



Terms of reference

OIA timeliness obligations: Systemic investigation into seven agencies' compliance, processes and practices

2 December 2022

Purpose & scope

The purpose of the Chief Ombudsman's self-initiated investigation is to examine the practices and processes used by seven agencies to meet their overarching obligations under the [Official Information Act 1982](#) to:

- make a decision on requests for information *'as soon as reasonably practicable, and in any case not later than 20 working days after the day on which the request is received'* (s15(1)); and
- release information without *'undue delay'* (s28(5)).

The investigation will examine practices and processes related to this overarching timeliness obligation, including:

- the use of extensions;
- transfers of requests;
- the approach to urgent requests;
- refusals of requests for the reason that the information *'is or will soon be publicly available'*;
- sign-out processes;
- involvement of media and/or communication teams in requests, and their processes and practices;
- interactions with Ministers' offices on agency requests;
- the duty on agencies to give reasonable assistance; and

- any impact of the application of proactive release policies to decisions on individual requests.

The investigation will involve consideration the agencies' supporting administrative structures, leadership and culture, policies, processes, practices, decision-making and record-keeping.

Agencies

The Chief Ombudsman selected the following seven agencies as representing a cross section of different types of agency, from central government departments, crown entities, and a state owned enterprise. The selected agencies also reflect a variety of functions, from policy development to service providers, including those involved in high interest policy programmes. Other contributing factors included a review of publicly available information about the agency and its OIA obligations.

- Te Whatu Ora | Health New Zealand
- Pharmaceutical Management Agency | Te Pātaka Whaioranga (Pharmac)
- Kainga Ora | Homes and Communities
- Department of Internal Affairs | Te Tari Taiwhenua (DIA)
- The Treasury | Te Tai Ōhanga
- Department of the Prime Minister and Cabinet | Te Tari O Te Pirimia Me Te Komiti Matua (DPMC)
- Transpower

Jurisdiction

The Ombudsman has jurisdiction to investigate *'any decision or recommendation made, or any act done or omitted'* by public service agencies or organisations named in [Parts 1 to 1C](#) and [2](#) of Schedule 1.¹

Background

The Chief Ombudsman recently concluded his follow-up investigation into 12 central government agencies' practices and compliance with the OIA. His report summarising the key themes – *Ready or not?* – was published in September 2022.²

This investigation concluded that the OIA itself is fundamentally sound and that the core public service is increasingly transparent and open. However, the investigation also identified

¹ See sections 13(1) and 13(3) of [Ombudsmen Act 1975](#).

² See the Ombudsman's 28 September 2022 media statement, including links to *Ready or not?* and 12 individual reports: <https://www.ombudsman.parliament.nz/news/ombudsmans-oia-probe-uncovers-significant-gaps>

concerning gaps in the timeliness of some responses, specifically in the way agencies are responding to journalists. Some agencies were breaching the law specifically in relation to:

- Media teams – there is a false perception that media information requests are not OIA requests and, as a result, that agencies do not need to adhere to OIA obligations when handling them. Whereas requests handled by the agency’s OIA team often are expected to go through a regimented, multi-stage process which invariably takes the maximum statutory time limit.
- Record keeping – a number of agencies breached the Public Records Act by not maintaining full and accurate records of public affairs.

The Chief Ombudsman was concerned that agencies’ misconception about journalists’ queries was fuelling the increasing mistrust within news organisations about the agencies mechanisms for providing information. It was also leading to the OIA being portrayed not as a mechanism to obtain information, but as a bureaucratic tool employed by agencies to delay or obfuscate information.

The investigation also revealed that a number of agencies seek ministerial feedback on agency OIA requests under the auspices of the ‘*no surprises*’ principle. The evidence revealed that in a number of cases there was confusion about the application of this principle (sending agency responses as an ‘FYI’) and cases in which the Minister was legitimately being approached for consultation or comment on an agency OIA response. Some agencies adopted standard timeframes for sharing OIA responses with the Minister’s office putting the agency at risk of not meeting its obligation under the OIA to communicate a decision ‘*as soon as reasonably practicable.*’

He noted there is real concern about timely access to relevant information and the OIA regime itself, which appear to be fuelled in part, by the issues identified in *Ready or Not?*

He said at the time that these processes adopted by the agencies have little or nothing to do with the law itself and he intended to consider this matter further, hence this investigation.

Outcomes

The Chief Ombudsman’s intention is to provide each agency with his findings and independent opinion about how it processes OIA requests to meet its timeliness obligations.

He will look to identify areas of good practice and make any recommendations and/or suggestions if he finds any areas where improvements might be made, and will report on these publicly.

The Chief Ombudsman may also produce a thematic report, commenting on key trends identified across all agencies under investigation.