

17 June 2022

s 9(2)(a)

By email: s 9(2)(a)  
Ref: H202206634

Tēnā koe s 9(2)(a)

### Response to your request for official information

Thank you for your request under the Official Information Act 1982 (the Act) to the Ministry of Health (the Ministry) on 19 May 2022. You requested:

*“Information concerning the Ministry of Health’s performance since 29 November 2017 concerning its processing of Official Information Act requests, including any statistical information concerning the number of requests received versus the number of extensions applied; Information identifying what the Ministry has done in consequence of the Government’s commitment of being “the most open, most transparent Government that New Zealand has ever had.”*

On 21 May 2022, under section 15(1AA) you amended your original request by adding an additional question:

*Please supply any statistical and/or other data justifying the following statement: “Due to the COVID-19 global pandemic response, the Ministry is experiencing significantly higher volumes of queries and requests for information. If we are unable to respond to your request within this time frame, we will notify you of an extension of that time frame.”*

On 23 May 2022, the Ministry sought under section 15 of the Act to clarify the first part of your request and particularly the statistical information you were seeking. The Ministry also advised that information was publicly available on the Public Service Commission website.

On 24 May 2022 you responded:

*Concerning your first point, I am happy for the requests to be dealt with jointly, although I would note that my second request was not in fact a modification of my first request, but rather a new (albeit related) request.*

*On your second point, I want to understand a number of points, namely:*

- *Whether the claim that the Ministry has been processing substantially more requests owing to the pandemic can be substantiated;*
- *Whether extensions of time have become more routine over time.*

*In relation to the second point above, I would be interested in any reports the Ministry has to hand concerning processing performance, and any internal strategies or memoranda or other information concerned with reducing the Ministry’s dependence on applying extensions. The statistical information I am interested in specifically relates to the Ministry’s dependence on the statutory provisions for extending processing timeframes (e.g. as a proportion, how many requests have been processed after an extension to the*

*processing timeframe has been applied by the Ministry, and how has this shifted over time).*

Under section 15 of the Act, your clarified request of 24 May 2022 became a new request for the purposes of the Act. This therefore required the Ministry to respond to your request no later than 21 June 2022.

I will respond to the various parts of your clarified request in turn.

Information about the number of requests under the Act the Ministry receives, and the number that are extended, is publicly available. Every year, the Ministry responds to a series of standard questions from Parliament's Health Committee through the Annual Review (of the Ministry's Annual Report) and Estimates (of proposed spending) processes. The Estimates questions to 2021 are available on Parliament's website at:

[www.parliament.nz/resource/en-NZ/53SCHE\\_EVI\\_111462\\_HE3626/8f2020b98b6241b4ec74e2d727e38604358432e6](http://www.parliament.nz/resource/en-NZ/53SCHE_EVI_111462_HE3626/8f2020b98b6241b4ec74e2d727e38604358432e6) (please refer to page 105). The 2022/23 Estimates of Appropriations will be published in the next two months. Previous years' responses are available at: [www.parliament.nz/en/pb/sc/scl/health/](http://www.parliament.nz/en/pb/sc/scl/health/).

You have asked for information about what the Ministry has done to be open and transparent. The Ministry takes its responsibilities under the Act seriously and its commitment to making information available to the public. In June 2021, the Ministry adopted its first Official Information Act Policy, which is publicly available at: [www.health.govt.nz/about-ministry/contact-us/official-information-act-requests](http://www.health.govt.nz/about-ministry/contact-us/official-information-act-requests). Additionally, in April this year, in keeping with Commitment 2 of the Open Government Partnership National Action Plan 2016-2018, the Ministry adopted its first Proactive Release Policy. The Policy is released to you in full as document 1. In addition to publishing responses to requests under the Act, the Ministry publishes a wide range of information on a host of health and policy issues that is available at: [www.health.govt.nz/about-ministry/information-releases](http://www.health.govt.nz/about-ministry/information-releases).

You have sought information justifying the Ministry's statement that it has received significantly higher volumes of requests recently. This information is publicly available in the statistics published every six months by the Public Service Commission. Those statistics show that in the six months to 31 December 2019 – immediately before the global COVID-19 pandemic – the Ministry completed 649 responses, of which 97.1 percent were completed within statutory timeframes (including extensions). Two years later, in the six months to 31 December 2021, the Ministry completed 2720 responses, with 93.9 percent completed within statutory timeframes (including extensions). The number of requests completed between the two periods represents a 319 percent increase. Additionally, the Ministry also published 148 responses to requests under the Act on its website in the six months to 31 December 2019 and a further 122 responses in the later period. These statistics can be perused at: [www.publicservice.govt.nz/resources/official-information-statistics](http://www.publicservice.govt.nz/resources/official-information-statistics).

The Ministry did not identify any reports concerning "processing performance or internal strategies or memoranda or other information concerned with reducing the Ministry's dependence on applying extensions". However, I can advise that the Ministry does not use automatic extensions as a method of managing timelines or volumes. While not within the scope of your request, under section 13, I am providing guidance used within the OIA Services Team around the use of section 15A extensions. This is released to you in full as document 2. As the guidance notes, decisions on extensions are not automatic and advisers must seek approval from the OIA Services Manager.

I trust this information fulfils your request. Under section 28(3) of the Act, you have the right to ask the Ombudsman to review any decisions made under this request. The Ombudsman may be contacted by email at: [info@ombudsman.parliament.nz](mailto:info@ombudsman.parliament.nz) or by calling 0800 802 602.

Please note that this response, with your personal details removed, may be published on the Ministry website at: [www.health.govt.nz/about-ministry/information-releases/responses-official-information-act-requests](http://www.health.govt.nz/about-ministry/information-releases/responses-official-information-act-requests).

Nāku noa, nā

A handwritten signature in black ink, appearing to be 'EBT' or similar initials, written in a cursive style.

Elisabeth Brunt  
**Group Manager, Government Services**  
**Office of the Director-General**

# Proactive Release Policy and Guidance

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982



## Purpose

Openness and transparency are critical drivers of public trust and confidence in government and promote active participation and engagement from the public.

This policy confirms the Ministry of Health's commitment to the proactive release of information and outlines its requirements and procedures.

This includes information about the proactive release of policy development (such as Cabinet material and advice to Ministers'), responses to official information requests, and general information releases.

## Scope

This policy applies to all Ministry employees, contractors, and consultants. It informs them of the processes and their responsibilities when preparing or reviewing documents for proactive release.

## Context

The Government has committed to improving practices around proactive release of information to promote good government, inform public understanding of the reasons for decisions, and facilitate informed participation in government decision making.<sup>1</sup>

While the Ministry has made significant progress in strengthening openness and transparency, more can be done in meeting the public's expectations around increasing access to official information.

Through proactive release, agencies can release information before it is requested. Agencies can have greater flexibility to decide when and how information is released, and what additional context to put around it to assist with a fuller understanding of the Ministry's work.

Directing requesters to information that has already been published reduces the administrative burden on agencies of responding to individual requests and eliminates the need for some requests altogether. Proactive release helps information reach a wider audience and enables more consistent messaging.

Proactive release allows agencies to become a reliable and authoritative source for their own information.





# Guiding principles and legislation

The following due diligence matters should be considered by the Directorate authoring or reviewing the material:

- the application of the principles in the [OIA](#), the [Privacy Act 2020](#), the [Health Information Privacy Code 2020](#) and the [Protective Security Requirements](#) and whether any information would be withheld if it was released under these and any other acts, regulations and requirements
- whether there are reasons to delay the proactive release of the information, for example where there are sensitivities around timing
- whether publication on the web is the best means of release
- whether there is any potential liability, civil or criminal, that might result from the proactive release of Cabinet material and key advice papers.

## Section 48 of the OIA

While we should have regard to the OIA when considering what should be released, proactively released information is not covered by the OIA.

This means section 48 of the OIA, which protects Ministers' and agencies from civil or criminal liability when information is released in good faith under the OIA, does not apply to information that is released proactively.

We must therefore consider any potential liability, civil or criminal, that might result from proactively releasing the Cabinet material and any key advice papers before seeking the Ministers' approval to publish them. This means it is important to have a robust process for reviewing the information for potential legal risks associated with publication, including peer-review and approval appropriate Directorate staff.

This applies even where the information has been previously released under an OIA request. In some instances, it may be appropriate to release information under the OIA, and not make it proactively available.

## Consultation

When considering publishing official information, consultation with or notification to the relevant Ministers in accordance with the "no surprises" principle<sup>2</sup> may be required.

If the document proposed for release includes information relating to another agency, consultation may also be required with that agency to allow it to conduct its own risk assessment.

There may also be instances where it is considered to be in the public interest to include the name of an official (typically a key decision maker) as part of an information release. A thorough risk assessment, including consulting the official to check whether they are comfortable with publication of their personal information must be undertaken. This also applies to names of officials from another agency.

## Types of information to consider for proactive release

Types of information that could be considered for proactive release include:

- information about the role and structure of the agency, and the types of information it holds
- policies, procedures, manuals, and guidelines used by the Ministry
- information about current or planned work programmes
- information about regulatory or review activities
- minutes, agendas and papers of boards or committees
- information about public engagement processes, including public submissions
- information about lists and registers maintained by the Ministry.

This policy discusses the three main types of proactive release: Cabinet material, general information (including briefings and advice to Ministers) and responses to OIA requests.

### Cabinet material

Cabinet has agreed that Cabinet and Cabinet committee papers and minutes must be proactively released and published online within 30 business days. The counting of the 30 business

<sup>2</sup> Cabinet Manual paragraphs 8.50 – 8.54

days starts from the day the final decisions are taken to Cabinet, unless there is good reason not to publish all or part of the material, or to delay the release<sup>3</sup>.

All Cabinet and Cabinet committee papers and associated minutes, including any attachments or appendices to the papers must be considered for publication. Only Cabinet Appointments and Honours (APH) papers and minutes are explicitly excluded from this policy.

The information that's published must be approved by the relevant Minister and reviewed by a Ministerial office. In the case of joint papers, the agreement of joint Ministers is required.

### General information

Where certain information generates or is likely to generate high levels of public interest, it may be beneficial to proactively release information on the topic. For general information releases, the Ministry has adopted a 'publish if it is in the wider public interest' approach.

These releases can contain a variety of information, such as internal memoranda, briefings to Ministers, and external reports commissioned by the Ministry. Some examples are available on the Ministry's [General information releases](#) webpage.

### OIA responses

The Ministry has been publishing OIA responses since 2018. This helps in directing people to publicly available information in the first instance, reducing the workload on Directorates.

OIA responses are made available where the information is considered to be of public interest, and where there is no risk to the privacy of individuals.

The OIA Services Team will publish responses monthly, with priority sometimes given to responses which are on a topic of public interest.

The Ministry will always withhold the names and contact details of requesters whose responses are published. Letters responding to requests will advise requesters that their response may be published.

The OIA Services Team will consider any feedback received from requesters where they are against the publishing of their request (for

example, journalists may mention the article they are planning and ask for their response not to be published until the article is finished).

While a requester cannot veto the Ministry's decision to proactively release an OIA response, we should give fair consideration to any concerns raised, and let the requester know what decision they've made, and why.

## The Ministry's proactive release process

### Cabinet material and general information

All material proposed for release must undergo a considered, reliable, robust, and thorough review process. There are two key roles internally:

1. The Directorate responsible for the subject matter or function identifies what information should or shouldn't be released and works with the Minister's office to get the Minister's approval to release the information.
2. The OIA Services Team undertakes the technical process of redacting and publishing the documents based on the instructions of the responsible Directorate.

The following appendices provide an overview of the main proactive release processes:

- **Appendix 1:** Proactive release process for Cabinet material
- **Appendix 2:** Proactive release of general information/key documents
- **Appendix 3:** Proactive release process of responses to official information requests

<sup>3</sup> [CO \(18\) 4: Proactive Release of Cabinet Material:](#)

## OIA responses

Proactive release of OIA responses is primarily driven and managed by the OIA Services Team.

While a response to an OIA request will have already taken into account the withholding grounds in the OIA, as signaled above the protections in section 48 of the OIA do not extend to the proactive publication of information, even if the information has previously been released to a requester.

As part of the OIA Services Team's assessment process, the following matters are considered:

- suitability for publication
- privacy interests
- contractual obligations
- risk of copyright/defamation
- addition of contextual information.

If Directorates working on OIAs with the OIA Services Team feel that a response is not suitable for publication, this should be noted early on with the OIA advisor, along with the reasons why.

## Roles and responsibilities

The Ministry operates a collaborative model to meet its commitment to the proactive release of information.

The **Director-General of Health** is accountable for the Ministry's performance in respect of its commitments to the principles and purposes of the OIA and to this policy.

**Executive Leadership Team** members are responsible to the Director-General and the Ministers for all proactive releases prepared by their Directorates and, unless delegated, approve all Ministry proactive releases.

**OIA Services** is responsible for providing expertise on how the OIA can be applied to information prepared for proactive release. The OIA Services Team will assist with redactions and prepare the documents for publication based on the instructions from the responsible Directorate.

responsible for collating the information for release, reviewing the content, considering any issues, assessing what needs to be withheld and consulting with the Minister.

The **Media Team** provides communications guidance if the proactive release of information may attract wider political, public or media interest.

The **Office of the Director-General** reviews the final package of information for proactive release before it is sent to the Minister's office for approval.

**Health Legal** provides legal advice on any implications that may arise in the proactive release of information.

**Ministers' offices** may commission the proactive release of information from the Ministry or receive notification from the Ministry on the proactive release of information. The office may provide feedback on the information before it is published.

**Ministers** approve the proactive release of Cabinet material.

**Directorates** as the 'information owners' are



# Key related policies, legislations, procedures, and guidance

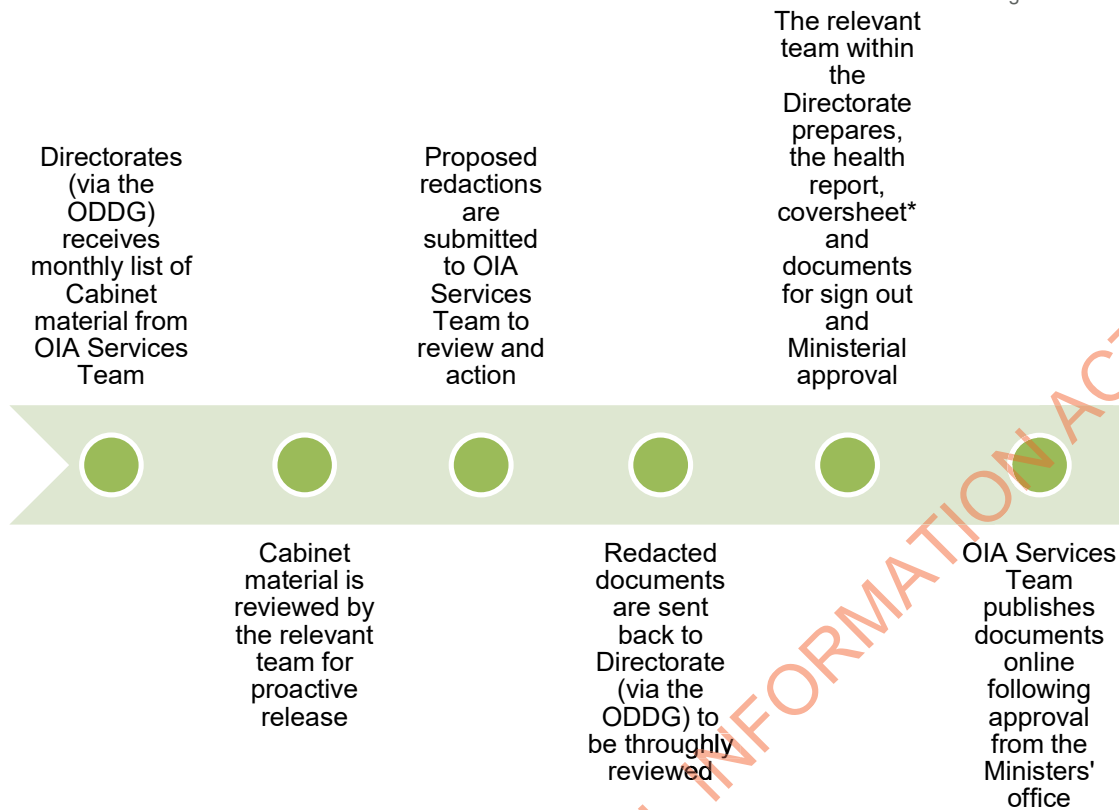
- [Proactive release of Cabinet material](#)
- [Strengthening Proactive Release Requirements](#)
- [Cabinet paper](#)
- [CabGuide](#)
- [Official Information Act 1982](#)
- [Privacy Act 2020](#)
- [Health Information Privacy Code 2020](#)
- [Official Information Act Policy](#)
- [Public Services Commission Guidance](#)

OWNER - Deputy Director-General (Office of the  
Director-General)

CONTACT - Manager OIA Services. Endorsed: 12  
April 2022

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

## Appendix 1: Proactive release process for Cabinet material



The coversheet should clearly state who the releasing Minister is, the relevant portfolio(s), the date of issue, a list of the documents that are being released, and an explanation of the reasons for any redactions - if applicable. See Appendix 1B for a coversheet example.

## Appendix 1A: Preparing Cabinet material for proactive release



The Ministry drafts Cabinet papers on behalf of a Minister or Ministers. The relevant Minister ‘owns’ the paper and takes it to Cabinet, so the decision on what, if anything, should be released sits with the Minister or joint Ministers.

### Step 1: Draft the Cabinet paper

When the owner of the Cabinet paper is drafting a Cabinet paper, a section must be included in the Cabinet paper on proactive release that says whether the Minister intends to proactively release the paper in whole or in part, or to delay the release beyond 30 business days. It’s the Minister’s decision, so a specific recommendation is not required.

That means input is needed from the Minister (or their office) on whether the paper should be proactively released during the drafting process.

### Step 2: Cabinet considers the paper

The 30 business days for proactively releasing the Cabinet material and any key advice papers starts on the day of the Cabinet meeting at which Cabinet makes a final decision.

### Step 3: Agree the timing for publication

Ultimately, the Minister decides when the documents will be published. It is key that the Directorate responsible for the Cabinet paper talks to the Minister’s office about the release as early as possible. This will allow the timeline for collating, reviewing, and publishing the documents to be planned out carefully.

As soon as the likely timing is known, the Directorate responsible for the Cabinet paper needs to let the OIA Services Team know.

### Step 4: Collate the documents

Identify the documents to be released:

- the Cabinet paper – don’t include the Cabinet summary sheet or agenda
- any attachments and appendices to the Cabinet paper
- the Cabinet minute
- any ‘key advice’ documents – these are papers addressed to the Minister who took the item to Cabinet, and that seek agreement from the Minister to recommendations that were subsequently decided by Cabinet.

Publishing key advice papers is optional – it’s up to the Minister to decide whether they want to include it in the proactive release.

It’s the Ministry’s responsibility to ensure we publish only the final versions of Cabinet material – that means:

- the version of the Cabinet paper approved by the Minister for lodgment in CabNet<sup>4</sup> or tabled in the meeting; and

<sup>4</sup> See Appendix 1C for information on CabNet

- the minute published by the Cabinet Office on CabNet.

Electronic copies of the final versions of Cabinet material can be downloaded from CabNet for the purposes of proactive release - keep the watermark. The OIA Services Team has access to CabNet and can assist in getting the final versions of Cabinet material.

If a key advice paper contains important handwritten information (e.g., comments from the Minister), consult the Minister on whether that can be released in a scanned version or if that information can be included in the coversheet that's released with the documents. See **Appendix 1B** for a coversheet example.

#### Step 5: Assess the content of the documents and draft the cover sheet and approval briefing

The Directorate that drafted the Cabinet paper is responsible for reviewing the content, considering any issues, assessing what, if anything, needs to be withheld, and agreeing that with the Minister.

While the information is being proactively released rather than released under the OIA, the grounds that would be used to withhold information under the OIA should still be considered. The most common grounds for withholding the release of information can be found under [section 6](#) and [section 9](#) of the OIA. See **Appendix 4** for further information on this.

There's no expectation that information that would not be released under the OIA should be proactively released. There's also no expectation that exploratory advice or advice generated in the early formative stages of a policy development process and intended to ensure the free and frank exchange of ideas necessary for the development of robust policy advice should be released.

If you're not sure whether there would be grounds for withholding information under the OIA, talk to the OIA Services Team or Health Legal. If relevant, the Directorate should also undertake consultation with other agencies or affected parties to seek feedback on the proposed release.

If any of the information has already been released, you can choose to link to that, but think about what will be easiest and most accessible.

Once Cabinet material is published online, the security classification (e.g., 'In Confidence') of the original document may no longer apply. Unless some information has been withheld from the version that's proactively released, the security classification of the original version should be reviewed.

#### Step 6: Prepare the documents

The electronic documents will be published in one package with a cover sheet that outlines what's being released and the reasons for any redactions.

Once there is internal approval for what should be released, whether anything should be withheld and the grounds for that, send the documents and draft cover sheet to the OIA Services Team to make the redactions. The OIA Services Team will apply the redactions, confirm what OIA grounds were used and prepare the documents for publication based on the instructions from the responsible business group.

#### Step 7: Review the pack

The OIA Services Team will provide the pack with the redactions marked to the responsible Directorate to review and check. The documents are watermarked in light grey as "Proactively Released" and the OIA grounds used will be visible upon any redacted information.

#### Step 8: Approval from the Minister

The decision on what to release sits with the Minister – or joint Ministers if the paper went to Cabinet in the name of more than one Minister.

The Directorate is responsible for drafting a memo and sending the Minister's office the documents with the proposed redactions, setting out their recommendations on what should be released and the expected timeframe for this to happen. See **Appendix 5** for further information on this.

Step 9: Publish the documents

Let the OIA Services Team know whether any changes are required – they will action any changes and confirm they've been done correctly with the Directorate.

Once the documents have been approved by the Minister, send them back to the OIA Services Team to publish.

The OIA Services Team will arrange for the documents to be uploaded on to the external website on the agreed date.

Examples of proactively released Cabinet material are available on the [Ministerial decision-making documents webpage](#).

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982



**Appendix 1B: Coversheet example for Cabinet material proactive release**

Page 11 of 11

[Proactive release – name of the package]  
[Date of issue]

[Explanation of the programme of work related to the Cabinet material being released]

In line with the [Cabinet office circular CO18\(4\)](#), this material is being released with redactions.

[Explanation of material redacted e.g., Please note some information has been withheld from these documents under the following sections of the Official Information Act 1982 and include the relevant sections of the Act that have been applied]

[List titles of all the Cabinet material being released]

[Insert a Copyright statement for Cabinet material and any public service departmental advice: © Crown Copyright, Creative Commons Attribution 4.0 International (CC BY 4.0)]

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

## Appendix 1C: What is CabNet

CabNet<sup>5</sup> is used by government agencies that require access to Cabinet material.

CabNet is operated under a devolved accountability and user-administration model. Agencies that use CabNet are responsible for administering the accounts of the CabNet users within their agency and for the quality of the material and information entered into CabNet.

Under the devolved model individual CabNet users:

- must have a legitimate need to access Cabinet material on an ongoing basis
- must only access information and documents on a need-to-know basis.

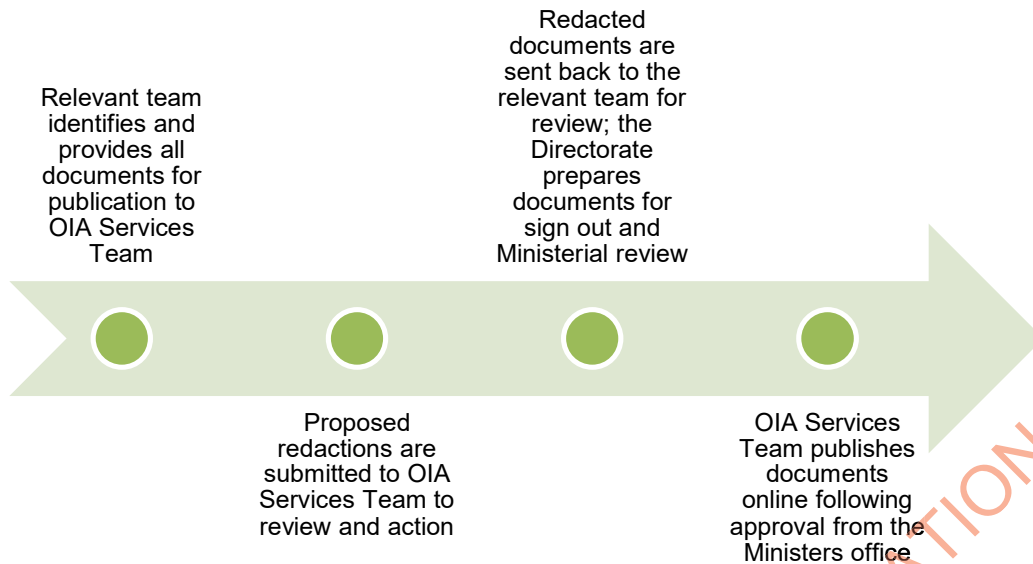
Approval for a CabNet account must only be provided to a staff member of CabNet user organisations on delegated authority from the agency Chief Executive.

To get access to CabNet, a user form needs to be completed with the Ministry's EDMS team. The new user will receive an email with instructions on how to verify and log in to the new account.

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

---

<sup>5</sup> For information on CabNet <https://dpmc.govt.nz/publications/what-cabnet>



As with Cabinet material, general documents for release are considered by the Ministry teams who hold the information with support from the OIA Services Team.

Timeframe and sign out for the response will be dependent on the Ministry team organising the release. Release 'as soon as reasonably practicable' is a good aim. However, if the information has already been refused under the OIA as it will be made publicly available/under section 18(d), strict timeframes apply to comply with the legislation<sup>6</sup>. The Ombudsman has indicated that six to eight weeks is the maximum time within which section 18(d) can be applied.

As with other proactive workflows, consideration must be given to the suitability of information for release, and any necessary consultations with external parties, including Minister's offices.

<sup>6</sup> [A guide to section 18\(d\) of the OIA](#)

### Appendix 3: Proactive release process for responses to OIA requests



#### Appendix 4: Common withholding grounds under the OIA

When reviewing information for proactive release, the Ministry should consider whether there is any potential harm in the release which may provide a substantive reason to withhold the information under the OIA.

Particularly whether any identified harmful effect would prejudice one of the conclusive interests protected by section 6, including:

- the security or defence of New Zealand
- New Zealand's international relations
- the maintenance of the law
- personal safety
- New Zealand's economy.


Or whether any identified harmful effect would prejudice one of the interests protected by section 9, including:

- privacy
- commercial activities
- information subject to an obligation of confidence
- constitutional conventions of confidentiality
- free and frank opinion
- legal professional privilege.


RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982



**Appendix 5: Examples of proactive release requests (seeking Ministerial approval)****General information release**

Link	Ref Number	Writer	Subject	Dt Due	Type	DB Number
	20220039	Hon Andrew Little	MEMO: Proactive release of: Quarterly Mental Health Report to Cabinet Priorities Committee Quarter 1 2021/22	01/03/2022	Briefing Request	H202203260

**Cabinet material**

Link	Ref Number	Writer	Subject	Dt Due	Type	DB Number
	20212527	Hon Chris Hipkins	BR MIN: Proactive release of the Cabinet paper: "Requiring high risk work in the health and disability sector to be undertaken by vaccinated workers"	08/02/2022	Briefing Request	H202200909



New Zealand Government

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982



## OFFICIAL INFORMATION ACT GUIDANCE

### SECTION 15A EXTENSIONS FOR MAKING AND COMMUNICATING A DECISION

Extending the time limits to make or communicate a decision on a request is one of the tools the Ministry can use to make responding to OIA requests manageable. However, there are certain circumstances that must be met for an extension to be granted. This guidance is intended to help you determine how to use the extension provision allowed under section 15A of the OIA.

#### REASONS FOR EXTENDING UNDER SECTION 15A

Where a request is made to the Ministry, the original time limit of 20 working days may be extended if:

- the request is for a large quantity of official information or necessitates a search through a large quantity of information and meeting the original time limit would unreasonably interfere with the operations of the Ministry; or
- consultations necessary to make a decision on the request are such that a proper response to the request cannot reasonably be made within the original 20 working day limit.

*So, what does applying an extension look like in practice?*

#### Extending requests for a large quantity of official information

*Sometimes requested information can be found and brought together relatively easily, but it will take a substantial amount of time to read, review and assess it all for release. While the Ministry cannot charge for this work or refuse the request on the grounds of substantial collation or research because of it, the Ministry can instead extend the maximum timeframe for making a decision on the request.*

#### Extending requests for consultation purposes

*Agencies may consult before making a decision on a request. Consultations may be with:*

- the requester, to confirm the nature of the information requests, or to explain any difficulties the Ministry is having in processing the request and allow the requester to amend or refine the scope of the request;
- agency staff, including the agency's in-house policy or legal team, external legal advisor or chief executive;
- external third parties, for example those who originally provided the requested information to the agency, or whom the information is about, or those who could be adversely affected; and
- any other agency with an interest in the information, including Ministers (only for the purposes of consultation, not for the notification of decisions).

*Any consultations should be necessary for the Ministry to make a proper decision on the request. If there are unnecessary consultations and signoffs taking place, this could give rise to a complaint that the Ministry has failed to make and communicate its decision on a request 'as soon as reasonably practicable'*

## WHEN AN EXTENSION ISN'T APPROPRIATE

Extensions are not appropriate where the work required to make the information available relates to tasks that constitute 'research' or 'collation'. 'Research' means finding the information and 'collation' means bringing it together. These terms can encompass the following tasks:

- identifying the requested information;
- determining whether the requested information is held;
- searching for the requested information;
- retrieving the requested information;
- extracting the requested information; and
- assembling or compiling the requested information.

Collation or research can also include reading and reviewing information, and consulting on the request, but only to the extent that these tasks are necessary to find the information that has been requested that would allow the Ministry to bring it together.

You should consult the requester to try and make the request more manageable as early as possible if your request appears as though the substantial collation or research tasks listed above will be required. If consultation with the requester fails, you may refuse the request under section 18(f). Applying section 18(f) instead of extending a request is the more appropriate action to take if you are still completing the substantial collation or research tasks listed above at the end of the original 20 working day limit.

It's important to note that if a requester complains about an extension to the Ombudsman, the Ministry is required to provide a timeline of the action it took to complete the request and any information in scope of the request to the Ombudsman. It is good practice to make a clear record of any exercises you have completed while completing a request. If you cannot clearly show that a large quantity of official information or a search through a large quantity of information and/or consultation took place when completing your request, the Ombudsman will likely issue a final opinion against the Ministry. Refer to *Appendix 1* for examples of extensions decisions made by the Ministry and the Ombudsman's final opinion on these.

**If your request does not meet the threshold to extend a request, then you should not apply an extension to your request. Your SME being away on annual leave, a team not having time to begin work on your request now, or your response being caught up in sign out are not legitimate reasons to extend a request.**

There are other methods that we can use in these instances, however, you need to escalate these issues with the OIA Manager as soon as possible and not leave it until the last day of the original time limit of 20 working days.



## NOTIFYING THE REQUESTER OF THE EXTENSION

The Ministry must communicate notice of the extension to the requester within 20 working days after the day on which the request was received. The notice effecting the extension must:

- state the reasons for the extension;
- specify the date in which the response can be expected; and
- advise the requester that they have the right to complain to the Ombudsman about the extension decision.

Refer to *Appendix 2* for the extension template email.

## HOW LONG CAN I EXTEND FOR?

The OIA states that an extension shall be for a reasonable period of time, however it does not define what it considers to be reasonable.

If your request requires an extension, it helps to create a timeline to work out what actions still need to be completed and how much time it would approximately take. Doing this ensures that you have a realistic timeframe to work to, rather than for example, applying a default extension period of two weeks and finding that you haven't allowed yourself enough time to complete the sign out process.

It's better to allow yourself more time to complete the request to prevent any late responses, however you still have the obligation to respond as soon as reasonably practicable. If you can provide the response to the requester before the time period of the extension ends you should.

The Ministry can extend the request as many times as required, within the original time limit of 20 working days.

## FAILING TO MEET THE TIME LIMITS

The Ministry may be subject to a complaint to the Ombudsman if it fails to comply with a time limit.

If it appears like it will not be possible for the Ministry to meet the extended maximum time limit, you should contact the requester to advise them on what is happening to their request and the reasons for the delay. The requester may be more understanding of the situation if you keep them informed, and less likely to immediately reach out to the Ombudsman. You should also do this if you cannot meet the original time limit and you do not have grounds to extend the request. You can read more about extensions in the Ombudsman's guide [The OIA for Ministers and agencies](#) (pages 23-24 and 49).



## APPENDIX 1 – OMBUDSMAN INVESTIGATION'S REGARDING s15A EXTENSIONS

**Example 1**

Request: Copies of any communications, to and from, any agencies, individuals, organisations or companies who have advocated NOT to provide an extension to the transition period of cannabis-based medicines. Copies of any MoH/govt internal communications on the subject of the extension (or not) of the current CBMs. Whether any pilfering or theft has been reported from licensed cannabis facilities, and if so, in what quantities.

Reason for extension: The Ministry explained that there had been delays in scoping the request, and that it was undertaking internal consultation with the subject matter expert at Medsafe.

Ombudsman's final ruling: The 'consultation' identified by the Ministry appeared to be only scoping work by the subject matter expert on behalf of the OIA team. The Ombudsman considered this kind of work to be a routine part of the collation and research in the early processing of information requests, as opposed to 'consultations necessary to make a decision', and that section 15A(1)(b) did not therefore apply.

The Ombudsman took the view that the extension decision was made more as a result of the Ministry's workload pressures. While sympathetic, the Ombudsman noted this is not a reason under section 15A to extend the timeframe for responding to requests for official information. In the absence of any specific details to indicate there was a substantial amount of information the subject matter expert was required to search through, the Ombudsman was also not satisfied that section 15A(1)(a) applied to this case. The Ombudsman therefore considered the extension decision was unreasonable.

**Example 2**

Request: "Any communication, including emails, provided to or created by the Manager for Immunisation or Senior Advisor for Immunisation, related to stock levels, distribution, supply or reviews, of flu vaccines over the last 7 days (26th April – 3rd May)"

Reason for extension: The Ministry advised TVNZ that the extension was due to it needing to undertake consultations. These consultations occurred from mid-June 2020 to late July 2020, and input was sought from the following: PHARMAC; Seqirus (NZ) Ltd; Healthcare Logistic; the Minister's Office; the Ministry's Immunisation team; and the Ministry's Business unit.

Ombudsman's final ruling: The Ministry's reason for seeking an extension complies with section 15A of the OIA. The reasonableness for the consultations seems to be reflected in the Ministry's consultation correspondence, and there does not appear to be any evidence to the contrary. Given the need for the consultations, this meant that a response to the request could not be made within the original time limit.

**Example 3**

Request: Provide all details you hold about the ethical approval for a study that was requested, any questions asked and their answers as well as other correspondence regarding this approval.

Reasons for extension: The Ministry advised the requester that the extension was required as further consultation was required. It was established that after receiving advice from the Ministry's Media Team, the Ministry had engaged with the Minister's Office under the 'no surprises' policy. Before the Ombudsman's final ruling was provided, the Ministry accepted that it was not entitled to extend the timeframe.

Ombudsman's final ruling: The Ministry does not appear to be seeking the Minister's input in order to make the decision, rather for noting purposes. The Ombudsman acknowledges that there are certain times where requests would trigger the 'no surprises' principle, and agencies would need to notify the relevant Minister. However, this notification should not interfere with the agency's ability to comply with the statutory obligations under the OIA. As the decision is sent for noting only, there are generally no grounds for agencies to utilise section 15A(1)(b) to extend the timeframe on the request. In this instance, as the Ministry contacted the Minister for noting purposes, the decision to extend the timeframe on this request appears invalid.



APPENDIX 2 – EXTENSION TEMPLATE

**Subject line: Extension of your request for information ref: H202xxxxxx**

Kia ora <name>

Thank you for your request for official information, received on <date request was received> requesting:

<insert request wording>

The Ministry of Health has decided to extend the period of time available to respond to your request under section 15A of the Official Information Act 1982 (the Act) as *your request is for a large quantity of information and meeting the original time limit would unreasonably interfere with our operations / your request necessitates a search through a large quantity of information and meeting the original time limit would unreasonably interfere with our operations and/or consultation is necessary to make a decision on your request and is such that a proper response cannot reasonably be made within the original limit.* You can now expect a response to your request on, or before, <new due date>.

You have the right, under section 28 of the Act, to ask the Ombudsman to review my decision to extend the time available to respond to your request. The Ombudsman may be contacted by email at: [info@ombudsman.parliament.nz](mailto:info@ombudsman.parliament.nz) or by calling 0800 802 602.

