

Official Information Act Requests Involving Ministers

Background and Purpose

This guidance is to be used for Official Information Act 1982 (OIA) requests involving Ministers made to Te Aka Whai Ora – Māori Health Authority.

OIA requests involving the Minister are ones where there is the potential for the Minister to be affected by release of the requested information because:

- it relates to their functions or activities as a Minister; or
- they may be required to prepare for the possibility of public or political commentary.

This guidance is based on the Ombudsman's model protocol (<https://www.ombudsman.parliament.nz/sites/default/files/2022-02/Model%20protocol%20on%20dealing%20with%20OIA%20requests%20involving%20Ministers.pdf>). Te Kawa Mataaho – Public Service Commission also provides agency guidance on Minister and agency official information requests <https://www.publicservice.govt.nz/guidance/official-information/oia-guidance-for-agencies/>.

Context and Principles

The principle of the Official Information Act (OIA) is availability, meaning that official information should be made available unless there is a good reason, in terms of the OIA, not to.

Here at Te Aka Whai Ora we have a centralised Ministerial Services team. Ministerial Services is responsible for managing responses to official information requests. We work alongside Te Aka Whai Ora teams to lead the response in a timely and consistent way. Any requests sent to staff outside Ministerial Services need to be referred to the team as soon as possible, and not responded to directly. If teams are unsure about whether it is an official information request, they should contact Ministerial Services first before taking any action.

Te Aka Whai Ora is responsible for making decisions on OIA requests it receives, unless those requests are required to be transferred to the Minister in accordance with section 14 of the OIA.

Te Aka Whai Ora recognises that the Minister may need to make, be involved in, or know about decisions on OIA requests involving the Minister. This may require transfer of the request, consultation, or notification of decision.

Notification of Requests

Te Aka Whai Ora will notify the Minister's office, of any OIA request involving the Minister, including where the requested information:

- relates to their Ministerial functions or activities or delegated functions or activities
- could impact on the Minister's functions or activities or delegated functions or activities
- was generated by or on behalf of a Minister
- is sensitive or controversial
- is likely to be published in the news media
- debated in the House.

Transfer

Te Aka Whai Ora will transfer all or part of an OIA request to the Minister when that is required under section 14 of the OIA, that is when the requested information is not held by Te Aka Whai Ora but is believed to be held by the Minister, or when the requested information is believed to be more closely connected with the functions of the Minister.

The Minister acknowledges that, in the absence of these circumstances, transfer is not permitted and responsibility for deciding on the request rests with Te Aka Whai Ora.

The need for transfer will be determined on the facts of the particular case, with regard to the specific information at issue and the functions of the Minister, and in consultation with the office of the Minister.

The Minister will likewise transfer all or part of an OIA request to Te Aka Whai Ora, following consultation when that is required under section 14 of the OIA.

Consultation

Te Aka Whai Ora will work with the Minister's office to identify requests requiring consultation.

The Minister's office will be consulted when the request includes reports that were prepared for the Minister, and on other requests as agreed, such as:

- The Minister supplied the information or it was generated on their behalf
- It is about the Minister's functions or activities
- It relates to Cabinet material
- Release could affect their functions or activities or legitimate interests.

Te Aka Whai Ora will provide the Minister's office with all information necessary for informed consultation. Te Aka Whai Ora will allow five working days for consultation to take place, unless a different timeframe has been agreed for a particular request.

The Minister's office will respond to all consultations as expeditiously as possible. The Minister's office will let Te Aka Whai Ora know if more time is required, so that Te Aka Whai Ora can consider whether it is necessary to extend the maximum 20 working days for making a decision on the request, if available.

The Minister's office will provide appropriate input in response to Te Aka Whai Ora requests for consultation. Appropriate input means comments and suggestions regarding:

- the proper application of the withholding grounds and the public interest test
- the release of additional information, to place the information that is being released in its proper context
- the proactive release of the same information to others, provided there is no undue delay in providing that information to the requester.

The Minister's office will not provide inappropriate input, such as raising irrelevant considerations (like political embarrassment) or asking or instructing Te Aka Whai Ora to act in a way that would be contrary to the requirements of the OIA, including withholding or delaying release of official information without any proper statutory basis.

Te Aka Whai Ora will consider the input of the Minister's office on an OIA request in good faith and with an open mind, before deciding whether that input provides a reasonable basis for changing its proposed decision on the request. Te Aka Whai Ora may proceed to make a decision on an OIA request if the Minister's office does not respond to the consultation or advise that further time is required.

Following appropriate consultation with the Minister's Office, the final decision on whether to release information or not remains the responsibility of Te Aka Whai Ora.

Notifying the Minister's Office about OIA Decisions

Te Aka Whai Ora will work with the Minister's office to identify when the office is required to be notified of a decision Te Aka Whai Ora has taken in relation to an OIA request.

Notification may be required when the requested information is, for example:

- sensitive or controversial in nature, or
- likely to be published in the news media or debated in the House.

Notification to the Minister will be done in parallel with Te Aka Whai Ora final sign-out process before the decision is communicated to the requester, unless a different timeframe has been agreed for a particular request. It is for the Minister's information only.

Te Aka Whai Ora may provide the Minister's office with a final version of the OIA response if there are any significant changes in the sign-out process.

Te Aka Whai Ora will be clear, through naming of email subject lines for example, if a request was sent to the Minister's office for 'consultation' or as 'notification of decision'.

Record keeping

Te Aka Whai Ora and the Minister's office will keep full and accurate records of interactions in relation to OIA requests, as required by section 17(1) of the Public Records Act 2005.

Disputes

Where an escalation is required regarding the proper application of the OIA, or where there are questions, please contact the General Manager, Ministerial Services.

Links

More detailed information about OIA requests involving Ministers is available on the Ombudsman's website at www.ombudsman.parliament.nz/sites/default/files/2019-08/OIA%20requests%20involving%20Ministers%20August%202019.pdf.