

Requests for Weathertight Services Information under the Official Information Act 1982

Weathertight Services regularly receives requests for information under the Official Information Act 1982 (the OIA). Although each request is assessed and responded to on a case-by-case basis, there are various common issues which are particular to Weathertight Services information for which we have developed a 'standard' approach, based on experience, precedent, and in some cases, legal advice. However, while the 'standard' approach is often a good starting point, it is important to note that there may be exceptions, and each request should be assessed on its own merits, taking into account the specific and current context in which the request is made.

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1. Releasing Lists

From time to time Weathertight Services receives requests asking for lists of claims (property addresses) and owners. Based on previous advice from the Ombudsman in 2008 (see link below), we do not release information in this way. The 2008 advice states that we are able to withhold this information under section 9(2)(ba)(ii) of the OIA, which provides that it is necessary to withhold information to "protect information which subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely otherwise to damage the public interest".

However, an exception to this will apply when the request is made by a Territorial Authority (TA) requesting lists of information on claims which relate to their region and which were active (open or received) after 1 April 2007. This is the date on which the Weathertight Homes Resolution Services Act 2006 came into force, including section 124 which sets out that the Ministry must inform TAs of particular events in relation to claims (known as 'LIM notifications'). Having received the LIM notifications for each of these active claims, TAs will already be aware of the claims, including names of owners and addresses of properties. Claims which were closed prior to the 2006 Act coming into force are not covered by this exception, as the TA would not have received LIM notifications for the claim and therefore may not be aware of the claim in the same way. Therefore, lists of pre-2006 Act claims could be withheld from a TA under section 9(2)(ba)(ii) of the OIA, as above.

TAs received information on all claims open as at 1 April 2007 as part of an OIA request made by Local Government New Zealand (LGNZ) on behalf of all TAs. More information, including copies of

what was released to TAs, is available here:

<https://mako.wd.govt.nz/otcs/llisapi.dll?func=ll&objId=4552615&objAction=browse>

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| Previous advice from the Ombudsman | www.ombudsman.parliament.nz/ckeditor_assets/attachments/35/3-3.doc |
| DOIA Example: | <p>s 9(2)(a) and s 9(2)(a) <i>A list of claims was requested, and subsequently requested again; we refused both requests.</i></p> <p>s 9(2)(a) <i>A list of claims for New Plymouth District Council was requested; we provided a list of claims active after 1 April 2007 but withheld claims which were closed by that date.</i></p> |

2. Privacy

When does section 9(2)(a) of the OIA apply?

To assess if something is personal information and should be redacted we first need to understand who the requester is and who is involved in the claim, and in what capacity. The Assessor's Report (if there is one) and Lotus Notes claims record is a good starting point to gain an overview of people involved.

If the OIA requester is the claimant, or if the requester is acting on behalf of the claimant and has appropriate authorisation, certain information could be considered for release under the Privacy Act 1993.

We may also receive requests from people associated with the building, such as other owners or body corporate representatives, building contractors, etc. In this case it may be necessary to withhold information under section 9(2)(a) of the OIA. If we are unsure whether it is necessary to withhold information under 9(2)(a), one good option is to ask the person whom the information affects.

In general we would redact addresses that aren't associated with the Weathertight claim, personal email address and contact details, financial and legal information and claimant comments that may be personal (for example, about their health). However we release the address of the property, and the name(s) of the owners where this is a matter of public record through the Certificate of Title.

We release financial information such as the estimated cost of repairs; however, information about a claimant's financial standing and whether they could afford repairs would likely be redacted. Body Corporate financial information could possibly be released; the provisions of the Unit Titles Act 2010 and the specifics of the OIA request would need to be considered.

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| DOIA Example: | <p>s 9(2)(a) <i>Financial information for the Body Corporate was released after checking with the Body Corporate managers.</i></p> |
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An interesting example where a different approach needs to be taken is the names of owners of units in a multi-unit complex in a leasehold agreement; we would redact their names as they aren't listed on the Certificate of Title and therefore aren't a matter of public record.

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| DOIA Example: | s 9(2)(a) Names of leaseholders were withheld. |
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Email addresses / contact details

The Ombudsman's office has released guidance relating to the release of employee information such as work phone numbers and email addresses. An example of this has been included below in the PHARMAC opinion.

Weathertight Services staff deal directly with claimants and stakeholders; therefore, it would be unreasonable to redact their work email addresses or work phone numbers for privacy reasons. We also have contractors who work with claimants and stakeholders; they are treated as Ministry staff and sign contracts stating so. Therefore any professional email addresses or phone numbers they use in relation to the claim (especially if it appears in the Assessor Report) are likely to be released.

We tend to release information if it is present in an email signature as there is no guarantee of privacy when sending an email with contact details that are able to be forwarded on. This has been tested and agreed with the Ministry's Legal Services. This is especially the case with people acting in a professional capacity in relation to the claim, such as Territorial Authority staff.

When considering contact details for an individual at another business (for example, a law firm) a quick internet search often shows that their details are available publicly. In general, an address that is clearly used for work purposes would be released as it is hard to argue a case for privacy in such circumstances, e.g. joe.bloggs@bloggslawyers.co.nz

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| Previous advice from the Ombudsman | Summary PHARMAC Ombudsman Opinion marked up VO 09 08 13 (3).docx http://mako.wd.govt.nz/otcs/cs.exe/link/10974671 |
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3. Weathertight Mediations

Section 84 of the Weathertight Homes Resolution Services Act 2006 discusses confidentiality in relation to mediations under the WHRS Act. Specifically, section 84(5) states that: *Nothing in the Official Information Act 1982 applies to any statement, admission, document, or information disclosed or made in the course of the provision of mediation services to the person providing those services. This includes any statement, admission, or document created or made for the purposes of the mediation (including a settlement under section 85) [s.84(1)(a)].*

This is also discussed in section 16(4) of the WHRS Act 2002 which provides that the OIA does not apply to any documents created for the purposes of mediation under the WHRS Act 2002.

Therefore, documents and information created or made for the purposes of mediation can be withheld under section 18(c) of the OIA, which provides that a request may be refused where the making available of the information requested would be contrary to the provisions of a specified enactment.

s 9(2)(h)

s 9(2)(h)

It is important to note that this only applies to mediations, not adjudications.

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| DOIA Example: | s 9(2)(a) | (folder includes legal advice) |
| | s 9(2)(a) | |

4. TA Documents

The majority of assessment reports include information from the Territorial Authority's property file. This file contains documents the TA holds on the property and usually includes the building consent, related CCC and other relevant construction documents. Our approach to these is not to redact any information as these are available from TAs under the Local Government Official Information and Meetings Act 2002; anyone is able to request the property file and it is made available. However, it is still important to review these documents as there may be documents which are unrelated to the claim and have simply been misfiled.

5. Refining an OIA Request

Under the OIA we are able to consult with the requester which can include: explaining any difficulties the agency is having in processing the request (for example when there is a large amount of information at issue), and allowing the requester to consider amending or refining the scope of their request.

If we receive a request for information pertaining to a specific address/claim and there is a significant number of documents we consult with the requester and attempt to refine the scope of their request. Generally, once we have received the request and reviewed the relevant files, we contact the requester and ask if they would like to refine to only include the approved assessment reports on the property. These assessor reports provide information about the property, details of damage that has resulted from Weathertight issues, remediation options and cost estimates to remediate, and this is often the most useful information for a requestor, particularly if they are a prospective purchaser. A follow up email is sent to confirm that the requestor has agreed to the refined scope, and to advise that they are able to make further requests for the remaining information if they wish to.

6. Files/information and documents

It is important that a full review of documents is undertaken; claim documents can be pulled from multiple electronic and physical sources. The first place to check is Lotus Notes; this also allows access to the previous document management system (known as the DMS) which can be checked for relevant information. The next place to check is the Ministry's current document management system, Mako. Recent claims should have a claim folder in Mako with electronic versions of all files included (there should also be a physical file in the office). If there isn't a Mako folder and the claim is closed, the physical file will need to be recalled and scanned and saved into the DOIA folder.

For older claims there may be information in the previous DMS, however, the physical file should be recalled to ensure we do not miss any files.

7. Action Notes

We do not release action notes with all OIAs as these are internal notes used to track the progress of claims. However, there may be requests where these are in scope and should be released. We would typically consider releasing action notes for OIA requests that ask for all 'records/correspondence/everything'.

A short description of what these action notes are should be included to provide context. For example, 'action notes are maintained for all open claims to enable claims advisors and the wider Weathertight Services team to manage claims.'

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| DOIA Example: | s 9(2)(a) |
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8. Contractor Information

The OIA applies to any information held by Weathertight Services contractors. Therefore, our contractors must supply us with all documents they hold in relation to a claim or assessment they have undertaken. The contract provides that this information must be provided to Weathertight Services at the end of the contract, or earlier if requested.

Requests may be made for all information relating to an assessment completed on a property. In this case we would contact the assessor and confirm that all documents, notes and photos have been provided to us, or establish a timeframe for receiving the information. Assessors are paid for their time in providing this information, so we usually ask for an estimate of cost first. In the past these costs were sometimes passed on to the requestor, however this is not currently the case.

s 9(2)(h)

[Redacted text block]

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| DOIA Example: | s 9(2)(a) | (this folder includes the legal advice) |
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9. When the requester is a Trust

A request for information from a trustee about a property owned by a family trust should be dealt with under the Privacy Act 1993 or the Official Information Act 1981 (OIA). In summary, the current perspective is that the trustee makes the request as an individual and as long as they can demonstrate they have the requisite authority to request this information as a trustee then we should treat it as a Privacy Act request. It is noted that trustees have an obligation to act unanimously and are subject to the terms of the trust instrument. The Trust Deed can be used as evidence to prove they are a trustee and have the authority to request the information.

If the request comes from a corporate entity it must go through the OIA. This includes an independent trustee that is a company.



FW Advice
regarding whether a t

Please note that the email linked to above is withheld in full under s 9(2)(h).

RELEASED UNDER THE
OFFICIAL INFORMATION ACT