



SSC Guidelines

Official Information Act 1982

Purpose

Purpose of these guidelines

These guidelines assist the State Services Commission (SSC) in responding to requests for information under the Official Information Act 1982 (the OIA), and to any subsequent inquiries that may be made by the Office of the Ombudsmen.

Scope of these guidelines

It is not feasible for guidelines of this kind to cover every possible case, as the circumstances of each case will be different. This document provides guidelines only – a set of operating principles, not a set of rules.

Requests for information, formal and informal

The requirements of the OIA apply to all SSC employees. These guidelines set down the processes to be followed when a request for information is received, and should be referred to in every instance.

However informal a request for information may appear, and regardless of who receives it, it must be treated as an OIA request to SSC.

Context

Core SSC business

One of the purposes of the OIA is to promote the accountability of Ministers of the Crown and officials. With greater accountability comes greater trust in government.

The State Services Commissioner (the Commissioner) sets standards of integrity and conduct which "contribute to a high performing, trusted and accessible State sector." Therefore, complying with the requirements of the OIA is core business for the SSC, reinforcing SSC employees' other obligations as public servants.

Section 4 of the OIA

Section 4 states that the purposes of the OIA are:

- (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: (this now only applies to incorporated bodies).
 - (c) to protect official information to the extent consistent with the public interest and the preservation of personal privacy.
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Who can make an OIA request?

OIA requests may be made by:

- New Zealand citizens or permanent residents;
 - people who are in New Zealand;
 - a body corporate incorporated in New Zealand; or
 - a body corporate incorporated overseas, with a place of business in New Zealand.
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Definitions

Official information

Section 2 defines "official information" as any information held by a department or organisation, or by a Minister of the Crown in his or her official capacity. (It does not include information provided to a Minister as a constituent's Member of Parliament.)

OIA request

Any request for information held by a department or organisation, or by a Minister of the Crown in his or her official capacity, is an OIA request.

The requester does not need to say that the request is under the OIA.

Information

"Information" is not defined in the OIA. Courts have held that the word has its ordinary meaning, so that in addition to written material it includes:

- video or audio tapes, information stored in computers;
 - information unrecorded but "held" in the memory of an officer of the department;
 - information in existence prior to the passage of the OIA; and
 - information generated within the department or obtained from outside sources.
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“Held” – when is information held

The information must be “held” by the department or a Minister. If raw data needs to be put together to provide the information requested, it is not “held” and is therefore not subject to the OIA.

Example: if data that is “held” needs to be researched to generate fresh information in a different form from that in the database, the department is not required to comply with a request.

Personal information

“Personal information” is information about an identifiable person. A request for personal information about another person is an OIA request.

Requests by individuals for information about themselves must be dealt with under the Privacy Act 1993.

Working days

“Working days” are defined in the OIA as any day of the week other than Saturday, Sunday, Good Friday, Easter Monday, ANZAC Day, Labour Day, the Sovereign’s Birthday, Waitangi Day, or any day from 25 December to 15 January inclusive.

Principles behind the OIA

Availability

The main premise of the OIA is the principle of availability, set out in section 5. This principle requires information to be made available unless there is good reason for withholding it.

“Good reasons” for withholding information are those set out in sections 6, 7, 9 and 18.

Erring on the side of availability

All decisions on whether to release information must be made bearing the principle of availability in mind.

The Court of Appeal has held that if a decision-maker is uncertain whether to release information, he or she should come down on the side of availability.

If a document contains a piece of information (e.g., a word, sentence, or paragraph) that should be withheld, that fact is not a ground for withholding the whole document. Only the particular piece of information should be withheld – and only if one of the statutory “good reasons” for withholding applies to it.

Duty to assist

Section 13 imposes a duty to give reasonable assistance to anyone making a request for information.

This duty requires SSC employees to give the requester reasonable assistance to help him or her refine a request, so that the information may be readily identified.

A request should not be interpreted so narrowly as to deny the requester the information he or she is looking for, when the requester's intention is reasonably discernible.

Process for OIA requests

Receipt of OIA request

An OIA request may be made directly to SSC, or to the Minister of State Services, who will forward the request to SSC for preparation of a draft response.

A request to SSC can be made in a number of ways. A request may be a letter to the Commissioner, an email to a SSC employee, or a seemingly informal request by way of a phone call transferred by reception. However informal a request may be, it must be treated as an OIA request. There is no requirement for a requester to state that the request is being made under the OIA.

Recording and responding to an OIA request

Most requests for information are received initially by Ministerial Services or through the SSC Enquiries email account. If an SSC employee receives a formal request, they must send the hard copy or email to Ministerial Services so that the request can be logged in Moto and allocated for response. Moto can be viewed on [Doris](#).

In most cases, Ministerial Services will prepare the draft response to the request in consultation with relevant teams in SSC. Ministerial Services will also co-ordinate any necessary external consultation, including with the Minister's office. The relevant subject matter Manager will sign out the response, which will be sent to the requestor by Ministerial Services.

Format of response

The OIA request will be logged in Moto. This means that a workflow will be generated, giving you options to transfer (in full or in part), extend, prepare a response, and create a report to go to the Minister's office when consulting on a response. Once you select each workflow, a template Word document will automatically be created – you do not have to choose a template yourself. Amend the template as required. Ministerial Services can provide help on formatting and on using Moto.

Who makes the decision to release/withhold information?

SSC must make decisions about requests made to it.

SSC employees must not invite a Minister to approve a release of information by SSC. However, SSC may consult a Minister on some (not all) proposed responses. Please consult Ministerial Services if you need further guidance. You should also refer to the [Ombudsman's](#) guidance for dealing with OIA requests involving Ministers.

If an SSC employee considers that the request is more properly one for the Minister, then the request should be transferred formally to the Minister (under section 14).

Decisions on requests to the Minister

Responses to OIA requests made directly to the Minister are drafted by SSC. The Minister must make the decision whether to release the information or not.

Time limits

Responding to a request

SSC must respond to a request as soon as practicable, and in no case later than 20 working days after the day on which the request was received (Section 15).

Transferring a request

Under section 14 of the OIA, a transfer must be made within 10 working days after the day on which the request was received.
(See [Release of Official Information: Guidelines for Co-ordination](#)).

Requests to the Minister

A draft response to an OIA request to the Minister must be processed by SSC and referred back to the Minister's office within 15 working days of receipt.

Consulting the Minister

Where a request is likely to lead to public comment, or where the information could reasonably be expected to be of concern to the Minister because, for example, they supplied the information, it is about their functions or activities, or release could affect their functions or activities or legitimate interests, SSC must consult the Minister, preferably before the 10th to 15th working day. The [Ombudsman's guidance](#) sets out when to consider consulting a Minister, how to undertake ministerial consultation and how to deal with ministerial input. Please consult Ministerial Services if you need further guidance.

Extensions of time

Under section 15A, the time for responding to an OIA request or to transfer a request may be extended for a reasonable period of time if:

- the request is for a large quantity of information or a large quantity of information must be searched and the original time limit would unreasonably interfere with other work, or
- consultation is necessary to make a decision on the request, and a decision cannot reasonably be made within the original time limit.

Nothing in the OIA prevents multiple extensions being made, providing any extensions are made within the original 20 working day time period after receiving the request.

Note: any decision to transfer a request to another agency for response must be made promptly and no later than 10 working days after the agency received the request (unless a valid extension of that time limit is made within 20 working days of the original request).

Written notice of extension

The requester must be advised of an extension of time within 20 working days after the request was received. The advice must:

- specify the length of the extension;
- state the reasons for the extension; and
- advise the requester of the right to complain to an Ombudsman about the extension.

For all OIAs where the time is extended, Ministerial Services expects that the requestor will be kept updated as the response moves through the process (e.g. upon the commencement and completion of consultation). Contact Ministerial Services if you need further guidance.

Transferring requests – section 14

Transferring requests

Section 14 requires that a request must be transferred, in whole or in part, if the information is held by another department or Minister, or if the information requested is more closely related to the functions of another department or Minister.

Before initiating a transfer, it is good practice to contact the department or Minister to confirm that they are better placed to respond.

Cabinet Minutes

Requests for Cabinet Minutes should be transferred to the department or Minister most directly responsible for the relevant topic.

Cabinet papers

A Cabinet paper belongs to the relevant Minister. Any request for a Cabinet paper must be transferred to the relevant Minister.

Crown Law opinions

Requests for Crown Law opinions must be transferred to the Solicitor-General, as these opinions belong to the Crown.

The Solicitor-General, with the Attorney-General, should make the decision whether to release. In transferring, it is helpful to provide information to the Solicitor-General to assist in making the decision.

Providing information that is in a document – section 16

Providing information that is in a document

Section 16(1) provides that information may be provided in a number of ways, by:

- giving a reasonable opportunity to inspect the document;
 - providing a copy of the document;
 - enabling a person to see or hear information that is in a visual or auditory form;
 - providing a written transcript of recorded information;
 - giving an excerpt or summary of the information; or
 - giving oral information about the document.
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Duty to provide information in form requested and exceptions

Under section 16(2), SSC is required to make information available in the way requested unless to do so would:

- impair efficient administration;
 - be contrary to a legal duty related to the document; or
 - prejudice interests protected by sections 6, 7 or 9 (and in the case of section 9 there is no countervailing public interest in the information requiring its release).
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Where providing information other than in the form requested

Section 16(3) requires the requester to be given:

- the reason for not providing the information in the way requested; and
- the grounds in support of the reason unless giving the grounds would prejudice the interests protected by sections 6, 7 or 9.

Note: even if section 16 may be relied upon, the requester should be approached to see if there is some other way to meet the request.

Withholding information

Legal team

Any proposal to withhold information requested under the OIA must be discussed with SSC Legal before the decision is implemented.

Advice to the requester when information withheld

If material relevant to a request is withheld, the requester must be advised of the section of the OIA relied upon, the reasons for withholding, and the right to complain to the Office of the Ombudsmen under section 28.

**Section 6:
conclusive
reasons for
withholding
information**

Section 6 sets out "conclusive reasons" for withholding information, if (as paraphrased below) making the information available would be likely to:

- prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand
 - prejudice the entrusting of information to the Government of New Zealand on the basis of confidence by other governments or international organisations
 - prejudice the maintenance of law and the right to a fair trial
 - endanger the safety of any person, or
 - seriously damage the economy of New Zealand by disclosing prematurely decisions to change or continue certain government economic or financial policies.
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**Section 7:
special reasons
for withholding
information**

Section 7 contains "special reasons" for withholding certain information relating to the Cook Islands, Tokelau, Niue, or the Ross Dependency.

**Section 9:
other reasons
for withholding
information**

Section 9 sets out "other reasons" for withholding official information.

If a decision is made under section 9 to withhold information, a two-stage public interest test must also be applied:

- first, check whether there is a reason to withhold the information (a whole document/page/paragraph); then
- consider whether there is, nevertheless, a public interest in that information that outweighs the reasons for withholding.

If SSC decides that the public interest outweighs the reasons for withholding, the information must be released.

Section 9 is most commonly used for withholding information in SSC. Section 9 applies if it is necessary to withhold information (amongst other things) to:

- protect the privacy of natural persons
 - protect information where making it available would be likely to unreasonably prejudice a person's commercial position
 - protect information that is subject to an obligation of confidence
 - avoid prejudice to health and safety
 - maintain the constitutional conventions that protect ... the confidentiality of advice tendered by Ministers of the Crown and officials
 - maintain the effective conduct of public affairs through the free and frank expression of opinions
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- maintain legal professional privilege, or
 - enable a Minister or department to carry on negotiations without prejudice or disadvantage.

Because of the significance of these withholding grounds, they are discussed more fully in *Annex 1* at the end of these OIA guidelines.

Note that SSC releases its officials names and work email addresses unless there is good reason not to. Cellphone numbers are generally withheld as they are often used for both personal and work purposes.

**Section 18:
refusal of
requests**

The grounds for refusing a request under section 18 include:

- the information requested is or will soon be publicly available. (Note: this reason should only be used when there are practical difficulties in providing the information at the time of considering the request. "Soon" means, for example, that a speech is about to be delivered or a report is being printed and it would be impractical to provide a copy. Good practice is to advise of a release date or explain the difficulty in giving the information now.)
 - the document does not exist or cannot be found
 - the information is not held by SSC, and SSC does not know that it is held by another department or Minister, or it is more closely connected with the functions of another department or a Minister (if the SSC knows that another department or Minister holds the information, the request should be transferred)
 - the information cannot be made available without substantial collation or research; or
 - the request is frivolous or vexatious, or the information requested is trivial.
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**Section 18A:
duty where
response
requires
substantial
collation or
research**

Section 18A requires SSC to consider whether information could be supplied if:

- a fee were charged, and/or
- the time limit for responding to the request were extended.

SSC may treat as a single request two or more requests from the same person if:

- the same or similar subject matter is involved, and
 - the requests are received simultaneously or in short succession.
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**Duty to consult
under section
18B**

If a request is likely to be refused on the basis that the document does not exist/cannot be found, or cannot be made available without substantial collation or research, section 18B imposes a duty to consult the requester first to see if the requester can make the request in a way that removes the reason for refusal.

Advising of right to complain

Bases for complaints to an Ombudsman

A requester must be advised of his or her right to make a complaint to the Office of the Ombudsmen where:

- the request to provide information is refused;
- the information is made available in a form other than that requested (section 16);
- deletions have been made in accordance with grounds under the OIA;
- a charge is made for the release of information;
- conditions are imposed on the use of released information;
- the time limit for making a decision on the request is extended; or
- notice is given under section 10 neither confirming or denying the existence of the information requested.

A standard paragraph for advising a requester of the right to make a complaint to an Ombudsman is contained in the Moto templates that are also saved in iManage (SSC-AGS-3-1-9-1).

Charging for release of information

Generally no charge for release of information

Generally, the SSC does not charge for release of official information.

If a decision is made to charge, reference must be made to the [Ministry of Justice Guidelines on Charging](#) on the Ministry of Justice website, and the decision should be discussed with SSC Legal and the HoSS Office. The [Ombudsman](#) also provides guidance on charging.

Advice to the requester if a charge is proposed

The requester should be advised of any proposed charge as early as possible and before proceeding further with the request.

The letter to the requester should specify that his or her agreement to the charge is sought before further action is taken to implement the request.

Itemised charges

If a charge for releasing information is imposed, the following cost guidelines apply (inclusive of GST):

- staff time in responding to the request – the first hour is free, then \$38 per half hour thereafter
- photocopying – the first 20 A4 pages are free, then 20 cents per page
- other costs actually incurred may be passed on
- Members of Parliament and their staff (including political party parliamentary research units) may be exempt from charges if provision of information is necessary to assist members' reasonable exercise of their democratic responsibilities
- the liability of the requester to pay can be waived, depending on his or her circumstances or the public interest.

Record of costs

Under the Ministry of Justice guidelines, a record should be kept of all costs incurred in releasing information.

Process for releasing information

Who to contact before releasing information

A Minister: SSC may either consult a Minister on a proposed release of information (at least five working days before the information is due to be released), may inform the Minister of the receipt of a request (e.g. through the weekly report), or may notify the Minister of the decision made on a request at the same time it is sent to the requestor.

Other organisations or individuals: SSC will consult or advise, as necessary, affected organisations or individuals of a release. For example, if a release of information on spending on a particular consultancy is planned, consideration should be given to notifying the consultant, ideally providing five working days' notice before the release.

Cabinet Office: Cabinet committee papers are covered by the OIA. Departments or Ministers handling requests for release of Cabinet committee papers must make the decision on release themselves, after consulting other departments that may have contributed to the papers. The Cabinet Office is available for general guidance.

Cabinet papers: The convention is that Cabinet papers belong to the Minister. Requests for Cabinet papers should be transferred to the Minister. Other departments that have contributed to the Cabinet papers must be consulted.

Papers of a previous government: The conventions governing the release of such information are set out in the [Cabinet Manual](#), paragraphs 8.83 and 8.84.

Releasing information previously released by the Minister or the SSC

Generally, information that has previously been released cannot be withheld, and should be released as soon as possible in response to the request. If the material was previously released by the Minister's office, the enquiry should be referred there.

If an SSC employee believes an exception to this rule is required, they should consult SSC Legal.

What if other departments have been asked for the same information

If a similar or identical OIA request has been made to other departments or Ministers, it is good practice to consult the department or Minister most responsible for the information. It may be appropriate for a reply to be coordinated so that another department or Minister should respond on behalf of the rest. All parties should be given at least five working days' notice of any release.

How to release information

All material released under the OIA must be copied onto paper with the *Released under the Official Information Act* watermark, which can be created by Ministerial Services. There is also a template under the Moto templates that are also saved in iManage (SSC-AGS-3-1-9-1).

Original documents or standard copies of original documents must not be released. If a response is emailed, any attachments must be copied onto the watermark paper and then scanned to attach them to the email.

Making redactions

Redactions should be made with SSC's redaction software, Adobe Acrobat DC. Ministerial Services can prepare the redactions for you.

Public release of responses to SSC OIA requests

SSC has a new policy for the public release of certain responses to SSC OIA requests. It is document 2266043 in iManage. Please talk to Ministerial Services if you have any queries.

Filing of response

A copy of the original request, the response, and any attached material must be sent to the Ministerial Services to put in Moto.

OIA requests to the Minister

If the Minister accepts the SSC's advice, the response will be sent out by the Minister's office, and a copy of the signed response to the OIA request will be returned to Ministerial Services. If the Minister does not accept the SSC's advice, the Minister may return the response with a request for amendments.

Section 23 – Requests for Decisions affecting an individual

Section 23: right of access to reasons for decisions affecting a person

Section 23 gives a person the right to request reasons for a decision or recommendation made about that person. The usual requirements to assist the requester to make a request apply.

The request must be made within a reasonable time of the decision or recommendation being made.

The reasons the requester can access are:

- findings on material issues of fact
 - a reference to the information on which the findings were based (subject to limitations set out below), and/or
 - the reasons for the decision or recommendation.
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Refusal of reference to information on which findings are based

Reference to the information on which findings are based may be refused on the basis that:

- the information is evaluative material (e.g., about the suitability of the person for employment, or awarding a contract), and giving the information would breach a promise of confidentiality
 - after consulting the requester's medical practitioner, releasing the information would be likely to prejudice the requester's physical or mental health
 - the requester is under 16 years of age, and disclosure would be contrary to the requester's interests, or
 - the requester has been convicted or is in custody, and releasing the information would be likely to prejudice the requester's safe custody or rehabilitation.
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Advising the Ombudsman

If some of the information covered by section 23 is refused, the requester must be advised of the right to make a complaint to an Ombudsman.

Work-related refusals

A person may ask for reasons about a decision that affected him or her when his or her application for a position has been unsuccessful.

An example is a consultant who tenders for work, asking for reasons why his or her tender was unsuccessful.

Ombudsman investigations

Ombudsman's queries

In dealing with an Ombudsman's investigation, advice should be sought from SSC Legal and Ministerial Services.

Ombudsman's right of access

The Office of the Ombudsmen has the right to full access to any material covered by an OIA request, including any material withheld from the requester, as well as any material showing why and how a decision was made to withhold information.

Time limits for replying to Ombudsman

Ombudsman inquiries must be answered within 20 working days after the day his or her inquiry was received. This time limit can be extended in the same way and for the same reasons as for responding to OIA requests.

Failure to meet the deadlines for replying to an Ombudsman inquiry may result in a report to Parliament.

Logging correspondence

All correspondence with an Ombudsman relating to a review must be logged with Ministerial Services, as a new Moto workflow will be created (or added to for ongoing investigations).

Ombudsman's preliminary report

The Office of the Ombudsmen usually provides a preliminary opinion, if it is contrary to the decision made by SSC or by the Minister. SSC (or the Minister) is provided with an opportunity to comment on the preliminary opinion. This is an opportunity to clarify points the Ombudsman may not have fully understood, or to re-emphasise points to which the Ombudsman has, in our view, not given sufficient weight.

Where the Ombudsman's preliminary view is persuasive, it is good practice to release the information on the basis of the preliminary view rather than waiting for a formal recommendation.

Ombudsman's formal recommendation (section 32)

There is a public duty to comply with a formal recommendation of the Ombudsman within 20 working days, unless before that date the Governor-General by Order in Council otherwise directs.

If an Ombudsman's formal recommendation is to be disputed, the SSC Legal and the HoSS Office must be consulted as soon as possible after receiving the recommendation.

OIA requests during an election period

Election periods defined

Generally, requests for information made by political parties during an election period should be treated the same as any other request for official information.

The Cabinet Manual describes an election period as beginning “three months before the general election is due, or (if the period between the announcement of the election and polling day is less than three months) from the announcement of the election.”

Informing the Commissioner of OIA requests during an election period

The Commissioner must be informed of any OIA request received from an MP or a political party (including party research units) during an election period.

The Commissioner may wish to consult with the Minister about a request, but this must not be a justification for delaying a response.

Political neutrality

The Ombudsman has commented on the importance of a well-informed electorate at the time of a general election. SSC staff should not become involved in assessing the political consequences of releasing information, but should make OIA decisions in a politically neutral manner.

Further information

Related Legislation

- [Official Information Act 1982](#)
 - [Ombudsman Act 1975](#)
 - [Privacy Act 1993](#)
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Related Guidance

- [Cabinet Manual](#)
 - [PSI OIA Guidance](#)
 - [Office of the Ombudsman Guidelines and Case Notes](#)
 - [Ministry of Justice Guidelines on Charging](#)
 - [Standards of Integrity & Conduct for the State Services](#)
 - [Release of Official Information: Guidelines for Co-ordination](#)
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Contact

For help with any OIA matters, please contact Ministerial Services in the first instance.

Annex 1 – Section 9(2) “Other reasons for withholding information”

Reasons for withholding information

Set out below are the reasons most commonly used by the SSC to withhold information.

Note: these grounds are subject to the “public interest” test.

Section 9(2)(a): protect the privacy of natural persons

To “*protect the privacy of natural person, including that of deceased natural persons.*”

Consider what effect disclosure might have, and whether it is necessary to withhold the information to protect the person's privacy.

Note: generally the SSC's practice is not to withhold the name of an official who has participated in giving advice. That is given in their official capacity, not a personal one requiring protection of their privacy.

Before making a decision to withhold consult the person.

Section 9(2)(b): commercial sensitivity

To “*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 is the subject of the information.*”

This reason for withholding is most commonly used in relation to requests for information about consultants e.g. hourly charge out rates. However, there is a public interest in knowing how much departments spend on consultancy, i.e. total figures that do not expose competitive rates.

Section 9(2)(ba): information that is subject to an obligation of confidence

To “*protect information which is subject to an obligation of confidence... where the making available of the information*

- (i) *would be likely to prejudice the supply of similar information from the same source and it is in the public interest that such information should continue to be supplied; or*
- (ii) *would be likely otherwise to damage the public interest.*”

This reason for withholding is used reasonably often. All elements must exist, i.e., disclosure would be likely to prejudice the future supply of similar information, and it is in the public interest that the supply of similar information continue.

An example of a situation where this would apply is the Chief Executive remuneration survey. SSC gathers information about chief executive remuneration from Crown entities, local government, and SOEs to provide advice to the Commissioner for the purpose of setting remuneration ranges for his or her statutory role in relation to Public Service Chief Executives and other chief executives.

If SSC released information that was gathered in confidence, SSC would be unlikely to be able to collect such information in future, and it is in the public interest that SSC continue to do so.

**Section 9(2)(f):
maintain the
constitutional
conventions for
the time being**

To "maintain the constitutional conventions for the time being which protect: . . .

- (iv) *the confidentiality of advice tendered by Ministers of the Crown and officials."*

This reason for withholding is commonly used. It will be used, for example, for Cabinet papers, before Cabinet has considered them, on the basis that release will undermine the ability of Cabinet to properly consider the advice. The papers can usually be protected until a decision has been made.

Another example: when a request for a draft answer to a Parliamentary Question (PQ) is received the Minister makes the ultimate decision about content and is accountable to Parliament for the answer. To release a draft PQ would make Ministers less likely to seek departmental advice, which would diminish the quality of advice to Parliament.

**Section 9(2)(g):
maintain the
effective
conduct of
public affairs**

To "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 officers and employee of any Department..in the course of their duty; or*
- (ii) *the protection of such Ministers . . . officers and employees from improper pressure or harassment."*

Section 9(2)(g)(i) is commonly used, often in conjunction with section (f)(iv) (confidentiality of advice tendered by Ministers of Crown and officials).

The use of 9(2)(g)(i) must involve opinions and the information must be needed for the effective conduct of public affairs. SSC must be able to show that if there were no protection the opinions would not have been expressed, and it is important for good government that they were.

To use 9(2)(g)(ii), SSC will need to show that there is a reasonable likelihood of improper pressure or harassment that would adversely affect the effective conduct of public affairs.

**Section 9(2)(h):
maintain legal
professional
privilege**

To "maintain legal professional privilege."

This reason for withholding will only apply to legal advice from a lawyer that is given as legal advice – not policy input to a policy paper by a lawyer.

Note: the requirement to transfer requests for Crown Law Office advice to the Solicitor-General.

**Section 9(2)(j):
information
relating to
negotiations**

To "enable a Minister of the Crown or any department . . . holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)."

Note: under the Employment Relations Act 2000 an employer cannot withhold information from a union that is reasonably required to support or substantiate a claim in collective bargaining for a collective agreement.

**"Public
interest" test
examples**

All section 9 grounds for withholding information are subject to the public interest test i.e. are the reasons "outweighed by other considerations which render it desirable, in the public interest, to make that information available," as per subsection 9(1) of the OIA.

An example of an overriding public interest: Payments to senior employees, particularly on leaving employment. At first glance section 9(2)(a) – protect the privacy of natural persons – would seem to apply. The Ombudsman has said that accountability for the expenditure of public money requires added transparency.

Note: the "public interest" is not the same as "of interest to the public".

RELEASED UNDER THE
OFFICIAL INFORMATION ACT



Publishing Responses to Official Information Act 1982 Requests on the State Services Commission's Website

Proactive release of information

Where possible, information of public interest that the State Services Commission (SSC) holds should be proactively published on SSC's website (proactive release). This includes:

- a) information published at SSC's discretion, without any request from the public
- b) information published in response to public demand, including information that is regularly requested from SSC under the Official Information Act 1982 (OIA)
- c) information that has previously been released by SSC to an individual requester under the OIA.

Proactive release of information promotes good government, openness and transparency and fosters public trust and confidence in agencies.

Note: Only Ministers may approve the proactive release of Cabinet material. Further information on the processes and responsibilities that follow a Minister's decision to proactively release Cabinet material and for it to be published online can be found in Cabinet Office Notice (15)3.

Responses to OIA requests should be published

All responses to OIA requests must be considered for publication (either in full or in part) on SSC's website.

SSC will exercise caution and due diligence before making official information available and will consider any potential liability, whether civil or criminal, that might result from the publication of an OIA response. This includes privacy considerations (for example, where the nature of the response is likely to reveal the identity of the requestor despite the requestor's identity being withheld), defamation, copyright, or breach of contract).

Internal consultation on a proposed response to a request that SSC intends to publish will include discussions with relevant SSC staff, including the Legal Team and the Office of the Head of State Services, to confirm that the risk assessment that has been undertaken by Ministerial Services is adequate and thorough.

SSC may decide to release information in addition to what has been requested, so that the information can be placed in the proper context, and to mitigate any potential harm from its release.

SSC may also, when considering publishing OIA responses, reconsider information previously released to a requester under the OIA and reassess whether the information is suitable for publication more generally.

In situations where a response is likely to be of no or very limited public interest (for example letters declining requests where the information is publicly available), SSC may decide not to publish the response.

Consultation

All parties

SSC will let all parties being consulted on its OIA response know if it intends to publish its response to an OIA request (as part of best practice, SSC consults, where possible, all individuals named in any documents proposed for release under the OIA, even where it is not proposed that their name be released).

Officials

If SSC is considering publishing personal information about officials (e.g. their name/email address/phone number), we will conduct a risk assessment that includes seeking confirmation from officials that they are comfortable with the publication of their personal information.

Minister's office

The Minister's Office should be given an opportunity to comment on the publication of responses in accordance with the "no surprises" principle (paragraph 3.16, Cabinet Manual). Ministerial Services will co-ordinate this, and will also consult any other individuals/teams in SSC as required on responses that are proposed for release.

Acknowledgement, consultation, and response letter text

The following text is included in all acknowledgements:

"Our letter notifying you of our decision on your request will confirm if we intend to publish the letter (with your personal details removed) and any related documents on the State Services Commission's website."

All consultation correspondence will include the following (amended depending on whether the response is intended to be published or not):

"Please note that we intend to publish our response to this official information request (with the requestor's personal details removed) on the State Services Commission's website." / OR "Please note that we do not intend to publish our response to this request."

All response letters will include the following (amended depending on whether the response is intended to be published or not):

"Please note that we intend to publish this letter (with your personal details removed) [and enclosed documents] on the State Services Commission's website."/ OR "Please note that we do not intend to publish our response to your request."

Location of publication

OIA responses will be released on its website on SSC's OIA page, with links to relevant work areas if possible (i.e. if a member of the public is looking at a page about the structure of Chief Executive remuneration, they can also see link(s) on that page to any related OIA responses about remuneration that SSC has published).

The information on this page will include the publication date (of both the response to the requestor and the date of online publication), a description of the OIA response, and a link to the response.

Where the Crown holds copyright, information will be made available on open licensing terms (where possible).

Timing of publication

SSC's OIA responses will typically be released on its website quarterly, or as otherwise determined. This will be reviewed once SSC's practice of releasing OIA responses has become business as usual. The website will not notify the public if there are no responses to be published on a particular day. SSC may (to be determined on a case by case basis) signal in advance whether a particular response will be published.

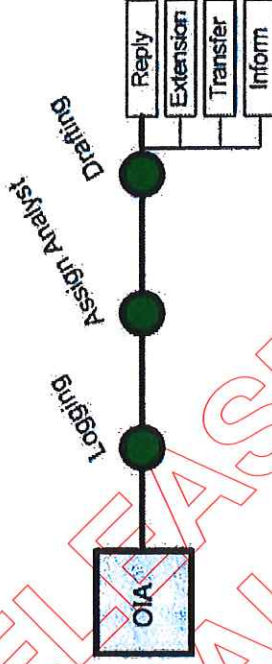
Publication of OIA responses will occur no sooner than one day after the response has been provided to the requestor (where the response is sent through email, with more time to be determined for responses sent through the mail) to provide the requestor time to consider the response.

SSC may, in the future, set up an RSS feed to allow people who frequently request information to be alerted to new releases.

Update of information published online

If SSC's decision on release is changed or overturned on complaint to the Ombudsman, we will update the related information published on our website.

SSC OIAs



20 Working Days

To understand the process for SSC OIAs it can be useful to remember that, if you are creating "child" workflows under the main OIA (e.g. Inform Report, transfer, extend), make sure you are in the right workflow that you want to progress – for example, if an SSC OIA needs to go to the Minister's office for consultation. (using the Inform process), you can create both a draft OIA reply and a draft OIA Inform Report, but make sure you are in the OIA Inform workflow when you want to progress it through to go to the Minister's office. Once you have your response back, you can update your OIA reply, and progress through to sign out

Stage	Responsible Staff	Actions
Logging	Ministerial Co-ordinator	<ul style="list-style-type: none"> Log new OIA Assign OIA to Manager, Research Analyst (someone from Ministerial Services), and TA
Assign Analyst	Ministerial Services Manager or Analyst	<ul style="list-style-type: none"> Assign OIA to Analyst (usually in Ministerial Services)
Drafting	Analyst	<ul style="list-style-type: none"> Select appropriate subflow, as required:
<i>Create an Inform Report/ Reply / Transfer / Extension</i>		
Drafting	Analyst	<ul style="list-style-type: none"> Draft the response document(s) Add related documents as required Add QA staff: It is recommended that staff should add 1 QA staff at a time and once the QA is approved then add the next one. <ul style="list-style-type: none"> Peer reviewer (content and proofread) Tim Ingleton (risk assessment) Other staff as necessary (e.g. Legal if there are proposed withholdings) Skip formatting and send straight to QA

QA	QA Analyst	<ul style="list-style-type: none"> Review documents and record QA Note that the TA should do their QA last 	<input type="button" value="Send to Sign Out"/>
Sign Out	Analyst	<ul style="list-style-type: none"> Send OIA to sign out Leave reply at drafting unless there is no inform, in which case treat as per other docs 	<input type="button" value="Approve and Sign Out"/>
Send	Manager	<ul style="list-style-type: none"> Approve OIA and sign out Leave reply at drafting unless there is no inform, in which case treat as per other docs 	<input type="button" value="Approve and Sign Out"/>
Send	Formatting TA	<ul style="list-style-type: none"> Copy OIA and deliver to Ministerial Co-ordinator 	
Send	Ministerial Co-ordinator	<ul style="list-style-type: none"> EITHER Send the Inform Report to the Minister's office OR Send the OIA reply (only if no inform required)/transfer/extension to the requestor. 	
<i>Inform Report</i>			
With Minister	Ministerial Co-ordinator	<ul style="list-style-type: none"> Draft OIA response will be considered by the Minister's office, with any comment returned 	
Returned	Ministerial Co-ordinator	<ul style="list-style-type: none"> The returned Inform Report will be scanned and added to Moto 	
<i>Reply after Inform has been returned</i>			
Drafting	Analyst	<ul style="list-style-type: none"> Copy and paste letter from Inform Report into reply document (having ensured any proposed changes have been incorporated in the reply, if they have been agreed by SSC) Skip formatting and send the OIA reply to QA 	
QA	QA Staff	<ul style="list-style-type: none"> Review documents and record QA Note that the TA should do their QA last 	<input type="button" value="Send to Sign Out"/>
Sign Out	Analyst	<ul style="list-style-type: none"> Send OIA reply to sign out 	<input type="button" value="Approve and Sign Out"/>
Sign Out	Manager	<ul style="list-style-type: none"> Approve and sign out OIA reply 	<input type="button" value="Approve and Sign Out"/>
Send	Formatting TA	<ul style="list-style-type: none"> Copy OIA reply and release documents and deliver to Ministerial Co-ordinator 	
Send	Ministerial Co-ordinator	<ul style="list-style-type: none"> Send the OIA reply and information to the requestor 	

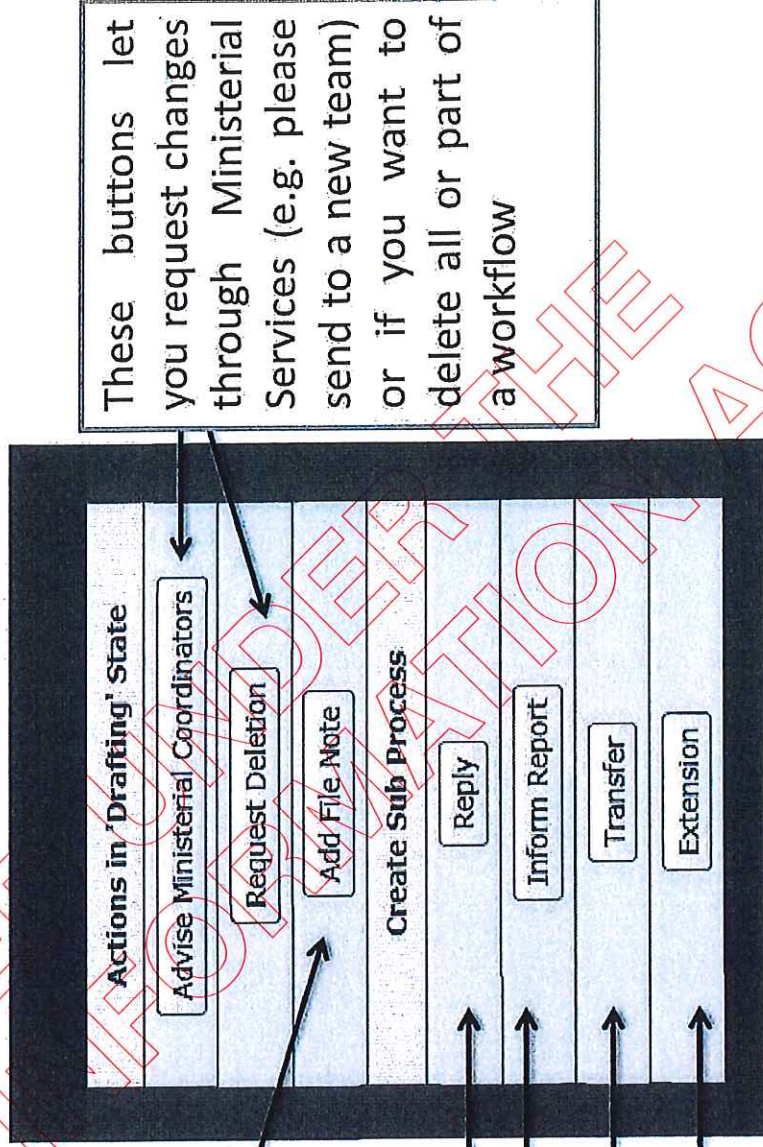
Other Buttons

Advise Ministerial Co-ordinator	Ask Ministerial/Co-ordinator to make Request NRR or to reassign it
Request Deletion	Ask for the workflow or subflow to be deleted
Add File Note	Create a File Note

OFFICIAL INFORMATION ACT
RELEASÉ UNDER THE

Creating Subflows for OIAs

OIAs have a *parent* workflow and multiple subflows, depending on individual requirements (e.g. Reply, Transfer, Consult, Extension)

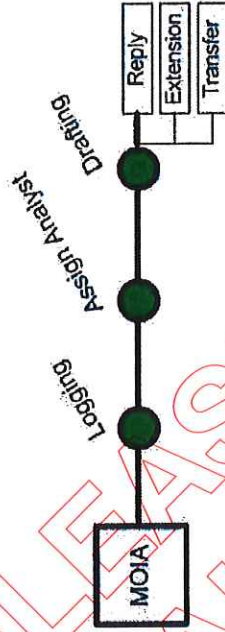


Generates a 'file note' document template

Use these buttons to generate any subflow templates you require. Speak to your Ministerial Services Team if you're not sure what you need




These buttons let you request changes through Ministerial Services (e.g. please send to a new team) or if you want to delete all or part of a workflow

MIN OIAs



Fifteen Working Days (to the Minister's office)

Stage	Responsible Staff	Actions
Logging	Ministerial Co-ordinator	<ul style="list-style-type: none"> Log new OIA Assign OIA to Manager, Research Analyst (someone from Ministerial Services), and TA
Assign Analyst	Ministerial Services/Manager	<ul style="list-style-type: none"> Assign OIA to Analyst (usually in Ministerial Services)
Drafting	Analyst	<ul style="list-style-type: none"> Add QA staff: <ul style="list-style-type: none"> Peer reviewer (content and proofread) Tim Ingleton (risk assessment) Other staff as necessary (e.g. Legal if there are proposed withholdings) Select appropriate subflow, as required:
Create a Reply / Transfer / Extension		
Drafting	Analyst	<ul style="list-style-type: none"> Draft the response document(s) Add related documents as required Add QA staff: <ul style="list-style-type: none"> Peer reviewer (content and proofread) Tim Ingleton (risk assessment) TA (formatting and proofread) Other staff as necessary (e.g. Legal if there are proposed withholdings) Skip formatting and send straight to QA

QA	QA Analyst	<ul style="list-style-type: none"> Review documents and record QA Note that the TA should do their QA last 	
		Send OIA reply to sign out	
Sign Out	Manager	Approve and sign out OIA reply	
Send	Formatting TA	Copy OIA reply and release documents and deliver to Ministerial Co-ordinator	
	Ministerial Co-ordinator	Send the OIA reply and information to the Minister's office.	
<i>Reply / Transfer / Extension</i>			
With Minister	Ministerial Co-ordinator	Will be considered by the Minister's office.	
Returned	Ministerial Co-ordinator	Returned (will be scanned and added to Moto)	

Other Buttons

Advise Ministerial Co-ordinator	Ask Ministerial Co-ordinator to make Request NRR or to reassign it
Request Deletion	Ask for the workflow or subflow to be deleted
Add File Note	Create a File Note