Public Records Act.

“I am concerned at the impact this must be having on their ability to retrieve requested information. Agencies must promote a strong record-keeping culture and introduce robust training.”

Mr Boshier says the investigation started before the global pandemic but ultimately was shaped by it.

“I had initial concerns that the law may be changed to allow agencies to treat official information requests as a low priority. I argued strongly that the free flow of information is crucial in a crisis to promote trust and public confidence.”

“I am pleased to say agencies continued to perform strongly during the pandemic thanks to the flexibility of the OIA.”

Mr Boshier says accurate and timely information may counteract the impact of disinformation, a key concern at present worldwide.

“The crisis also demonstrates the need for independent oversight which is provided by my office.”

Mr Boshier is calling for public sector chief executives to be held accountable for their agencies’ OIA work by including OIA measures in their performance objectives.

“They already have stewardship responsibilities under the Public Service Act and regular reporting on OIA performance is key.”

Mr Boshier says the OIA has proven to be fundamentally sound and a crucial check when the government was exercising great power over the lives of individual New Zealanders during the pandemic.

“The fundamental issue is the way agencies are considering and responding to OIA requests. My investigation found this process is only as difficult or as painful as an agency makes it for itself.”

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Note

The following reports are available on the Ombudsman’s website:

- [Ready or not? \(2022\)](#)
- [Accident Compensation Corporation | Te Kaporeihana Āwhina Hunga Whara \(2022\)](#)
- [Department of Corrections | Ara Poutama Aotearoa \(2022\)](#)
- [Ministry of Education | Te Tāhuhu o te Mātauranga \(2022\)](#)
- [Ministry of Foreign Affairs and Trade | Manatū Aorere \(2022\)](#)
- [Ministry of Health | Manatū Hauora \(2022\)](#)
- [Ministry of Justice | Te Tāhū o te Ture \(2022\)](#)
- [New Zealand Customs Service | Te Mana Ārai o Aotearoa \(2022\)](#)
- [New Zealand Defence Force | Te Ope Kātua o Aotearoa \(2022\)](#)
- [NZ Transport Agency | Waka Kotahi \(2022\)](#)
- [Ministry of Social Development | Te Manatū Whakahiato Ora \(2022\)](#)
- [Ministry of Transport | Te Manatū Waka \(2022\)](#)
- [Public Service Commission | Te Kawa Mataaho \(2022\)](#)
- [Not a game of hide and seek \(2015\)](#)