

RELEASE OF OFFICIAL INFORMATION UNDER THE OFFICIAL INFORMATION ACT 1982

RECEIVE REQUEST

A decision must be made on a request, and whether there will be any charge for the request (see note), within 20 working days unless request is transferred or an extension is available (see s15)

If request qualifies for an extension (request is for or involves a large volume of information or consultations are necessary) notification of extension of reasonable period of time must be given to requestor, within 20 working days of request being received (s15A). Only one extension may be given.

Is the request addressed to the correct agency?

NO

Transfer within 10 working days (s14)

YES

Is the requestor qualified to make the request under s12?

NO

Give reasonable assistance to the requestor (s13)

YES

Does the request relate to personal information about a natural person?

YES

Refer to Privacy Act (s12(1A) OIA)

NO

Is the request specified with due particularity?

NO

Give reasonable assistance to the requestor and invite them to clarify their request

YES

YES

Are there any conclusive reasons to withhold information under s6?

NO

Do any of the reasons for withholding information in s9 apply?

Delete or alter information that needs to be withheld, give reasons why and provide information on right to ask Ombudsman to investigate (ss17, 19)

Are there reasons in the public interest for release?

YES

Should the request be refused under s18?

NO

YES

NO

Release all other information in accordance with s16

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NOTE :

Refer to Ministry of Justice Charging Guidelines for Official Information Act Requests and Part A of the Ombudsmen Practice Guidelines for information on charging for the release of official information

If the request involves a political issue, is controversial or is addressed to a Minister it may be necessary to:

- Brief the Minister
- Consult, where appropriate
- Transfer, if appropriate

Key Provisions in the Official Information Act 1982

The overarching principle of the Act is “the principle of availability”, which requires that requested information “shall be made available unless there is good reason for withholding it” (s5). You should presume that information will be released, and then check to see whether the Act contains reasons that, on balance, suggest that the information ought to be withheld.

Possible reasons for withholding

Reasons that may provide “good reason for withholding” information are contained in sections 6, 7, 9, 10, and 18 of the Official Information Act.

Section 6 deals with information about New Zealand’s defence, security and international relations as well as maintenance of the law, safety of people and protection of the New Zealand economy; section 7 deals with information about the defence, security and international relations of the Cook Islands, Tokelau, Niue and the Ross Dependency; and section 10 concerns the existence of information. Sections 9 and 18 are usually the most relevant.

Note that when withholding information under section 9 you must be satisfied that there are no broader public interest factors that override the reason for withholding.

- **Section 9(2)(a)** – to protect the privacy of natural persons, included those deceased
- **Section 9(2)(b)** – to avoid disclosure of a trade secret or to protect the commercial position of the person who supplied the information, or who is the subject of the information
- **Section 9(2)(ba)(i) and (ii)** – to protect information that is subject to an obligation of confidence or that was or could be provided under legal compulsion, and where releasing the information would either prejudice the supply of similar information in the future and it is in the public interest that such information should be continue to be supplied, or would damage the public interest in some way
- **Section 9(2)(c)** – to avoid prejudice to health and safety measures
- **Section 9(2)(d)** – to avoid prejudice to the substantial economic interests of New Zealand
- **Section 9(2)(e)** – to avoid prejudice to measures that prevent or mitigate loss to the public
- **Section 9(2)(f)(i) and (ii)** – to maintain the current constitutional conventions protecting confidentiality of communications with the Sovereign and collective and individual ministerial responsibility. This includes the constitutional convention that requires all Ministers to support Government policy publicly, even if they are opposed to it privately. Thus, information that reveals the position of individual Ministers, especially where it shows they disagree with Government policy, may be protected under this subsection.

- **Section 9(2)(f)(iii) and (iv)** – to maintain the current constitutional conventions protecting the political neutrality of officials and the confidentiality of advice tendered by Ministers and officials. This may require withholding information on advice to Ministers when Ministers have not made up their minds on that advice. It only applies to advice that expresses an opinion on a possible course of action.
- **Section 9(2)(g)(i) and (ii)** – to maintain the effective conduct of public affairs through the free and frank expression of opinions. A high standard is required for this subsection to apply. It must be shown that releasing a free and frank opinion would in some way lead to less effective conduct of public affairs. The information should be released in the absence of compelling reasons for believing that releasing it would inhibit officials’ ability or willingness to advise freely. This section also protects Ministers, officials and employees from improper pressure or harassment.
- **Section 9(2)(h)** – to maintain legal professional privilege
- **Section 9(2)(i) and (j)** – to enable a Minister, department or organisation holding information to carry out commercial activities or negotiations
- **Section 9(2)(k)** – to prevent the disclosure or use of official information for improper gain or advantage
- **Section 18(a)** – that by virtue of section 6, 7 or 9 of the Act there is good reason for withholding the information
- **Section 18(b)** – the Minister, department or organisation does not confirm or deny the existence or non-existence of the requested information
- **Section 18(c)** – making the information available would be contrary to law or constitute contempt of Court or House of Representatives
- **Section 18(d)** – the information requested is or soon will be publicly available
- **Section 18(e)** – the document containing the information requested does not exist or cannot be found
- **Section 18(f)** – the information cannot be made available without substantial collation or research – it would be appropriate to ask the requester to narrow their request before refusing under this subsection
- **Section 18(g)** – the information requested is not held by the Minister, department or organisation and the person dealing with the request believes that the information is not held by any agency
- **Section 18(h)** – the request is frivolous or vexatious or the information requested is trivial

For further information see www.ombudsmen.govt.nz and www.justice.govt.nz