



5 June 2026

9(2)(a) privacy

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Official Information Request

Our Ref: OIA 2026-0109

I refer to your Official Information Act 1982 (OIA) request transferred to the Public Service Commission (the Commission) from the Minister for the Public Service and Digitising Government on 11 May 2026 asking to:

1. *Amend the Code to include an explicit standard requiring BORA compliance, referencing Sections 3(b), 5, and 6.*
2. *Reference external accountability bodies - Ombudsman, Human Rights Commission, courts - in the whistleblowing framework.*
3. *Confirm that professional obligations (medical, legal, ethical) prevail over the Code where they conflict.*
4. *Mandate regular BORA and common law rights training for all public servants, including the pivotal Fitzgerald validation in the Supreme Court, especially of those involved in policy, enforcement, and rights-affecting decisions.*
5. *Release all documents relating to the decision to exclude explicit BORA obligations from the Code - including Cabinet papers, legal advice, internal memoranda, and correspondence. Ms Collins, pursuant to the Official Information Act 1982, we request these documents formally and ask that they be provided in full.*
6. *Refer the Code to the Ombudsman and Human Rights Commission for independent review*

Our response

Our response addresses those matters that fall within the functions and powers of the Public Service Commissioner (the Commissioner) under the [Public Service Act 2020](#) (the PS Act). Under the PS Act, the Commissioner independently sets the standards of integrity and conduct and issues the guidance that together comprise the Code.

Matters raised in your letter relating to the COVID-19 response, including part seven of your request, fall outside the Commissioner's mandate and are therefore out of scope of our response. Parts one to six are addressed below.

Part one – Your request to amend the Code to include an explicit standard requiring New Zealand Bill of Rights Act 1990 (NZBORA) compliance, referencing sections 3(b), 5 and 6.

The Code was developed through a comprehensive consultation process, including consideration of NZBORA consistency. Agencies to which the Code applies were consulted, along with relevant stakeholders, including the Human Rights Commission. Consultation identified the key integrity and conduct standards and helped finalise the Code's content.

The Code is not intended to replace NZBORA obligations and expressly says that legislation prevails over the Code. Standard 2 of the Code requires public servants to act lawfully, which would include complying with NZBORA when performing their work role. It is the responsibility of each public sector organisation to ensure their employees are aware of how to comply with NZBORA. Standard 4 of the Code also reflects human rights framing by setting an expectation that public servants recognise and uphold the dignity of every person.

For these reasons, a separate or explicit NZBORA compliance standard has not been included and is not considered necessary at this time.

Part two – reference external accountability bodies – Ombudsman, Human Rights Commission, courts – in the whistleblowing framework

The Code is primarily intended to set integrity and conduct expectations for public servants, rather than to operate as a comprehensive guide to all possible accountability mechanisms available to the public.

The Code outlines that anyone can report concerns about behaviour or activities that they feel may breach the Code to the relevant Public Sector organisation in the first instance, since those are generally issues to be managed by the individual employer, i.e., the chief executive of the relevant Public Sector organisation. The Code also notes that serious wrongdoing may be reported to appropriate authorities listed in the Protected Disclosures (Protection of Whistleblowers) Act 2022 and provides a link to access that Act.

Part three – confirm that professional obligations (medical, legal, ethical) prevail over the Code where they conflict

Consistent with section 20 of the PS Act, the Code includes guidance on political neutrality which addresses the right to freedom of expression and the responsibilities of individuals who have obligations as a member of a profession (see: [The Code of Conduct for the Public Sector - Te Kawa Mataaho Public Service Commission](#), pages 16-18).

The Code does not establish a rule under which obligations under the Code prevail over professional obligations. However, the Code makes it clear that where professional obligations are legislative requirements, then those will prevail over the Code.

The Code recognises that public servants who are members of a profession may need to carefully navigate situations where professional and public service obligations intersect, because professional obligations apply concurrently to the Code. If there is inconsistency or conflict between professional obligations and the Code, the individual needs to raise this with their employer.

We intend to develop scenario-based guidance to support the Code's implementation for those with additional professional obligations, with an initial focus on the health sector.

The principle of political neutrality continues to be a fundamental expectation of public service conduct. The Code is supported by existing guidance issued by the Commission on this topic here: [Political neutrality for public servants as individuals - Te Kawa Mataaho Public Service Commission](#).

Part four – mandate regular NZBORA and common law rights training for all public servants

Decisions about training requirements sit with individual public sector employers.

Part six – refer the Code to the Ombudsman and Human Rights Commission for independent review

The Human Rights Commission was consulted during the development of the Code in accordance with section 17 of the PS Act as an agency to which the Code would apply. It is not generally appropriate to refer the Code to either the Ombudsman or the Human Rights Commission for an independent review, as this would not align with their respective statutory functions or with the purpose of the Code as a system-level standard issued by the Commissioner.

Appropriate mechanisms for scrutiny include consultation under section 17 of the Public Service Act 2020 (as noted above, this was conducted), periodic internal review led by the Commissioner, and parliamentary scrutiny through select committees as part of regular accountability processes (e.g., the annual review).

Information does not exist

Part five – release all documents relating to the decision to exclude explicit NZBORA obligations from the Code

There was no consideration of whether to exclude NZBORA obligations from the Code. In developing the Code, the Commissioner acted consistently with relevant provisions of the PS Act, including sections 20 and 22, which acknowledge NZBORA rights and require that guidance addressing political neutrality also address freedom of expression and professional responsibilities.

I am therefore refusing this part of your request under section 18(e) of the OIA on the grounds the information does not exist.

You may be interested in an OIA response regarding the Code that is published on the Commission's website at the link provided in the table below. Page 34 (paragraphs 12-15) of this link outline NZBORA considerations in relation to the Code:

Item	Date	Document Description	Website Address
1	23 January 2026	Memorandum to the Public Services Commissioner 'Code of Conduct for the Public	https://www.publicservice.govt.nz/assets/DirectoryFile/OIA-2026-0048-Information-request-

		Sector – decisions to set standards and issue guidance’ (Published via OIA 2026-0048)	regarding-the-Code-of-Conduct-for-the-Public-Sector.pdf
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If you wish to discuss this decision with us, please feel free to contact Enquiries@publicservice.govt.nz.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Please note that we intend to publish this response (with your personal details removed) on the Commission’s website.

Yours sincerely



Nicky Dirks
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Public Service Commission - Te Kawa Mataaho