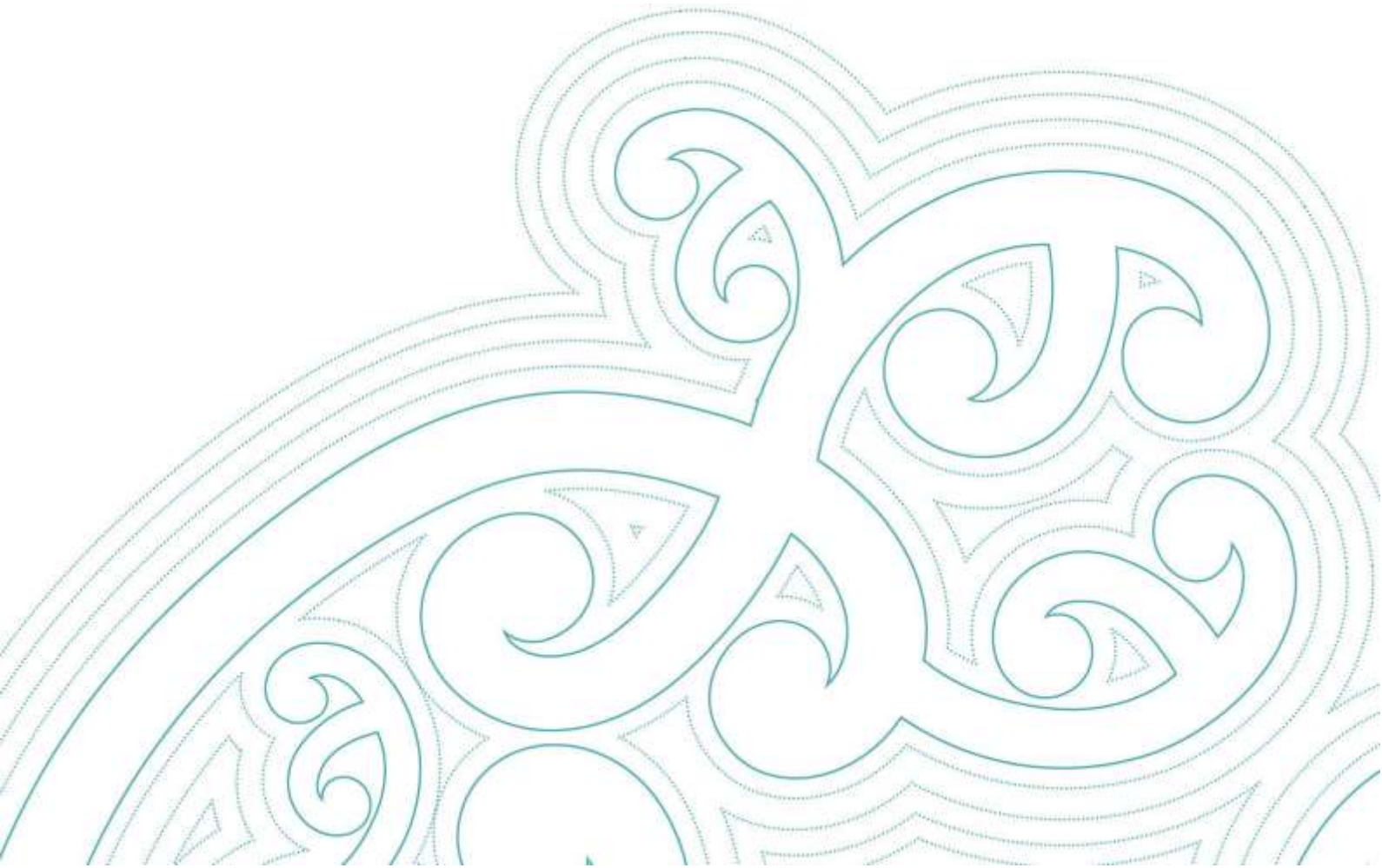




MINISTRY OF HEALTH

New Zealand Government

# Proactive Release Policy and Guidance



# Commitment

Manatū Hauora (the Ministry of Health) is committed to supporting the principles of the Public Service Act 2020 and the 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. The commitment is publicly demonstrated in the Ministry's Official Information Act Policy.

## Purpose

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

The proactive release of information should be based on the guiding principle of the OIA, in that information should be made available unless there are good reasons under the Act to withhold it<sup>1</sup>.

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

## Scope

This policy applies to all Manatū Hauora employees, contractors, and consultants. It informs them of the processes and their responsibilities when creating, preparing or reviewing documents that should be proactively released.

# 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>2</sup>.

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”*.

While Manatū Hauora 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, Manatū Hauora can release information before it is requested. We 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 Manatū Hauora 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 ultimately allows Manatū Hauora to become a reliable and authoritative source for our own information.

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<sup>1</sup> [Section 5](#)

<sup>2</sup> [Commitment Two of Open Government Partnership New Zealand](#)

# Good proactive release culture

Manatū Hauora has a positive culture around the importance of the OIA and proactive release and we are mindful that we need to have strong and regular messaging from senior leadership to enhance this culture.

The Ministry's senior leaders should take the lead in developing an environment that promotes openness and transparency, champions positive engagement and enables compliance with the principle, purposes, and provisions of the OIA and proactive release.

Innovation and agility in making information available can be proactively led by all Ministry employees. Proactive release of information practices should be embedded into all business-as-usual work. Consideration can be given to whether information should be released before it is created, or at the time it is created. Information that cannot be released should be easily identifiable, which in turn will make the redaction process in the near future easier.

By anticipating and planning the release of all information at the beginning of the process, the Ministry can shift from always being in a reactive position to a much more proactive one.

## 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 internet publication 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 5 of the OIA

The proactive release of information should be based on the principle of availability that underpins the OIA, namely that *“Information shall be made available unless there is good reason under the Act for withholding it”*.

This principle should always be kept in mind by Manatū Hauora staff when considering information for proactive release.

### 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>3</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 in the public interest to include the name of

<sup>3</sup> Cabinet Manual paragraphs 8.50 – 8.54

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 the 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;<sup>4</sup>
- policies, procedures, manuals, and guidelines used by the Ministry;<sup>5</sup>
- information about current or planned work programmes and policy approvals;
- 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 registered or maintained by the Ministry;
- planning and performance information; and
- financial information relating to tendering, procurement and contracts.

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 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. This is in line with Cabinet Office circular [CO \(18\) 4 - Proactive Release of Cabinet Material](#) and has been noted in the recently issued Cabinet paper

### [The next steps in the public release of official information.](#)

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 is 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.

From July 2022, Te Kawa Mataaho will begin reporting on the number of Cabinet papers released by agencies as part of their [six-monthly OIA statistics](#). The information collected by Te Kawa Mataaho will cover, by portfolio:

- the number of Cabinet papers which have been approved for release by the relevant portfolio Minister;
- the number of Cabinet papers released;
- the number released within 30 business days; and days of the final Cabinet decision.

### 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.

Responses to OIA requests are made available with the principle of availability in mind: "*that the information shall be made available unless there is good reason for withholding it*".

The OIA Services Team will publish responses within the month of the response being provided to the requester but no sooner than one day after, to provide the requester time to consider the response.

<sup>4</sup> [Section 20](#)

<sup>5</sup> [Section 22](#)

Priority of publication will be given to responses which are on a topic of public interest. Trends in requests are noticed during triaging and frequent reporting on requests.

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 will fairly consider 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 request.

### 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 considered 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.

OIA responses are assessed by the Principal Advisor in the OIA Services Team and approval to publish is sought from the Manager OIA Services who is responsible for administering the proactive release policy.

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

- suitability for publication;
- privacy interests;
- contractual obligations;
- risk of copyright/defamation; and
- 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.

**Directorates** as the 'information owners' are responsible for collating the 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.

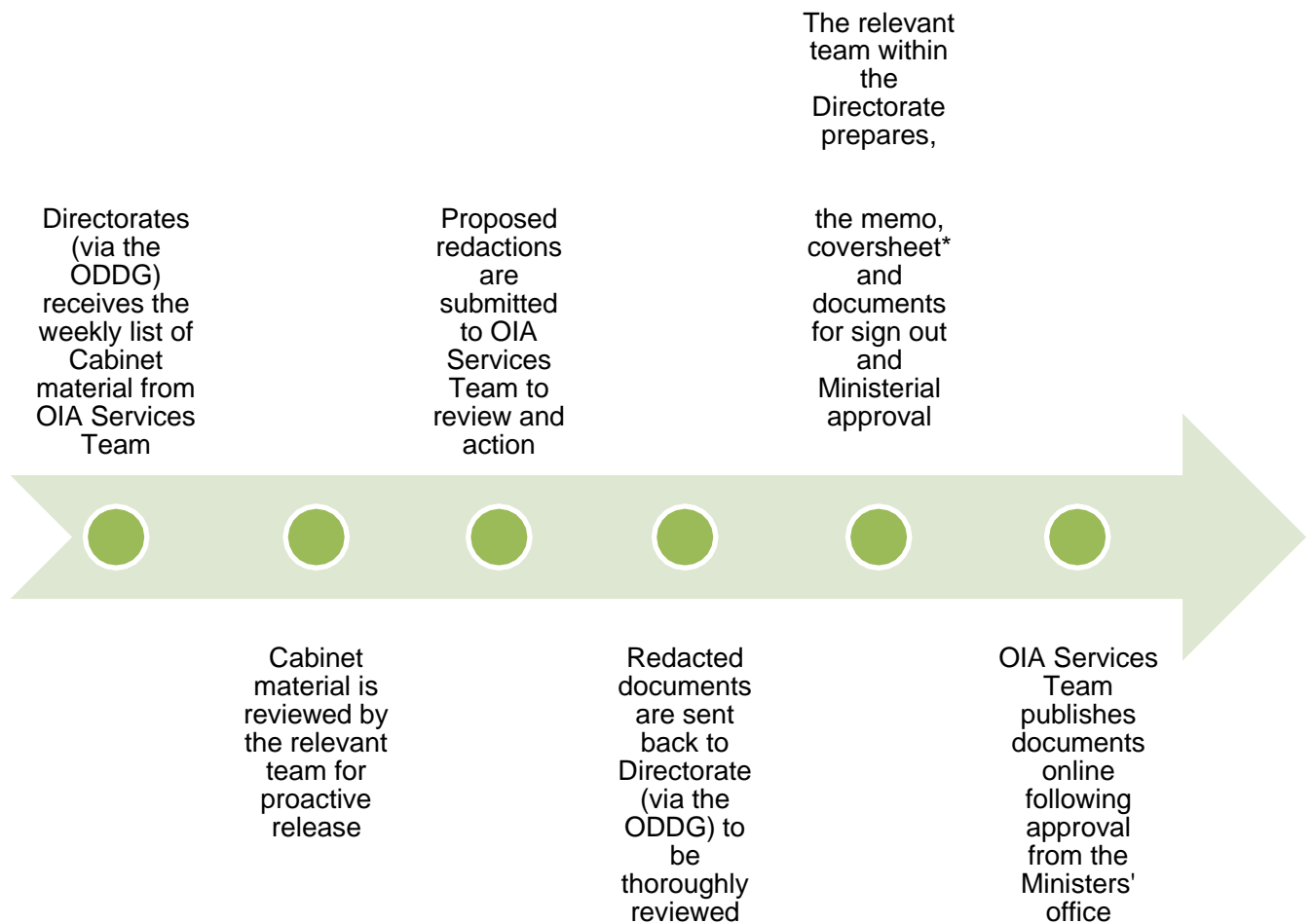
**Ministers** approve the proactive release of Cabinet material.

# 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  
(Government and Executive Services)  
CONTACT - Manager OIA Services.  
To be reviewed by August 2023.

## 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.

### Publication

Cabinet material which has been approved for release will be published at the earliest opportunity, but no later than 30 business days from the day the final decisions are taken to Cabinet. Cabinet material is published on the Ministry's [Release of Ministerial decision-making documents](#) webpage.

There will be some material that may not be appropriate for proactive release within the above timeframe. 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 communicated to the OIA Services team and recorded including when the information may be released and what decisions are still pending.



## 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; and
- 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>6</sup> or tabled in the meeting; and

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<sup>6</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](#).

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

[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)]

## **Appendix 1C: What is CabNet**

CabNet<sup>7</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.

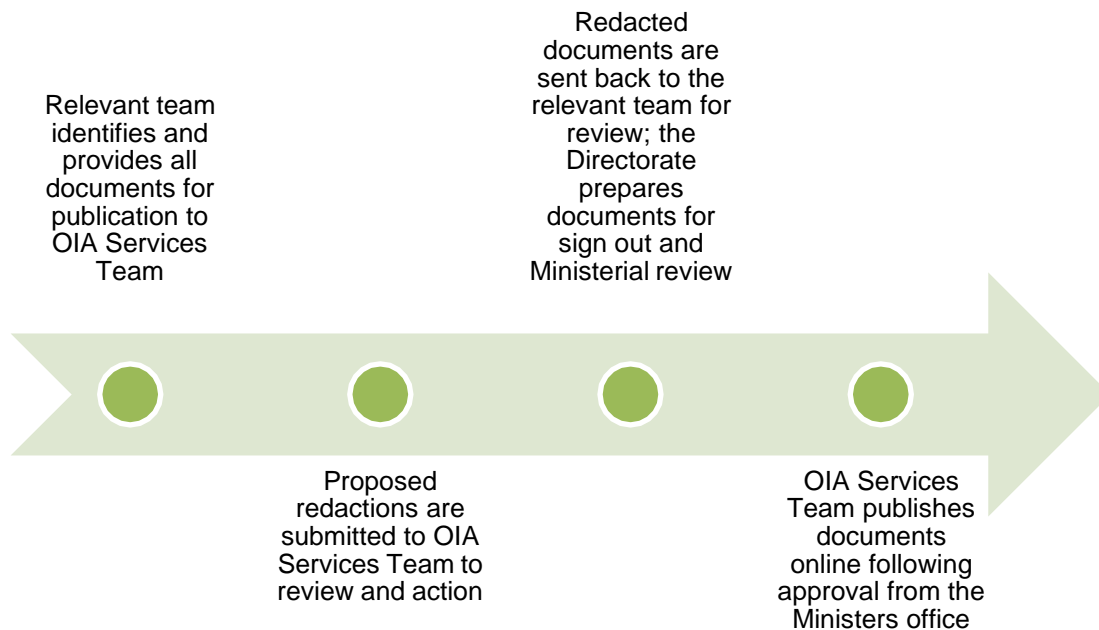
Approval for a CabNet account must only be provided to a staff member of CabNet user organisations on delegated authority from the agency Chief Executive.

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.

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<sup>7</sup> For information on CabNet <https://dpmc.govt.nz/publications/what-cabnet>

## Appendix 2: Proactive release process for general information / key documents



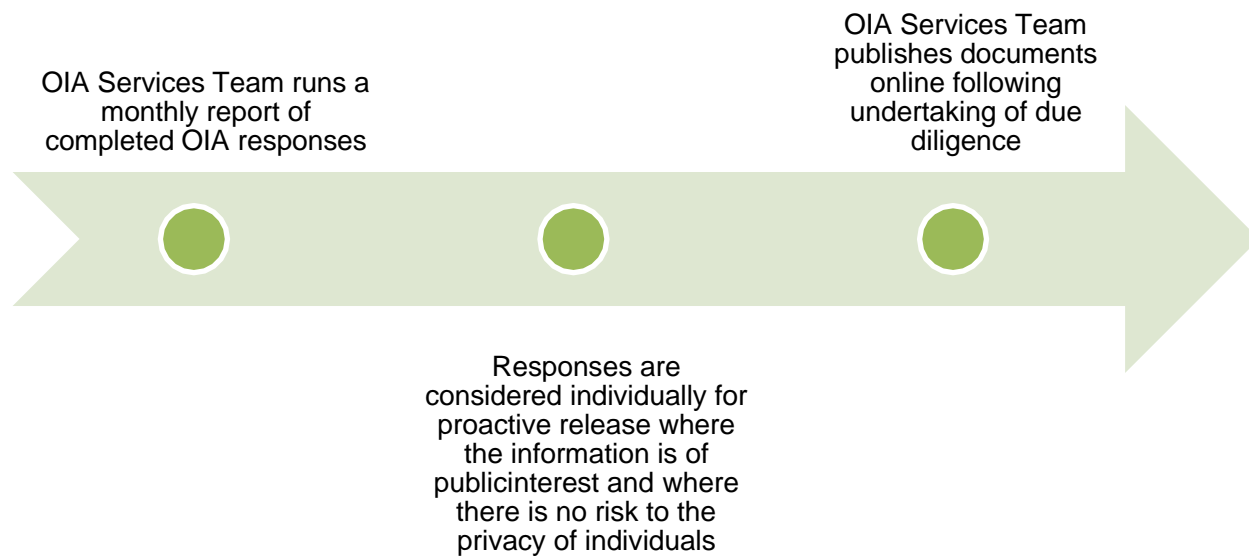
As with Cabinet material, general documents for release are considered by the Ministry teams who hold the information with support from the OIA Services Team.

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>8</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>8</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.

The Ombudsman has published guidance on [section 6 withholding grounds](#).


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

- [Privacy](#)
- [Commercial activities](#)
- [Confidentiality](#)
- [Free and frank opinions](#)
- [Legal professional privilege](#).




## 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



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