



# Processing an Official Information Act Request

## PRACTITIONER GUIDANCE

This guidance provides an overview of the steps involved in responding to a request for official information. It provides hints and tips to help you complete requests in a timely and effective way.

### What you need to know

- All information held by an agency subject to the Official Information Act 1982 (OIA), or a Minister of the Crown in his or her official capacity, is official information.
- A request for official information does not need to refer to the OIA, can be communicated by any means (including orally or by social media) and can be made to any person in the agency.
- You must make a decision about whether you will release the information requested and communicate it to the requester 'as soon as reasonably practicable' and no later than 20 working days after the request is received unless you have extended the time limits for response.

### Key timeframes

- The working day count starts the day after a request is received by an agency.
- If a request is refined within seven working days it can be treated as a new request.
- You have ten working days to transfer a request unless you extend the time limit to transfer.
- You have 20 working days to extend the time limit for making and communicating a decision to the requester.
- You have 20 working days to make and communicate a decision to the requester unless you extend the time limit.

## AIM TO COMPLETE THE FIRST FIVE STEPS IN THREE DAYS

- |   |                                                 |    |                                                              |
|---|-------------------------------------------------|----|--------------------------------------------------------------|
| 1 | Consider the request and who should respond     | 7  | Extend the time limit, if necessary                          |
| 2 | Allocate responsibility and acknowledge request | 8  | Draft the response                                           |
| 3 | Scope the response                              | 9  | Consult or notify the Minister, if appropriate               |
| 4 | Establish a timeline                            | 10 | Obtain approval and send the response                        |
| 5 | Gather relevant information                     | 11 | Consider publishing response and information on your website |
| 6 | Analyse and consult                             | 20 | Meet the 20 working day timeframe.                           |

# 1 CONSIDER THE REQUEST AND WHO SHOULD RESPOND

When your agency receives a request, you should consider what the requester is asking for and who might be best placed to respond.

If you are not the right agency to respond to the request you must transfer the request within ten working days unless you have extended the timeframe to make a transfer (see top of page 3).

## Requests that are unclear

Requesters must ensure that their requests are made with 'due particularity' (section 12 of the OIA). 'Due particularity' means a request has enough detail to enable an agency to identify the information requested. Agencies should not have to make any unsupported assumptions about the information the requester wants. (Note that requests where a response would involve substantial collation or research are handled differently - the legislation has other ways to deal with these requests). If the request has not been specified with 'due particularity', you must help the requester make their request in a way that enables your agency to identify the information the requester is seeking (section 13 of the OIA).

If a request is amended or clarified within seven days after the date it is received, that request may be treated as a new request and the time limit for the response refreshed. However, this does not apply if your agency or Minister seeks the amendment more than seven working days after receiving the original request. (See section 15(1AA) and 15(1AB)).

## Requests for information your agency may not hold

Identify if your agency holds the information or if another agency or Minister should respond.

If a request is seeking information your agency doesn't hold (or only partially holds) get in touch with other agencies to find out where the information is held and transfer the request. If the information is spread across multiple agencies you may need to respond to part of a request and transfer the remainder.

## Requests for personal information

Requests made by or on behalf of natural persons for personal information about themselves must be considered under the Privacy Act 1993 rather than the OIA. The Office of the Privacy Commissioner has advice for agencies on how to respond to a request for personal information.

## Requests for reasons for decision or recommendation

A request to an agency for a statement of the reasons why an agency made a decision or recommendation in respect of the requester can be made under section 23 of the OIA. The OIA doesn't define what types of decisions or recommendations a request can be made about. These requests are different from other OIA requests because the section requires agencies to create a statement of the reasons why a decision was made. The same time limits that apply to other types of OIA requests apply to these requests. The response to the requester must:

- Be in writing;
- Include the findings on material issues of fact;
- Refer to the information on which the findings were based (with limited exceptions);
- Set out the reasons for the decision or recommendation.

The [Office of the Ombudsman](#) has published additional guidance on how to respond to a section 23 request.

## Requests for information by a body corporate

[Part 4 of the OIA](#) deals with access to personal information by body corporates. There are different rules that set out how you must respond to a request by a body corporate and when you can withhold information. The [Office of the Ombudsman](#) publishes guidance on how to respond to a request by a body corporate.

## Transferring a request (section 14 of the OIA)

You must transfer a request where:

- your agency doesn't hold the information, but it is held by another agency or by a Minister, or
- the information is more closely connected with the functions of another agency or with the functions of a Minister.

A transfer must be completed within ten working days of an agency receiving the request unless you have extended the transfer time limits. Information about transfers can be found [here](#).

### Requests for Cabinet material

All Cabinet material produced for the current Minister should be considered the property of the Minister (Cabinet Manual, Chapter 8). Any requests for Cabinet material should be transferred to the Minister or, at the very least, the Minister needs to be consulted before its release. The Cabinet Office can provide general guidance to agencies if they have queries about the release of Cabinet material.

If you receive a request for Cabinet material from a previous administration, advise the Cabinet Office as soon as possible. The Cabinet Office, on behalf of the Prime Minister, will consult the Leader of the Opposition about the proposed release. In this situation, you may need to extend the time limit for decision-making on the request.

## 2 UPDATING A REQUESTER ABOUT THE PROGRESS OF A REQUEST

Allocate responsibility for answering the request (to an individual or area) as determined by your agency processes.

Send an email or letter (depending on the method the requester used to contact you) to the requestor, acknowledging that you have received the request.

The acknowledgement letter should include:

- the date your agency received the request;
- that your agency will try to respond as quickly as possible and give the latest date they can expect a response by;
- that your agency will extend the time limits if a response can't be provided by that date;
- the name and contact details of the person managing the request.

## 3 SCOPE RESPONSE

Identify the information within the scope of the request

1. Read the request carefully and identify anything that seems unclear.
2. If there is any ambiguity, consider consulting the requester. Guidance on contacting requesters can be found on SSC's website. Clarification of a request must take place within seven working days, if the amended request is to be treated as a new request.
3. Think about the context. Use this to think about what the requester may want to know.
4. Identify and consult with people in your agency who may know what information exists (and where it is located).

It may be helpful to share the scope of your response with the requester. This can be an opportunity to explain the volume of the information requested (if it's large) and identify things that they might not need or want to receive.

On scoping the request, you may identify that the request will require substantial collation or research to respond. A request may be refused on this ground. See [section 18\(f\)](#) of the OIA.

However, before doing so you must consider whether the request could be processed with a reasonable extension of the time limit, by fixing a charge, or by consulting with the requester to help them make a request that would not involve [substantial collation or research](#). For more advice, see guidance in this series on substantial collation or research.

**TIP:**

Get early management approval of the scoping for agency requests, or, early Ministerial approval for Ministerial requests.

## 4 ESTABLISH A TIMELINE

### Developing your timeline

Work out your timeline by going backwards from the maximum due date, leaving a buffer of at least two days in case there are delays. If you can prepare a timeline that allows the request to be answered sooner than 20 days, you must do so.

The Office of the Ombudsman has a [calculator](#) to help you work out when the 20 working day count ends.

If you have contacted the requester [within seven days of receipt](#) and clarified the information needed, you can treat the amended request as a new request and adjust the timeline.

### Be flexible

The process is not linear and some steps may be undertaken concurrently. You may need to revisit previous steps in light of what emerges later.

### Agency response timeline

- Gather relevant information (step 5)
- Analyse and consult (including with Minister, if appropriate) (steps 6 and 9)
- Draft response (step 8)
- Provide draft to Minister, if appropriate (step 9)
- Obtain approval and send response (step 10)

### Ministerial response timeline

- Confirm approach with Minister's office (this should have been done during scoping – steps 3 and 9)
- Gather relevant information (step 5)
- Analyse and consult (step 6)
- Draft response (step 8)
- Provide draft to Minister for review (step 9)
- Provide final copy to Minister if changes made (steps 9 and 10)
- Minister's office sends response

## 5 GATHER RELEVANT INFORMATION

Search relevant physical and electronic locations. Don't hesitate to get specialist help from subject matter experts, records or IT staff.

Note that information held by external contractors is considered to be held by the contracting agency.

Identify papers that may need to be consulted on or consider whether the request or part of the request may need to be transferred to another agency or Minister.

As you collate the documents, insert them into a table to help stay organised and to include in the response, if needed.

Consider keeping a record of your searches. In the event that no relevant information is held, it may be helpful to record that all reasonable efforts have been made to locate the information in case the Office of the Ombudsman ends up investigating a complaint.

### Record keeping

Make as many copies of the full set of documents as required to meet your agency's sign out and filing requirements.

Make sure you make copies of:

- the original documents within the scope of the request;
- copies of documents marked up with proposed deletions and the withholding or refusal grounds that apply to those deletions; and
- final copies of documents with deletions in them.

These may be electronic or hardcopy documents, depending on your agency's system.

Keep a full set of documents as this is best practice and you will need these if there is an investigation by the Office of the Ombudsman.

## 6 ANALYSE AND CONSULT

In consultation with relevant colleagues, decide what information you will release and if any of the information should be withheld or if the request will be refused.

Remember that the OIA is based on the principle of availability:

Official information shall be made available unless there is a good reason for withholding it.

Consult with other agencies about material that relates to them (that is, papers that other agencies have written or helped write, or are affected by) to determine what information they consider should be released or withheld, and the reasons for this.

Look at the criteria for refusing or withholding official information. They can be found in sections 6, 7, 9 and 18 of the OIA.

### TIPS:

- Involve a senior or more experienced team member throughout the process.
- Involve subject matter experts.
- If in doubt about anything, get a peer review from your legal team.
- Use previous OIA responses from your team or agency for guidance.
- Mark up any potential redactions and the grounds under which you are considering withholding the information (some agencies will have redaction software that allows this process to take place electronically).
- Keep a record of who you consulted with and what their advice was.
- Keep a record of the final decision on the request and how you came to this decision.

## The public interest test

If you decide to withhold information under any of the [section 9](#) withholding grounds you must also apply a 'public interest test'. This means that agencies must balance the public interest in disclosing information against the need to withhold it. If the public interest in the information outweighs the harms that may arise if the information was released, the information should be released. The [Office of the Ombudsman](#) provides detailed guidance on how they have interpreted the public interest test.

## 7 EXTEND THE TIME LIMIT IF NECESSARY

You can extend the time limit at any point before the original 20 days end. Where it is obvious at the start that an extension will be required, inform the requester of this decision as early as practical.

Where this is not the case, it is best practice not to extend until you have already, in good faith, tried to process the request. This way you will have a good idea of how long to extend the time limit.

You must inform the requester when extending the time limit. Your letter must:

- state the period of extension, which must be reasonable in the circumstances
- give the reasons for the extension
- tell the requester they have the right to complain to the Ombudsman about the extension.

SSC has published more detailed information about [extensions](#) and how they can be used.

### NOTE

Extending the time limit relates to extending the time limits to make and communicate a decision to the requestor. The information being provided may subsequently be provided, without undue delay, after the decision has been communicated to the requester.

## 8 DRAFT THE RESPONSE

Your draft response to the requester should explain what decision you have made on their request.

Be upfront about the parameters you set during scoping. If you're withholding or refusing information, list the reasons why and refer to the relevant withholding and/or refusal grounds.

You must tell the requester that they have the right to complain to the Ombudsman if you have refused or withheld information.

You could also explain any relevant context, which may help minimise any risks associated with the release of information. Photocopy the redacted copies of any documents onto paper with a 'released under the OIA watermark.

At this stage, you may wish to discuss with relevant parties, including your Minister, the option of publishing the response and information after this has been provided to the requester.

### Timeline check-in

When you're drafting the letter, make sure you include time for peer review, management approval, possible Minister's office consultation or notification, sign-out etc.

## 9 CONSULT OR NOTIFY MINISTER, IF APPROPRIATE

Depending on whether it is an agency or Ministerial OIA request, the response may have to be sent to the Minister's office for consultation, notification, or approval if it's a Ministerial OIA.

The [Cabinet Manual](#) (para 8.50-8.54) provides more detailed information on ministerial consultation and the 'no surprises' principle.

### Consulting the Minister on agency OIA requests

An agency should consult its Minister if the request relates to the Minister's function or involves Cabinet material. It should be clear that the agency is consulting rather than providing the request for the Minister's information, and sufficient time should be allowed for the Minister to raise any concerns about the proposed decision. In some instances, it may be appropriate to transfer the request to the Minister's office.

### Notifying the Minister about agency OIA requests and responses

An agency may notify its Minister about any request for official information it receives. An agency should inform its Minister if it intends to release any information that is particularly sensitive or potentially controversial, in accordance with the "no surprises" principle (see [Cabinet Manual paragraph 3.22](#)). The decision on how to respond to an agency OIA request must only be made by the agency.

Generally, a Minister requires five days to look at a proposed response, but check how it works in your agency. Due to its workload, you need to be prepared for the Minister to take longer than expected. You also need to make sure you will have enough time to make any changes the Minister asks for (if it's a Ministerial request) or to consider changes (if it's an agency request), without breaching the statutory time limit. Check in on progress with the Minister's office after a couple of days.

## 10 OBTAIN APPROVAL

**Make sure you have factored your agency's sign-out process into your timeline.**

Your agency is likely to have a specific process for sending responses that you will need to be familiar with.

## 11 CONSIDER PUBLISHING THE RESPONSE AND INFORMATION

The State Services Commission encourages agencies to consider whether responses to OIA requests should be [published](#) in line with the OIA's purpose to make official information more freely available.

### MORE INFORMATION

This document and other guidance produced in this series can be found on [SSC's website](#).

The [Office of the Ombudsman](#) publishes guidance on how the Office has dealt with complaints under the OIA and can help government agencies by giving advice on OIA requests and issues.

The [charging guidelines](#) for OIA requests (which apply to all agencies that are subject to the OIA) can be found on the Ministry of Justice's website.

The [Cabinet Manual](#) provides information on Cabinet material and the 'no surprises' principle.