



10 JUN 2019

DOIA18/19050227

Mr Jake Preston

Fyi-request-10239-272aeff@requests.fyi.org.nz

Dear Mr Preston

I refer to your email to the Ministry of Business, Innovation and Employment (MBIE) dated 14 May 2019 requesting the following information under the Official Information Act 1982 (the Act):

I am happy to receive any ministry wide OIA training materials, but I am also interested in what was the Department of Building and Housing and any specific way of handling requests they employ, for example I am interested to see how an official information request is handled, say from a member of cabinet, a member of the opposition, and a member of the public. Similarly I am keen to understand the internal processes involved when a request is received, through to when a response is issued.

The Department of Building and Housing (DBH) was disestablished in 2013 and its functions were taken up by MBIE. As your original request was directed to MBIE, the information they provide you will cover processes and procedures from their organisational viewpoint.

However, as housing was of interest to you, and some of the housing functions moved from MBIE to the new Ministry of Housing and Urban Development (the Ministry), this response provides information relating to the Ministry's way of working with Official Information Act (OIA) requests.

The Ministry is relatively new, being established on 1 October 2018. It brought together teams from MBIE and the Ministry of Social Development (MSD), as well as new recruits. To ensure Official Information Act requests were able to be worked on from day one, procedures from both legacy agencies were drawn upon. Guidance provided by the State Services Commission (SSC) has also been used.

The following link will take you to the OIA guidance section on SSC's website, which has been used by the Ministry: www.ssc.govt.nz/official-information-guidance. In particular, the practitioner guidance document on processing an OIA requests is closely followed: [http://www.ssc.govt.nz/sites/all/files/Processing an OIA Request2018.pdf](http://www.ssc.govt.nz/sites/all/files/Processing%20an%20OIA%20Request2018.pdf)

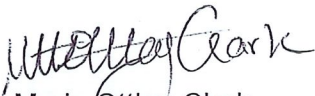
As time has progressed, the Ministry has tailored SSC's guidance into its own training material for staff. I enclose this document for your information. Whilst any other documentation is still being finalised (including internal process and procedure policies), there is nothing more that can be released to you at this time.

You asked how an OIA is handled when received from a member of cabinet, a member of the opposition and a member of the public. Actually, there is no difference in how OIA responses are handled: the same process is followed regardless of who has submitted the request.

I hope you find this information useful. If you have any questions, please do not hesitate to contact the Ministry at OIA_Requests@hud.govt.nz.

You have the right to seek an investigation and review of my response by the Ombudsman, in accordance with section 28(3) of the Act. The relevant details can be found on the Ombudsman's website www.ombudsman.parliament.nz.

Yours sincerely



Marie Ottley-Clark
Manager, Ministerial Services
Office of the Chief Executive

Ministry of Housing And
Urban Development
Official Information Act
1982 (OIA)

WHAT YOU NEED TO KNOW



Official Information Act 1982

Official Information Act (OIA)

This presentation aims to teach you about:

- the role of the OIA in enabling New Zealanders to participate in their democracy, and
- how to handle requests for information under the OIA.

Released Under the Official Information Act 1982

Learning objectives

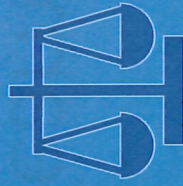
Responding to requests for official information is a legal and constitutional obligation. It is important for all State services employees to understand the OIA and the processes involved.

- By the end of this presentation, you should be able to
- Explain the OIA's intent and purpose
 - Understand the processes for responding to a request for information, including time limits
 - Understand how to handle a request that may need substantial collation or research to respond.

Released Under the Official Information Act 1982

What is the OIA and why is it important?

- The purpose of the OIA is to make information available to the public unless there is good reason for withholding it.



- “Official information” means any information held by an agency that is subject to the OIA.
- This includes Ministers of the Crown acting in their official capacity, government departments, District Health Boards, schools, universities, polytechnics and wānanga, Crown entities, Crown agents, and state-owned enterprises amongst others. It doesn’t include a court or a tribunal (acting in their judicial capacity), or a Royal Commission.
- The OIA is an important part of New Zealand’s constitution.
- Access to official information allows New Zealanders to participate in our democracy, and hold government and state sector agencies to account.

1982

Released Under the OIA

Reasons for withholding information

- One of the foundations of the OIA is the principle of availability. This requires information to be made available unless there is a good reason for withholding it.

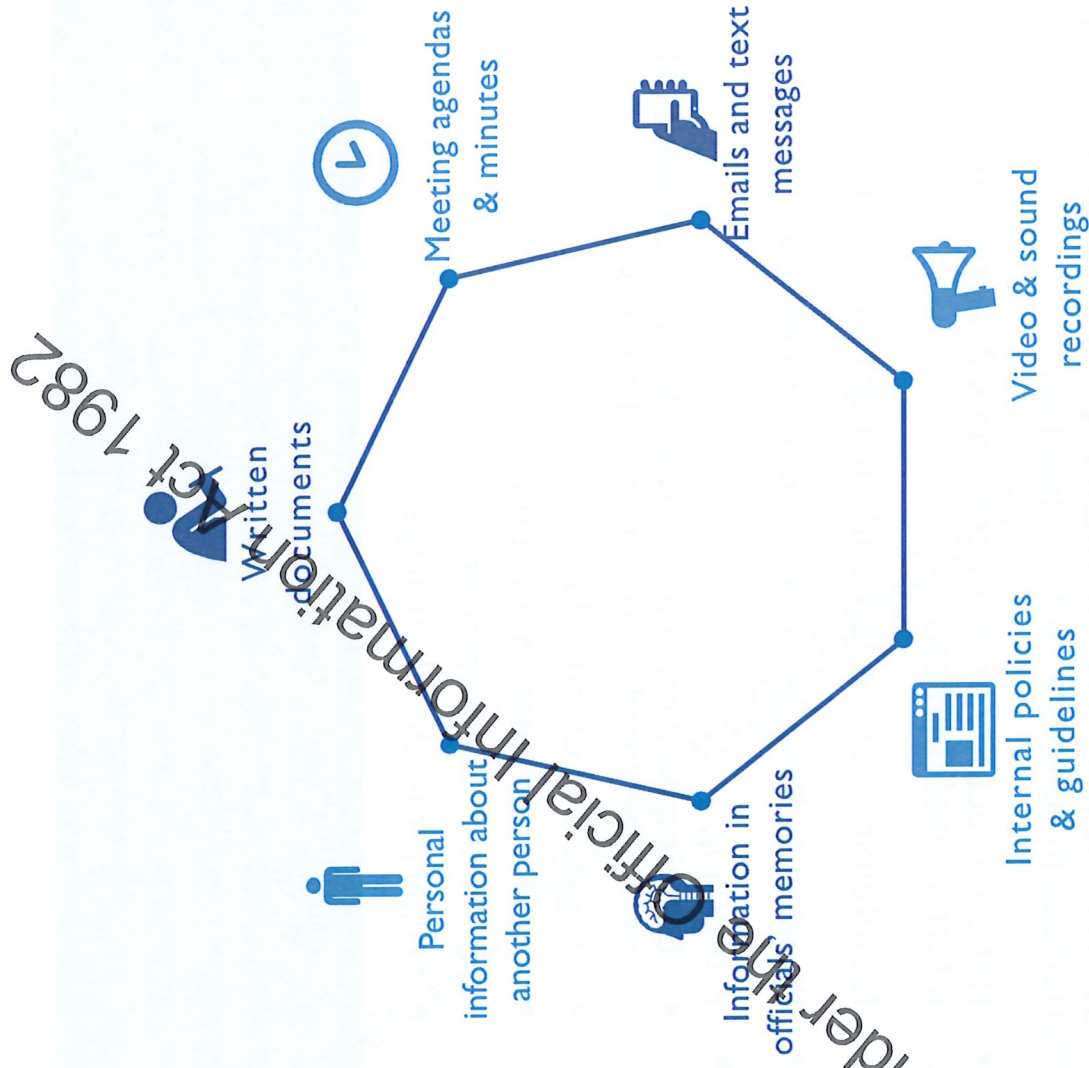
Reasons for withholding information are in sections 6, 7 and 9 of the Official Information Act and include:

- National security or defence of New Zealand, and international relations
- Maintenance of the law and the right to a fair trial
- Damage to New Zealand's economic interests
- Protecting:
 - Constitutional conventions regarding the confidentiality of advice tendered by Ministers and officials
 - The privacy of individuals
 - Health and safety of the public
 - Commercial information
 - Legal professional privilege

When withholding information under any of the section 9 withholding grounds, a 'public interest test' must also be applied. Agencies must balance the public interest in disclosing information against the need to withhold it. If the public interest in the information outweighs the harms that may arise if the information was released, the information should be released. (See the Ombudsman's guide to the public interest test).

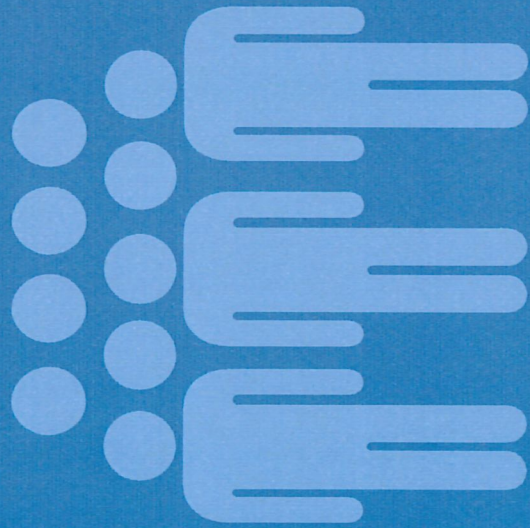
What can official information include?

- All information held by an agency subject to the OIA, or a Minister of the Crown in their official capacity, is official information.



Released Under the Official Information Act 1982

Who can make a request?



- Anyone who is in New Zealand can make an official information request – whether they are a citizen, permanent resident or otherwise.
- A visitor can apply if they are in New Zealand.
- New Zealand citizens or permanent residents can apply even if they are overseas.
- Corporate bodies either incorporated in, or with a place of business in, New Zealand can also request information under the OIA.

1982

Released Under the
Official Information Act 1982

Minister and agency official information requests

SSC has guidance on its website on how to transfer a request.



Agency OIA requests

These are requests to the agency. The response will be approved and signed by a delegated officer in the agency.



Ministerial OIA requests

These are requests to a Minister. An agency may be asked to prepare the response, but it will be approved and signed by the Minister.

When to transfer all or part of an OIA request to the Minister (s14 of the OIA)

- The requested information is not held by the agency but is believed to be held by the Minister.
- The requested information is believed to be more closely connected with the functions of the Minister.
- The need for transfer is decided on the facts of the particular case and in consultation with the Minister's office.

Under s14 the agency can also transfer all or part of a request to another agency if the information requested more closely aligns to the functions of that agency.

Released under the
Official Information Act 1982

Released under the
Official Information Act 1982

Consulting the Minister on agency OIA requests

- Some OIA requests received by an agency will need to involve the responsible Minister.

- Some examples of when the Minister may need to be consulted:
 - To decide whether a request needs to be transferred to the Minister
 - When the “good government” withholding grounds are being considered.
 - A request that relates to the functions or activities of the Minister
 - A request that relates to Cabinet material
 - A request that is sensitive or controversial.
- Notify the Minister about decisions on agency OIA requests under a “Go surprises” approach where the information is:
 - Sensitive or controversial in nature
 - Likely to be published in the news media or debated in the House.
- Factor consultation requirements into your working day count and liaise with the Minister’s office to determine if an extension may be needed.
- Keep accurate records of any interactions with the Minister in relation to the OIA request.



SSC has guidance on its website on Minister and agency official information requests.

1982

Released Under the
Official Information Act

Requests for personal information

- The OIA includes provisions which protect information where this is necessary in the public interest or to preserve personal privacy.

Requests for personal information about another person are dealt with under the OIA

People can also ask for personal information about themselves. These requests are dealt with under the Privacy Act 1993.



Released Under the Official Information Act 1982

If you are not sure which Act applies, seek legal advice.

OIA response time limits

- We must make and communicate a decision on an official information request as soon as reasonably practicable.



If a request can be processed before the maximum time limits in the OIA, it should be.

- The working day count starts the day after a request is received by an agency.
- A decision must be provided to the requester within 20 working days unless the agency extends the time limits.
- If the agency decides to transfer the request, a decision should be made within 10 working days of receipt of the request.
- The time limits can be extended in some circumstances.
- The requester must be told of any extension and the reasons for it.
- If a request is refined within 7 working days it can be treated as a new request.

SSC has guidance on its website on how to transfer a request and extensions.

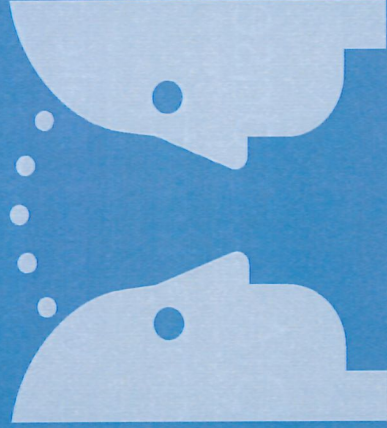
The Office of the Ombudsman has a calculator to help you work out when the 20 working day count ends.



Information A1982
1982

Released Under the
Official Information Act

Receiving OIA requests



- There is no set way in which an official information request can be made, but the requester must identify the information requested with 'due particularity' (section 12 of the OIA).
- A request does not need to be in writing or need to refer to the OIA, but you can ask for a request to be put in writing if it is necessary for clarification.
- If the request is made verbally, it is best practice to write to the requester promptly to confirm what you understand is being requested.

Features of a request that lacks 'due particularity':

- You cannot identify a topic or issue the request is about
- There is no date range or anything with which you could use to begin to scope the request i.e. all information about 'x'
- It is so vague that you are unsure whether the person is asking for information or providing information

1982

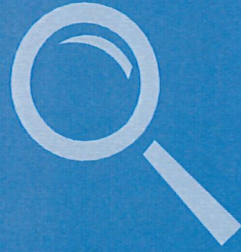
Information

Under the

Released

Clarifying an information request

- Requests need to have enough detail to identify what information the requester needs.



Ensure a request is clear and specific

- If you can't identify what information is being requested, or the request is not clear, you should contact the requester to define or clarify the request.
- Try to find out:
 - What the requester wants to know
 - The specific types of documents the requester is looking for or perhaps isn't aware of
 - Any time pressures the requester has (you might be able to send the response in stages).
- You must seek to clarify the OIA request within 7 working days of receiving it to restart the 20 working days for responding.
- Keep records of your consultation and confirm any changes to the request in writing to the requester.



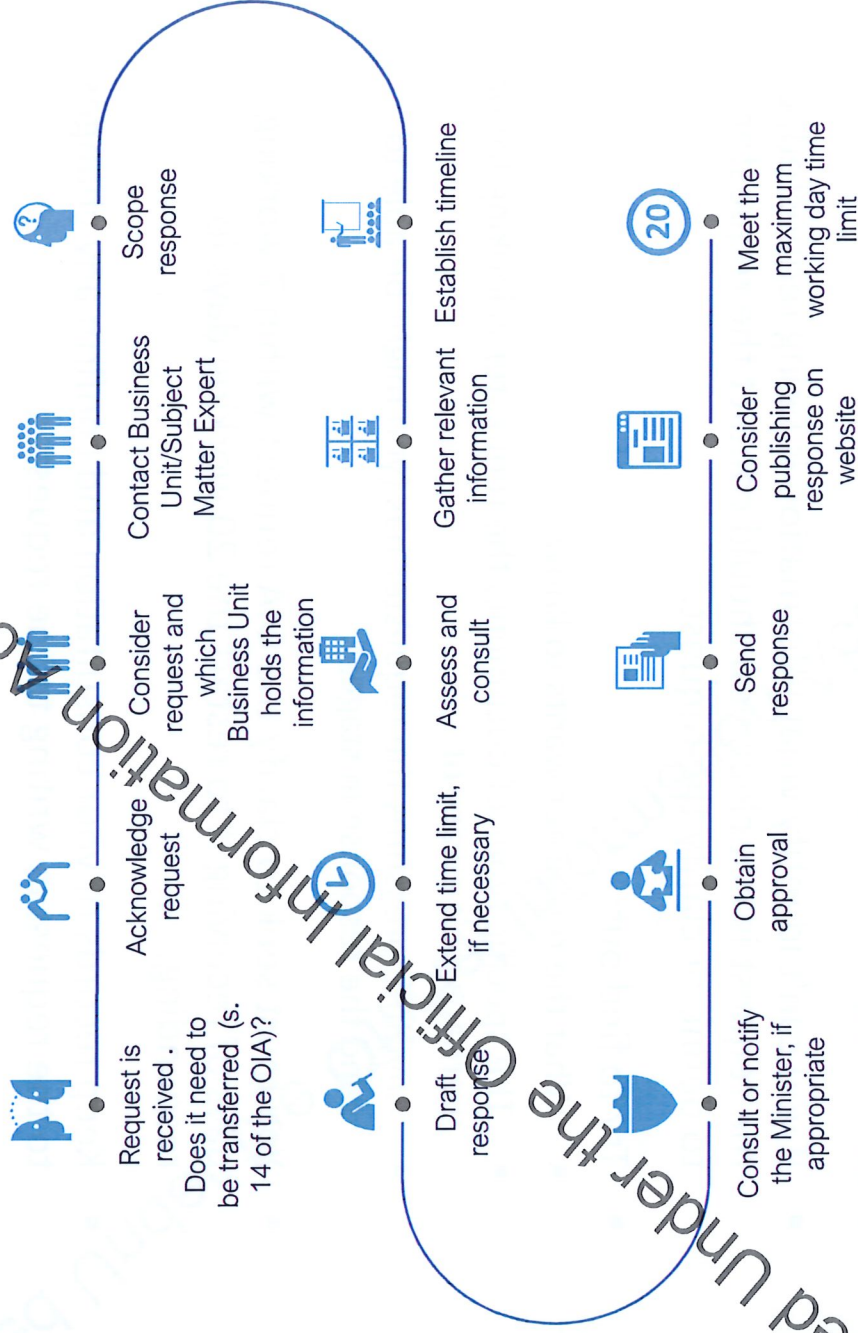
SSC has guidance on its website on contacting requesters.

Released Under the
Official Information Act 1982

Quick Overview: Responding to OIA requests

- Aim to complete the first six steps in three days.

HUD's OIA Process

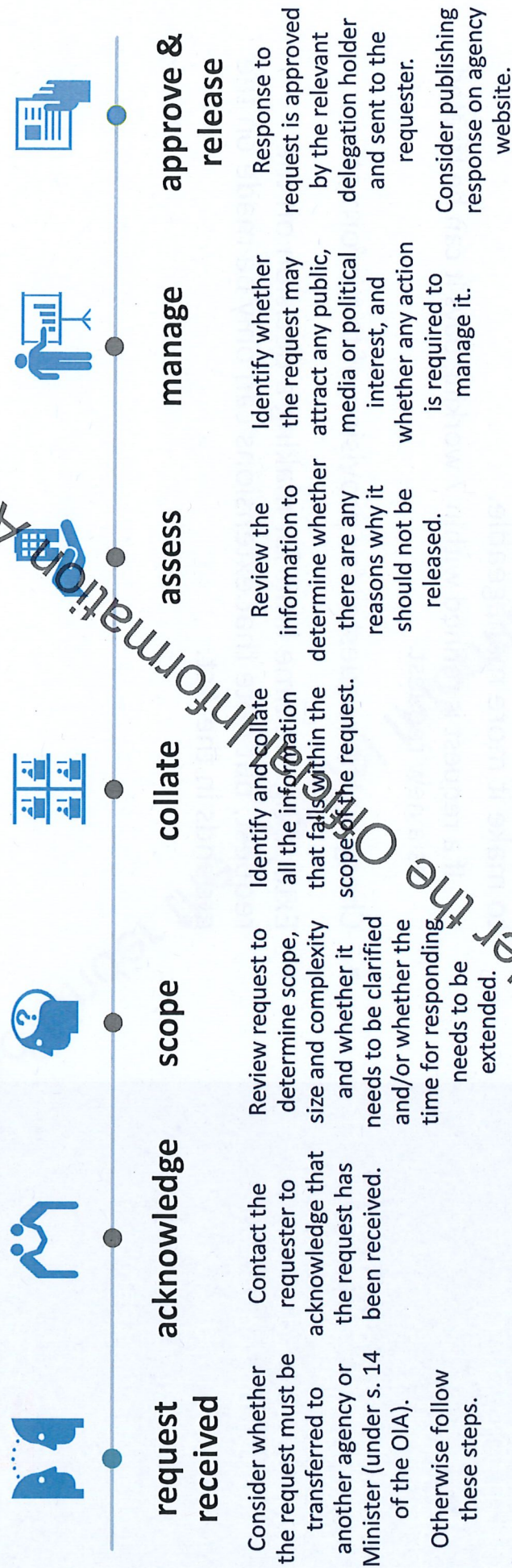


SSC has guidance on its website on processing an Official Information Act request.

Released Under the Official Information Act 1987

Information Act 1982

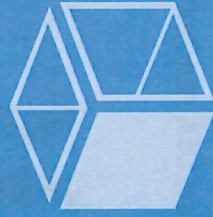
After an OIA request is received, there are 6 key stages to preparing the response.



SSC has guidance on its website on proactive release of information.

Requests requiring substantial collation and research

- Section 18(f) of the OIA provides that a request may be refused if “the information requested cannot be made available without substantial collation or research”.



Before refusing a request on these grounds, you must consider whether the following would enable the request to be granted:

- Contacting the requester to ask them to refine the request to make it more manageable.
- If a request is refined within 7 working days it can be treated as a new request.
- Charging the requester for provision of the information.
- Extending the time limit for making a decision on the request, but note that extensions can only be made on the grounds in the Act.



SSC has guidance on its website on information requests requiring substantial collation or research.

Released Under the Official Information Act 1982

Review of key points

For more information on handling an OIA request go to SSC's website:

<http://www.ssc.govt.nz/official-information-guidance>



- 'Official information' means any information held by an agency that is subject to the OIA, including Ministers of the Crown and government departments.
- The OIA is founded on the principle of availability, information must be made available unless there is a good reason for withholding it and information may only be withheld on the grounds set out in the OIA.
- Whether it's an agency or a Ministerial OIA request, there are 6 key stages to preparing a response once it is received:
 - Scope
 - Acknowledge
 - Collate
 - Assess
 - Manage
 - Approve and release.
- A decision must be provided to the requester no later than 20 working days unless the time limits are extended.

1982

Released Under the OIA