



<b>Report Title:</b>	Monitoring Official Information Act Performance and New Guidance on Media Requests		
<b>Report No:</b>	2023-0284		
<b>Date:</b>	20 December 2023		
<b>To:</b>	Hon Nicola Willis, Minister for the Public Service		
<b>Action Sought:</b>	Note this briefing	<b>Due Date</b>	19 January 2024
<b>Contact Person:</b>	Hugo Vitalis, Deputy Commissioner, Integrity, Ethics and Standards		
<b>Contact No:</b>	9(2)(a) privacy		
<b>Encl:</b>	Yes	<b>Priority:</b>	Low
<b>Security Level:</b>	IN CONFIDENCE		

## Executive Summary

1. This report outlines the Public Service Commission's work to monitor and improve agencies' Official Information Act 1982 (OIA) practices. It also advises on proposed guidance *Complying with the OIA – Responding to Media Requests*, which addresses the Chief Ombudsman's concerns about non-compliance.
2. We understand the Minister of Justice may be interested in reviewing the OIA. Should a review be implemented the Commission will work with the Ministry of Justice, as appropriate and keep you informed of any changes to our role within this context.

### *Monitoring and improving agencies' OIA practices*

3. Public reporting of data is an important lever for improving transparency, accountability and performance. The Commission collects and publicly reports OIA performance data every six months, covering January to June and July to December periods. We will brief you prior to each release in March and September.
4. The Commission reports data for 99 public service agencies. We use this data to work with individual agencies where changes in performance are identified. Data is also collected and reported separately for two non-public service departments (NZ Police and NZ Defence Force). The Commission does not collect data on Ministerial compliance with the OIA.
5. Since 2016, timeliness of OIA responses for public service agencies has improved from 91% to between 97-98% within legislated timeframes. Request volumes have increased by about 90%, from around 28,000 pa in 2016 to approximately 52,000 pa in 2023. We believe increased accessibility (such as the ability to make requests online) and awareness of the OIA have contributed to the volume increase.
6. Since 2022, the Commission has also collected additional data on timeliness and legislative compliance. In the six months to June 2023, average responses took 13.6 days. 7.5% of requests used extensions, 3.6% of requests were transferred, and 9.9% of requests were refused in full.

7. To support effective OIA practices across agencies, the Commission leads the Official Information Forum. This comprises three new practitioner training sessions and four community of practice sessions for experienced practitioners delivered annually.

*Complying with the OIA – Responding to Media Requests*

8. In 2022, the Chief Ombudsman published *Ready or Not?*, looking into the OIA practices of 12 Public Service agencies. It highlighted variability across agencies and has helped inform improvements. One area of concern for the Chief Ombudsman was agencies' compliance with the OIA when responding to requests from the media (e.g. ensuring reasons for any refusal are explained).
9. The Commission has developed new guidance *Complying with the OIA – media responses*, to provide practical advice on compliance. The Commission is intending to publish this guidance early in 2024. A copy is attached as appendix one.
10. A key risk is that straightforward media requests are delayed by now being referred to a more "formal" OIA process. The proposed guidance therefore emphasises that where information is readily available it should be provided without delay. We will monitor implementation to ensure the guidance is operating as intended.

## **Recommended Action**

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We recommend that you:

- a **note** we will brief you on public service agencies' OIA performance data, in March and September each year, ahead of publication.

*Noted*

- b **note** the Public Service Commissioner intends to publish new guidance *Complying with the OIA – media responses* in early 2024.

*Noted*

Hon Nicola Willis

**Minister for the Public Service**

## Purpose of Report

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11. This report provides you with an overview of the Commission's:
- role monitoring and supporting improved agency Official Information Act (OIA) practices, and
  - proposed guidance on *Complying with the OIA – Responding to Media Requests*, addressing the Chief Ombudsman's concerns about non-compliance.

## Background

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12. The OIA is an important part of New Zealand's constitutional framework. Its purpose is to progressively increase the availability of official information to the public, promoting public participation and government accountability. Effective and efficient agency practices are critical for achieving these objectives.
13. Since 2016, the Commission has been collecting and publishing data on OIA compliance.<sup>1</sup> The data is used to actively monitor changes in performance. The Commission follows up with agencies to understand any underlying issues and provide support as appropriate.
14. The data collected covers 99 public service agencies (e.g. departments, departmental agencies and Crown entities). OIA data for two non-public service departments (NZ Police and New Zealand Defence Force) is collected and reported separately by the Commission. Data relating to Ministerial compliance with OIA responses is not collected by the Commission.
15. We understand the Minister of Justice may be interested in reviewing the OIA. Should a review be implemented the Commission will work with the Ministry of Justice, as appropriate, and keep you informed of any changes to our role within this context.

## OIA monitoring and improving practices

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16. Since monitoring began in 2016, the rate of requests responded to within 20 working days by public service agencies (or within a lawful extension), has improved from 91%, to consistently over 97 percent or higher in the past three years. For the most recent collection (to June 2023), timeliness was 98.2%.
17. Over the same period, the volume of requests received has increased significantly. Public service agencies are now responding to almost 90% more requests. From 2016, volumes increased from about 28,000 pa (14,100 per six months) to approximately 52,000 pa in 2023 (26,505 in the six months to June). The highest number of requests recorded to date was 29,700, in the six months to December 2021.
18. In 2022, the Commission's data collection was expanded to cover the use of extensions, refusals, transfers and average response times [CAB-22-MIN-0168.01 refers]. The latest collection round (to June 2023) shows:
- Average time to respond was 13.6 days<sup>2</sup>
  - Extensions were used in 7.5% of requests
  - Transfers were used in 3.6% of requests

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<sup>1</sup> The Ministry of Justice administers the OIA. The Commission's monitoring and support role operates under section 46 of the OIA via delegation from the Ministry.

<sup>2</sup> The average response time includes extensions.

- Refusals in full were 9.9% of requested.<sup>3</sup>
19. At an aggregate level, the system is performing well. However, there are always areas for improvement. There can be considerable variation across agencies. With each data collection round, the Commission assesses how individual agencies are performing and provides support if it is needed.
  20. Data is also collected for complaints to the Ombudsman. In the period to June 2023, 217 complaints were notified to agencies for investigation. There were 69 deficiency findings issued against agencies by the Ombudsman (44 in the previous period). This represents 0.26% of the 26,505 requests completed in that period. Agencies at the forefront of the COVID-19 response, Ministry of Health and Ministry of Business, Innovation and Employment, were particularly affected. The increase in volume of requests received was a factor. Previously, deficiency findings were trending down as a percentage of requests completed.
  21. As noted above, the data for two non-public service departments is reported separately. In the period to June 2023, NZ Police completed 42,460 requests, an increase of 24% on the previous period. This increase in volume impacted resourcing and performance with 78.5% responded to on time. These issues are being addressed. NZ Defence Force completed 1,967 requests with 80.3% of these completed on time.

#### *Reporting*

22. The next reporting period covers July to December 2023 and will be published in March 2024, alongside the Office of the Ombudsman's complaints data. We will brief you ahead of publication.
23. The Commission also maintains a centralised list of proactive release locations for individual agency websites to support accessibility for members of the public. Proactive release supports open government and public trust and confidence. Agencies are expected to have policies and processes in place to ensure information held by them is considered for proactive release.
24. Agencies are encouraged to consider the proactive release of more OIA responses to foster openness and transparency. Proactive release of responses supports all New Zealanders to have access to information about government work programmes and services relevant to them. Proactive publication of responses by agencies decreased from 2,660 responses to 2,247 responses in the latest period. There can be good reasons for not publishing OIA responses (especially privacy issues), and proactive release decisions need to be made on a case-by-case basis. However, we will continue to encourage agencies to consider proactive release where appropriate.

#### *Building agency capability*

25. The Commission also leads a community of practice, called the Official Information Forum, to improve capability and therefore the quality of OIA practices. Seven Official Information Forums are held each year. Four are for experienced practitioners and are designed to share learning and practices from across agencies. New practitioner sessions are held three times

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<sup>3</sup> Not all agencies are able to provide reasons for refusal. Where information is available, the majority are that the information was not held, did not exist, was already in the public arena or would soon be publicly available.

a year and presented in partnership with the Office of the Ombudsman. Since 2019, the forum has grown from around 300 attendees across events to over 1000 attendees in 2023.

### ***Complying with the OIA – Responding to Media Requests***

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26. The Chief Ombudsman’s report *Ready or Not?* looked into the OIA practices of 12 public service agencies. A thematic report was also released. These reports have been picked up by agencies and improvements are being made.
27. One of the key themes identified was the handling of OIA requests from media. The report highlighted varied practices across the 12 agencies reviewed. In some cases, the Ombudsman raised a concern that there was a misconception that information requests received from media organisations were not OIA requests.
28. In his final report, the Ombudsman set his expectation that agencies need to comply with the OIA when responding to queries from media that contain an information request. In response, the Commission has developed guidance to improve practices.
29. The guidance is designed to support agencies to build an understanding of, and compliance with, aspects of the OIA that are relevant when responding to queries from media. For example:
  - providing responses as soon as reasonably practicable;
  - informing requestors of the reasons why information may have been withheld or refused and their right to complain to the Ombudsman; and
  - ensuring accurate records are maintained.
30. We consulted on the guidance with agencies across the Public Service, the Office of the Ombudsman, and the Media Freedom Committee (consisting of members from a range of media organisations). Feedback was largely focused on ensuring the guidance is clear about its purpose and supports agencies to understand the key elements of the OIA while enabling timely responses.
31. In developing new guidance, we were conscious of the need to balance meeting OIA requirements while ensuring the guidance does not unintentionally delay response times. The guidance therefore reiterates that information should continue to be provided quickly, and that compliance with the OIA does not mean every request needs to be transferred to a “formal” OIA process.
32. We have also acknowledged feedback from the Media Freedom Committee that agency compliance with best practice is critical. We will work with agencies to highlight this point and monitor the implementation to ensure the guidance is working as intended.

### Te ū ki te OIA – ngā urupare pāpāho Complying with the OIA – media responses



Te Kawa Mataaho  
Public Service Commission



*The spirit of the Act is about making official information more freely available, which is crucial for promoting good government and trust and confidence in the Public Service*

*- Public Service Commissioner Peter Hughes.*

The role of the media is crucial in a functioning, democratic society. It is essential for keeping New Zealanders informed, scrutinising decision-making and holding the Government to account.

People working across media teams play a key role in providing the media with information they need as quickly as possible, including when official information is requested. Media teams and the individuals within them seek to perform this role to a high standard. They are committed to providing timely, accurate information that supports transparency across the Public Service.

The Official Information Act 1982 (OIA) supports this role, particularly the [principle of availability](#) that requires information to be made available unless there is a good reason for withholding it.

Responding to information requests from the media allows the media to inform the public about agencies' work priorities, events and public services that are available. They also respond to any high-profile issues quickly and professionally, thereby helping to build and maintain public trust and confidence. Media teams play a role in supporting this function by providing requested information.

The Ombudsman has also discussed the importance of official information requests handled by media teams in the report *Ready or not?*<sup>4</sup>

### Te Whāinga | Purpose

This guidance is designed to support media teams to continue to perform highly while ensuring they are aware of the aspects of the OIA that may apply to their work from time to time including:

- providing responses as soon as reasonably practicable;
- informing requestors of the reasons why information may have been withheld or refused, and their right to complain to the Ombudsman; and
- keeping accurate records.

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<sup>4</sup> [Ombudsman - Ready or Not? OIA compliance and practice in 2022](#)

Current practices support compliance with the OIA. This guidance highlights some of the key areas teams should be thinking about to ensure compliance with both the letter and the spirit of the OIA.

When following this guidance, responses to media can and should continue to be provided quickly, utilising the relationships and processes agencies have in place. This does not mean that all requests received from media need to go through a “formal” OIA process or be transferred to OIA teams for response unless a request seeks information requiring further consideration or collation. Similarly, responses should only take the full 20 working days when required. Responses still need to be provided as soon as reasonably practicable.

### **Hei āwhea te Ture OIA ka whai pānga ki ngā tono a te hunga pāpāho? | When does the OIA apply to queries from media?**

Media queries that request official information, regardless of the channel it is received through (including written or oral requests), need to be treated in accordance with the OIA.

Official information is defined as any information held by an agency subject to the OIA (see [section 2](#)). Official information includes:

- documents, reports, memoranda, letters, emails and drafts
- non-written information, such as video or tape recordings
- internal rules, principles, policies or guidelines for decision-making.

Official information also includes information which is known to an agency and can be recalled but has not yet been written down. However, an agency is not required to create new information to respond to a request if the information is not already known.<sup>5</sup> For example, if an agency has not established a view or position on a matter (either written, or otherwise known) it is not obliged to form one to respond to an OIA request.

A requester does not have to put a request in writing. While it may be helpful for a requestor to follow up in writing, this does not need to happen for an agency to respond to an oral request.<sup>6</sup>

### **Hei āwhea te Ture OIA ka kore e whai pānga ki ngā tono a te hunga pāpāho? | When does the OIA not apply to queries from media?**

Not all media requests will include a request for official information. For example, the following types of requests are not covered by the OIA if an agency would need to create information or generate an opinion to respond:

- comment or providing an opinion on topical matters
- a response to claims or developing issues
- requests for interviews.

### **Ko te whakatau me te whakamōhio atu i te whakataunga | Making and communicating a decision**

*Provide reasonable assistance*

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<sup>5</sup> [Office of the Ombudsman's guide to information not held.](#)

<sup>6</sup> [Section 12 \(4\) and \(5\)](#) of the OIA may apply in some cases.

Agencies have a duty to [provide reasonable assistance to requestors](#). This is especially important if the agency cannot clearly identify what is being requested. If a request is too broad or unclear, then a discussion on how to narrow or clarify it may be appropriate.

Sometimes another agency may be best placed to answer some or all of the request. When providing assistance, it may be appropriate to suggest the requestor asks a different agency. In some cases, the requestor may prefer to ask a different agency directly, otherwise the agency should support the requestor by transferring the request under section 14 of the OIA.

#### *Respond as soon as reasonably practicable*

The OIA includes a requirement to make and communicate decisions [as soon as reasonably practicable](#).

This means requests that can be responded to immediately should be. Processes already used to provide responses quickly can and should continue. For example, if it is known that the information requested is already or soon to be publicly available, easily on hand or does not exist, the requestor should be informed at the earliest opportunity.

If a media organisation asks for information on a particular timeframe to meet internal deadlines, agencies should endeavour to meet their timing, if possible. If it is not possible, this should be communicated early. Options may include clarifying the request, providing some information by the deadline or rescoping.<sup>7</sup>

If a request is rescope or clarified, the timeframe for responding does not change unless the amendment or clarification is sought within 7 working days of receiving the request as set out in [section 15\(1AB\)](#).

#### *When a request may need additional consideration*

If the request is complex, covers a large amount of information or requires consultation, it may not be possible to provide a response immediately. However, it should still be provided as soon as reasonably practicable. In such cases, it may be appropriate for teams whose functions specifically include responding to OIA requests to have responsibility for responding. The subject and context of the request will help agencies decide what is a reasonably practicable timeframe.

If an extension of time to respond to an OIA is required, it must be for a reason set out in [section 15A](#) of the OIA, and this must be communicated to the requestor. Wherever possible, the need for an extension should be communicated early.

#### *If information is withheld or refused*

Information can be withheld or refused either partially or in full, if any of the grounds set out in either [section six](#), [section nine](#) (withholding) or [section 18](#) (refusing) the OIA apply.<sup>8</sup> When information has been withheld or refused, the OIA requires that the following must be communicated:

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<sup>7</sup> In some circumstances this will allow an agency to reset the maximum statutory time frame for responding to a request. However, all requests should continue to be completed as soon as reasonably practicable.

<sup>8</sup> If section 9 is used, there is a public interest test that must be considered. Ministerial teams are available to support the consideration of this section when required. [Section 7](#) may also be relevant in some cases.



- the reasons for the decision (as provided for in the OIA); and
- the right of the requestor to complain to the Ombudsman.

If the requestor asks, then an agency is also required to provide the grounds for relying on the relevant section which generally means that a more detailed explanation about the decision should be provided.

The use of templates or email footers can help ensure these steps are followed in each request. For example, an agency may include a link to their website where more information about the reasons for a refusal are provided.<sup>9</sup>

### *Record-keeping*

Sections [17\(1\) and \(2\)](#) of the Public Records Act 2005 require agencies to create and maintain a full and accurate record of its affairs in accordance with normal, prudent business practice. Records must be in an accessible form.

To meet these obligations and ensure decisions can be reviewed for reasonableness (for example if a complaint is received by the Ombudsman), records should include:

- the request and communications with the requestor, including the information provided;
- any decisions made, the reasons for them and the OIA grounds that have been applied;
- any consultation or other correspondence that was relied on in the process of responding;
- a written record, for example an email summary, if considerations and/or responses are given orally;
- the name and position of the decision-maker; and
- any other context that may be relevant.

One way of meeting this requirement is keeping a daily media log that clearly sets out requests and responses. It is likely a media log will include all queries received by a media team, not just those that request information. To ensure OIA requests can be easily identified, the log could include a column that indicates whether the request was an OIA or not. This way OIA requests can also be extracted for inclusion in OIA data that is reported centrally to Te Kawa Mataaho Public Service Commission.

### **Te kaupapahere pāpāho | Media policy**

As every agency has its own context and processes, policies may differ between agencies. Some may wish to consider establishing a policy or including a section in an existing policy that covers OIA requirements as they relate to media queries. For example, a policy might include some or all of the following:

- when a media request includes a request for information (refer to the section in this guidance *When does the OIA apply to queries from the media?*)
- the roles and responsibilities of different teams and functions within the agency

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<sup>9</sup> An example is available on the [Ministry of Social Development website](#). The Office of the Ombudsman also has template responses that may include helpful lines for use in some responses.

- the process for determining how different types or parts of a request will be handled – e.g. simple/quick turnaround responses and more complex requests that require consultation with, or referral to, other teams within the agency
- what needs to be communicated to requestors, especially if information within scope of the request is withheld or refused; including the applicability of the OIA to their request, grounds for any decisions made and the right to make a complaint to the Ombudsman. The policy could include example text for use in responses
- the expected process for recording any deliberations and decisions, including who has authority to approve responses
- the process for ensuring OIA requests handled by the communications team are included in the agency's overall OIA data reported to Te Kawa Mataaho Public Service Commission
- a checklist of points to consider when a media request is received. An example is provided below.

#### **Te Rārangī Arowhai | Checklist:**

#### **Ina tae mai tētahi tono nā te hunga pāpāho. Kua oti rānei i au | When a media request is received. Have I:**

- checked whether the query is a request for official information?
- understood the scope and nature of the request, or communicated with the requestor to clarify, if required?
- provided assistance to clarify, narrow or transfer the request, if required?
- followed OIA requirements to ensure a response is provided as soon as reasonably practicable, i.e. as soon as the information is available?
- engaged with others such as the ministerial services team to determine if further consideration is required?
- considered if anyone outside my organisation (such as the Minister's office) needs to know about the request or if other agencies need to be consulted?
- communicated with the requestor on the likelihood of being able to meet any deadlines they may have (for example a deadline for submitting a news article)?
- communicated with the requestor if an immediate response is not going to be possible?

#### **Ina tuku atu i te urupare. Kua oti rānei i au | When providing a response. Have I:**

- ensured there is a record of the request, response and reasons for any decisions made?
- communicated the reason for the decision and the right to complain to the Ombudsman if information is withheld or refused?