

Official Information Act requests

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Policy

1. Purpose

- 1.1 The purpose of this document is to provide guidance on handling Official Information Act (OIA) requests.

2. Legislative Reference

- 2.1 The Official Information Act 1982 (OIA), sections 2, 6 – 9, 12, 14 – 20, 22 – 24, 28, and 48) and the Electronic Transactions Act 2001, section 11.
- 2.2 This policy draws from the Office of the Ombudsman’s *Official information legislation guides* at <http://www.ombudsman.parliament/resources-and-publications/guides/official-information-legislation-guides>. It is recommended that staff handling OIA requests consult these documents for further detail and tips.

3. What is official information?

- 3.1 Any information **held** by Veterans’ Affairs no matter where it originated – e.g. information created by a third party and sent to Veterans’ Affairs – and where it is located, should be considered official information. Official information is not limited to documentary material, and includes material held in **any format** such as:
 - written documents, reports, memoranda, letters, notes, emails and draft documents;
 - non-written documentary information, such as databases, CD, video or tape recordings, photographs;
 - information known to Veterans’ Affairs, but which has not yet been recorded in writing or otherwise (including knowledge of a particular matter held by another staff member in their official capacity);
 - documents and manuals which set out the policies, principles, rules or guidelines for Veterans’ Affairs decision making (many of these, however, will be publicly available on the website); and
 - the reasons for any decisions that have been made about a person.

Official Information Act 1982, sections 22 and 23.

- 3.2 Information or advice provided by independent bodies set up under our Act such as for example the Veterans’ Health Advisory Panel, or contractors used by Veterans’ Affairs will be deemed as being “held” by Veterans’ Affairs and therefore subject to the OIA. This does **not**, however, apply to the Veterans’ Entitlements Appeal Board. The Veterans’ Entitlements Appeal Board is not subject to the OIA as its functions are “judicial” and as such it is considered by

the Office of the Ombudsman as a “tribunal”, and therefore excluded from the definition of “organisation” in the OIA.

3.3 If a requester seeks information by asking a question, staff must distinguish between:

- questions which can be answered by providing information already known to and held by the agency (this is official information in terms of the OIA); and
- questions which require Veterans’ Affairs to form an opinion or provide an explanation and to create new information to answer the request (this is **not** official information in terms of the OIA).

4. Special categories of official information

4.1 Certain rules apply to particular information that may be requested under the OIA. These are:

- internal rules or guidelines for decision making (this information can be provided);
- statements of reasons for decisions (section 23 of the OIA provides a right to a written statement of reasons about a decision or recommendation made about the requester); and
- personal information requests by corporate entities about themselves can be provided (see paragraph 6.4 below).

4.2 The request for a written statement of reason must be made within a “reasonable time” of the decision or recommendation at issue. A written statement of reasons about a decision or recommendation should be full and comprehensive in explaining the decision making process, and must include:

- the findings on material issues of fact;
- a reference to the information on which the findings were based; and
- the reasons for the decision or recommendation.

Official Information Act 1982, s. 23(1).

5. What is not official information

5.1 Official information does not include:

- information held by a Minister:
 - in their private capacity;
 - in their capacity as an MP (electorate information); or

- in their capacity as a member of a political party (corporate information).
- library or museum material for reference or exhibition purpose;
- information held by Veterans' Affairs solely as an agent, or for the sole purpose of safe custody, on behalf of a person who is not subject to the OIA;
- information held by the Public Trustee or Maori Trustee in their capacity as a trustee;
- evidence or submissions to a Royal Commission or a commission of inquiry;
- certain information related to inquiries established under the Inquiries Act 2013;
- any correspondence or communication between any agency (including Veterans' Affairs) and the Ombudsman or the Privacy Commissioner, in relation to their investigations;
- victim impact statements; and
- evidence, submission or information given or made to the Judicial Conduct Commissioner, a Judicial Conduct Panel, or the Judicial Complaints Lay Observer.

5.2 For a comprehensive list see section 2(e) to (l) of the Official Information Act 1982.

6. Requests for personal Information

- 6.1 If the requester is asking for personal information held by Veterans' Affairs about himself/herself, he or she should be advised that the request will be treated as a request under the Privacy Act (**see separate policy on Privacy Act requests**).
- 6.2 If the requester is seeking information on behalf of someone else with their informed consent, then the requested will generally be considered to be acting as that person's "agent" or "representative", and this request should be dealt with under the Privacy Act.
- 6.3 If the information requested is about other people it should be considered under the OIA, unless the agency is satisfied that the person requesting the personal information has, in accordance with section 45(a) of the Privacy Act 1993, authorisation from the person the information is about to obtain it. See separate policies on Representatives of Veterans and Other claimants and Persons with Legal authority to act for a veteran or other claimant regarding authority given by the veteran or other claimant to another person to act on their behalf. Staff must check what specific authority the agent or representative has been given by the veteran or other claimant to act on their

behalf. This includes what particular information the agent or representative has the authority to release.

- 6.4 If the requester is a corporate entity (company or incorporated society), which is either incorporated in New Zealand or has a place of business in New Zealand, it has the right to access any information Veteran's Affairs holds about it.

Official Information Act 1982, s 24.

7. Eligibility to request official information

- 7.1 Any person is entitled to make a request under the OIA who is:

- a New Zealand citizen;
- a permanent resident of New Zealand;
- a person who is in New Zealand;
- a body corporate (i.e., company or incorporated society) which is incorporated in New Zealand; or
- a body corporate which has a place of business in New Zealand.

Official Information Act 1982, s.12(1).

- 7.2 A return address on a request by letter should be sufficient evidence that the requester is in New Zealand, and therefore eligible. If the request is made by e-mail or over the internet, staff may check (promptly) whether the person is eligible to make the request. Staff should only query eligibility if there is a genuine need to do so, being mindful of the obligation to provide reasonable assistance to requesters.

Official Information Act 1982, s.15(1).

- 7.3 If the request has been made over the Veterans' Affairs website it may be possible to check eligibility by replying to the requester at the same time the request is acknowledged, explaining the eligibility requirements, and providing the name and contact details of a staff member (the Privacy Advisor) the requester can contact privately in order to provide assurance of eligibility.

- 7.4 If the requester is ineligible, the Policy Advisor must advise the requester accordingly.

- 7.5 Even if the requester turns out to be ineligible a reasonable response should be provided.

8. The form of an OIA request

- 8.1 There is no set way in which an OIA request must be made. An OIA request is made in any case when an eligible person asks for access to specified official information.

Official Information Act 1982, s.12(1).

- a request can be made in any form and communicated by any means, including orally or written format e.g. Facebook, Twitter, online portal, letter, email;

Official Information Act 1982, s.12(1AA(a)).

- the requester does not need to refer to the OIA

Official Information Act 1982, s.12(1AA(b)).

- the request can be made to any person in the agency concerned.

8.2 For oral requests, staff may ask for it to be put in writing if that is “reasonably necessary” to clarify the request.

Official Information Act 1982, s.12(4).

8.3 If the requester refuses to do this or is unable to, staff must record their understanding of the request and provide a copy of that record to the requester.

Official Information Act 1982, s.12(5).

9. Assisting when the request is not clear

9.1 To be a valid request, the request must be “specified with due particularity”; i.e. Veterans’ Affairs must be reasonably able to identify what information is being requested.

Official Information Act 1982, s 12(2).

9.2 Staff should look carefully at the scope of the request and any relevant time period the requester has identified. If there is any doubt about the scope of the request, clarification should be sought from the requester promptly. If the request is made orally, staff may ask the requester to put it in writing to help clarify the request.

9.3 A request for a large amount of information does not necessarily mean that the request lacks “due particularity”. If there are genuine administrative concerns with processing the request or making the information available, staff should look at other mechanisms of handling the request, such as inviting the requester to refine the request (needs to be done within the first seven days of receiving the request), such as:

- refining the time period covered by the request;
- refining the types of documents covered by the request;
- providing a list of documents that are potentially in the scope of the request;

- an alternative form of releasing the information, for example, summary, viewing documents, or oral briefing;
- seeking an extension of the maximum time limit;
- if the requester makes multiple requests, invite him/her to prioritise the requests and consider extending the time limit on each request as needed.

9.4 Staff can further assist the requester by:

- providing an outline of the different types of information which might meet the terms of the request;
- providing access to catalogues, indexes or lists to help the requester understand the nature of the information held by Veterans' Affairs;
- providing a general response to the request;
- setting out the options for further information which could be provided on request; and
- giving the requester a reasonable opportunity to consult with a contact person.

9.5 If necessary, consider whether it would be appropriate to refuse the requests under section 18(h) on the grounds that the requests are frivolous or vexatious (see section 13 below).

9.6 If a request is amended or clarified, it can be treated as a new request which replaces the original one. Veterans' Affairs is thus not obliged to respond to the original request, and restart the timeframe for response. **This does not apply if the amendment or clarification was sought more than seven days after receiving the original request.** In this case the original request still stands and Veterans' Affairs must respond within the original 20 working day time limit or seek an extension for responding (see section 12 below for timeframes).

10. Registering a request

10.1 It is important that an OIA request is registered immediately. Any staff who receive OIA requests must inform the Policy Team VANZPOL@nzdf.mil.nz, heading up the email clearly "OIA REQUEST". The Policy Advisor will register the request and track its progress, including notifying NZDFHQ. The Policy Advisor will draft the response and coordinate sign-off. If the requester sends a follow-up message about the OIA request the message must be forwarded to the Policy Team VANZPOL@nzdf.mil.nz. This message must also be registered immediately.

10.2 If staff need further advice about handling OIA requests they should consult with the Policy Advisor.

11. Transferring a request to another agency

- 11.1 If the requester asks for information that is not held by Veterans' Affairs or the request is more closely connected with another agency, the request should be transferred, within 10 **working days** of receiving the request, to the relevant agency, or be refused under sections 18(e) or 18(g) of the OIA because the requested document does not exist, or the information is not held. The requester must be informed of the decision to transfer the request.
- 11.2 Note that NZDF is not a separate agency. Staff would need to consult with the appropriate branch of NZDF to obtain the information requested. The original timeframes would continue to apply, even if the other branch of NZDF chose to respond to the requester directly. Veterans' Affairs will continue to monitor that the timeframe is met.
- 11.3 Templates for letters to transfer the OIA to another organisation (and for other letters) are available at Appendix 3 of the *Office of the Ombudsman's "The OIA for Ministers and agencies. A guide to processing official information requests", June 2016*].
- 11.4 It is a good idea to consult with the other agency first before transferring as they may have already received the same request. Staff should also consult with the requester in that case as it may be they want an assurance that we do not hold any additional relevant information that the other agency does not have and they might withdraw their request if such an assurance can be given.
- 11.5 If the information requested relates to executive government decision making functions (e.g. Cabinet decisions), and release could prejudice Cabinet's or a Minister's ability to perform those functions, transfer to the Minister might need to be made.

12. Timeframes for response

- 12.1 The legal timeframe for responding to OIA requests is "as soon as reasonably practicable", and no later than 20 working days after the request is received. When counting working days, Day 1 is the first working day after the day on which the request was received.
- 12.2 Requests that are received at a Veterans' Affairs email address such as VANZPOL or on the Veterans' Affairs website will be taken as being received at the time when they enter the information system, **not** when they come to staff attention. This is regardless of whether the email was received outside business hours.
- Official Information Act, s. 15(1), and Electronic Transactions Act 2002, s.11.*
- 12.3 In practice, staff will receive many requests for information that can be responded to immediately by pointing the requester to the appropriate place on the Veterans' Affairs website or by e-mailing or posting the relevant publicly available information.

12.4 Proactive release of information on the website should be considered where possible to support transparency and reduce the need for some OIA requests (see also section 17 below).

12.5 Any official information that Veterans' Affairs has decided to release must be made available without "undue delay". In this regard, where a request is large, and redactions need to be made, staff may, within the 20 days timeframe, give the requester an indication of when the material is likely to be released.

Official Information Act, s. 28(5)

12.6 Additional timeframe requirements are to:

- request clarification of a request within 7 working days, if the amended request is to be treated as a new request;
- transfer a request to another agency promptly, and no later than 10 working days, after the request is received;
- extend the maximum time-limits to make a decision or transfer a request, within 20 working days after the day on which the request was received.

Extending the timeframe

12.7 The maximum time limits for transferring a request, and making a decision and communicating it to the requester, can be extended, but only if certain criteria are met. These are:

- there's a valid reason – either the request is for a large amount of information or requires a search through a large quantity of information; or consultations to make a decision on the request cannot reasonably be made within the original time limit;
- the extension is for a reasonable period of time given the circumstances (the OIA does not define "reasonable period of time, but it depends on the circumstances of the case); and
- the decision to extend the maximum time limit has been communicated to the requester within 20 working days after the day on which the request is received.

Official Information Act, s.15A

12.8 As a matter of practice, however, it is desirable to make a decision to transfer to another agency within the 10-days time limit for transfer.

Requests for urgency

12.9 Staff should consider any request for urgency, and assess whether it would be reasonable to give the request higher priority. The legal obligations remain the same (20 days rule, and communicating the decision without undue delay), but such requesters should be provided with an indicative timeframe for response. A conversation with the requester will provide clarification of the reasons for

urgency and may help make decisions about what information might be released sooner rather than later.

- 12.10 For further tips about consultation, refer to pages 25 to 28 of the Office of the Ombudsman's "*The OIA for Ministers and agencies. A guide to processing official information requests*", June 2016.

13. Grounds for refusing a request

- 13.1 Reasons must be given to requesters for refusing requests.

Administrative reasons

- 13.2 Administrative reasons for refusing a request for information (under section 18 of the Official Information Act), are:

- making the information available would be contrary to an enactment;
- making the information available would constitute contempt of Court or of the House of Representatives;
- the information is, or will soon be, publicly available (N.B if it was the requester's request which has led to the decision to publish the information, staff do not have grounds to refuse to release it to the requester);
- the request is made by or on behalf of a defendant, for information that could be sought under the Criminal Disclosure Act 2008;
- the document does not exist or cannot be found, despite reasonable efforts to locate it;
- the information cannot be made available without substantial collation or research (you must first consider extending the 20 working day timeframe for making a decision on the request before refusing it on these grounds);
- the information is not held by the agency, and there are no grounds to believe the information is held by another agency or more closely connected with the functions of another agency; or
- the request is frivolous or vexatious, or the information requested is trivial.

- 13.3 For further guidance regarding substantial collation or research, you can refer to the Office of the Ombudsman's document "*Substantial collation or research. A guide to section 18(f) of the OIA and section 17(f) of the LGOIMA*" at the Office of the Ombudsman's site referred to in paragraph 2.2.

Conclusive reasons

- 13.4 Section 6 of the OIA provides for non-release if release would prejudice:

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

13.5 Section 9 of the OIA provides for non-release if release would prejudice:

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

Public interest test

13.6 However, in the case of section 9, if there is a **public interest** in release which outweighs the need to withhold the information, then the request cannot be refused under section 9. You can look at examples of the Public Interest test in the document “*Public Interest. A guide to the public interest test in section 9(1) of the OIA and section 7(1) of the LGOIMA*” at the Office of the Ombudsman’s site referred to in paragraph 2.2.

13.7 There is also further useful information elaborating on some of the common misconceptions about releasing information under section 9 in the document “*Part 5 – Common Misconceptions*” and about privacy in the document *Part 2C Privacy* at the Office of the Ombudsman’s site referred to in paragraph 2.2.

Good faith protection

13.8 Sometimes an agency may be reluctant to release information for fear of litigation. However, the release of information in good faith in response to a request under the OIA will not expose an agency to civil or criminal proceedings. This means that the agency has released in the honest belief that the OIA requires disclosure and has made reasonable efforts to identify the interests requiring protection as well as any public interest in release.

Official Information Act 1982, s. 48.

13.9 The good faith protection is not available when an agency decides to proactively release information, rather than releasing information to a requester in response to an OIA request. A complaint may also be made to the Ombudsman by any person affected by the release, if it is considered that the agency has not, for example, taken due care when making deletions to

information, or not giving them a reasonable opportunity to comment before release.

14. Charging for information

- 14.1 An agency can charge for the supply of information. Reasonable charges can be made for making the information available including time spent retrieving and collating the information, and preparing it for release. Charges cannot be made for the time spent or any expenses incurred in deciding whether or not to release the information. An agency should not decide whether or not to charge until it has decided whether and to what extent the information can be made available. Where the charge is substantial the requester should be given the opportunity to refine their request.

Official Information Act 1982, s. 15.

- 14.2 Consideration should be given to whether waiving a charge may be appropriate given the circumstances of the requester and the public interest in release of the information.
- 14.3 Further guidance on charging is available at the Office of the Ombudsman's document "*Charging. A guide to charging for official information under the OIA and LGOIMA*" at the Office of the Ombudsman's site referred to in paragraph 2.2.

15. How information will be released

- 15.1 If the decision is to grant the request for information, staff must decide how the information will be released. The OIA provides that an agency can:
- give the requester a reasonable opportunity to inspect the information;
 - release a hard copy of the information;
 - release the information in electronic form or by electronic means;
 - arrange for the requester to hear or view the information;
 - provide a written transcript of the information;
 - provide partial disclosure of the information – for example:
 - release a document with some information deleted ("redacted");
 - release a summary of the information;
 - release an excerpt, or particular passage, from a document; or
 - provide the requester with an oral briefing.

Official Information Act 1982, ss. 16(1A) and 17(1A).

15.2 However, the OIA also provides that the information should be released in the way preferred by the requester unless to do so would:

- impair efficient administration;
- be contrary to any legal duty Veterans' Affairs has in respect of the information; or
- prejudice the interests outlined in paragraphs 13.5 to 13.9 above (and there is no countervailing public interest in the case of paragraph 13.9, i.e. section 9 of the OIA).

15.3 If the information is not provided in the way preferred by the requester, the agency must explain the reason and the grounds supporting that reason.

Official Information Act, s, 16(3).

15.4 It should be noted that due to Defence requirements, Veterans' Affairs can only provide the information in paper form or via email in PDF form. Veterans' Affairs is not permitted to use memory sticks, CD ROM, DVD ROMs or floppy discs.

15.5 An agency may also decide to:

- release the information subject to certain conditions;
- release the information with an additional statement to put it into context (useful if releasing it on its own might be misleading or incomplete); and
- release other additional information it considers relevant to the request and helpful to the requester.

15.6 If the information to be released is contained in a document that includes other information outside the scope of the request, the agency can choose to either:

- release the document in its entirety; or
- redact the information that is outside the scope of the request and advise the requester accordingly (it is important, however, not to take an unreasonably narrow interpretation of the request).

Conditional release

15.7 Information may be released subject to conditions on the use, communication or publication of the information.

Official Information Act, s.28(1)(c).

15.8 Conditions can include:

- an embargo;
- a requirement that the requester keep the information confidential;

- a requirement that any discussion of the information should include reference to a contextual statement the agency has also provided; and
- a requirement to use the information only for a specific purpose.

15.9 It should be noted however, that the conditions are not enforceable under the OIA.

16. Communicating the decision

16.1 Notice to the requester of the decision must be made within the relevant timeframe and must include:

- whether the request will be granted; and if so
- in what manner; and
- for what charge (if any).

16.2 Decisions should be clearly worded and sensitive to the particular needs of the requester.

Notice of decision to refuse

16.3 If the decision is to refuse the request, reasons must be given for that decision. This means referring to the particular subsection relied on in the OIA to refuse the request. If the reason for refusal is one of the conclusive reasons under section 9 of the OIA, staff should clearly identify the public interests favouring release, and give reasons for concluding that the public interest does not outweigh the need to withhold.

Official Information Act 1982, s. 19(a)(i).

16.4 The OIA also requires agencies to provide the grounds for relying on the relevant subsection, if the requester asks for them.

Official Information Act 1982, s. 19(a)(ii).

16.5 The requester must be advised of the right to complain to the Ombudsman and to seek an investigation and review of the decision.

Official Information Act 1982, s. 19(b).

16.6 A template letter for communicating a decision to the requester is available at Appendix 3, pages 50 – 51 of the Office of the Ombudsman’s document “*The OIA for Ministers and agencies. A guide to processing official information requests*” available at the site referred to in paragraph 2.2.

Releasing the information

16.7 Usually when a decision is made to grant the request for information, whether in full or in part, the information is provided at the same time as the decision. However, if, for example, the request is for a large amount of information, it may be provided at a later stage. The notice of decision must clearly indicate

that the information will be provided later, with an estimated timeframe for the release. If some of the information is to be withheld, the notice should also advise this and state the reasons for refusal of that part of the request. Later release may also be appropriate if a decision has been made to charge. The agency may require part payment in advance before the work is undertaken to prepare the information for release.

- 16.8 The Policy Advisor must register notices of decision and the final release of the information.

17. Publication of information

- 17.1 Veterans' Affairs may decide, proactively or in response to a request, to publish information, e.g. on its website. A proactive approach to publishing information will promote transparency, and at the same time reduce some information requests.

18. Complaints about Veterans' Affairs response

- 18.1 The requester has the right to complain (it must be in writing) to the Ombudsman about a decision to refuse (or partially refuse) a request for information and to seek an investigation and review of that decision (see www.ombudsman.parliament.nz/make-a-complaint).

Official Information Act 1982, s. 19(b).

- 18.2 The requester may also complain to the Ombudsman about:
- delays in making a decision or in releasing information;
 - a decision to extend any of the maximum time limits;
 - a decision to charge for supplying information;
 - the way in which information has been made available; and
 - conditions imposed on the release of information.
- 18.3 The Ombudsman also has specific power to investigate complaints about requests:
- for internal rules or guidelines for decisions;
 - for statements of reasons for a decision affecting the requester; or
 - by corporate entities for their personal information.
- 18.4 The Ombudsman may also be able to consider complaints about the administrative conduct of an agency in responding to the requester, such as processes followed by the agency during its consideration of the information request, e.g. transferring the request to another agency, or a decision not to grant urgency.

- 18.5 As noted in paragraph 13.9, a third person who is affected by the release of information due to, for example, not deleting (redacting) certain information, or not being given the chance to provide comment on the information to be released, may complain to the Ombudsman.

Glossary

working day [section 2 of the Official information Act 1982].

means:

any day of the week other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day); and
- (ab) if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday; and
- (b) a day in the period commencing with 25 December in any year and ending with 15 January in the following year.

other claimants [section 7 of the Veterans' Support Act 2014]

Means:

- (a) persons who have served as members of the armed forces before 1 April 1974 and whose injury or illness was caused by, contributed to by, or aggravated by routine service in New Zealand or overseas; and
- (b) dependants of veterans; and
- (c) spouses or partners of veterans.

veteran [section 7 of the Veterans' Support Act 2014]

Means:

- (a) a member of the armed forces who took part in qualifying operational service at the direction of the New Zealand Government; or
- (b) a person:
 - (i) who has been:
 - (A) appointed as an employee of the Defence Force under section 61A of the Defence Act 1990; or
 - (B) seconded to the Defence Force with the permission of the Chief of Defence Force; and
 - (ii) who took part in qualifying operational service at the direction of the New Zealand Government; or
- (c) a person who, immediately before the commencement of Part 3 of this Act, is eligible for a pension under the following provisions of the War Pensions Act 1954:
 - (i) section 19 (but only if the person was a member of the forces);
 - (ii) section 55 or 56;
 - (iii) Parts 4 and 5