OIA compliance and practice in the Ministry of Foreign Affairs and Trade - Manatū Aorere

Opinion of the Chief Ombudsman June 2021

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# Background

In 2015 my predecessor, Dame Beverley Wakem, carried out an investigation to:

* examine the attitudes, policies, practices and procedures adopted by government agencies generally, in order to establish how well they were complying with the requirements of the OIA;
* identify good practices, areas of weakness or vulnerability and practices that could give rise to non-compliance; and
* recommend improvements where needed.

As it was not practicable to examine in detail the practices of all government agencies subject to the Ombudsman’s jurisdiction, twelve government agencies were selected to investigate as being representative of central government agencies.[[1]](#footnote-2) All 12 agencies were provided with individual reports and although these reports were not published, the agencies were provided with action points which, if implemented, would lead to improvements in OIA practice. A further 75 agencies and 27 Ministers’ offices subject to the OIA were invited to provide information via a survey.

The resulting report titled Not a Game of Hide and Seek, was published in December 2015.

In December 2019, I decided that it was timely to revisit the 12 representative agencies involved in *Not a Game of Hide and Seek*, by initiating a follow up investigation to determine the current state of OIA practice and culture in these central government agencies.

# Introduction

This report sets out my opinion on how well the Ministry of Foreign Affairs and Trade (the Ministry) is meeting its obligations under the Official Information Act 1982 (OIA).

My investigation has included consideration of the Ministry’s supporting administrative structures, leadership and culture, processes and practices, including information management, public participation, and proactive release of information to the extent that these relate to achieving the purposes of the OIA.

The purposes of the OIA are to increase the availability of information to the people of New Zealand in order to:

* enable effective participation in the making and administration of laws and policies; and
* promote the accountability of Ministers of the Crown and officials,

thereby enhancing respect for the law and promoting the good government of New Zealand.

The OIA also protects official information to the extent consistent with the public interest and the need to protect personal privacy.

As Chief Ombudsman, I am committed to ensuring official information is increasingly available and not unlawfully refused and to improving public sector capability in terms of decision making. Key to achieving this is Parliament’s expectation that I regularly review the OIA practices and capabilities of public sector agencies.

I have initiated this practice investigation using my power under the Ombudsmen Act 1975 (OA). This provides me with the tools needed to investigate matters I consider important to improve administrative decision making across the public sector.[[2]](#footnote-3)

I have considered the information gathered through my investigation against an assessment framework consisting of the following five areas:

* Leadership and culture;
* Organisation structure, staffing and capability;
* Internal policies, procedures and resources;
* Current practices; and
* Performance monitoring and learning.

# The impact of COVID-19

My investigation coincided with an unprecedented event, the emergence of COVID-19 and the resulting nationwide state of emergency. From 26 March to 13 May 2020, New Zealand was at Alert Levels 4 and 3, during which time individuals who were not deemed essential workers were instructed to stay home under a nationwide lockdown (*the 2020 lockdown*).[[3]](#footnote-4)

The 2020 lockdown enacted in response to the COVID-19 pandemic has caused people across New Zealand, including in the public sector, to adapt to working differently – away from their office; remote from colleagues; and accessing work information from their homes.

While information gathering for my investigation commenced before the 2020 lockdown, I had an opportunity and a responsibility to extend my investigation and consider how agencies’ existing official information practices enabled them to adapt to the challenges presented by the 2020 lockdown, and to maintain compliance with official information obligations. By reporting my findings, my intention is to highlight good practices, identify any vulnerabilities and lift overall official information practices across the public sector, including by recommending where agencies ought to improve their current arrangements to enable them to maintain resilience and compliance should a pandemic or natural disaster occur at some point in the future.

A key aspect of my information gathering involved seeking information from the agency via a questionnaire, and seeking information from staff via an online survey before the 2020 lockdown. I extended my investigation to include consideration of agencies’ practices during the 2020 lockdown. After the 2020 lockdown, I asked agencies to complete another questionnaire, and staff to complete another survey. For clarity, I have outlined below how I will refer to these throughout my report:

* A questionnaire sent to agencies in late 2019 seeking information about policies, procedures and practices (I will refer to this throughout my report as ‘my initial questionnaire’).
* A questionnaire sent to agencies in mid-2020 seeking information about policies, procedures and practices *during th2 2020 lockdown* (I will refer to this throughout my report as ‘my post-lockdown questionnaire’).
* A survey of staff in late-2019 seeking their views about culture, policies, practices and procedures (I will refer to this throughout my report as ‘my initial survey’).
* A survey of staff in late-2020 seeking their views about culture, policies, practices and procedures *during the 2020 lockdown* (I will refer to this throughout my report as ‘my post-lockdown survey’).

## My opinion

Through the investigation process, I identified areas of good practice, and areas of vulnerability that I think the Ministry should address. My opinion relates only to the Ministry’s practice during the period in which my investigation took place.[[4]](#footnote-5) I notified the Ministry of my investigation on 22 November 2019 and I formed my final opinion on 30 June 2021.

I have suggested 25 actions that I consider will improve the Ministry’s practices. The Ministry was given the opportunity to comment on my provisional opinion before I formed my final opinion, and I have taken its comments into consideration. The opportunity to review and address my suggested action points was welcomed by the Ministry. During the course of the investigation, the Ministry began making improvements, and I encourage it to continue with the outlined programme of work to improve processes and practice. I refer to the Ministry’s specific responses in the body of the report.

For the reasons set out below and on the information before me, it is my opinion that in relation to the Media team’s practices, the Ministry acted contrary to law by not informing requesters about the right to complain to my Office, as outlined in section 19(b) of the OIA, when a media information request was fully or partially refused.

For the reasons set out below and on the information before me, it is also my opinion that the Ministry’s Media team has acted contrary to law in relation to section 17(1) of the Public Records Act 2005 by failing to create and maintain full and accurate records of substantive correspondence (including telephone conversations, meetings and verbal discussions) with requesters, and any material internal discussions, to ensure there was a record of information scoping, administrative steps, and decision making for media information requests handled by the Media team.

However, I have not made recommendations in these instances as the Ministry advised in its response to my provisional opinion that the Chief Executive directed immediate action be taken to address the Media team’s practices in relation to responses to media information requests and record keeping.

I am pleased that the Ministry has an increasingly open culture, and the OIA webpage advises of the Ministry’s commitment to releasing official information and resources about the work it does. The OIA webpage also includes an array of useful information for requesters. During the 2020 lockdown, the Ministry kept requesters and the public informed about how OIA processes might be affected, which is commendable.

Senior leaders are notified at the outset of OIA requests that involve their divisions. It is excellent that training on both the OIA and information management is provided to all new staff upon induction, and there are OIA ‘champions’ throughout the Ministry. A variety of OIA guidance material is available to assist staff, as well as a *Proactive Release Policy*. Records are kept of OIA decision making, consultation and administrative steps, as per best practice. OIA reporting to senior leaders is robust and quality assurance on OIA requests occurs yearly.

I would like to extend my thanks to the Ministry for the positive and open way it engaged with this investigation, including during the 2020 lockdown period. In particular, my thanks go to those staff who took the time to meet with my investigators to discuss their OIA experience; completed employee surveys; and liaised with my Office throughout the investigation. I also acknowledge members of the public, including journalists and regular requesters, for the views they shared in my public survey.

I look forward to further productive engagement with the Ministry as it works through my suggested action points.



Peter Boshier

Chief Ombudsman

30 June 2021

# Executive summary

This summary draws together the key findings and suggested actions from my investigation.

### Leadership and Culture

The Ministry’s senior leaders value transparency and are driving a more open culture. This is reflected in the Ministry’s external messaging to the public, which includes overarching statements on its commitment to openness and transparency. The Ministry also provided examples of internal messaging to staff about the importance of the OIA in conjunction with these topics.

Although the post-lockdown staff survey results showed an increase in staff who rated the signals sent by the Chief Executive and Deputy Secretaries about the OIA as strongly or moderately pro-disclosure, I encourage the Chief Executive and senior leaders to ensure ongoing internal messaging is provided to staff about the importance of the OIA and openness more generally. This will ensure the spirit of the legislation stays front of mind for staff, and that the percentage of staff who view their senior leaders as strongly or moderately pro-disclosure will continue to grow.

The Ministry has an excellent OIA webpage. Not only is it easy to access and use, but it includes helpful information for requesters. Through the course of this investigation, I identified opportunities for the Ministry to further improve its OIA webpage by including who is eligible to make an OIA request, that OIA responses can be provided in alternate formats, that requesters should be informed if there is an intention to charge, and by adding a link to the *Directory of Official Information*. The Ministry promptly affected these changes after receiving my provisional opinion.

There is still an opportunity for the Ministry to expand on the description of information held (in the *Directory of Official Information* and on the OIA webpage), add links to internal decision making rules (as described in section 22 of the OIA), and publish details of its approach to internal decision making on OIA requests.

| **Action points: Leadership and culture** |
| --- |
| 1. Ensure ongoing messaging from senior leaders to staff about the importance of the OIA, and openness more generally
 |
| 1. Expand on the description of information held by the Ministry in the *Directory of Official Information* and on the OIA webpage
 |
| 1. Provide a link on the OIA webpage to the Ministry’s internal decision making rules (described in section 22 of the OIA)
 |
| 1. Publish details on the OIA webpage of the Ministry’s approach to internal decision making on OIA requests
 |

### Organisation structure, staffing and capability

The Ministry uses a partly centralised OIA model, and OIA requests are handled by the Ministerial Services team with help from subject matter experts. Overall, the Ministry appears to have the staffing capacity and organisational capability to ensure it generally meets its OIA obligations in a timely manner.

It is commendable that OIA training is provided to all staff at induction, and specialised training is available upon request. Although the Ministry provided OIA refresher training in 2016, it would be beneficial to offer refresher training to all staff on a regular basis. There did not appear to be any recent, OIA-specific training on decision making for senior leaders. I encourage the Ministry to provide OIA decision making training regularly because it will assist in the consistent application of OIA provisions across the organisation.

It is also commendable that information management and record keeping training is provided to all staff at induction. I suggest the Ministry ensure refresher training sessions are also available on a regular basis to all staff.

| **Action points: Organisation structure, staffing and capability** |
| --- |
| 1. Ensure the OIA training programme includes regular refresher training for all staff and targeted training for decision makers
 |
| 1. Ensure regular refresher training is provided for information management and record keeping
 |

### Internal policies, procedures and resources

The Ministry’s OIA guidance documents are largely accurate and comprehensive. They are also clearly written and readily accessible to staff. However, I have identified some aspects which could be improved. For example, there is little to no information about who is eligible to make an OIA request; treating clarified requests as having replaced the original request and resetting the maximum statutory timeframe for responding; differentiating between consultation and notification with Ministers’ offices; consulting third parties; conducting the public interest test (and factors to consider before information is withheld); the importance of recording details of decision making; and differentiating between requests made under parts 2, 3 and 4 of the OIA. There is an opportunity for the Ministry to update its OIA guidance documents to include these topics.

Further, the Ministry should ensure both extension provisions are reflected in full, and consider revising OIA guidance to better reflect that decisions on OIA requests should be made ‘as soon as reasonably practicable’. I also encourage the Ministry to add dates to the OIA guidance documents which do not already have them, as this will serve as a reminder that periodic reviews should be undertaken.

I applaud the Ministry for having a sound *Proactive Release Policy*, which covers most of the aspects I consider such a policy should have. I suggest the addition of two minor details to ensure the policy aligns with best practice. One is the frequency and timing of publication, and the other is a commitment to releasing information in accessible and usable formats. The policy should then be published on the Ministry’s website.

Information management and record keeping resources are robust, but should be kept up-to-date through regular reviews. Approximately 60 percent of respondents from the initial staff survey described the information management system as ‘somewhat difficult’ or ‘very difficult’ to search, find and collate information. Staff receive training on conducting searches in the information management system. However, the Ministry may wish to consider providing further training and guidance to assist staff with searches.

There also appeared to be a discrepancy in the number of staff who are aware of the Ministry’s naming standards document, and the use of metadata when entering information into the system. Staff awareness could be raised on both of these topics to ensure there is more consistency in the future.

| **Action points: Internal policies, procedures and resources** |
| --- |
| 1. Review and update OIA guidance material to include information such as:
* who is eligible to make an OIA request;
* treating clarified requests as having replaced the original request and resetting the maximum statutory timeframe for responding;
* differentiating between consultation and notification with Ministers’ offices;
* consulting third parties;
* conducting the public interest test (and factors to consider before information is withheld);
* the importance of recording details of decision making; and
* differentiating between requests made under parts 2, 3 and 4 of the OIA
 |
| 1. Ensure both extension provisions are reflected in full in OIA guidance, and consider revising OIA guidance documents to better reflect that decisions should be made ‘as soon as reasonably practicable’
 |
| 1. Add dates to OIA resources to ensure they are regularly reviewed
 |
| 1. Review and update the *Proactive Release Policy* to include information on the frequency and timing of release, as well as making information accessible
 |
| 1. Publish the *Proactive Release Policy* on the Ministry’s website
 |
| 1. Ensure information management and record keeping resources are regularly reviewed and up-to-date
 |
| 1. Consider providing further guidance and training on conducting searches of the information management system *GDM*
 |
| 1. Consider ways to raise staff awareness of the *GDM Naming Standards* document and metadata
 |

### Current practices

My investigation found that 96.4 percent of OIA requests were processed within the 20 working day maximum statutory timeframe for the period of 1 July 2019 to 30 June 2020. During the 2020 lockdown, while overall OIA practices were maintained, timeliness was impacted due to the redeployment of subject matter experts to the Ministry’s Emergency Coordination Centre. The number of proactively released OIA responses also decreased during this time. However, I note the Ministry did proactively release a substantial amount of information, independent of OIA responses, which is excellent. The Ministry should examine what steps can be taken in the future to maintain proactive release of OIA responses during times of crisis.

Most proactively released OIA responses on the Ministry’s website are PDF documents, but these particular PDF documents are not searchable. In order to support accessibility, the Ministry should ensure the text of all proactively released OIA responses are searchable and not ‘image only’, and all visual elements are tagged with alternative text.

The Ministry has a number of good practices that it utilises when responding to OIA requests, and generally exhibits a high level of overall compliance with the requirements of the OIA. During my investigation, I identified an opportunity for the Ministry to update its OIA request acknowledgement to include the date the request was received, the information requested, and an explanation of timeframes for a decision to be made and communicated. I also identified an opportunity for the Ministry to update the *OIA standard wording* for transfer letters. The Ministry promptly effected these changes after receiving my provisional opinion.

I am pleased the Ministry and Ministers’ offices understand the final decision maker on departmental OIA requests is the Ministry. After receiving my provisional opinion, the Ministry provided me with the finalised copy of its *OIA requests and Ministers* guidance document. This written agreement was developed to clarify when, and in what circumstances, decision makers will consult with Ministers’ offices on departmental OIA requests or notify Ministers’ offices of departmental OIA responses. I am encouraged by the Ministry’s progress, but I note the distinction between the notification of, and consultation with, Ministers’ offices on departmental OIA requests and responses could be clearer.

Requests to the Media team for information which is held by the Ministry are subject to the OIA. The Ministry must ensure that all requests for information are handled in accordance with the OIA. On the occasions the Media team refused requests for information, I was concerned that requesters were not informed about their right to complain to the Ombudsman. In my opinion, I consider this practice to be contrary to section 19(b) of the OIA. However, I have not made a formal recommendation in this instance because the Chief Executive advised me that he had directed immediate action be taken to address the issue. The Ministry advised its Media team will add template wording to ensure requesters are informed about their right to complain to the Ombudsman for all media information responses where information has been fully or partially refused, in accordance with the provisions of the OIA. In response to my provisional opinion, the Ministry also said it has scheduled OIA refresher training for the Media team, and this will be repeated annually. I have included an action point to address this.

Some of the Media team’s records relating to exchanges with requesters (including responses), and internal verbal discussions, also appeared to be missing. In my opinion, I consider this practice to be contrary to section 17(1) of the Public Records Act 2005. However, I do not consider it necessary to make a formal recommendation in this instance, in light of the Ministry’s advice that remedial steps have been taken to address this deficiency. The Ministry advised the Knowledge Information and Analytics (KIA) team is working with the Media team to ensure full and accurate records of substantive correspondence are created and maintained, in accordance with the Public Records Act 2005. This includes the Media team recording all substantive conversations in the Ministry’s information management system in a way that readily identifies the date and requester. These actions will ensure there is a record of information scoping, administrative steps, and decision making for media information requests handled by the Media team. I have included an action point to address this.

Changes in practice should be supported by messaging from senior leaders, reinforcing that requests for information handled by the Media team must adhere to the OIA.

| **Action points: Current practices** |
| --- |
| 1. Consider how to prevent any future decreases in OIA timeliness in times of crisis
 |
| 1. Maintain proactive release practices for OIA responses
 |
| 1. Refine the *OIA requests and Ministers* guidance document to differentiate between notifying Ministers’ offices of departmental OIA responses, and consulting with Ministers’ offices on departmental OIA requests
 |
| 1. Ensure the Media team includes the right to complain to the Ombudsman in all responses when a media information request is fully or partially refused
 |
| 1. Provide targeted OIA training to the Media team on a regular basis, to ensure they understand their obligations under the OIA
 |
| 1. Ensure the Media team create and maintain full and accurate records of substantive correspondence (including telephone conversations, meetings and verbal discussions) with requesters, and any material internal discussions, to ensure there is a record of information scoping, administrative steps, and decision making for media information requests handled by the Media team
 |
| 1. Ensure messaging from senior leaders reinforces that requests for information handled by the Media team must adhere to the OIA
 |
| 1. Ensure the text of all PDF documents released are searchable and not ‘image only’, and all visual elements are tagged with alternative text
 |

### Performance monitoring and learning

I am pleased the Ministry completes a yearly audit of OIA requests (chosen at random) through an external agency. The Ministry also collects and reports on a wide variety of OIA request data, which is laudable. From this data, monthly reports are provided to the Ministry Board. Reports include the monitoring of OIA performance in terms of quantity and efficiency (with comparisons over time), as well as key themes, resourcing, capacity or capability issues, and the outcome of any Ombudsman investigations.

OIA performance could be further improved by storing certain OIA information in a way that would enable easier reporting of the data (by eliminating the need for a manual search). The Ministry also has an opportunity to present to the public a more complete picture of the volume of information requests it handles by including media information requests and research requests in the total count of its OIA timeliness statistics.

Staff involved in the OIA process circulate and learn from Ombudsman opinions and publications. However, I strongly encourage the Ministry to formalise this process through written guidance.

| **Action points: Performance monitoring and learning** |
| --- |
| 1. Consider capturing additional OIA request data in a way that allows for easy retrieval, reporting and analysis
 |
| 1. Include media information requests and research requests in OIA statistical reporting
 |
| 1. Formalise the process for learning from Ombudsman investigations and guidance, and reflect this in OIA policy and procedures
 |

# Leadership and culture

Achieving the purposes of the OIA depends significantly on the culture of the agency and the attitudes and actions of its leaders. Ministers, chief executives and senior managers should take the lead in developing an environment that promotes openness and transparency, champions positive engagement with those who want to know and understand what work they are doing, and enables compliance with the principles, purposes and provisions of the OIA.

When it is clear to staff that their leaders respond to requests for official information positively and view it as an opportunity to operate in a more transparent, engaging and accountable manner, they will follow.

To assess the Ministry’s leadership and culture, I considered whether:

* chief executives, senior leaders and managers demonstrated a commitment to the Ministry meeting its obligations under the OIA and actively fostered a culture of openness;
* senior leadership had established an effective official information strategic framework which promoted an official information culture open to the release of information; and
* senior leadership demonstrated a commitment to proactive disclosure and public participation, with clear links to the Ministry’s strategic plans, creating a public perception of openness.

### Messaging to the public

It is important for agencies to publicly express a commitment to openness and transparency as it enables the public to have trust and confidence in how requests for information held will be treated. External corporate documents which were available at the time of my investigation, such as the Ministry’s most recent Annual Reports and Strategic Intentions,[[5]](#footnote-6) include numerous messages that align with the purposes, principle and provisions of the OIA, as well as openness and transparency more generally. For example, the *Strategic Intentions 2020-2024* states:

We want to be seen as an effective communicator in releasing and disseminating our information proactively and publicly, where possible. We will seek to achieve this by releasing high-value public data for reuse, and making other information as publicly available as possible, in accordance with the Official Information Act 1982 and the Declaration on Open and Transparent Government.

The information published on an agency’s website is also a strong indicator of senior leaders’ approach to openness. The Ministry’s OIA webpage[[6]](#footnote-7) contains the following statement:

The Ministry of Foreign Affairs and Trade is committed to proactively releasing a range of official information and resources about our work.

The Ministry reinforces this statement with action, by proactively releasing select OIA responses.[[7]](#footnote-8)

During the 2020 lockdown, the Ministry provided information about how OIA processes might be affected. This included updating its website, an auto-reply email for the Enquiries mailbox, an OIA request acknowledgement email template and an OIA extension letter template. If any OIA requests were in progress, then delayed due to the COVID-19 response, requesters were kept informed. This is consistent with the guidance issued by my Office, [[8]](#footnote-9) which included information on the extension provisions.[[9]](#footnote-10)

I applaud the Ministry for providing clear external messaging through multiple channels about its support of the OIA, openness and transparency.

### Messaging to staff

Fostering a culture that promotes good official information practices is the responsibility of senior leaders. One indicator of an agency’s internal culture of openness and transparency is whether there are regular, clear statements to staff reflecting a commitment to the purposes and principle of the OIA.

My initial questionnaire requested examples of recent, relevant messaging to staff from senior leaders about the importance of complying with the purposes, principle and provisions of the OIA. The Ministry replied:

…the Divisional Manager of ESD [Executive Services Division] regularly raises points, reminders, performance updates at the weekly Ministry Issues Meeting (MIM) with Tier 1-3 managers (the record of which is shared widely with staff in New Zealand and offshore), reinforced by Te Aka intranet posts and emails as required.

ESD has also, from time to time, used the Formal Messaging vehicle to reinforce important points, for example to correct the previously common practice of withholding staff names based on seniority…rather than based on likely harm.

In response to the initial questionnaire, the Ministry provided copies of the MIM, as well as a separate appendix document (which included examples from both on and off shore). Examples from the appendix included:

* official information being mentioned, in relation to information management, in June 2019 ‘as part of HOM [Head of Mission]’s annual briefing to all staff in conjunction with the Ministry’s Control Self-Assessment’;
* discussions at divisional meetings to ensure if an OIA request is made, the information is ‘OIA-ready’; and
* senior leaders at some international posts refreshing their staff about the OIA when a request is received.

In relation to the COVID-19 2020 lockdown, a post on Te Aka (the Ministry’s intranet) written by a senior leader promoted the proactive release of information. I also note that the Ministry has a *Proactive Release Policy* which states, ‘The proactive release of information promotes good government, openness and transparency and fosters public trust and confidence in agencies.’ This is excellent, and is exactly the type of language I would expect a proactive release policy to include.

I conducted an initial staff survey and a post-lockdown staff survey. In both, I asked staff questions relating to their perceptions of leaders’ approach to openness. While there were significantly fewer respondents to the post-lockdown staff survey,[[10]](#footnote-11) the results in the tables below are still worth noting:[[11]](#footnote-12)

How would you rate the signals sent by the following people about the OIA, as it relates to your agency?

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Leadership level | Initial staff survey:Strongly or moderately pro-disclosure | Post-lockdown staff survey:Strongly or moderately pro-disclosure | Initial staff survey: ‘They are silent on the issue’ or ‘I don’t know’ | Post-lockdown staff survey: ‘They are silent on the issue’ or ‘I don’t know’ | Initial staff survey:Strongly or moderately anti-disclosure | Post-lockdown staff survey:Strongly or moderately anti-disclosure |
| Chief Executive | 44% | 54% | 54% | 46% | 2% | 0% |
| Deputy Secretary | 57% | 59% | 36% | 39% | 7% | 2% |
| Immediate Manager | 71% | 66% | 24% | 29% | 5% | 5% |

How would you rate the signals sent by the following people about openness and public engagement more broadly, as it relates to your agency?

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Leadership level | Initial staff survey:Strongly or moderately pro-openness | Post-lockdown staff survey:Strongly or moderately pro-openness | Initial staff survey: ‘They are silent on the issue’ or ‘I don’t know’ | Post-lockdown staff survey: ‘They are silent on the issue’ or ‘I don’t know’ | Initial staff survey:Strongly or moderately anti-openness | Post-lockdown staff survey:Strongly or moderately anti-openness |
| Chief Executive | 68% | 76% | 31% | 24% | 1% | 0% |
| Deputy Secretary | 76% | 73% | 19% | 27% | 5% | 0% |
| Immediate Manager | 77% | 71% | 18% | 22% | 5% | 7% |

What is your impression of your agency's overall commitment to a culture of openness and public participation?

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Initial staff survey:Strongly or moderately pro-openness | Post-lockdown staff survey:Strongly or moderately pro-openness | Initial staff survey: ‘They are silent on the issue’ or ‘I don’t know’ | Post-lockdown staff survey: ‘They are silent on the issue’ or ‘I don’t know’ | Initial staff survey:Strongly or moderately anti-openness | Post-lockdown staff survey:Strongly or moderately anti-openness |
| 78% | 83% | 9% | 15% | 13% | 2% |

In the post-lockdown survey, there was a 10 percent increase in staff who rated the signals sent by the Chief Executive about the OIA as strongly or moderately pro-disclosure. There was an eight percent increase in staff who rated the signals sent by the Chief Executive about openness more broadly as strongly or moderately pro-openness. This is commendable, and highlights the benefits of clear communication between the Chief Executive and staff.

The average ratings from across all 12 agencies in the post-lockdown staff survey were as follows: [[12]](#footnote-13)

* 49 percent of staff said the signals sent by their Chief Executive are strongly or moderately pro-disclosure under the OIA.
* 71 percent said the signals sent by their Chief Executive are strongly or moderately pro-openness.
* 50 percent said the signals sent by Deputy Secretaries are strongly or moderately pro-disclosure under the OIA.
* 66 percent said the signals sent by Deputy Secretaries are strongly or moderately pro-openness.

Ministry staff rated the signals sent by the Chief Executive and Deputy Secretaries post-lockdown above the average of the 12 agencies under investigation.

Furthermore, a number of comments from the initial staff survey suggest there has been a culture change at the Ministry in recent years:

I have noticed more messaging from senior leaders on the need to improve the way we communicate to the public and share information more generally and then specifically under the OIA

The Ministry is making a conscious effort to increase openness and public participation.

It has been changing over the last few years towards being more open.

I encourage the Chief Executive and senior leaders to continue providing internal messaging to staff about the importance of the OIA, as well as openness and transparency more generally, as staff are noticing the progress. This messaging should not be a one-off exercise, but should represent an ongoing practice that evidences a permanent culture shift championed by the Ministry.

|  |
| --- |
| Action point |
| Ensure ongoing messaging from senior leaders to staff about the importance of the OIA, and openness more generally |

|  |
| --- |
| **The Ministry’s response**The Ministry stated: *Senior leadership messaging occurs from time to time, but could be more formalised. We will develop a communications plan, identifying opportunities for senior leaders to message on the importance of the OIA, and of openness more generally.***My comment**The Ministry’s commitment to promoting the OIA and transparency as part of its communications plan is encouraging and I look forward to being kept updated on how the Ministry’s communication plan develops.  |

### OIA webpage

Information on agencies’ websites is a signal to the public about leaders’ commitment to the purposes and principle of the OIA and openness more generally. When *Not a game of Hide and Seek* was published, the Ministry did not have an OIA webpage. However, I am pleased it does now, and that the information on the OIA webpage[[13]](#footnote-14) is relatively easy to access and use. For example, the OIA webpage is located one click away from the homepage under the heading ‘About us’.

In order to assist its requesters, the Ministry has included the following information on the OIA webpage:

* an explanation of the principle of availability;
* a list of ways an OIA request can be submitted;[[14]](#footnote-15)
* an explanation of timeframes, including that the OIA requires a decision on a request to be made ‘as soon as possible, and no later than 20 working days’ (barring an extension);
* a link to the charging guidelines on the Ministry of Justice website;
* a link to the OIA statistics on the Public Service Commission website;
* links to Ombudsman’s website (one to the *Making official information requests* guide and one to the homepage for those making complaints); and
* a link to the ‘Media & resources’ section of the Ministry’s website where proactively released OIA responses are available.[[15]](#footnote-16)

I am impressed by the comprehensiveness of the OIA webpage, and I only had a few minor suggestions to elevate it closer to best practice. One suggestion was the addition of information on who is eligible to make an OIA request.[[16]](#footnote-17) However, I would note that even if a requester is ineligible, agencies should still endeavour to provide a reasonable response.[[17]](#footnote-18) I also suggested the Ministry add that requesters can ask for OIA responses to be provided in alternate formats, which is discussed further under [*Current practices*](#_Accessibility_and_usability_1).

Another suggestion was in relation to the ‘What does it cost?’ section. I noted this section could be further clarified to state that in the event a charge is applied, the Ministry will inform the requester of the intention to charge, and provide the requester with the opportunity to refine their request (which may remove a charge).

After receiving my provisional opinion, the Ministry promptly added information on OIA requester eligibility to the OIA webpage, as well as stating that OIA responses can be provided in alternate formats, and that requesters will be contacted if there is an intention to charge.

The Ministry stated that a description of the information it holds is found in the *Directory of Official Information* on the Ministry of Justice website, and after receiving my provisional opinion, the Ministry added a link to the *Directory of Official Information* from the OIA webpage.[[18]](#footnote-19) The OIA webpage also includes links to the resources section of the Ministry’s website, as well as links to the Ministry’s strategic direction and its work on ‘trade, aid and development, the environment and peace, rights and security’. Within the *Directory of Official Information*, the description of the information the Ministry holds should be expanded to include the definition of information ‘held’ and the types of information that can be requested.[[19]](#footnote-20) Furthermore, there is value in adding the definition and types of information directly to the Ministry’s OIA webpage.

In the initial questionnaire, the Ministry provided links to some of its internal decision making rules (such as export controls) but these are not linked to the OIA webpage.[[20]](#footnote-21) I suggest the Ministry include links on the OIA webpage to these rules, as well as any other internal ‘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.’[[21]](#footnote-22)

Furthermore, the Ministry’s internal OIA guidance (such as the *Official Information Act (OIA) requests* guidance document and *Managing the impact of regular, very broad and/or complex requests – overview reference document*), which details internal decision making on OIA requests, are not published on the OIA webpage. When asked if these internal guidance documents would be made publicly available, the Ministry stated it does not intend to publish them because:

They are written with a different purpose in mind, and we do not think they would add meaningfully to the user (requester) experience.

I understand the Ministry’s reasoning for not proactively publishing its internal OIA guidance in full. However, specific information from this guidance, such as the Ministry’s approach to internal decision making on OIA requests, would be a useful addition to the OIA webpage. Not only would this information allow the Ministry to explain its internal functions and operations when responding to OIA requests, but it would provide requesters with a better understanding of the Ministry’s processes when an OIA request is received. It would also help manage journalist expectations about why the information they request cannot always be made available within a 24 hour news cycle deadline. This rationale is equally applicable to other requesters who may ask for their request to be treated as urgent. Perhaps most importantly, key OIA guidance used by the Ministry to make itself open and accountable to the public should be made available to the public.[[22]](#footnote-23)

Therefore, I encourage the Ministry to reconsider its position on this matter. Where agencies have clear and reasonable OIA policies articulating their approach to considering urgent requests, charging for the supply of information, checking the eligibility of requesters, and dealing with vexatious requests, they will be less vulnerable to criticism when they apply these policies.

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| Action points |
| Expand on the description of information held by the Ministry in the *Directory of Official Information* and on the OIA webpage  |
| Provide a link on the OIA webpage to the Ministry’s internal decision making rules (described in section 22 of the OIA) |
| Publish details on the OIA webpage of the Ministry’s approach to internal decision making on OIA requests  |

# Organisation structure, staffing, and capability

Responding to official information requests is not only a legal requirement but a core function of the public sector. Therefore, it is expected agencies will organise their structure and resources to ensure they are able to meet their legal obligations under the OIA, in a way that is relevant to their particular size, responsibilities and the amount of interest in the information they hold.

To assess the Ministry’s organisational structure, staffing and capability, I considered whether:

* the Ministry had the capacity to discharge its official information obligations, with clear and fully functioning roles, accountabilities, reporting lines, delegations and resilience arrangements; and
* the Ministry had the capability to discharge its official information obligations.

### Model for handling OIA requests

The Ministry is divided into eight groups, each with its own Deputy Chief Executive or Deputy Secretary. Along with the Chief Executive, these roles comprise the senior leadership team. Within each group are divisions, and within divisions are units or teams.

The Ministry has a partly centralised OIA model, and OIA requests are handled by the Ministerial Services team[[23]](#footnote-24) in the Executive Services Division (ESD). As of January 2021, the team comprised a tier four Unit Manager, three Senior Advisors, one Advisor and a Senior Advisor of Projects. Two Ministerial Coordinators work across the ESD, one of which works closely with the Ministerial Services team. The Unit Manager is overseen by the ESD Divisional Manager (tier three), who signs out OIA responses once the content has been approved by the corresponding Deputy Chief Executive or Deputy Secretary (tier two).

Divisional leaders are involved with OIA requests from the start. A staff member from the Ministerial Services team coordinates the response with the ‘lead’ division, though often more than one division is involved. Tier two and three managers from the ‘lead’ division are included in the allocation email, so they are aware of the request that will eventually come to them for approval.

As I discuss further under [*Current practices*](#_Reported_OIA_timeliness), subject matter experts from divisions were redeployed to assist with the Ministry’s COVID-19 response. The redeployment of these subject matter experts had an effect on OIA timeliness, so this aspect of the partly centralised OIA model may be a challenge for the Ministry in times of crisis.

A Microsoft Excel *OIA Tracker* spreadsheet is used to track OIA requests, and final OIA responses are saved in the Ministry’s information management system, Global Document Management (GDM). Staff from the Ministerial Services team keep a GDM file note of each OIA request which captures the history of the request, including a record of the decision making and any consultations. Although a record of the decision is kept, there are no written policies or procedures explaining why decision making should be recorded. The Ministry’s good practice in this area should be supported by guidance to ensure continuity and consistency. This is discussed further below under [*Internal policies, procedures and resources*](#_OIA_guidance_material).

I commend the Ministry for having specific lines of accountability for OIA decision making. The Ministry has informed me that it is currently reviewing OIA processes to ensure they are effective and documented correctly.

### OIA training

The *Not a Game of Hide and Seek* investigation outlined that an effective training framework should encompass:[[24]](#footnote-25)

* training at induction;
* introductory basic awareness of key official information principles;
* advanced courses for specialists covering, for example:
	+ proper application of the public interest and harm tests;
	+ dealing with broad, complex requests covering a large volume of information; and
* refresher courses.

The initial staff survey asked when staff last received training on responding to OIA requests. The results are below.[[25]](#footnote-26)

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| --- | --- |
| Answer Choices | Responses |
| Within the last year | 32% |
| Between 1-2 years ago | 9% |
| Between 3-4 years ago | 10% |
| More than 4 years ago | 20% |
| I have never received any training on the OIA | 30% |

In the initial questionnaire, the Ministry stated that all new staff receive OIA training at induction, which is held fortnightly. A general overview is provided on the first day, and ‘a longer session as part of the Foundations Programme, which is training for all foreign policy and development staff.’ I received a copy of the PowerPoint presentation for the Foundations Programme which was thorough and included an explanation of the principle of availability.

The ESD Unit Manager holds ‘tailored, on demand’ training sessions with divisions and groups. Sometimes the divisions approach ESD for training, and sometimes ESD approaches the divisions. An external provider has also delivered OIA training, and is developing an e-learning module which the Ministry intends to use.

There are approximately 17 OIA ‘champions’ from across the Ministry who received training from the external provider. This training specifically included information on how to apply the OIA withholding and refusal grounds. The OIA ‘champions’ were selected by their divisions and shared what they learned among other staff in the division.

OIA refresher training was provided to Ministry teams in 2016 through an OIA roadshow PowerPoint presentation. This presentation and an *OIA process diagram* were made available to staff on Te Aka. I received copies of both documents, which were suitable for their purposes.

OIA training appears to be an area of strength for the Ministry. However, even though the training delivered by the ESD Unit Manager provides an OIA refresher and can be catered to the individual needs of divisions and groups, the Ministry should consider offering OIA refresher training to all staff on a regular basis. Refresher training is especially valuable for an agency like the Ministry where staff frequently rotate between positions. The Media team would also benefit from targeted OIA refresher training, which I discuss further below under [*Current practices*](#_Media_requests).

The ESD Divisional Manager used to meet with OIA decision makers to discuss OIA examples and withholding grounds. However, it does not appear the Ministry has provided senior leaders with any recent, OIA-specific training on decision making. I encourage the Ministry to develop formalised OIA training for the senior leadership team to be delivered on a regular basis. This not only sends a clear message that senior leaders are committed to the purposes and principle of the OIA and of openness and transparency more generally, but will help to ensure OIA provisions are applied consistently across all divisions (including the public interest test).

While I appreciate many senior leaders may have experience and good support mechanisms in place, relying on an individual’s knowledge and past experience to make the appropriate decision underestimates the benefits of ongoing training and regular refreshers, including keeping up to date with any changes in law or new opinions I issue. The benefits of providing regular training for senior leaders involved in decision making include that it:

* demonstrates leadership from the top, that responding to OIA requests is core business and should be prioritised;
* ensures officials’ understanding and knowledge;
* promotes efficiencies and consistencies in decision making; and
* demonstrates commitment to support and grow the professional development of staff.

The Ministry may wish to be aware that my staff are available to assist with developing and/or delivering training, on request.

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| Action point |
| Ensure the OIA training programme includes regular refresher training for all staff and targeted training for decision makers |

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| **The Ministry’s response**The Ministry advised: *Additional resources in the OIA [Ministerial Services] team commencing in July 2021 will allow senior team members to establish a schedule of refresher training that can be made available to all staff. Targeted training, e.g. in the application to section 6 and for decision makers, will also be developed and tailored to the Ministry’s circumstances.*In addition, the Ministry is considering purchasing an online OIA training course which would be available to all staff. **My comment**I applaud the Ministry for providing further resources to the Ministerial Services team to support targeted and refresher training for staff. I look forward to seeing the Ministry’s progress in the development of its training programme. |

### Information management and record keeping training

It is important that an agency has the capability to discharge its official information obligations. Training on the Ministry’s information management and record keeping practices is essential in order to facilitate the retrieval of information in response to an OIA request.

Record keeping relates to controlling and managing records from creation, capture, maintenance and use, through to eventual disposal. Information management is a broader concept, relating to the creation of information, which is sometimes a record.

As stated above in [*Model for handling OIA requests*](#_Model_for_handling), the Ministry uses GDM for information management. The KIA team provide GDM induction training to all new staff. GDM training includes a short presentation that covers how to handle the Ministry’s information, followed by time for staff to begin completing the GDM e-Learning modules. Two weeks later, a one-on-one training session on GDM is provided at the desk of the new staff member.

I am pleased the Ministry introduced information management e-Learning modules (which cover record keeping) in October 2018 as part of induction training. Although the Ministry had planned for all staff employed before October 2018 to also complete the modules, this was delayed due to COVID-19. The KIA team are currently assessing how many staff have completed the modules and what can be done to increase that number.

The GDM and information management training modules are updated ‘when there are changes to the systems that affect the way information is managed.’ I have viewed the modules and am pleased the information management ‘Your responsibilities’ module states, ‘Records we create can be requested by the public under the Official Information Act’ and reminds staff to ‘Always be professional.’ Furthermore, the ‘What is information and records management’ module states, ‘It’s really important that we manage our records and information well so that our information is open, accessible, and of good quality.’

The initial staff survey asked when staff last received training on information management and record keeping. The results are below.[[26]](#footnote-27)

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| Answer Choices | Within the last year  | Between 1 - 2 years ago | Between 3 - 4 years ago | More than 4 years ago | I haven't received any training since working at this agency |
| Last received training on information management (such as how to use the information management systems to store/search for information) | 36% | 27% | 16% | 20% | 2% |
| Last received training on record keeping (such as what a record is, how/where/for how long records should be kept) | 26% | 26% | 12% | 19% | 16% |

It is encouraging to see that nearly all staff have received information management training, and soon more staff will have received record keeping training (from the information management e-Learning modules).

There does not appear to be any refresher training on information management and record keeping. I would encourage the Ministry to provide refresher training on a regular basis to all staff on these topics. Furthermore, aside from a mention in the information management e-Learning modules, there does not appear to be any specific training offered on the Public Records Act 2005.[[27]](#footnote-28) It is important for the Public Records Act to remain front of mind for the Ministry, as staff handle records on a daily basis.

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| Action point |
| Ensure regular refresher training is provided for information management and record keeping |

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| **The Ministry’s response**The Ministry stated: *A campaign to ensure all staff, on and offshore, complete mandatory online records management training will be delivered in 2022.**In parallel, training completion KPIs and associated monitoring processes will be agreed with the Ministry’s Data and Information Governance Group.* |

# Internal policies, procedures and resources

I expect as a matter of good practice that the Ministry develops or adopts policies and procedures that will assist staff to apply the requirements of the OIA consistently. In addition, staff should be supported by good systems, tools and resources that will enable them to effectively process requests and make good decisions consistent with the provisions in the Act.

To assess the Ministry’s internal policies, procedures and resources, I considered whether it had accurate, comprehensive, user-friendly and accessible policies, procedures and resources that enable staff to give effect to the OIA’s principle, purposes and statutory requirements. This includes policies, procedures and resources in relation to:

* dealing with official information;
* records and information management; and
* proactive release of information.

### OIA guidance material

Of the respondents who answered questions in my initial staff survey about the Ministry’s OIA guidance, 81 percent said it was ‘*somewhat or very easy to find/access policy and guidance materials*’ and 79 percent said it was ‘*somewhat or very easy to understand/use policy and guidance materials*’.[[28]](#footnote-29) This is a good result that indicates staff generally consider OIA resources are accessible and user-friendly.

In addition to the OIA training information referenced above in [*Organisation structure, staffing and capability*](#_OIA_training), there are several other resources available to staff that provide an overview of the Ministry’s OIA process and of the legislation:

* *Official Information Act requests* Te Aka page
* *OIA requests* guidance document (updated in March 2019)
* *Checklist* - *Responding to an Official Information Act (OIA) request* (updated in November 2019)
* *OIA process summary overview*
* *OIA scoping worksheet*
* *OIA quick guide*
* *Style Guide Official Information Act requests – roles and responsibilities*
* *Official Information Act 1982 (OIA) request Sign-off Sheet; Risk and Quality Assurance Sheet;* and *To be completed by Minister’s Office* sheet (updated in November 2020)
* *Managing the impact of regular, very broad and/or complex requests – overview reference document*
* *OIA response* template and *OIA standard wording* document

I applaud the Ministry for having a wide variety of OIA resources to assist staff, and for the many positive aspects within these resources. I am pleased that both the *Official Information Act requests* Te Aka page and the *OIA requests* guidance document ‘Principles’ section state:

All requests for official information must be treated as requests for information under the OIA.

The information on the *Official Information Act requests* Te Aka page is clear, and links are provided to both internal OIA guidance and external website resources (such as the OIA legislation, the Ombudsman and the Public Service Commission).

The *OIA requests* guidance document includes sections on ‘Urgent requests’, ‘Charging for Official Information Act responses’, ‘Draft documents’ and ‘Cabinet papers for release’. I was especially impressed with the ‘Due particularity’ and ‘Vague or unspecific requests’ sections for their great descriptions of due particularity and reasonable assistance. Another section worth noting is ‘Substantial work involved’, which states:

…departments have a statutory responsibility to meet the requirements of the Official Information Act, and are expected to treat Official Information Act requests as “core business” and to have “reasonable staff resources” to action them.

This section also advises that before refusing an OIA request due to substantial collation and research,[[29]](#footnote-30) staff must consider:

* fixing a charge, or
* extending the timeframe, or
* contacting the applicant to suggest they reduce the scope of the request.

Furthermore, the *OIA requests* guidance document has a specific section on ‘Release of staff names’ which states:

The ministry takes a ‘case by case’ approach to the withholding of staff names in documents that are to be released to a requestor under the Official Information Act.

The *Checklist - Responding to an OIA request* includes the importance of scoping accurately and early in the process. It also highlights the principle of availability and has prompts to identify opportunities for proactive release of information.

I am pleased the Ministry offers an *OIA quick guide*, which is useful for staff with limited time. Even more notable, both the *OIA quick guide* and *OIA scoping worksheet* include a reference to searching text messages, WhatsApp and staff recollection. The *OIA quick guide* also states:

Requests do not need to be made in any particular format, so things such as T [Twitter] and F [Facebook] messages count as OIA requests

The *Sign-off Sheet* prompts the consideration of whether the OIA response should be proactively released, and asks whether ‘all sources of information (incl. electronic messages)’ have been considered.

The *Risk and Quality Assurance Sheet* asks staff to note whether there are any reputational risks in releasing the information. The Ministry should be cautious with this wording as reputational risk is not a reason to withhold information.[[30]](#footnote-31)

The *Managing the impact of regular, very broad and/or complex requests – overview reference document* highlights that the first step the Ministry should take when a ‘very broad and/or complex’ OIA request is received is to consult the requester. This document also highlights that a requester should be contacted if their OIA request might be refused on the basis that it is ‘frivolous or vexatious or that the information requested is trivial.’[[31]](#footnote-32) Furthermore, it says that refusing an OIA request due to substantial collation or research is a ‘last resort’.

As stated above, the existing guidance for staff on processing OIA requests has many good features. However, it could be further improved. For example, in the *OIA requests* guidance document, there is little or no information about:

* who is eligible to make an OIA request;[[32]](#footnote-33)
* the discretion to treat a clarified request as having replaced the original request and, in certain circumstances, to reset the maximum statutory timeframe for responding to the clarified request;[[33]](#footnote-34)
* differentiating between consultation and notification with Ministers’ offices (discussed further under [*Current practices*](#_Ministerial_interactions_on));
* consulting third parties;
* conducting the public interest test (I suggest this section be revisited in line with my public interest guide);[[34]](#footnote-35)
* the importance of recording details of decision making; and
* requests for internal decision making rules (section 22 of the OIA), statements of reasons (section 23 of the OIA), and personal information by bodies corporate (sections 24 – 27 of the OIA).

I note several OIA guidance documents mention extensions. The Ministry should be mindful of the two extension provisions, and reflect both of those provisions in full within its OIA guidance.[[35]](#footnote-36) I also note several OIA guidance documents mention day 20 in reference to the 20 working day statutory timeframe to make and communicate a decision on an OIA request (in lieu of an extension). The Ministry must be cognisant that while the 20 working day statutory timeframe is the maximum deadline for a decision to be made on an OIA request, the OIA stipulates that decisions should be made ‘as soon as reasonably practicable’.[[36]](#footnote-37) The Ministry should consider revising the relevant OIA guidance documents to better reflect this legislative requirement.

The *OIA requests* guidance document includes a ‘Withholding information’ section that lists the withholding grounds, but does not provide much detail on what factors should be considered before information is withheld. This section should be further expanded, and could include Ombudsman precedents as examples,[[37]](#footnote-38) which might be particularly useful for commonly requested information (such as staff names and contact details).

In its response to my initial questionnaire, the Ministry advised me that:

OIA policies and procedures are reviewed and updated regularly, drawing on processes and guidance from the centre, and as our practices evolve, to ensure they remain fit for purpose.

There is an opportunity for the Ministry to update its OIA resources as part of this review process. In addition, I suggest adding dates to all OIA resources that do not already have them, so it is evident when periodic reviews and updates should be completed. My Office is also available to review OIA resources.

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| Action points |
| Review and update OIA guidance material to include information such as:* who is eligible to make an OIA request;
* treating clarified requests as having replaced the original request and resetting the maximum statutory timeframe for responding;
* differentiating between consultation and notification with Ministers’ offices;
* consulting third parties;
* conducting the public interest test (and factors to consider before information is withheld);
* the importance of recording details of decision making; and
* differentiating between requests made under parts 2, 3 and 4 of the OIA
 |
| Ensure both extension provisions are reflected in full in OIA guidance, and consider revising OIA guidance documents to better reflect that decisions should be made ‘as soon as reasonably practicable’ |
| Add dates to OIA resources to ensure they are regularly reviewed |

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| **The Ministry’s response**The Ministry advised: *OIA guidance is currently being updated to ensure inclusion of this information. This should be complete by end of 2021.**Policy guidance has been completed that addresses the differentiation between consultation and notification with Minister’s offices.*The Ministry is also establishing a work programme that will allow for regular review of OIA guidance. **My comment**I commend the Ministry on its progress in this area and will seek an update on the changes made to the OIA guidance. |

### Proactive release of information policy

In its response to my initial questionnaire, the Ministry advised me that:

An Official Information and Proactive Release Policy document has been considered, approved and published on the Ministry’s intranet along the lines of that used by DPMC [Department of the Prime Minister and Cabinet].

The Ministry promoted the creation of a proactive release policy on Te Aka in 2017:

Having the trust and confidence of New Zealanders is critical to how our whole systems works. Being open and transparent with New Zealanders, and responsive when they ask us for information, is an important part of earning and maintaining that trust.

The documents leading to the creation of this policy, such as the *Meeting paper* for the Coordination and Performance Committee, acknowledged the benefits of proactively releasing information, while also identifying that tracking OIA requests can inform decisions about what information to proactively release.

A copy of the *Proactive Release Policy* was provided, and covers most of the aspects I consider such a policy should have.[[38]](#footnote-39) This includes a high-level statement committing to proactively releasing official information, the type of information that will be released, and the process of preparing information for proactive release. However, I note the policy does not include:

* the frequency and timing of publication; and
* a commitment to releasing information in accessible and usable formats.

I suggest including these minor additions to align with best practice. The *Proactive Release Policy* could then be published on the Ministry’s website.

The Ministry also advised:

Selected OIA responses are published regularly, and consideration has been built into our QA/Coversheet sign-out processes for every request, to raise awareness of this intention. It is now noted in almost all response letters that the response (with personal details removed) may be published.

We anticipate releasing a higher volume of OIA responses this coming year as capacity allows.

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| Action points |
| Review and update the *Proactive Release Policy* to include information on the frequency and timing of release, as well as making information accessible |
| Publish the *Proactive Release Policy* on the Ministry’s website |

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| **The Ministry’s response**The Ministry stated: *As well as including information on frequency and timing of release, we will look to broaden the current [Proactive Release] policy from a focus on OIA and Cabinet releases to include the Ministry’s programme of declassified file and open data releases.*Once the current policy has been reviewed, the Ministry plans to publish it on the website. **My comment**I acknowledge the Ministry for the initiative it has undertaken in this area and will seek an update on the changes made to the *Proactive Release Policy*. I look forward to the policy being published on the Ministry’s website.  |

### Information management and record keeping policy and guidance material

The Ministry has comprehensive guidance on information management and record keeping, such as a *GDM Training User Guide*, a *Top 10 for GDM* quick reference guide, *Where to save Post documents in GDM* and a *GDM* *resources* tab on Te Aka(which includes links to ‘Frequently asked questions’ and ‘Hints and tips’). There is a GDM Blog, and GDM contacts who can provide assistance. When GDM was upgraded in July 2020, the Ministry updated the *GDM resources* Te Aka page to include an overview of the changes. The updated GDM e-Learning modules were made available on the page as well.

I applaud the Ministry’s proactive approach to guidance for staff on the GDM upgrade. Consistent with this approach, it may also be timely for the Ministry to review and update all information management and record keeping policies and guidance to ensure they are still fit for purpose. For instance, the Ministry has a *Records Management Policy* (last updated 23 June 2015 but scheduled to be replaced with a *Data and Information Policy* in 2021), *Security Classification definitions and examples* (last updated June 2016), *Document and information handling* standard (last updated September 2017) and *Information Principles.* Regularly reviewing policies and guidance is essential to maintaining the usefulness of these documents and to ensuring good information handling practices within agencies. The Ministry should also ensure its guidance documents reflect newer platforms, like Zoom, as decisions made on these platforms should be recorded.[[39]](#footnote-40)

Other information management and record keeping guidance documents provided by the Ministry include *Declassification and release of historical information standard*, a presentation on *Using topics in GDM*, a *Text messages are records too!* Te Aka page (last updated 21 September 2015), a *Paper Records* Te Aka page (last updated 10 July 2019), a draft *Digitisation Standard* and a *GDM Guide - What is a Record?* one page document, which are all great guidance material for staff. In the initial questionnaire, the Ministry advised its *Retention and Disposal Schedule* has been approved by Archives New Zealand. I also applaud the Ministry for providing specific instructions to staff in the Emergency Coordination Centre to ensure emails or documents created as part of the COVID-19 response were captured in the GDM system.

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| Action point  |
| Ensure information management and record keeping resources are regularly reviewed and up-to-date |

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| **The Ministry’s response**The Ministry advised: *The need to review and continuously improve information management record keeping resources is evaluated each year, as part of the Ministry’s business planning process.* |

### Information management system

Although the Ministry has good guidance on using GDM, 59 percent[[40]](#footnote-41) of staff survey respondents (from the initial survey) still described the system as ‘somewhat difficult’ or ‘very difficult’ to use to search for and find information, and 61 percent[[41]](#footnote-42) described the system as ‘somewhat difficult’ or ‘very difficult’ to use to collate information.

One respondent to the initial staff survey said the GDM layout is based on a previous organisational structure at the Ministry, and two respondents to the initial staff survey said the Ministry had shifted from using paper files to using an electronic system that is structured differently than the way the paper files were. Another difficulty with the search function is that it returns too wide of a result.

The challenges of searching, finding and collating information have reportedly caused some staff to avoid using GDM. Instead, staff might save information on their local drives. One staff survey respondent (from the initial survey) said:

The search facility is known to be highly ineffective. We assume that things, once filed, are likely to be lost so people save things on their personal areas. This is fine until people rotate into new roles.

Although one of the GDM e-Learning modules provides guidance on conducting three types of searches within GDM, it might prove valuable to expand upon that guidance to address some of the concerns raised in the initial staff survey.

There were also several comments from the initial staff survey about a lack of naming conventions and metadata tags, which make searching difficult. Although there is a *GDM Naming Standards* document, it appears some staff are unaware of its existence. One staff survey respondent stated, ‘The use of … document naming policies varies from team to team despite there being an agency wide policy/guidance.’ One of the GDM e-Learning modules simply states, ‘Ensure you name your documents clearly, to help you and others find them easily’ but provides no further information. The Ministry should consider how to educate more staff on the existence of the *GDM Naming Standards* document and metadata.

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| Action points |
| Consider providing further guidance and training on conducting searches of the information management system *GDM* |
| Consider ways to raise staff awareness of the *GDM Naming Standards* document and metadata |

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| **The Ministry’s response**The Ministry stated it has ‘approved a business case to implement an enterprise search engine…by April 2022’. The search engine ‘will be programmed with Ministry language and vernacular, removing the need for specialist search training or precise naming of information stored in GDM’. **My comment**It is positive the Ministry is actively seeking to improve how staff search, find and collate information. This will assist staff in retrieving information for business purposes and responding to OIA requests.  |

# Current practices

The effectiveness of the OIA is largely dependent on those who implement it on a day-to-day basis and how they apply the resources available to them to manage the realities of giving effect to the Act.

To assess the current practices of the Ministry, I considered whether:

* the Ministry’s official information practices demonstrate understanding and commitment to the principles and requirements of the OIA;
* the Ministry’s staff have a good technical knowledge of the OIA; and
* the Ministry is coping with the volume and complexity of requests, and decisions are compliant.

### Reported OIA timeliness

For the six month period of 1 July 2019 to 31 December 2019, the Ministry completed 200 OIA requests with a timeliness rating of 99 percent.

For the six month period of 1 January 2020 to 30 June 2020, the Ministry completed 130 OIA requests with a timeliness rating of 92.3 percent. I note the COVID-19 2020 lockdown happened during this time, and OIA requests decreased during the 2020 lockdown. The Ministry explained the drop in timeliness in the 2019/20 Annual Report:

OIA timeliness in the latter part of the year was impacted by the Ministry’s COVID-19 response, which resulted in subject matter experts and information resources not always being available between February-May to allow for timely responses to OIA requests.

I am pleased the Ministry took responsibility for the dip in timeliness, and used OIA acknowledgement emails to link requesters to the COVID-19 statement from my Office.[[42]](#footnote-43) When the above six month time periods are combined (1 July 2019 to 30 June 2020), the yearly timeliness rating is 96.4 percent.

Overall, it appears the Ministry operated consistently within my COVID-19 guidance during 2020 lockdown.[[43]](#footnote-44) However, its model for handling OIA requests appeared somewhat problematic due to reliance on subject matter experts from divisions. Many were redeployed to other roles, which hindered the Ministry’s ability to meet OIA timeframes. Reliance on subject matter experts can also be problematic during ‘business as usual’ if, for whatever reason, those resources are unavailable.

My guidance noted that if subject matter experts were unavailable for consultation (within the original 20 working day maximum statutory timeframe to make a decision on a request), agencies could make use of the section 15A(1)(b) extension provision.[[44]](#footnote-45) I encourage the Ministry to consider what could be done differently next time there is a significant event, in order to prevent any future decreases in OIA timeliness. The Ministry’s handling of OIA requests during the 2020 lockdown could also form part of its COVID-19 Continuous Improvement Project (which I discuss further below under [*OIA practices during the 2020 lockdown*](#_OIA_practices_during)), but be assessed separately.

In the latest OIA statistics released for the six month period of 1 July 2020 to 31 December 2020, the Ministry completed 148 OIA requests with a timeliness rating of 95.3 percent. I recognize the Ministry was still actively engaged in the COVID-19 response during this time, and I expect OIA timeliness will improve going forward.

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| Action point  |
| Consider how to prevent any future decreases in OIA timeliness in times of crisis |

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| **The Ministry’s response**The Ministry advised: *The OIA [Ministerial Services] team will continue to use the tools of the OIA (e.g. seeking to rescope, extending where required) to try to prevent any decreases in timeliness in times of crisis, recognising that MFAT will continue to take a leadership role in respect of the Government’s response to the international aspects of any crisis.* |

### OIA practices

To gain an understanding of the processing of OIA requests, my investigators reviewed a random selection of recent OIA request files from before, during and after the 2020 lockdown. These files contained some examples of excellent OIA practices. I was pleased public interest factors were considered when information was withheld under section 9 of the OIA. The Ministry also recorded the reason(s) for withholding information and any consultations. Where a request was likely to be refused due to substantial collation or research,[[45]](#footnote-46) the requester was consulted. Overall, the documentation of decision making on OIA requests is going well.

My investigators also noted other examples of good OIA practices. If the Ministerial Services team cannot provide the requester with the exact information requested, they endeavour to provide some information relevant to the request regardless. The Ministry also considers alternative release formats for making information available in multiple ways, such as giving a requester a reasonable opportunity to inspect a document in person.[[46]](#footnote-47) Although OIA timeliness dipped during the 2020 lockdown, in general, good OIA practices were maintained.

The Ministry stated it sends an OIA acknowledgement email for every OIA request handled by the ESD. While evidence of OIA acknowledgement was only included in one of the OIA request file samples my investigators reviewed, viewing the FYI website[[47]](#footnote-48) confirmed acknowledgement emails are being sent. However, the acknowledgement email did not include the following:

* the date the request was received (or deemed to have been received);[[48]](#footnote-49)
* details of the Ministry’s understanding of the information requested;
* an explanation that a decision will be made on the request as soon as reasonably practicable[[49]](#footnote-50) (and no later than 20 working days from the date of receipt); and
* an explanation that if a decision cannot be made within that timeframe, an extension will be notified.[[50]](#footnote-51)

Through the course of the investigation, I suggested the Ministry update its acknowledgement to ensure these details were included in the future. My Office produced a template which might prove useful.[[51]](#footnote-52) Including the above information helps to ensure at the earliest possible stage that the Ministry and the requester are in agreement as to the nature of the information requested.

Another of the OIA request file samples my investigators reviewed involved the Ministry transferring a request to another agency. To align with best practice, I suggested the Ministry update the ‘Transfer letters’ section of the *OIA standard wording* to more closely resemble the transfer letter templates produced by my Office.[[52]](#footnote-53) This ensures all key details relating to the transfer are included.

After receiving my provisional opinion, the Ministry promptly updated its OIA request acknowledgement to include the date the request was received, the information requested, and an explanation of timeframes for a decision to be made and communicated. The Ministry has also updated the *OIA standard wording* for transfer letters.

### OIA practices during the 2020 lockdown

As stated in [*The impact of COVID-19*](#_The_impact_of), my investigation coincided with the COVID-19 pandemic and resulting 2020 lockdown. At Alert Levels 3 and 4, staff were instructed to work from home. It is not surprising then, that this sudden change in work practice had an effect on the Ministry’s ability to perform its OIA functions.

Staff were redeployed from throughout the Ministry to assist with the COVID-19 emergency response, including two ESD staff members (one being the Ministerial Coordinator who works closely with the Ministerial Services team). However, no staff were redeployed from the Ministerial Services team. To put the scale of the response into perspective, over 400 staff (approximately half of the Ministry’s onshore workforce) were reassigned to the Emergency Coordination Centre and worked in shifts around the clock (providing 24 hour availability to New Zealanders overseas). This also meant that the usual staff members involved in OIA requests from ‘lead’ divisions changed.

Ministry laptops were in the midst of being upgraded when the 2020 lockdown started, and ESD staff received laptops quickly. The ESD did not initially have mobile work phones but this has since been remedied during the course of the investigation. Zoom meetings were held daily to stay connected, and Zoom was also used for OIA request scoping meetings. ESD staff took notes of meetings and stored them in GDM, which is good practice.

There were some minor technical issues at the beginning of the 2020 lockdown, but all ESD staff were able to work. The Ministry advised that ‘*Planned upgrades in server capacity and VPN were brought forward to improve performance, stability and security.*’ Other minor issues experienced during the 2020 lockdown included:

* one OIA request for information held in physical files (which were unable to be accessed);
* one monthly OIA governance report being missed for March 2020 (as the governance committees did not meet that month); and
* the probability that more OIA requests were extended.

Due to the access issue involving physical files, the KIA team are now looking into digitising paper files to mitigate the chance of this issue recurring.

Successful OIA practices during the 2020 lockdown included:

* moving to an electronic review and sign out process for OIA responses, including with the Ministers’ offices;
* the Ministerial Services team receiving support from the senior leadership team on OIA requests when needed; and
* the ESD having staff deployed but still meeting most OIA timeframes.

One staff member said the Ministry’s existing proactive release policy and practices assisted with the release of documents for the ‘Unite against COVID-19’ website.[[53]](#footnote-54) This reiterates why having a proactive release policy is important.

Positive changes the Ministry has kept and/or made after the 2020 lockdown include:

* the continuing use of an internal electronic review and sign out process for OIA responses;[[54]](#footnote-55)
* the continuing use of Zoom and other tools for conducting business; and
* upgrades for GDM, Microsoft Office and the operating system being ‘brought forward to ensure that the Ministry’s computer network was up-to-date in case another lockdown was required’.

As mentioned above in [*Reported OIA timeliness*](#_COVID-19_lockdown), the Ministry commissioned a Continuous Improvement Project to evaluate its COVID-19 response, which was completed on 7 May 2021. I encourage the Ministry to separately review the processing of OIA requests in connection with the scope of this project.

### Proactive release of OIA responses

The table below shows how many OIA responses have been proactively published on the Ministry’s website (in 6 month increments) as reported to the Public Service Commission:[[55]](#footnote-56)

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| Timeframe | OIA request responses published on website |
| 1 July 2020 - 31 December 2020 | 2 |
| 1 January 2020 - 30 June 2020 | 4 |
| 1 July 2019 - 31 December 2019 | 6 |
| 1 January 2019 - 30 June 2019 | 15 |
| 1 July 2018 - 31 December 2018 | 1 |
| 1 January 2018 - 30 June 2018 | 0 |

The proactive release of 15 OIA responses from 1 January 2019 to 30 June 2019 coincided with the government mandate to proactively release Cabinet papers. Since then, the number of proactively released OIA responses has continued to decrease. Based on the number of OIA requests received by the Ministry, I would expect more OIA responses to be released proactively. However, I understand COVID-19 created exceptional circumstances for the Ministry, which are still ongoing. Despite the COVID-19 challenge, the Ministry did proactively release a substantial amount of information, as distinct from OIA responses.

As workloads return to normal and staff resume their usual roles, I encourage the Ministry to retroactively release OIA responses. In the future, the number of OIA responses published should continue to increase to align with the intentions of the Open Government Partnership[[56]](#footnote-57) and the Ministry’s own *Proactive Release Policy*.

I am pleased to note that where information has been redacted (blacked out) in the proactively released OIA responses on the Ministry’s website,[[57]](#footnote-58) the withholding or refusal grounds have been referenced. However, the PDF format in which the OIA responses are published is not searchable. I discuss this point further below under [*Accessibility and usability of official information releases*](#_Accessibility_and_usability_1).

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| Action point  |
| Maintain proactive release practices for OIA responses  |

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| **The Ministry’s response**The Ministry advised: *We will continue to proactively release OIA responses suitable for publication.* |

### Ministerial interactions on OIA requests

When interacting with Ministers’ offices on departmental OIA requests and responses, it is essential that agencies differentiate between whether they are seeking feedback from the Minister on an OIA request (consultation), or providing a copy of an OIA response for the Minister’s information only (as an ‘FYI’ or notification).

In response to my initial questionnaire, the Ministry stated:

We have built good trust and confidence with the Offices’ political staff (in particular Foreign Affairs, where most of the requests go) by being open with them and clarifying with staff new to the role as need be as to the appropriate boundaries, from the beginning of the new administration.

The Political Advisor from the Office of the Minister of Foreign Affairs meets weekly with the ESD Manager ‘to ensure the lines of communication on information release are built on trust, and managed openly and appropriately.’ While departmental OIA responses are sent to the Private Secretary (a secondee from the Ministry) in the Office of the Minister of Foreign Affairs, any feedback on responses is primarily sent by a Political Advisor from that office directly to Ministry staff (bypassing the Private Secretary).

Due to the absence of a written agreement to guide the process of dealing with OIA requests involving Ministers, my investigators asked the Ministry to describe the unwritten process for interactions with the Ministers’ offices. The Ministry responded that it ‘keeps its Ministerial offices informed of OIA responses underway, to ensure no surprises, each week through the weekly issues report.’ The ‘issues report’ is a simplified version of the Excel spreadsheet used to track OIA requests. The Ministry said not all OIA responses are sent to Ministers’ offices (but many are).

The Ministry explained that when an OIA request relates to policy issues (and sometimes corporate information), or is from the media or parliamentary offices, the response is sent as part of the ‘no surprises’ principle.[[58]](#footnote-59) Sometimes all documents relating to the OIA request are sent, and sometimes only a copy of the OIA response is sent. How long the Ministers’ offices have to familiarise themselves with the material before the OIA response is sent to the requester is determined on a case by case basis (in relation to the complexity, length and sensitivity of a response).

The *OIA process diagram* describes how consultation with the Minister happens for departmental OIA requests. It states that 15 days post receipt ‘If required, response dispatched to Ministerial offices for consultation (Pursuant to Section 15(5) of the OIA)’. It then notes that following the Minister’s office ‘Review/assessment. Comments sent back to MFAT [the Ministry] via ESD. ESD will engage with the Division on any changes sought.’ However, it does not mention on what basis departmental OIA requests are provided to the Minister for consultation.

For two of the OIA request files my investigators reviewed, it was unclear whether the Minister’s office was being notified of the decision or consulted about the decision.[[59]](#footnote-60) As mentioned above in [*Internal policies, procedures and resources*](#_OIA_guidance_material), the Ministry does not have OIA guidance that clearly differentiates between consultation and notification. In my view, it should be evident when the Ministry is consulting the Minister, and when it is providing a copy of its departmental OIA decision as an ‘FYI’ only. Further, I am concerned that the practice of providing Ministers’ offices (as an ‘FYI’) with an indeterminate amount of time to familiarise themselves with a departmental OIA response puts the Ministry at risk of failing to meet its legal obligation to make and communicate the decision on an OIA request ‘as soon as reasonably practicable’.[[60]](#footnote-61)

It is permissible for agencies to provide departmental OIA responses to Ministers’ offices as part of a ‘no surprises’ arrangement if it is for a proper purpose (such as allowing the Minister to prepare for public commentary), and does not interfere with timeliness requirements. However, if the Ministry is providing a copy of its departmental OIA response to the Minister’s office for notification, the response should be sent at the same time, or shortly before, being sent to the requester. Notification of the Ministry’s decision should require no input from the Minister. If the Minister’s input is needed, then the Ministry should consider consultation.

I advised the Ministry to ensure its OIA guidance material covered notification of, and consultation with, Ministers’ offices. Once the Ministry’s OIA guidance was updated, I suggested the Ministry ensure its practice is consistent with that guidance.

My investigators did not note any interference by the Minister’s office in decision making on departmental OIA requests, and it was clear all parties understood the Ministry was the final decision maker. However, regardless of whether communication is funnelled through a Private Secretary or a Political Advisor, a clear, written agreement approved by both parties could assist with clarity of purpose in the processing of departmental OIA requests. I developed a model protocol on dealing with OIA requests involving Ministers in August 2019.[[61]](#footnote-62) This is intended to be a useful starting point for agencies and their Ministers to discuss and decide upon clear criteria for managing departmental OIA requests, either as a protocol document or in another agreed way. I would expect such a written agreement to include:

* how the agency distinguishes between consulting with the Minister’s office on a request and advising the Minister of a request as an ‘*FYI*’ only;
* whether all responses deemed ‘of interest’ are provided in full to the Minister’s office, or whether some are notified by subject only;
* what factors would cause the agency to consider a request to be ‘of interest’ to the Minister;[[62]](#footnote-63)
* the resolution process in the event of disagreement between the agency and the Minister’s office;
* the timeline for providing responses to the Minister’s office; and
* the process when the Minister’s office is unable to provide its comments to the Ministry within the statutory timeframe for the Ministry to respond to the requester.

I am pleased that during the course of the investigation, the Ministry has developed a written agreement, the *OIA requests and Ministers* guidance document. This document includes information on the notification of, and consultation with, Ministers’ offices on departmental OIA requests. However, I consider the distinction between notification and consultation has not yet been clearly set out. The Ministry should consider refining the *OIA requests and Ministers* guidance document to be consistent with my guidance on this topic.[[63]](#footnote-64) Once refined, I encourage the Ministry to consider making this document available on the OIA webpage.

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| Action point |
| Refine the *OIA requests and Ministers* guidance document to differentiate between notifying Ministers’ offices of departmental OIA responses, and consulting with Ministers’ offices on departmental OIA requests  |

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| **The Ministry’s response**The Ministry stated: *Policy guidance in this area has been developed and was promulgated earlier this month.***My comments**I am pleased that the Ministry has taken positive steps in the development of its new *OIA requests and Ministers* guidance document. I note the document implies that any departmental OIA request that does not meet the criteria to be provided to a Minister’s office for consultation must instead be provided to ‘the respective Minister/s with advance notice about proposed decisions’. I encourage the Ministry to consider whether all departmental OIA responses should be provided to Ministers’ offices for notification. It would also be useful for the *OIA requests and Ministers* guidance document to include whether departmental OIA responses are provided to Ministers’ offices in full, or whether some are notified by subject only. Further, the section in the *OIA requests and Ministers* guidance document that relates to notification states: *The Ministry will endeavour to provide at least 24-hours’ notice prior to the despatch of the response, during which time Ministers may provide final comment or request more information if they wish.*I note that if the Ministry is providing a copy of a departmental OIA response to a Minister’s office for notification, the response should be sent at the same time, or shortly before, being sent to the requester. Notification of the Ministry’s decision should require no comment from the Minister before it is sent to the requester. If a Minister’s comment is required, the Ministry should consider consultation. |

### Media and research information requests

Requests to an agency media team for information which is held by the agency are subject to the OIA. The Ministry’s Media team receives most media requests through email, averaging three to five requests per day. These are recorded in the daily RADAR wrap up internal email (which is saved in GDM).

The Media team does not differentiate between media requests for information held (media information requests) versus media requests for comment or an interview. I consider it is important to make this differentiation, both for OIA recordkeeping purposes, and so the Media team is clear when the requirements of the OIA apply to the responses they are providing. These requirements are not onerous. They are either to provide the information requested, or if not, to provide the reason for refusal and reference to the right to complain.

During the 2020 lockdown, the Media team was relocated to the Emergency Coordination Centre, and the team of four expanded to 10 to handle the substantial increase of several hundred media requests received. Three additional Ministry staff also assisted with the all-of-government COVID-19 Communications response. I am impressed by the Ministry’s decision to quickly scale up its Media team in order to get timely information to the public. The provision of information by government agencies is especially important in times of crisis.

The Ministry advised it provides OIA training and guidance to its Media team. The Ministry also advised that the Media team and ESD work closely together on responses. In its response to my initial questionnaire, the Ministry stated:

…the media team does not ‘refuse’ media [information] requests; they escalate those they cannot respond to quickly or without more formalised collation, review and escalated approval (through ESD’s OIA process and risk management).

The Ministry also stated ‘there aren’t formal threshold guidelines, every media request is individually assessed by skilled media advisers to determine the response required, in consultation with ESD if necessary.’

I appreciate that both the Media team and journalists value the immediacy and informality of their interactions, which facilitate fast-turnaround responses. However, there may be reluctance for a media information request to be passed from a Media team to an OIA team out of concern that, as a consequence of referring it to the OIA team, it could take up to 20 working days for the information to be sent. This timeframe might result in the journalist deciding to abandon the request. Therefore, it is important to re-iterate that the OIA requires a decision to be made and communicated ‘as soon as reasonably practicable’*,* and no later than 20 working days after the date the request is received.[[64]](#footnote-65) The reference to 20 working days is not the de facto goal, but the absolute maximum (barring an extension).[[65]](#footnote-66)

For this reason, it may be useful to inform journalists about their ability to ask the Ministry to treat their request with urgency.[[66]](#footnote-67) In fact, any requester can ask for their request to be treated as urgent, but should provide a reason for seeking the information urgently.[[67]](#footnote-68) In turn, agencies should have a clear policy on how they will consider and, where sound reasons exist for doing so, manage urgent requests. This includes the ability to fix a charge to offset any costs incurred pursuant to a request for urgency. As I discussed above in [*Leadership and culture*](#_OIA_webpage_1), it is good practice for agencies to publish their internal OIA guidance so the process for making decisions about requests for urgency (among other things) is transparent.

To gain further understanding of the processing of media information requests, my investigators reviewed a random selection from before, during and after the 2020 lockdown. The Media team was sometimes refusing requests for information, and a reason for the refusal was provided when this occurred, as required by the OIA. However, in a number of those reviewed, a reference about the right to complain to my Office was not included.[[68]](#footnote-69)

This is a timely reminder that all staff should be aware that when a request for information is refused, that decision must be communicated in accordance with section 19 of the OIA. This section requires the Ministry to:

* provide the reason for the refusal and, if requested, the grounds in support of that reason; and
* advise the requester that they may make a complaint to the Ombudsman and seek an investigation and review of this decision.

I consider that the Ministry has acted contrary to law in relation to section 19(b) of the OIA, by failing to inform requesters about their right to complain to the Ombudsman when media information requests are refused by the Media team. However, I have not made a formal recommendation in this instance because the Chief Executive advised me that he had directed immediate action to ensure the Media team complies with the OIA when refusing or partially refusing OIA requests. This action includes the addition of standard text to responses advising that requesters can make a complaint to the Ombudsman if information is fully or partially refused under the OIA.

Further, the Ministry has advised that OIA refresher training has been scheduled for the Media team, which should reinforce the message that when a media information request is fully or partially refused, this has to be done in accordance with the OIA. As mentioned above in [*Organisation structure, staffing and capability*](#_OIA_training), the Media team’s practices highlight the need for targeted OIA refresher training on a regular basis to strengthen staff understanding of, and commitment to, the purposes, principle and provisions of the OIA. I have included an action point to address this.

Additionally, in a number of other media information request samples my investigators reviewed, some records relating to exchanges with requesters appeared to be missing. For example, a handwritten note on an email stated ‘Media team called journalist with response’, yet no record of that phone call was provided to me. In another example, a final email response was referenced but not provided. The Ministry also acknowledged that internal verbal discussions about media requests are not always written down. In reviewing the samples provided, the lack of records of substantive verbal discussions made it challenging to determine whether the Ministry answered all questions asked by requesters.[[69]](#footnote-70)

I consider that the Ministry has acted contrary to law in relation to section 17(1) of the Public Records Act 2005, by failing to create and maintain full and accurate records of discussions. However, I have not considered it necessary to make a formal recommendation in this instance in light of the Ministry’s advice that immediate remedial steps have been taken to address this deficiency. The Ministry stated:

The KIA team is working with the Media team to make sure the Media team’s record keeping practices are in line with the requirements of the Public Records Act. This includes the Media team recording all substantive conversations related to information requests in a specific folder in the Ministry’s document management system (GDM), in a way that readily identifies date/requester.

I understand that my suggestions may require a cultural shift in the Media team. I have included an action point to address this. Changes in practice should be supported by strong messaging from senior leaders to reinforce that requests for official information handled by the Media team must adhere to the OIA. Furthermore, there is no reason that compliant practices should interfere with timeliness or the effective relationships which appear to exist between the Ministry’s Media team and journalists.

Similar to media information requests, when an OIA request is received which asks for older information, it will sometimes be passed from the Ministerial Services team to the KIA team as a research request. As referenced above, the Ministry must be mindful that all requests for information are governed by the OIA. Therefore, OIA provisions (such as timeliness and refusals) also apply to research requests.

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| Action points |
| Ensure the Media team includes the right to complain to the Ombudsman in all responses when a media information request is fully or partially refused |
| Provide targeted OIA training to the Media team on a regular basis, to ensure they understand their obligations under the OIA |
| Ensure the Media team create and maintain full and accurate records of substantive correspondence (including telephone conversations, meetings and verbal discussions) with requesters, and any material internal discussions, to ensure there is a record of information scoping, administrative steps, and decision making for media information requests handled by the Media team |
| Ensure messaging from senior leaders reinforces that requests for information handled by the Media team must adhere to the OIA |

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| **The Ministry’s response**As outlined above, the Chief Executive directed immediate action to ensure the Media team’s performance is compliant. In relation to messaging from senior leaders reinforcing that requests for information handled by the Media team must adhere to the OIA, the Ministry advised that messaging is already occurring. **My comment**It is positive that the Ministry has started to action messaging from senior leaders reminding staff that requests for information handled by the Media team must adhere to the OIA. I look forward to being kept updated on the Ministry’s progress on these action points. |

### Accessibility and usability of official information releases

All public service and non-public service agencies are required to meet the NZ Government Web Accessibility Standard.[[70]](#footnote-71) The standard is intended to make websites more accessible for users with a range of disabilities, including visual, hearing, physical, speech, cognitive, language, learning and neurological disabilities. Although the accessibility standards apply to website content, it is also best practice to apply these standards to information released in response to OIA requests.

I have produced a guide which includes a section on New Zealand’s international and domestic obligations to ensure disabled people have equal access to information.[[71]](#footnote-72) This section also provides advice on making information accessible. It should be noted that not all members of the public have access to internet, and some may require information in other formats (including, but not limited to, audio, braille, printed materials, New Zealand Sign Language, and Easy Read) to cater for different access needs. The public should be advised that they can ask for accessible formats if required.

Agencies should publish and provide information in a format that accommodates the use of assistive technology, such as screen readers. For example, publishing or providing information in an ‘image only’ format (such as a scanned PDF or JPG) is not accessible for blind and low vision individuals using screen readers, or those with learning disabilities using read aloud applications. It also limits the ability to search documents using keywords. Where PDF documents are provided in response to an OIA request, they should be searchable. Published PDF documents should also be searchable, and ideally be accompanied by an accessible Microsoft Word version. As the Ministry begins to proactively release more OIA responses, the web accessibility standards become increasingly important.

In its response to my initial questionnaire, the Ministry stated that accessibility of its proactively released OIA responses is ‘an issue’. This is largely due to the release of restricted content, which is sometimes heavily redacted. However, the Ministry advised that it has ‘had some success creating searchable PDFs of historical, un-redacted documents using Adobe Pro functionality.’ Furthermore, the Ministry stated its KIA team is:

…currently writing a draft Digitisation Standard which will incorporate technical specifications designed to ensure the legibility and usability of future digitised information for as long as is required, including the need to be optical character recognition (OCR) searchable.

I note that some documents on the Ministry’s website are published in a searchable format, but my investigators were unable to find any evidence of proactively released OIA responses being searchable. The Ministry should ensure all PDF documents that are proactively released are searchable and not ‘image only’, and tag all visual elements with alternative text. I also note the Ministry’s published OIA responses include a watermark, which can sometimes inhibit the use of assistive technologies.

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| Action point  |
| Ensure the text of all PDF documents released are searchable and not ‘image only’, and all visual elements are tagged with alternative text |

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| **The Ministry’s response**The Ministry stated: *Most of our PDF releases on the Ministry website are searchable and OCR compatible. Where we are releasing ‘images’ (for example, for material that was previously classified), we will explore what we can achieve with tagging and alternative text.**The Ministry has recently adopted Adobe Acrobat as its standard redaction software, and we will follow up on whether it provides more options for release of secure, searchable PDF documents.***My comment**It is commendable that the Ministry is actively working to make sure its PDF documents are accessible. I note that all proactively released documents, including OIA responses, should be accessible. |

# Performance monitoring and learning

The OIA does not impose specific requirements on agencies in relation to record keeping and management of requests they receive for access to information. However, Ombudsmen have consistently supported maintaining a full audit trail for any decision made by an agency. Formulating a decision on a request for access to official information is no different. Once this information is recorded, agencies have a wealth of information that can be used to inform business planning and future decisions concerning access to information—but only if it is captured in a way that is meaningful, facilitates subsequent analysis, and regular monitoring and reporting occurs.

To assess performance monitoring and learning of the Ministry in relation to requests for official information, I considered whether:

* the Ministry has an established system for capturing meaningful information about its official information activities and established appropriate and relevant performance measures;
* there is regular reporting and monitoring about the Ministry’s management performance in respect of official information requests; and
* the Ministry learns from data analysis and practice.

### Collection, analysis and reporting of OIA data

The Ministry advised that OIA data is sent to the Ministry Board on a monthly basis in the form of a Coordination and Performance Committee report. I have been provided a copy of this monthly report, which comprises the following information (including graphs and tables for comparisons over time):

* number of OIA requests received and sent during the month, and number of OIA requests on hand at the end of the month;
* number of OIA requests received, sent and on hand broken down by Ministry group;
* number of OIA requests made to each Minister for the month;
* topics of interest (repeat request topics);
* type of requester (media, political party or member of the public);
* number of OIA responses sent late (by month);
* percentage of OIA requests responded to within the statutory timeframe (by month);
* number of OIA responses proactively uploaded to the Ministry’s website; and
* number of open Ombudsman investigations, and number of closed Ombudsman decisions (either in support of the Ministry or against the Ministry).

There are also tables comparing annual OIA performance data[[72]](#footnote-73) and outlining active Ombudsman investigations in more detail.[[73]](#footnote-74)

OIA data is sent as part of strategic framework goal reporting on a six-monthly basis, and is provided to Parliament twice a year in the Annual Review and Estimates Select Committee questionnaires. It is also provided every six months to the Public Service Commission.[[74]](#footnote-75)

Although the Ministry collects a wide variety of OIA information, I note that a few gaps remain. For example, the Ministry does not collect data on the type of request (Part 2, 3 or 4 of the OIA) or the number of charges fixed and collected.[[75]](#footnote-76)

I received a copy of the *OIA Tracker* Excel spreadsheet, and the Ministry does not appear to differentiate between whether the Minister was consulted on an OIA decision or notified of an OIA decision already reached by the Ministry under its ‘no surprises’ practices. This information is captured on the *Sign-off Sheet*, but a manual search would be required to collate it. Furthermore, the outcome of a request (granted in full, granted in part or refused in full) and the reason for transfers and extensions may also only be ascertained after a manual search. The Ministry may like to consider capturing this data in a way that would allow for ease of retrieval, reporting and analysis in the future.

Another point to note is the benefits of including media information requests and research requests in OIA statistical reporting. Doing so would provide a more accurate picture of the Ministry’s OIA performance.

Unless a media information request is passed to the ESD for processing, media information requests are not included in the six month OIA statistics provided to the Public Service Commission. However, the number of media requests handled by the Media team (both media information requests, and media requests for comment or an interview) is included in the Annual Review responses to the Foreign Affairs, Defence and Trade Select Committee. Research requests are also not counted in the six month OIA statistics provided to the Public Service Commission.

I encourage the Ministry to consider including media information requests[[76]](#footnote-77) and research requests in the six monthly OIA statistics. Not including them results in an incomplete picture of the Ministry’s reported OIA timeliness compliance, as well as its ability to accurately gauge information demand.

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| Action points |
| Consider capturing additional OIA request data in a way that allows for easy retrieval, reporting and analysis |
| Include media information requests and research requests in OIA statistical reporting |

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| **The Ministry’s response**The Ministry advised: *We are reviewing our current OIA information recording (Excel spreadsheet) to see if we can readily capture more information.**The Ministry is also currently investigating the possibility of implementing a workflow tool within the next 12 months, which would enable better capture and reporting of information.**The Ministry will look at what is required to enable media and research requests to be included as part of its performance reporting framework.* |

### Learning from investigations and guidance

It is important agencies learn from Ombudsman investigations and resources in order to build institutional knowledge (to reduce the likelihood of complaints being made in the future), stay apprised of current topics and work toward continuous improvement.

The Ministry stated:

We build in feedback from reviews and OIA investigations into our ESD repositories used by our advisers managing the process with our subject matter experts; we share findings with the relevant divisions and reference them in ongoing advice. We also discuss anything significant with our performance or processes, which may arise from Ombudsman decisions, with the CPC governance committee as need be.

Our focus has been on making sure advisers are up to date so can clarify as need be with divisions and share reasoning and precedents to help make good decisions, including links to Ombudsman’s Office guidance for more detail as need be. We share new resources, opinions and findings in the team and discuss and embed things to learn. Our Corporate Legal Unit also reinforces Ombudsman practice guidance regularly when it is supporting OIA responses through review and advice.

It is positive to see feedback is added to document repositories and findings are shared among staff. However, I understand that there is not a formal, written policy to support this practice. I suggest the Ministry formalise the process, which could be as simple as adding a section to the existing *OIA requests* guidance document.

It is also positive that the Unit Manager of ESD is involved in the Public Service Commission’s OIA forums,[[77]](#footnote-78) and supports staff from the Ministerial Services team attending in the future.

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| Action point  |
| Formalise the process for learning from Ombudsman investigations and guidance, and reflect this in OIA policy and procedures |

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| **The Ministry’s response**The Ministry stated: *The Ministry has an ‘Ombudsman repository’ stored within GDM, where it records outcomes from Ombudsman investigations and other guidance published – as a learning and reference tool. However, the repository has become quite large over the past few years, and will be reviewed for continued relevance and currency of information so that it is more useful as a reference guide.**The Unit Manager uses regular team meetings to discuss responses/decisions from the Ombudsman’s office, as well as any new guidance that has been released.***My comment**I applaud the Ministry for taking a proactive approach to reviewing its ‘Ombudsman repository’, as well as sharing Ombudsman guidance and decisions with the Ministerial Services team at their team meetings. However, I note that the Ministry should also ensure its practices of learning from Ombudsman investigations and sharing Ombudsman guidance are written into its OIA process documents. |

### Quality measures

Quality assurance is conducted once the process of responding to an OIA request is complete, and has a broader focus on the effectiveness of the process as a whole. There is a wealth of qualitative data to be gained from incorporating quality assurance into the OIA process. When analysed effectively, this can be used to inform improvements in the OIA process, including:

* ensuring consistency in the agency’s approach across similar requests;
* determining the reason for any delays; and
* identifying areas for training.

A *Risk and Quality Assurance Sheet* is completed for every OIA request which is handled by the ESD. The sheet includes four sections:

* OIA request details (the OIA number, due date, requester name, organisation, the request itself, and background and context).
* Response (whether the information has been released before, an outline of the type of information to be released, and the type of information being withheld and why, noting consideration of the public interest in decisions to withhold).[[78]](#footnote-79)
* Risk assessment (whether there are any reputational risks, the harm of release, and how these can be mitigated).[[79]](#footnote-80)
* Consultation (agencies informed/consulted, key partners/posts informed/consulted, and other MFAT divisions consulted).[[80]](#footnote-81)

The *OIA process diagram* states:

The purpose of the QA form is to provide quality assurance, as well as accountability and ownership.

Although the *Risk and Quality Assurance Sheet* is excellent, it primarily assists with the peer review process, and quality assurance differs from peer review. However, it is pleasing to note that the Ministry also has an official quality assurance process.

A ‘Percentage of Ministry [departmental] OIA requests responded to within statutory timeframes’ are audited every year by Audit NZ. A random selection of OIA responses are chosen and the results of the audit are included in the Ministry’s Annual Report. The ESD also receives informal feedback. Although ‘changes have not been required as a result of these audit checks…they do provide an excellent opportunity to annually review practice and reporting processes, and a useful management reminder to ensuring that they are being consistently followed’. I commend the Ministry for this initiative.

# Appendix 1. Official information practice investigation — terms of reference

The Ministry of Foreign Affairs and Trade

22 November 2019

This document sets out the terms of reference for a self-initiated investigation by the Chief Ombudsman into the practices of the Ministry of Foreign Affairs and Trade (the Ministry) relating to the Official Information Act 1982 (OIA).[[81]](#footnote-82)

## Purpose of the investigation

The investigation will cover how the *Departments/Ministries* work to achieve the purposes of the Official Information Act through its processing and decision-making on requests for information. It is essentially a follow-up to the 2015 investigation.

The investigation will assess how well the agency has implemented the action points raised in the 2015 investigation of its OIA practices, and will also consider its current official information practices, policies and culture. This will include consideration of the *Departments’/Ministries’* supporting administrative structures, leadership and culture, processes and practices, including information management, public participation and proactive release of information, to the extent that these relate to achieving the purposes of the OIA.

The investigation will identify areas of good practice, and make suggestions for improvement opportunities where areas of vulnerability are identified.[[82]](#footnote-83)

## Scope of the investigation

The investigation will evaluate each agency’s leadership and culture, organisational systems, policies, practices and procedures needed to achieve the purposes of the OIA, with the primary focus being how each agency has progressed with its implementation of action points from the 2015 *Not a Game of Hide and Seek* investigation. We may also investigate any new issues relating to the agency’s official information culture, policy and practice that arise through the surveys or review of policies and guidance documents about Official Information processing, records management and information management.

The investigation will be underpinned by a set of indicators, grouped around the following dimensions:

* Leadership and culture
* Organisation structure, staffing and capability
* Internal policies, procedures, resources and systems
* Current practices
* Performance monitoring and learning

It will also compare data collected in, or relating to, the period of the 2015 investigation with current data to assess whether the agency has made improvements in any area(s). This data may include:

* Ministry OIA statistics
* Complaints received by the Office of the Ombudsman
* Results from agency, staff, and public surveys
* Content on an agency’s website.

A sample of decisions reached by the agency on individual OIA requests may be considered as part of this investigation, to assist the Chief Ombudsman’s understanding of the agency’s official information practices.

If evidence emerges concerning specific examples of OIA breach, then a determination will be made in each case as to whether it can be addressed adequately within this investigation, or whether a separate stand-alone intervention is warranted. Any process issues which can be resolved during the course of the investigation will be addressed immediately.

## Investigation process

The Manager Official Information Practice Investigations will work with a team of Senior Investigators and Investigators to assist the Chief Ombudsman in conducting the investigation. The investigation team will liaise with your nominated contact official during the investigation. Information may be gathered through the processes set out below.

## Information gathering

Information will be gathered through desk research, a survey of each agency’s official information practices, a staff survey, meetings with key staff, and a survey of the public. A sample of decisions reached by the agency on individual OIA requests may also be requested and considered as part of this investigation. As would be the case with any investigation conducted by the Ombudsman, any information requested of an agency by this Office during this investigation will be subject to the secrecy provisions in section 21 of the Ombudsmen Act 1975 (OA). Requests for information will be made pursuant to section 19 of the OA.

## Desk research

A review of publicly available information including the agency’s annual reports, strategic intentions documents, and any other material made available on its website. Desk research will also review data and information held by the Office of the Ombudsman (for example, statistical data), and statistics published by the Ministry regarding reported OIA timeliness.

## Surveys

A survey of the agency, including requests for the supply of internal documents about:

* The steps taken to implement action points suggested by the Chief Ombudsman in the 2015 investigation
* Policies and guidance documents related to official information processing, record-keeping and information management

A survey of agency staff, canvassing:

* Views of the agency’s leadership and culture in relation to official information and transparency more generally
* Views of the agency’s policies, processes, training and resources relating to official information
* Views of the agency’s record-keeping and Information Management systems, policies, training and resources, inasmuch as these impact the agency’s ability to discharge its official information obligations

A survey of members of the public (including journalists/other media) that have sought information from the agency. The Chief Ombudsman may issue a media release that includes a link to the public survey, and will ask each agency to include a link to the survey on its public website.

Note that we may also request any other documents or information required to investigate issues that arise as a result of meetings with staff; and agency, staff and public surveys.

## Meetings

The investigation team will meet with:

* the tier-two manager responsible for the agency’s official information processing function; and
* the manager of the team that processes official information requests.

In addition, further meetings may be scheduled with other staff members after information collected from the agency and through staff and stakeholder surveys has been analysed by the investigation team.

My staff will also meet with staff of the Minister’s office who liaise with MFAT on responses to OIA requests.

Staff members selected to meet with the investigation team will be provided with information about the meetings process and the purpose of the meeting. The meetings will be digitally (audio) recorded. Meetings are likely to take approximately one hour.

## Other

A review of the agency’s intranet.

## Follow up period

After information has been gathered through the methods outlined above, the investigation team may request additional information or clarification from the agency on points that may have arisen throughout the course of the investigation, to assist our understanding of matters of fact and to provide the opportunity for further relevant information to be supplied.

## Reporting

### Draft report

The draft report of the Chief Ombudsman’s investigation will incorporate good practices as well as any issues that may have been identified during the investigation. The draft report will outline the Chief Ombudsman’s provisional findings and, when relevant, identify the suggestions and/or recommendations that may be made to improve the agency’s official information practices. The draft will be provided to the Chief Executive for comment.

### Final reports

Comments received on the draft report will be considered for amendment of, or incorporation into, the final report.

The final report will be sent to the agency’s Chief Executive, relevant Ministers, published on the Ombudsman’s website, and tabled in Parliament. Note that the published version of the report will not include detail of our assessment of the agency’s progress toward implementing action points from the 2015 *Not a Game of Hide and Seek* investigation. We committed to each agency at the time that the details of the 2015 investigation for each agency would not be made public.

In addition to individual reports, we will produce an ‘omnibus’ report which will outline general trends across all agencies. Because this will be a summary of the final opinions for each agency, a draft of this report will not be provided to the agencies as they will have already had chance to comment on our findings.

## Evaluation

Following completion of his investigation, the Chief Ombudsman will conduct a review exercise as part of his Continuous Improvement programme. This will involve seeking the views of the agency’s senior managers on their experience of this practice investigation, its value and relevance to their improving their work practices, and how future investigations may be improved when applied to other agencies.

# Appendix 2. Key dimensions and indicators

## Introduction

There are five key dimensions that have an impact on official information good practice in government agencies:

1. [Leadership and culture](#_Leadership_and_culture)
2. [Organisation structure, staffing and capability](#_Organisation_structure,_staffing)
3. [Internal policies, procedures and resources](#_Internal_policies,_procedures)
4. [Current practices](#_Current_practices)
5. [Performance monitoring and learning](#_Performance_monitoring_and)

These dimensions are underpinned by a series of indicators, which describe the elements of good practice we would expect to see in order to evaluate whether each of the dimensions is being met.

These indicators are not exhaustive and do not preclude an agency demonstrating that good practice in a particular area is being met in other ways.

## Leadership and culture

Achieving the purposes of the Act[[83]](#footnote-84) largely depends on the attitudes and actions of leaders, including Ministers, chief executives, senior leaders and managers within the agency. Ministers, chief executives and senior managers should take the lead in promoting openness and transparency, and championing positive engagement with official information legislation.

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| **Elements** | **Things to look for (indicators)** |
| Ministers, chief executives, senior leaders and managers demonstrate a commitment to the agency meeting its obligations under the Act and actively foster a culture of openness within the agency | * Chief executives, leaders and the relevant Minister(s) actively and visibly work together to promote a culture of positive OIA compliance and good administrative practice
* Leaders make clear regular statements to staff and stakeholders in support of the principle and purposes of official information legislation, reminding staff of their obligations
* Leaders demonstrate clear knowledge and support of the Act’s requirements
* Leaders encourage staff to identify areas for improvement and provide the means for suggesting and implementing them when appropriate
* Leaders make examples of good practice visible
* A visible and explicit statement exists about the agency’s commitment to openness and transparency about its work
 |
| Senior leadership have established an effective official information strategic framework which promotes an official information culture open to the release of information | * The agency has a strategic framework describing how it intends to achieve:
	+ Compliance with the Act
	+ Good practice
	+ A culture of openness and continuous improvement
	+ Participation and access to information by the public and stakeholder groups
* Senior leadership takes an active role in the management of information
* A senior manager has been assigned specific strategic responsibility and executive accountability for official information practices including proactive disclosure
* Senior managers have accountabilities for compliance with the Act
* Appropriate delegations exist for decision makers and they are trained on agency policies and procedures and the requirements of the Act
* Senior leaders model an internal culture whereby all staff:
	+ Are encouraged to identify opportunities for improvement in official information practice (including increasing proactive disclosure) and these are endorsed and implemented
	+ Are trained to the appropriate level for their job on official information policies and procedures and understand the legal requirements
	+ Have compliance with the Act in their job descriptions, key performance indicators, and professional development plans
* Senior leaders oversee the agency’s practice and compliance with the Act, the effectiveness of is structures, resources, capacity and capability through regular reporting. Any issues identified that risk the agency’s ability to comply with the Act are actively considered and addressed
 |
| Senior leadership demonstrate a commitment to proactive disclosure, and public participation with clear links to the agency’s strategic plans, thereby creating a public perception, and a genuine culture of openness | * Senior leaders are committed to an active programme of proactive disclosure and stakeholder engagement where the agency seeks and listens to the public’s information needs through:
	+ Regular stakeholder meetings and surveys
	+ Reviewing and analysing requests and media logs
	+ Reviewing and analysing website searches
* There is clear senior leadership commitment to the proactive release of information resulting in the agency publishing information about:
	+ The role and structure of the agency and the information it holds
	+ Strategy, planning and performance information
	+ Details of current or planned work programmes, including background papers, options, cabinet papers and consultation documents
	+ Internal rules and policies, including rules on decision-making
	+ Corporate information about expenditure, procurement activities, audit reports and performance
	+ Monitoring data and information on matters the agency is responsible for
	+ Information provided in response to official information requests
	+ Other information held by the agency in the public interest
* The agency holds up to date information that is easily accessible (easy to find, caters for people requiring language assistance or who have hearing or speech or sight impairments) about:
	+ What official information it holds
	+ How it can be accessed or requested by the public and its stakeholders
	+ How to seek assistance
	+ What the agency’s official information policies and procedures are (including charging)
	+ How to complain about a decision
* The agency makes information available in different formats, including open file formats
* The agency’s position on copyright and re-use is clear
* The public and stakeholders perceive the agency to be open and transparent
 |

##

## Organisation structure, staffing and capability

Responding to official information requests is a core function of the public sector. Therefore, it is expected agencies will organise their structure and resources to ensure they are able to meet their legal obligations under the Act considering each agency’s size, responsibilities and the amount of information held.

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| **Elements** | **Things to look for (indicators)** |
| Agency has the capacity to discharge its official information obligations, with clear and fully functioning:* roles;
* accountabilities;
* reporting lines;
* delegations; and
* resilience arrangements.
 | * An appropriate, flexible structure exists to manage official information requests which is well resourced reflecting the:
	+ Size of the agency
	+ Number of requests received (and from whom, public, media, other)
	+ Number or percentage of staff performing official information functions in the agency
	+ Percentage of time these staff are also required to undertake other functions
	+ Need to respond within statutory time limits
	+ Use of staff time, specialisations, structural resilience
* Roles and responsibilities are clearly defined:
	+ Specific responsibility exists for coordinating, tracking and monitoring official information requests and agency decisions (and ombudsman decisions) and there is the authority and support to ensure compliance[[84]](#footnote-85)
	+ Decision makers are sufficiently senior to take responsibility for the decisions made and are available when required, and if not, resilience arrangements exist.
	+ The official information function is located in an appropriate unit or area within the agency that facilitates effective working relationships with relevant business units (for example; media and legal teams)
 |
| Agency has the capability to discharge its official information obligations | * Training at all levels on the requirements of the Act is provided regularly and staff are expected to attend, and to apply the knowledge acquired
* Training is role specific with additional training for senior managers, decision makers and staff with official information responsibilities to support their work
* Expectations are set by senior leaders that regular refreshers are provided to all staff
* Training is provided on information management and record keeping that is role-specific and includes guidance on information retrieval as well as information storage
* The process for staff to assess and make decisions on official information requests is clear, understood, up to date and staff apply and document the process
* Agency staff, including front line staff and contractors, know what an official information request is and what to do with it
* User-friendly, accessible resources, guidance and ’go to’ people are available
* Staff official information capability is regularly assessed and monitored through, for example, performance reviews and regular training needs analyses
* Official information obligations are included in induction material for all staff
* The agency’s internal guidance resources are accessible to all staff
 |

## Internal policies, procedures and resources

Agencies should develop or adopt policies and procedures that will assist staff to consistently apply the requirements of the Act supported by good systems, tools and resources ensuring effective processing of requests consistent with the requirements of the Act.

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| **Elements** | **Things to look for (indicators)** |
| The agency has good official information policies, procedures and resources that are accurate and fit for purpose | * Good policies, procedures and resources exist for receipt and assessment of requests, which cover:
	+ What is official information
	+ Identifying the type of official information request received (Part 2, 3 or 4 of OIA) and distinguishing from Privacy Act requests
	+ Identifying the scope of the request
	+ Consulting with and assisting the requester
	+ Establishing the eligibility of a requester when necessary
	+ Logging requests for official information
	+ Acknowledging receipt of the request
	+ Correctly determining statutory time limits and tracking the handling of the requests
	+ Identifying who in the agency should respond to the request
	+ Establishing criteria for deciding whether, and if so, how a response to a request should be provided urgently
	+ Managing potential delays (including the reasons for them, the escalation process and invoking the extension provision)
* Good policies, procedures and resources exist for information gathering on requests, which cover:
	+ Identifying the information within the scope of the request
	+ Searching, finding and collating the information at issue
	+ Documenting the search undertaken for the information within the scope of the request (including time taken if charging is likely)
	+ Transferring requests to other agencies or Minister(s) and advising the requester
	+ Consulting officials within the agency and third parties
	+ What to do if the information is held by a contractor covered by the Act by virtue of section 2(5) of the OIA
	+ Engaging with Ministers on official information requests
* Good policies, procedures and resources exist for decision making on requests, which cover:
	+ Making a decision whether to release the information
	+ Making a decision on the format in which information is released
	+ Making a decision whether to charge for the release of information
	+ Guidance on application of withholding or refusal grounds relevant to requests made under Parts 2, 3 and 4
	+ Guidance on any statutory bars on disclosure relevant to the legislation the agency administers
	+ Imposing conditions on release where appropriate
	+ Advising the requester of the decision
	+ Recording reasons for each item of information withheld, and the agency’s consideration of the public interest in release where required
* Good policies, procedures and resources exist for releasing requests, which cover:
	+ Providing the information in the form requested
	+ Preparing information for release (including redactions)
* The agency has tools and resources for processing official information requests, such as templates, checklists, *‘go-to’* people, effective tracking and monitoring systems, and redaction software and staff are trained on how to use them.
* The agency’s official information policies, procedures and resources are regularly reviewed and up-to-date
* Staff find them useful and easy to access
 |
| The agency has appropriate record keeping and information management policies, procedures and resources | * Staff are able to identify, access and collate information that has been requested under the Act
* The agency has accurate and comprehensive records and information management policies, procedures and resources which enable information relevant to a request to be identified and collated
* The policies and procedures cover aspects such as:
	+ Creating, organising, maintaining and storing records
	+ Managing and modifying records
	+ The security of information
	+ A guide to determining which records systems exist and what information each holds
	+ Retaining, retrieving and disposing of records
	+ Both manual and electronic records, including personal e mail accounts, instant messaging and text messages
	+ Assigned responsibilities and performance criteria for records and information management by staff
	+ The provision of secure audit trails
	+ Annual/periodic audits of records
* These policies and procedures are regularly reviewed and up-to-date
* Staff find the policies and procedures useful and easy to access
 |
| The agency has accurate and comprehensive proactive release policies, procedures and resources | * The policies and procedures cover the release of such things as:
	+ Information that has been released in response to official information requests
	+ Information described in section 20 of the OIA about the agency and the information it holds
	+ Information described in section 22 of the OIA about the agency’s internal decision making rules, including its official information policies and procedures
	+ Strategy, planning and performance information
	+ Financial information relating to income and expenses, tendering, procurement and contracts
	+ Information about work programmes and policy proposals
	+ Information about public engagement processes, including public submissions
	+ Minutes, agendas, and papers of advisory boards or committees
	+ Information about regulatory or review activities carried out by agencies
* The policies and procedures include a process for identifying opportunities for proactive release, for example, where a high number of official information requests are received about a subject
* The policies and procedures include a process for preparing for proactive release, including managing risks around private or confidential information, commercially sensitive information and information subject to third party copyright
* The policies outline how and where the information should be made available for access, and if any charge should be fixed
* They are regularly reviewed and up-to-date
* Staff know about the agency’s proactive release policies and procedures
* Staff find the policies useful and easy to access
 |

## Current practices

The effectiveness of the Act is largely dependent on those who implement it on a day to day basis and how they apply the resources available to them to manage the realities of giving effect to the Act.

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| **Elements** | **Things to look for (indicators)** |
| Official information practices demonstrate understanding, compliance, and commitment to the principle and requirements of the Act | * The agency complies with maximum statutory timeframes to transfer, extend, decide on requests, and release official information
* Requests are handled in accordance with the applicable law (Privacy Act, Part 2 OIA, section 22 OIA, section 23 OIA, Part 4 OIA)
* The agency makes appropriate use of the withholding grounds and administrative reasons for refusal
* The agency makes appropriate use of the mechanisms for dealing with large and complex official information requests
* The agency gives proper consideration to the public interest in release of official information, and explains this to requesters
* The agency interprets the scope of official information requests reasonably
* The agency consults with, and provides reasonable assistance to requesters
* The agency consults appropriately with third parties
* Ministerial involvement in agency official information decision making is appropriate
* The process for escalation of issues is used where necessary and is effective
* Official information is released in the form requested unless there is a good reason not to
* Consideration is given to releasing information in accessible formats
* There is evidence that agency practice aligns with its policies and procedures
* Staff regularly use the agency’s policies and procedures
 |
| The agency has good record keeping and information management practices | * The agency documents its handling of official information requests, including the steps taken to search for the requested information, the information identified as relevant to the request, and the reasons for its decisions
* The agency’s records and information management practices facilitate official information compliance (it is generally easy to find information that has been requested under the Act)
* Staff regularly use the Agency’s records and information management policies and procedures as described in ‘The agency has appropriate record keeping and information management policies, procedures and resources’ indicator under [*Internal policies, procedures, and resources*](#_Internal_policies,_procedures)
 |
| The agency has good proactive release practices | * The agency’s entry in the *Directory of Official Information* is full, accurate and likely to assist requesters, and is linked from, or reproduced on, the agency’s own website
* The agency publishes useful information online including the types of information described in the ‘The agency has accurate and comprehensive proactive release policies, procedures and resources’ indicator under [*Internal policies, procedures, and resources*](#_Internal_policies,_procedures)
* The agency publishes information in multiple formats, and applies open use standards
* The agency’s position on copyright and re-use is clear
* Staff use the agency’s proactive release policies and procedures where applicable
 |

## Performance monitoring and learning

Agencies should adopt performance monitoring and learning frameworks that enable them to learn and drive performance improvement and innovation.

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| **Elements** | **Things to look for (indicators)** |
| The agency has an established system for capturing and analysing data to inform meaningful and appropriate performance measures | * Performance measures include:
	+ Quantity – for example the number of requests, from where and the number processed
	+ Efficiency – for example duration of request handling, number of responses that exceed legislative maximum time limits, the reasons for any delays
	+ Quality – for example outcome of any internal quality assurance reviews and/or external reviews of official information decisions and processes and whether or not the results of those reviews provide evidence of system wide issues
	+ Monitoring of opportunities for proactive release – for example identifying common types of requests or a high number that indicates information that could be made available
* The agency collects data about its performance under the Act including such things as:
	+ The number of requests
	+ The type of request (Part 2, 3 or 4 of the Act)
	+ The type of requester (for example; media, political researcher, corporation, individual citizen, Member of Parliament, interest group, etc.)
	+ The information sought
	+ The number and reason for transfers, and whether the transfer was made in time
	+ The number, length and reason for extensions
	+ The outcome of the request (granted in full, granted in part, refused in full, withdrawn or abandoned)
	+ The number and amount of charges made and collected
	+ The grounds on which information was withheld or the request refused
	+ Whether the requester was consulted prior to any refusal under section 18(f)
	+ Whether the Minister was consulted on the decision
	+ Whether the decision was notified to the Minister
	+ Whether, and which, third parties were consulted
	+ The time from receipt of the request to communication of the decision
	+ The time from receipt of the request to release of the information
	+ If the time limit (extended or not) was breached, the reasons for the delay
	+ Whether the response was proactively published and if not, why
	+ Whether the Ombudsman investigated or resolved a complaint about the request
	+ The outcome of the Ombudsman’s investigation or involvement
	+ The outcome of any internal quality assurance reviews of processes or decisions
	+ Staff time spent and costs incurred in processing official information requests, including the time spent assisting in processing requests by staff who are not in core OIA roles
* The agency analyses this data to determine whether it is complying with its relevant performance measures
* The agency monitors information demand (for example, through official information requests, website use, and other enquiries) to identify opportunities for proactive release
* The agency monitors any difficulties in identifying and collating information that has been requested
 |
| There is regular reporting about the agency’s management and performance in respect of official information requests | * Data about the agency’s official information performance, and information demand is regularly reported to senior leaders, and at least quarterly to the Chief Executive
* Reports include emerging themes or trends, opportunities for improvement and proactive release, resourcing, capacity or capability (training) issues
* Reporting informs planning, resourcing and capability building decisions
 |
| The agency learns from data analysis and practice | * The agency has a system for sharing official information learning and experience, such as meetings, newsletters, email or intranet updates, or official information *‘champions’*
* The agency monitors relevant data, guidance and publications, including those produced by the Ombudsman and Public Service Commission
* The agency monitors the outcome of Ombudsman investigations and reports these to relevant staff, including official information decision makers
* The agency analyses this information to determine where it has the potential to improve official information practice, stakeholder relations, or increase opportunities for public participation
* The agency periodically reviews its relevant systems, structures, and compliance with policies and procedures
* The agency actively participates in initiatives to share and discuss best practice externally, for example through forums, interest groups, networks and communities of practice
 |

Document ends

1. Accident Compensation Corporation, Department of Corrections, Ministry of Education, Ministry of Foreign Affairs and Trade, Ministry of Health, Ministry of Justice, New Zealand Customs Service, New Zealand Defence Force, Waka Kotahi NZ Transport Agency, Ministry of Social Development, Ministry of Transport, Public Service Commission. [↑](#footnote-ref-2)
2. See ss 13(1) and 13(3) OA 1975 [↑](#footnote-ref-3)
3. Link to the Unite against COVID-19 [History of the COVID-19 Alert System webpage](https://covid19.govt.nz/alert-system/history-of-the-covid-19-alert-system/).

 Note that a second nationwide lockdown was initiated in August 2021. My post-lockdown staff survey and agency questionnaire only relate to the agency’s practices during the first lockdown. [↑](#footnote-ref-4)
4. On occasion I may look at material from outside the investigation period where particular issues warrant further investigation. [↑](#footnote-ref-5)
5. See pages 50, 57, 61, 73, 75, 81 and 82 [*Annual Report 2019/20*](https://www.mfat.govt.nz/en/about-us/mfat-annual-reports/mfat-annual-report-2019-20/read-the-mfat-annual-report-2019-20/)

 See pages 42, 45, 48, 49, 50, 51, 53, 62, 63, 64, 65 and 72 [*Annual Report 2018/19*](https://www.mfat.govt.nz/en/about-us/mfat-annual-reports/mfat-annual-report-2018-19/read-the-mfat-annual-report-2018-19/)

 See page 5, 11, 12, 18, 46, 49, 55 and 65 [*Annual Report 2017/18*](https://www.mfat.govt.nz/en/about-us/mfat-annual-reports/mfat-annual-report-2017-18/read-the-mfat-annual-report-2017-18/)

 See pages 4, 6, 8, 17, 20 and 21 [*Strategic Intentions 2020-2024*](https://www.mfat.govt.nz/assets/About-us-Corporate/MFAT-strategies-and-frameworks/MFAT-Strategic-Intentions-2020-2024.pdf)

See pages 4, 6, 7, 11, 18, 19, 20, 22 and 23 *Strategic Intentions 2019-2023*

See pages 6, 7, 17, 18, 19, 20 and 22 *Strategic Intentions 2018-2022* [↑](#footnote-ref-6)
6. Link to the Ministry’s [OIA requests webpage](https://www.mfat.govt.nz/en/about-us/contact-us/official-information-act-requests/). [↑](#footnote-ref-7)
7. Link to the Ministry’s [Media and resources webpage](https://www.mfat.govt.nz/jp/media-and-resources/) where an ‘OIA’ box can be ticked to display the proactively released OIA responses. [↑](#footnote-ref-8)
8. Link to the Office of the Ombudsman [FAQs about official information requests during COVID-19](https://www.ombudsman.parliament.nz/resources/faqs-about-official-information-requests-during-covid-19). [↑](#footnote-ref-9)
9. See s 15A OIA 1982 [↑](#footnote-ref-10)
10. There were 179 total responses to the initial staff survey compared to 54 total responses to the post-lockdown staff survey. Any findings should be balanced against the total number of staff (approximately 1,800) employed by the Ministry. [↑](#footnote-ref-11)
11. Numbers may not add up to 100 as they have been rounded to the nearest percentage. [↑](#footnote-ref-12)
12. Numbers have been rounded to the nearest percentage. [↑](#footnote-ref-13)
13. Link to the Ministry’s [OIA request webpage](https://www.mfat.govt.nz/en/about-us/contact-us/official-information-act-requests/). [↑](#footnote-ref-14)
14. Such as email, telephone, post and social media. [↑](#footnote-ref-15)
15. Link to the Ministry’s [Media and resources webpage](https://www.mfat.govt.nz/jp/media-and-resources/) where an ‘OIA’ box can be ticked to display the proactively released OIA responses. [↑](#footnote-ref-16)
16. See s 12(1) OIA 1982 [↑](#footnote-ref-17)
17. See p 5 of the Office of the Ombudsman [Requests made online: A guide to requests made through fyi.org.nz and social media](https://www.ombudsman.parliament.nz/resources/requests-made-online-guide-requests-made-through-fyiorgnz-and-social-media). [↑](#footnote-ref-18)
18. Link to the Ministry of Justice [Directory of Official Information](https://www.justice.govt.nz/about/official-information-act-requests/directory-of-official-information/). [↑](#footnote-ref-19)
19. See p 6 of the Office of the Ombudsman [The OIA for Ministers and agencies: A guide to processing official information requests](https://www.ombudsman.parliament.nz/resources/oia-ministers-and-agencies-guide-processing-official-information-requests). [↑](#footnote-ref-20)
20. Link to the Ministry’s [How to export military and dual-use goods webpage](https://www.mfat.govt.nz/en/trade/trading-weapons-and-controlled-chemicals/how-to-export-military-and-dual-use-goods/). [↑](#footnote-ref-21)
21. See s 22(1)(b) OIA 1982 [↑](#footnote-ref-22)
22. See s 22 OIA 1982 [↑](#footnote-ref-23)
23. The Ministerial Services team is also responsible for ministerial correspondence. [↑](#footnote-ref-24)
24. Link to [*Not a Game of Hide and Seek*](https://www.ombudsman.parliament.nz/resources/oia-report-not-game-hide-and-seek)(December 2015): 65. [↑](#footnote-ref-25)
25. Numbers may not add up to 100 as they have been rounded to the nearest percentage. [↑](#footnote-ref-26)
26. Numbers may not add up to 100 as they have been rounded to the nearest percentage. [↑](#footnote-ref-27)
27. Link to the [Public Records Act 2005](https://www.legislation.govt.nz/act/public/2005/0040/latest/DLM345529.html) [↑](#footnote-ref-28)
28. Numbers have been rounded to the nearest percentage. [↑](#footnote-ref-29)
29. See s 18(f) OIA 1982 [↑](#footnote-ref-30)
30. See s 9(2) OIA 1982 [↑](#footnote-ref-31)
31. See s 18(h) OIA 1982 [↑](#footnote-ref-32)
32. Even if a requester is ineligible, agencies should still endeavour to provide a reasonable response (see p 5 of the Office of the Ombudsman [Requests made online: A guide to requests made through fyi.org.nz and social media](https://www.ombudsman.parliament.nz/resources/requests-made-online-guide-requests-made-through-fyiorgnz-and-social-media)). [↑](#footnote-ref-33)
33. See s 15(1AA) and (1AB) OIA 1982 [↑](#footnote-ref-34)
34. Link to the Office of the Ombudsman [Public interest: A guide to the public interest test](https://www.ombudsman.parliament.nz/resources/public-interest-guide-public-interest-test). [↑](#footnote-ref-35)
35. See ss 15A(1)(a) and (b) OIA 1982 [↑](#footnote-ref-36)
36. See s 15(1) OIA 1982 [↑](#footnote-ref-37)
37. Link to the Office of the Ombudsman [Resources and publications webpage](https://www.ombudsman.parliament.nz/resources). [↑](#footnote-ref-38)
38. Link to the Office of the Ombudsman [Proactive release: Good practices for proactive release of official information guide](https://www.ombudsman.parliament.nz/resources/proactive-release-good-practices-proactive-release-official-information). [↑](#footnote-ref-39)
39. Link to Archives New Zealand [Information management during COVID-19 webpage](https://archives.govt.nz/information-management-during-covid-19). [↑](#footnote-ref-40)
40. This number has been rounded to the nearest percentage. [↑](#footnote-ref-41)
41. This number has been rounded to the nearest percentage. [↑](#footnote-ref-42)
42. Link to the Office of the Ombudsman [Chief Ombudsman’s statement on official information response times during the COVID-19 emergency](https://www.ombudsman.parliament.nz/news/chief-ombudsmans-statement-official-information-response-times-during-covid-19-emergency). [↑](#footnote-ref-43)
43. Link to the Office of the Ombudsman [FAQs about official information requests during COVID-19](https://www.ombudsman.parliament.nz/resources/faqs-about-official-information-requests-during-covid-19). [↑](#footnote-ref-44)
44. See p 13 of the Office of the Ombudsman [FAQs about official information requests during COVID-19](https://www.ombudsman.parliament.nz/resources/faqs-about-official-information-requests-during-covid-19) [↑](#footnote-ref-45)
45. See s 18B OIA 1982 [↑](#footnote-ref-46)
46. See s 16(1) OIA 1982 [↑](#footnote-ref-47)
47. Link to the [FYI website - Ministry of Foreign Affairs and Trade](https://fyi.org.nz/body/mfat). [↑](#footnote-ref-48)
48. See ss 15(1AA) and (1AB) OIA 1982 [↑](#footnote-ref-49)
49. See s 15 OIA 1982 [↑](#footnote-ref-50)
50. See ss 15A(1)(a) and (b) OIA 1982 [↑](#footnote-ref-51)
51. Link to the Office of the Ombudsman [Template letter 1: Acknowledgement letter](https://www.ombudsman.parliament.nz/resources/template-letter-1-acknowledgement-letter). [↑](#footnote-ref-52)
52. Links to the Office of the Ombudsman [Template letter 3: Transfer letter to requester](https://www.ombudsman.parliament.nz/resources/template-letter-3-transfer-letter-requester) and [Template letter 4: Transfer letter to other agency](https://www.ombudsman.parliament.nz/resources/template-letter-4-transfer-letter-other-agency). [↑](#footnote-ref-53)
53. Link to the Unite against COVID-19 [Proactive release](https://covid19.govt.nz/updates-and-resources/legislation-and-key-documents/proactive-release/) webpage [↑](#footnote-ref-54)
54. Occasionally large or complex OIA responses are still signed out in hard copy (both internally and by Ministers’ offices). [↑](#footnote-ref-55)
55. Link to the Public Service Commission [OIA statistics webpage](https://www.publicservice.govt.nz/guidance/official-information/oia-statistics/). [↑](#footnote-ref-56)
56. Link to the [Open Government Partnership website homepage](https://ogp.org.nz/). [↑](#footnote-ref-57)
57. Link to the Ministry’s [Media and resources webpage](https://www.mfat.govt.nz/en/media-and-resources/) where an ‘OIA’ box can be ticked to display the proactively released OIA responses. [↑](#footnote-ref-58)
58. See paragraph 3.22(a) [Cabinet Manual](https://dpmc.govt.nz/our-business-units/cabinet-office/supporting-work-cabinet/cabinet-manual/3-ministers-crown-and-2) [↑](#footnote-ref-59)
59. See s 15(5) OIA 1982 [↑](#footnote-ref-60)
60. See s 15(1) OIA 1982 [↑](#footnote-ref-61)
61. Link to the Office of the Ombudsman [Model protocol on dealing with OIA requests involving Ministers](https://www.ombudsman.parliament.nz/resources/model-protocol-dealing-oia-requests-involving-ministers). [↑](#footnote-ref-62)
62. See [*Peters v Bennett*](https://forms.justice.govt.nz/search/Documents/pdf/jdo/13/alfresco/service/api/node/content/workspace/SpacesStore/6bab9e40-68be-468f-909a-a7176a5317f7/6bab9e40-68be-468f-909a-a7176a5317f7.pdf) [2020] NZHC 761 [↑](#footnote-ref-63)
63. Link to the Office of the Ombudsman [Dealing with OIA requests involving Ministers: A guide to transfer, consultation, and the notification of decisions on OIA requests](https://www.ombudsman.parliament.nz/resources/dealing-oia-requests-involving-ministers-guide-transfer-consultation-and-notification). [↑](#footnote-ref-64)
64. See s 15(1) OIA 1982 [↑](#footnote-ref-65)
65. See ss 15A(1)(a) and (b) OIA 1982 [↑](#footnote-ref-66)
66. See s 12(3) OIA 1982 [↑](#footnote-ref-67)
67. While a reporting deadline would not typically be considered a valid reason to prioritise the handling of one OIA request above others, I note that media requesters may at times have other genuine and legitimate reasons to ask that their information request is treated with urgency. [↑](#footnote-ref-68)
68. Of the 19 media information requests reviewed, eight were full or partial refusals which did not include a reference about the right to complain to the Ombudsman. [↑](#footnote-ref-69)
69. Of the 19 media information requests reviewed, five were unclear as to whether all questions had been answered. [↑](#footnote-ref-70)
70. Link to the Digital government [Web Accessibility Standard 1.1 webpage](https://www.digital.govt.nz/standards-and-guidance/nz-government-web-standards/web-accessibility-standard-1-1/). [↑](#footnote-ref-71)
71. See section ‘Making sure the information is accessible’ on p 11 of the Office of the Ombudsman’s [Proactive release: Good practices for proactive release of official information](https://www.ombudsman.parliament.nz/resources/proactive-release-good-practices-proactive-release-official-information). [↑](#footnote-ref-72)
72. The *Annual MFAT OIA performance analysis* table includes the following information: Financial Year; No. received; % responded to in 20 days; % responded to in statutory timeframes (including extensions); and Average days to respond [↑](#footnote-ref-73)
73. The *Active MFAT Ombudsman investigations as at end (month)(year)* includes the following information: Topic; Complainant; Sections under investigation; Status; Date investigation notified; and Division/Unit [↑](#footnote-ref-74)
74. Link to the Public Service Commission [OIA statistics webpage](https://www.publicservice.govt.nz/guidance/official-information/oia-statistics/). [↑](#footnote-ref-75)
75. I note the Ministry stated it has not charged for OIA requests, but if a charge was fixed that information could be recorded. [↑](#footnote-ref-76)
76. As distinct from media requests for comment or an interview. [↑](#footnote-ref-77)
77. Link to the Public Service Commission [Official Information Forum webpage](https://www.publicservice.govt.nz/guidance/official-information/official-information-forum/). [↑](#footnote-ref-78)
78. See s 9(1) OIA 1982 [↑](#footnote-ref-79)
79. As stated above in [*Internal policies, procedures and resources*](#_OIA_guidance_material), the Ministry should be cautious as reputational risk is not, of itself, a reason to withhold information as per s 9(2) OIA 1982. [↑](#footnote-ref-80)
80. The *Sign-off Sheet* includes boxes to tick if the OIA response is sent to the Minister’s office for consultation or notification. [↑](#footnote-ref-81)
81. See sections 13(1) and 13(3) of the Ombudsmen Act 1975 (OA). [↑](#footnote-ref-82)
82. Formal recommendations under the OA will only be made if the Chief Ombudsman forms an opinion that a decision, recommendation, act, or omission by the agency was unreasonable or contrary to law under section 22 of the OA. [↑](#footnote-ref-83)
83. ‘The Act’ refers to the Official Information Act 1982 [↑](#footnote-ref-84)
84. This indicator is also relevant to performance monitoring and learning. [↑](#footnote-ref-85)