

28 August 2020

Andrew Ecclestone
fyi-request-10553-96376640@requests.fyi.org.nz

Our ref: OIA 75977

Dear Mr Ecclestone

Ombudsman complaint: Official Information Act request

I am writing in response to your further feedback to the Office of the Ombudsman, about the Ministry's resubmitted response to your Official Information Act request, regarding the Ministry's targeted engagement in 2019 with subject matter experts to help assess the merits of a formal review of the OIA.

I am advised that you have questioned why some of the submissions are image-only and not searchable PDFs. While the Ministry used its website as the main mechanism to undertake the engagement process, some people and organisations chose to provide written submissions outside this process. As some of the submissions received were signed, scanned and then emailed to the Ministry, they unfortunately cannot be provided as a searchable PDF as per your request.

You have also questioned why some of the appendices were not provided as a searchable PDF. I am advised the adviser who prepared the information had some difficulty in turning the intranet page into a searchable PDF and decided to print and scan the material. Further IT assistance has since been sought to convert these documents into a searchable PDF, please see the appendices **attached**.

I trust this information answers your concerns about the documents not being provided as searchable PDFs.

Yours sincerely



Caroline Greaney
General Manager, Civil and Constitutional Policy



Proactively release Cabinet papers

Last updated: 12/5/2020 | Content owner: Jenna Bottcher

What you need to know about publishing Cabinet papers and related documents on our website in accordance with the Government's proactive release policy

Government policy on proactive release of Cabinet material and key advice papers

From 1 January 2019, the Government expects Cabinet papers, attachments and minutes, and, if the Minister chooses, 'key advice' papers relating to the Cabinet paper, to be proactively released on departments' websites.

The policy applies to all Cabinet papers other than appointment (APH) papers. We're also not expected to publish material that wouldn't be released in response to a request under the Official Information Act 1982 (OIA) request.

The documents must be published within 30 business days of the matter being considered by Cabinet, unless there's a good reason not to. The information that's published must be approved by the relevant Minister.

SSC provided this helpful summary of the policy and the requirements to the OIA Forum on 31 October 2018:

[OIA-Forum-31 Oct-2018 - SSC Presentation - proactive release Cabinet material \[PDF, 950 KB\]](#)

The full details of the policy are set out in this Cabinet Office Circular - CO (18) 4 - Proactive Release of Cabinet Material: Updated Requirements:

<https://dpmc.govt.nz/publications/co-18-4-proactive-release-cabinet-material-updated-requirements> (<https://dpmc.govt.nz/publications/co-18-4-proactive-release-cabinet-material-updated-requirements>)

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Who has to do this?

Anyone who drafts a Cabinet paper on behalf of a Minister needs to know about this policy and how to review and publish the documents.

There are 2 key roles internally:

- The group responsible for the subject matter or function addressed in the Cabinet paper drafts the Cabinet paper, identifies what should or shouldn't be released and works with the Minister's office to get the Minister's approval to release the information.
- The Ministerial Services team in Strategy, Governance, and Finance (SGF) undertakes the technical process of redacting and publishing the documents based on the instructions of the responsible business group.

When do you need to do this?

The Cabinet paper itself must say whether it will be proactively released once it's been considered by Cabinet – so you need to think about proactive release **before** the paper is lodged with the Cabinet Office.

Once the paper has been to Cabinet, the documents are generally expected to be published within 30 business days – you'll need to agree the exact timing with the Minister's office.

Step 1: Draft the Cabinet paper

See related procedure: Prepare a Cabinet paper <https://jet.justice.govt.nz/how-do-i/prepare-a-cabinet-paper/> (<https://jet.justice.govt.nz/how-do-i/prepare-a-cabinet-paper/>)

We draft Cabinet papers on behalf of Ministers. The relevant Minister 'owns' the paper and takes it to Cabinet, so the decision on what, if anything, should be released sits with the Minister (or joint Ministers, if the paper's in the name of more than one Minister).

When you're drafting a Cabinet paper you must include a section on proactive release that says whether the Minister intends to proactively release the paper in whole or in part, or to delay the release beyond 30 business days. It's the Minister's decision, so you don't need to include anything on proactive release in the recommendations.

That means you'll need to get input from the Minister (or their office) on whether the paper should be proactively during the drafting process.

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Note that the proactive release policy does not apply to papers considered by the Cabinet Appointments and Honours Committee (APH).

Step 2: Cabinet considers the paper

See related procedure: Attend a Cabinet Committee meeting

<https://jet.justice.govt.nz/how-do-i/attend-a-cabinet-committee-meeting/>
(<https://jet.justice.govt.nz/how-do-i/attend-a-cabinet-committee-meeting/>)

The 30 business days for proactively releasing the Cabinet material and any key advice papers starts on the day of the Cabinet meeting at which Cabinet makes a final decision.

‘Business day’ is defined in [CO \(18\) 4 - Proactive Release of Cabinet Material: Updated Requirements \[PDF, 950 KB\]](#)

Step 3: Agree the timing for publication

Ultimately, the Minister decides when the documents will be published. They’re generally expected to publish the papers within 30 business days of the Cabinet decision. They may, however, want to publish the documents earlier - particularly if they want to announce the decisions at the same time the papers are published. Conversely, they may decide there’s a good reason to delay publication.

The key is to talk to the Minister’s office about timing as early as possible, so you can plan the timeline for collating, reviewing, and publishing the documents.

As soon as you know the likely timing, let the Ministerial Services team in SGF know as soon as possible.

Step 4: Collate the documents

Identify the documents to be released:

- the Cabinet paper – don’t include the Cabinet summary sheet or agenda
- any attachments and appendices to the Cabinet paper
- the Cabinet minute
- any ‘key advice’ documents – these are papers addressed to the Minister who took the item to Cabinet, and that seek agreement from the Minister to recommendations that were subsequently decided by Cabinet. Publishing key advice papers is optional – it’s up to the Minister to decide whether they want to include them in the proactive release.

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It's our responsibility to ensure we publish only the final versions of Cabinet material – that means:

- the version of the Cabinet paper approved by the Minister for lodgement in CabNet or tabled in the meeting, and
- the minute published by the Cabinet Office on CabNet

All the documents need to be in a text searchable format.

- electronic copies of the final versions of Cabinet material can be downloaded from CabNet for the purposes of proactive release - keep the watermark
- for any key advice papers, start with the final Word version of the document and save it as a pdf so it meets the accessibility requirements – don't use a scanned version of the document
- if a key advice paper contains important handwritten information (eg, comments from the Minister), consider also publishing a scanned version or including that information in the cover sheet that's released with the documents.

Step 5: Assess the content of the documents and draft the cover sheet and approval briefing

The group that drafted the Cabinet paper is responsible for reviewing the content, considering any issues, assessing what, if anything, needs to be withheld, and agreeing that with the Minister.

The documents will be published as a single 'pack' with a cover sheet. Start drafting the cover sheet while you're reviewing the content of the documents.

You should also start drafting the approval briefing, which seeks the Minister's approval for what should be published, at the same time.

While the information is being proactively released rather than released under the OIA, you should still have regard to the grounds that would be used to withhold information under the OIA.

There's no expectation that information that would not be released under the OIA should be proactively released. There's also no expectation that exploratory advice, 'blue skies' thinking or advice generated in the early formative stages of a policy development process and intended to ensure the free and uninhibited exchange of ideas that's necessary for the development of robust policy advice should be released.

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If you're not sure whether there would be grounds for withholding information under the OIA, talk to the Office of Legal Counsel.

If any of the information has already been released, you can choose to link to that, but think about what will be easiest and most accessible.

Due diligence – section 48 of the OIA

While we should have regard to the OIA when considering what should be released, proactively released information is not covered by the OIA. This means section 48 of the OIA, which protects Ministers and agencies from civil or criminal liability when information is released in good faith under the OIA, does not apply to information that is released proactively.

We must therefore consider any potential liability, civil or criminal, that might result from proactively releasing the Cabinet material and any key advice papers before seeking the Minister's approval to publish them.

Once Cabinet material is published online, the security classification of the original document may no longer apply. Unless some information has been withheld from the version that's proactively released, you should review the security classification of the original version.

Step 6: Prepare the documents

The electronic documents will be published in one package with a cover sheet that outlines what's being released and the reasons for any redactions.

The Ministerial Services team in (SGF) will make the redactions and prepare the documents for publication based on the instructions from the responsible business group.

Once you've got internal approval for what should be released, what, if anything, should be withheld and the grounds for that, send the documents and draft cover sheet to Ministerial Services team to make the redactions.

Talk to Ministerial Services team about the best way to get the instructions to them. For straightforward releases, an email attaching the documents and noting the redactions may be enough. For more complex matters, it may be helpful to meet and talk through the redactions.

Step 7: Review the pack

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Ministerial Services team will provide the pack with the redactions marked to the responsible business group to review and check.

Step 8: Approval from the Minister

The decision on what to release sits with the Minister – or joint Ministers if the paper went to Cabinet in the name of more than one Minister.

The approval briefing is the mechanism for getting formal agreement from the Minister on what is released and when. You should have started drafting the approval briefing when you were assessing the content of the documents for release (step 5).

The responsible business group provides the approval briefing to the Minister attaching the marked documents and setting out their recommendations on what should be released and when. The approval briefing should also note where the papers will be published on the Ministry's website (Ministerial Services team will give you that information).

Step 9: Publish the documents

Once the documents have been approved by the Minister, send them back to Ministerial Services team to publish.

Let Ministerial Services team know whether any changes are required – Ministerial Services team will liaise with you to make those changes and confirm they've been done correctly.

Ministerial Services team will arrange for the documents to be uploaded on to the external website on the agreed date.

Contacts

Ministerial Services team
minservices@justice.govt.nz

Part of

[Ministers and cabinet](#)

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Templates

[Process map for proactive release](#)

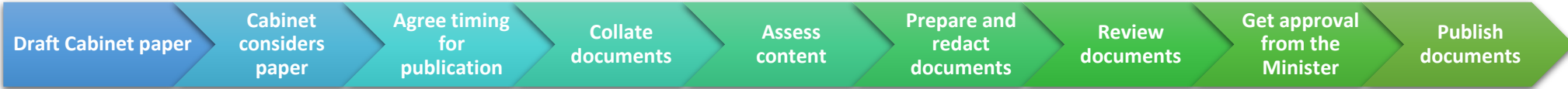
[Proactive release cover sheet template](#)

[Proactive release approval briefing template](#)

Process for the proactive release of Cabinet papers and related documents

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Appendix C



Responsible business unit

Responsible business unit **drafts** Cabinet paper for Minister – paper must include a statement on whether it will be proactively released

30 day timeframe triggered

Responsible business unit **agrees with the Minister** or their office **when** the documents will be published

Responsible business unit **collates** Cabinet material and any key advice papers

Responsible business unit:

- **assesses** documents to identify any issues and whether there might be grounds to withhold any information – seeking advice from OLC if necessary
- **drafts** cover sheet and approval briefing

Responsible business unit **reviews** redacted documents and finalises approval briefing

Responsible business unit **sends** documents, cover sheet and approval briefing to Minister **for approval**

Responsible business unit **notifies** Operational Improvement once the pack has been approved by the Minister and can be published

Operational Improvement

Operational Improvement **monitors** CabNet for Cabinet papers requiring publication.

Operational Improvement **prepares** documents for release, including making electronic **redactions**

Operational Improvement **publishes** coversheet and documents on website, and notifies the responsible business unit that it has been published

KEY TERMS	
Responsible business unit	The unit responsible for the subject matter or function addressed in the Cabinet paper. They draft the Cabinet paper, identify what should or shouldn't be released and work with the Minister's office to get the Minister's approval to release the information.
Operational Improvement	The team in Corporate and Governance that undertakes the technical process of redacting and publishing the documents based on the instructions of the responsible business group.
Cabinet material	All Cabinet papers, any attachments or appendices to those papers, and the associated minutes. This includes minutes resulting from the consideration of oral items at Cabinet.
Key advice papers	A key advice paper is a document addressed to the Minister who took the item to Cabinet that seeks agreement from the Minister to recommendations on the matter.
Cover sheet	Cabinet material and any related key advice will be published as a single pack with a cover sheet that contains key information like a list of the documents being released and whether and why anything has been withheld (redacted).
Approval briefing	The briefing to the Minister seeking agreement on what documents will be released and any redactions.

[Hon XXX YYYY]
[Minister of/for XXXX]

Appendix D

[Proactive release – name of the package]

[Date of issue: DD Month YYYY]

The following document[s] [has/have] been proactively released in accordance with Cabinet Office Circular CO (18) 4.

[Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.]

No.	Document	Comments
1	<p>[Title of the document]</p> <p>[Type of document – eg “Cabinet paper”, “Cabinet minute”, “Attachment to Cabinet paper”, “Key advice”, and so on]</p> <p>[Author of document – eg, “Office of the Associate Minister of Justice”, “Cabinet Office” (for minutes) or “Ministry of Justice” for key advice]</p> <p>[Date of the document – for Minutes: “Meeting date: dd mm yyyy”]</p>	<p>[For example:</p> <p>“Some information has been withheld in accordance with section 9(2)(f)(iv) of the OIA to protect the confidentiality of advice tendered by Ministers of the Crown and officials.”</p> <p>Where regulations or other legislative instruments have been agreed: “Note that the copies of the regulations and commencement orders provided to Ministers with this paper have been withheld in accordance with section 61 of the Legislation Act 2012 and section 9(2)(h) of the Official Information Act 1982 to maintain legal professional privilege.</p> <p>The legislative instruments are publicly available from www.legislation.govt.nz.”]</p>
2	<p>[Title of the document]</p> <p>[Type of document]</p> <p>[Author of document]</p> <p>[Date of the document]</p>	<p>[For example:</p> <p>“Some information has been withheld in accordance with the following sections of the OIA:</p> <ul style="list-style-type: none"> • section 9(2)(a) to protect the privacy of natural persons, and • section 9(2)(f)(iv) to protect the confidentiality of advice tendered by Ministers of the Crown and officials.”]
3.	<p>[Title of the document]</p> <p>[Type of document]</p> <p>[Author of document]</p> <p>[Date of the document]</p>	<p>[For example:</p> <p>“Released in full.”]</p>

Approval to proactively release documents

To Hon XXXX YYYY, **Minister [of/for etc]**

From [Firstname Lastname], [Role]

Date [DD Month YYYY]

Subject Proactive release of documents relating to...

Purpose

1. This paper seeks your approval to publish documents relating to [XXXXX] on the Ministry's website on [DD Month YYYY] in accordance with the Government's policy on proactive release of Cabinet and related material [CO (18) 4].

Information to be released

2. [Note what the Minister indicated they would do in relation to proactive release (Ministers must indicate whether they intend to release in the Cabinet paper itself).]
3. [Describe the documents we recommend releasing:
 - 3.1. There is an expectation that papers **and** any attachments and appendices will be released (see para 18 of [CO \(18\) 4](#)).
 - 3.2. There is an expectation that the **minute** will also be published. Use the minute of the Cabinet Committee, if that is where the substantive discussion took place, provided it has subsequently been confirmed by Cabinet (see para 18 of [CO \(18\) 4](#)).
 - 3.3. Note what, if any "key advice papers" we recommend releasing.

Prepare the coversheet to be published with the pack at the same time that you're completing this section of the approval briefing.]

4. [Explain what, if any, information we recommend withholding and the grounds for that. Did you need to seek legal advice on any of the withholding grounds? If so, explain.]
5. [Add or modify headings and sub-headings as required.]

Sub-heading format [if required]

6.
 - 6.1.

Issues

7. [For example: do the papers include any information that is likely to attract wider media, political or public attention? Is it a one-off paper, or is it part of a bigger project or series of papers? Is any of the information to be released already in the public domain?]

8. [Delete this heading if it's not required – any issues may have been addressed in the previous section.]

Timing

9. [For example: what is the 30-day deadline for publishing the papers? Did they Minister decide to delay publication? When do we recommend publishing the material? Have we talked to the Minister's office about linking the release to an announcement or press release? If publication is expected to line up with a Ministerial announcement or press release, we may need to agree a specific time for publication, and not just the date of publication.]

Consultation

10. [Did we need to consult any other organisations or individuals about what should be released? What was their feedback?]

Publication details

11. The proposed publication details are set out in the **appendix**.

Recommendations

12. It is recommended that you **approve publication** of the following documents on the Ministry's website on [DD Month YYYY]:

No.	Document	Comments	Approval
1	[Title of the document] [Date of the document – if applicable]]	[For example: "We recommend withholding some information as it is likely it would, if requested under the Official Information Act 1982, be withheld under section 9(2)(f)(iv) to protect the confidentiality of advice tendered by Ministers of the Crown and officials. No public interest has been identified that would outweigh the reasons for withholding it."]	Yes / No

[Make sure the signature blocks are on a page with other text – they shouldn't be on a standalone page.]

[Name of person signing the briefing]

[Role]

APPROVED

SEEN

NOT AGREED

[Hon Firstname Lastname]

Minister [of or for] XXXX

Date / /

Attachments:

- Draft pack for publication [the pack should include the coversheet and the documents with any proposed redactions marked]

Appendix – publication details

13. The documents will be published on [DD Month YYYY].
14. The following table outlines the details for loading the documents onto the external website.

<p>Topic</p> <p><i>The “topic” is the top-level tag for material in the publications finder on the website</i></p>	<p>[You must include at least one “topic” - see the publications finder for options.]</p> <p>[If you’re releasing Cabinet and related material you must include “Cabinet and related material” as a topic, but you can add others if applicable (eg, “Policy”).]</p>
<p>Category</p> <p><i>The “category” is the second-level tag for material in the publications finder</i></p>	<p>[There are currently no categories under “Cabinet and related material”, but there may be applicable categories if you include another “Topic”. If you’re not including any categories, write “Not applicable”.]</p>
<p>Title</p>	<p>[Use the title from the coversheet for the pack of documents to be proactively released.]</p>
<p>Description</p> <p><i>This is different from the title – it’s what appears in the search results, so it needs to be meaningful.</i></p>	
<p>Key words</p> <p><i>Any additional keywords to be tagged – you don’t need to include any words already mentioned in the title or description</i></p>	<p>Proactive release [this term must be included]</p> <p>[Add other key words if applicable]</p>
<p>Content owner</p> <p><i>This must be a person</i></p>	<p>[Firstname Lastname], Role</p>
<p>Business unit and group</p>	
<p>Owner’s email address</p> <p><i>Use a generic team address if you have one – eg, teamname@justice.govt.nz</i></p>	