



# ACCESS TO PERSONAL INFORMATION UNDER THE PRIVACY ACT 1993

## RECEIVE REQUEST

Any individual (natural person) can make an information privacy request (s34).

Agencies must give reasonable assistance to the requestor to make the request in accordance with the requirements of the Act or direct the request to the appropriate agency (s38).

A decision must be made on a request within 20 working days unless the request is transferred or an extension is available (see ss39, 40, 41).

If the request qualifies for an extension under s41 (request is for or involves large volumes of information or consultations are necessary) notification of an extension of a reasonable period of time must be given to the requestor (within 20 days of receipt of the request).

Does the request relate to information about someone other than the requestor?

Yes

Refer to the Official Information Act 1982. See Allen+Clarke's free guide: *Release of Official Information Under the Official Information Act 1982*.

No

Is the request made to the correct agency?

No

Transfer within 10 working days (s39).

Yes

Is it likely that release would give rise to a prejudice under s27, or do any of the grounds for refusing the request in s29 apply?

Yes

No

Do any of the grounds for refusal specified in s28 apply?

No

Are there reasons in the public interest for release even if one of the s28 grounds apply?

No

Is it necessary to withhold all the information?

Yes

Give reasons for refusal in accordance with ss32 and 44.

No

Delete or alter information that needs to be withheld and give reasons why (s43).

Yes

Release information in accordance with ss40, 42 and 45 and charge if qualified to do so under ss35 and 36.

The Law Commission has reviewed the Privacy Act and its work could result in potential changes to privacy law. For more information see: [www.lawcom.govt.nz](http://www.lawcom.govt.nz)

NB. Section 7 provides that information may be withheld or released if required by any other enactment (Act or Regulation).



Principle 6 of the Act provides that an individual is entitled to obtain confirmation of whether or not an agency holds personal information about them and to have access to that information.

Reasons that may provide “good reason for refusing” access to personal information are contained in sections 27, 28 and 29 of the Privacy Act.

Section 27 deals with information about the defence, security and international relations of New Zealand, the Cook Islands, Tokelau, Niue and the Ross Dependency. It also covers disclosure of information likely to prejudice the maintenance of law or endanger the safety of an individual. Section 28 deals with trade secrets and section 29 covers other reasons such as confidentiality, minors, contempt of Court, frivolous requests and the information being too difficult to retrieve.

### 27 Security, defence, international relations, etc

- (1) An agency may refuse to disclose any information requested pursuant to principle 6 if the disclosure of the information would be likely –
  - (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 individual.
- (2) An agency may refuse to disclose any information requested pursuant to principle 6 if the disclosure of the information would be likely –
  - (a) to prejudice the security or defence of –
    - (i) the self-governing state of the Cook Islands; or
    - (ii) the self-governing state of Niue; or
    - (iii) Tokelau; or
    - (iv) the Ross Dependency; or
  - (b) to prejudice relations between any of the Governments of –
    - (i) New Zealand;
    - (ii) the self-governing state of the Cook Islands;
    - (iii) the self-governing state of Niue; or
  - (c) to prejudice the international relations of the Governments of –
    - (i) the self-governing state of the Cook Islands; or
    - (ii) the self-governing state of Niue.

### 28 Trade secrets

- (1) Subject to subsection (2), an agency may refuse to disclose any information requested pursuant to principle 6 if the withholding of the information is necessary to protect information where the making available of the information –
  - (a) would disclose a trade secret; or
  - (b) would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information.
- (2) Information may not be withheld under subsection (1) if, 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 the information available.

### 29 Other reasons for refusal of requests

- (1) An agency may refuse to disclose any information requested pursuant to principle 6 if –
  - (a) the disclosure of the information would involve the unwarranted disclosure of the affairs of another individual or of a deceased individual; or
  - (b) the disclosure of the information or of information identifying the person who supplied it, being evaluative material, would breach an express or implied promise –
    - (i) which was made to the person who supplied the information; and
    - (ii) which was to the effect that the information or the identity of the person who supplied it or both would be held in confidence; or
  - (c) after consultation undertaken (where practicable) by or on behalf of the agency with an individual's medical practitioner, the agency is satisfied that –
    - (i) the information relates to that individual; and
    - (ii) the disclosure of the information (being information that relates to the physical or mental health of the individual who requested it) would be likely to prejudice the physical or mental health of that individual; or
  - (d) in the case of an individual under the age of 16, the disclosure of that information would be contrary to that individual's interests; or

- (e) the disclosure of that information (being information in respect of an individual who has been convicted of an offence or is or has been detained in custody) would be likely to prejudice the safe custody or the rehabilitation of that individual; or
  - (f) the disclosure of the information would breach legal professional privilege; or
  - (g) in the case of a request made to Radio New Zealand Limited or Television New Zealand Limited, the disclosure of the information would be likely to reveal the source of information of a bona fide news media journalist and either –
    - (i) the information is subject to an obligation of confidence; or
    - (ii) the disclosure of the information would be likely to prejudice the supply of similar information, or information from the same source; or
  - (h) the disclosure of the information, being information contained in material placed in any library or museum or archive, would breach a condition subject to which that material was so placed; or
  - (i) the disclosure of the information would constitute contempt of court or of the House of Representatives; or
  - (ia) the request is made by a defendant or a defendant's agent and is –
    - (i) for information that could be sought by the defendant under the Criminal Disclosure Act 2008; or
    - (ii) for information that could be sought by the defendant under that Act and that has been disclosed to, or withheld from, the defendant under that Act; or
  - (j) the request is frivolous or vexatious, or the information requested is trivial.
- (2) An agency may refuse a request made pursuant to principle 6 if –
    - (a) the information requested is not readily retrievable; or
    - (b) the information requested does not exist or cannot be found; or
    - (c) the information requested is not held by the agency and the person dealing with the request has no grounds for believing that the information is either –
      - (i) held by another agency; or
      - (ii) connected more closely with the functions or activities of another agency.
  - (3) For the purposes of subsection (1)(b), the term evaluative material means evaluative or opinion material compiled solely –
    - (a) for the purpose of determining the suitability, eligibility, or qualifications of the individual to whom the material relates –
      - (i) for employment or for appointment to office; or
      - (ii) for promotion in employment or office or for continuance in employment or office; or
      - (iii) for removal from employment or office; or
      - (iv) for the awarding of contracts, awards, scholarships, honours, or other benefits; or
    - (b) for the purpose of determining whether any contract, award, scholarship, honour, or benefit should be continued, modified, or cancelled; or
    - (c) for the purpose of deciding whether to insure any individual or property or to continue or renew the insurance of any individual or property.
  - (4) In subsection (1)(c), medical practitioner means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine.

For further information see [www.privacy.org.nz](http://www.privacy.org.nz)

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