OIA compliance and practice in the Ministry of Transport – Te Manatū Waka

Opinion of the Chief Ombudsman October 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 Transport (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. It also includes information management, public participation, and proactive release of information to the extent that these relate to achieving the purposes of the OIA.

The purpose of the OIA is 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. I considered 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 the 2020 lockdown* (I will refer to this throughout my report as ‘my post-2020 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-2020 lockdown survey’).

# My opinion

I have not identified any conduct by the Ministry that is currently wrong, unreasonable or contrary to law and, as such, I have not made any formal recommendations.[[4]](#footnote-5) Through the investigation process, I have 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.[[5]](#footnote-6) I notified the Ministry of my investigation on 22 November 2019 and I formed my final opinion on 4 October 2021.

I have made 30 suggested actions, which 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 Ministry accepts all of my suggested action points, I refer to the Ministry’s specific responses in the body of the report.

The investigation identified that the Ministry has a generally open culture. I am pleased that the Ministry has launched a more user-friendly website, which will increase transparency for the public. The Ministry has several types of OIA training, including some OIA induction, targeted training and periodic information sessions to groups of staff. A high number of staff reported having completed information management and record keeping training. It is positive that the Ministry has an ‘OIA Hub’, which includes clear and practical OIA-related information. Some improvements have been identified, which will lift the quality of the material still further. The Ministry releases some OIA responses proactively and reported maximum statutory OIA timeframes are usually adhered to.

I was particularly pleased with the Ministry’s response to the COVID-19 pandemic. A high number of staff reported that the Chief Executive’s signals about openness and public engagement more broadly were either strongly or moderately pro-openness. In terms of resources available to fulfil the role, a high number of respondents to the post-2020 lockdown staff survey said they had adequate resources to fulfil their role.

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 to those staff members 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 continuing productive engagement with the Ministry as it works through my suggested actions.



Peter Boshier

Chief Ombudsman

4 October 2021

# Executive summary

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

### Leadership and Culture

Leadership is key to developing and maintaining a strong culture of openness and transparency within an agency. Overall, staff perceived the culture at the Ministry to be generally open and transparent. There were examples of the Chief Executive providing messaging to staff on the importance of OIA requests. In addition, staff survey results suggest the signals sent from leaders about OIA and openness are generally good.

Messaging from agencies to the public about the OIA and openness is also important. The Ministry has some overarching, broad messaging consistent with the OIA’s principle of availability. However, I expect strategic and corporate documents, such as the annual report, to include overarching statements about the Ministry’s commitment to complying with the OIA and openness generally.

The Ministry launched a reformatted website in November 2020, which includes a lot of useful and easy-to-understand content for OIA requesters. However, the webpage does not include information such as: an overarching ‘statement of principle’ about the Ministry’s commitment to complying with the OIA and openness generally; a statement that supporting documents can be requested in a variety of formats; that OIA decisions will be made ‘as soon as reasonably practicable’; and my contact details. I am also concerned that the OIA webpage is two ‘clicks’ from the homepage and is not particularly easy for requesters to locate.

Finally, the Ministry should consider including a timeline of its upcoming consultations. I am pleased the Ministry now explicitly states that submissions may be published. Openness and transparency about the publishing of submissions at the outset is important as it may alter how submitters signal where any personal, commercial or other sensitive information appears in their submission.

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| **Action points: Leadership and culture** |
| 1. Clear messaging to the public in strategic plans and corporate documents about the Ministry’s commitment to complying with the OIA and openness generally
 |
| 1. Add a link to the OIA webpage directly from the website homepage
 |
| 1. Include on the OIA webpage:
* an overarching ‘statement of principle’ outlining the importance of OIA and openness;
* a statement that supporting documentation can be requested in a variety of formats;
* an update to the OIA timeframe to state that OIA decisions will be made ‘as soon as reasonably practicable’; and
* my contact details
 |
| 1. Include a timeline of upcoming consultations on the website
 |

### Organisation structure, staffing and capability

The Ministry operates a ‘decentralised’ model to process OIA requests as the majority of requests are completed by business units. The Ministry undertook an external review of its official correspondence function in 2019, which resulted in a number of proposed ‘work streams’ to address identified issues. The review proposed several model options and the model adopted provided more senior positions in the Official Correspondence team.

Overall, there are some benefits and some vulnerabilities to operating a decentralised model. The Ministry considers that it works well for the size of the organisation and the number of OIA requests it receives. One of the vulnerabilities of the model is that when a number of people across the organisation are responsible for processing OIA requests, individual staff members may process only a handful of OIA requests every year, and it may be difficult for those staff to maintain their knowledge about what to do when handling a request. With this in mind, I encourage the Ministry to continue to review the model to ensure it is fit for purpose and the most efficient operating model for OIA processing at the Ministry.

The Ministry conducts several types of OIA training. It delivers some training on OIA request processes at induction (if it is relevant to the employee’s role); targeted training to new staff when they first receive an OIA request; and periodic information sessions to groups of staff. The Ministry has also started conducting ‘OIA 101’ training for recent graduates. Overall, I think the Ministry does well in the area of OIA training, but there is room for improvement. I am pleased the Ministry has said it will continue to review the OIA education function to refine the OIA training processes and materials. In particular, I would like the Ministry to include information on the OIA into the induction program of all new staff. It should also ensure in-depth OIA training is provided to those processing OIA requests and all senior leaders are attending formalised OIA training on a regular basis.

In terms of training on information management and record keeping, a high number of staff that responded to the initial staff survey said they had received training in the last two years. However, there does not appear to be any refresher training on information management and record keeping. I would encourage the Ministry provide refresher training on a rolling basis to all staff on these topics.

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| **Action points: Organisation structure, staffing and capability** |
| 1. Ensure that regular OIA training is provided to:
* all staff at induction;
* specialised roles such as the Official Correspondence team and those processing OIA requests;
* senior leaders
 |
| 1. Ensure regular refresher training is provided for information management and record keeping
 |

### Internal policies, procedures and resources

The Ministry has an ‘OIA Hub’, which is a ‘one-stop-shop’ for all OIA related information. The OIA Hub includes a wide range of information. I applaud the Ministry for having a wide variety of OIA resources to assist staff, and for the sound content within these resources. On the whole, the guidance provides very clear and practical steps for staff who may not have completed the OIA process before. However, in order to further lift the quality of the material, I suggest the Ministry review its guidance and consider including information on: keeping records of the search for documents; balancing public interest and keeping relevant records; peer review processes; and consultation and notification to the Minister’s office. The Ministry should also consider publishing the OIA guidance material on its website.

The Ministry has comprehensive guidance on information management and record keeping and a Knowledge team that assists in this area. The Ministry’s information management system (TARDIS) was introduced in 2018, it stores and manages both documents and emails. Comments from the initial staff survey were mixed in relation to its effectiveness. I encourage the Ministry to continue to update the training and guidance, as well as review its technology capabilities periodically to ensure they are fit for purpose.

The Ministry proactively releases a range of information, including a number of OIA responses. While the Ministry does have a proactive release process document, which addresses the proactive release of Official Information requests, it does not have an overarching proactive release policy to guide decision making. I encourage the Ministry to develop an overarching proactive release policy that includes information on the publishing of OIA responses. I suggest it review its current guidance on the proactive release of OIA responses to include information on making information accessible and the refusal of OIA requests because information is or will soon be publicly available. I also suggest the Ministry publish its guidance on the website.

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| **Action points: Internal policies, procedures and resources** |
| 1. Review and update OIA guidance material to include more information on:
* keeping records of the search for documents;
* balancing public interest and keeping a record of considerations;
* peer review processes; and
* consultations and notification to the Minister’s office
 |
| 1. Publish the OIA guidance material on the Ministry’s website
 |
| 1. Develop an overarching proactive release policy for the proactive release of any information, and include the publishing of OIA responses as part of the broader proactive release policy
 |
| 1. Review and update the proactive release of OIA responses process document to include further information on:
* making information accessible; and
* refusal of OIA requests because the information requested is or will soon be publicly available (section 18(d) of the OIA)
 |
| 1. Publish the proactive release guidance on the Ministry’s website
 |

### Current practices

To gain an understanding of how the Ministry processes requests, my investigators reviewed a random selection of OIA request files. Overall, the Ministry’s OIA processing appears to be good, but some inconsistencies were identified. I am pleased the progress on OIA requests is tracked and maximum statutory timeframes were usually adhered to. Correspondence was generally of a high standard with some good template letters.

However, there were some vulnerabilities identified in the Ministry’s practices, which have prompted me to suggest remedial actions. It is good practice for the Ministry to ensure OIA acknowledgement emails are sent every time a request is made (unless the request is responded to immediately). Also, acknowledgement letters should include the maximum statutory timeframe to make and communicate a decision on a request. There were some inconsistent record keeping practices identified. For instance, there were no records kept of searches or the balancing of public interest considerations. Records of telephone conversations and meetings were also not provided to my investigators.

I note that graduates complete some OIA requests, which is a good development opportunity for junior staff. However, devolving responsibility for preparing responses to OIA requests too far down the organisational structure risks poor or inconsistent decisions. Junior staff will require further support to ensure their practices are consistent with those across the organisation. Training and guidance can be used to ensure consistent practice, as well as having clear and robust peer review processes. I suggest broadening the review process to ensure those with specialist OIA knowledge (either in the Official Correspondence or Legal team) are reviewing OIA request files and responses before they are provided to the requester. It is also important to keep a record of the review.

Other inconsistencies were identified in the sample file review conducted by my investigators. For instance in one case, an email was included in the file suggesting that some documents in scope were almost entirely replicated in a memorandum, so the documents were not included in the request. However, the requester was not given an opportunity to clarify whether or not to include duplicate documents in the request. In another instance, some information included in an OIA request was refused under s 18(d) and some information was withheld under s 9 of the Act. However, the decision letter stated that the requester could ‘make a complaint about the withholding of information to the Ombudsman’, and it may not have been clear to the requester that they could also complain to the Ombudsman about the information that was refused under the OIA. As outlined in the template decision letter available on my website,[[6]](#footnote-7) I suggest the Ministry include in its response template wording ‘you have the right to seek an investigation and review by the Ombudsman of this decision’.

I am pleased the Ministry publishes some OIA responses on the OIA page of the website and advises requesters in the OIA response letter that their responses will be made public. In addition to publishing some OIA responses, the Ministry releases a variety of other information proactively. I urge the Ministry to continue to increase the number of documents it publishes proactively and to ensure it has the resources in place to allow growth in this important area.

In terms of timeliness, the Ministry’s reported percentage of OIA requests completed within the maximum statutory time limit has remained relatively stable for the last three reporting years. There is still some way to go for the Ministry to reach its 100 percent target.

During the COVID-19 2020 lockdown, there were no changes to the prioritisation of OIA requests and the Ministry updated its guidance in line with advice issued by me and from the Solicitor-General. The post-2020 lockdown staff survey results suggest the messages sent by the Chief Executive regarding OIA and openness during the 2020 lockdown period were heard by staff. There were also some positive changes that occurred as a result of the 2020 lockdown for the Ministry. For instance, hard copy documents were not sent to the Minister’s office, just electronic copies were accepted. If this practice works well for the Ministry, I urge it to consider continuing the practice, with agreement from the relevant Minister’s office.

My investigation considered the Ministry’s interactions with the Minister’s office on OIA requests. The current procedure allows five working days for the Minister’s office to review responses, at the Minister’s request. Approximately 46 percent of Chief Executive OIA requests were sent to the Minister’s office in the 2019/20 financial year. It is permissible for agencies to provide 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 absolve the agency of its responsibility for complying with the statutory timeliness requirements. The recognised need for a department to inform its Minister under ‘*no surprises’* may be met by giving a copy of the decision to the Minister at the same time, or shortly before, it is sent to the requester. One way agencies can ensure best practice, is by having a clear written agreement in place with Minister’s offices. I also encourage the Ministry to conduct a review of the process to notify the Minister of OIA responses to ensure the practice is occurring on a case-by-case basis, and does not interfere with the statutory obligation to make and communicate the decision as soon as reasonably practicable. It should also ensure all ministerial interactions are recorded.

Requests to media teams for information are subject to the OIA. Media teams receive any number of requests from journalists, including requests for information already held by the agency (which are OIA requests) or requests for the Ministry to generate comment on a particular issue (which are not OIA requests). To gain an understanding of the Ministry’s processing of media information requests, my investigators reviewed a random selection of media request documents. The majority of requests were answered in full, but a small number were not.

It is imperative that agencies have a clear policy on how they will consider media information requests. I encourage the Ministry to update its OIA guidance to include details such as the circumstances in which an information request from the media is passed to the Official Correspondence team to deal with. The guidance should also have information about requests refused by the Engagement and Communications team, to ensure compliance with the legal obligation to provide the reason for the refusal and the applicant’s right to complain to the Ombudsman. Once updated, the Ministry would benefit from proactively releasing the relevant guidance document. Targeted training to the Engagement and Communications team on the OIA, along with messaging from senior leaders, would also be beneficial.

Agencies should publish 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 could preclude the use of screen readers. It may also make the information less easy to use generally, by limiting the ability to search documents by keyword. During the course of the investigation, the Ministry updated its website. It said that the format of the new website requires published OIA responses to include a brief description of the PDF document, which improves searchability and makes the information more accessible via search engine. However, my investigators reviewed a number of recently proactively published OIA responses on the Ministry’s webpage and a number of those reviewed were partially searchable with some pages that were an ‘image only*’* format. I encourage the Ministry to ensure all documents released in response to an OIA request or proactively released are searchable and not ‘image only’, and all visual elements are tagged with alternative text.

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| **Action points: Current practices** |
| 1. Ensure every OIA request is acknowledged; consider updating the acknowledgement to include the information requested and an explanation that an extension will be notified if a decision cannot be made and communicated within the 20 working day maximum statutory timeframe
 |
| 1. Review practices in relation to searching and keep a record of searches
 |
| 1. Keep a record of decision making, including the balancing of public interest considerations against the need to withhold information
 |
| 1. Amend OIA record keeping practices to ensure full and accurate records of substantive correspondence (including telephone conversations, meetings and verbal discussions) are created and maintained
 |
| 1. Ensure OIA responses are reviewed by an OIA specialist in either the Official Correspondence team or Legal team, and keep a record of the review
 |
| 1. Ensure all documents in scope are included in a request, or give the requester an opportunity to clarify the scope of the request (even if documents are largely duplicated in other documents)
 |
| 1. Ensure requesters are advised of their right to complain to the Ombudsman about reviewable OIA decisions
 |
| 1. Develop a written agreement with the Minister’s office on handling agency OIA requests
 |
| 1. Conduct a review of the process to notify or FYI the Minister of OIA responses to ensure the practice is occurring on a case-by-case basis and does not interfere with the statutory obligation to make and communicate the decision as soon as reasonably practicable
 |
| 1. Ensure a full and accurate record is kept of interactions with the Minister’s office
 |
| 1. Update the OIA guidance to include detail on media information requests, and consider publishing the guidance
 |
| 1. Keep a record of all substantive communications with requesters, including telephone conversations and meetings
 |
| 1. Provide targeted OIA training to the Engagement and Communications team
 |
| 1. Ensure all documents released in response to an OIA request, or proactively released, are searchable and not ‘image only’, and all visual elements are tagged with alternative text
 |

### Performance monitoring and learning

The Ministry records information on OIA requests in an ‘OIA Tracking Sheet’. This Excel spreadsheet captures a variety of information for each request, and is mostly focused on tracking the progress of work to respond to the request. I am pleased the Ministry has introduced a workflow tool that tracks the progress of OIA requests, and that improvements to data collection and reporting were considered as part of the Ministry’s official correspondence review. However, I encourage the Ministry to expand the range of data it collects and improve details in regular reporting to senior leaders. The Ministry should also consider including OIA requests received by the Financial, Economic and Statistical Analysis Team and the Communications Team in OIA statistical reporting.

The Ministry does have a peer review process in place for responses but I suggest broadening the process to ensure an OIA specialist reviews requests. The Ministry does not have a formalised post-closure quality assurance process. I urge the Ministry to consider developing a formal quality assurance process for completed OIA requests.

I am pleased that the Ministry advised that Ombudsman complaints are processed by its Legal team and investigation outcomes are shared with the team responsible for the OIA request that is the subject of investigation. However, the Ministry did not provide an example where an Ombudsman decision had informed a change in practice. The Ministry would benefit from formalising these processes to ensure investigation outcomes, case notes and my guidance are incorporated into the Ministry’s practices and guidance where relevant.

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| **Action points: Performance monitoring and learning** |
| 1. Collect further qualitative data on the handling of OIA requests
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| 1. Improve details in regular reporting of statistics to senior leadership
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| 1. Include official information requests handled by the Financial, Economic and Statistical Analysis Team and the Engagement and Communications Team in OIA statistical reporting
 |
| 1. Develop a formal quality assurance process for completed OIA requests
 |
| 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. They should champion positive engagement with those who want to know and understand what work they are doing, and enable compliance with the principle, 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 staff

The senior leadership team includes the Chief Executive, four Deputy Chief Executives, a Director and the Chief Financial Officer. Overall, information gathered from the staff surveys and meetings indicates that the Ministry’s senior leadership team is supportive of the purposes and principle of the OIA and the culture is generally open and transparent.

As part of the investigation, I conducted surveys of Ministry staff in early 2020 (initial staff survey) and following the COVID-19 2020 lockdown (post-2020 lockdown staff survey). In the initial staff survey, Ministry staff were asked about their impression of the Ministry’s overall commitment to openness and public participation and 95 percent of respondents said they considered the Ministry to be either strongly or moderately pro-openness. Many of the comments from the initial staff survey also indicate that staff consider the organisation to be generally open. Some examples of the comments are:

The OIA is part of our core business and is given great priority.

Highly committed to openness - we can't succeed without it.

When staff were asked about the signals sent by leaders about the OIA, openness and public engagement more broadly, respondents to the initial staff survey gave the following answers:

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

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| --- | --- | --- | --- |
| Leadership level | Strongly or moderately pro-disclosure | ‘They are silent on the issue’ or ‘I don’t know’ | Strongly or moderately anti-disclosure |
| Chief Executive | 66% | 34% | 0% |
| Deputy Secretaries | 69% | 28% | 3% |
| Immediate Manager | 90% | 8% | 2% |

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 | Strongly or moderately pro-openness | ‘They are silent on the issue’ or ‘I don’t know’ | Strongly or moderately anti-openness |
| Chief Executive | 87% | 13% | 0% |
| Deputy Secretaries | 77% | 23% | 0% |
| Immediate Manager | 90% | 8% | 2% |

Overall, the Ministry’s staff ratings on the signals sent by leaders on OIA and openness were higher than average, compared to the other agencies surveyed. The average ratings from staff across all twelve agencies were:

* 56 percent of staff across all agencies said the signals sent by their Chief Executive are strongly or moderately pro-disclosure under the OIA.
* 76 percent of staff across all agencies said the signals sent by their Chief Executive are strongly or moderately pro-openness and public engagement more broadly.
* 58 percent of staff across all agencies said the signals sent by Deputy Secretaries are strongly or moderately pro-disclosure under the OIA.
* 69 percent of staff across all agencies said the signals sent by Deputy Secretaries are strongly or moderately pro-openness and public engagement more broadly.

The positive results from the initial staff survey indicate that the messaging on openness is strong. However, there may be less specific messaging from the Chief Executive on the OIA. I note that 34 percent of staff indicated they did not know, or considered the Chief Executive’s signals on the OIA to be ‘silent’. This indicates that further messaging from the Chief Executive on the importance of the OIA would be valuable to a number of staff.

The message from staff meetings on the culture of the organisation also reflected that it is a generally open agency that values the OIA. One meeting attendee said the advantage of a small agency is that the Chief Executive can hold a fortnightly ‘stand-up’ meeting where staff from the entire agency gather to discuss issues. They said there are ‘no issues of the message getting lost through filtering down though the tiers’. The meeting attendee said the Chief Executive had used this forum to highlight good practice in relation to OIA requests in the past, which gave the message that it is ‘important and valued work’. Another staff meeting attendee said it is a ‘close and trusting culture’.

I am heartened that the Chief Executive recognised the importance of performing well on OIA requests by sending an internal email to all Managers and the Senior Leadership Team that said ‘OIAs are one of our highly visible performance statistics… as I’ve said before if we are seen as a poor performer on these, it leaks into people’s view of our policy advice performance’. I am pleased the Chief Executive recognised the broader importance of OIA requests in terms of reputational risk to the organisation. Good OIA performance not only reflects well on agencies, but promotes transparency and facilitates effective participation of the public in government decisions.

### Messaging to the public

Ideally, I would like to see agencies provide strong messages to the public in support of the OIA and openness more generally. External messages can come in many forms, for instance, strategic plans and corporate documents should include clear commitments to openness, transparency and the availability of official information. The Ministry has a statement on its webpage that lists ministerial briefings that states ‘we proactively release lists of transport material that the Minister of Transport has seen as part of our ongoing commitment to openness and transparency’. The website’s transparency statement also states ‘we have an ongoing commitment to openness and transparency and publish information considered to be of interest to the public’.

The Ministry publishes OIA response standards and its performance measures in the annual report. The 2019-20 annual report states that in 2019, 91 percent of official information requests to the Ministry were replied to within maximum statutory timeframes. In 2020, 95 percent of requests were responded to in the maximum statutory timeframe, and the 2020 standard or target is 100 percent. I commend this as all agencies should have 100 percent as their standard timeliness target, given this is measuring compliance with a legal obligation.

It is encouraging that the website includes some overarching and broad messaging, which is consistent with the OIA’s principle of availability, and the annual report includes some OIA performance measures. However, I expect strategy and corporate documents, such as the annual report, to include overarching statements about the Ministry’s commitment to complying with the OIA and about openness generally. As it stands, the Ministry is currently missing an opportunity to communicate these objectives to the public. Explicit recognition of the OIA’s purposes, principle and requirements would further enhance the Ministry’s strategic documents.

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| Action point  |
| Clear messaging to the public in strategic plans and corporate documents about the Ministry’s commitment to complying with the OIA and openness generally |

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| **The Ministry’s response**The Ministry stated:I have noted your comments regarding making our openness messaging more explicit to the public and acknowledge that we could be more proactive in this space. I have asked the Ministerial Services team to look at ensuring these messages are included in our corporate documents going forward. I look forward to following up on the Ministry’s progress. |

### OIA webpage

The Ministry launched a reformatted website in November 2020. When developing the new website, the Ministry stated it engaged with stakeholders to ensure the new site would provide easy access to the types of information that users are seeking. The consultation included members of the media who are regular OIA requesters.

The website includes an OIA webpage that is two ‘clicks’ from the homepage.[[7]](#footnote-8) There is useful and easy-to-understand content on the website for requesters, including:

* What information you can request under the OIA (including a link to the Act) and steps to take before you make an OIA request. There are email addresses to other agencies, and a link to the Ministry of Justice’s Directory of Official Information.
* How to make an OIA request – by email, telephone or in writing. Links to the Ombudsman’s website on making an OIA request are also included.
* Getting a response – sets out expected timeframes. The website states a request should be acknowledged in one day, clarified within seven days, and a response due in 20 working days. The website includes details on transferring requests and extending requests due to substantial collation or considerable collaboration.
* Withholding information – link included to section 9 of the OIA.
* Complaining about a response – states requesters can complain to the Ombudsman. However, no contact details are included on the website. The link on ‘how to make a complaint’ directs the user to section 9 of the OIA.
* Published OIA responses – OIA responses are published when they are likely to be of public interest. There is a link to the published OIA responses included on the webpage.

It is commendable that the Ministry has provided clear and structured guidance on making a request. It is helpful for people to understand the most relevant agency they can request information from and providing a link to the Ministry of Justice’s [*Directory of Information*](https://www.justice.govt.nz/about/official-information-act-requests/directory-of-official-information/) will further aid requesters to make a request. The Ministry also stated that the website has improved search functionality, which is commendable, especially considering the publishing of OIA requests and increased proactive disclosure of information, which is discussed below in [*Proactive release of information*](#_Proactive_release_of_2).

In order to further enhance the OIA webpage, I suggest making the following improvements:

* The OIA page is currently two ‘clicks’ from the homepage. Users of the website are required to go to the ‘contact us’ section in order to ‘make an information request’. I do not consider this to be an intuitive process for most requesters. I strongly urge the Ministry to have a link to the OIA webpage directly on the homepage.
* Include a ‘statement of principle’ on the OIA page, outlining the importance of the OIA and openness.
* The website states that when making a request, requesters need to tell the Ministry ‘how you want to receive the response, for example by email or post’. As discussed below in [*Accessibility and usability of official information releases*](#_Accessibility_and_usability), agencies should publish information in a format that accommodates the use of assistive technology. Some requesters may find other formats more accessible for a number of reasons. I would like the website to signal to requesters that they can request information in a variety of formats.
* The OIA timeframe currently states a response will take 20 working days. However, the OIA states that a decision is to be made ‘as soon as reasonably practicable’, and in any case not later than 20 working days after the request is received.[[8]](#footnote-9) I consider this to be an important distinction to be made on the website.
* Currently, my contact details are not included on the website. The link on the website titled ‘How to make a complaint’ is a hyperlink to the OIA on the New Zealand Legislation website. Although a link to the legislation is useful, it would also be appropriate to include a hyperlink to my guide called ‘[*Making official information requests: A guide for requesters*](https://www.ombudsman.parliament.nz/resources/making-official-information-requests-guide-requesters)’, and a link to my website for contact details on making a complaint.
* The Ministry’s information guidance documents are not published on its webpage. Publishing internal OIA resources on the OIA webpage would allow the Ministry to explain its internal functions and operations when responding to OIA requests. This would provide requesters with a better understanding of its processes when an OIA request is received. This issue is also discussed in [*OIA guidance material*](#_OIA_guidance_material_1).

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| Action points  |
| Add a link to the OIA webpage directly from the website homepage  |
| Include on the OIA webpage:* an overarching ‘statement of principle’ outlining the importance of OIA and openness;
* a statement that supporting documentation can be requested in a variety of formats;
* update the OIA timeframe to state that OIA decisions will be made ‘as soon as reasonably practicable’; and
* my contact details
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| **The Ministry’s response**The Ministry stated:I also appreciated your comments on the clarity of our OIA guidance on the website, and your suggestions for improvement, including regarding the OIA link on the homepage, and making sure we link to the guide you have produced for requesters. I have raised this with the Manager, Engagement and Communications to progress. I look forward to following up on the Ministry’s progress. |

### Public consultation

Previously, the Ministry included a timeline for publications and engagement on its website. However, the Ministry states it no longer maintains information in this format because site analysis indicated there was low usage of the page. The Ministry states that from January to September 2018, there were only 197 visits to the page, which equated to 0.02% of visits to the site. It was decided the benefit of publishing was not sufficient given the resource needed to maintain the content.

The structure of the Ministry’s new website is such that it does not have a landing page for consultations, but they remain easy to access from the homepage. The webpage outlines all open consultations, upcoming consultations and closed consultations. However, there were no consultations listed as ‘upcoming consultations’ at the time of writing. It is not clear what the time period is for upcoming consultations to be included on the website, i.e. how far in advance upcoming consultations are listed.

I am pleased the Ministry conducted research to ascertain the feasibility of maintaining the previous timeline on engagement and publications before removing the information from its website. However, I consider it would be beneficial for the public to have clear information about the timeline for upcoming consultations. I am not suggesting the Ministry reverts to the previous timeline, but it may be as simple as adding approximate dates to the upcoming consultations. As outlined below in [*Proactive release of information*](#_Proactive_release_of), it is also desirable to have information on the frequency and timing of the release of information.

I am pleased that each consultation has a clear and concise statement regarding how the submission will be treated under the OIA, the Privacy Act and the public records act. It states:

We will publish a summary of submissions after the engagement period has closed and submissions have been analysed. If you do not want your name or any identifying information to be included in anything we publish (including because you believe your comments are commercially sensitive) please indicate this clearly in your submission.

Openness and transparency about the publishing of submissions at the outset is important as it may alter how submitters signal where any personal, commercial or other sensitive information appears in their submission. I am pleased the Ministry now explicitly states this to submitters.

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| Action point  |
| Include a timeline of upcoming consultations on the website |

# 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 it had:

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

### Model for handling OIA requests

The Ministry operates what it calls a ‘decentralised’ model of processing OIA requests as the majority of OIA requests are completed by business units. The Ministry has an Official Correspondence team, which sits in the Ministerial Services unit. The Official Correspondence team logs and acknowledges OIA requests and assigns them to the relevant business unit to process.[[9]](#footnote-10)

The Ministry undertook an external review of its official correspondence function in 2019. Three separate ‘work streams’ resulted from the review: organisational structure, reviewing processes and a proposed review of the supporting technology. The new Official Correspondence team structure came into effect in January 2020, the review of processes was finalised in November 2020 and the technology review was delayed due to COVID-19.

The 2019 review of the Official Correspondence operating model proposed several model options, including keeping the current model, moving to a greater centralised model with more resource, or moving to a fully decentralised model. The consulting group recommended a move to greater centralisation with additional resourcing. The Senior Leadership team decided to move to a model that was not articulated in the review report. The model agreed on provided more senior positions to lead the Official Correspondence team. The team now has a team leader, senior advisor and advisor.

The Ministerial Services area has increased by three staff members since the review and capacity in the Official Correspondence team increased from three to five. One meeting attendee said there is a focus on making this team more of a ‘knowledge centre’. The Ministry states that the current model allows the Official Correspondence team to take the lead from a strategic and operational perspective, and provide guidance and support for the processing of OIA requests. The Ministry stated that the development of specialist content occurs from the relevant business unit, which is responsible for processing the OIA request.

The Ministry states that while the majority of OIA requests go to business units to complete, the Official Correspondence team does complete the cross-team OIA requests and those that require a consolidated or consistent approach. Prior to the review, one business area would have taken the lead on the cross-team OIA requests, whereas these are now completed by the Official Correspondence team.

A meeting attendee said the Ministry’s recent graduates complete OIA requests because it is a good way for new recruits to learn about the work of the Ministry and to embed an ‘OIA philosophy’ early. They said the Official Correspondence team assists with the training. Another meeting attendee said they have recently started conducting ‘OIA 101’ training for new graduates. This is discussed below in [*OIA training*](#_OIA_training).

Overall, there are some benefits and some vulnerabilities to operating a decentralised model. The Ministry considers that it works well for the size of the organisation and the number of OIA requests it receives. However, multiple people across the organisation are responsible for processing OIA requests. While there are some benefits to having so many individuals working on these requests, there are also potential risks. For instance, each staff member may only receive a few OIA requests per year to process. This may make it difficult to maintain knowledge on the processing of requests, such as the application of withholding grounds and public interest considerations. As discussed in [*OIA practices*](#_OIA_practices), some inconsistencies have been identified in the Ministry’s OIA processing, which could be alleviated by having a centralised approach and more OIA specialists processing requests.

In order for the decentralised model to work well, a number of staff need to have a greater knowledge of the OIA. I am pleased the Ministry acknowledges this and the Official Correspondence and Legal teams are available for support. Staff that do not respond to OIA requests regularly will be reliant on good quality advice and resources to guide them. One meeting attendee said one benefit to having a more devolved model is that most people can complete OIA requests across the whole Ministry. However, a downside is that the burden can be uneven across teams. A decentralised or devolved model for handling requests needs good guidance in place to ensure continuity between those processing OIA requests (see [*OIA guidance material*](#_OIA_guidance_material)) and training (see [*OIA training*](#_OIA_training)). Broadening the review process to ensure those with specialist OIA knowledge (either in the Official Correspondence or Legal team) are reviewing OIA request files would also mitigate against inconsistencies. See [*OIA practices*](#_OIA_practices) for further details.

The Ministry states that the new Official Correspondence team has been in place for over 12 months, and the increased staffing has had a positive effect. I encourage the Ministry to continue to review the Ministry’s model to ensure it is fit for purpose, and the most effective operating model for OIA processing at the Ministry.

### OIA training

TheNot a Game of Hide and Seek investigation outlined that an effective training framework should encompass:[[10]](#footnote-11)

* 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 Ministry conducts several types of training. It delivers some training on OIA request processes at induction (if it is relevant to the employee’s role); targeted training to new staff when they first receive an OIA request; and periodic information sessions to groups of staff. The Ministry has also started conducting ‘OIA 101’ training for recent graduates. Each of these training initiatives is discussed in more detail below.

The Ministry states it had previously provided separate OIA content sessions as part of the induction programme. However, a staff meeting attendee said the Ministry now considers training to be more effective for new employees when it is provided alongside the processing of an OIA request. This allows training to be targeted depending on an individual’s role in relation to OIA requests. One meeting attendee said when they train on OIA content alongside a staff member completing their first OIA request, it helps the trainee to ‘absorb’ the information better and helps stop the ‘crush’ of training when someone initially starts.

The Ministry said the new OIA model and additional resources in the Official Correspondence team has meant an increased focus on training staff in the business units on the OIA. With a decentralised model, increased staff training is imperative. The Ministry states the Official Correspondence team has focussed heavily on training and inductions for Ministry staff during 2020, delivering these both in person and virtually during the 2020 lockdown.

The Ministry provided an overview presentation on OIA requests, called ‘Talking OIAs’, which it presents to staff when it is relevant to their role. I am pleased the presentation includes an overarching statement about the purposes of the OIA, to enable effective participation by the community and to promote accountability. It also stipulates the OIA’s ‘principle of availability’ located in section 5 of the Act, which is that ‘information shall be made available unless there is good reason for withholding it’. The presentation gives a broad overview of the method, basic steps, where to go for assistance and goes through some ‘current glitches’.

However, some improvements could be made to the presentation to ensure staff are adhering to the OIA. The module states to be ‘clear about your deadlines’ but does not go into detail about the OIA stating a decision is to be made ‘as soon as reasonably practicable, and in any case not later than 20 working days’.[[11]](#footnote-12) The presentation does not include details on conclusive reasons for withholding official information (section 6 of the OIA); withholding information for other reasons (section 9 of the OIA); and that information withheld under section 9 must be weighed with other considerations which may render it desirable in the public interest to be made available.[[12]](#footnote-13) I understand the need to make training presentations brief and accessible to all staff. However, adding further detail into the presentation would give staff a more accurate understanding of the OIA process.

The Ministry has developed and delivers OIA training to its graduate cohort. The training is titled ‘OIA 101’ and provides an overview of the OIA, including the history of the OIA, why it matters, the grounds for withholding, numbers of OIA requests and a flow chart of the OIA process. It also covers what to watch out for, proactive release and reporting. I am pleased the training states that Skype and Microsoft Team chats can be included in an OIA request. I consider this training to be a good introduction to the principle and application of the official information legislation for new public servants, and indeed would be of use to experienced staff as well.

It is positive that a high number of initial staff survey respondents reported receiving OIA training or refresher training. Approximately 56 percent of initial staff survey respondents said they had training within the last year and 11 percent said they had training 1-2 years ago. It is also pleasing that only 14 percent of survey respondents said they had received no training on the OIA.

When asked about the type of OIA training they received, 53 percent of respondents said the OIA was mentioned during induction. Approximately 61 percent of respondents said they received a broad overview of the OIA and 53 percent said they had received a general refresher. This is a relatively high percentage of respondents who had received refreshers. I do note, however, that only eight percent of respondents said they had received specialist training. One meeting attendee said specialised OIA content training used to be conducted by the Legal team. However, they stopped running it because they started running joint sessions between the Official Correspondence and Legal teams every six months.

Overall, I think the Ministry does well in the area of OIA training. I am pleased the Ministry has said it will continue to review the OIA education function to refine the OIA training processes and materials. However, I would like the Ministry to include information on the OIA into the induction program of all new staff. Information on the OIA is currently only included in induction where it is considered relevant to the staff member’s role. I consider the OIA to be relevant to all government employees. Even if the staff member is not involved in OIA processing, all staff are creating information and could potentially receive a request for information. They should ensure they are storing information correctly, as it might be subject to an OIA request. It is imperative for all staff to know about the Act in order to ensure compliance when dealing with official information.

I also note that the Ministry did not provide evidence of conducting OIA training to senior leaders. I encourage the Ministry to introduce formalised OIA training to all senior leaders on a regular basis. It would send a clear message that senior leaders are committed to the principles and purposes of the Act, and will more adequately equip them to apply OIA provisions appropriately. It demonstrates, from the top, that responding to OIA requests is core business and should be prioritised.

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 that regular OIA training is provided to:* all staff at induction;
* specialised roles such as the Official Correspondence team and those processing OIA requests;
* senior leaders.
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### 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.

The Ministry’s electronic document and records management system is called TARDIS. As outlined in the section below, [*Information management and record keeping policies and guidance*](#_Information_management_and), staff are required to use this system wherever possible.

It is positive that 95 percent of initial staff survey respondents said they received information management and record keeping training in the last two years. This is an excellent result and should be a target other agencies strive for. However, I note that only 30 percent of staff survey respondents said they had received refresher training in the last year.

The Ministry provided a power point slide, which is used for induction training, titled Knowledge resources at the Ministry. The presentation introduces new staff to the knowledge resources they have available and gives an overview on how the Ministry manages its work. I am pleased the presentation connects record keeping to OIA requests by stating ‘makes OIA responses SO much easier’. It also states that good record keeping is a requirement for central government employees under the Public Records Act 2005. The PowerPoint presentation is not very detailed, but provides a sound overarching training framework. I encourage the Ministry to ensure when the training is undertaken, the trainer discusses the OIA and Public Records Act in detail with attendees.

The Ministry also provides more in depth training as required. For instance, when the new Information Management system was introduced, training was incorporated as part of the roll out. Some comments from the initial staff survey include:

We introduced a new document management system, so in depth training was provided as part of that.

We had training on how to use the new IM system - and had key point people in our teams if there were questions on how to use it.

We adopted a new document management system a couple of years ago, which necessitated in-depth training at the time.

It is positive that nearly all staff have received information management training. However, it is not clear that there is regular refresher training on information management and record keeping. I would encourage the Ministry provide refresher training on a rolling basis to all staff on these topics.

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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:[Training] is an area that we are consistently trying to improve on, and it continues to be on the Ministerial Services team’s work plan. The team will continue to provide induction and refresher training, and will be exploring developing a training session for my leadership team.I look forward to following up on the Ministry’s progress. |

# Internal policies, procedures and resources

As a matter of good practice, I expect the Ministry to adopt 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

The Ministry has an ‘OIA Hub’, which is a ‘one-stop-shop’ for all OIA related information. The OIA Hub includes a wide range of material such as:

* an introduction, quick checklist, Minister OIAs, Chief Executive OIAs;
* clarifying the request and assembling the information;
* ‘How long have I got’ – including information on requests for urgency;
* transferring an OIA request, guide to charging;
* refusal of requests - including information on sections 6 and 9 of the OIA;
* a review of an OIA request by the Ombudsman;
* legal FAQs;
* consultation with other parties; and
* proactive publication of responses to OI requests – process (discussed below in [*Proactive release of information guidance*](#_Proactive_release_of_1)).

I applaud the Ministry for having a wide variety of OIA resources to assist staff, and for the sound content within these resources. On the whole, the guidance provides very clear and practical steps for staff who may not have completed the OIA process before.

A number of particularly good practices, and some issues, were identified when the guidance was considered. For instance, the guidance on Chief Executive OIAs includes a timeline for responding to Chief Executive OIA requests. I suggest the section includes details of section 15 of the OIA, which states decisions on requests are to be made ‘as soon as reasonably practicable’.

It is positive that the Introduction guidance states that not all OIA responses are to be provided to the Minister’s office as part of ‘no surprises’. However, the guidance differentiates between ‘routine requests’ and ‘formal requests’. It states routine requests are for published information and ‘do not usually warrant being formally recorded as OIA requests even if the request specifically refers to the OIA’. I urge the Ministry to reconsider this advice as all requests for information are official information requests and should adhere to the OIA. In addition, having an accurate record of what information the public is routinely requesting means the Ministry will be better equipped to identify opportunities for proactive disclosure.

It is positive that the Introduction section states that the principle of availability underpins the whole Act. It states ‘all information shall be made available unless there is good reason for withholding it’. The Introduction explicitly advises OIA practitioners to help requesters to clarify requests. I am pleased that it states ‘a simple phone call can often resolve any ambiguity’. I am also pleased it states ‘note: always keep a record of the conversation including time, date and agreed outcome. Record any updates in the ‘status/comments/reasons for delays’ column of the OIA tracking sheet’. It is excellent that the policy explicitly outlines the importance of keeping records of conversations.

It is good that the guidance on Clarifying the request and assembling states that ‘it is not possible to make a proper decision about whether to release or withhold any information without having it in front of you to assess’. However, the guidance also states ‘if the request is vague or difficult to understand you should consider asking the person to put the request in writing’. I am concerned this confuses clarifying the request with dealing with an oral request.

The guidance titled ‘How long have I got’, states ‘the statutory obligation is to answer all requests ‘*as soon as reasonably practicable’* and the section gives some detail about requests for urgency. The section titled ‘Refusal of requests’ goes through each sub-section of section 18 of the Act, including details on refusing a request if the information is or will soon be publicly available; when the information does not exist, the information cannot be found, if there is substantial collation, if information is not held, the request is frivolous or vexatious or trivial. I am pleased the guidance states that if the Ministry is unable to locate documents after a reasonable effort to locate they should consult with the requester to clarify. I encourage the Ministry to include information on saving the details of the search for documents. I am also pleased the guidance states that when administrative reasons are used to refuse information, requesters must still be told they can seek a review by the Ombudsman of that refusal.

The guidance on Substantive refusals goes through a number of the withholding grounds, giving good explanations and links to Ombudsman guidance. It is positive there is a section on consideration of public interest, which states consideration should be given to promote overall public good. I urge the Ministry to include details on how to balance public interest and recording the public interest considerations. It is also positive that the sub-section on personal privacy advises to contact the person affected to seek their view on the release of the information. It states the individual’s view is just one factor to weigh and does not necessarily ‘veto’ or prevent the release of the information.

The OIA quick checklist gives a brief list to remind those processing OIA requests of the steps. I encourage the Ministry to include a step ensuring public interest considerations have been considered.

I also encourage the Ministry to include further information and clarity in its guidance around peer review. It should be clearly stipulated which positions are responsible for checking the requests for consistency and the correct application of the OIA. As discussed below in [*OIA practices*](#_OIA_practices), it is important that decentralised models for processing OIA requests include a step where an ‘OIA specialist’ reviews the responses.

As discussed in [*Ministerial interactions on OIA requests*](#_Ministerial_interactions_on), the guidance material does not differentiate between:

* consultation with the Minister – where the Minister’s input on an OIA request is required, and the agency’s decision on that request might legitimately be delayed until that reasonably be obtained;[[13]](#footnote-14) and
* notification of the agency’s decision on an OIA request to the Minister - which is done for the Minister’s information only, at the same time or shortly before the decision is conveyed to the requester.

I urge the Ministry to add more information to its guide on consultation and notification to Ministers. I encourage the Ministry to ensure its practice is consistent with my guidance [*Dealing with OIA requests involving Ministers*](https://www.ombudsman.parliament.nz/sites/default/files/2019-08/OIA%20requests%20involving%20Ministers%20August%202019.pdf). I suggest making these changes in addition to developing a written agreement between the agency and relevant Ministers outlining the various processes and expectations in relation to OIA requests.

Staff were asked about the Ministry’s OIA guidance in my initial staff survey. Of those who responded, 86 percent said it was ‘somewhat or very easy to find/access policy and guidance materials’ and 75 percent said it was ‘somewhat or very easy to understand/use policy and guidance materials’.[[14]](#footnote-15) This is a good result that indicates staff generally consider the Ministry’s OIA resources to be accessible and user-friendly.

The Ministry states it is undertaking an Official Correspondence review and developing more in-depth information and advice for staff. There is an opportunity for the Ministry to further update its OIA resources in line with the suggestions above, 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 staff are also available to review OIA resources.

I encourage the Ministry to publish the updated OIA guidance document on its website. Guidance which is used to make agencies more open and accountable to the public should, in turn, be made available to the public.

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| Action points  |
| Review and update OIA guidance material to include more information on:* keeping records of the search for documents;
* balancing public interest and keeping a record of considerations;
* peer review processes; and
* consultation and notification to the Minister’s office
 |
| Publish the OIA guidance material on the Ministry’s website |

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

The Ministry has comprehensive guidance on information management and record keeping, including the Records and Information Management Policy and a guidance document called Filing and record keeping guidance. There is also a Knowledge team that assists with information management and record keeping.

The Records and Information Management Policy clearly outlines the purpose, scope, principles and guidelines of the management of records. I am pleased that the policy includes a matrix of roles and responsibilities for staff at all levels. It includes definitions and has ownership and date for next review.

The Ministry’s filing guidance describes who is responsible for keeping records. I am pleased the document outlines the person responsible for filing a document to reduce the risk of information being duplicated. For instance, it states that ‘internal documents, those originating from within the MOT are filed by the author. External documents, those originating from another organisation, are filed by the original receiver’. It also describes where information should be filed and includes detail on how to file phone calls and text messages.

In order to further improve the information management and record keeping guidance, the Ministry should consider including overarching statements on good record keeping being integral to compliance with the OIA.

### Information management system

The Ministry introduced a new information management system called TARDIS in 2018, which stores and manages both documents and emails.

When staff were asked about the information management system at the Ministry, 85 percent of respondents said there is one centralised system for records storage. This result is very good, and indicates that generally the information management system is user friendly for staff. However, the comments from the staff survey were mixed, a selection of comments include:

Unless you personally know where information is, it can be very hard to find. …

It is helpful that we have one centralised information system, however, unless you have the specific title of the document it can be a little difficult to navigate and find the relevant information. …

There are lingering problems with TARDIS as a document management and workflow management system

It is difficult to know whether the issues raised are due to lack of training or an issue with the system. I am pleased that the Ministry states it has a Records Management Advisor, who works with and trains staff on TARDIS. As outlined in the section above, [*Information management and record keeping training*](#_Information_management_and_1), a high proportion of staff survey respondents reported completing training.

As discussed in [*Model for handling OIA requests*](#_Model_for_handling), the Ministry undertook a review of its Official Correspondence function that resulted in three ‘work streams’. One of the work streams was a review of OIA processes. The Ministry advised it had undertaken the process review, which was completed at the end of November 2020. A copy of the process review was requested and the Ministry stated:

The process review ended up taking a slightly different approach from what was initially envisaged. The outputs were a series of process maps and associated descriptions of our OC processes which we are planning to use to revamp and update our training and guidance material. This piece of work hasn’t yet begun however, although we are looking at starting that shortly.

I encourage the Ministry to continue to update the training and guidance material as suggested by the process review.

The Ministry also advised it was conducting a review of its technology. However, it has since informed me that it will not be progressing a review of technology until it has fully considered the results from the process review. The Ministry said it is ‘very keen to make sure that any technology change reflects our processes, and that our technology is not driving our processes’. The Ministry has advised that any changes to its technology capabilities will likely be incremental rather than looking for a new solution. It intends to continue to operate with the existing workflow tools which it states are working well.

I am heartened that the Ministry states there is potential to make iterative improvements to its technology capabilities and the workflows are reviewed and refined on a regular basis. I suggest the Ministry consider my investigation when making changes, to ensure it considers compliance with the OIA when making improvements.

### Proactive release of official information guidance

The Ministry proactively releases a range of information, including a number of OIA responses, which is discussed below in [*Proactive release of information*](#_Proactive_release_of). While the Ministry does have a proactive release process document, which addresses the proactive release of Official Information requests, it does not have an overarching proactive release policy to guide decision making. Proactive release is not only about the publishing of responses to OIA requests. A range of information can and should be released publicly. Information on the publishing of OIA responses can be one part of a broader proactive release policy.

It is positive that the Ministry has the ‘Proactive publication of responses to Official Information Act requests – process’ document. It is undated, so it is unclear when the process guide came into effect or whether it is periodically reviewed. The document is clearly written and contains a detailed outline of the process involved in publishing an OIA response.

The document stipulates that the process to decide what information is to be published is separate and distinct from deciding what information is to be released or withheld under the OIA. This issue is discussed in my guides titled ‘[*Proactive release*](https://www.ombudsman.parliament.nz/sites/default/files/2020-06/Proactive_release.pdf)’ and ‘[*Names and contact details of public sector employees*’](https://www.ombudsman.parliament.nz/sites/default/files/2020-04/Names%20and%20contact%20details%20of%20public%20sector%20employees.pdf). Agencies have discretion when deciding what to release proactively, subject to other legal obligations, such as those included in the Privacy Act 1993. In addition to stipulating this in the guidance document, I urge the Ministry to ensure that it is clear in the OIA response which material has been withheld under the OIA, as distinct from that which has been redacted due to the response being published.

The guidance states that when deciding which OIA responses to publish, consideration must be given to what is ‘of interest to the wider public’. The Ministry publishes contextual information if appropriate, the cover letter and attached documents. It is positive that the document states:

If a complaint to the Ombudsman leads to a change in our OIA response, the information should be updated as soon as possible after receiving the recommendation.

I am pleased the document discusses the timing of release, that OIA responses will be published on the Ministry’s website four working days after it has been sent to the requester. The delay allows time for the requester to consider the information before it enters the public domain and the Ministry to prepare the documents for publication.

The document also provides information about section 48 of the OIA, which provides protection against certain actions. The procedure document states that the section of the Act provides protection from legal action from information released under the OIA. However, this does not apply to web publication. It states:

We should not automatically assume that an OIA release is good to be published just because it has been sent to a requester. However, this is not to encourage excessive caution in deciding what to publish.

I am encouraged that the process document points this out to staff. As outlined in my guide titled ‘[*Proactive release*](https://www.ombudsman.parliament.nz/sites/default/files/2020-12/Proactive%20release.pdf)*’*, there are ways to mitigate the risks of not having protection against legal action.[[15]](#footnote-16) The provisions in the OIA that support an assessment of any potential harm from the release of information (see sections 4(c), 6 and 9 of the OIA), also do not necessarily apply. This means it is important to have robust processes for reviewing the information at issue for potential risks associated with publication, including peer review and sign-off by management. The Ministry’s process document does outline a process for seeking the views of the Legal and Communications teams, as well as peer review and approval from a Manager. It is excellent the document states consideration of publication should occur at the same time as OIA consideration. This will reduce double handling. Timeliness should also be improved as long as consideration of whether to publish does not slow down decision making on the OIA.

The document includes a list of potential concerns and what to do in those instances. It discusses consulting with third parties, compiling and preparing the response for publication. The document stipulates that the form for publication is PDF, and states it must be searchable and not image only PDF. This is positive, but I encourage the Ministry to include further information on the accessibility and usability of information (see [*Accessibility and usability of official information releases*](#_Accessibility_and_usability)). The process document expressly stipulates where to save the publication version, as distinct from the OIA release, to prevent the incorrect version being published on the website.

I am concerned the document states that if someone ‘sends a duplicate request’ they should be pointed to the previously published response. I would like the Ministry to consider the wording of this to ensure it clearly stipulates that in cases where information is not provided, due to it being publicly available, it is still a refusal under s 18(d) of the OIA and must be treated as such. Alternatively, the Ministry could ask the requester whether the prior response answers their request and, if so, query whether the requester would like to withdraw their request. However, if the Ministry ultimately refuses to answer the question, it must cite the ground and give details to complain to my office, as outlined in section 19 of the OIA.

The document states there will be a six monthly review to assess whether the proactive release of OIA responses increased the number of requests (because of flow on questions) or reduced the number of requests. However, when a copy of the review was requested, the Ministry said a review has not been completed and there are no plans to complete a review. I am disappointed this is not occurring, as it could be a good opportunity to assess the impact of proactive release on OIA request numbers.

I am impressed with the proactive release process document. It includes a high level of detail and helpful flow chart for ease-of-use. Some tweaks, as outlined above and stipulated in the action points below, would further improve the document. It would also be beneficial to have a guidance document for proactively releasing other information, not necessarily only OIA responses.

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| Action points  |
| Develop an overarching proactive release policy for the proactive release of any information, and include the publishing of OIA responses as part of the broader [proactive release policy](#_A_proactive_release) |
| Review and update the proactive release of OIA responses process document to include further information on:* making information accessible; and
* refusal of OIA requests because the information requested is or will soon be publicly available (section 18(d) of the OIA).
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| Publish the proactive release guidance on the Ministry’s website |

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| **The Ministry’s response**The Ministry stated:I appreciate your comments on our existing OIA guidance and have directed the Ministerial Services team to address them when they refresh our guidance content. Once we have the guidance updated and finalised, we will also look at publishing it on the website. In addition, the Ministry remains committed to proactive release of information and the Ministerial Services team continues to encourage the Ministry to proactively publish where possible. It is an area we are particularly interested in and have been reaching out to other agencies who have proactive publishing guidelines and policies in place to see what we can learn from them.I look forward to following up on the Ministry’s progress. |

# 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 official information practices demonstrate understanding and commitment to the principle and requirements of the OIA;
* staff have a good technical knowledge of the OIA; and
* it copes with the volume and complexity of requests, and decisions are compliant.

### OIA practices

To gain an understanding of how the Ministry processes requests, my investigators reviewed a random selection of OIA request files. Overall, the Ministry’s OIA processing is fairly good but some inconsistencies were identified.

On a positive note, the progress on OIA requests is tracked and maximum statutory timeframes were usually adhered to. Correspondence was generally of a high standard and there were some good template letters. I am pleased that the extension letter includes details about how to complain. There was an example in the file samples reviewed where a request was extended and it was clear from the file that the extension was due to consultations having taken place. There was also a record kept of the consultations on the OIA request file. There was evidence in one file that the Ministry explicitly attempted to make a decision ‘as soon as reasonably practicable’ and not simply aiming to issue a response on the 20 working day maximum statutory deadline. In this case, the request was being refused, but I encourage the Ministry to ensure such effort is made in all instances.

There were some areas identified that require improvements, including acknowledgement emails. One public survey respondent said:

I never received any acknowledgement that my request had been received by the ministry so I had no idea if it was being worked on or not.

While acknowledgement emails were sent in most of the sample OIA files, they did not include details of the statutory timeframe to make and communicate a decision on a request.[[16]](#footnote-17) There was also no explanation included in the email advising that if a decision cannot be made and communicated within the 20 working day maximum statutory timeframe, an extension will be notified.[[17]](#footnote-18) Further, in one instance, the wording of the original request was not included (as it had been clarified) and in a transfer case, an acknowledgement letter was not sent, just a transfer letter.

I suggest the Ministry update its acknowledgement response to ensure these details are included in the future. I have produced a template which might prove useful.[[18]](#footnote-19)

Other issues identified in the sample file review include:

* There was no formalised peer review or post-closure quality assurance conducted. Although there were emails included of sign out process, the formal peer review process was not clear from the file review. See the section below, [*Quality measures*](#_Quality_measures), for details.
* There was no record of the search undertaken included in the sample files. One OIA file included an email stating that a search had been conducted, but was difficult due to an original list with relevant metadata not being saved on TARDIS. The email stated ‘a process improvement is desperately needed*’.*
* An email was included in an OIA file stating that a staff member was going to contact an OIA requester to clarify a request. However, the outcome of the clarification was not included in the records provided to my investigators. In reviewing the samples provided, the lack of records about substantive verbal discussions made it challenging for my investigators to fully ascertain the events that took place.
* There were no records of telephone conversations or meetings. In one instance, a meeting invite was included, but no outcome of the meeting was included.
* There were no records kept of public interest considerations taking place when information was being withheld under section 9 of the OIA. I note the response letter to requesters states ‘in regard to the information that has been withheld under section 9 of the Act, I am of the opinion that there are no countervailing considerations that make it desirable, in the public interest, to make the information available’. However, this sentence seems to be standard wording included in response letters where information is withheld under section 9, and it is not evident that clear consideration is taking place in each instance.
* In one case, the OIA response letter stated that a draft Cabinet paper was ‘excluded from release’ because it was ‘almost entirely reiterated in the memorandum…’, which was included in the documents being assessed. However, if there was a possibility the documents were in scope, they should have either been provided to the appropriate staff member to consider under the OIA, or the requester given an opportunity to clarify the scope of the request.
* In another instance, some information included in an OIA request was refused under s 18(d) and some information was withheld under s 9 of the Act. However, the decision letter stated that the requester could ‘make a complaint about the withholding of information to the Ombudsman’, and it may not have been clear to the requester that they could also complain to the Ombudsman about the information refused under the OIA. I suggest the Ministry consider using my [*template letter*](https://www.ombudsman.parliament.nz/sites/default/files/2020-06/6._Decision_letter.pdf) wording ‘you have the right to seek an investigation and review by the Ombudsman of this decision*’* in letters that include decisions that are reviewable by my Office.

Practice issues were identified in a number of the file samples reviewed, which highlights inconsistent practices at the Ministry. The Ministry has demonstrated that it has quite good training (see [*OIA training*](#_OIA_training)) and fairly good guidance documents for staff (see [*OIA guidance material*](#_OIA_guidance_material_1)). However, as discussed in [*Model for handling OIA requests*](#_Model_for_handling), there are vulnerabilities with a decentralised model. When multiple people across the organisation are responsible for processing OIA requests, each staff member may only receive a few OIA requests every year to process. As outlined in the Not a Game of Hide and Seek report, the more devolved a system is, the greater knowledge staff need to have of their agency’s obligations under the OIA.

Another potential reason for the inconsistencies may be that graduates are completing some OIA requests. Devolving responsibility for preparing responses to OIA requests too far down the organisational structure risks poor or inconsistent decisions if staff are too junior or inexperienced. While it is acceptable for graduates to complete OIA requests to further their knowledge of the OIA, junior staff will require further support to ensure their practices are consistent with those across the organisation. Training and guidance can be used to ensure consistent practice, as well as having clear and robust peer review processes.

As discussed in the section below [*Quality measures*](#_Quality_measures), the Ministry does have a review process in place, however, some improvements could be made. I suggest broadening the review process to ensure those with specialist OIA knowledge (either in the Official Correspondence or Legal team) are reviewing OIA request files and responses before they are provided to the requester. It is also important to keep a record of the review.

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| Action points  |
| Ensure every OIA request is acknowledged; consider updating the acknowledgement to include the information requested and an explanation that an extension will be notified if a decision cannot be made and communicated within the 20 working day maximum statutory timeframe |
| Review practices in relation to searching and keep a record of searches |
| Keep a record of decision making, including the balancing of public interest considerations against the need to withhold information |
| Amend OIA record keeping practices to ensure full and accurate records of substantive correspondence (including telephone conversations, meetings and verbal discussions) are created and maintained |
| Ensure OIA responses are reviewed by an OIA specialist in either the Official Correspondence team or Legal team, and keep a record of the review |
| Ensure all documents in scope are included in a request, or give the requester an opportunity to clarify the scope of the request (even if documents are largely duplicated in other documents) |
| Ensure requesters are advised of their right to complain to the Ombudsman about reviewable OIA decisions |

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| **The Ministry’s response***Acknowledgement letters*The Ministry said it acknowledges the suggestion to update the acknowledgement email and the Ministerial Services team is redrafting it.*OIA response review*The Ministry said the Legal or Ministerial Services teams are already reviewing the majority of OIA responses and the feedback and comments should be included in the document management system. The Ministry said ‘the Ministerial Services team will ensure that this is also explicitly mentioned in our training and guidance to make sure it is happening for all requests’.*Duplicating content from documents*The Ministry stated:Upon reflection of your feedback, we do acknowledge that the document should have been supplied regardless, and the Ministry will be taking note of this to strictly adhere to the request, as well as amend and restructure our training and guidance on this point.*Ombudsman details in decision letters* The Ministry stated:The Ministry acknowledges that our consistency regarding section 18(d) needs to be addressed… we have already taken the opportunity to make sure that our current responses are being sent out addressing both the withholding and refusal of information. … I have instructed my Ministerial Services team to provide some updated guidance and communications for all staff. I look forward to following up on the Ministry’s progress. |

### Proactive release of information

The proactive release of information to the public promotes good government, transparency and fosters public trust. The Ministry has improved its practice in this area in recent years. The Ministry proactively released approximately three percent of its OIA responses in 2018 and 37 percent in 2019. In the first half of 2020, the Ministry published approximately 21 percent of its OIA responses, which included the period in 2020 lockdown. In the second half of 2020, the percentage of proactively released OIA responses increased to 33 percent. I encourage the Ministry to continue to increase the number of OIA responses it is releasing. It should also consider retroactively publishing responses that were not published during the 2020 lockdown period.

I am pleased the Ministry’s published OIA responses are located on the OIA page of the website. They sit alongside information, advice and guidance to requestors on making an OIA request to the Ministry.[[19]](#footnote-20)

In terms of advising requesters that their responses will be made public, the Ministry states responses to requestors include a statement that ‘the Ministry publishes our OIA responses and the information contained in our reply to you will be published on the Ministry website’. As discussed in [*Proactive release of official information guidance*](#_Proactive_release_of_1) above, the Ministry also publishes OIA responses four working days after it has been sent to the requester which gives time for the requester to consider the information before it enters the public domain and the Ministry to prepare the documents for publication.

In addition to publishing some OIA responses, the Ministry releases a variety of other information proactively. The Ministry states that it is committed to the principles of being open and transparent with the information they hold. Some examples of information the Ministry publishes includes:

* 219 datasets, which are open and accessible through the Ministry's [website](https://www.transport.govt.nz/).
* A list of ministerial briefings titles are published on the Ministry website monthly.
* Key documents and background material on specific projects or issues are proactively published. Recent examples of this include information on Auckland Light Rail and the Upper North Island Supply Chain Strategy material.
* Implementing the rules for publishing Cabinet papers.

The Ministry states that proactive publishing of this material is strongly supported by senior leaders and has become part of how the Ministry works. Some comments from the initial staff survey, support this. One respondent said:

The Ministry has made significant strides in this regard over the past 3-4 years. As a Manager, we are well supported to make information available, including numerous very significant proactive releases. This has been supported by SLT and Ministers. There has been an increase in the number of positive conversations re scope and intent with requestors, to help ensure they receive the information that is sought in an efficient manner.

Another said that while they are proactively publishing more documents, resourcing is a barrier:

To be honest I can't really point to any specific action that was taken to make us more open. We now proactively publish briefing titles and cabinet papers but the former was a pragmatic decision and the latter was due to all of government requirements. But resourcing has always been and continues to be a major barrier.

I urge the Ministry to continue to increase the number of documents it publishes proactively and to ensure it has the resources in place to allow growth in this important area. It is excellent that the Ministry has a thorough guidance document in relation to publishing OIA requests. I suggest the Ministry expand the guide to include the proactive release of all information. See [*Proactive release of official information guidance*](#_Proactive_release_of_1) for details.

### Reported OIA timeliness

The Public Service Commission publishes OIA statistics every six months.[[20]](#footnote-21) As the following table demonstrates, the reported percentage of OIA requests completed by the Ministry within the maximum statutory time limit has remained relatively stable for the last three reporting years.

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| Financial year | Requests received  | OIA requests completed within legislated timeframe |
| 2015/16 | 143 | 97 percent |
| 2016/17 | 162 | 86 percent |
| 2017/18 | 120 | 95 percent |
| 2018/19 | 105 | 94 percent |
| 2019/20 | 137 | 96 percent |

I note that the Ministry’s 2019-2020 annual report states that the 2020 standard or target is 100 percent. The percentage of OIA requests completed within the statutory timeframe from 1 July to 31 December 2020 was 94.7 percent, still someway off the 100 percent target, which is the legislative requirement.

I note that the statistics above do not indicate the number of OIA requests which have been extended within the statutory due date. I am pleased that the Ministry keeps a record of the OIA requests it extends. It extended approximately 17 percent of OIA requests during the 2019/20 financial year. Section 15A of the OIA states that a request can be extended if a request is for or requires a search through a large quantity of information or consultations are necessary that cannot be made in the original time limit. It may be that the OIA requests that were extended were done so correctly and entirely justified. However, because the Ministry does not record the reasons for extension (which I discuss further in [*Collecting, analysis and reporting of OIA data*](#_OIA_statistics)), I am unable to determine whether the extensions were justified by the nature and complexity of the requests it receives, or whether it may indicate another issue, such as inadequate resourcing.

I am pleased that the Ministry has introduced a workflow tool that tracks the progress of OIA requests. The tool includes a reporting function that allows all authors and managers to monitor the status of requests. The Ministry also maintains a shared spreadsheet that provides key process and timeline information. I encourage the Ministry to continue to seek ways to improve its timeliness rates.

### 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 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 some agencies’ ability to perform OIA functions.

The Ministry said there were no changes in the prioritisation of OIA requests during the 2020 lockdown period. The Ministry added a new ‘tab’ to the OIA Hub to store all official correspondence related to COVID-19 guidance. The Ministry states it promoted the new information to staff through all of Ministry meetings (held via Skype), announcements posted on the intranet and the Ministry’s weekly newsletter.

The guidance on the intranet stated that the OIA process will ‘continue to operate as normal during COVID-19’, but there was some allowance for the different working situation. The OIA request page on the website stated that the ‘current COVID-19 emergency is placing significant pressure on the Ministry’s resources. We will contact you if we require an extension to your request’. The same sentence was also included in the OIA email acknowledgement. I am pleased the guidance stated that COVID-19 ‘does not give us the blanket right to extend all OIAs’ and provided links to both a guidance from the Solicitor General and a statement on my website.

The Ministry worked with the Prime Minister’s office to ensure the proactive release of decision making documents relating to COVID-19 was consistent across agencies. As mentioned in the section above, [*Proactive release of information*](#_Proactive_release_of), the number of OIA requests published did drop and the Ministry should consider retroactively publishing responses that were not published during the 2020 lockdown period.

As part of my investigation, a survey of staff was conducted post-2020 lockdown. When staff were asked how they rate the signals from the Chief Executive sent during 2020 lockdown about the OIA, approximately 62 percent of staff respondents said the Chief Executive was strongly or moderately pro-disclosure and 28 percent said they did not know. In terms of the Chief Executive’s signals about openness and public engagement more broadly, 90.5 percent of respondents said the Chief Executive was either strongly or moderately pro-openness. These are excellent scores and indicate that the messages sent by the Chief Executive regarding OIA and openness during the 2020 lockdown period were heard by staff.

In terms of resources available to fulfil the role, a meeting attendee advised that staff were having a ‘practice’ work from home day when the 2020 lockdown was announced. This meant staff had their laptops with them and the Ministry couriered monitors to those who required two monitors. I am pleased that 80 percent of post-2020 lockdown staff survey respondents said they had adequate resources to fulfil their role. Only 5 percent of respondents said they did not have adequate resources, which again, is an excellent result. Having adequate resources to allow staff to work from home meant the staff responsible for OIA processing were able to continue to perform their roles and obligations under the OIA. The Ministry states that overall, it was well set up for the 2020 lockdown. Staff were able to access systems from home with very little difficulty and there are currently no plans to amend the business continuity plan as it relates to the processing or answering of OIAs.

There were some positive changes that occurred as a result of the 2020 lockdown for the Ministry. For instance, hard copy documents were not sent to the Minister’s office, just electronic copies were accepted. If this practice works well for the Ministry, I urge it to consider continuing the practice, with agreement from the relevant Minister’s office.

### Ministerial interactions on OIA requests

The Ministry states that the Minister’s office is informed of all OIA requests the Ministry receives and the Minister’s office indicates whether it would like to see the response prior to its release. Approximately 46 percent of Chief Executive OIA requests were sent to the Minister’s office in the 2019/20 financial year. In those cases, the material for release is provided to the Minister’s office five working days prior to its release.

In some cases, the Minister’s office was consulted on information within the scope of a request, depending on their interest in the information. The Ministry states that responsibility for deciding whether a release requires consultation is part of the responsibility of tier three managers. The Ministry’s policy states it takes a ‘no surprises’ approach to informing the Minister’s office of OIA responses. The OIA Hub Introduction states:

…every Friday the Official Correspondence team provides the Minister’s office with a list of all Chief Executive OIA requests received by the Ministry. The Minister’s office will then indicate which OIA replies they may wish to see.

The policy states that the staff member responsible for the OIA should allow time in the timeline for the Minister’s office ‘to be consulted’. It states ‘the Minister’s office requires a response to be sent to them five working days before it is due to the requester, for this consultation to occur’. I am concerned the policy does not clearly distinguish between a consultation and notification (noting or FYI) process. The difference between a ministerial consultation and notification is:

* a ministerial consultation is the mechanism that allows an agency to seek the Minister’s input before making a decision on a request; and
* notification is the means to let the Minister know the decision an agency has taken on a request and will be communicating to the requester.

As it stands, I do not consider the Ministry to be taking a ‘no surprises’ approach with the Minister’s office because, as outlined in my guidance ‘[*Dealing with OIA requests involving Ministers*](https://www.ombudsman.parliament.nz/sites/default/files/2019-08/OIA%20requests%20involving%20Ministers%20August%202019.pdf)*’*, a ‘no surprises’ approach more closely aligns to the practice of notification. The notification of an OIA response to the Minister should not interfere with an agency’s ability to comply with its statutory obligation.[[21]](#footnote-22) I consider the Ministry’s practice to be more closely aligned with a consultation as it allows the Minister’s office to provide input on the OIA before it is sent to the requester.

It is permissible for agencies to provide 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. The obligation may be met by giving a copy of the decision to the Minister at the same time, or shortly before, it is sent to the requester.

The current procedure allows five working days for the Minister’s office to review responses, if requested. The implication of this is that staff have less time to prepare a response and requesters may not be provided with a response ‘as soon as reasonably practicable’. One initial staff survey comment said:

We give the Minister's office 5 days to review agency OIA responses, if they ask to see them. This shortens our timeframe for preparing the response by 5 days (15 days to prepare, 5 days for the office to consider).

There were some concerning comments in the initial staff survey regarding ministerial interactions on OIA requests. These are:

The Minister's office generally seeks to withhold more information than recommended by my agency.

In my view, senior managers very rarely push back on Minister’s office when they request information which we have tagged for release is withheld.

Although there is no further evidence to support the issues raised in the comments above, these staff perceptions are concerning. One way agencies can ensure best practice is by having a clear written agreement in place with Ministers’ offices. I developed a ‘[*Model protocol on dealing with OIA requests involving Ministers*](https://www.ombudsman.parliament.nz/sites/default/files/2019-08/Model%20protocol%20August%202019.pdf)*’* in August 2019, to assist agencies in developing a framework around the interaction with Ministers in relation to OIA requests. The model protocol includes the elements of good practice, and I would expect agencies to adopt such an approach with Ministers’ offices, either as a protocol document or in another agreed way. I expect the agreement to at least include:

* how the Ministry distinguishes between consulting with the Minister’s office on a request, and notifying 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 Ministry to consider a request to be ‘of interest’ to the Minister;
* the resolution process in the event of disagreement between the Ministry 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 respond to the Ministry within the statutory timeframe for the agency to respond to the requester.

A written agreement should guide and define the interactions between the agency and the Minister’s office as it relates to official information releases, therefore it should not be unilateral but discussed and agreed between the parties.

It is also imperative that OIA files keep a full and accurate record of any ministerial interactions, including any response from the Minister’s office and outcome of the exchange. As outlined above in [*OIA practice*](#_OIA_practices)*s*, my investigators conducted a review of OIA files and in one case, there were emails included in the OIA file stating there would be consultation with the Minister’s office, but there was no response from the Minister’s office included in documents provided to my investigators.

The Ministry initially advised that it is currently refreshing and updating its guidance on dealing with the Minister’s office in relation to OIA requests, based on my published protocol. It stated the guidance will ensure improved transparency around Ministry practice when engaging with the Minister’s office. However, when an update on the development of the guidance was requested, the Ministry said that following the formation of the Ministerial Services team in late 2020, the work was paused. I encourage the Ministry to continue this work and finalise the agreement as soon as possible.

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| Action points  |
| Develop a written agreement with the Minister’s office on handling agency OIA requests |
| Conduct a review of the process to notify or FYI the Minister of OIA responses to ensure the practice is occurring on a case-by-case basis and does not interfere with the statutory obligation to make and communicate the decision as soon as reasonably practicable |
| Ensure a full and accurate record is kept of interactions with the Minister’s office |

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| **The Ministry’s response**The Ministry stated:The Ministerial Services team will be revisiting its previous work on a protocol for dealing with the Minister’s office in terms of the OIA. Similar to the proactive release of information, they have been contacting other agencies to learn from their experience, as well as using the material on your website.I look forward to following up on the Ministry’s progress. |

### Media information requests

Requests to media teams for information are subject to the OIA. Media teams receive any number of requests from journalists, such as requests for information (which are subject to the OIA) or requests for comment on a particular issue (which are not generally subject to the OIA). The Ministry has an Engagement and Communications team that deals with the majority of media information requests.

There are no policies or guidelines documenting how the Ministry determines which requests will be responded to by the Engagement and Communications team, and which are referred to the Official Correspondence team. The Ministry said in cases where a requester specifies the request is being made under the OIA, it will go to the Official Correspondence team and through the ‘formal process’. The Ministry said there is no record of the Engagement and Communications team extending timeframes to respond or withholding information from the requester.

To gain an understanding of the Ministry’s processing of media information requests, my investigators reviewed a random selection of media request documents. The majority of requests were answered in full, but a small number were not answered in full.

It is imperative that agencies have a clear policy on how they will consider media information requests. I encourage the Ministry to update its OIA guidance to include specific guidance for the media team as well as details such as:

* Details on a requester’s right to ask the agency to treat their request with urgency, and how such requests should be dealt with.
* The circumstances in which an information request from the media is passed to the Official Correspondence team to deal with.
* If an information request is refused by the Engagement and Communications team, the legal obligation to provide the reason for the refusal and the applicant’s right to complain to the Ombudsman.

Once updated, the Ministry would benefit from proactively releasing the relevant guidance document. This would give requesters a better understanding of its processes when an information request is received. It would encourage consistency of practice and accountability to the public. I consider key OIA guidance, which is used to make the agency open and accountable to the public should, in turn, be made available to the public.

In terms of the records kept of media information requests, I am pleased that a detailed spreadsheet is kept of the verbatim request and response from the staff member. I am also pleased the record includes the individual who ‘signed out’ the request. However, it is not clear that all conversations between the journalist and staff member have been recorded. I appreciate that both the Engagement and Communications team and journalists value the immediacy and informality of their interactions, which facilitate fast turnaround times. However, the recording of telephone conversations does not need to be onerous.

The Ministry said the Engagement and Communications team receives OIA training, which covers Ministry processes and ‘can also include OIA content if they do not have relevant experience’. However, a meeting attendee said that induction or specialist training to the Engagement and Communications team on the OIA is not currently occurring. I encourage the Ministry to provide OIA training to all of the Engagement and Communications team, and ensure the training is tailored to the circumstances in which they will be dealing with the OIA. It must be clear that media information requests are requests under the OIA and there are legal obligations that must be met.

Another point to note is the benefits of including media information requests in OIA statistical reporting. The Ministry states that media and data requests are recorded separately to OIA requests. However, including media information requests in OIA statistical reporting would provide a more accurate picture of the Ministry’s OIA performance. This issue is discussed in more detail in the section below titled [*Collecting, analysis and reporting of OIA data*](#_OIA_statistics)*.*

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| Action points |
| Update the OIA guidance to include detail on media information requests, and consider publishing the guidance |
| Keep a record of all substantive communications with requesters, including telephone conversations and meetings |
| Provide targeted OIA training to the Engagement and Communications team  |

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| **The Ministry’s response**The Ministry stated:Your action points relating to Media enquiries have been passed to the Manager, Engagement and Communications for consideration. When the existing OIA guidance is updated, the Ministerial team will action your comments relating to the inclusion of detail on media information requests. They have also acknowledged your comment regarding specific training for the Engagement and Communications team, and will work with the team’s Manager on that.I look forward to following up on the Ministry’s progress. |

### 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.[[22]](#footnote-23) The standard is intended to make web content more accessible for users with a range of disabilities, including visual, auditory, 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.

Agencies should publish 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 could preclude the use of screen readers. It may also make the information less easy to use generally, by limiting the ability to search documents by keyword. 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.

In response to my agency questionnaire, the Ministry stated:

To ensure that redacted information cannot be exposed, the Ministry publishes OIA responses in a format that means it is not searchable either from external search engines (e.g. Google) or the inbuilt search engine on the Ministry’s website.

The Ministry’s new website will provide greater flexibility to tag published documents so they can be more effectively found through search engines.

During the course of the investigation, the Ministry updated its website. It said that the format of the new website requires published OIA responses to include a brief description of the PDF document, which improves searchability and makes the information more accessible via search engine. The Ministry said:

Following discussion with your staff recently, the Ministry has updated its process and guidance on publishing OIAs to ensure all PDFs are searchable.

However, my investigators reviewed a number of recently proactively published OIA responses on the Ministry’s webpage[[23]](#footnote-24) and approximately 80 percent of those reviewed were partially searchable with some pages that were an ‘image only*’* format. Approximately 20 percent were fully searchable. This highlights that there is still some inconsistency of practice that may be remedied by having clear advice on accessibility and usability in the proactive release guidance document.

I have produced a guide[[24]](#footnote-25) which includes a section on New Zealand’s international and domestic obligations to ensure disabled people have equal access to information. The guide 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.

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| Action point  |
| Ensure all documents released in response to an OIA request, or proactively released, are searchable and not ‘image only’, and all visual elements are tagged with alternative text |

# 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, the Ombudsmen have consistently advocated 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 records information on OIA requests in an ‘OIA Tracking Sheet’. This Excel spreadsheet captures a variety of information for each request, and is mostly focused on tracking the progress of work to respond to the request. I am pleased the Ministry has introduced a workflow tool that tracks the progress of OIA requests, and that improvements to data collection and reporting were considered as part of the Ministry’s official correspondence review. During my investigation, the Ministry advised that it has expanded the range of data it collects to include:

* the type of requester;
* the number of request transfers to other agencies;
* the number, length and reason for extensions;
* whether the Minister was consulted on the decision;
* whether the decision was notified to the Minister; and
* the time from receipt of the request to release of the information.

The Ministry has advised that the workflow tool includes a reporting function which allows all authors and managers to monitor the status of requests. It is encouraging that the Ministry has taken steps to ensure it can more actively monitor the progress of OIA requests. This is particularly important given the Ministry’s decentralised model for processing OIA requests. Active monitoring of this kind can assist the agency in complying with statutory timeframes, and to ensure that business units processing requests are adequately supported. [[25]](#footnote-26)

I commend the agency on the steps it has taken to expand data collection and for expressing an interest in continued improvement in this area. I encourage the Ministry to expand the range of data it collects to include:

* the type of request (Part 2, 3 or 4 of the OIA);
* the reason for request transfers, and whether the transfer was made in time;
* the number of charges made and collected; and
* the time from receipt of the request to communication of the decision.

A wide range of data should be regularly reported to senior leadership to inform decisions regarding OIA practices and to improve performance. The Ministry has advised that it reports on OIA performance to the senior leadership team on a quarterly basis, which it refers to as a reporting ‘snapshot’. It includes OIA performance statistics in its annual report and reports the percentage of OIA requests completed by the Ministry within the maximum statutory time limit. The senior leadership team is also provided with a daily summary of media requests.

The Ministry provided copies of this quarterly reporting snapshot, which shows the number of OIA requests completed by the Ministry and the Minister’s office, and the percentage of requests completed within the maximum statutory time limit. I acknowledge the importance of monitoring compliance with timeliness obligations. However, the Ministry collects a wealth of additional information, which would be beneficial to report to senior leadership. I encourage the Ministry to expand the range of data it reports to senior leadership to include indicators that would help improve the Ministry’s performance in a variety of ways, such as:

* Reasons for refusing requests or withholding information, which can enhance existing monitoring of request trends and promote compliance with the Act.
* Average response time, which can help quantify workload and inform resourcing decisions.
* Reasons for extensions or delays. Collecting this information may help the Ministry detect potential systemic issues, such as over-reliance on extensions, institutional or OIA knowledge concentrated on particular staff members, or workload distribution among staff.

The Ministry has advised that statistical information requests are dealt with by the Ministry’s Financial, Economic and Statistical Analysis Team; and media information requests are dealt with by the Ministry’s Engagement and Communications Team.[[26]](#footnote-27) These requests and related data should be captured and reported to senior leadership, consistent with other official information requests, to ensure the Ministry has a comprehensive picture of its OIA performance.

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| Action points |
| Collect further qualitative data on the handling of OIA requests |
| Improve details in regular reporting of statistics to senior leadership |
| Include official information requests handled by the Financial, Economic and Statistical Analysis Team and the Engagement and Communications Team in OIA statistical reporting |

### Quality measures

The Ministry does have a peer review process in place for responses but does not have a formalised post-closure quality assurance process. Sample files provided to my investigators did include sign-out emails, and the Ministry provided me with a process document instructing staff to submit documents to the Ministry’s Legal and Communications teams for approval if required before submitting these documents to a Manager for approval. However, as suggested in [*Model for handling OIA requests*](#_Model_for_handling) and [*OIA practices*](#_OIA_practices), broadening the review process to ensure those with specialist OIA knowledge (either in the Official Correspondence or Legal team) are reviewing OIA request files where necessary would mitigate against inconsistencies. A formalised process should also be incorporated into OIA guidance material.

During my investigation, the Ministry provided an overview of the request handling process, and indicated that combined peer review and quality assurance occurs before OIA responses are sent to the requester. I acknowledge the Ministry does have some form of peer review process. However, quality assurance is a separate and distinct process from the peer review process. Peer review occurs before responses are sent to requesters and quality assurance is conducted once the process of responding to the request is complete. Quality assurance also 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.

The quality of OIA responses may encompass factors such as a robust and adequately documented decision making process, the inclusion of contextual information to assist requesters, and the quality of response letters. Establishing a system of quality assurance would help the Ministry identify where additional training needs are required, or support needed in a particular business unit. It also recognises excellent performance where it exists.

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| Action point |
| Develop a formal quality assurance process for completed OIA requests |

### Learning from investigations and guidance

The Ministry has advised that Ombudsman complaints are processed by its Legal team and investigation outcomes are shared with the team responsible for the OIA request that is the subject of investigation. The Ministry also said it informally considers the extent to which it may be appropriate to improve policies and procedures based on the outcome of Ombudsman investigations. However, the Ministry did not provide an example where an Ombudsman decision had informed a change in practice.

The Ministry advised that while it does not formally monitor the outcome of other Ombudsman investigations, it does take note of new guidance issued by the Ombudsman. The Ministry said the Engagement and Communications team and Legal team discussed guidance published in 2019, which resulted in the Official Correspondence team amending its policies to be consistent with the guidance.[[27]](#footnote-28)

It is encouraging that the Ministry has taken steps to disseminate my guidance. In particular, I commend the Ministry’s decision to incorporate guidance into written policy rather than only disseminating it amongst staff with specialist OIA knowledge. Ensuring guidance is incorporated into policy, or otherwise accessible to all staff through the OIA Hub, is particularly important given the Ministry currently uses a decentralised model. As discussed in [*Model for handling OIA requests*](#_Model_for_handling)*,* staff may only deal with OIA requests infrequently, so may not retain one-off circulated guidance. Incorporating this information into policy or guidance also has the potential to free up resource within Official Correspondence or Legal teams as formally incorporated guidance is more widely available.

The Ministry would benefit from formalising these processes to ensure investigation outcomes, case notes and my guidance are incorporated into the Ministry’s practices and guidance where relevant. There is merit in developing a formal policy to support this practice, which would ensure the Ministry continues to benefit from Ombudsman decisions and guidance.

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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 Ministerial Services team is currently reviewing the reporting it provides to [the Chief Executive] and my Senior Leadership Team and we have noted your comments regarding the OIA data the Ministry is capturing. … all OIA responses also go through a quality assurance (QA) review before being signed out. We will take your feedback on board regarding the QA process and will look to see what further assistance and guidance can be provided in this space to ensure that our responses are of the highest quality. Similarly we do have a draft process regarding Ombudsman investigations and guidance, and the Ministerial Services team will continue to work to embed that into our standard processes.I look forward to following up on the Ministry’s progress. |

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

### Ministry of Transport

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 relating to the Official Information Act 1982 (OIA).[[28]](#footnote-29)

## Purpose of the investigation

The investigation will cover how the selected agencies 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 agency’s 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.[[29]](#footnote-30)

## 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:

* the Ministry’s OIA statistics
* complaints received by the Office of the Ombudsman
* results from Ministry staff, and public surveys
* content on an the Ministry’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; and
* 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 the Ministry 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_1)
2. [Organisation structure, staffing and capability](#_Organisation_structure,_staffing,)
3. [Internal policies, procedures and resources](#_Internal_policies,_procedures_2)
4. [Current practices](#_Current_practices_1)
5. [Performance monitoring and learning](#_Performance_monitoring_and_2)

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[[30]](#footnote-31) 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[[31]](#footnote-32)
	+ 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
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## 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 sections 13(1) and 13(3) Ombudsmen Act 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 and agency surveys only relate to agency’s practices during the first lockdown. [↑](#footnote-ref-4)
4. Formal recommendations under the OA may be only be made if I form an opinion that a decision, recommendation, act or omission by the agency was wrong, unreasonable or contrary to law, etc. under s 22 of the OA. [↑](#footnote-ref-5)
5. On occasion I may look at material from outside the investigation period where particular issues warrant further investigation. [↑](#footnote-ref-6)
6. Link to Ombudsman website – [decision letter template](https://www.ombudsman.parliament.nz/sites/default/files/2020-06/6._Decision_letter.pdf) [↑](#footnote-ref-7)
7. The OIA webpage is accessible from about us/what we do/OIA requests. Link to [OIA webpage](https://www.transport.govt.nz/about-us/what-we-do/oia-requests/). [↑](#footnote-ref-8)
8. s 15(1) of the OIA [↑](#footnote-ref-9)
9. Logged by the Official Correspondence team. Assigned to a business unit to consider scope; refine; gather assess and analyse material; consult internally and externally; legal/communications advice; redact and assemble documentation; peer review and QA; provide FYI to the Minister’s office if appropriate; and dispatch to the requester. [↑](#footnote-ref-10)
10. 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-11)
11. s 15(1) of the OIA [↑](#footnote-ref-12)
12. s 9(1) of the OIA [↑](#footnote-ref-13)
13. See s 15(1) OIA [↑](#footnote-ref-14)
14. Numbers have been rounded to the nearest percentage. [↑](#footnote-ref-15)
15. S 48 of the OIA [↑](#footnote-ref-16)
16. Section 15 of the OIA states that Decision on requests must be made *as soon as reasonably practicable, and in any case not later than 20 working days after the day on which the request is received by that department…* [↑](#footnote-ref-17)
17. See s 15A(1)(a) and (b) OIA 1982 [↑](#footnote-ref-18)
18. 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-19)
19. Link to Ministry of Transport’s [website](https://www.transport.govt.nz/about-us/what-we-do/oia-requests/). [↑](#footnote-ref-20)
20. Link to [Public Service Commission website](https://www.publicservice.govt.nz/guidance/official-information/oia-statistics/). [↑](#footnote-ref-21)
21. Statutory obligations:

	* to make the decision on a request for official information itself ‘*free from dictation or other improper influence*’;
	* to communicate that decision to the requester ‘*as soon as reasonably practicable’* and no later than 20 working days after the request was received (unless extended); and
	* to release official information without ‘*undue delay’*. [↑](#footnote-ref-22)
22. Link to the [Digital Government Web Accessibility Standard 1.1](https://www.digital.govt.nz/standards-and-guidance/nz-government-web-standards/web-accessibility-standard-1-1/). [↑](#footnote-ref-23)
23. From April and May 2021, link to Ministry of Transport’s [website](https://www.transport.govt.nz/about-us/what-we-do/search-official-information-act/SearchForm?Keyword=&TopicID=&DocumentTypeID=28&action_results=Search). [↑](#footnote-ref-24)
24. 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 guide](https://www.ombudsman.parliament.nz/resources/proactive-release-good-practices-proactive-release-official-information). [↑](#footnote-ref-25)
25. As discussed in [*Reported OIA timeliness*](#_Reported_OIA_timeliness). [↑](#footnote-ref-26)
26. As distinct from media requests for comment or an interview. [↑](#footnote-ref-27)
27. The guidance titled [*Names and contact details of public sector employees,*](https://www.ombudsman.parliament.nz/resources/names-and-contact-details-public-sector-employees)published in April 2020. [↑](#footnote-ref-28)
28. See sections 13(1) and 13(3) of the Ombudsmen Act 1975 (OA). [↑](#footnote-ref-29)
29. 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-30)
30. ‘The Act’ refers to the Official Information Act 1982 [↑](#footnote-ref-31)
31. This indicator is also relevant to performance monitoring and learning. [↑](#footnote-ref-32)