OIA compliance and practice in the New Zealand Customs Service – Te Mana Ārai o Aotearoa

Opinion of the Chief Ombudsman December 2021

Contents

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| --- |
| [Background 2](#_Toc113443746)[Introduction 2](#_Toc113443747)[The impact of COVID-19 3](#_Toc113443748)[Executive summary 6](#_Toc113443749)[Leadership and culture 13](#_Toc113443750)[Organisation structure, staffing, and capability 21](#_Toc113443751)[Internal policies, procedures and resources 26](#_Toc113443752)[Current practices 35](#_Toc113443753)[Performance monitoring and learning 51](#_Toc113443754)[Appendix 1. Official information practice investigation — terms of reference 56](#_Toc113443755)[Appendix 2. Key dimensions and indicators 61](#_Toc113443756) |

# 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 twelve 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 twelve 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 New Zealand Customs Service (Customs) is meeting its obligations under the Official Information Act 1982 (OIA).

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

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

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

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

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

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

I have initiated this practice investigation using my power under the Ombudsmen Act 1975. 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 lockdown enacted in response to the COVID-19 pandemic has caused people across New Zealand, including in the public sector, to adapt to working differently – away from their office, remote from colleagues, and accessing work information from their homes.

While information gathering for my investigation commenced before the 2020 lockdown, I had an opportunity and a responsibility to extend my investigation and consider how agencies’ existing official information practices enabled them to adapt to the challenges presented by the 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 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-lockdown questionnaire’*).
* A survey of staff in late-2019 seeking their views about culture, policies, practices and procedures (I will refer to this throughout my report as *‘my initial survey’*).
* A survey of staff in late-2020 seeking their views about culture, policies, practices and procedures *during the 2020 lockdown* (I will refer to this throughout my report as *‘my post-lockdown survey’*).

## My opinion

My opinion relates only to Customs’ practice during the period in which my investigation took place.[[4]](#footnote-5) I notified Customs of my investigation on 22 November 2019 and I formed my final opinion on 13 December 2021.

Through the investigation process, I have identified areas of good practice, and areas of vulnerability that I think Customs should address. I have suggested 25 actions that I consider will improve Customs’ practices. Customs was given the opportunity to comment on my provisional opinion before I formed my final opinion and I have taken its comments into consideration. The opportunity to review and address my suggested action points was welcomed by Customs. I was also encouraged by Customs’ advice that work is underway to address the action points, *‘particularly as these relate to Customs’ wider record-keeping practices and suggested amendments to… policies, guidance, data collation and reporting’*. I refer to Customs’ specific responses in the body of the report.

For the reasons set out below and on the information before me, it is my opinion that, in relation to the Communications team’s practices, Customs acted contrary to law when it refused media information requests without citing the reasons relied on under the OIA, or informing requesters about the right to complain to my Office, as outlined in subsections 19(a) and (b) of the OIA.

For the reasons set out below, on the information before me, it is also my opinion that Customs’ Communications team has acted contrary to law in relation to section 17(2) of the Public Records Act 2005, which requires Customs to maintain full and accurate records for media information requests *‘in an accessible form, so as to be able to be used for subsequent reference.’*[[5]](#footnote-6)

However, I have not made recommendations in these instances as Customs advised in its response to my provisional opinion that it has commenced a work programme to ensure compliance with the OIA and the Public Records Act 2005. I commend Custom’s commitment to improving its OIA practices and look forward to further updates on its progress.

It is also very encouraging that Customs has effected changes to its practices throughout my investigation illustrating commitment to the principle and purposes of the OIA. For example, I note the agency’s recent measures aimed at improving its OIA training systems, which include committing to increased OIA training in the OIA team’s business improvement plan. I was also pleased to see Customs’ progress towards establishing an effective information management and record keeping framework by implementing a single document management system across all of its corporate functions with the intention of using it as *‘Customs’ main document/content management system.’*

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

I look forward to further productive engagement with Customs in the months to come as it works through the remaining action points.



Peter Boshier

Chief Ombudsman

13 December 2021

# Executive summary

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

### Leadership and Culture

It is evident from my investigation that Customs’ executive leadership team signals their commitment to compliance with the OIA and supporting the culture of openness within the agency. The results of my initial and post-lockdown staff surveys were largely positive around staff’s views on Customs’ approach to openness generally. However, the results also revealed opportunities for Customs’ senior leaders to make their messaging on the OIA more visible and explicit. Therefore, I suggest that the agency consider sending more regular communications to staff (e.g. via meetings, emails, the intranet and high-level statements in the agency’s internal guidance) reinforcing the importance Customs attaches to complying with the principle and purposes of the OIA.

Customs’ external messaging appears to be one of the stronger areas of the agency’s OIA practice. Customs’ website and some key strategic and corporate documents contain a number of statements that illustrate the agency’s commitment to openness, transparency and compliance with the OIA.

To improve the website further, I suggest that Customs consider publishing its OIA guidance. This measure will help promote openness and accountability by providing requesters with a better understanding of Customs’ OIA processes.

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| **Action points: Leadership and culture** |
| 1. Increase messaging from senior leaders to staff about the importance of the OIA |
| 2. Provide a link on the OIA webpage to Customs’ internal decision making rules (described in section 22 of the OIA) |

### Organisation structure, staffing and capability

Customs’ current OIA processes operate under a centralised model which, in my view, meets the agency’s demands in this area of its functions. The model also allowed it to successfully adapt to the challenges of the 2020 lockdown.

The results of my initial and post-lockdown staff surveys appear to indicate some gaps within Customs’ OIA training systems. However, I am encouraged by the recent measures developed by the agency (including committing to increased OIA training in the OIA team’s business improvement plan). In my view, these measures will help improve Customs’ OIA training practices which currently include training at induction, specialist training for the OIA team and refresher OIA training for all staff.

Staff training around information management and record keeping appeared to present more opportunities for improvement. The results of my initial staff survey indicated that Customs may need to increase staff training around record keeping on the use of the agency’s current information management platforms particularly in the interim until Customs’ single information system project (named *Cohesion* or *Hononga*) is completed. In order to identify areas where staff require additional support, I suggest that Customs consider conducting a survey of training needs, and of compliance with information management and record keeping policies. These measures should be bolstered through increased messaging from senior leaders to signal Customs’ commitment to maintaining sound information management and record keeping practices.

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| **Action points: Organisation structure, staffing and capability** |
| 3. Ensure all staff receive training at induction on record keeping and the use of information management systems relevant to their role; regular refresher training should also be available |
| 4. Consider conducting a needs analysis in order to identify areas where staff require additional training support and/or guidance on the use of the information management systems and good record keeping |

### Internal policies, procedures and resources

Customs recently implemented a number of measures aimed at improving its OIA policy and guidance material, including regularly reviewing its OIA guidance and recording the agency’s decision-making process on OIA requests via *‘OIA Decision Report Template’*. However, Customs’ guidance on the OIA process should, in my view, be expanded to include more information on important OIA topics such as transfers, extensions, application of withholding and refusal grounds and engagement with requesters.

Customs may also wish to consider streamlining its sign-out process as I note that some respondents in my initial staff survey stated that Customs’ current process greatly reduced the time available for collating information for OIA requests. Implementing different tiers of signoff depending on the complexity or degree of risk associated with the request might enable risks to be managed while also allowing staff sufficient time to process OIA requests.

Customs’ proactive release guidance currently covers proactive release of responses to OIA requests and Cabinet material. The guidance on the proactive release of Cabinet material is quite detailed. I suggest that Customs expand the coverage of the policy to include proactive release of all official information. The policy could be further enhanced by ensuring it includes details such as the types of Customs’ information that will be proactively released and the process for identifying opportunities for release.

The results of my staff surveys appear to indicate that Customs needs to continue to review staff compliance with the agency’s information management and record keeping policies. Several respondents to my initial staff survey highlighted specific issues present within Customs’ current systems, including lack of clarity around the use of Customs’ multiple information management systems and frequent reliance on staff knowing who to approach to obtain information relating to an OIA request.

To address information management concerns, Customs advised that it has been working towards implementing a single document management system across all of its corporate functions with the intention of using it as *‘Customs’ main document/content management system.’* In conjunction with the agency’s recent review of its information management structures (including policies and procedures), Customs has also established an information management team in its Information Service Group.

Customs is making positive progress in this area and I encourage it to ensure that the new system is implemented in a way that improves the efficiency of capturing, storing, searching and retrieval of information to enable information relevant to a request to be identified and collated. In addition, until the new system is in place, Customs must remain aware of the limitations of its current systems, and ensure it has policies and processes in place (including providing guidance and training to staff) that will mitigate any risk of information being overlooked when it is searched for in the context of an OIA request. Senior leaders should bolster these measures by signalling Customs’ commitment to maintaining sound information management and record keeping practices.

As Customs advised of its plan to review its *‘information management environment’*, I encourage it to ensure that its policies and procedures explain in appropriate detail all staff’s obligations in relation to information management and record keeping.

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| **Action points: Internal policies, procedures and resources** |
| 5. Review and update OIA guidance material incorporating my suggestions |
| 6. Review sign-off processes to identify where these can be streamlined |
| 7. Review and update the proactive release policies and procedures incorporating my suggestions |
| 8. Ensure that the introduction of the new information management system is: * accompanied by appropriate interim measures, including providing guidance and training to all staff, addressing staff’s difficulties with the use of the current information management systems to mitigate the risk of information being overlooked when it is searched for in the context of an OIA request; and
* supported by clear and regular messaging from senior leaders on the importance of sound information management and record keeping practices.
 |
| 9. Ensure that information management and record keeping policies include guidance on the matters as per my suggestions |

### Current practices

The agency has maintained consistently high timeliness of its responses to OIA requests since 2015/16 (99 percent) with the agency’s reported timeliness standing at 99.7 percent during the period of July – December 2020. However, Customs’ OIA statistics also show a low number of responses to OIA requests published on Customs’ website relative to the number of total OIA requests received.

Customs appeared to respond well to the challenges of the 2020 lockdown having effected some positive changes into its practices such as the implementation and active use of Microsoft Teams. Customs advised that the software allowed the agency’s OIA team *‘to consult more easily with other business units … [and] share documents virtually across the organisation during OIA consultation and commissioning meetings.’*

Review of Customs’ sample OIA files conducted by my investigators revealed some inconsistencies. For example, the acknowledgment emails were sent to requesters without fully explaining the requirement under section 15(1) of the OIA to make a decision on an OIA request and notify it to the requester *‘as soon as reasonably practicable, and in any case not later than 20 working days after the day on which the request is received’*. In addition, some records lacked details of the decision making process or administrative steps taken in relation to searching for requested information, and the rationale behind the application of the public interest test. I am pleased to note, however, that in response to my provisional opinion Customs has already taken some steps towards remedying the above inconsistencies, including amending template acknowledgement email to include the requirement under section 15(1).

I suggest that Customs review its interpretation of the ‘*no surprises’* principle in respect of allowing the Minister’s office five days to review Customs’ response irrespective of whether it is for notification or consultation. Customs should identify where it may meet its obligations by, where appropriate, providing a brief synopsis (or a topic) of the response to the Minister’s office at the same time, or shortly before, it is sent to the requester, rather than providing the proposed response in its entirety five days in advance.

I was encouraged to note Customs’ advice that it was *‘in the process of exploring an OIA agreement with the Minister’s office’* to regulate interactions between the agency and the Minister’s office. Further, in response to my provisional opinion, Customs also advised that it has drafted *‘a process for engagement with [the] Ministers’ office on handling departmental OIA requests’* noting my suggestions *‘around how the intent of the ‘no surprises’ convention can be fulfilled’.*

Upon review of Customs’ responses to media information requests handled by the agency’s Communications team, my investigators found that the team refused requests without citing the reasons relied on under the OIA, or informing requesters of their right to seek a review of Customs’ decision by way of a complaint to me. I consider this practice contrary to section 19 of the OIA.

I was also concerned that Customs was failing to create and maintain full and accurate records for media information requests *‘in an accessible form, so as to be able to be used for subsequent reference.’* [[6]](#footnote-7) In my opinion, this practice is contrary to section 17(2) of the Public Records Act 2005.

However, I have not made formal recommendations in the above instances as Customs advised that it has commenced a work programme to ensure compliance with the OIA and the Public Records Act 2005. A number of actions are already underway including improvements to the current OIA and record keeping processes, as well as providing refresher training and guidance to the Communications team.

The publication of Customs’ OIA guidance, accompanied with providing regular specialist OIA training to the Communications team, will give requesters a better understanding of Customs’ processes and ensure that staff within the Communications team understand their obligations under the OIA. These measures should be supported by messaging from senior leaders reinforcing that media information requests handled by the Communications team must adhere to the OIA.

I am encouraged to note that the Communications team has committed to looking at the media teams’ practices of other agencies within the public sector in order to *‘incorporate any potential changes to its policies and processes’*.

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| **Action points: Current practices** |
| 10. Consider amending template extension letter to specify, where appropriate, the new date to which the agency is extending the 10 working day time limit available for transfers |
| 11. Ensure that records of consultations with requesters and agencies are kept whenever transferring an OIA request to another agency, or contemplating withholding information under section 18 of the OIA |
| 12. Record administrative steps taken when searching for requested information, where this may be appropriate |
| 13. Ensure that records of Customs’ rationale behind the application of the public interest test are kept where appropriate |
| 14. Ensure that records of relevant telephone and in-person conversations, meetings and discussions over instant messaging platforms, such as Microsoft Teams, are kept on file |
| 15. Review the practice of providing official information responses to the Minister for noting under the *‘no surprises’* obligation, in order to identify opportunities where this may be fulfilled by:* providing information to the Minister’s office at the same time or shortly before the response is provided to the requester; and
* providing the Minister’s office only the topic of the request or a summary of the response rather than the full response.
 |
| 16. Develop and finalise an agreement with the Minister’s office on handling departmental OIA requests |
| 17. Ensure the Communications team’s responses to media information requests, which contain full or partial refusal, are dealt with in accordance with the provisions of the OIA |
| 18. Ensure the Communications team creates and maintains in an accessible form full and accurate records of substantive correspondence with requesters (including telephone conversations, meetings and verbal discussions), and any material internal discussions |
| 19. Update the OIA guide to include more detail on urgent OIA requests and consider publishing the guide |
| 20. Provide targeted OIA and information management and record keeping training to the Communications team to ensure they understand their obligations under the OIA |
| 21. Ensure messaging from senior leaders reinforces that media information requests handled by the Communications team must adhere to the OIA |

### Performance monitoring and learning

As part of Customs’ quality assurance processes, the agency’s OIA guidance document requires draft responses to OIA requests to be peer reviewed by managers of the OIA, legal and Communications teams, as well as the relevant Group Manager. This practice can be further improved by implementing a set of quality criteria against which all of Customs’ draft responses to OIA requests can be reviewed.

The high quality of Customs’ OIA responses can also be maintained via introducing quality assurance checks of OIA responses after OIA requests are finalised. I am encouraged by Customs’ advice in response to my provisional opinion that the agency will consider the implementation of a quality assurance process for completed OIA requests.

Customs’ OIA data is compiled by the OIA team with the use of an Excel spreadsheet and reported weekly to the Minister of Customs and monthly toDeputy Chief Executive, International and Governance.

Customs’ OIA reporting can be improved and made more comprehensive by including data on media information requests handled by Customs’ Communications team, along with more data to measure the quality of Customs’ responses to OIA requests. I also suggest that Customs consider moving away from using a spreadsheet to input and track OIA requests and look at alternative options more suited to the volume of requests being received by the agency.

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| **Action points: Performance monitoring and learning** |
| 22. Develop a quality assurance process for completed OIA requests |
| 23. Collect and analyse further qualitative data on the handling of OIA requests |
| 24. Include media information requests in OIA statistical reporting |
| 25. Consider an alternative (non-spreadsheet) system to track OIA requests and decisions |

# Leadership and culture

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

* the Chief Executive, senior leaders and managers demonstrated a commitment to Customs 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 Customs’ strategic plans, creating a public perception of openness.
	+ 1. Messaging to staff

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

It is evident from the results of my investigation that Customs’ executive leadership team, comprising the Chief Executive and five Deputy Chief Executives, strongly signal their commitment to compliance with the OIA and supporting the culture of openness within the agency. Customs stated in its correspondence to my Office that *‘regular communication is required in order for messaging to be well understood by any audience’*, and that the agency *‘remains committed to ensuring that communications supporting the principle and purposes of official information legislation is made regularly’*.

Customs also arranged to meet with me on 18 May 2021 to discuss how Customs’ leaders can strengthen the agency’s OIA performance. The meeting was attended by the Chief Executive and Deputy Chief Executives and, in my view, clearly demonstrated Customs leadership’s commitment to compliance with the OIA and a willingness to improve the agency’s already strong OIA practices.

Customs’ response to my initial questionnaire outlined some of the agency’s practices to highlight the importance of the OIA to staff:

The Chief Executive has a weekly meeting attended by the managers of the Policy, Legal, Communications and OIA teams, among others. …a number of OIAs are discussed at the meeting to ensure the Chief Executive and the managers present are aware of some of the new OIA requests as well as the progress being achieved to respond to existing requests. At these meetings the Chief Executive promotes the achievement of the purposes, principle and requirements of the Act.

The Chief Executive and/or a member of the Customs Executive Board will be presenting on the OIA to the organisation’s Strategic Leadership Team (comprising approximately 60 managers) in February 2020.

Customs’ senior staff indicated during meetings with my investigators that the agency continues to undergo positive changes in its OIA culture with staff becoming increasingly aware of openness and compliance with the OIA. However, many respondents in my initial staff survey also commented on Customs’ challenges in balancing the need for operational security with transparency and openness:

*Management are pro disclosure but some staff believe openness will compromise methodologies and tip criminals off.*

*As we deal with matters which could reveal operational readiness, they keep the balance between ensuring information that could be used by those we are trying to prevent breaking the law, and openness.*

*Balance between public security and public transparency is always a balance but we are committed to providing as much transparency in our actions/communications as possible.*

*I would describe our organisation as 'pro-openness' in terms of sharing information under OIA. I think where there can be some nervousness around when it identifies staff or foreign or domestic partners and this nervousness is largely around the fact we are a law enforcement agency and we want to protect our staff and our relationships…*

*Aware of need to balance operational security and classified information rules alongside transparency in order to maintain our social licence.*

*OIA is taken seriously. …We hold and come across a very sensitive information and understand clearly not to misuse it. We have to be selective in what we say and do in the public.*

*I think Customs is committed to the OIA and openness (and shares information and acts consistently with its intent), but … there can be tension between openness vs. need to know, and for many staff across the more frontline business the OIA is somewhat abstract/peripheral.*

The results of my initial and post-lockdown staff surveys[[7]](#footnote-8) indicate that respondents hold a favourable opinion of Customs’ culture of openness and transparency. When asked *‘What is your impression of your agency’s overall commitment to a culture of openness and public participation?’* respondents answered as follows:[[8]](#footnote-9)

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | Strongly pro-openness and public participation | Moderately pro-openness and public participation | ‘It is silent on the issue’ or ‘I don’t know’ | Moderately anti-openness and public participation | Strongly anti-openness and public participation |
| Initial survey | 29% | 55% | 10% | 6% | 0% |
| Post-lockdown survey | 49% | 40% | 9% | 2% | 0% |

Several respondents in my initial staff survey also commented on Customs’ culture and commitment to meeting its obligations under the OIA, openness and public participation:

*Open and invites public participation…*

*…overall mostly positive.*

*I feel Customs has a sensible and balanced approach to the OIA.*

*My impression is Customs is moving in a positive direction to be more transparent and open regarding its activities and the disclosure of official information.*

*I think Customs leadership is very supportive of meeting our OIA obligations - this can be seen across business units, from Policy, Legal, Comms, and Operations leaders, as well as the Chief Executive. I think Customs generally is focused on continuing to improve the way it meets its OIA obligations. Customs' ability to be open frequently needs to be balanced against our operational law enforcement role - this is not always easy/obvious and requires careful judgement by those involved in the OIA process. Customs is supportive of general public engagement and participation, but it is early days for this in the organisation and more effort and resources can and should be committed to this important activity.*

*Any reluctance for disclosure would usually be at an individual's level.*

*Group Managers in Policy and Legal who have intimate and direct knowledge of OIA-related policy and practice seem strongly pro-disclosure and open. Those in operational roles seem to be less clear…*

The results of my initial and post-lockdown staff surveys were largely positive around staff’s views on Customs’ approach to openness generally. I am pleased to note that staff’s perceptions around openness show a marked improvement in my post-lockdown survey. When asked *‘How would you rate the signals sent by the following people about openness and public engagement more broadly, as it relates to your agency?’* the respondents answered as follows:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Leadership level | Initial staff survey:Strongly or moderately pro-openness | Post-lockdown staff survey:Strongly or moderately pro-openness | Initial staff survey:‘They are silent on the issue’ or ‘I don’t know’ | Post-lockdown staff survey: ‘They are silent on the issue’ or ‘I don’t know’ | Initial staff survey:Strongly or moderately anti-openness | Post-lockdown staff survey:Strongly or moderately anti-openness |
| Chief Executive | 61% | 72% | 36% | 27% | 3% | 1% |
| Deputy Secretaries | 62% | 72% | 34% | 27% | 4% | 1% |
| Immediate Manager | 68% | 76% | 28% | 23% | 4% | 1% |

However, when staff were asked *‘How would you rate the signals sent by the following people about the OIA, as it relates to your agency?’* many respondents were far less certain. For example, a large proportion of respondents in my initial staff survey (45 percent) did not know the Chief Executive’s position on disclosure under the OIA or thought that she was silent on the issue:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Leadership level | Initial staff survey: Strongly or moderately pro-disclosure | Post-lockdown staff survey:Strongly or moderately pro-disclosure | Initial staff survey: ‘They are silent on the issue’ or ‘I don’t know’ | Post-lockdown staff survey: ‘They are silent on the issue’ or ‘I don’t know’ | Initial staff survey:Strongly or moderately anti-disclosure | Post-lockdown staff survey:Strongly or moderately anti-disclosure |
| Chief Executive | 54% | 55% | 45% | 43% | 1% | 2% |
| Deputy Secretaries | 58% | 56% | 40% | 42% | 2% | 2% |
| Immediate Manager | 67% | 61% | 29% | 37% | 4% | 2% |

Of the twelve agencies surveyed in my current investigation, Customs received slightly below average ratings from respondents in my initial staff survey in relation to senior leaders’ approach to disclosure of information under the OIA, and their approach to openness more generally. The average ratings from across all twelve agencies in my initial staff survey were as follows:[[9]](#footnote-10)

* 56 percent of staff said the signals sent by their Chief Executive are strongly or moderately pro-disclosure under the OIA;
* 58 percent said the signals sent by Deputy Secretaries are strongly or moderately pro-disclosure under the OIA;
* 76 percent said the signals sent by their Chief Executive are strongly or moderately pro-openness;
* 69 percent said the signals sent by Deputy Secretaries are strongly or moderately pro-openness.

Overall, I am encouraged to see Customs implementing messaging from senior leaders about openness in general. However, the results of my initial and post-lockdown staff surveys also reveal opportunities for Customs’ senior leaders to make their messaging on the OIA more visible and explicit. For example, a significant proportion (43 percent) of respondents in my post-lockdown staff survey did not know how to rate the signals sent by the Chief Executive on the OIA or thought the Chief Executive was silent on the issue. This compares to just 27 percent of respondents in my post-lockdown staff survey who did not know how to rate the signals sent by the Chief Executive about openness and public engagement more broadly or thought the Chief Executive was silent on the issues.

While Customs maintains good practices to clearly signal its commitment to openness and public participation in general, in my view, the agency should consider sending more regular communications to staff (e.g. via meetings, emails, the intranet and high-level statements in the agency’s internal guidance) reinforcing the importance Customs attaches to complying with the principle and purposes of the OIA.

Staff’s concerns around balancing operational security with transparency and openness can be addressed by messaging to all staff thatone of the OIA’s purposes is ‘…*to protect official information to the extent consistent with the public interest and the preservation of personal privacy*.’[[10]](#footnote-11) The key principle of the OIA is that information must be made available on request *’unless there is good reason for withholding it’*.[[11]](#footnote-12) The tools for protecting information are the withholding grounds in sections 6, 7, 9, 10 and 18 of the OIA.

In addition to messaging, I suggest Customs ensure that all staff receive training on the purposes of the OIA, the principle of availability of official information and application of the withholding grounds under the OIA (OIA training is discussed in more detail in [*Organisation structure, staffing, and capability*](#_OIA_training)).

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| **Action point**  |
| Increase messaging from senior leaders to staff about the importance of the OIA |

* + 1. Messaging to the public

It is important for agencies to publicly express a commitment to openness and transparency as it enables the public to have trust and confidence in how requests for information held will be treated. Customs’ website and some key strategic and corporate documents contain a number of messages that illustrate the agency’s commitment to openness, transparency and compliance with the OIA in its work and activities as a government agency. For example:

* Customs’ OIA webpage[[12]](#footnote-13) provides an excellent example of messaging on the OIA:

*The Official Information Act 1982, also known as the OIA, is an important tool and safeguard in New Zealand’s democracy.*

*We're committed to complying with the purposes, principle and requirements of the Act. We make the official information that we hold as a government agency available to the public, unless there is good reason for withholding it.*

*Making our official information available to the public enables more effective participation in our country’s democracy, promotes accountability, enhances respect for the law, and promotes the good government of New Zealand. Equally, withholding our official information is important when it is in the public interest to protect the information or necessary to preserve personal privacy.*

* Customs’ Annual Report 2020[[13]](#footnote-14) is another excellent example of the agency’s signalling:

*The Official Information Act 1982 (OIA) is intended to make government activities more open and transparent to the public. Customs is committed to the principles of openness and public engagement, and complying with the purposes and requirements of the OIA. We make the official information we hold as a government agency available to the public unless there is good reason (as set out in the OIA) for withholding it.*

*In 2019/20 we responded to 833 requests for information under the OIA, with all but four of those responses provided within the legislated timeframe.*

*We are aware that proactive release of official information can improve public trust and confidence in government and facilitate informed participation in government decision-making. We regularly publish responses to OIA requests on our website …, as well as release a range of information to keep the public informed about our work, such as interceptions of drugs and other illicit goods…*

* Customs’ Statement of Intent 2017-2021 contained a number of broader messages around public trust, social responsibility and fairness, for example:

*Customs supports the Government’s commitment to open and transparent government by making high-value public data, which can be read by technology, available for re-use.*

* Finally, Customs encourages public engagement and participation in the agency’s processes by publishing public consultation and discussion documents. Customs’ ‘Important notices’ webpage[[14]](#footnote-15) includes a number of consultations on various issues such as, for example, border clearance levy and goods clearance fees. As a minor suggestion, however, I encourage Customs to consider including a quicklink to ‘Important notices’ on the agency’s homepage.

Overall, it is clear that Customs’ external messaging through its corporate and strategic documents is one of the stronger areas of the agency’s OIA practice. The agency’s clear and visible messaging will no doubt help increase public awareness of the OIA and its role as a constitutional measure, thus enabling the public to have trust and confidence in how their requests for access to official information held by Customs will be treated.

* + 1. OIA webpage

Information on agencies’ websites is a signal to the public about leaders’ commitment to the purposes and principle of the OIA and openness more generally.

Along with the messaging in Customs’ corporate and strategic documents, the agency’s website is another area of practice that has shown strong performance. The website has recently been updated to include Customs’ OIA webpage as one of twelve topics prominently profiled on the homepage.[[15]](#footnote-16) The quicklink ‘OIA requests’ takes users through to a well-structured OIA webpage[[16]](#footnote-17) that contains comprehensive and accurate information to assist website users with making OIA requests. For example, the website contains an overarching statement clearly communicating Customs’ strong support for the purposes and principle of the OIA. There are links to past responses and links to OIA statistics broken down by subject.

I also note that the webpage now includes an updated link to the Ministry of Justice’s Directory of Official Information for Customs along with a description of the information that the agency holds.[[17]](#footnote-18) As a minor suggestion, the webpage can be made more user-friendly by supplementing the descriptions of Customs’ information with hyperlinks to the webpages where the relevant information is located.[[18]](#footnote-19) Increasing public understanding of information held by Customs will help requesters make more tailored OIA requests and thus help reduce unnecessary administrative burdens on the agency.

As the website contains a link to the charging guidelines published by the Ministry of Justice, it can be supplemented by an explanation that the requester will be given an opportunity to refine their request in order to reduce or remove the need for a charge.

Although Customs’ OIA process is briefly outlined on the webpage, this section could also be further improved by including references or links to the agency’s OIA policy and procedure (discussed in more detail under [*Internal policies, procedures and resources*](#_OIA_policy_and)). While the OIA webpage currently includes a link titled *’Internal Process Checklist for Customs OIA Requests’*,[[19]](#footnote-20) the link only contains a very brief process-oriented document that does not provide any guidance on substantive OIA issues or provide insight into Customs’ decision-making process on OIA requests.

I consider it is important for agencies to publish policies which describe how decisions are made on factors that impact people, as described in section 22 of the OIA. Publishing Customs’ OIA guidance will help promote openness and accountability by providing requesters with a better understanding of Customs’ OIA processes, particularly around such important issues as application of the withholding grounds under the OIA or dealing with difficult or vexatious requests. The increased OIA awareness will help manage requesters’ expectations around their requests, strengthen public trust in Customs’ decisions and make the agency less vulnerable to criticism when applying its OIA policy and procedure.

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| **Action point**  |
| Provide a link on the OIA webpage to Customs’ internal decision making rules (described in section 22 of the OIA) |

# 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 Customs’ organisational structure, staffing and capability, I considered whether:

* Customs had the capacity to discharge its official information obligations, with clear and fully functioning roles, accountabilities, reporting lines, delegations and resilience arrangements; and
* Customs had the capability to discharge its official information obligations.
	+ 1. Model for handling OIA requests

Customs’ current OIA processes operate under a centralised model which, as indicated by the agency’s reported timeliness of 99.7 percent for the period from January to June 2020, appears to meet Customs’ demands in this area of its functions. Overall, it seems that Customs has the staffing capacity and organisational capability to ensure that the agency is able to meet its OIA obligations in a timely manner. The agency’s capacity and capability also allowed it to successfully adapt to the challenges of the 2020 lockdown (discussed in [*Current practices*](#_OIA_practices_during)).

Customs’ OIA team, Correspondence, Reviews and Ministerial Servicing team (CRaMS), sits within the International and Governance group with the group’s Deputy Chief Executive assigned overall responsibility for the agency’s OIA performance. The tier two managers, as the authorised[[20]](#footnote-21) decision makers on OIA requests, are sufficiently senior to ensure effective and expedient discussions with experts and senior officials, as well as appropriate escalations in the event of any delays in the OIA process. The delegation of the OIA decision-making authority to tier two managers signals the importance the Chief Executive has accorded to Customs’ OIA processes.

CRaMS consists of twelve FTE specialist advisors and supports Customs in meeting its obligations under the OIA, as well as handling correspondence addressed to the Minister, the Chief Executive and Deputy Chief Executives. The team’s staff are located in four Customs’ offices in Auckland, Christchurch, Dunedin and Wellington.

Key staff my investigators spoke to said that CRaMS works closely with its contacts within business units responsible for the relevant information as they draft responses to OIA requests and make recommendations to the relevant Deputy Chief Executive as the decision maker with regard to each request. The team’s close relationship with business units is maintained on a daily basis via triaging, commissioning and scoping meetings and discussions. Internal stakeholder engagement was said to have increased recently during and post- the 2020 lockdown after the introduction of Microsoft Teams (for example, the software is now routinely used to conduct commissioning meetings on OIA requests).

* + 1. OIA training

My initial staff survey asked when staff last received training on responding to OIA requests. The results are below:[[21]](#footnote-22)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Within the last year | Between 1-2 years ago | Between 3-4 years ago | More than 4 years ago | *‘I have never received any training on the OIA’* |
| 22% | 17% | 6% | 22% | 33% |

Some respondents also commented on Customs’ OIA training as follows:

*More training can and should be done - using a variety of delivery methods.*

*Systematic training should be offered to managers.*

*No formal training, more of an information session on the process.*

*Aside from a brief mention during induction, most of my training has been through experience and asking others.*

The above results appear to indicate some gaps within Customs’ OIA training systems. For example, 55 percent of respondents reported that they have never received OIA training or received it more than four years ago. I am encouraged, however, that the recent measures developed by the agency (including committing to increased OIA training in CRaMS’ business improvement plan) will help improve its practices in this area of its functions. Customs’ training systems currently include the following:

* OIA training at induction is delivered to staff via completion of Customs in-house Official Information Act and Privacy Act training module, available to all staff via the intranet[[22]](#footnote-23) and as part of Customs’ induction pack. I am pleased to observe that the module is comprehensive and can, in my view, help establish organisation-wide awareness of key official information principles, if completed by all Customs staff. As Customs advised that it will review the module in 2021, I suggest that the module is amended to include details about the requirement under section 15(1) of the OIA to make and communicate decisions on OIA requests *‘as soon as reasonably practicable’*.
* Training to OIA specialists is delivered via external courses, along with training facilitated by CRaMS itself (a half-day OIA and Privacy Act workshop and on the job training). I encourage Customs to also ensure that specialist OIA training is regularly delivered to the agency’s Communications team (discussed in more detail in [*Current practices*](#_Media_information_requests)). Such training should address a range of OIA topics, including refusing requests, how to apply the public interest test and complying with section 19 of the OIA.[[23]](#footnote-24)
* Customs advised my Office that communications will be sent to all staff in 2021 prompting them to complete OIA refresher training online. This is a positive measure, especially if refresher training is available to tier four and above decision makers to keep abreast of any changes to OIA legislation or guidance that might affect the agency’s policies and procedures when dealing with OIA requests. I encourage Customs to ensure that regular refresher training on the OIA is delivered to all staff.
* Customs staff stated during meetings with my investigators that, following some staff changes within Customs’ Communications team, OIA training was delivered to the team via completion of Customs’ OIA training [module](https://wakacs.ooto.ombudsmen.govt.nz/otcs/llisapi.dll/app/nodes/1798448)in 2019-20, followed up by ‘annual refresher’ for some staff in late 2020. CRaMS also delivers annual OIA training to Customs’ People and Capability Service Delivery group.

I am pleased that Customs is constantly working towards improving its OIA training. The OIA training measures as outlined above, when fully implemented, will no doubt benefit the agency’s practices by increasing organisation-wide awareness of the OIA and providing staff with current knowledge of the OIA and best OIA practices. Training also reinforces to staff the importance that Customs leaders place on the agency’s OIA processes and practices.

Customs may wish to be aware that staff in my Office are available to assist with developing and/or delivering training on request.

* + 1. Information management and record keeping training

It is my expectation that all agencies provide training for staff on their information management systems and record keeping obligations that is role-specific, and includes guidance on information retrieval as well as information storage. Implementing agency-wide information management and record keeping training is essential in order to facilitate the retrieval of information in response to an OIA request. The effective use of these systems for storage and retrieval is important not only in fulfilling OIA obligations, but for efficient business practices generally.

The results of my initial staff survey indicate that Customs may need to increase staff training around record keeping and the use of its information management platforms. A reasonable proportion of 124 respondents in my survey indicated that, since starting work at Customs, they had never received training on information management (36 percent) and record keeping (36 percent).[[24]](#footnote-25) Staff were further asked to describe the nature of their training received at Customs, to which the 35 respondents who said they had received training answered as follows:[[25]](#footnote-26)

*‘What was the nature of the information management/record keeping training you received?’*

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| --- | --- |
| Answer choices | Responses |
| There is some mention of IM systems/record keeping during induction training | 23% |
| A general overview of how to use the information management systems and record keeping obligations | 45% |
| In depth training on record keeping and information management systems including use of search functions | 8% |
| A record keeping and information management refresher session for experienced staff | 3% |
| One-on-one training on an ad hoc basis | 20% |
| I haven't received any training on record keeping or information management since working at this agency | 24% |
| Other (comments below) | 9% |

Some respondents commented as follows:

*…mostly on the job learning and asking how to do things or find them if unsure.*

No training [received] solely dedicated to info management. It is just one aspect of a system used by Customs which sits across all passenger and goods as well as Intelligence functions.

*It’s been fifteen years since I started so I honestly can’t remember, however I am responsible for [information management function] so I am aware of what is required in regards to this…*

*Our organisation receives and generates classified documents. There seems to be no training that I am aware of around the management of such material.*

I note in the above results that 20 percent of staff receive training on an ad hoc basis, and only 3 percent received refresher training. This suggests an opportunity for Customs to implement refresher training for staff at regular intervals.

Finally, many respondents in my initial staff survey (34 percent) indicated that it was not clear how and for what type of information each of Customs’ records storage systems should be used.[[26]](#footnote-27)

In order to identify areas where staff require additional support, I suggest that Customs consider conducting a survey of training needs and of compliance with Customs’ information management and record keeping policies, particularly in the interim until Customs’ single information management system (*Cohesion* or *Hononga*) is completed (discussed in [*Internal policies, procedures and resources*](#_Information_management_systems)). These measures should also be bolstered through increased messaging from senior leaders to signal Customs’ commitment to maintaining sound information management and record keeping practices.

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| **Action points** |
| Ensure all staff receive training at induction on record keeping and the use of information management systems relevant to their role; regular refresher training should also be available |
| Consider conducting a needs analysis in order to identify areas where staff require additional training support and/or guidance on the use of the information management systems and good record keeping |

# Internal policies, procedures and resources

I expect as a matter of good practice that agencies develop or 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 Customs’ 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.
	+ 1. OIA policy and guidance material

Customs has recently made a number of improvements to its OIA policy and guidance material. For example, in its response to my initial questionnaire Customs advised that its OIA guidance is now regularly reviewed and updated (although I encourage Customs to ensure that the guidance stipulates the frequency of these reviews). Customs’ OIA guidance is also easily accessible to all staff via the intranet with 73 percent of respondents in my initial staff survey having indicated that Customs’ OIA guidance was easy to find or access.[[27]](#footnote-28)

A summary overview of Customs’ OIA process is outlined in a three page document titled *‘Official Information Act Process’* (supplemented by *‘Checklist for High Level Official Information Requests’*). The main process document addresses the following steps in Customs’ OIA process:

* *‘When an OIA request is received’* (this and other sections can be made more user-friendly by providing links to the relevant template letters for processes such as acknowledging receipt of OIA requests, transfers, extensions, and seeking clarification or amendment of requests);
* *‘Planning OIA timeframe’;*
* *‘OIA sign-out steps’*;
* *‘OIAs referred by Customs to the Minister’s Office for Notification or Consultation’* (this section will be discussed in more detail in [*Current practices*](#_Ministerial_interactions_on));
* *‘OIA Proactive Releases’* (this section will be discussed in more detail in [*Internal policies, procedures and resources*](#_Proactive_release_of));
* *‘Information that comes to be held after a request is received’* (I am pleased to note that this section draws from my guidance[[28]](#footnote-29) and encourages staff to consider providing additional relevant information to requesters even if that information was received by the agency after an OIA request was received).

Customs’ decision-making process on OIA requests is now recorded via a document titled *‘OIA Decision Report Template’* which provides advice to the relevant senior manager and includes the following fields:

* *‘Risk profile rating’*,[[29]](#footnote-30) where staff are asked to consider, among other things, *‘[w]hat risks are associated with making this information public’* (a senior Customs staff member advised during an interview that the agency does not use a risk rating as a ground to withhold information as the templates are completed by OIA team’s advisors who undergo specialist OIA training on the correct application of the withholding grounds under the OIA);
* ‘*Consultation’* (this specifies which business groups were involved in preparing Customs’ response, as well as whether the response will be provided to the Minister’s office under the *‘no surprises’* convention);
* ‘*Has the requester sought urgency’*, including details of the request for urgency;
* *‘Can the information be identified? Can it be found? What do we think the requestor is asking for?’*
* *‘Will answering the request require substantial collation and research?’*
* *‘What are the countervailing reasons to withhold the information? How do the Public Interest and the reasons to withhold weigh up?’*

The above process, while already strong, can be further improved by expanding the range of issues considered by decision-makers to include, for example, steps taken to search[[30]](#footnote-31) for the requested information and whether the response is to be published on Customs’ website.

There are a number of reasons I suggest the agency maintain good record keeping practices for OIA requests:

* the Public Records Act 2005 requires every agency to which it is subject to create and maintain full and accurate records of its affairs;[[31]](#footnote-32)
* it will assist Customs in responding to requesters if they seek the grounds for withholding information under section 19 of OIA;
* it will assist the agency in responding to Ombudsman investigations;
* information released under the OIA does not automatically attract protections under section 48 of the OIA.[[32]](#footnote-33) Instead, as the High Court has recently clarified,[[33]](#footnote-34) section 48 operates as a positive defence, and it is the agency who bears the onus of demonstrating that information was released pursuant to an OIA request and in *‘good faith’*. It therefore would be prudent to keep records of decision-making in order to evidence *‘good faith’* release should any decision become the subject of a challenge.

The full record of the decision making process set out in one user-friendly document can also be used to guide staff to ensure consistency of Customs’ responses to similar OIA requests.

Overall, Customs’ guidance on the OIA process should, in my view, be expanded to include more information on the following:

* High-level statement of Customs’ commitment to compliance with the OIA, including the definition of official information and the general outline of the OIA, its purposes and the principle of availability of official information;
* Identifying the type of OIA request received (Part 2, 3 or 4 of the OIA);
* Transfers and extensions;
* Application of withholding or refusal grounds under the OIA (this guidance does not need to be detailed and only needs to establish basic knowledge of the grounds to help increase agency-wide awareness);
* Requirements under section 19 of the OIA to provide the reason for the refusal, and the requester’s right to complain to the Ombudsman;
* Application of the public interest test (for example, a step-by-step process of application of the test as outlined in Appendix 1 to *‘Public interest: A guide to the public interest test’* published by my Office);[[34]](#footnote-35)
* The requirement under section 15(1) of the OIA to make a decision on an OIA request and notify it to the requester *‘as soon as reasonably practicable, and in any case not later than 20 working days after the day on which the request is received’*;
* Consulting with and assisting requesters, including:
	+ dealing with urgent requests (I also discuss this in [*Current practices*](#_Media_official_information));
	+ managing complex or broad requests;
	+ considering alternative release formats for making information available in multiple ways, such as giving a requester a reasonable opportunity to inspect a document in person;[[35]](#footnote-36) and
	+ before refusing an OIA request due to administrative reasons,[[36]](#footnote-37) considering fixing a charge, extending the timeframe, or contacting the requester with a suggestion to refine their request.

Customs may also wish to consider reviewing its sign-out process (as outlined in Customs’ *‘Official Information Act Process‘*) as I note that some respondents in my initial staff survey stated that Customs’ current process greatly reduced the time available for collating information for OIA requests:

*As a provider of information for OIAs/collation of responses, I find the timelines for delivery frustrating. Most of the time available under the Act is taken up by the multitude checking and sign off processes which means that I get literally 3-4 days in which to collate information and write the response. As requests are always ad hoc, this creates difficulty in getting the rest of my (busy/urgent work) job done.*

*While OIA responses which relate to travel information and company data information are processed in a short timeframe, other OIA responses such as media requests have a very long internal sign off process. This greatly reduces the time available for the work area holding the information to search and gather information that may be within scope. This can result in information not being looked for left out. These responses are also more likely to be extended unnecessarily as a result.*

*We have a lengthy sign off process which impacts on your time to research and prepare the documents, or you will miss the 20 day deadline.*

To allow staff sufficient time to process OIA requests, manage risks, and help ensure Customs’ compliance with its duty to communicate its decisions on OIA requests as soon as reasonably practicable,[[37]](#footnote-38) I suggest the agency consider streamlining its sign-out processes. This could be achieved by consideration of different tiers of sign-off depending on the complexity or degree of risk associated with the request. This might enable risks to be managed while avoiding the need for multiple levels of managerial sign-off.

Finally, as a minor observation, I note that Customs’ OIA process document, when outlining steps in the agency’s OIA process and the participants involved in it, refers to staff only by their first names. This may be confusing for staff who are new or infrequently involved in the OIA process, and the document itself can quickly become outdated if staff move, resign or go on leave. Therefore, I suggest that Customs consider either replacing staff’s first names with their position titles or adding position titles in parentheses.

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| **Action points**  |
| Review and update OIA guidance material incorporating my suggestions  |
| Review sign-off processes to identify where these can be streamlined |

* + 1. Proactive release of information policy

In addition to the information published on Customs’ OIA webpage (discussed in [*Leadership and culture*](#_OIA_webpage_1)), Customs’ proactive release practice includes publication of information on the following:

* Customs’ organisational structure and role,[[38]](#footnote-39)
* Cabinet material,[[39]](#footnote-40)
* Financial information,[[40]](#footnote-41)
* Public engagement processes,[[41]](#footnote-42)
* Monitoring data on matters of Customs’ responsibility as an agency (for example, Customs publishes statistics relating to drug interceptions and non-drug (goods) interceptions).[[42]](#footnote-43)

Customs also stated that during the 2020 lockdown it proactively released documents[[43]](#footnote-44) relating to New Zealand’s border during the COVID-19 emergency, along with statistics on daily international air passenger arrivals and departures*.*

While the range of information published by Customs is extensive, I suggest that the agency’s OIA policy and guidance materials (discussed in [*Internal policies, procedures and resources*](#_OIA_policy_and)) are also released as part of the agency’s proactive release practice.

Customs’ commitment to proactive release is expressed on the agency’s OIA webpage:[[44]](#footnote-45)

*As part of our commitment to open and transparent government we regularly publish responses for*[*general*](https://www.customs.govt.nz/about-us/information-releases/official-information-act-requests/general-oias/)*,*[*media*](https://www.customs.govt.nz/about-us/information-releases/official-information-act-requests/media-oias/)*and other OIAs after the requestor has received their response from us.*

Customs’ internal guidelines for proactive release of official information are outlined in the agency’s guidance document titled ‘*Official Information Act Process’*. The document currently only regulates responses to OIA requests. I suggest it could be expanded to provide guidance on proactive release of any official information. I would also suggest including the following in the guidance:

* A high-level commitment to proactively releasing official information in accessible form;
* The types of Customs’ information that will be proactively released;
* A process for identifying opportunities for proactive release, for example, where a high number of OIA requests is received about a subject (this information will help formalise Customs’ current practices for identifying trends and themes of OIA requests);
* A process for preparing for proactive release, including managing risks around personal or confidential information, commercial information and information subject to third party copyright (formalising Customs’ risk assessment processes will help ensure clearer and more streamlined decision-making when handling subsequent OIA requests); and
* Provision for the policy to be regularly reviewed and updated.

I am pleased to note that much of the above guidance is provided in Customs’ recently developed document titled “*Proactive release of Cabinet material – Process overview*”, which covers the agency’s process for proactively releasing Cabinet material when Cabinet has made a final decision on a proposal. This extensive 14-page document outlines the frequency and timing of publications and makes some provisions for management of risks associated with releases of Cabinet materials. I encourage Customs to include similar level of detail into its guidance on proactively releasing non-Cabinet material.

As Customs continues to develop its proactive release policy, it may wish to be aware that my Office has recently published guidance[[45]](#footnote-46) on good practice for the proactive release of official information.

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| **Action point**  |
| Review and update the proactive release policies and procedures incorporating my suggestions |

* + 1. Information management and record keeping systems and guidance
			1. **Information management systems**

An agency’s capability to discharge its official information obligations is often heavily dependent on establishing and maintaining effective systems for information management and record keeping.

Several respondents to my initial staff survey highlighted specific issues present within Customs’ current systems, including lack of clarity around the use of Customs’ multiple information management systems and frequent reliance on staff knowing who to approach to obtain information relating to an OIA request:

*There is no electronic file management system, and there is no New Zealand-wide file system (Auckland files are not visible to Wellington staff unless specifically given access and a link, and so on) so that information may be missed because it is not visible to the person looking for it, and there are various bespoke file systems only available to certain staff.*

*A shambolic mix. There are several systems. They don't cover all information held. I'm not sure that anyone has a clear understanding on how/for what most are used.*

*Several systems and in terms of the secondary systems not particularly clear how/for what type of information they should be used (or even always clear who has what systems); from a primary system perspective (i.e. CusMod) it is however centralised and reasonably clear in terms of the type of information.*

*The ability to access the information relevant to a request, to enable it to be assessed against the principles of the Act, is probably the single biggest challenge of any request.*

*Everything is stored on a G:drive with access to individual folders restricted as required. We do not have a document management system. Version control of documents is problematic as is retrieval. The search engine is horrible. Plus we have to go to our IT department to do a search on emails which can often throw up literally thousands of emails which makes it impossible to answer OIAs with certainty that all information has been provided.*

*This is probably one of the areas which need strongest focus within Customs, to help the organisation respond to OIA requests.*

*While the info management system is non-existent, people tend to know who knows stuff. Responses to OIAs tend to find the information via knowledge about who knows this, and their internal team records.*

In its response to my post-lockdown questionnaire Customs has advised that it has been working towards implementing a single document management system (named *Cohesion* or *Hononga*) across all of its corporate functions[[46]](#footnote-47) with the intention of using it as ‘*Customs’ main document/content management system.*’ In conjunction with the agency’s recent review of its information management structures, Customs has established an information management team in its Information Service Group with the responsibility to *’administer Cohesion [Hononga], set appropriate policies, and deliver training on information management and use of the Cohesion system’.*

Customs is making positive progress in this area and I encourage it to ensure that the new system is implemented in a way that improves the efficiency of capturing, storing, searching and retrieval of information to support its overall capabilities and performance in this area. In addition, until the new system is in place, Customs must remain aware of the limitations of its current systems, and ensure it has policies and processes in place (including providing guidance and training to staff) that will mitigate any risk of information being overlooked when it is searched for in the context of an OIA request. Senior leaders should bolster these measures by signalling Customs’ commitment to maintaining sound information management and record keeping practices.

* + - 1. **Information management and recording policies and procedures**

In relation to its information management policies and procedures, Customs advised of its plan to review these as it stated the following in its response to my initial questionnaire:

*…we recognised the need to review and refresh our information management environment. As a result, two new roles have been created, an Information Management Advisor and a Content Management Advisor. These new roles will review our information management framework and underlying policies, procedures and processes.*

The agency also stated that it does not currently have a record keeping policy:

*Given the diversity across our organisation, there is no single record keeping policy. However, within the various business areas of the organisation we have established systems and protocols on electronic document collection, retention and storage. These are embedded within various Operational Policies and Procedures.*

While I commend Customs for its progress in this area of practice, I encourage the agency to ensure that the review and development of its policies and guidance (especially in the context of the *Cohesion/Hononga* project) includes the consideration of the following aspects:

* 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 system holds;
* retaining, retrieving and disposing of records;
* the management of both manual and electronic records, including personal e-mail accounts, text messages and instant messaging platforms such as Microsoft Teams;
* assigned responsibilities and performance criteria for records and information management by staff;
* the provision of secure audit trails; and
* annual/periodic audits of records.

The development and review of Customs’ information management and record keeping policies and guidance should be supported by continuing to review staff compliance with Customs’ policies and procedures and ensuring that all staff receive regular training on record keeping and the use of information management systems (discussed in [*Organisation structure, staffing and capability*](#_Information_management_and_2)). I also consider that the review affords a valuable opportunity for Customs’ senior leaders to champion sound information management and record keeping practices, and to highlight how these support transparency and the robustness of Customs’ responses to OIA requests. Clear and regular messaging can be delivered to staff agency-wide via internal communications and high-level statements in policies, procedures and guidance.

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| **Action points**  |
| Ensure that the introduction of the new information management system is:* accompanied by appropriate interim measures, including providing guidance and training to all staff, addressing staff’s difficulties with the use of the current information management systems to mitigate the risk of information being overlooked when it is searched for in the context of an OIA request; and
* supported by clear and regular messaging from senior leaders on the importance of sound information management and record keeping practices.
 |
| Ensure that information management and record keeping policies include guidance on the matters as per my suggestions |

# 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 Customs, I considered whether:

* Customs’ official information practices demonstrate understanding and commitment to the principle and requirements of the OIA;
* Customs’ staff have a good technical knowledge of the OIA; and
* Customs is coping with the volume and complexity of requests, and decisions are compliant.
	+ 1. Reported OIA timeliness

Since the 2015/16 reporting year, the Public Service Commission (PSC) has published the OIA timeliness statistics of central government agencies.[[47]](#footnote-48) Customs has maintained consistently high reported timeliness of its responses to OIA requests since 2015/16 (99 percent) with the most recent statistics at the time of writing of this report showing the agency’s timeliness standing at 99.6 percent during the reporting period of January-June 2021. The number of responses to OIA requests proactively released on the agency’s website has also increased from 17 in 2016/17 to 28 responses published in the reporting period from July to December 2020. While I commend Customs for this increase, I note that it still represents a fairly low number when compared to the total number of requests received. A staff meeting attendee stated their view that, considering the volume of OIA requests completed by the agency,[[48]](#footnote-49) Customs should be publishing more responses to OIA requests.

Customs’ reported OIA timeliness remained high – 99.6 percent – in the reporting period from January to June 2020, which includes the time the nation was in lockdown. As Customs advised in its response to my post-lockdown questionnaire, the volumes of OIA requests received by the agency over the 2020 lockdown period *‘remained consistent with previous years’*, although I note that the number of requests received during that period decreased from 483 in the preceding six months, to 350 requests.

The following table shows that the percentage of OIA requests processed by Customs within legislated timeframes has increased from an already high timeliness of 99 percent in 2015/2016:

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| Financial year | Requests received | OIA requests handled within legislated timeframe |
| 2015/16 | 1018 | 99 percent |
| 2016/17 | 1076 | 98.6 percent |
| 2017/18 | 1046 | 99.6 percent  |
| 2018/19 | 868 | 99.6 percent  |
| 2019/20 | 833 |  99.6 percent |
| 2020/21 | 597 | 99.7 percent  |

### OIA practices

To gain an understanding of how Customs processes OIA requests, my investigators reviewed a random selection of OIA request files.

Overall, the files show high levels of compliance with the requirements of the OIA, with consistent adherence to statutory timeframes and largely adequate record keeping of emails and key correspondence. I particularly note Customs’ compliance with its duty to give reasonable assistance to requesters prescribed by section 13 of the OIA. For example, two files showed the agency asking requesters to clarify their requests, and one offered to provide the requester with an excerpt or a summary of a document to make information sought by the requester more accessible.[[49]](#footnote-50)

However, the agency could further improve its practices with some focus on the following areas:

* Customs’ acknowledgment emails to requesters did not fully explain the requirement under section 15(1) of the OIA[[50]](#footnote-51) to make and communicate a decision ‘*as soon as reasonably practicable*’, and simply stated that responses are to be provided within 20 working days. However, I am encouraged by Customs’ advice in response to my provisional opinion that the OIA team’s template acknowledgement email now includes the requirement under section 15(1) of the OIA.
* While Customs’ letters transferring an OIA request to other agencies were generally compliant with the requirements of the OIA, there did not appear to be any indication that Customs considered consulting with the requester and the other agencies about the proposed transfer.[[51]](#footnote-52)
* The OIA files did not appear to contain records of steps taken to search for requested information, such as, for example, what information systems were searched, what key words were used and what was the outcome of the searches.[[52]](#footnote-53) Documenting the steps taken to search for information, and the number, location and type of any documents located, can assist staff handling similar requests in future, particularly if the request is for a broad range of information. In addition, recording the time taken to collate a sample of documents within the scope of a request for a large amount of information can assist agencies in considering whether to fix a charge for the supply of information, to extend the timeframe for responding to a request, or to refuse a request pursuant to section 18(f) of the OIA, as well as helping to provide context during any subsequent review of that decision by me.
* Where Customs withheld information under section 9(2)(g) of the OIA, the files I reviewed did not appear to include records of Customs’ rationale behind the application of the public interest test.[[53]](#footnote-54) I note that Customs’ response letter and the OIA decision report (discussed in [*Internal policies, procedures and resources*](#_OIA_policy_and)) stated that the agency *‘has considered the public interest arguments in favour of making this information available’*.
* Two letters communicating Customs’ decisions to refuse a request under section 18(e) of the OIA did not state whether the agency consulted or considered consulting with the requester as required by section 18B of the OIA. Customs should ensure that staff are provided guidance around consulting with requesters when contemplating refusing a request under section 18 of the OIA.[[54]](#footnote-55)
* One OIA file contained an email which referred to staff consulting the requester over the telephone; however, no record of the conversation appeared to have been kept. Another file included a request from a staff member to hold a meeting via Microsoft Teams to discuss *‘a suitable approach to the request’*, but no records of the meeting itself were kept on the file. Therefore, I encourage Customs to ensure that records of relevant telephone and in-person conversations, meetings and discussions over instant messaging platforms such as Microsoft Teams, are noted and kept on file.

I consider improved guidance (see [*Internal policies, procedures and resources*](#_OIA_policy_and)) and increased introductory and specialist OIA training (see [*Organisation structure, staffing and capability*](#_OIA_training)) would help mitigate the above gaps. To align with best practice, I also suggest that Customs update its template letters to ensure that all relevant details are included. My Office has produced templates which might prove useful.[[55]](#footnote-56)

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| **Action points**  |
| Consider amending template extension letter to specify, where appropriate, the new date to which the agency is extending the 10 working day time limit available for transfers |
| Ensure that records of consultations with requesters and agencies are kept whenever transferring an OIA request to another agency, or contemplating withholding information under section 18 of the OIA |
| Record administrative steps taken when searching for requested information, where this may be appropriate  |
| Ensure that records of Customs’ rationale behind the application of the public interest test are kept where appropriate |
| Ensure that records of relevant telephone and in-person conversations, meetings and discussions over instant messaging platforms, such as Microsoft Teams, are kept on file |

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| **Customs’ response** Customs advised, in response to my provisional opinion, that *‘process enhancements’* to support engagement with requesters and *‘provide greater clarity in… responses to the media’* include recording information on the steps taken by Customs to locate information. Customs amended the OIA team’s template acknowledgement email to include the requirement under section 15(1) of the OIA. Customs also provided a template acknowledgement email for use by the Communications team.**My comments**I commend Customs for the initiatives taken to date. I note that the Communications team’s template for acknowledging receipt of media information requests still does not specify that decisions on OIA requests must be communicated *‘as soon as reasonably practicable’* as required by section 15(1) of the OIA.I also note that the Communications team’s template appears to clearly distinguish *‘media requests’* and *‘OIA requests’* and may thus contribute to a misconception that media information requests are not subject to the OIA. Media requests for information held are subject to the OIA, regardless of which team responds to the request.  |

### 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. From 26 March to 27 April 2020, New Zealand was at Alert Level 4 and from 28 April to 13 May 2020 at Alert Level 3.[[56]](#footnote-57) At Alert Levels 3 and 4, staff were instructed to work from home.

Based on the results from my post-lockdown survey and meetings with staff following the 2020 lockdown, Customs appeared to have responded well to these challenges, despite being impacted by the COVID-19 emergency. Customs staff indicated during surveys and meetings with my investigators that the performance of the agency’s OIA functions continued largely unaffected. Customs’ emergency management structure established via a Business Continuity Plan was tested prior to the 2020 lockdown, and staff continue to have access to the tools necessary to work remotely, equipping Customs for any future possible lockdown or emergency scenarios.

In its response to my post-lockdown questionnaire Customs stated that its OIA practices during the 2020 lockdown were informed by Solicitor-General’s guidance[[57]](#footnote-58) emailed to Customs and other agencies by the Public Service Commission. The agency also advised that there were no changes in its OIA processes and practices (including interactions with the Minister’s office on OIA requests), and no staff were redeployed to or from the OIA team.

Overall, based on the results of my post-lockdown survey and Customs’ reported timeliness compliance during the 2020 lockdown period, it appears that the agency’s centralised model of OIA processing, and its procedures and practices were sufficiently robust to ensure that Customs responded well to the challenges presented by the lockdown. A Customs’ staff member also stated during a meeting with my investigators that the agency’s adaptability was in large part enabled by its BAU practices before the 2020 lockdown, such as OIA staff being based in different locations and frequently communicating via video-conferencing. Its existing practices meant the team was already adept at working remotely from colleagues.

The 2020 lockdown also brought some positive changes into the agency’s BAU practices after the lockdown, including the implementation and active use of Microsoft Teams. Customs advised in its response to my post-lockdown questionnaire that the software allowed the OIA team *‘to consult more easily with other business units … [and] share documents virtually across the organisation during OIA consultation and commissioning meetings.’*

The results of my post-lockdown survey of Customs’ staff were encouraging as well, and, in my view, strongly evidenced Customs’ positive response to the challenges presented by the 2020 lockdown. When asked *‘Do you think there are any aspects of your agency's OIA practice which assisted efficient and accurate OIA processing during lockdown?’*, respondents cited ‘*clear process and responsibilities*’, clear and regular communications between the OIA team and other staff involved in the OIA process, as well as *‘[e]fficient data bases to store information’.* For example:

*I feel that Customs has sound processes in place that work regardless of lockdown or other status. We are well placed to access information and work remotely with some work having been done during the Wellington earthquake which required people to work off site while the building was fixed. Lessons were identified from here and good Business Response Plans were in place.*

*A focus on quality remote working solutions and equipment enabled us to continue processing and information gathering even though we were in lockdown*

*The ability of key staff to work from home and access 'normal' work drives and the Customs intranet, and therefore policy and procedures…*

*Ease of availability and accessibility of electronic data; communication to the right work areas or points of contact irrespective of working from home or on site for essential work.*

*Better internal consultation with Business Units across the country via the use of Microsoft Teams.*

A few respondents commented on some challenges, however, when asked *‘Do you think there are any aspects of your agency's OIA practice which made OIA processing during lockdown more difficult?’*:

*Access to hard copy and checking in with colleagues would have been more difficult (but only marginally so).*

*No access to footage and not knowing the Drive in which to place the footage to have it available to the investigator.*

Most respondents to my survey (76 percent)[[58]](#footnote-59) thought that they had adequate resources to fulfil their roles in relation to the OIA during the 2020 lockdown.[[59]](#footnote-60)

* + 1. Ministerial interactions on OIA requests

Customs advised that it draws a distinction between notifications and consultations on OIA requests that involve the Minister’s office. Notifications are sent when the Minister *‘may have an interest under the “no surprises” policy’*.[[60]](#footnote-61) Consultations, on the other hand, occur when Customs contemplates the release of information that could reasonably be expected to be *‘of concern to the Minister because, for example, the Minister supplied the original information, it is about the Minister’s functions or activities, or the release could affect the Minister’s functions or activities or legitimate interests’*.

Customs’ OIA process guidance, (*‘Official Information Act Process’*, discussed in [*Internal policies, procedures and resources*](#_OIA_policy_and)), contains a decisive statement about which party is the decision maker on departmental OIA requests:

*Customs makes the decision on the request and the [Minister’s] Office has no input into that decision.*

Customs’ staff further advised during meeting with my investigators that, whenever a response to an OIA request is sent to the Minister’s office, the agency will state clearly whether the response is sent for consultation or as a notification only. The timeframe for sending responses is stated by Customs’ OIA process guidance to be five working days for both notifications and consultations.

Overall, the interactions between Customs and the Minister’s office appear to be appropriate. Customs staff stated during interviews that they had never felt pressured by the Minister’s office when making their decisions on departmental OIA requests. Staff advised that the Minister’s office will occasionally ask clarifying questions so the Minister is able to respond appropriately to any media enquiries or parliamentary questions once the response is sent to the requester.

The relationship was also described positively by respondents in my initial staff survey where many appeared to have good understanding of the *‘no surprises’* principle:

*Notification is letting the Minister’s office know about the decision Customs has taken on a request and will be communicating to the requester. The purpose of notifying decisions is to enable the Minister to prepare for the possibility of public or political commentary. This is in line with the ‘no surprises’ principle outlined in 3.22(a) of the Cabinet Manual. Customs makes the decision on the request and the Office has no input into that decision…*

*It seems to work well and smoothly with a clear protocol and understanding. Our staff handling OIA requests are professional, knowledgeable and helpful to other staff in drafting responses.*

However, I note that some comments were less positive, particularly when describing their perception of Customs’ practice of notifying responses to OIA requests to the Minister’s office, for example:

*It is officially 'no surprises' but the Minister's office requires x days to review the response before it is sent out. If it was really 'no surprises' they'd get it just before it is sent out.*

It is clear that Customs considers on a case-by-case basis which requests are sent to the Minister’s office, and it indicates whether the request is for noting or for consultation. However, I note some potential issues with the agency’s interpretation of the *‘no surprises’* principle in respect of:

* allowing the Minister’s office five days to review the response irrespective of whether it is for notification or consultation;
* providing the Minister’s office with the proposed response in full in every case where it might be sufficient for the Minister’s stated purposes only to receive the topic of the request or a synopsis of the decision.

I accept agencies may notify the Minister’s office about decisions reached on departmental OIA requests as a notification under the *‘no surprises’* convention, including to allow the Minister to prepare for public commentary or Parliamentary questions. However, if an agency has considered a request and effectively has made a decision to release the requested information, but does not communicate that decision to the requester for another five days, it may be in breach of its statutory obligation to make and communicate the decision to the requester *‘as soon as reasonably practicable’*.[[61]](#footnote-62)

Additionally, it seems possible that Customs’ blanket application of the five working day notification period may inadvertently suggest to the Minister’s office that decisions notified to the Minister in advance of being communicated to the requester are still yet to be taken, or that the agency remains open to input from the Minister.

I suggest, therefore, that Customs review its interpretation of the *‘no surprises’* principle by identifying where it may meet its obligations by:

* where appropriate, providing the response to the Minister’s office at the same time, or shortly before it is sent to the requester, rather than five days in advance; and
* where appropriate, providing the Minister’s office the topic only, or a brief synopsis of the response, rather than the proposed response in its entirety.

Customs recently advised that it is *‘in the process of exploring an OIA agreement with the Minister’s office’* to regulate interactions between the agency and the Minister’s office. I encourage Customs to ensure that the agreement includes the following:[[62]](#footnote-63)

* a clear statement on where responsibility rests for departmental OIA requests;
* how Customs distinguishes between consulting with the Minister’s office on a request, and notifying the Minister of request as an ‘*FYI*’ only (this distinction will help ensure staff’s understanding, for example, that whenever a response is notified to the Minister, Customs does not seek input from the Minister’s office and that staff should not delay responses waiting for feedback from the Minister’s office);
* whether all responses deemed of interest to the Minister are provided in full to the Minister’s office, or whether some are notified by subject only, and how to distinguish between these categories;
* what factors would cause the agency to consider a request to be ‘of interest’ to the Minister;[[63]](#footnote-64)
* the process to follow where the Minister’s office wishes to provide feedback or raise concerns;
* the appropriate contact people at Customs if staff at the Minister’s office have questions or comments on a proposed response;
* the timeframe for providing responses to the Minister’s office (ideally, notifications should be sent at the same time or shortly before the response is sent to the requester, to ensure that there is no undue delay in providing the information to the requester,[[64]](#footnote-65) and to help avoid any perception that the agency is awaiting clearance from the Minister’s office); and
* the process when the Minister’s office is unable to respond to a consultation within the statutory timeframe to respond to the requester (it is good practice to consult the Minister’s office early in the OIA process, where consultation is required, to avoid delays and to ensure compliance with sections 15(1) and 28(5) of the OIA).

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| **Action points**  |
| Review the practice of providing official information responses to the Minister for noting under the *‘no surprises’* obligation, in order to identify opportunities where this may be fulfilled by:* providing information to the Minister’s office at the same time or shortly before the response is provided to the requester; and
* providing the Minister’s office only the topic of the request or a summary of the response rather than the full response
 |
| Develop and finalise an agreement with the Minister’s office on handling departmental OIA requests  |

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| **Customs’ response**In its response to my provisional opinion, Customs advised as follows:*We have drafted a process for engagement with our Ministers’ office on handling departmental OIA requests… We are in discussion with our Ministers’ office to ensure that the intent and purpose of the agreed engagement process is understood by the office and have noted your suggestions around how the intent of the ‘no surprises’ convention can be fulfilled. We remain mindful about which responses we share with our Ministers’ office and via which mechanisms.***My comments**I note Customs’ recent measures as outlined above and look forward to receiving further updates on the agency’s progress.  |

### Media information requests

Many information requests sent to Customs by media requesters are routinely handled by the agency’s Communications team. Customs advised that the Communications team maintains a close working relationship with the OIA team which allows them to conduct regular meetings and have helpful and prompt conversations about the appropriate treatment of information requests from the media.

The Communications team’s process for referring media information requests to the OIA team has recently been reflected in a draft guidance outlining the relevant referral criteria. A staff meeting attendee advised that, generally, the requests are to be referred if they cannot be processed quickly by the Communications team. I note that, while the guidance includes a direction regarding Communications team’s obligation under the OIA to respond to information requests as soon as reasonably practicable, there is no reference to the obligations to provide reasons for refusing requests, or to inform requesters of their right to complain to the Ombudsman in situations where the Communications team may be partially or fully refusing information requests.[[65]](#footnote-66)

Upon review of Customs’ sample responses to media information requests my investigators found instances[[66]](#footnote-67) where the Communications team refused information without providing the reason for its refusal under the OIA or informing the requester of their right to complain to an Ombudsman to seek an investigation and review of the decision on their request.

In this instance, I consider that Customs has acted contrary to law by not meeting its legal obligations under sections 19(a) and (b) of the OIA. These sections require Customs to:

* provide the reason for the refusal; and
* advise the requester of their right to complain to an Ombudsman to seek an investigation and review of this decision.

I have not made a recommendation in this instance because Customs advised that it has commenced a work programme to ensure compliance with the OIA including the following measures:

* *‘…enhancement to the process to confirm when a media request is an information request*
* *establishment of an improved process to provide clarity for those requesting information that they may approach the Office of the Ombudsman should they be unsatisfied with the response…’*
* *‘…refresher training for the Communications team on the requirements of the OIA…*
* *direct and individualised best practice guidance from the Correspondence Reviews and Ministerial Servicing (CRaMS) team to the Communications team on requests they are handling and the application of the OIA, where required.’*

Customs must be mindful that where a request handled by the Communications team includes a request for information which is held by the agency (as distinct from a request for information to be created, including requests for comment), this is an OIA request and must be dealt with in accordance with the provisions of the OIA. It is, therefore necessary, for the Communications team to have adequate knowledge of the OIA to be able to identify OIA requests and to understand their statutory obligations when dealing with them.

I note that the Communications team’s record keeping about the media information requests it deals with appears markedly different from the practices of the OIA team. In particular, the Communications team does not appear to maintain full and accurate records in an accessible form of its substantive discussions on media information requests. In response to a request from my Office for the Communications team’s sample files, the team was unable to provide records of external and internal discussions pertaining to media information requests or the rationale behind decisions not to provide information. It was not possible to determine whether such records were kept, as details of media information requests and responses to them were summarised in a media log.

In light of the above, I consider that Customs has acted contrary to law in relation to section 17(2) of the Public Records Act 2005, which requires the agency to maintain ‘*in an accessible form, so as to be able to be used for subsequent reference, all public records that are in its control’* until their disposal is authorised by law.

However, I have not made a recommendation, as Customs advised that it has commenced a work programme to ensure compliance with the Public Records Act 2005 and improve the existing record keeping process including the following measures:

* *‘…improvements to the existing record keeping process for the Communications team including information about decisions and the responses provided…’*
* *‘…refresher training for the Communications team on … the appropriate use of the existing record system for media requests…’*

I appreciate that both the Communications team and journalists may value the immediacy and informality of their interactions, which facilitate fast turnaround of responses. There is no reason that compliance with the OIA and the Public Records Act 2005 should undermine the effective relationship, which appears to exist between Customs’ Communications team and members of the media. Nor should OIA compliance inhibit the swift handling of requests. Indeed, amendments to the OIA in 2015 made clear Parliament’s intention that agencies can and should actively engage with requesters to assist them to make effective requests at the front end of the OIA process.[[67]](#footnote-68) It is entirely consistent with the scheme of the OIA for agencies to enable officials to make quick, effective and accurate decisions, providing they meet the statutory requirements.

Regardless of whether the Communications team or the OIA team responds to the request, I suggest that Customs emphasise in its messaging and guidance that the OIA requires a decision to be made and communicated ‘*as soon as reasonably practicable*’*,* and no later than 20 working days after the date the request is received.[[68]](#footnote-69) The 20 working days is not a de facto goal, but the absolute maximum (barring an extension).[[69]](#footnote-70) Shifting the emphasis from the 20 working days requirement to making and communicating decisions on requests ‘*as soon as reasonably practicable*’ could help improve media requesters’ understanding of the OIA and Customs’ OIA processes. If the query cannot be responded to in 24 hours, another timeframe could be discussed with the requester.

Requesters should also be made aware that under section 12(3) of the OIA, a requester may ask that their request be treated as urgent, where reasons can be provided for doing so.[[70]](#footnote-71) If an agency agrees that there is a valid need for urgency, this may change what is considered ‘*reasonably practicable*’ in the particular case. Agencies should have clear policy (discussed in [*Internal policies, procedures and resources*](#_OIA_policy_and)) on how they will consider such requests and, where sound reasons exist, should ensure they have the capacity to respond as soon as reasonably practicable.

I urge Customs to ensure that its OIA guidance includes the following information:

* Details on a requester’s right to ask the agency to treat their request with urgency, and how such requests should be dealt with;
* If an information request is refused by the Communications team, the legal obligation to provide the reason for the refusal and the requester’s right to complain to the Ombudsman.

Customs can increase OIA awareness and signal its openness and accountability to the public by proactively publishing its OIA guidance on its website. The publication of the guidance not only encourages transparency and consistency of practice, it can also give requesters a better understanding of Customs’ processes and decision-making and help manage journalists’ expectations about why the information they request cannot always be made available within a 24-hour news cycle deadline. The publication should be accompanied by the provision of regular specialist OIA and information management and record keeping training to the Communications team (discussed in [*Organisation structure, staffing and capability*](#_Information_management_and_2)) to help improve the team’s processing of media information requests including information storage and retrieval.

I understand that my proposed recommendations and suggestions may require a cultural shift in the Communications team. This should be supported by strong messaging from senior leaders to reinforce that the Communications team’s OIA processes and responses to media information requests must adhere to the OIA and the Public Records Act 2005.

I am encouraged to note that some important positive steps have already been taken by Customs in this area, as Customs Communications Manager corresponded with my Office in December 2020 to *‘consider further options for indicators of good practice with media information requests’*. As a result of this consultation, the Communications team has committed to looking at the media teams’ practices of other agencies within the public sector in order to *‘incorporate any potential changes to its policies and processes’*.

I commend Customs for its proactive approach to its OIA practices, as I am confident that the agency’s commitment to continuous improvement will soon bring about positive changes in the Communications team’s practices and ensure its full compliance with the OIA.

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| **Action points** |
| Ensure the Communications team’s responses to media information requests, which contain full or partial refusal, are dealt with in accordance with the provisions of the OIA |
| Ensure the Communications team creates and maintains in an accessible form full and accurate records of substantive correspondence with requesters (including telephone conversations, meetings and verbal discussions), and any material internal discussions |
| Update the OIA guide to include more detail on urgent OIA requests and consider publishing the guide |
| Provide targeted OIA and information management and record keeping training to the Communications team to ensure they understand their obligations under the OIA |
| Ensure messaging from senior leaders reinforces that media information requests handled by the Communications team must adhere to the OIA |

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| **Customs’ response**In Customs’ response to my provisional opinion, the Chief Executive reinforced their expectation that all information requests are handled in accordance with the provisions of the OIA. The agency also advised that *‘a work programme has commenced to ensure compliance with the OIA and Public Records Act 2005’* including the following measures: * *‘enhancement to the process to confirm when a media request is an information request*
* *establishment of an improved process to provide clarity for those requesting information that they may approach the Office of the Ombudsman should they be unsatisfied with the response*
* *improvements to the existing record keeping process for the Communications team including information about decisions and the responses provided*
* *refresher training for the Communications team on the requirements of the OIA and the appropriate use of the existing record system for media requests*
* *direct and individualised best practice guidance from the Correspondence Reviews and Ministerial Servicing (CRaMS) team to the Communications team on requests they are handling and the application of the OIA, where required.’*

**My comments** I look forward to seeing Customs’ progress against the above action points and will seek updates on its actions over the next year. |

### 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.[[71]](#footnote-72) The standard is intended to make websites more accessible for users with a range of disabilities, including visual, hearing, physical, speech, cognitive, language, learning and neurological disabilities. Although the accessibility standards apply to website content, it is also best practice to apply these standards to information released in response to OIA requests.

I have produced a guide[[72]](#footnote-73) which includes a section on New Zealand’s international and domestic obligations to ensure disabled people have equal access to information. This section also provides advice on making information accessible. It should be noted that not all members of the public have access to internet, and some may require information in other formats (including, but not limited to, audio, braille, printed materials, New Zealand Sign Language, and ‘Easy Read’) to cater for different access needs. The public should be advised that they can ask for accessible formats if required.

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

As Customs proactively releases more information, including responses to OIA requests, the agency’s compliance with the web accessibility standards becomes increasingly important. Customs should ensure that all of its released PDF documents are searchable and not ‘image only’, and that all visual elements are tagged with alternative text.

In its response to my initial questionnaire Customs stated that, allowing for file size restrictions, the agency now activates the Optical Character Recognition function on PDFs using Adobe Acrobat XI Professional,[[73]](#footnote-74) which enables search functions to be carried out on PDF files that are otherwise not searchable. Impediments can be observed when releasing large files, where Customs’ internal cybersecurity policy limits file sizes of email attachments.

I note that most of the information on Customs’ website is published in a searchable format, with some exceptions such as, for example, a briefing to incoming Minister dated September 2018 which appeared to be a scanned document.

Customs’ strong commitment to accessibility of official information is clearly expressed on its webpage[[74]](#footnote-75) dedicated to accessibility which includes the following statement:

 *This website and its content have been developed with reference to the*[*New Zealand Government Web Standards*](https://www.digital.govt.nz/standards-and-guidance/nz-government-web-standards/)*.*

*All the changes are intended to make our site more accessible. Being accessible means the information is easier to find, more logical, more complete and, much easier to read and understand.*

*Accessibility is also about a certain openness and inclusiveness. Customs is very much a part of the community that we are charged with protecting. So we have tried to make our site attractive and friendly to all. We hope the experience of using it is an enjoyable one.*

The webpage describes the available formats as follows:

*A number of documents are available online as Adobe Acrobat PDF files. …Alternative document formats are provided where possible for online documents. Historical docs are in the process of being converted to HTML.*

The contact details for Customs’ ‘web team’ are helpfully included for anyone experiencing technical difficulties, content problems or for suggestions for improving the website.

It is also pleasing to note that the agency’s website uses the ReadSpeaker tool to provide an easy way for visually impaired people to access information on the website. The ReadSpeaker icon appears on every page of Customs’ website and allows users to listen to selected 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, 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 Customs in relation to requests for official information, I considered whether:

* Customs 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 Customs’ management performance in respect of official information requests; and
* Customs learns from data analysis and practice.
	+ 1. Quality measures

Subject to my earlier suggestions on Customs’ sign-out process (discussed in [*Internal policies, procedures and resources*](#_OIA_policy_and)), I consider peer review an important tool to ensure consistent, high quality responses to OIA requests. I encourage Customs to ensure peer-review is still an aspect of any amended sign-out process.

Good quality performance monitoring enables agencies to learn from previous practice in order to inform future practice. Customs’ OIA guidance document, *‘Official Information Act Process’*, requires draft responses to OIA requests to be peer reviewed by managers of the OIA, legal and Communications teams, as well as the relevant Group Manager. The agency’s decision report template also includes a designated section for peer review (including a space for reviewers’ comments) where the reviewer signs under the following statement:

*I am confident that the response and the report are of a high standard and in accordance with the Official Information Act 1982.*

While the above processes provide a strong base to help ensure high quality of Customs’ responses to OIA requests, I suggest that Customs consider refining their practices in this area. For example, a peer review template or checklist can include a set of quality criteria against which all of Customs’ draft responses to OIA requests can be reviewed. The criteria can include the following considerations:

* Whether the requester has been provided reasonable assistance;[[75]](#footnote-76)
* Whether the draft response answers the requester’s query;
* Whether the withholding grounds were applied correctly (including consideration of the public interest test, where required);
* Whether the draft response is clear and uses plain English;
* Whether the draft response is consistent with Customs’ past responses to similar OIA requests.

High quality of Customs’ responses can also be maintained through promoting the use of peer review checklists in every OIA file and increasing general awareness of OIA quality among staff tasked with processing OIA requests.

Quality assurance checks of a random selection of OIA responses on a regular, scheduled basis is another way agencies can ensure that practice is in accordance with guidance and consistent across the organisation. 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, amongst others. Establishing a system of quality assurance could assist Customs to identify where additional training needs or support may be needed in particular business unit, and to recognise excellent performance.

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

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| **Customs’ response**In response to my provisional opinion Customs advised as follows:*Our CRaMS advisors have been reminded of the need to ensure a high quality assurance check has been completed on each response at the appropriate stage in the process. We are in the process of reviewing our Commissioning and Quality Assurance checklists which support our CRaMS advisors in the development of a response. As part of that review, we will consider the implementation of an additional quality assurance process for completed OIA requests…***My comments**I commend Customs for taking steps towards implementing the above action point and look forward to seeing the agency’s progress.  |

* + 1. Collection, analysis and reporting of OIA data

Customs currently tracks its OIA requests with the use of an Excel spreadsheet[[76]](#footnote-77) which includes the following data:

* topic of OIA request (brief summary of the information requested);
* type of OIA request, e.g. ‘*Policy’* or ‘*Border Operations’*;
* whether the response was sent within the required timeframe;
* number of requests with extensions.

OIA data is compiled by the OIA team (CRaMS) and reported weekly to the Minister of Customs and monthly to theDeputy Chief Executive, International and Governance.

Customs advised that the monthly reports provide *‘a high-level overview of the CRaMS team’s outputs, which include responses to OIA requests and measures their timeliness under the Official Information Act.’* The monthly report also provides percentages of OIA requests by topic and type of requester.

The weekly report to the Minister includes more detailed OIA data:

* Requester name;
* Information requested;
* Whether the request was addressed to Customs or the Minister;
* Statutory due date;
* Status of the request (e.g. ‘*closed’*, ‘*open’*); and
* ‘*Progress’* e.g. ‘*Statutory timeframe met*’, ‘*On track (extended)*’, ‘*Transferred*’.

Customs’ practice of reporting all OIA requests to the Minister appears to be in need of review. I suggest that Customs consider whether the information it provides to the Minister about OIA requests truly concern ‘*matters of significance within their portfolio responsibilities, particularly where these matters may be controversial or may become the subject of public debate*.’[[77]](#footnote-78) The Minister may not need to be provided all such information on OIA requests processed by Customs, as not all of those requests concern *‘matters of significance’* within the Minister’s portfolio. Providing information under the *‘no surprises’* convention and Customs’ application of the convention are also discussed in [*Current practices*](#_Ministerial_interactions_on).

Also, having reviewed Customs’ reporting documentation, I note that the information captured in CRaMS’ reports to the Minister of Customs and Group Manager appears to remain focused mainly on timeliness, while reflecting little data pertaining to the quality of Customs’ procedural and substantive decision-making on its OIA requests (e.g. reasons for extensions and refusals). Most respondents in my initial staff survey also named timeliness as the main target around Customs’ OIA performance. I would, therefore, encourage Customs to further expand the range of collected and reported data to include, in addition to timeliness, indicators that would help monitor the quality of Customs’ responses to OIA requests, provide a comprehensive picture of the agency’s OIA performance, and inform resourcing and staff training decisions. Such data can include the following:

* reasons for extensions or delays in the OIA process (analysis of this data may help monitor any systemic issues relating to delays, e.g. overuse of extensions, staff working longer hours than necessary, or over-reliance on institutional and/or OIA knowledge concentrated on few key individuals);
* outcomes of any external/internal quality assurance consultations and reviews of OIA decisions and processes, and whether or not the results of those reviews provide evidence of system-wide issues;
* number of OIA requests where information was withheld in full or in part along with reasons for withholding information;
* common themes of OIA requests to inform Customs’ decisions on proactive release of official information;
* media information requests handled by Customs’ Communications team should be included in the OIA statistics reported to the Public Service Commission (collecting and reporting this data will help provide a more comprehensive picture of Customs’ actual OIA workload and performance).

I also encourage Customs to consider moving away from using a spreadsheet to input and track OIA requests and look at alternative options more suited to the volume of requests being received by the agency. For example, a workflow tool may improve the tracking of OIA requests and help streamline Customs’ OIA processes by automating many of the steps taken during processing of OIA requests, including assigning requests to staff, enabling easy access to templates and checklists, and sending reminders to staff to ensure compliance with statutory timeframes. Some workflow tools can also be used to capture and report comprehensive OIA data to provide a complete picture of Customs’ OIA performance.

Customs’ senior staff acknowledged during meetings with my investigators that the agency may benefit from implementing a workflow tool for its OIA processes.

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| **Action points**  |
| Collect and analyse further qualitative data on the handling of OIA requests |
| Include media information requests in OIA statistical reporting |
| Consider an alternative (non-spreadsheet) system to track OIA requests and decisions |

* + 1. Learning from investigations and guidance

Many respondents in my initial staff survey indicated that Customs could do more to continuously improve its OIA practice through the process of learning from the experience of responding to OIA requests, and from Ombudsman investigations. The table below shows the views of respondents on whether Customs has effective practices in the following areas:

|  |  |  |
| --- | --- | --- |
|  | Yes | No |
| Learning from the experience of responding to OIA requests | 63% | 37% |
| Promoting improvement to its OIA practices | 58% | 42% |
| Ensuring staff learn from Ombudsman decisions and guidance on the OIA | 57% | 43% |

In its response to my initial questionnaire Customs stated that it had not yet developed a formal policy or process to formalise learnings resulting from Ombudsman investigations due to *‘minimal numbers of Ombudsman complaints received and even lesser adverse findings’*, although *‘findings or useful commentary are considered in the ongoing review or building of OIA processes’*.

I note that Customs already maintains some positive practices that help facilitate learning from Ombudsman’s investigations and guidance. The Manager of the OIA team (CRaMS) regularly sends email updates to team members, *‘News from the Office of the Ombudsman’*, distributing latest guidance or alerting of any investigations. I encourage Customs to build on this practice by targeting a wider range staff throughout the organisation to whom the information would be relevant, including the senior leaders. This can be achieved by, for example, setting up a designated page on the agency’s intranet or including updates from my Office as a standing item in regular meetings. These measures may help generate discussion and help keep staff’s knowledge of the operation of the OIA up-to-date, as well as signal Customs’ commitment to ongoing improvement of its OIA practices.

I am pleased to note Customs’ advice that it will develop a policy in this area of practice having stated the following in its recent correspondence to my Office:

*…we have given this further consideration, and believe that there would be some value in developing a policy across the first quarter of 2021, to formalise the learnings that are identified through our OIA sign-out and consultation process, as well as through any adverse findings resulting from Ombudsman investigations.*

*Documenting these learnings will create a knowledge base for ongoing and future work, which will assist in continuous improvement of Customs’ OIA processes and practices on an ongoing basis.*

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

### New Zealand Customs Service – Te Mana Ārai o Aotearoa

22 November 2019

This document sets out the terms of reference for a self-initiated investigation by the Chief Ombudsman into the practices of the New Zealand Customs Service – Te Mana Ārai o Aotearoa relating to the Official Information Act 1982 (OIA).[[78]](#footnote-79)

## Purpose of the investigation

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

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

The investigation will identify areas of good practice, and make suggestions for improvement opportunities where areas of vulnerability are identified.[[79]](#footnote-80)

## 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:

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

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

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

## Investigation process

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

## Information gathering

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

## Desk research

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

## Surveys

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

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

A survey of agency staff, canvassing:

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

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

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

## Meetings

The investigation team will meet with:

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

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

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

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

## Other

A review of the agency’s intranet.

## Follow up period

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

## Reporting

### Draft report

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

### Final reports

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

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

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

## Evaluation

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

# Appendix 2. Key dimensions and indicators

## Introduction

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

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

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

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

## Leadership and culture

Achieving the purposes of the Act[[80]](#footnote-81) 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[[81]](#footnote-82)
	+ Decision makers are sufficiently senior to take responsibility for the decisions made and are available when required, and if not, resilience arrangements exist.
	+ The official information function is located in an appropriate unit or area within the agency that facilitates effective working relationships with relevant business units (for example; media and legal teams)
 |
| Agency has the capability to discharge its official information obligations | * Training at all levels on the requirements of the Act is provided regularly and staff are expected to attend, and to apply the knowledge acquired
* Training is role specific with additional training for senior managers, decision makers and staff with official information responsibilities to support their work
* Expectations are set by senior leaders that regular refreshers are provided to all staff
* Training is provided on information management and record keeping that is role-specific and includes guidance on information retrieval as well as information storage
* The process for staff to assess and make decisions on official information requests is clear, understood, up to date and staff apply and document the process
* Agency staff, including front line staff and contractors, know what an official information request is and what to do with it
* User-friendly, accessible resources, guidance and ’go to’ people are available
* Staff official information capability is regularly assessed and monitored through, for example, performance reviews and regular training needs analyses
* Official information obligations are included in induction material for all staff
* The agency’s internal guidance resources are accessible to all staff
 |

## Internal policies, procedures and resources

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

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

## Current practices

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

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

## Performance monitoring and learning

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

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

Document ends

1. Accident Compensation Corporation, Department of Corrections, Ministry of Education, Ministry of Foreign Affairs and Trade, Ministry of Health, Ministry of Justice, New Zealand Customs Service, New Zealand Defence Force, Waka Kotahi NZ Transport Agency, Ministry of Social Development, Ministry of Transport, Public Service Commission. [↑](#footnote-ref-2)
2. See ss 13(1) and 13(3) of the 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 survey and agency questionnaire only relate to the agency’s practices during the first lockdown. [↑](#footnote-ref-4)
4. On occasion I may look at material from outside the investigation period where particular issues warrant further investigation. [↑](#footnote-ref-5)
5. See s 17(2) of the Public Records Act 2005 [↑](#footnote-ref-6)
6. See s 17(2) of the Public Records Act 2005 [↑](#footnote-ref-7)
7. There were 158 total responses to my initial staff survey compared to 166 total responses to my post-lockdown staff survey. Any findings should be balanced against the total number of staff (approximately 1,200) employed by Customs. [↑](#footnote-ref-8)
8. Note that figures may not total 100 percent due to rounding. [↑](#footnote-ref-9)
9. Numbers have been rounded to the nearest percentage. [↑](#footnote-ref-10)
10. See s 4(c) of the OIA [↑](#footnote-ref-11)
11. See s 5 of the OIA [↑](#footnote-ref-12)
12. Link to Customs’ [OIA requests webpage](https://www.customs.govt.nz/about-us/information-releases/official-information-act-requests/). [↑](#footnote-ref-13)
13. Link to Customs’ [Annual Report 2020](https://www.customs.govt.nz/globalassets/documents/annual-report-2020/2020-annual-report.pdf). [↑](#footnote-ref-14)
14. Link to Customs’ [Important notices webpage](https://www.customs.govt.nz/about-us/news/important-notices). [↑](#footnote-ref-15)
15. Link to Customs’ [homepage](https://www.customs.govt.nz/) [↑](#footnote-ref-16)
16. Link to Customs’ [Official Information Act requests webpage](https://www.customs.govt.nz/about-us/information-releases/official-information-act-requests/). [↑](#footnote-ref-17)
17. Link to Customs’ [Official Information Act requests webpage](https://www.customs.govt.nz/about-us/information-releases/official-information-act-requests/). [↑](#footnote-ref-18)
18. For example, the reference to operational policy can include a link to [Customs’ operational policy webpage](https://www.customs.govt.nz/about-us/customs-operational-policy/). [↑](#footnote-ref-19)
19. Link to Customs’ [Official Information Act requests webpage](https://www.customs.govt.nz/about-us/information-releases/official-information-act-requests/). [↑](#footnote-ref-20)
20. See s 15(4) of the OIA [↑](#footnote-ref-21)
21. Numbers may not add up to 100 as they have been rounded to the nearest percentage. [↑](#footnote-ref-22)
22. Customs has a Learning and Development site on its intranet. [↑](#footnote-ref-23)
23. This section states that every decision to refuse a request under the OIA must provide the reason for the refusal and advise the requester of their right to complain to the Ombudsman and to seek an investigation and review of that decision. [↑](#footnote-ref-24)
24. For information management training, 28 percent said they had received it more than four years ago; 9 percent between 3-4 years ago; 14 percent between 1-2 years ago; and 14 percent within the last year. For record keeping training, 30 percent said they had received it more than four years ago; 9 percent between 3-4 years ago; 10 percent between 1-2 years ago; and 15 percent within the last year. [↑](#footnote-ref-25)
25. Answers do not total 100 percent as respondents could select more than one answer. [↑](#footnote-ref-26)
26. When asked to describe Customs’ information management systems, 9 percent of respondents stated that there was one, centralised system for records storage. Forty five percent of respondents indicated that there were several systems in use for different types of information and it was clear how/for what type of information each should be used. Twelve percent indicated ‘I don’t know’ or responded with comments. [↑](#footnote-ref-27)
27. Sixty seven percent of respondents also found the OIA guidance easy to understand and use. [↑](#footnote-ref-28)
28. See p. 28 of the Office of the Ombudsman guidance [*The OIA for Ministers and agencies*](https://www.ombudsman.parliament.nz/sites/default/files/2019-08/The%20OIA%20for%20agencies%20August%202019.pdf) [↑](#footnote-ref-29)
29. OIA requests are assigned ratings ‘*low’*, ‘*moderate’* and ‘*high’* using a number of criteria set out in the template such as likely media coverage and public or political interest. [↑](#footnote-ref-30)
30. These considerations could include, for example, what information systems or archives were searched, and what search terms were entered. [↑](#footnote-ref-31)
31. See s 17 of the Public Records Act 2005 [↑](#footnote-ref-32)
32. Section 48 of the OIA states that *‘[w]here any official information is made available in good faith pursuant to this Act no proceedings, civil or criminal, shall lie against the Crown or any other person in respect of the making available of that information, or for any consequences that follow…’* [↑](#footnote-ref-33)
33. *Williams v New Zealand Police* [2021] NZHC 808, currently under appeal. [↑](#footnote-ref-34)
34. Link to the Office of the Ombudsman guide [*Public interest: A guide to the public interest test*](https://www.ombudsman.parliament.nz/resources/public-interest-guide-public-interest-test). [↑](#footnote-ref-35)
35. See s 16(1) of the OIA [↑](#footnote-ref-36)
36. See s 18 of the OIA [↑](#footnote-ref-37)
37. See s 15(1) of the OIA [↑](#footnote-ref-38)
38. See, for example, Customs’ [Who we are webpage](https://www.customs.govt.nz/about-us/about-customs/who-we-are/). [↑](#footnote-ref-39)
39. Link to Customs’ [Cabinet material webpage](https://www.customs.govt.nz/about-us/information-releases/cabinet-material/). [↑](#footnote-ref-40)
40. See, for example, the [Financial Statements](https://www.customs.govt.nz/globalassets/documents/annual-report-2020/2020-annual-report---6-financial-statements.pdf) section of Customs’ Annual Report 2020. [↑](#footnote-ref-41)
41. Link to Customs’ [Important notices webpage](https://www.customs.govt.nz/about-us/news/important-notices/). [↑](#footnote-ref-42)
42. Link to Customs’ [Statistics webpage](https://www.customs.govt.nz/about-us/statistics/). [↑](#footnote-ref-43)
43. Link to the *‘Unite against COVID-19’* [Border webpage](https://covid19.govt.nz/alert-levels-and-updates/proactive-release/border/). [↑](#footnote-ref-44)
44. Link to Customs’ [Official Information Act requests webpage](https://www.customs.govt.nz/about-us/information-releases/official-information-act-requests/). [↑](#footnote-ref-45)
45. Link to the Office of the Ombudsman guide [*Proactive release: Good practices for proactive release of official information*](https://www.ombudsman.parliament.nz/sites/default/files/2020-06/Proactive_release.pdf) [↑](#footnote-ref-46)
46. Most of the agency’s operational transactions are recorded via a processing database called ‘*CusMod’*. [↑](#footnote-ref-47)
47. Link to the Public Service Commission [website](https://www.publicservice.govt.nz/guidance/official-information/oia-statistics/) [↑](#footnote-ref-48)
48. For example, in the reporting period of July-December 2020 Customs completed 322 OIA requests, of which 28 were published on the agency’s website. [↑](#footnote-ref-49)
49. See s 16(1)(e) of the OIA [↑](#footnote-ref-50)
50. Section 15(1) of the OIA requires agencies to make decisions on OIA requests and notify them to requesters *‘as soon as reasonably practicable, and in any case not later than 20 working days after the day on which the request is received’.* [↑](#footnote-ref-51)
51. Consulting the requester can help clarify why they made the request to Customs, and what information they hoped to obtain. The requester may be interested in knowing what Customs holds in connection with its functions, and not what the ‘lead agency’ on a particular issue holds. Knowing this, Customs is more likely to engage meaningfully with the requester, including by providing the requester an opportunity to modify or amend their request or to direct it elsewhere. In addition to consulting the requester, consulting the other agency will enable Customs to ascertain, among other things, whether the other agency has already received a version of the request or does in fact hold or is more closely connected to the information requested. [↑](#footnote-ref-52)
52. Explanation of what constitutes a *‘reasonable search’* is outlined in Ombudsman’s guidance, [*Information not held*](https://www.ombudsman.parliament.nz/sites/default/files/2019-08/Information%20not%20held%20August%202019.pdf). [↑](#footnote-ref-53)
53. Link to the Office of the Ombudsman guide [*Public interest: A guide to the public interest test*](https://www.ombudsman.parliament.nz/sites/default/files/2020-07/Public_interest_August_2019.pdf) [↑](#footnote-ref-54)
54. For example, under section 18B of the OIA, whenever an agency is contemplating a refusal under [section 18(e) or (f)](https://www.legislation.govt.nz/act/public/1982/0156/latest/link.aspx?id=DLM65600#DLM65600), it must consider whether consulting with the requester would assist them to make the request in a form that would remove the reason for the refusal. [↑](#footnote-ref-55)
55. Link to the Office of the Ombudsman [OIA templates webpage](https://www.ombudsman.parliament.nz/resources?f%5B0%5D=category%3A2505). [↑](#footnote-ref-56)
56. 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/). [↑](#footnote-ref-57)
57. The guidance reminded agencies of their obligations under the OIA and referred agencies to guidance published by my Office. [↑](#footnote-ref-58)
58. Six percent of respondents indicated ‘No’ and 18 percent indicated ‘I don’t know’. [↑](#footnote-ref-59)
59. Eighty five percent of 127 respondents in my post-lockdown staff survey indicated that they worked from home during the lockdown. [↑](#footnote-ref-60)
60. See para 3.22(a) of the [Cabinet Manual](https://dpmc.govt.nz/our-business-units/cabinet-office/supporting-work-cabinet/cabinet-manual/3-ministers-crown-and-2) 2017 [↑](#footnote-ref-61)
61. See s 15(1) of the OIA [↑](#footnote-ref-62)
62. Link to the Office of the Ombudsman guide [*Dealing with OIA requests involving Ministers*](https://www.ombudsman.parliament.nz/sites/default/files/2019-08/OIA%20requests%20involving%20Ministers%20August%202019.pdf); also, link to the Office of the Ombudsman [*Model protocol on dealing with OIA requests involving Ministers*](https://www.ombudsman.parliament.nz/sites/default/files/2019-08/Model%20protocol%20August%202019.pdf) [↑](#footnote-ref-63)
63. See [*Peters v Bennett*](https://forms.justice.govt.nz/search/Documents/pdf/jdo/13/alfresco/service/api/node/content/workspace/SpacesStore/6bab9e40-68be-468f-909a-a7176a5317f7/6bab9e40-68be-468f-909a-a7176a5317f7.pdf) [2020] NZHC 761 [↑](#footnote-ref-64)
64. Section 28(5) of the OIA provides that any undue delay in releasing information is deemed to be a refusal of a request that an Ombudsman can investigate. [↑](#footnote-ref-65)
65. See s 19 of the OIA [↑](#footnote-ref-66)
66. Of the 20 responses to media information requests reviewed, 3 appeared to be full or partial refusals, which did not provide the reasons for refusals or did not include a reference about the right to complain to the Ombudsman. [↑](#footnote-ref-67)
67. See s 15(1AA) and (1AB) of the OIA [↑](#footnote-ref-68)
68. See s 15(1) of the OIA [↑](#footnote-ref-69)
69. See s 15A(1)(a) and (b) of the OIA [↑](#footnote-ref-70)
70. While a reporting deadline would not typically be considered a valid reason to prioritise the handling of one OIA request above others, I note that media requesters may at times have other genuine and legitimate reasons to request that their information request is treated with urgency. [↑](#footnote-ref-71)
71. Link to the Digital government [Web Accessibility Standard 1.1 webpage](https://www.digital.govt.nz/standards-and-guidance/nz-government-web-standards/web-accessibility-standard-1-1/). [↑](#footnote-ref-72)
72. See section *‘Making sure the information is accessible’* on p 11 of the Office of the Ombudsman’s [*Proactive release: Good practices for proactive release of official information*](https://www.ombudsman.parliament.nz/resources/proactive-release-good-practices-proactive-release-official-information) guide [↑](#footnote-ref-73)
73. Customs advised that information sent in response to OIA requests is now redacted by the OIA team with the use of a manual titled *‘How to redact information using Adobe Acrobat XI Pro’* to help ensure accuracy and consistency of redactions. [↑](#footnote-ref-74)
74. Link to Customs’ [Accessibility webpage](https://www.customs.govt.nz/about-us/using-our-website/accessibility/). [↑](#footnote-ref-75)
75. See s 13 of the OIA [↑](#footnote-ref-76)
76. In addition to the spreadsheet, OIA requests are also entered into an agency-wide software titled ‘Customs Correspondence Information Tracking System’ (CITS). This records such data as topic of correspondence, due date, ‘*Work Area*’ (e.g. CRaMS) and ‘*Processing Officer*’. [↑](#footnote-ref-77)
77. See para 3.22(a) of the [Cabinet Manual](https://dpmc.govt.nz/our-business-units/cabinet-office/supporting-work-cabinet/cabinet-manual/3-ministers-crown-and-2) 2017 [↑](#footnote-ref-78)
78. See sections 13(1) and 13(3) of the Ombudsmen Act 1975 (OA). [↑](#footnote-ref-79)
79. Formal recommendations under the Ombudsmen Act 1975 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 Ombudsmen Act 1975. [↑](#footnote-ref-80)
80. ‘The Act’ refers to the Official Information Act 1982 [↑](#footnote-ref-81)
81. This indicator is also relevant to performance monitoring and learning. [↑](#footnote-ref-82)