

Guidelines for processing information requests

About requests for information

To carry out its statutory functions and duties, Police gathers a wide range of information. This information includes personal information about victims, witnesses, offenders, offences and offending.

Similarly, Police holds a significant amount of information about the organisation, and the processes and policies that it employs to carry out its functions and duties. This type of information is known as Official Information.

Police's effective management of all this information is a vital aspect of its core business, and the methods used are designed to comply with the following:

Official Information Act 1982

Privacy Act 1993

Public Records Act 2005

Criminal Disclosure Act 2008

Access to information

The Official Information Act and Privacy Act provide people with access to the information Police holds.

The following guidelines provide staff with guidance on how to deal with information requests.

If you have any queries regarding requests for information contact the Police Privacy Officer on 44392, duty legal adviser on 44555 at PNHQ or your District Information Officer.

Legislation

Official Information Act 1982

The Official Information Act provides for specific controls over the handling of information by government agencies. It does not apply to any private

sector organisations.

The Official Information Act states that information held by Government Agencies must be made available to the public, upon request, unless good reasons exist for withholding it. The reasons for refusing a request are described in the Act. The Act covers requests by:

- Natural persons for personal information about individuals other than themselves.
- Companies and other bodies for information about themselves or other persons.
- Requests from individuals for a statement of reasons about a decision or recommendation that affects them in a personal capacity.
- Requests from members of the public about any aspect of Police and/or its employees

The Official Information Act sets out various rules that govern the handling of requests for the release of information.

Office of the Ombudsmen

Complaints about decisions made on requests for Official Information by government departments, Ministers, public sector organisations or local authorities may be investigated and reviewed by the Office of the Ombudsmen.

Privacy Act 1993

The Privacy Act provides a comprehensive set of rules that apply to any agency regarding the collection, storage, access to use and disclosure of personal information.

Personal information is information about an identifiable individual.

Police has a duty to provide reasonable assistance to any person who wishes to make a personal information request. As POLICE holds a large amount of sensitive personal information, it is important that management and staff within Police know the requirements of, and comply with, the Privacy Act.

The Privacy Act sets out 12 Information Privacy Principles that cover the collection, handling and use of personal information.

Health Information Privacy Code 1994

The Health Information Privacy Code sets out 12 Health Information Privacy Rules that cover the collection, handling and release of personal health information.

Police are not a health agency and therefore the Code does not apply to the health information Police may hold. Agencies that Police interact with that are health agencies will be subject to the Code.

Privacy Commissioner

Investigation into complaints about access to and withholding of information, collection, storage, accuracy, retention, use or disclosure of personal information is the responsibility of the Office of the Privacy Commissioner.

Police's responsibilities regarding privacy and official information

Familiarisation with the Acts reduces the risk of a breach of privacy. Compliance with the Official Information Act and the Privacy Act also enhances the image of Police as a responsible agency with a commitment to respect individual's privacy. One of the purposes of the Official Information Act is to promote accountability of public sector agencies by being transparent in respect to its policies and processes that affect members of the public.

Police's responsibilities under both Acts include:

- Educating management and staff of the organisations obligations under the legislation.
- Developing procedures to respond to personal and official information requests.
- Ensuring compliance with the statutory requirements in both Acts
- The appointment of a Privacy Officer.

Privacy Officer

The appointment of a Privacy Officer is a statutory requirement under the Privacy Act. It is the responsibility of the Privacy Officer to ensure compliance with the provisions of the Privacy Act. The Privacy Officer also oversees investigation into complaints lodged with the Privacy Commissioner.

Carolyn Richardson, Senior Legal Adviser, PNHQ is the Privacy Officer for Police.

District Co-ordinator

Each District has a District Co-ordinator for Official Information Act and Privacy Act requests. District Co-ordinators will be responsible for logging, allocating, and tracking requests for information that are received in Districts.

Official Information

Definition

"Official Information" is any information held by a government agency, such as Police. It refers to information about the organisation's management, operation, business practices, internal policies, guidelines, investigations, prosecutions and its employees. It also includes personal information where someone other than the individual concerned makes the requests.

Official information is not confined to written documents. In addition, it can include tape recordings, electronic files and manuals, e-mails, books, maps, drawings, videotapes and films. It may also be information that is known by an individual Police staff member, where the information was received in the course of their work.

Official Information Act 1982

The basic principle of the Official Information Act is that all information held by government agencies shall be made available to the public, unless a good reason exists for withholding it. The legislation specifies the reasons that are appropriate for an agency to withhold requested information.

Once a request for information is received, it is Police's responsibility to establish:

- Whether the information exists, and if so
- Can it be released to the person making the request?

The Official Information Act sets out various rules that govern the handling of requests for the release of official information.

This material (guidelines, fact sheets and standard letters) should provide Police staff with sufficient advice to respond to requests under the Act. However, there may be occasions where Police receives a request that includes a reference to a section of the Official Information Act 1982 or the Privacy Act 1993. Therefore, access to the legislation has been provided to assist with these requests.

Processing a request

Requests for official information are processed under the Official Information Act 1982.

Requests for personal information about an individual from organisations or another individual are also processed under the Official Information Act.

However, requests for personal information from the individual concerned are governed by the Privacy Act 1993. Guidance on how to respond to Privacy Act requests is in the Privacy Act guidelines.

Ministerial Services

All official information requests received at PNHQ are logged by Ministerial Services as an Official Information Act request. Requesters do not have to refer to the correct or any legislation when making their request. Police must determine what Act applies to the request based on what information is being requested and by whom.

- **Example.** A request is received from Jim Brown requesting information about a conviction against his brother for disorderly behaviour. As Jim is asking for information about someone other than himself the request is processed under the provisions in the Official Information Act 1982.

If a lawyer representing Joe Brown wrote to Police advising that Mr Brown had instructed her to act for him, requesting the same information the request would be processed under the Privacy Act as the lawyer is acting as Mr Brown's agent.

Assistance

Section 13 of the Official Information Act imposes a duty on Police to assist a person with their request.

It is preferable that a request for information is made in writing, so that

Police can ensure that the request is properly answered. However, the legislation does not require a request to be made in writing, and consequently Police must accept an oral request for information. Police may ask a person making an oral request to put the request in writing but cannot refuse to accept the request if they do not. In those circumstances, it is important to clarify the information request, and record the request straight away, and if possible read it back to the requester and ask them to confirm that you have recorded it correctly.

Requests that are made over the telephone ought to be treated in the same manner as written requests. They must be logged with Ministerial Services, and any response provided must be signed off on the Audit Trail Process.

Due Particularity

Section 12 of the Official Information Act requires a request to be specified with "due particularity". This means that it must be clear what information the requester is seeking. Ideally the request should:

- Identify what information is being sought
- Indicate how the requester wants the information provided
- Provide any reasons for urgency (should it be requested)
- Provide a name, address, and contact phone number.

Sometimes Police will receive requests that are not very clear and assessment may be necessary to determine whether a request can be actioned. If it is not possible to establish what the requester wants, or their request is so wide that it is impossible to answer or identify the information sought, Police should write back to the requester for further clarification.

Example: A request is received for "all information about diversion". Such a request is not made with "due particularity". Police write to the requester to seek further clarification of the information required. The requester writes back advising that they want information on the criteria Police use to determine if a person is eligible for diversion. Having established the request is in fact quite specific, Police is now in a position to respond.

Who can make a request?

Section 12 of the Official Information Act states that requests can be made by any of the following:

- A New Zealand citizen
- A permanent resident of New Zealand
- A person who is in New Zealand

- An organisation that is incorporated in New Zealand.
- An organisation that is incorporated outside New Zealand, but has a place of business in New Zealand.

However, should Police receive a request for information from an individual or organisation outside New Zealand, every endeavour should still be made to comply with the request. Although the Official Information Act would not govern its response, Police still needs to provide assistance in a timely manner. Having said that, it is important that care is taken if the request is for personal information.

- Example: An Australian researcher requests information about the number of theft ex-car reported to Police in the Wellington district in 2008. Police could respond to the request by providing the information if it is collated and held.

It is not necessary for the requester to specify that they are making a formal request, or specifically name the legislation or the correct legislation. All requests are automatically deemed to come under the relevant legislation.

- Example: A member of the public asks Police for information about its policy about the return of stolen property and refers to the Data Protection Act. Despite the fact the request refers to an Act that does not exist in New Zealand it is still an Official Information Act request.

Anonymous Requesters

A requester must provide their name and address so that Police may determine whether the Official Information Act applies to the request.

Requests from other government agencies

Several government agencies have a statutory authority to access personal information from individuals or organisations. Should such an authority exist in the agency's legislation, Police is required to release information if it is requested.

It is important that the agency provides Police with details of their statutory authority before Police releases any personal information. The request should always be made in writing and it is important that we ask for the agency to submit a written request which includes a reference to the applicable legislation.

Most of the requests that Police receive will be from:

- Inland Revenue (quoting section 17 of the Tax Administration Act)

1994).

- Child Youth and Family (quoting section 66 of Children, Young Persons and their Families Act 1989)
- The Ministry of Social Development (quoting section 11 of the Social Security Act 1964)

Time frames

Section 15 of the Official Information Act states that a decision should be made and provided to a requester "as soon as reasonably practicable" and no later than 20 working days from the day after the request is received.

- Example: A requester asks for a copy of the Police policy about the Disposal of Found Property. As the document pertaining to disposal of found property is a small factual document about how Police staff must handle found property, a decision is made to release it to the requester. On the eleventh working day a letter is sent to the requester providing a copy of the policy.

Police may notify an extension of time to enable the response to be provided. Extensions are permitted where:

- Large quantities of information are involved
- Searching through large quantities of information would unreasonably interfere with Police's operations
- Consultations are required to make the decision.

Should Police decide to notify an extension of time, formal notification must be made before the expiry of the 20 working days time limit, and must include the following:

- Period of extension
- Reasons for extension
- Advice that the requester has the right to make a complaint about the extension to the Office of the Ombudsmen.

It is important that the further period of time that Police requests is realistic and reasonable in the circumstances.

- Example: A requester asks Police for a copy of the entire set of the Manuals of Best Practice. Due to the number of volumes and all of the workgroups that need to be consulted with to decide what parts of the Manuals can be released, Police notified an extension for a further twenty working days. The letter advised that an extension for a further 20 working days would be required so that all of the consultations could

be completed. The letter also advises that the requester can make a complaint to the Office of Ombudsmen about the extension of time.

Further extensions may be notified if and only if they are notified before the twenty working day period expires.

How to count time

Time limits are expressed in "working days" - any day that is not a Saturday, a Sunday, a public holiday, or a day between 25 December and 15 January inclusive. Also note that regional Anniversary Day holidays are not excluded from "working day", so they must still be counted.

To count working days available, day 1 is the first working day after the day on which the request is received.

So, if a request is received on a Monday, the last and 20th working day available to send out the response is the 4th Monday after that (unless a public holiday or the Christmas holiday period adds some time to the deadline).

If a request has been made orally, then later confirmed in writing, you must count the working days from the date of the oral request, not from the receipt of the written confirmation.

Transferring a request

In cases where Police does not hold the official information, but knows of another government agency that does, Police can transfer the request to the other agency (under section 14 of the Official Information Act). The transfer must be done promptly, and no later than 10 working days from date of receipt of the request.

You ought to telephone the agency you are transferring the request to, and advise them that the request is being transferred. The requester should also be told that the request has been transferred. A copy of the request should be sent to the agency.

- Example: An individual writes to Police seeking details of a Court hearing and comments made by the presiding Judge. The information sought is not held by Police but is probably held by the Ministry of Justice. Accordingly, Police transfers the request to the Ministry. A letter is sent to the Ministry transferring the request and a letter sent to the requester advising of the transfer.

Charging for information

Section 15 of the Official Information Act provides Police with an authority to charge for the provision of official information. Generally, Police will only impose a charge for the cost in cases where a large amount of documentation is requested or a significant amount of work would be required to action the request.

Note – Police cannot charge for providing personal information.

- Example 1: An individual requests a copy of the entire Police file relating to a large investigation. Processing the request involves assessing and copying a significant amount of documents that will take several weeks. Police have to hire a contractor to do the work and Police decides a charge should be imposed.
- Example 2: An individual requests a copy of all documents on a file relating to his diversion. No charge is imposed, as this is a request for personal information.
- Example 3: An individual seeks a copy of the Police policy regarding the Employee Rehabilitation Process. This does not involve a significant amount of copying or research. The information is provided without a charge being imposed.

Decisions on charging for information should be made in consultation with staff in the Privacy Office, Ministerial Services Unit or the District Coordinator.

The factors to consider regarding imposing a charge are:

- staff time involved preparing information for release
- staff time involved in locating the information requested
- photocopying charges and other fixed costs incurred in preparing information for release

In cases where Police considers a charge should be imposed, the expected costs should be advised in writing. The requester must be asked to confirm that they are prepared to meet the costs involved. Police may also seek payment of part or all of the expected costs prior to undertaking the work.

A right of review, to the Office of the Ombudsmen, exists regarding any charge imposed by Police.

Police rates for costs are:

- **Labour** - \$38 per half hour (including GST) with the first ½ hour being free
- **Photocopying** – 20¢ per page (including GST) with the first 20 pages being free
- **Other costs** – all other charges (e.g. courier fees etc) at full cost incurred by Police.

Withholding information

As noted previously, Police is required to release official information when it is requested, unless there are good reasons not to. The grounds for withholding information are specified in sections 6, 9 and 18 of The Official Information Act. Section 9(1) requires Police to consider whether the reason for withholding information is outweighed by the public interest.

In cases where a requested document contains some material that cannot be released (for example where an individual is identified), it is appropriate to delete part of the document before the document is released. A decision letter would need to be sent, providing the section and reason for the partial deletion of the document's contents.

The following are the reasons why Police can withhold official information:

The release would be likely to prejudice the maintenance of law, including the prevention, investigation, and detection of offences, and the right to a fair trial.

- Example: An individual seeks details of an investigation Police is currently undertaking into the supply of drugs. Police can refuse the request and withhold some or all of the information requested to ensure that the investigation is not compromised. Section 6(c)

There is a need to protect the safety of any individual.

- Example: An individual seeks details of an informant who has given information to Police. There are grounds for believing the informant could be harmed if information that identified them was released. Police therefore has good reasons to refuse the request and decides to withhold the information. Section 6(d)

There is a need to protect the privacy of persons, including that of deceased persons.

- Example: An individual requests access to a homicide investigation file. The offender has been convicted and sentenced. There is a lot of information on the file about the deceased person and their family. Police declines to release the information to protect the privacy interests of the deceased person and the family members as there was no public interest favouring release of the information that outweighed the privacy interests of the individuals concerned. Section 9(2)(a)

There is a need to protect information if release would disclose a trade secret or would be likely to unreasonably prejudice the commercial position of the person who supplied the information or the person the information is about.

- Example: A requester seeks details of the contract that Police has entered into regarding the provision of equipment. Police decides to withhold some aspects of the contractual agreement, as disclosure would prejudice the commercial position of the organisation that have entered into contractual arrangements with Police. Section 9(2)(b)

The information is subject to an obligation of confidence where it is in the public interest to protect the future supply of similar information, or the source of such information.

- Example: Police receive a request for a copy of information obtained during an investigation of an assault on a tourist. A Hotel provides a copy of its guest register and CCTV footage from the Hotel foyer for the period relating to the allegation of assault. The Hotel is concerned that patrons will be reluctant to use the Hotel if the information is given to a third party and provides the register information and CCTV footage to Police on the basis that it is confidential and must not be released to any other person. Police declines to release the information as it was given in confidence and it is in Police's interests to protect the future supply of such information during an investigation. section 9(2)(ba)

There is a need to maintain effective conduct of public affairs through 'free and frank' discussions between Cabinet Ministers and officials and between officials when doing their job.

- Example: An individual has sought a copy of notes of a meeting held between the Minister for Police and Police regarding the progress of a legislative amendment. Police declines to release the advice, as doing so would prejudice any future 'free and frank' discussions. Section 9(2)(g)(i)

There is a need to protect legal professional privilege.

- Example: A person has requested a copy of a legal opinion that the District obtained from Legal Services. Police decides to claim legal professional privilege¹ on the opinion. Police therefore declines to release the legal opinion. Section 9(2)(h)

The information requested is, or soon will be, publicly available.

- Example: A researcher has sought details of the Police Customer Satisfaction Survey. The information is about to be released publicly in four weeks, and therefore Police declines to release the information. Section 18(d)

The document alleged to contain the information does not exist, or cannot be found.

- Example: An individual has sought a copy of Police report on a

¹ Legal professional privilege applies to any communication between a Police lawyer and a Police employee where advice is sought or provided.

matter. After making inquiries it is apparent that no such report exists. Police declines the request because the information does not exist or cannot be found. Section 18(e)

The information cannot be made available without substantial collation or research.

- Example: An individual has sought details of the number of staff members who have undergone workplace assessments. Police declines to provide the information, as its compilation would require substantial collation or research as every District and station would have to be contacted to obtain the information. However, the person is advised that the information could be made available should they agree to meet Police costs to retrieve the information or if the request was more specific. Section 18(f)

Information is not held

- Example: A requester asks for the total cost of a Police investigation. Police does not routinely collect every cost associated with an investigation. Police may be able to provide an approximate cost and could offer to do so but the information requested is not held if Police do not have a total cost figure. The request may be refused on the basis that the information requested is not held by Police. Section 18(g)

The request is frivolous or vexatious, or the information requested is trivial.

- Example: A requester makes his sixth request in three weeks for a copy of Police's policy regarding Diversion. Having supplied the information previously, Police declines to provide a further copy, on the basis that the request is vexatious. Section 18(h)

If you are withholding any information from a requester, you must advise the requester that you have withheld information, and the section you have relied on to withhold that information. You must also advise the requester of their right to make a complaint to the Office of the Ombudsmen about your decision and to request a review and investigation.

Other things to be aware of

The information requested is subject to a suppression order

Care must be taken, before information is released to check that the information is not subject to a suppression order. If information is disclosed to a third party that has been suppressed by the Court Police may be in contempt of court.²

In some instances it is possible to disclose information that is the subject of a suppression order if the person it is disclosed to is to a "*genuinely interested party*" and the disclosure will not amount to a "publication".

If the information is requested for Family Court proceedings the information may be provided directly to the Family Court judge for his or her consideration without breaching a suppression order.

The requester should be advised to make an application to the relevant Court to have the suppression order varied or lifted to obtain access to the information.

Always obtain legal advice before releasing information that is subject to a suppression order.

Requests from Counsel for the Child appointed by the Family Court

If the Counsel for the Child requests information in that capacity ask them to provide a copy of the letter of appointment from the Family Court.

Requests from Counsel for the Child will often be about the parents of any children involved in the proceedings. In most cases if the issue is one of custody and access the public interest in ensuring the Court is fully informed about offending or family violence or any other information which may have a bearing on the care and safety of the children while in the custody of either parent is very high and will often outweigh the privacy interests of the parents.

Requests from lawyers on behalf of their clients

Should be processed as Privacy Act requests as the lawyer is the individual's

² *Television New Zealand Limited v Solicitor-General* [2009] NZFLR 390, [2008] NZCA 519 at para [56]

agent. The lawyer does not have to provide proof that they are instructed to act on the individuals behalf but many will do so when they request information from Police.

Media requests

Request from media are Official Information Act 1982 requests and as such should be processed in the same way as any other request for information. Sometimes the requester will ask for the information to be provided in a short timeframe to meet a publishing deadline. Police will try to assist the media requester if possible but not to the extent that our internal process is not followed.

Due to the subject matter of some requests it is essential that GM: Public Affairs and the Commissioners and the Minister are aware of what it is proposed to release in response to a request.

The business owner of the information sought should manage requests for information on a short timeframe carefully and ensure that any internal signoff is completed prior to release, but does have the flexibility to reduce the timeframe for a response by fast tracking the decision making and audit trail process.

Example: A request is received from a weekend paper on Thursday afternoon requesting information about a Police officer who was recently involved in a high profile criminal matter. The journalist advises that the information sought is for an article in the weekend paper which will be written with or without the information sought. The information requested is readily available for release, the officer concerned agrees to it being released to the journalist but because the matter has had significant media and public interest the business owner wants to ensure that the Commissioners know that the information will be released and why.

The business owner takes the proposed release to the people who must sign the audit trail so the release is signed off in a day

What happens when a Request is received?

- **The request is logged and allocated to the relevant business owner**

The business owner is the workgroup who holds or is most likely to hold the information requested. If a request is allocated to your workgroup and you do not hold the information requested return the request immediately to Ministerial Services or the District Co-ordinator.

- **The business owner must ascertain if the information requested is held by Police**

If the information is not held by Police but is held by another agency the request must be transferred within 10 working days.

If the information does not exist or cannot be found the request may be refused pursuant to section 18(e) of the OIA.

If the request is ambiguous or unclear the business owner should write back to the requester and ask them to be more specific about the request and restate it with "due particularity" The twenty working days do not start to count down until the request is restated in a way that it is clear what is being requested. If the requester does not write back a follow up letter should be sent. If no response is received from the requester return the file with a covering explanatory note to the District Co-ordinator or Ministerial Services.

What is the business owner responsible for??

- **Deciding what information will be released to the requester**
- **Allocating resources to ensure that the request is responded to on time and accurately**
- **Ensuring that transfers of requests are done within ten working days**
- **Ensuring that extensions are notified before the twenty working days expires**
- **Drafting the response to the request and peer review**
- **Seeking legal advice about the response if necessary**
- **Moving the draft response and proposed release of information through the audit trail within the allocated time frame**
- **Make any amendments to the draft and/or proposed release or refusal and post response to the requester.**
- **Retain a copy of the information considered for release**

- **Retain a copy of the information and response sent to the requester and return completed file to Ministerial Services at PNHQ**

Audit Trail

The audit trail is a mandatory part of the OIA request process. The business owner is responsible for ensuring that the proposed response to a request is moved through the audit trail process in a timely fashion and that the statutory timeframes are adhered to.

The purpose of the audit trail is to ensure that Public Affairs, the Executive and the Minister of Police are made aware of the subject matter and proposed response to requests.

When the business owner has prepared a response to a request the proposed response must be reviewed by Legal Services: Privacy, and other parts of Police specified by Ministerial Services.

If any of the groups who review the proposed response as part of the audit trail recommend amendments it is the responsibility of the business owner to ensure that the amendments are made or discussed prior to the response being sent.

The business owner is ultimately responsible for the final draft of the response that is sent.

Complaints to the Office of the Ombudsmen

If a requester complains about the delay in receiving a response to their OIA request the Ombudsman will contact Police and ask for an explanation for the delay. The business owner is responsible for providing a response to the Ombudsman in the timeframe they specify which is usually two working days.

If a requester makes a complaint to the Ombudsmen the business owner will be advised of the complaint and asked to prepare a report on the decision to refuse the request. The business owner will provide the report and a copy of the withheld information to the Privacy Legal Team who will prepare a response to the Ombudsman.

The report must be prepared by someone other than the person who signed out the response to the request, (i.e a 'one-up' policy in respect to the investigation of complaints).

Office of the Ombudsmen

Complaints about the responses to requests under the Official Information Act are handled by the Office of the Ombudsmen.

The contact address for that office is:

Office of the Ombudsmen

PO Box 10152

Wellington 6143

Ministerial Services and the Privacy teams at PNHQ Legal Services manage Police's liaison with the Office of Ombudsmen.