Organisational Guidelines

Dealing with Requests and Complaints under the *Official Information Act 1982*

Reference: MPI Organisational Policy: *Official Information, Personal Information and Ombudsman Inquiries*

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1 What procedural steps should an employee follow after receiving a request for information?

1.1 The Official Information Act (OIA) request process is administered by the Ministerial and Governance Group (MGG). Generally speaking all OIA requests must be formally logged by that Group, and all responses coordinated by it (see **5.5** for the criteria for when a request should be logged with MGG as an OIA request).

1.2 However the MGG performs an administrative role only in the request process. Ownership of each individual OIA request (and all correspondence including the final formal response), rests with the "SME" (subject matter expert) to whom the request has been allocated by MGG. All formal OIA decision making and correspondence will need to be made/signed out by a person with authority delegated by the Director-General, currently Directors and Deputy Directors General ("Authorised Persons").

1.3 The **OIA process flowchart** sets out the process to be followed by any employee/s dealing with an OIA request in MPI. The chart is designed to be printed and used separately from these Guidelines (for example, by pinning it up onto a wallboard). The remainder of these guidelines provides more detail on the matters covered in the flowchart.

1.4 A breach of these Guidelines will effectively amount to a breach of the Official Information Act Policy from which these Guidelines flow. A clear and consistent process, applied by all employees and managers, will:

- promote public confidence in MPI's openness and transparency in dealing with official information requests;
- enhance MPI's level of compliance with the OIA;
- help to minimise the number of complaints made to the Ombudsman's office in respect of MPI's decisions under the OIA.

2 Introduction to Official Information Act 1982

2.1 It is important for anyone working with OIA requests to understand the purposes of the *Official Information Act 1982* (OIA). The purposes of the OIA are:

> 4(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.

2.2 In addition to developing an understanding of the OIA's purpose, it is also important for all MPI staff to be conscious of their broader obligations as public servants in holding, creating and being party of official information and requests for the same.

3 Scope

3.1 These Guidelines are designed to be read with and accompany the MPI Organisational Policy Official Information, Personal Information, and Ombudsman and Privacy Commissioner Inquiries (revised 2012) (the "OIA Policy").

3.2 The purpose of these Guidelines is to:

- Provide a detailed outline of the key principles and processes set out in the OIA for dealing with OIA requests;
- Be a practical and informative guide for MPI staff who deal frequently with such requests;
- Promote consistency across MPI in the way official information requests are processed and managed;
- Enhance MPI's compliance with the requirements (e.g. timeframes) of the OIA, by ensuring that all staff and managers using the OIA are familiar with how it works, and with the internal processes set out in these Guidelines for managing requests.

3.3 These Guidelines do not cover the following areas:

- Requests made by an individual for information about themselves, which fall within the scope of the *Privacy Act 1993* ("PA");
- Investigations, reviews or inquiries made by the Ombudsmen under the OIA or the Ombudsmen Act 1975, *other than those arising from a complaint about a decision under the OIA* (s28);
- Requests by individuals or agencies for publicly available material of a general nature (such as website content or MPI publications).

3.4 **Specific information provisions in other legislation MPI deals with**

(a) Some Acts have specific information provisions that need to be considered when information relating to those Acts is being requested for disclosure under the OIA. Staff dealing with certain kinds of information need to be aware of these provisions, and how they impact on disclosure under the OIA.

(b) One example frequently arising within MPI's portfolio area is s12 of the **Agricultural Compounds & Veterinary Medicines (ACVM) Act 1997**. Section 12 applies to information supplied by applicants for trade name product registration during the registration process.

(c) Section 12(1) also contains an active prohibition on MPI releasing information about a trade name product application, where s9(2)(b) (commercial confidentiality) applies to that information, and the TNP application has been publicly notified.

(d) There is an identical provision to s12 of the ACVM Act in s57 of the Hazardous Substances & New Organisms (HSNO) Act 1996.

4 What is 'Official Information'?

4.1 The definition of "official information" in section 2 of the OIA is extremely broad:

> "**Official information**—
>
> (a) Means any information held by—
>
> (i) A Department; or
>
> (ii) A Minister of the Crown in his official capacity; or
>
> (iii) An organisation; and
>
> (b) Includes any information held outside New Zealand by any branch or post of—
>
> (i) A Department; or
>
> (ii) An organisation"

4.2 The key point to grasp is that almost any type of information (in any form) held by MPI is "official information" subject to the OIA – the definition is not specific about the form in which information must be kept for it to be "official information".

4.3 The Ombudsman even considers that the definition of official information also includes knowledge of a particular fact or state of affairs held by officers in such organisations or Departments in their official capacity. The fact that such information has not yet been reduced to writing does not mean that it does not exist and is not *"held"* for the purposes of the Act.[1]

4.4 That said however, much of the official information MPI is asked to release is in the form of "documents". The definition of "document" in s2 (relevant to s16 of the OIA – 'Documents') is also very wide:

> "**Document"** means a document in any form; and includes—
>
> (a) Any writing on any material:
>
> (b) Any information recorded or stored by means of any tape recorder, computer, or other device; and any material subsequently derived from information so recorded or stored:
>
> (c) Any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means:
>
> (d) Any book, map, plan, graph, or drawing:
>
> (e) Any photograph, film, negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced"

4.5 Therefore, e-mails, file notes of phone conversations, draft documents, and electronic material such as PowerPoint presentations and database entries, are all "documents" within the scope of the OIA.

[1] Ombudsmen's Practice Guidelines, Part A, Chapter 1 (How the Official Information Legislation Works), page 4

5 What is an Official Information Act request and who can make one?

What is an OIA request?

5.1 When any "person" (whether a member of the public, MP, or some agency or organisation), makes a request to MPI for information, the employee receiving the request must consider whether the request falls within the scope of the OIA.

5.2 Most requests for information will fall within the scope of the OIA, however a small number (comprising requests by an individual for information about themselves) will instead fall under the PA.

5.3 Some requests may involve a combination of OIA and PA.

5.4 A request for information will often fall within the OIA, even though it has not explicitly been framed as an OIA request by the person making it.

5.5 MGG is able to provide advice on whether a request should be logged but MPI policy is that a request *must* be logged with MGG as an OIA request if it meets any of the following criteria:

- Requests stating they are made under the OIA
- Requests from media organisations
- Requests from political or special interest groups or individuals
- Requests for material for commercial or litigious purposes
- Requests regarding potentially contentious issues
- Requests which MPI intends to apply a charge for
- Requests which MPI intends to refuse
- Requests from the Parliamentary Library where the information sought is not already in the public domain.

Who may make a request?

5.6 The next key issue in determining whether a request is an OIA request is whether the person making it is *lawfully entitled* under the OIA to request official information. Section 12(1) of the OIA restricts the making of OIA requests to the following categories of persons (and note that 'person' includes an artificial legal person, such as a body corporate):

> (a) "A New Zealand citizen; or
> (b) A permanent resident of New Zealand; or
> (c) A person who is in New Zealand; or
> (d) A body corporate which is incorporated in New Zealand; or
> (e) A body corporate which is incorporated outside New Zealand but which has a place of business in New Zealand"

5.7 Thus if the request has been made by a person outside New Zealand who is not a New Zealand citizen, or on behalf of a company which was not incorporated in New Zealand or (if incorporated overseas) which has no place of business in New Zealand, the employee receiving the request is entitled to send a letter declining to disclose information under the OIA.

5.8 There are a number of key provisions of the OIA with which employees need to become familiar. These include the provisions dealing with the making of requests, and response timeframes, extension and transfer of requests, charging, and responding to complaints made to the Ombudsmen.

5.9 This part of the Guidelines provides a brief overview of these key provisions (with reference to relevant decisions of the Ombudsman), but for a more detailed analysis you should consult the *Ombudsman's Practice Guidelines* – available online at www.ombudsmen.parliament.nz.

6 Who decides on the release of 'official information' under the OIA?

6.1 The answer to this question is relatively straightforward. Section 12(4) of the OIA provides:

> (4) Where a request in accordance with section 12 of this Act is made or transferred to a Department, the decision on that request shall be made by the permanent head of that Department or an officer or employee of that Department authorised by that permanent head unless that request is transferred in accordance with section 14 of this Act to another Department or to a Minister of the Crown or to an organisation or to a local authority.

6.2 The Director-General of MPI (or a duly authorised officer or employee) is, therefore, ultimately responsible for decision-making under the OIA. In these Guidelines that person is referred to as the "Authorised Person" (or AP).

6.3 In the interests of practicality and administrative efficiency, the DG has issued a series of statutory delegations to Directors (and Deputy Directors) within MPI to sign off on OIA letters and make other statutory 'decisions' under the OIA. Employees dealing with and processing OIA requests should therefore ensure they have the 'signoff' of a director or other manager with the appropriate delegation for any preliminary or final letter being sent in response to an OIA request (other than an acknowledgment of receipt of request, which may be signed out by a non-authorised employee).[2]

6.4 The Authorised Person should also have an opportunity to review a draft of the OIA response letter before they are asked to sign it, so that they can make any changes they consider appropriate.

[2] See note 1

7 Principle of Availability – s5

7.1 Section 5 of the OIA provides:

> **5 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.

7.2 Section 5 is a key provision, because it effectively creates a "presumption" in favour of *disclosing* official information, except where there are good reasons for withholding it. The only 'good reasons' for withholding are those set out explicitly in Part 2 of the OIA (including the administrative grounds for withholding in s18).

7.3 It is frequently tempting for MPI staff dealing with requests to attempt to find a way of withholding information especially where they suspect that a requester might use the information in a way that could be detrimental to MPI, or some other person or agency.

7.4 Unless a request falls into the category of being "frivolous or vexatious" in terms of section 18(h), or there is some other clear ground for withholding (such as that MPI can demonstrate a likelihood of "improper gain or advantage" under s9(2)(k) OIA), the assumed *motive* of the requester in asking for the official information is largely irrelevant to decision-making under the OIA.

8 Conclusive Reasons for Withholding – s6

8.1 Section 6 of the OIA sets out a list of conclusive reasons for withholding official information.

8.2 The crucial difference between these conclusive reasons, and the 'good reasons' for withholding in s9, is that once a conclusive reason is established, then withholding is not subject to a countervailing test of 'public interest' (a test which must be applied where grounds for withholding are established under s9).

8.3 The conclusive reasons for withholding are that the making available of the information *would be likely* to do one or more of the following:

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

8.4 The *Ombudsmen's Practice Guidelines* describe the *likelihood* test as follows (emphasis added)[3]

> "The phrase "would be likely" requires more than 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."

[3] Ombudsmen's Practice Guidelines, Chapter 3 (Conclusive Reasons for Withholding), p3

9 Other Reasons for Withholding – s9

9.1 Within MPI and most other Government agencies, section 9(2) is by far the most commonly used section for withholding information.

9.2 **The 'Public Interest Balancing' Test –s9(1)**

(a) All grounds for withholding under s9(2) of the OIA are subject to a countervailing 'public interest' test under s9(1). Section 9(1) provides that where that section applies, 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"
> (emphasis added)

(b) The 'public interest' test requires each request for information to be assessed for public interest on a case-by-case basis. Thus even where grounds for withholding exist under s9(2), those grounds may be outweighed by public interest considerations favouring release of the information.

(c) The following extracts from the *Ombudsmen's Practice Guidelines* are also of use in determining 'public interest':[4]

> "The phrase "public interest" is not restricted in any way. Wider concepts, such as an individual's right to fairness and natural justice in respect of the actions of public sector agencies, should also be considered when assessing whether the overall public interest favours disclosure of certain information. This may often reflect the purposes for which the information is initially generated or supplied, the use to which it has been put and other uses to which it may also legitimately be put.

(d) Public interest considerations which favour the release of information include:

- **The content of the information requested**. What does the information requested actually say? Is the content of the information such that its release would, in some way, promote the public interest? For example, does the information relate to the expenditure of public money or will it reveal factors taken into account in a decision-making process? If so, would the release of such information serve to promote the accountability of Ministers or officials?
- **The context in which that information was generated**. What is the background to the generation of the information at issue? For example, was the information generated as part of a decision making process? What stage has been reached in that decision making process? Releasing background information, or information which sets out the options under consideration, will often enable the public to participate in the decision making process.
- **The purpose of the request**. Although a requester is not required to explain his or her purpose in requesting information, knowing why the information is required by the requester is often helpful in identifying the considerations favouring disclosure of the information and assessing whether those considerations outweigh the interest in withholding the information. For example, a requester may seek background information from MPI in order to challenge certain allegations which have been made against him or her that MPI is investigating. In such cases, MPI may need to weigh certain considerations, such as promoting that individual's right to fairness or natural justice, against the interests in favour of withholding the information.

(e) Finally, MPI should assess the weight of these competing considerations and decide whether, in the particular circumstances of the case, the desirability of disclosing the information, in the public interest, outweighs the interest in withholding the information. If MPI, after identifying and weighing these competing interests, finds them to be evenly balanced then ***the information at issue ought to be withheld***.

(f) A very important point to understand is that the test under section 9(1) is not whether there is a public interest in disclosure of the information, but rather, whether the considerations favouring the

[4] Above n3, pages 2-3

release of the information, in the public interest, *outweigh* the interest in withholding the information. For that reason, the test is described as a 'balancing' test (because the reasons for withholding must always be weighed into the balance).

9.3 **Necessary to withhold – s9(2)**

(a) The next key point about the application of the withholding grounds under s9(2), is that in order to safely rely on one or more of these grounds, an agency must establish that withholding the information requested is "necessary" (not merely desirable) in order to protect the interest described in the ground being relied on.

(b) 'Necessity' is a very high threshold for an agency to meet – higher than the test of 'likelihood' provided for in s6. MPI must demonstrate a near certainty that the relevant interest in s9(2) will be prejudiced by disclosure of the information (and must preferably be able to provide some evidence of this – such as the results of a previous disclosure of information in similar circumstances, or disclosure by another agency in similar circumstances).

(c) If no concrete evidence is available (and MPI is relying, for example, on a prediction of a certain result occurring), the logical link of 'inevitability' between the ground relied on and disclosure of the information must be particularly strong, and clearly articulated in MPI's file on each particular request (so that if MPI is challenged by a complaint to the Ombudsman, it can substantiate its decision to withhold information under s9).

9.4 **Withholding necessary to protect the privacy of a natural person – s9(2)(a)**

(a) Section 9(2)(a) provides for a ground for withholding information where withholding is necessary to—

> "(a) Protect the privacy of natural persons, including that of deceased natural persons"

(b) The following factors are relevant in determining whether this privacy ground is satisfied:

- Begin (as always) with the presumption that the information must be disclosed unless there is good reason for withholding it;
- Assess whether there is any privacy interest in the information (what is the nature and content of the information – does it reveal such personal details as name, address, identifying details, medical or financial information, and so on);
- Look at what the information might reveal about the person (some parts of it may be 'private' and other parts more generic, and less 'private')
- Assess the circumstances in which MPI came to be in possession of the information (how was it supplied or generated, by whom and for what purpose)?
- Assess whether the person affected would consent to release of the information (check with the person if possible, and do not assume that the person would or would not consent). If the person consents to release or says they 'don't care', it then becomes difficult to argue that withholding is necessary to protect the person's privacy:
    - if the information concerns a child (a minor), the child's parent or guardian may be consulted about release of the information;
    - if the information concerns a deceased person, that person's next-of-kin should be consulted;
- Assess the extent (if any) to which the information is already in the public domain, however the extent and timing of any previous disclosure is relevant (if disclosure was only partial, and/or was a long time ago, it may be arguable that the information is no longer in the 'public domain').

(c) Finally, as all grounds in s9 are subject to the test of 'countervailing public interest', the employee should assess whether there are any public interest considerations outweighing the privacy interest in withholding the information in question (apply the analysis set out in 10.2.10).

9.5 **Withholding is necessary where making the information available would disclose a trade secret, or unreasonably prejudice the commercial position of the person who supplied or is the subject of the information – s9(2)(b)**

(a) These "commercial" grounds of withholding have been grouped together in these Guidelines, because (although each has a slightly different focus) they are of a similar nature. This ground often becomes relevant when the information being held by MPI was originally sourced from a company or industry group, and there is a concern that disclosure could allow competitors to gain an unfair advantage.

9.6 **Trade secret or prejudice to commercial position – s9(2)(b)**

(a) Section 9(2)(b) concerns trade secrets and commercially sensitive information, and provides that information may be withheld where withholding is necessary to:

> (b) Protect information where the making available of the information—
>
> (i) Would disclose a *trade secret*; or
>
> (ii) Would be likely unreasonably to prejudice the *commercial position* of the person who supplied or who is the subject of the information

(b) This section of the Guidelines does not go into detail about what amounts to a 'trade secret' or 'commercial prejudice' for the purposes of s9(2)(b)(i) and (ii). There is a useful summary of both these concepts at Chapter 4.2 of the *Practice Guidelines*, and if an employee is considering using s9(2)(b) as a ground for withholding, it is recommended that they first consult the *Practice Guidelines*.

(c) It is important to grasp that to establish commercial prejudice to a third party, it is not sufficient for the agency holding the information to simply assert that such prejudice exists. The Court of Appeal has held that a "real and substantial risk" of prejudice is required.[5] Consultation with the third party would normally be necessary, to establish the likely existence and nature of any prejudice.

(d) The agency must not only establish that prejudice is "likely" (in terms of a 'real and substantial risk'), but also, that the prejudice is "unreasonable" in the circumstances. If for example there is a strong public interest in disclosure, it may be arguable that the likely prejudice suffered is not "unreasonable" in the circumstances.

(e) If identifying information about commercial entities is to be released, a notification letter should be sent to them as a courtesy. This letter can summarise the information being released, and the reasoning under the Official Information Act for release. We do not wish to invite discussion as the decision has been made at this stage. To limit MPI's legal risk and administrative costs, do not provide copies of the information unless you receive a formal Official Information or Privacy request from the relevant commercial entity. Consult legal for assistance.

9.7 **Obligation of confidence – s9(2)(ba)**

(a) Section 9(2)(ba) concerns information subject to a specific obligation of confidence, and provides that information may be withheld to:

> (ba) 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-
>
> (i) 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;
>
> (ii) Would be likely otherwise to damage the public interest

(b) It is important to note that s9(2)(ba) is not limited to the commercial context (as s9(2)(b) is). It could for example apply to information supplied by a person who has been directed under one of MPI's Acts to supply it, and disclosure of that information could threaten future compliance with the statutory obligation to supply the information.

[5] *Commissioner of Police* v *Ombudsman* [1988] 1 NZLR 385, 391

(c) Further, s9(2)(ba) focuses on harm caused to the 'public interest' or a prejudice to the future supply of the information (not so much on harm caused to the party with whom the obligation of confidence exists). Even though the information identified may be "confidential" that is not the end of the analysis. Further evidence must be found to suggest that the supply of similar information may be prejudiced by disclosure AND that it is in the public interest that that information continue to be supplied (mere speculation that prejudice could occur won't usually be sufficient to satisfy this ground).

9.8 Commercial activities – s9(2)(i)

(a) Sections 9(2)(i) and 9(2)(j) are focused on the position of MPI holding/disclosing the information, not on the position of third parties. Section 9(2)(i) provides that information may be withheld if withholding is necessary to:

> (i) Enable a Minister of the Crown or any Department or organisation holding the information to *carry out, without prejudice or disadvantage, commercial activities*;
>
> or
>
> (j) Enable a Minister of the Crown or any Department or organisation holding the information to *carry on, without prejudice or disadvantage, negotiations* (including commercial or industrial negotiations)

(b) The type of analysis an employee needs to apply to determine whether s9(2)(i) applies is as follows:

- Consider whether the information at issue relates to the "commercial activities" of the person who is the subject of the information or who supplied the information (does the activity have a 'profit-making' aspect to it? If not, it will not be 'commercial' for OIA purposes);
- What is the nature of the 'commercial activity' being undertaken?
- What prejudice or disadvantage might result to the commercial activity if the information held by the agency carrying that activity out is disclosed? (the agency must provide detailed reasons, not simply an 'assertion' of prejudice)
- Explain why disclosure of the relevant information is very likely to cause the predicted prejudice or disadvantage (such that withholding is absolutely necessary)

(c) Even where the ground under s9(2)(i) is satisfied, the employee must still apply the 'countervailing public interest' test to see if public interest outweighs the need to withhold.

9.9 Negotiations, including commercial or industrial negotiations – s9(2)(j)

(a) Section 9(2)(j) allows withholding where necessary to enable a Minister, or any department or organisation holding information, to carry on negotiations (including commercial or industrial negotiations), without prejudice or disadvantage.

(b) To establish this ground, an employee will need to:

- Identify the specific nature of any negotiations likely to be affected by disclosure of requested information – negotiations must be either current (ongoing) or reasonably contemplated by MPI (a question of fact in each case, e.g. negotiations with a tenderer leading to a formal contract);
- Identify any prejudice or disadvantage likely to result to those negotiations if information is disclosed;
- Identify any information needing to be withheld to prevent that prejudice occurring? (NB: s9(2)(j) does not necessarily provide authority to withhold all information relating to negotiations, what is the link between the information requested, and possible prejudice to negotiations?)

(c) Finally, as for all the withholding grounds under s9, the test of 'countervailing public interest' must be applied to determine whether public interest considerations outweigh the ground for withholding.

9.10 Which of the 'commercial' grounds for withholding applies in any particular situation?

(a) It can be a tricky process distinguishing which of the 'commercial' grounds for withholding applies in any given situation. Employees need to consider the following factors to determine which (if any) of sections 9(2)(b), 9(2)(ba), 9(2)(i) or 9(2)(j) applies:

- Determine the exact type of prejudice or harm that may result from disclosure of the information;
- Assess whether s9(2)(b) fits that type of prejudice or harm;
- Assess the nature of the information and how it came to be in MPI's possession (e.g. MPI in regulatory role, but generates or holds information about a private enterprise, or MPI in a commercial role, and generates commercial information);
- Assess whether the harm/prejudice is likely to result to MPI or a third party.

9.11 **Withholding necessary to protect constitutional conventions – s9(2)(f)**

(a) Another ground of withholding occasionally used by Government agencies is s9(2)(f) which enables withholding to:

> (f) Maintain the constitutional conventions for the time being which protect—
> (i) the confidentiality of communications by or with the Sovereign or her representative;
> (ii) collective and individual ministerial responsibility;
> (iii) the political neutrality of officials;
> (iv) the confidentiality of advice tendered by Ministers of the Crown and officials

(b) This ground does not automatically protect any briefing or advice to a Minister. Whether it applies depends on the content of the advice - if advice contains positive recommendations, which need to be considered by the Minister, it may be protected, whereas if the briefing simply contains factual information, it may not be.

(c) The main consideration required to establish this ground of withholding is whether withholding is necessary in order to enable the Minister to fully consider and make decisions on the advice tendered. Thus if decision-making is already at an advanced or near complete stage, the advice may not be protected under this ground, whereas if key decisions have yet to be made, and disclosure may prejudice these, it may be possible to argue that this ground for withholding applies.

(d) Where information requested includes advice or briefings to the Minister, the Minister's office should be consulted on possible release of the advice.

9.12 **Withholding necessary to maintain effective conduct of public affairs through free and frank expression of opinion by or between or to Ministers/organisations/departments – s9(2)(g)**

(a) Section 9(2)(g) is often cited as a ground for withholding departmental material, but (given the relatively strict attitude of the Ombudsman to the use of this ground) is possibly overused, or used in situations where the ground is not appropriate to the material in question. For that reason, caution is advisable in the use of s9(2)(g) as a ground of withholding – a strong case is needed.

(b) Section 9(2)(g) has two distinct limbs to it, and provides that information may be withheld where withholding is necessary to:

> (g) Maintain the effective conduct of public affairs through—
> (i) 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
> (ii) The protection of such Ministers, members of organisations, officers, and employees from *improper pressure or harassment*

Free and Frank expression of opinion – s9(2)(g)(i)

(c) Not all free and frank opinions between officials, or between Ministers and officials, are protected under this ground. The important extra element required is that such protection must be necessary in order to maintain the "*effective conduct of public affairs*". What does this expression mean?

(d) The *Practice Guidelines* state that protection under s9(2)(g) generally arises from either of the following two types of possible prejudice:[6]

> (1) To the ability of Ministers, officials or others to **generate opinions** in the future; or
>
> (2) To the ability of Ministers (etc) to **express** such opinions in a free and frank manner in the future – the way in which information is expressed can be an important means of communicating the significance of issues.

(e) The withholding agency must be able to answer the following three questions to establish this ground:

- How would disclosure of the information at issue actively inhibit the free and frank expression of opinions in future?
- How would the inhibition of such free and frank expression of opinions prejudice the effective conduct of public affairs?
- Why is this predicted prejudice so likely to occur that it is necessary to withhold the information in the circumstances of the particular case?

(f) Regarding question 1, relevant issues will be whether release of the information would inhibit future generation or expression of such opinions, whether such opinions are likely to be expressed in a different way (and not in such a free and frank way), or whether its release may mean that opinions are not recorded adequately in future.

(g) Other relevant considerations are:

- The relative seniority of the person expressing the opinion (the more senior the person, the less likely disclosure may be to prejudice future expression of such opinions);
- The customary mode of communication between the generator of the opinion and its intended recipient (the less formal the mode of communication, the more likely disclosure may be to damage the prospects of future 'free and frank' opinions being expressed by the person or similar persons in that position);
- Is it important that the opinions expressed in this context be expressed in writing on future occasions? (if the information is disclosed and that leads to a failure to record such opinions in future, will this be critical to the relevant process or decision-making of which the opinion forms a part)?

(h) It is important when relying on this ground to be able to adequately distinguish statements of fact from expressions of opinion (so, for example, some factual material in documents may not be able to be withhold , while the 'opinion' component of the document could be withheld under s9(2)(g)), and also to identify the overall process that the information forms a part of (this will allow MPI to determine whether the information was generated or expressed at a critical, 'decision-making' stage of that overall process).

(i) Finally, the test of 'countervailing public interest' under s9(1) must be applied.

Improper pressure or harassment – s9(2)(g)(ii)

(j) The type of harm at which s9(2)(g)(ii) is aimed is effectively summarised by the Ombudsman in Chapter 4.7 of the *Practice Guidelines*:

> "The purpose of this provision is not simply to provide protection against improper pressure or harassment, but to *maintain the effective conduct of public affairs through such protection*. If the section is to apply, there must not only be a reasonable likelihood of improper pressure or harassment, but *a link must be made between the anticipated behaviour, the impact upon the*

[6] Ombudsman's Practice Guidelines, Part B (Chapter 4.6), p2

> *person to whom it is directed, and the effective conduct of public affairs*. This section will only apply if the improper pressure or harassment is so serious that it will place the effective conduct of public affairs at risk." (emphases added)

Thus it is vital that the two elements of (i) improper pressure and (ii) harm to the conduct of public affairs are both well-established before this ground is relied on.

(k) Improper pressure of sufficient magnitude to satisfy the requirements of s9(2)(g)(ii) is described in the *Practice Guidelines* as follows:[7]

> "Improper pressure or harassment" is something more than ill considered or irritating criticism or unwanted publicity. It is a course of conduct that has such an effect on the person against whom it is directed that he or she is unable to perform his or her duties effectively and hence the conduct of public affairs is at risk" (emphases added)

(l) Accordingly, conduct such as intimidating and specific threats against a Minister or an official would be likely to satisfy the test of improper pressure, or some form of coercion or blackmail, with threatened consequences.

(m) The MPI employee should ask the following questions:

- What type of behaviour could be expected as a result of disclosure of the information? (past or threatened behaviour may be relevant in establishing likelihood)
- Could that behaviour properly be described as improper pressure or harassment?
- Against whom would the behaviour be directed?
- Does that person/s fall within one or more of the categories outlined in s9 (2) (g)(ii)
- How might the pressure or harassment impact on the conduct of public affairs? (look at the role of the person against whom it could be directed, and how their contribution to public affairs might be affected by the behaviour)
- How likely is it that the anticipated behaviour will occur, and how likely that it will have a detrimental impact on conduct of public affairs?

(n) Finally, the test of 'countervailing public interest' under s9(1) must be applied.

9.13 Withholding necessary to maintain legal professional privilege – s9(2)(h)

(a) Section 9(2)(h) allows withholding of information where such withholding is necessary to protect legal professional privilege.

(b) Generally this ground will apply to protect disclosure of departmental legal advice, or external legal advice to MPI, and may also apply to protect portions of Ministerial briefings or other policy documents which refer to legal advice given to MPI.

(c) Legal professional privilege also applies to communications with solicitors seeking legal advice, and information gained, and communications with solicitors, in the context of departmental litigation.

(d) Occasionally it may be in the public interest to release legal advice but the Attorney-General's consent to release of privileged advice is always required so should seek assistance from MPI Legal Services.

(e) In assessing whether it is necessary to withhold certain information to maintain legal privilege, it may sometimes be necessary to determine whether MPI or the client receiving advice within MPI (a member of a business unit) has expressly or impliedly waived the privilege.

(f) Waiver occurs in circumstances where an employee expressly states that privilege does not apply or (more commonly) where privilege is impliedly waived, by virtue of the advice having already been publicly disclosed, or portions of the advice have been included in a document which has been publicly disclosed, or disclosed outside MPI. For more information on 'waiver' and the criteria for it,

[7] Above n11, Chapter 4.7

please consult Legal Services, and refer to the *12th Compendium of Case Notes of the Ombudsmen* (2000) p161-163.

(g) Finally, as with all the grounds of withholding in s9, the 'countervailing public interest' test must be applied. However in the case of legal privilege the Ombudsman has noted that the public interest in maintaining privilege is particularly strong:[8]

> "Legal professional privilege has long been regarded as "a fundamental element in the administration of justice." As such, the public interest in ensuring the maintenance of the privilege is very high. Given the strength of the public interest in ensuring the maintenance of legal professional privilege, any public interest consideration, in terms of section 9(1), which might outweigh the interest which section 9(2) (h) is designed to protect would need to be particularly strong"

9.14 Withholding necessary to prevent disclosure or use of official information for improper gain or advantage – s9(2)(k)

(a) A less commonly used ground for withholding, s9(2)(k) permits withholding of official information where necessary to:

> (k) Prevent the disclosure or use of official information for improper gain or improper advantage

To establish this ground, an employee will need to answer the following questions:

- Would disclosure of the requested information result in a gain or advantage, and if so, to whom would this gain/advantage accrue?
- Is the gain/advantage of a kind that is "improper"?

(b) Even the Ombudsman concedes that it is difficult to describe precisely what amounts to "improper" gain or advantage to a level required to meet the threshold contemplated by s9(2)(k). The *Practice Guidelines* describe the following types of factors as relevant in determining what is "improper":

> "In this regard, the word *"improper"* is defined in the Concise Oxford Dictionary as meaning, *"...not in accordance with accepted rules of behaviour, inaccurate, wrong...."* The word "*improper*" has also been held by the courts to import an element of illegality or moral turpitude. To support such an inference a close examination of the facts will usually be called for"

9.15 Special issue: Anonymity of officials

(a) A very live issue in recent times concerns whether officials in Government departments have a right to have their names withheld, where a requester asks for information about (for example) who made a particular decision, or wrote a particular paper – or their names simply fall within the scope of a broad request for certain information.

(b) A common mistake has been to assume that simply because requested information relates to an *identifiable person*, then necessarily the information has to be withheld to protect that person's privacy. That is wrong – an individual may consent to disclosure of the information, or there may not be a strong privacy interest.

(c) In 2009 the Ombudsman's office held that in the case of senior managers (and even for some more junior staff), there *is no automatic privacy interest in names that justifies withholding.*[9] Furthermore in that case a very high threshold was set for being able to withhold officials' names on grounds of likely risk to safety, or harassment. Finally, the issue in that case (genetic modification) was held to be of sufficiently high public interest and importance that it was held to be in the public interest that names associated with the decision making be disclosed.

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[8] *Ombudsmen's Practice Guidelines,* Part B, Chapter 4.8, p4

[9] **Ombudsman complaint W58305: Sustainability Council of New Zealand**. Note that there was some evidence of threats against specific staff in that case, however the Ombudsman decision (favouring disclosure) was based largely on the fact that many of the names sought to be withheld were already in the public domain in connection with the same matter. Note however that the names had been disclosed in a published ESR report *after* a decision had already been made by NZFSA to withhold them, but the Ombudsman was not persuaded by arguments by NZFSA

(d) However it is possible to distill from this and other cases a baseline position that the Ombudsman's Office takes on this issue:

> "Public officials' names should, in principle, be available when requested under the Official Information Act (OIA). Anonymity of public employees and statutory appointees should be reserved for special circumstances – such as where the safety of individuals is at issue.
>
> …[t]he Ombudsman generally accept that considerations of personal privacy will always be likely to apply to an official's home contact details or information of a personal nature"

(e) Two situations mentioned by the Ombudsman as possibly providing a justification for withholding officials' names are:

- The free and frank ground: where withholding of the official's name is considered essential to guarantee the continuation of effective conduct of public affairs through "free and frank expression of opinion by officials". If this ground is sought to be used however, consideration must be given to the nature of the information to which the name is linked, and also the seniority of the individual (the more senior the official, the less likely they are to be deterred from free and frank exchange in future by disclosure of their name)[10];
- Special circumstances where withholding is justified under s9(2)(g)(ii) to protect officials from harassment.

(f) Based on these considerations from the Ombudsman, MPI's policy position at this time is as follows:

- Where a request is made for the names and/or other details of officials at senior management level or above (Director level or above), there will normally not be grounds for withholding this information. The only exception might be if there is strong or concrete evidence of a risk to the safety or welfare of the official involved, or their family, or a convincing "free and frank" argument (see above). Note however that a person's actual position does not always determine whether they are "senior" in all contexts (in some kinds of decision making roles they may play a senior part, but not in other contexts – the facts are always relevant in each case);
- Where a request is for the names and/or other details of officials at levels lower than senior management, the issue should be approached on a case-by-case basis, with relevant questions being:
  - What does the official themselves think about disclosure of their details? (you should always consult them);
  - Would disclosure of the official's name affect the privacy of the individual in a way that is likely to be to their detriment?
  - Would disclosure/withholding serve any of the purposes of the OIA itself (as set out in s4)?
  - Are there any safety or other evidence-based concerns about disclosure of the names/details of the official/s in question?
  - Does the 'public domain' counter-argument apply (and consider at what point any public disclosure was made – that may become critical if the matter comes before the Ombudsman, as in the Sustainability Council ruling).

(g) In all cases it is vital that Legal Services and Human Resources should be consulted on *any* potential release of names or other details involving *any* official (*including* a senior manager).

[10] In the *Sustainability Council* provisional decision, the Ombudsman (David McGee) said: "it is not enough to assert that disclosure of officials' names in connection with a "contentious" or "controversial" policy or decision will significantly inhibit those officials from expressing free and frank opinions in the future. One must have regard to the particular circumstances of the case, including factors such as (i) the nature and content of the information at issue and what it would reveal about the individuals concerned; (ii) the extent of information already in the public domain; and (iii) the seniority of the individuals, Senior officials should *expect* some information about their performance of their jobs to be disclosed. In that case the privacy interest at stake was described by both the Chief Ombudsman and the Privacy Commissioner as being "very weak".

10 Transfer of Requests

10.1 Section 14 of the OIA is a key provision, because it enables a request for official information to be transferred to another agency in circumstances where MPI is not the appropriate agency to be dealing with a request.

10.2 The ability to be able to determine successfully when s14 applies, and to transfer requests in appropriate circumstances, has significant time and resource advantages for Government agencies. Section 14 provides:

> **14. Transfer of requests**
>
> Where—
>
> (a) A request in accordance with section 12 of this Act is made to a Department or Minister of the Crown or organisation;
>
> and
>
> (b) The information to which the request relates—
>
> (i) Is not held by the Department or Minister of the Crown or organisation but is believed by the person dealing with the request to be held by another Department or Minister of the Crown or organisation, or by a local authority; or
>
> (ii) Is believed by the person dealing with the request to be more closely connected with the functions of another Department or Minister of the Crown or organisation, or of a local authority, —
>
> the Department or Minister of the Crown or organisation to which the request is made shall promptly, and in any case not later than 10 working days after the day on which the request is received, transfer the request to the other Department or Minister of the Crown or organisation, or to that local authority, and inform the person making the request accordingly

10.3 Section 14 allows all or part of a request to be transferred. **Critically, the decision to transfer all or part of a request is one that must be made promptly and in any event no later than 10 working days after the request has been received.**

10.4 Section 14 applies where:

- MPI does not hold all or part of the information requested;
- MPI does not hold all or part of the information requested, but believes that another agency (e.g. MPI) holds, or may hold, that information. If the employee dealing with the request cannot locate the information requested, but doesn't know if another agency holds that information, the employee should make basic inquiries of other likely agencies, but if no information is forthcoming from that inquiry, s/he should not transfer the request, but rather in consultation with his/her Manager) should respond back to the requester stating that MPI does not hold the information requested, and following inquiries, has been unable to determine whether another agency holds the information;
- MPI believes the request is more appropriately dealt with by another agency

10.5 The key point to note with this second limb of s14, is that MPI may hold the information requested, or may not, but the request may be transferred if the employee dealing with the request (in consultation with and sign-off from his/her manager) reasonably believes that the subject matter of the request is more closely connected with the functions of another agency.

10.6 It will often be necessary to consult with the Minister (or as appropriate another agency) on whether a request should be transferred to the Minister or that agency. Such consultation may also (usefully) reveal whether the same or a similar request has been made to the Minister or the other agency.

10.7 Requests should usually be transferred in the following situations:

- Where MPI only 'holds' information that was generated by another agency;
- Where MPI has generated information on the request of, or for, the Minister (it will often be appropriate to transfer to the Minister's office in this situation, but the Manager should consult with the Minister's office on a proposed transfer)

10.8 If a request is transferred by MPI to the Minister it is important that MPI continues to advise and support the Minister in responding to the request, but the Minister has the ultimate decision as to whether to release the information. If a complaint is made to the Ombudsman following a transfer to the Minister, MPI should advise and support the Minister in responding to the review letter from the Ombudsman.

10.9 If the employee and Manager decide against a transfer, it may still be appropriate for them to consult with another agency (or the Minister) on a response to the request, if elements of the request relate to the functions of that other agency or the Minister.

10.10 The decision to transfer a request can in itself be the subject of a complaint to the Ombudsman, so the Manager (or other person with delegated authority) approving the transfer must ensure the statutory grounds for transfer are satisfied, and that the reasons for transfer are adequately documented.

11 Timing and extension of timeframe for responding to requests

11.1 Section 15A of the OIA provides for an extension of time to respond to requests, provided that the following criteria (specified in that section) are satisfied:

> (1) (a) 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 Department or the Minister of the Crown or the organisation;
>
> or
>
> (b) Consultations necessary to make a decision on the request are such that a proper response to the request cannot reasonably be made within the original time limit.
>
> (2) Any extension under subsection (1) of this section shall be for a reasonable period of time having regard to the circumstances.
>
> (3) 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.
>
> (4) The notice effecting the extension shall—
>
> (a) Specify the period of the extension; and
>
> (b) Give the reasons for the extension; and
>
> (c) State that the person who made the request for the official information has the right, under section 28(3) of this Act, to make a complaint to an Ombudsman about the extension; and
>
> (d) Contain such other information as is necessary

11.2 It is important to note that generally speaking, the OIA requires requests to be processed "as soon as reasonably practicable". The 20 working day timeframe set out in s12 is the statutory maximum timeframe within which a request must lawfully be processed. It is not (and should not become) the normal timeframe for processing requests.

11.3 If the requester indicates that the request is "urgent", the employee should ask for reasons for that urgency. The OIA does not provide for "urgent" requests to be processed urgently, and therefore the "as soon as reasonably practicable" timeframe still applies to this type of request.

11.4 An extension under s15A can be "for a reasonable period of time". This allows MPI to determine what amounts to a "reasonable period" in the circumstances, taking into consideration the reasons for the extension.

11.5 There is no provision for further extension of time after an extension has already been made under s15A. Therefore staff handling the request should carefully estimate how much additional time will be needed to collate the information, or perform the consultation, required, and set the extension timeframe conservatively, bearing in mind that the Ombudsman's guidelines clearly provide that **no further extension can be made.**

11.6 If consultation with third parties is the reason for seeking an extension it is often necessary to seek the requester's permission to provide their details to the party being consulted. If this is the case then you should ask their permission in the letter notifying them of the extension.

11.7 The extension should be decided on and notified to the requester as soon as practicable. Although a maximum of 20 working days is provided for, any unreasonable delay may be the subject of a complaint to the Ombudsman.

11.8 A notification to the requester under s15A should be signed out by an Authorised Person, and should contain the following information:

- Length of the extension
- Reasons for the extension; and
- The requester's right to complain to the Ombudsman about the extension.

11.9 If a decision is not made within 20 working days, or within the extended time frame, the request is deemed to have been refused and the requester may lodge a complaint with the Ombudsman.

12 Options for release of information in 'documents'

12.1 Section 16 of the OIA becomes relevant where all or part of the information requested is contained in documents. It provides for a variety of options (other than complete release) for how the information in the documents may be disclosed to the requester. The range of options provided for in s16 may help save MPI in cost, and time spent in processing a request, so is worthy of careful consideration.

12.2 Under s16 information in a document may be made available through a variety of ways such as:

- By giving the requester a reasonable opportunity to inspect the document;
- By providing the requester with a copy of the document;
- Where the document is a thing from which sound or visual images may be reproduced, by giving the requester an opportunity to hear or view the sounds or visual images (as the case may be);
- Where the document is one where words are recorded in a sound form, or as a form of shorthand or code, by providing the document in transcript form;
- By giving an excerpt or summary of the contents (one of the more commonly used options for release under this section);

12.3 Under s16(2) the agency holding the information is obliged to release the information in the form preferred by the requester, unless doing so would:

- impair efficient administration;
- be contrary to a legal duty of the department; or
- prejudice the interests protected by ss 6, 7 or 9 (and there is no countervailing public interest).

12.4 Once again, the decision to release information in a particular form under s16 (such as an excerpt or summary), is subject to review by the Ombudsman, so if the MPI employee releases a document in a form that the requester subsequently challenges (and, for example, s/he requests the entire document), the employee should normally accede to that subsequent request, unless there are well established reasons under s16(2) to release the document in the alternative form chosen by the employee (and signed off by the Manager).

13 Deletion of information from documents

13.1 Section 17 of the OIA permits information to be released in the form of a copy, with deletions or alterations in the copy provided, if there are grounds under ss6 or 9 for withholding part of the information in those documents.

13.2 Where information is released in this way, the letter of notification to the requester must notify the requester that parts of the document have been altered or deleted because of the need to withhold certain information, and must set out the reasons for the withholding. If the requester asks, the employee must also provide the grounds for withholding, unless to do so would prejudice the interests protected by ss6, 7 or 9, and there is no countervailing public interest.

14 Administrative reasons for refusal of requests

14.1 This section provides a very brief outline of what the Ombudsman terms 'administrative reasons for refusal of requests' under s18 of the OIA. For a more detailed discussion of these important (and commonly used) grounds for refusal, employees and managers should refer to Part A, Chapter 2 of the *Practice Guidelines*.

14.2 Section 18 provides a list of 'administrative' grounds on which agencies can withhold information, and these grounds operate in addition, or as alternatives, to the 'substantive' grounds for withholding under ss6, 7 and 9 of the OIA. Some of these grounds are:

- That release of the information would be contrary to an enactment or constitute contempt of Court or of the House of Representatives;
- That the information is or will soon be publicly available;
- The document with the information does not exist or cannot be found;
- That the information cannot be made available without substantial collation or research;
- That the request is frivolous or vexatious or the information requested is trivial.

14.3 Where any of the grounds in s18 are used as a basis for refusing a request, the requester must still be informed of their right to seek review of the decision by the Ombudsman, under s28 of the OIA. The grounds (briefly) are summarised in the following clauses.

14.4 **That the agency neither confirms nor denies the existence of the information requested - s18(b)**

This ground applies where, under s10 of the OIA, MPI is entitled to respond back to the requester with a statement that MPI "neither confirms nor denies" the existence of the requested information. The criteria for "neither confirming nor denying" are that MPI:

> "is satisfied that the interest protected by section 6 or section 7 or section 9(2) (b) of this Act would be likely to be prejudiced by the disclosure of the *existence or non-existence* of such information" (emphasis added)

14.5 **Release of the information would be contrary to an enactment or contempt of court or Parliament - s18(c)**

This ground is largely self-explanatory. The ground most likely to be used by MPI is that release of certain information would be contrary to an enactment. There are some Acts (for example the ACVM Act, in the context of product registration data) which require specified information to be kept confidential by the person or agency holding it. In these circumstances the agency is entitled to withhold the information under s18(1)(c), but should assess whether the restriction applies to all (or only part of) the information, and should not necessarily withhold where there is only a discretion to keep the information confidential.

14.6 **That the information is or will soon be publicly available - s18(d)**

(a) Examples of this ground applying are where the information is in a readily accessible publication that is available to the general public. As to when information may be considered to "soon" be available, the Ombudsman has stated:

> "This can encompass situations such as when the information is contained in the text of a speech that is about to be delivered or it is in a report which is being printed and there are difficulties in providing it immediately. It would be administratively impractical for an agency to be expected to provide a copy of the information in these circumstances. As to what is meant by "soon" in the context of section 18(d), this is a question of fact to be determined in the circumstances of the case"[11]

(b) An important note of caution needs to be sounded here about the pro-active release of information by MPI. This arises in a situation where an OIA request is made (or even where no request has been made), and MPI elects to "proactively" release information, either to be helpful to some person or agency, or to forestall the possibility of the criticism of "lack of transparency" on some particular issue.

[11] *Practice Guidelines*, Part A, Chapter 2, at p6

(c) In these circumstances, a proactive release (while well-intentioned), may be detrimental in the longer term to MPI, because once information is in the public domain, it is much more difficult to withhold it from some specific requester at a later stage, even if such withholding becomes necessary.

(d) The other reason why pro-active release of information is risky, is that the release is not covered by the statutory protection set out in s48 of the OIA, against legal actions against agencies who release information in good faith under the OIA. This means that in releasing information pro-actively, MPI or an employee could potentially be held liable (for example, for negligence, breach of privacy or defamation) in respect of that action. For this reason, any pro-active release of potentially controversial or contentious information should first be checked with Legal Services.

14.7 **The document alleged to contain the information requested does not exist or cannot be found - s18(e)**

(a) This ground may only be used after MPI has applied its duty of 'reasonable assistance' and made efforts to locate the document requested, or to establish whether the document actually exists (and whether it is held by some other agency).

(b) If the problem is that the requester has incorrectly named a document in the request, the MPI employee should make some attempts to notify the requester of what documents actually do exist that are similar in vein to the one/s which was requested.

14.8 **Substantial collation or research - s18(f)**

(a) There is no automatic bar in the OIA on people requesting large volumes of information, but the Danks Committee (whose work led to the passage of the OIA) remarked that the OIA should generally not be used for the conduct of what it termed "fishing expeditions".

(b) Section 18(f) allows a request to be refused if other provisions of the OIA (such as requiring due particularity, or being able to charge for collation of information) do not reduce the administrative burden on the agency holding the information of processing a large or broadly defined request.

(c) In deciding if this ground applies the employee should assess the following factors:

- the amount of work involved in determining what information falls within the scope of the request;
- the difficulty involved in locating, researching or collating the information;
- the amount of documentation to be looked at;
- the work time involved;
- the nature of the resources and the personnel available to process requests for information; and
- the effect on other operations of the diversion of resources to meet the request.

(d) That an agency must first 'exhaust' all other administrative options (such as consulting with the requester, charging, and extending the time limit) before using s18(f) has been confirmed recently by the enactment of ss18A and 18B, which provide:

> 18A Requests involving substantial collation and research
>
> (1) In deciding whether to refuse a request under section 18(f), the Department, Minister of the Crown, or organisation must consider whether doing either or both of the following would enable the request to be granted:
>
> (a) fixing a charge under section 15:
>
> (b) extending the time limit under section 15A.
>
> (2) For the purposes of refusing a request under section 18(f), the Department,
>
> Minister of the Crown, or organisation may treat as a single request 2 or more requests from the same person—
>
> (a) that are about the same subject matter or about similar subject matters; and

(b) that are received simultaneously or in short succession.

18B Duty to consider consulting person if request likely to be refused under section 18(e) or (f)

If a request is likely to be refused under section 18(e) or (f), the Department, Minister of the Crown, or organisation must, before that request is refused, consider whether consulting with the person who made the request would assist that person to make the request in a form that would remove the reason for the refusal.

14.9 Request is frivolous or vexatious, or the information requested 'trivial' - s18(h)

(a) Of all the administrative grounds for refusal, this ground is one of the more difficult to successfully establish.

(b) 'Frivolous or vexatious' request focuses on the reasons and motives for the request being made, rather than the nature of the information requested. Courts applying similar grounds to legal proceedings, have held that to establish a claim as 'frivolous or vexatious', it must so patently unreasonable as to amount to an abuse of the court's process, and to be completely lacking in good faith. According to the Ombudsman, the focus of this ground must remain on the request itself, not the requester.12

(c) Therefore, an agency may not refuse a request simply on the basis that the requester has made numerous apparently trivial and time-consuming requests in the past. The agency must look at the particular request, made in light of all surrounding circumstances. Past requests and the conduct of the requester may be one relevant factor, but must not be the sole determining factor. The agency will need to be able to produce evidence, apart from past dealings with the requester, to show that the particular request sought to be refused under s18(1)(f) has been made on a completely irrational basis, and in bad faith.

(d) Whether a request is 'trivial' focuses on the nature of the information sought, and the surrounding circumstances, and is a judgment to be made by the agency in each individual case. The agency should look at:

- The nature of the information requested;
- The apparent purpose for which the information has been requested; and
- The relationship (if any) between the information requested, and any other information of a similar nature that is already in the public domain.

(e) This ground can sometimes be used in a situation where a request is so widely framed that interpreted literally, it includes "all information" on a particular subject (even information of a trivial nature, such as times or dates of meetings on that subject, with no apparent purpose for needing that information). In this type of situation, it will be important to look at (and perhaps even ask the requester) the purpose of the request, to clarify whether part of the information requested could be considered 'trivial' in the context of that purpose.

[12] *Practice Guidelines,* Part B, para 2.5

15 Procedural requirements relating to refusal of requests

15.1 Section 19 of the OIA requires the agency refusing a request (for any reason, whether under ss6 or 9, or s18), to do two things:

(a) Give reasons for that refusal to the applicant and (if the applicant so requests), the grounds for the reasons (unless the giving of the grounds would in itself prejudice the interests sought to be protected by the refusal of the request); and

(b) Give the applicant information concerning the applicant's right to seek an investigation and review of the decision by way of a complaint to the Ombudsman under s28(3) of the OIA

15.2 In order to satisfy these statutory requirements, the Authorised Person signing out any formal OIA response letter in which MPI is withholding information, or refusing to release it on any ground, should ensure that the letter adequately addresses the matters outlined above.

16 Charging for release of information

16.1 The ability to charge for information released under the OIA is important, because agencies subject to the OIA can in some instances recoup some of the administrative cost of responding to requests. Subject to the considerations listed below, MPI staff are expected to consider charging.

16.2 Sections 15(1A) and (2) allow agencies to fix a charge for the release of official information, and stipulate that any charge fixed must be "reasonable", having regard to the costs of labour and materials involved in making the information available, and any costs incurred in connection with the agency making information available "urgently".

16.3 The charges set out in the Ministry of Justice *Charging Guidelines for Official Information Act 1982 Requests* ("the Justice Guidelines ") specify what is considered a "reasonable" amount to charge. MPI staff should adhere to the charges set out in the Justice Guidelines. The Justice Guidelines are available online at www.justice.govt.nz. In essence the charges provided under the Justice Guidelines are as follows:

16.3.1 Staff time:

Time spent by staff searching for relevant material, abstracting and collating, copying, transcribing and supervising access where the total time involved is *in excess of one hour* should be charged out as follows (after that first hour):

- an initial charge of $38 for the first half hour or part thereof; and
- then $38 for each additional half hour or part thereof.

A higher rate of charge is only acceptable where staff with specialist expertise who are not on salary are *required* to process the request, in which case a rate not above their rate of pay may be charged.

MPI discussion with the Ombudsman has clarified that time taken to make a *first review* of the information to identify possible issues (e.g a "first cut" to identify those aspects that may need to be withheld) can be charged for. However, the time spent in deciding whether to release information is not chargeable.

The physical editing process to delete information that is to be withheld is subject to charging.

16.3.2 Photocopying:

Photocopying / printing where total number of pages is *in excess of 20 pages* should be charged out at 20 cents for each page after the first 20 pages (A4 pages).

16.3.3 Other costs

All other charges should be fixed at an amount that recovers up to the actual costs involved, including:

- the provision of documents on computer discs
- the retrieval of information off-site
- reproducing a film, video or audio recording
- arranging for the applicant to hear or view and audio or visual recording
- providing a copy of any map, plan or other document larger than A4 size.

16.4 Whether a request should be charged for is at MPI's discretion and depends on the circumstances of each request. We recommend contacting Legal Services if you are unsure about the appropriateness of charging. Section 7 of the Justice Guidelines provides considerations that should be taken into account when deciding whether to charge for requests. These include having regard to:

- whether the payment might cause the applicant hardship
- whether remission or reduction of the charge would facilitate good relations with the public or assist MPI in its work
- whether remission or reduction of the charge would be in the public interest because it is likely to contribute significantly to public understanding of, or effective participation in, the operations or activities

of the government, and the disclosure of the information is not primarily in the commercial interest of the requester.

The level of public interest can be assessed by considering:

- whether the information will allow a significant contribution to operations and activities of government?
- whether the information will enable informed comment for public consultation?
- whether the information will contribute significantly to understanding of public at large?
- whether the public at large is the primary beneficiary, or just the requester or a narrower segment of people?
- whether information is primarily in commercial interest of requester rather than public at large?

Part A section 3 of the Ombudsmen's Practice Guidelines also provide useful information regarding charging, These are available online at http://www.ombudsmen.parliament.nz

16.5 Before deciding to charge, the staff member dealing with the request (in discussion with an Authorised Person) should determine whether the information could feasibly be provided in an alternative form that would not require a charge to be imposed (for example by providing a document on a CD, or allowing the requester to inspect the document).

16.6 When these considerations have been taken into account and charging remains appropriate, staff members are expected to actively pursue charging (rather than the Ministry simply bearing the cost). This will require staff to keep records of time spent on requests so that any proposed charges can be accurately estimated.

16.7 The decision for charging must be signed out by an 'Authorised Person' (usually a relevant Director or DDG). A preliminary letter (prior to the substantive response) must be sent to the requester stating that a charge will be imposed if the information is released. This gives the requester the opportunity to withdraw or amend the scope of their request if they wish to. A template Charging Letter is available on Kotahi at: Home » Do » Guidelines & Templates » Official Information Act (OIA) Requests – Charging.

16.8 The letter or e-mail notifying the proposed charge should set out the basis on which the charge has been calculated. Care should be taken to ensure that the estimate provided is as accurate as possible because the Ombudsman has on previous occasion determined that an estimate could not be increased even though the costs greatly exceeded it. MPI then effectively commits itself to releasing the information that is subject to the charge. Under s15(3) of the OIA, an agency can require that all or part of the charge be paid in advance (before the request is processed).

16.9 Once MPI has notified the requester that their request will be granted but a charge is payable the 20 day period stops as a decision has been made about the request (see s15(1)). After the requestor agrees to a charge, the drafter should arrange for Finance to raise an invoice for the proposed amount and the information must be provided as soon as practicable.

16.10 If the requester provides payment, then MPI must provide the information.

16.11 **Example:**

- Request received from a reporter who wants to access all investigations made under the Food Act for the last year..
- Consideration should be given as to whether charging is appropriate.
- The drafting officer makes an estimate of how long it will take to search, retrieve, print and collate the relevant documents, as well the time taken to make a first review of the content.
- Using the Charging Letter Template, notify the requester that MPI has received their request, advise them of MPI's decision whether or not to release the information, how much MPI estimates it will cost, and that MPI will proceed once it has received their agreement to pay in advance/ pay a deposit / pay on receipt. Letter must be signed out by a DDG or Director. The 20 business day time frame stops here.
- Wait for confirmation that the requester accepts the charging terms, or changes the scope of the request.
- Continue with the request taking into account all of the usual considerations, and keeping track of the time spent and amount of printing.

17 Where MPI is the department being *consulted* on another department's OIA request

17.1 MPI is in a different position vis-à-vis the OIA where it is being consulted (as a third party to an OIA request), rather than being the department receiving and responding to the request. It is not unusual for MPI to be consulted by another department, SOE or crown entity whose functions are similar to, or associated with, functions that MPI performs.

17.2 However MPI may be consulted even where it has no similar 'functional' interest in the OIA request – there may for example be situations where MPI or one or more of its employees has a privacy or commercial confidentiality or negotiating interest at stake that should be consulted on by another agency that received the OIA request.

17.3 Depending on the nature of the initial OIA request and the 'MPI interest' at stake, we may be asked for our view on any of the following:

- whether particular information should be disclosed or withheld
- a particular privacy or confidentiality issue affecting MPI or any of its employees
- an issue of "public interest balancing" (e.g. where the consulting department has formed some particular view on whether the public interest outweighs withholding, and wants to check that view with MPI); or
- we may simply be asked for background information, or clarification, on some particular issue, to assist a department or agency in responding to a request, that falls short of a formal 'transfer of request' to MPI.

17.4 In these 'consultation' type situations (where MPI is not the responding department), the employee interacting with the consulting department or agency needs to go through the following steps:

(a) Record the consultation request. Unless the consultation has already been initiated in a letter, the employee should make a written record or filenote of any discussions with the consulting agency (i.e. the agency that received the OIA request and that now wants to consult on it with MPI);

(b) Decide who needs to be consulted internally within MPI. The employee should work out which people and/or business groups within MPI have a "stake" in the matter being consulted on, and should initiate this internal consultation process. Depending on how close to the statutory 20 day deadline the consultation request has been made, we may need to do this internal consultation fairly urgently, so as not to compromise the statutory timeframes the other department is working to;

(c) Decide whether HR (in addition to Legal Services) need to be specifically consulted. HR should be consulted if there is an issue raised by the consultation that may affect the safety or wellbeing of a MPI employee, or that may raise other employment related issues (such as State Sector Act or employment contract issues).

(d) Legal Services should be internally consulted on a consultation request from another agency, in the following situations:

- Where there is an issue of legal professional privilege involved[13], or a privacy[14], confidentiality, or commercial or "other" negotiations issue (e.g. international negotiations);
- Where MPI disagrees with the proposed decision of the consulting department on whether information that pertains to MPI should be released or not;

[13] Legal Services has exclusive 'jurisdiction' within MPI in relation to issues concerning legal privilege in legal advice or other legal documents. Any consultation involving legal advice or privilege issues should involve Legal Services in discussions at a very early stage, so as to ensure that any requests for waiver of privilege are appropriately handled, as per the Cabinet Guidelines for Conduct of Crown Legal Business.

[14] There is a Privacy Officer within MPI who can be consulted on privacy issues – Legal Services can tell you who this person is at any given time.

- Where in the judgment of the MPI employee dealing with the consultation, there is some legal or other strategic issue affecting MPI that would benefit from discussion and advice from Legal.

(e) Respond in writing back to the consulting department. Where we are being formally consulted for OIA purposes it is important that our views back to the consulting department be recorded in writing (even where, for example, we have already met with the department or agency to express our views). There needs to be a "paper trail", for our own protection as a department, and so that we have evidence of what our views were if the matter ends up with the Ombudsman or in other legal proceedings.

(f) Consider whether the DG, Minister and/or a DDG/Director need to be briefed on outcome. As a final step, consider whether the consultation was of sufficient importance for MPI that senior management and/or the Minister need to be briefed on the outcome. This may occur where, for example, the release of information may have the potential to cause political embarrassment, or may raise liability, PR or other strategic concerns for MPI as a department.

18 Review of an OIA decision by the Ombudsman

18.1 What is the Ombudsman's role generally, and under the OIA?

(a) Ombudsmen are statutory officers established under the provisions of the Ombudsmen Act 1975, and are essentially "public watchdogs", whose functions include the conduct of investigations and inquiries into the processes of Government; including the obligations of Government agencies under the OIA.

(b) Section 28 of the OIA provides that the Ombudsman may investigate and review any decision of a department, Minister, or organisation subject to the OIA, in respect of:

- A refusal to make requested official information available to any person in accordance with s12 of the OIA; or
- The manner in which information will be made available, under s16 or s17 of the OIA (sections relating to documents, and deletions from documents); or
- Charges imposed for release of official information under s15; or
- Failure to comply with time limits in the OIA (which is a deemed refusal);
- Imposition of conditions on the use, communication or publication of official information released under s12; or
- A notice given under s10 (notices which 'neither confirm nor deny' the existence of requested official information)

18.2 What must MPI do when it receives a review letter from the Ombudsman?

(a) All correspondence with the Ombudsman's Office must be checked by Legal Services and cleared by the Chief Legal Adviser before being submitted for signature. Under the MPI delegations only the relevant DDG, the Chief Legal Adviser or the DG may sign out correspondence with the Ombudsman's office.[15]

(b) Under s29A of the OIA, the agency subject to the complaint must furnish to the Ombudsman all "information, documents, papers or things" required by the Ombudsman promptly (and in any event no later than 20 working days after being required to furnish the information). Sometimes it is possible to negotiate an extension to this timeframe, if the issues are complex, or further consultation is required, but any extension should be sought well before expiry of the 20 working day maximum.

(c) The Ombudsman's letter to an agency notifying it of a complaint about an OIA decision it has made will usually be in the following general format:

- S/he may request MPI to provide him with copies of all the information requested (i.e. anything released or withheld in response to the request).
- S/he may require an explanation of the basis upon which MPI withheld any information (or, as the case may be, why the time limit has been extended, or why a charge was imposed, or how the charge was calculated).
- S/he may ask for an explanation of the prejudice or harm that MPI believes would be likely to result if the information were disclosed, and how that prejudice or harm is protected by the withholding provisions we have relied on.
- S/he may inquire whether any third party was consulted and, if so, whether they had any separate concerns about disclosure.

18.3 Provisional opinion

(a) In some instances the Ombudsman may request a meeting with departmental officials to discuss the complaint, if s/he needs to clarify any issues, but more often, the Ombudsman will release a 'provisional opinion' on the complaint to the agency, and (if the opinion is adverse to the agency) give the agency an opportunity to comment on that provisional view.

[15] See 'General Statutory & Financial Delegations' in Kotahi

(b) If on the other hand the Ombudsman's provisional opinion supports the agency's decision, s/he will give the complainant an opportunity to comment on the draft opinion, and MPI would be informed that the Ombudsman is in correspondence with the complainant.

18.4 Final opinion

(a) After receiving views from either (or both) parties to the complaint, the Ombudsman will prepare a final opinion and convey that to both parties.

(b) The Ombudsman's final opinion (if adverse to the agency) must, under s30(1)(d), contain recommendations, and these recommendations must be disclosed to both parties. S/he may also disclose to the complainant "such other information" as s/he considers proper. The Ombudsman is also required to send a copy of his or her report to the Minister responsible (if the complaint was against a department).

18.5 What is the status of the Ombudsman's 'recommendations'?

(a) A common misconception is that the Ombudsman's recommendations in relation to a complaint are not binding on a department or other agency. That is not accurate.

(b) Under s32 of the OIA, 21 days after the Ombudsman formally issues recommendations to a department, those recommendations become binding in the sense that the department falls under a 'public duty' to comply with the recommendations, unless in the intervening period:

- the Governor-General by Order-in-Council has directed otherwise (in practice this is a Cabinet "veto") or
- the department or some other agency with legal standing challenges the recommendations by way of judicial review.

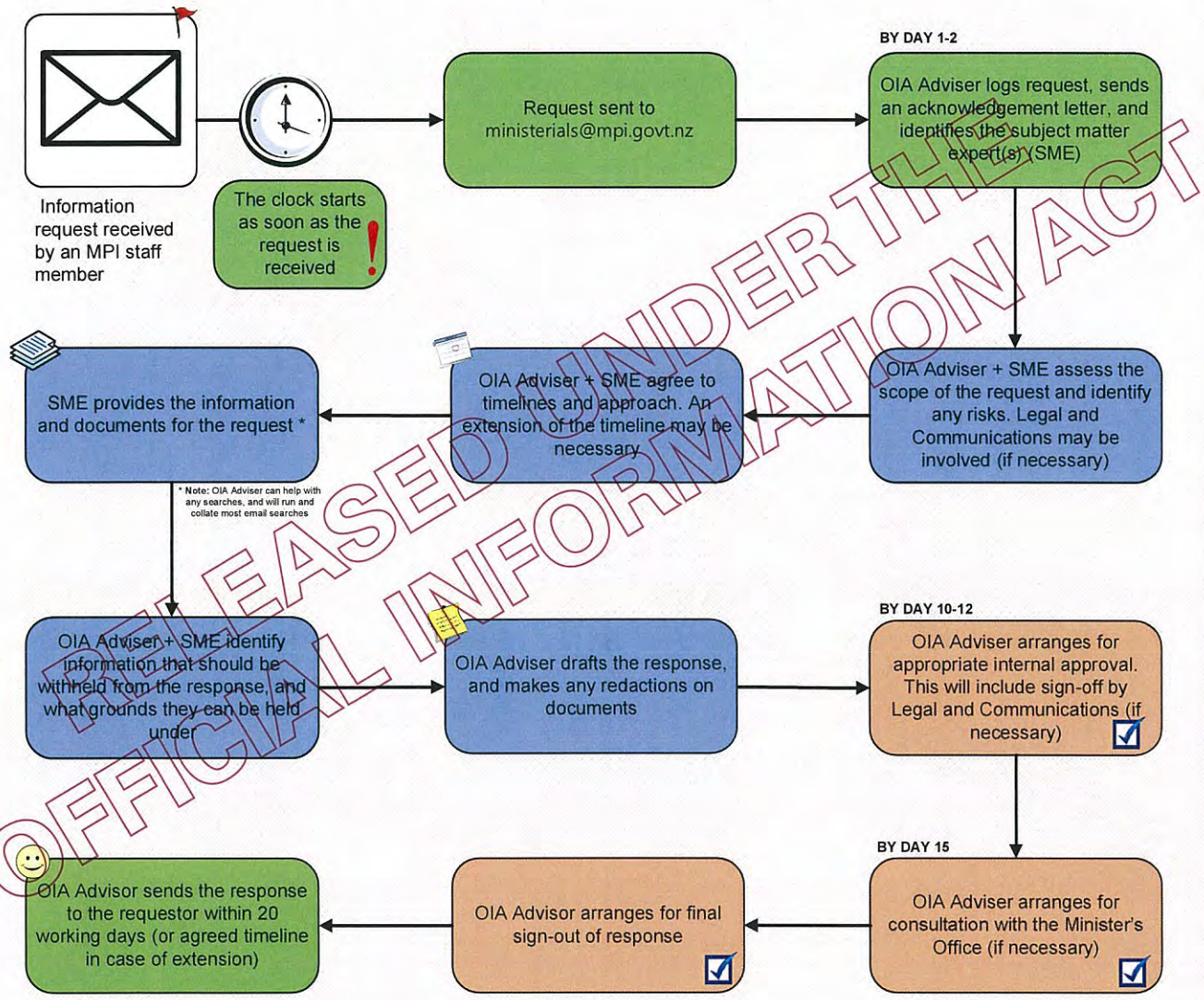
(c) If after 21 days the recommendations become binding, the head (CEO) of the department becomes responsible for actioning the recommendations as quickly as possible (or within whatever timeframe the Ombudsman has set in the recommendations).

(d) Finally, failure to meet the Ombudsman's timeframes for responding to his/her requests for information, or a formal response, can result in the failure being formally reported to Parliament. Such action would cause huge embarrassment for MPI and should be avoided at all costs.

MPI's OIA PROCESS

MPI has a statutory obligation to respond to official information requests in 20 working days

Who is my OIA Adviser?
s 9(2)(a)



FAQ

What does an OIA look like?

An OIA request is made when someone asks for access to official information by any means. The request does not need to be in writing. The requester does not need to refer to the Official Information Act.

What is official information?

Official information means any information held by MPI, or in the case of Ministerial OIAs, information held by Ministers. This includes letters, emails, documents, data non-written documentary information (such as material stored on the computer, videos or tape recordings) and knowledge held by staff.

A request for information not held by MPI requires MPI to transfer the request to the appropriate Minister or department.

Questions? – email s 9(2)(a) **@mpi.govt.nz**

Ministry for Primary Industries
Manatū Ahu Matua

Reference number

Name
Address
Address
CITY

Dear [Recipient's name]

OFFICIAL INFORMATION ACT REQUEST

I refer to your official information request on [date received] relating to [insert subject or request – use bullet points as appropriate].

The following information is released to you under the Official Information Act 1982 (OIA):

[Insert body of letter here]

Some information has been withheld pursuant to section(s) [references] of the OIA because [quote the act].

MPI is satisfied that in the circumstances of this case, the withholding of the information is not outweighed by other considerations which render it desirable in the public interest to make the information available. You have the right under section 28(3) of the OIA to seek an investigation and review by the Ombudsman of our decision to [withhold information / refuse your request].

Yours sincerely

[Delegated authority]

Type your Branch here
Type your Directorate Here
Pastoral House, 25 The Terrace
PO Box 2526, Wellington 6140, New Zealand
Telephone: 0800 00 83 33, Facsimile: +64-4-894 0300
www.mpi.govt.nz

Ministry for Primary Industries
Manatū Ahu Matua

Reference number

Name
Address
Address
CITY POSTCODE

Dear [Recipient's name]

CHARGE FOR OFFICIAL INFORMATION

I refer to your official information request on [insert date] regarding [insert subject of request – use bullet points if appropriate].

This letter is to notify you that under section 15(1)(a) of the Official Information Act (OIA), the Ministry for Primary Industries (MPI) has decided to impose a charge for making the requested information available to you. In deciding to fix a charge, MPI has considered the public interest in making this information available.

It is estimated that the amount of the charge will be $ [amount] (including GST) as specified in the guidelines by the Ministry of Justice. This amount has been calculated as:

- $ [amount] for staff time (at $76 per hour for [###] hours, with the first hour free)
- $ [amount] for printing (at 20c per page for [###] pages, with the first 20 pages free).

No further action will be taken on your request until you have

- paid the amount quoted in full.
- agreed to pay the amount in full prior to the information being provided to you.
- agreed to pay the amount in full as soon as the information has been provided to you.
- made a partial payment of $ [amount] and agree to pay the remainder of the charge prior to the information being provided to you.
- made a partial payment of $ [amount] followed by payment of the remainder of the charge as soon as the information has been provided to you.

You have the right under section 28(3) of the OIA to contest this decision to charge for information by seeking an investigation and review of the decision by an Ombudsman.

If you wish to discuss any aspect of your request or this letter, or if you require any further assistance, you are encouraged to contact [name, position] on [phone] or at [email].

Type your Branch here
Type your Directorate Here
Pastoral House, 25 The Terrace
PO Box 2526, Wellington 6140, New Zealand
Telephone: 0800 00 83 33, Facsimile: +64-4-894 0300
www.mpi.govt.nz

Yours sincerely

Name
Title, Directorate

Ministry for Primary Industries
Manatū Ahu Matua

Reference number

Name
Address
Address
CITY

Dear [Recipient's name]

EXTENSION OF TIME TO ANSWER OFFICIAL INFORMATION REQUEST

I refer to your official information request on [date received] regarding [insert subject or request].

The Ministry for Primary Industries (MPI) will not be able to respond within the timeframe set out in the Official Information Act 1982 (OIA) because

- your request is for a large quantity of information and meeting the normal 20 working day time limit would unreasonably interfere with the operations of the Ministry for Primary Industries (MPI).
- your request necessitates a search through a large quantity of information and meeting the normal 20 working day time limit would unreasonably interfere with the operations of the Ministry for Primary Industries (MPI).
- consultation necessary to make a decision on your request are such that a proper response cannot reasonably be made within the normal 20 working day time limit.

MPI will reply to your request by no later than [date], earlier if possible.

Please confirm as soon as possible whether or not we can identify you as the requestor to the consulted [party/parties]. The Ombudsman's Office considers that identification of the requester is good practice when consulting with affected third parties and that is the approach we prose to take here, subject to your views.

You have the right under section 28(3) of the OIA to seek an investigation and review by the Ombudsman of our decision to extend the time limit for responding to your request.

Yours sincerely

[Delegated authority]

Type your Branch here
Type your Directorate Here
Pastoral House, 25 The Terrace
PO Box 2526, Wellington 6140, New Zealand
Telephone: 0800 00 83 33, Facsimile: +64-4-894 0300
www.mpi.govt.nz

Ministry for Primary Industries
Manatū Ahu Matua

Reference number

Name
Address
Address
CITY POSTCODE

Dear [Recipient's name]

TRANSFER OF YOUR REQUEST FOR OFFICIAL INFORMATION

I refer to your official information request on [insert date] relating to [insert subject of request].

This letter is to advise you that the Ministry for Primary Industries (MPI) is transferring your request to [Minister, Ministry of/for, or other organisation receiving your request] under section 14 of the Official Information Act 1982.

Your request is being transferred because the information you are seeking [is not held by MPI but, I believe, is held by [organisation named above] [, I believe, is more closely connected with the functions of [organisation named above.]

Yours sincerely

[Delegated authority]

Type your Branch here
Type your Directorate Here
Pastoral House, 25 The Terrace
PO Box 2526, Wellington 6140, New Zealand
Telephone: 0800 00 83 33, Facsimile: +64-4-894 0300
www.mpi.govt.nz

Ministry for Primary Industries
Manatū Ahu Matua

Reference number

Name
Address
Address
CITY POSTCODE

Dear [Recipient's name]

TRANSFER OF OFFICIAL INFORMATION REQUEST

I attach the following:

- A request for official information from [name of requester] dated [date received].
- Our letter of notification to [name of requester] that the request is being transferred to you for response.

This letter serves as a formal transfer of this request under section 14 of the Official Information Act 1982.

Yours sincerely

[Delegated authority]

Type your Branch here
Type your Directorate Here
Pastoral House, 25 The Terrace
PO Box 2526, Wellington 6140, New Zealand
Telephone: 0800 00 83 33, Facsimile: +64-4-894 0300
www.mpi.govt.nz

OFFICIAL INFORMATION ACT REQUEST – INFORMATION FOR MINISTERS OFFICE (TO BE COMPLETED BY DRAFTER)	
Date Due to Requestor	
Due back to MPI (blank if it is the Minister's OIA)	
Extension given? Length?	
Requestor	
Subject	
General/Political/Media	
File Number	
External Agencies Consulted	
The request - background and interpretation: • What is the request? • What prompted the request?	
Risk Assessment • Low / Med / High	
Outline of the information to be released • Has it been released before? If so to whom and when.	
Outline of the information to be withheld	

(TO BE COMPLETED BY MINISTER'S OFFICE)	
Date received by Minister's Office	
Seen by	
Comments	