



## PROACTIVE RELEASE OF OFFICIAL INFORMATION

<b>Version</b>	1	<b>Contact</b>	Manager, Ministerial and Executive Services
<b>Policy Owner</b>	Chief of Staff - Head of Service	<b>Approved</b>	January 2021
<b>SharePoint</b>	Ministerial Services	<b>Due for Revision</b>	January 2023

### Te Kawa Mataaho Public Service Commission’s commitment

Te Kawa Mataaho Public Service Commission’s (the Commission) is committed to supporting the principles of the Public Service Act 2020 and Official Information Act 1982 (OIA), by promoting open government and increasing the availability of information and the internal processes used to prepare information for publication.

### Principles

Open government is one [five principles](#) in the Public Service Act 2020 that underpins the public service as it “supports constitutional and democratic government, enables both the current Government and successive governments to develop and implement their policies, delivers high-quality and efficient public services, supports the Government to pursue the long-term public interest, facilitates active citizenship, and acts in accordance with the law”.

Proactive release is predicated on the [principle of availability](#) as described in the OIA:

- to progressively increase the availability of official information to the people of New Zealand to:
  - enable more effective public participation in the making and administration of laws and policies;
  - promote the accountability of Ministers and officials; and so enhance respect for the law and promote good government; and
- protect official information to the extent consistent with the public interest and the preservation of personal privacy except where there is a good reason to withhold the information.

Information of public interest that the Commission holds should be considered for proactive release on the Commission’s website in accordance with the timeframes established in this policy.

The Commission may choose to make redactions when proactively publishing information and may decide to release information in addition to what has been requested, and the rationale for withholding some information, so that the information can be placed in the proper context.

### Measures of Success

The Commission will regularly review the effectiveness of this policy. The success of this policy over time will be evidenced by the continued publication of official information, in scope of the policy as described below.

## Scope and Fit

This policy sets down the principles and processes to be followed when considering proactively releasing information.

Information considered for proactive release includes:

- **formal advice** to the Minister of the Public Service
- **titles of advice** provided to the Minister of the Public Service
- **OIA responses and information** that has been released by the Commission to an individual requester under the OIA
- **any other information released by the Chief Executive**, such as research reports or publications, information published in response to public interest, and information that is regularly requested from the Commission under the OIA

This policy covers all full-time staff, part-time staff, permanent and fixed term, and staff on secondment with the Commission.

**Official information** means any information held by a department or organisation or its employees, as defined by [section 2 of the OIA](#).

**Formal advice** to the Minister for the purposes of this policy means written advice from the Commission to its Minister(s) in the form of reports or briefings, but excludes administrative information, such as meeting arrangements and agendas, speaking points, aide memoires and event run sheets.

**Information released by the Chief Executive** means official information released at their discretion which the Commission believes to be of interest to the wider public, including corporate information such as strategic intentions; Chief Executive appointments; terms of reference and findings from investigations; government formation information; OIA statistics.

## Cabinet Material and Briefings to Incoming Ministers are excluded

Only Ministers may approve the proactive release of Cabinet material. Further information on the expectations, processes and responsibilities regarding a Minister's decision to proactively release Cabinet material and for it be published online can be found in [Cabinet Office Circular \(18\) 4](#).

The decision on whether Briefings to Incoming Ministers (BIMs) will be proactively released is a matter for Ministers, not the department or agency (refer to the [Cabinet Manual 3.19](#)).

## Consultation

All parties involved in the creation of the document being considered for release should be consulted or informed of the Commission's intention to publish the information.

Consultation should all occur (where possible) with individuals named in any of the documents proposed for release, even where it is not proposed that their name be released.

### Consultation with Ministers

If release of the information is likely to attract public comment, the relevant Minister must be informed of the release at least five working days before the information is due to be released. In the case of **formal advice**, the Minister will have the opportunity to agree or disagree to the information being proactively released.

## Due diligence

Proactive release is different from releases under the OIA. It is a decision of the chief executive or the Minister to release the information in the interest of transparency, to enable the public to understand decision making and to strengthen the accountability of decisions makers and advisors. It therefore does not have the same protections from sanctions that apply to information released under the OIA ([section 48](#)).

The normal assessments for releasing official information are to be followed. This is supplemented by a risk assessment to address the issue that protections from civil or criminal liability are not available when proactively releasing official information, including:

- assessing the potential effect of releasing the information in good faith;
- reviewing the information by applying the principles of the OIA, the Privacy Act 1993, and the Protective Security Requirements to the information;
- considering whether the documents contain any information that would be withheld if it was requested under the OIA;
- considering whether the documents contain any information that must be withheld under the terms of any other legislation;
- considering any potential liability (civil or criminal) that might result from the proactive publication of any official information (for example, defamation, copyright, privacy or breach of contract)
- considering if any other contextual information is required to make sense of the information.

A checklist of possible considerations is attached as Appendix 1.

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

However, when considering publishing personal information about an official they should conduct a thorough risk assessment, including consulting the official to check whether they are comfortable with publication of their personal information.

If it is considered in the public interest to publish the name of an official from another agency (for example a document relating to a cross-agency work programme), consultation with the relevant agency must occur.

See the [guidance from the Office on the Ombudsman](#) on names and contacts details of public sector employees.

## Publication

Information for proactive release is prepared for publication by Ministerial and Executive Services Team.

**Formal advice to Ministers** which has been approved for release will be published at the earliest opportunity, but no later than the end of the month following that during which it was approved by the relevant Minister (subject to a final risk assessment). It is published on the Commission's Proactive Releases webpage.

There will be some material that may not be appropriate for proactive release within the above timeframe, given particular timing sensitivities.

For example:

- advice that is still under active consideration
- advice that relates to other decisions that are to be publicly announced, but where the announcement is scheduled to take place outside the policy timeframe.

Where a decision is taken to delay release the decision should be recorded including when the information may be released.

Publication of **OIA responses** should generally occur within a month of the response being given to the requestor but no sooner than one day after, to provide the requestor time to consider the response. They are published on a dedicated page on the Commission's website.

**Other information released by the chief executive** will be released at a date determined by the chief executive.

**Where information is being withheld** reference to the legislative authority or other reason under which the decision to withhold was made should be stated in the body of the text at each deletion point. Most commonly this will refer to the relevant section of the OIA. See appendix 1.

Publication will be actioned by the Information and Technology Services team at the request of Ministerial Services.

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

## Update of information published

If redactions have been made to documents which have been proactively released and it is determined at a later date that more information can be made available, the Commission may revise and update the published information.

When an OIA response is successfully challenged with the Ombudsman a new version of the response will be published.

## Further information

### Related Legislation

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

### Related Guidance

- [Cabinet Manual](#)
- [Ministry of Justice Guidelines on Charging](#)
- [Office of the Ombudsmen OIA Guides](#)
- [Standards of Integrity & Conduct for the State Services](#)
- [OIA guidance for agencies](#)
- [Maintaining Confidentiality of Government Information](#)
- [SSC Policy and Instrument of Delegation](#)
- [Proactive release of official information – agency guidance](#)
- [Names and contact details of public sector employees](#)

### Contacts

For help with:

- processing and handling issues - contact Ministerial and Executive Services team.
- any other queries, including interpreting the OIA, contact the Legal team.

## Appendix 1: Assessing information for proactive release

Consider whether the information proposed for release would have been released or withheld if the information had been requested under either the OIA or, in the case of personal information, the Privacy Act 1993.

Key question	What to consider	Supporting guidance
<p><b>OIA</b></p> <p><i>Does the material contain any information that would have been withheld if the information had been requested under the Official Information Act?</i></p>	<p>The withholding grounds in the Official Information Act (<a href="#">section 6</a>, <a href="#">section 7</a>, and <a href="#">section 9</a>) need to be taken into account to ensure that proactive publication does not prejudice one of these interests. In general terms, the interests protected by the withholding grounds in the OIA include:</p>	<p>The Ombudsman has published guidance on <a href="#">Conclusive reasons for withholding official information</a> (section 6 of the OIA).</p>
	<p>6(a): National security or defence of New Zealand, and international relations.</p>	<p>This type of information must be managed in accordance with the <a href="#">New Zealand Government Security Classification System</a>, the <a href="#">Protective Security Requirements</a> and the <a href="#">New Zealand Information Security Manual</a>.</p>
	<p>6(c): Maintenance of the law, including preventing, investigating and detecting offences, and the right to a fair trial</p>	
	<p>6(d): Health and safety of the public</p>	
	<p>6(e): Damage to New Zealand's economic interests</p>	
	<p>7(a): Security or defence of the Cook Islands, Niue, Tokelau and the Ross Dependency</p>	<p>See national security and international relations above.</p>
	<p>9(2)(f)(iv): Constitutional conventions protecting for the time being the confidentiality of advice tendered by Ministers and officials</p>	<p>The Ombudsman has published guidance on <a href="#">The OIA and the public policy making process</a> and <a href="#">Free and frank opinions</a>.</p> <p>The SSC has published guidance on <a href="#">Free and frank advice &amp; policy stewardship</a>.</p>
	<p>9(2)(a): Personal privacy (refer to the next section on Privacy)</p>	<p><a href="#">Section 6</a> and <a href="#">Part 4</a> of the Privacy Act 1993.</p>

Key question	What to consider	Supporting guidance
	9(2)(ba): Confidentiality	The Ombudsman has published guidance on the <a href="#">Confidentiality withholding ground</a> in the OIA.
	9(2)(b)(ii): Commercial information	The Ombudsman has published guidance on the <a href="#">Commercial withholding ground</a> in the OIA.
	9(2)(h): Legal professional privilege. Agencies and Ministers have the same rights as private organisations to obtain legal advice. If the information proposed for release may be considered to be covered by legal professional privilege, it will not be appropriate for release unless it has been reviewed by the Crown Law Office and the Attorney-General has approved a legal waiver of legal privilege.	Refer to the Cabinet Manual's <a href="#">Guidelines for the presentation of legal advice</a> to ensure legal advice is clearly identified and separated so it can be easily redacted.  The Ombudsman has published guidance on <a href="#">Legal professional privilege</a> .
	<i>Public interest test</i> The public interest test still should be looked at with proactive releases where information is being considered for withholding. The public interest test involves three steps: <ul style="list-style-type: none"> <li>• Identifying the relevant public interest factors for disclosure</li> <li>• Identifying any relevant public interest factors against disclosure</li> <li>• Assessing whether the public interest against disclosure outweighs the public interest in favour of disclosure</li> </ul>	The Ombudsman has published guidance on <a href="#">the public interest test</a> .
<b>Privacy</b> <i>Is there a privacy interest in the information proposed for release?</i>	When considering personal privacy in relation to the proactive release of information, the disclosure standards in the Privacy Act 1993 must be taken into account. Consider whether there is a need to redact information to protect personal privacy and/or whether the information should be released at all.  Consult with all individuals/companies named in any information proposed for release (even if it is not proposed to release their name).  If considering publishing personal information about officials (e.g. their name/email	<a href="#">Section 6</a> and <a href="#">Part 4</a> of the Privacy Act 1993.  The Office of the Privacy Commissioner <a href="#">Codes of practice that become law</a> and other guidance including <a href="#">A quick tour of the privacy principles</a> .

Key question	What to consider	Supporting guidance
	address/phone number), a risk assessment should be carried out and confirmation sought from the individuals concerned that they are comfortable with the publication of their personal information.	

### Other considerations

The following guidance provides information on some other generic risks that may need to be considered before proactively publishing information. It does not provide an exhaustive list of risks that apply to the proactive release of information as these can take a number of forms, depending on what and how the information is published.

Key question	What to consider
<p><b>Contractual obligations</b></p> <p><i>Is there a contractual interest in the information proposed for release?</i></p>	<p>Consider whether there is a need to redact information to protect contractual obligations and/or whether the information should be released at all.</p>
<p><b>Copyright</b></p> <p><i>Is any of the information proposed for release subject to copyright?</i></p>	<p>If the information proposed for release is the creative work of others, their trademarks, or certain confidential business information, the owner of the information must give permission before it can be published.</p> <p>Where the Crown holds copyright, information will be made available on open licensing terms (where possible).</p> <p>The <a href="#">New Zealand Government Open Access and Licensing framework</a> provides guidance for releasing copyright works and non-copyright material for re-use by others.</p>
<p><b>Defamation</b></p> <p><i>Does the information proposed for release say or do something that may potentially harm the reputation of another person, group, or organisation?</i></p>	<p>Ensure that the risks of defamation are understood, and that the information is thoroughly assessed for this risk when considering information for publication. Seeking legal advice.</p>
<p><b>Other legislation</b></p> <p><i>Does the material contain any</i></p>	<p>Other legislation may also need to be taken into account if the material contains information that must be withheld under the terms of that legislation. Seeking legal advice.</p>

*information that  
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any other  
legislation?*