



**GOVERNMENT  
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28 March 2014

Mr Alex Harris  
fyi-request-1499-b81fad81@requests.fyi.org

Dear Mr Harris

**OFFICIAL INFORMATION ACT REQUEST**

I refer to your request dated 3 March 2014, in which you requested:

- *A copy of the review of OIA procedures mentioned in [the ISC annual financial review].*
- *A copy of the agreement with the Ministers office [in the ISC annual financial review].*
- *All advice, correspondence, drafts, memos and emails related to the above (I'm interested in seeing the process of the review, who had input to it, what was considered and what wasn't).*

The review of the GCSB's procedures for responding to Official information Act requests was conducted internally and consisted of a review of our "Instructions for Responding to Official Information Act (OIA) Requests", (a copy of which is attached) following liaison with PMO.

I decline to provide the other documents requested under the provisions of section 18(e) of the Official Information Act 1982 (the Act), on the grounds they do not exist.

In accordance with section 19 of the Act, I am required to advise you that you that you have the right, by way of complaint under section 28(3) to an Ombudsman, to seek an investigation and review of the refusal.

Yours sincerely,



Ian Fletcher  
Director

## INSTRUCTIONS FOR RESPONDING TO OFFICIAL INFORMATION ACT (OIA) REQUESTS

### Background

1. Requests can be made under the Official Information Act 1982 (pursuant to section 12) by the following:

- A New Zealand citizen; or
- A permanent resident of New Zealand; or
- A person who is in New Zealand; or
- A body corporate which is incorporated in New Zealand; or
- A body corporate which is incorporated outside New Zealand but which has a place of business in New Zealand.

2. The official information requested must be specified with due particularity in the request.

3. The Bureau has 20 working days after the request is received to respond. An extension may be sought (pursuant to section 15A) if:

- the request is for a large quantity of official information or necessitates a search through a large quantity of information and meeting the original time limit would unreasonably interfere with the operations of the Bureau; or
- the consultations necessary to make a decision on the request are such that a proper response to the request cannot be made within the original time limit.

4. The extension shall be for a reasonable period of time having regard to the circumstances and the extension shall be effected by giving or posting notice of the extension to the person who made the request within 20 working days after the day on which the request is received. The notice shall:

- Specify the period of the extension; and
- Give the reasons for the extension; and
- State that the person who made the request for the official information has the right, under section 28(3), to make a complaint to an Ombudsman about the extension; and
- Contain such other information as is necessary.

### Principle of Availability

5. The principle of availability underpins the whole Official Information Act (OIA). It is set out in section 5 of the Act.

*“Principle of availability – The question whether any official information is to be made available, where that question arises under this Act, shall be determined, except where this Act otherwise expressly requires, in accordance with the purposes of this Act and the principle that the information shall be made available unless there is good reason for withholding it.”*

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This principle must be kept in mind when we are considering how best to respond to a request.

### Purposes of the Act

6. The guiding principle is reflected in the purposes of the OIA (section 4).

*“Purposes – the purposes of this Act are, consistently with the principle of the Executive Government’s responsibility to Parliament.*

- (a) *To increase progressively the availability of official information to the people of New Zealand in order –
  - (i) *To enable their more effective participation in the making and administration of laws and policies; and*
  - (ii) *To promote the accountability of Ministers of the Crown and officials, -*  
*And thereby to enhance respect for the law and to promote the good government of New Zealand;**
- (b) *To provide for proper access by each person to official information relating to that person*
- (c) *To protect official information to the extent consistent with the public interest and the preservation of personal privacy.”*

7. With regard to the personal information about natural persons, this is to be handled as a Privacy Act 1993 request (refer s.12(1)(A) of the OIA).

8. The purposes recognise that implicit in the application of the OIA there will often be a tension between:

- Considerations favouring disclosure of information; and
- Considerations favouring withholding information.

9. Considerations favouring withholding are set out in section 6, 7, 9, and 18 of the OIA. These range from:

- Reasons for refusal that relate to the administrative difficulty in complying with a request; to
- Reasons for refusal based on the harm that may be caused by disclosure of the information at issue.

### Responding to a request for Official Information

10. When processing and responding to a request for official information, we need to consider the following issues:

- What specific information has been requested?
- Can the information be identified?
- Is the information held?
- Is the information held “*official information*”?
- Are there any administrative or procedural reasons for refusal?
- Is it possible to make a decision on the request within the time limits of the Act?

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- Is there good reason to withhold some or all of the information?
- In what form should the information be released?

11. Refer to the Ombudsman's guidelines for further guidance on the points above.

### Grounds for Declining Requests

12. Sections 6, 9, 10 and 18 provide for various grounds for declining requests. Section 6 provides that good reason for withholding official information exists if the making available of that information would be likely:

- To prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or
- To prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by the government of any other country or any agency of such a government, or any international organisation; or
- To prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial; or
- To endanger the safety of any person; or
- To damage seriously the economy of New Zealand by disclosing prematurely decisions to change or continue Government economic or financial policies relating to: exchange rates or the control of overseas exchange transactions; the regulation of banking or credit; taxation; the stability, control, and adjustments of prices for goods and services, rents, and other costs, and rates of wages, salaries, and other incomes; the borrowing of money by the Government of New Zealand; and the entering into of overseas trade agreements.

13. In practice there are two questions which must be asked when considering whether section 6 applies to a particular request:

- Precisely how would disclosure of the information requested prejudice an interest protected in subsections (a) to (e)?
  - It is not sufficient to simply assert that disclosure of the information will have a prejudicial effect. GCSB must be able to identify, with sufficient particularity, the nature of the prejudicial effect and explain how such prejudice will occur in order to meet the tests for withholding in section 6.
- Would the predicted prejudice be "*likely*" to occur?
  - The phrase "*would be likely*" requires more than the mere possibility that disclosure may have a prejudicial effect. The Court of Appeal has interpreted the phrase "*would be likely*" to mean "*a serious or real and substantial risk to a protected interest, a risk that might well eventuate*". This is a lower standard than that required by the reasons for refusal in section 9 of the Act, where information can be withheld "*if and only if, the withholding is necessary*" to avoid prejudice to one of the interests identified as requiring protection.

14. There are various case notes on the Ombudsman's website which illustrate the application of section 6.

15. Section 9 provides that good reason for withholding official information exists, unless, in the circumstances of the particular case, the withholding of that information is outweighed by other considerations which render it desirable, in the public interest to make that information available, if, and only if, the withholding of the information is necessary to:

- Protect the privacy of natural persons, including that of deceased natural persons; or

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- Protect information where the making available of the information would disclose a trade secret or would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information; or
- Protect information which is 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 to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied or would be likely otherwise to damage the public interest; or
- Avoid prejudice to measures protecting the health or safety of members of the public; or
- Avoid prejudice to the substantial economic interests of New Zealand; or
- Avoid prejudice to measures that prevent or mitigate material loss to members of the public; or
- Maintain the constitutional conventions of the time being which protect the confidentiality of communications by or with the Sovereign or her representative or collective and individual ministerial responsibility or the political neutrality of officials or the confidentiality of advice tendered by Ministers of the Crown and officials; or
- Maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any Department or organisation in the course of their duty or the protection of such Ministers, members of organisations, officers, and employees from improper pressure or harassment; or
- Maintain legal professional privilege; or
- Enable a Minister of the Crown or any Department or organisation holding the information to carry out, without prejudice or disadvantage, commercial activities; or
- Enable a Minister of the Crown or any Department or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations); or
- Prevent the disclosure or use of official information for improper gain or improper advantage.

16. Section 10 provides that where a request under the OIA relates to information to which section 6 or section 7 or section 9(2)(b) of the OIA applies, or would, if it existed, apply, the Bureau may, if it is satisfied that the interest protected by section 6 or section 7 or section 9(2)(b) of the OIA would be likely to be prejudiced by the disclosure of the existence or non-existence of such information, give notice in writing to the applicant that it neither confirms nor denies the existence or non-existence of that information.

17. Section 18 provides that a request may be refused only for one or more of the following reasons, namely:

- That, by virtue of section 6 or section 7 . . . or section 9 of the OIA, there is good reason for withholding the information:
- That, by virtue of section 10 of the OIA, the Department or Minister of the Crown or organisation does not confirm or deny the existence or non-existence of the information requested:
- That the making available of the information requested would be contrary to the provisions of a specified enactment or constitute contempt of Court or of the House of Representatives:

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- That the information requested is or will soon be publicly available:
- That the document alleged to contain the information requested does not exist or cannot be found:
- That the information requested cannot be made available without substantial collation or research:
- That the information requested is not held by the Department or Minister of the Crown or organisation and the person dealing with the request has no grounds for believing that the information is either held by another Department or Minister of the Crown or organisation or a local authority or is connected more closely with the functions of another Department or Minister of the Crown or organisation or of a local authority:
- That the request is frivolous or vexatious or that the information requested is trivial.

### Charges for Requests

18. The Bureau shall (pursuant to section 15 of the OIA), no later than 20 working days after the day on which the request is received by the Bureau, decide whether the request is to be granted and, if it is to be granted, in what manner and for what charge (if any); and give or post to the person who made the request notice of the decision on the request.

19. The Bureau may charge for the supply of the official information. Any charge:

- shall be reasonable and regard may be had to the cost of the labour and materials involved in making the information available to and to any costs incurred pursuant to a request of the applicant to make the information available urgently.
- (Whole or part of) may be required to be paid in advance.

20. For more detail on exactly how the Bureau should fix any charges for OIA requests then please refer to the guidelines issued by the Ministry of Justice titled "Charging Guidelines for Official Information Act 1982 Requests".

### OIA Requests

21. The Compliance and Policy team are responsible for responding to OIA requests.

### Format of a response to an OIA Request

22. Responses to OIA requests are in letter format:

- The letters are saved electronically into Objective.
- If the Bureau declines to provide the official information requested then the grounds for withholding must be stated in the letter.
- The Bureau must inform the person who requested the official information that they have the right (under section 19(b) of the OIA), by way of complaint to the Ombudsman under section 28(3) of the OIA, to seek an investigation and review of the refusal to disclose the information requested.

### Responses

23. Consultation on all responses is to include the following:

- The responsible Unit Manager/Deputy Director;
- Communications;

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- Legal;
- The Minister's Office, and;
- Associate Director

24. The finalised version of the response is signed by an appropriately authorised signatory, the Director, or in the Directors absence, the Acting Director.

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