

OFFICIAL INFORMATION

A GUIDE FOR PEOPLE WHO WANT INFORMATION FROM CENTRAL AND LOCAL GOVERNMENT

If you want to get information from central or local government, you may be able to request that information under the Official Information Act 1982 (*OIA*) or the Local Government Official Information and Meetings Act 1987 (*LGOIMA*).

This guide provides you with advice about how to request information and what to do if you are unhappy with the response to your request.

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REQUESTING INFORMATION FROM THE GOVERNMENT

What is official information?

Official information means any information held by the Government, including:

- ❖ government Ministers in their official capacity (information which is held by Ministers in their capacity as MPs or private individuals is not official information);
- ❖ government departments and organisations;
- ❖ the Police;
- ❖ city, district and regional councils, local authorities and community boards;
- ❖ state-owned enterprises;
- ❖ school Boards of Trustees, universities, polytechnics and other tertiary education institutions;
- ❖ public health authorities, such as district health boards; and
- ❖ any other organisation subject to the OIA or LGOIMA.

The government agencies that you can request information from are listed in the First Schedule to the Ombudsmen Act, the First Schedule to the OIA and the First Schedule to LGOIMA. Each of these Schedules can be viewed at the following website:

http://www.legislation.govt.nz/browse_vw.asp?content-set=pal_statutes

A list of the agencies that you can request information from can also be found in the Directory of Official Information, which is published by the Ministry of Justice every two years. The directory is available in public libraries or can be viewed at the following website:

<http://www.justice.govt.nz/pubs/reports/2006/directory-of-official-information/index.html>

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What is the law on requesting information?

Under the OIA and LGOIMA, people can request any official information from the government organisations listed above.

The guiding principle of the OIA and LGOIMA is that information must be made available unless there is “*good reason*” to withhold it.

The OIA and LGOIMA list a number of grounds which provide “*good reason*” to withhold information, for example to protect the security or defence of New Zealand.

The purpose of the OIA and LGOIMA is to:

- increase the availability of official information to promote more effective public participation in government, to promote the accountability of government, to enhance respect for the law and to promote good government generally; and
- to protect certain information where necessary in the public interest or to preserve personal privacy.

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Who can request official information?

Under the OIA, anyone who is in New Zealand can request official information from government Ministers or government departments or organisations. New Zealand citizens and residents who are living overseas can also request official information. Companies that are either incorporated in New Zealand, or have a place of business in New Zealand, can also request official information.

Under LGOIMA, *“any person”* can request official information from a local government organisation. *“Any person”* includes corporations and groups of people.

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What information can you request?

You can ask for any specified official information that is held by a Minister or central or local government organisation.

This can include:

- documents, reports, letters, memoranda, emails and draft documents;
- non-written information, such as video tapes or recordings;
- the reasons for any decisions that have been made about you;
- manuals which set out internal policies, principles, rules or guidelines; and
- agendas and minutes of meetings, including those not open to the public.

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Requesting information about yourself

You can also ask for personal information about yourself.

However, unless you are a company or an incorporated body, these types of requests are dealt with under the Privacy Act not the OIA or LGOIMA.

Enquiries about such requests should be made to the Privacy Commissioner, whose contact details are:

Auckland	PO Box 466 Telephone: (09) 302 8680 Fax: (09) 302 2305
Wellington	PO Box 10 094 Telephone: (04) 472 2059 Fax: (04) 472 7516
Privacy Hotline	0800 803 909
Website	http://www.privacy.org.nz/

Enquiries about all other official information requests should be made to the Ombudsmen. The Ombudsmen's contact details can be accessed [here](#).

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How do you make a request?

Making a request is easy. Simply contact the relevant Minister, government department, organisation or local authority and ask for the information you are seeking.

How to word your request

You do not need to use legal language when requesting official information.

A request does not need to be in writing – you can make requests in person or by the telephone.

You do not even have to state that your request is being made under the OIA or LGOIMA (although it may be helpful to do so). Any request for information to an organisation covered by the OIA or LGOIMA must be treated as an official information request.

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Due Particularity

Be as specific as you can in identifying what information you want.

Section 12(2) of the OIA (section 10(2) of the LGOIMA) states that a request must be specified with “*due particularity*”. This means that the person receiving the request must be able to identify the information requested.

Sometimes, requests are made for large amounts of information because the requester does not know exactly what type of information they are most interested in receiving or does not know how that information is held by the agency.

Requests which are unclear, or are too broad, may result in delays, charges, or even refusals.

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Verbal requests

If you make your request verbally, instead of in writing, it is useful to make a note of what you have requested and when you requested it. This is useful if you later need to complain about your request.

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Tips for making requests

- Before making your request, it may be helpful to telephone or email the organisation concerned to get advice about the type of information you are interested in receiving. Knowing the likely form of the information you are seeking or who wrote it, may help you make your request more specific. This may avoid the need for the organisation to ask you to clarify your request.
- Under the OIA and LGOIMA, organisations are required to give you reasonable help to make an official information request.
- Look at your request and consider whether it is clear. For example, is your request for specific documents (such as the advice a Minister received on a particular subject) or is the request for general information about that subject?
- If you are happy to discuss your request with the organisation, make this clear and provide a contact telephone number or email address.
- Making an initial request for general information about the work being done on a particular topic may assist you to make a more specific, follow-up, request for the exact information that you want.
- If you don't want to receive certain types of information (for example, internal emails or draft versions of documents) make that clear in your request.
- Although the OIA and LGOIMA do not require you to explain the purpose of the request, doing so may help the organisation identify the information you are seeking and decide whether your request should be granted.
- If your request covers much more information than you expected and you are willing to reduce your request or to accept information in a different form (for example, as a summary) make this clear. Doing so may help reduce the time it takes the organisation to respond to your request.
- Keep copies of any requests made in writing. If you make a verbal request, make a note of when, how and who you made your request to. This is helpful if you later need to make a complaint about your request.

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When should you receive a response to your request?

Your request must be answered "*as soon as reasonably practicable*", and in any case no later than 20 working days after it was received.

However, the time limit for responding to a request can be extended if:

- the request is for a large quantity of information or requires a search through a large quantity of information, and meeting the original time limit would unreasonably interfere with the operations of the organisation; 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 time limit.

An organisation can only extend the time limit once. If an organisation intends to extend the time limit, it must notify you of the extension within 20 working days of receiving your request.

If you are unhappy with the decision to extend the time limit for responding to your request, you can complain to an Ombudsman about that extension.

If you do not receive a response to your request within 20 working days, or by any extended time limit set by the organisation, your request is deemed to have been refused and you can complain to an Ombudsman about that refusal.

If you need the information urgently, you can ask for your request to be treated as urgent but you must explain why.

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Will you have to pay for the information?

You may be asked to pay a charge for information. However the charge has to be "*reasonable*".

If an organisation decides to charge you for information, it will usually write to you first to explain how much the charge is likely to be and how the charge has been calculated. The charge will be based on the cost of labour and materials involved in making the information available.

The organisation may ask that the charge, or a deposit, be paid before it releases the information.

The Ministry of Justice has published Guidelines on Charging, which have been approved by the Government. These guidelines set out what the Government regards as reasonable charges for the provision of official information. The guidelines can be viewed at the following website:

<http://www.justice.govt.nz/pubs/reports/2002/charging-guidelines/index.html>

If any organisation decides to charge you for official information and you think that the charge is unreasonable, you can complain to an Ombudsman about it.

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How will the information be provided?

If you want the information to be provided in a particular way, you should say this in your request:

- you can ask for a copy of the information or to look at it;
- you may listen to a recording or see a video or ask for a transcript;
- if information is stored in a computer, you can ask for a print-out of that information.

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Can your request be refused?

Yes. A request can be refused, but only if there is “*good reason*” under the OIA or LGOIMA for refusing it.

A request can be refused under the OIA for a number of reasons, including:

- the security and defence of New Zealand;
- the maintenance of the law;
- to protect trade secrets or the commercial position of a third party;
- personal privacy; and
- legal professional privilege.

Similar grounds for withholding information also exist in the LGOIMA.

Further information on the withholding grounds in the OIA and LGOIMA can be found on the Office of the Ombudsmen website (www.ombudsmen.govt.nz) under Guides and Pamphlets – Practice Guidelines.

In some cases, before refusing a request, an organisation must also consider whether there is a stronger public interest in favour of releasing the information which outweighs the reasons for withholding it. If that is the case, the information must be made available.

If your request is refused, the organisation must tell you why and must also tell you that you have the right to complain to an Ombudsman about that refusal.

Sometimes, you may be given some, but not all, of the information at issue, for example you may be provided with a summary or a copy of a document that has some sensitive information deleted.

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Section 23 – Reasons for Decisions

Under section 23 of the OIA, you are entitled, as a right, to ask an organisation to provide you with a written statement which explains the reasons for any decision or recommendation made by the organisation that affects you personally.

Requests for written statements of reasons are often made by persons who feel upset or concerned about a decision or recommendation that affects them personally. Section 23 provides that person with a right to further information about that decision.

Section 23 applies to many different types of decisions or recommendations made by organisations every day. For example:

- decisions made on a person's application for a job or promotion;
- decisions made on a person's salary or terms and conditions of employment;
- decisions or recommendations that relate to the awarding of commercial tender contracts;
- decisions or recommendations on applications for education scholarships; or
- decisions or recommendations on applications for income support.

This list is not exhaustive. There are many other decisions and recommendations made by organisations which are covered by section 23.

How to request a section 23 statement of reasons

You will need to make a specific request to the organisation concerned for a statement of the reasons for the particular decision or recommendation at issue. You do not need to refer to section 23 (but it may be helpful if you do). Make sure that you clearly identify the particular decision or recommendation that you are concerned about.

Who can request a section 23 statement of reasons

New Zealand citizens, residents and people who are in New Zealand may request a statement of reasons under section 23. A body corporate, which is either incorporated in New Zealand or has a place of business in New Zealand, may also request a section 23 statement of reasons.

The requester must have a personal interest in the decision or recommendation

Section 23 provides that a person may request a written statement of reasons for a decision or recommendation which has been made "*in respect of that person in his or its personal capacity.*" This means that the requester must have a particular interest in the decision or recommendation at issue that is different from that of the general public.

The request must be made within a reasonable time

Section 23 states that any request for a written statement of reasons must be made within a reasonable time of the decision or recommendation at issue. Accordingly,

if you want a statement of reasons for a particular decision or recommendation, do not delay in making your request.

What must a written statement include?

A written statement of reasons under section 23 must be full and comprehensive in explaining the decision-making process at issue. Section 23 states that the written statement 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.

Can information be withheld?

Yes, section 23 sets out certain grounds for withholding information from a written statement of reasons.

If an organisation withholds information from a written statement of reasons, it will advise you that certain information has been withheld and explain why that information was withheld.

WHAT SHOULD YOU DO IF YOU ARE UNHAPPY WITH THE RESPONSE TO YOUR REQUEST?

Can you complain about a decision?

Yes. If you are unhappy with the response to your request, you can complain to an Ombudsman.

Under the OIA and LGOIMA, an Ombudsman can investigate:

- decisions to withhold information or to delete information from documents released to you;
- delays or extensions to the time limits for responding to requests;
- charges for supplying information;
- the way in which information has been made available;
- release of information subject to conditions; and
- the response to a request for a statement of reasons for a decision affecting the requester.

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What is an Ombudsman?

An Ombudsman is an independent Officer of Parliament who investigates complaints against central and local government organisations, including complaints under the OIA and LGOIMA.

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How do you complain to an Ombudsman

There is no charge for making a complaint to an Ombudsman. All investigations are conducted in private.

If you wish to make a complaint to an Ombudsman, you can do so by:

- letter, fax or email (addressed to complaint@ombudsmen.govt.nz); or
- by using an online complaint form available at www.ombudsmen.govt.nz

The Office of the Ombudsmen contact details can be viewed [here](#).

When making your complaint, it would be helpful if you could provide:

- a copy of your letter of request or details of your verbal request; and
- a copy of the organisation's reply to your request.

If you have not received a reply to your request, provide details of when and where you made it.

If you need assistance, please telephone the Office of the Ombudsmen free phone number 0800 802 602.

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Will an Ombudsman always investigate?

Whether or not an Ombudsman conducts a formal investigation depends on the nature of the complaint.

On receiving a complaint, an Ombudsman will consider:

- whether or not to investigate the complaint and, if the decision is to investigate, whether to try to resolve the complaint through informal enquiries; or
- whether to begin a formal investigation.

There are a number of reasons why an Ombudsman may decide not to investigate a complaint. For example, section 17 of the Ombudsmen Act says that an Ombudsman may decline to investigate a complaint on a number of grounds, including:

- that there is an adequate alternative remedy available to the complainant (for example, if there are court proceedings underway and the information at issue may be obtained through the discovery process)
- that the complainant has known about the matter for more than 12 months;
- the subject-matter of the complaint is trivial;
- the complaint is frivolous or vexatious or is not made in good faith; or
- the complainant does not have sufficient personal interest in the complaint.

In some cases, it may be necessary for an Ombudsman to make enquiries with a complainant or an organisation, before deciding whether to investigate a complaint.

If your complaint is about a delay, or it is urgent, an Ombudsman may decide to make informal enquiries with the organisation concerned. Such enquiries may resolve the complaint without the need for a formal investigation.

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How are investigations conducted?

An Ombudsman's investigation is conducted in an impartial and non-adversarial way. All investigations are conducted in private.

An Ombudsman is not an advocate for the complainant or the organisation concerned. An Ombudsman's function is to form an independent and impartial opinion on whether your request has been dealt with correctly.

Your complaint will be acknowledged promptly and you will be kept informed throughout the investigation.

An Ombudsman will seek the organisation's response to your complaint. If information has been withheld, an Ombudsman will view that information.

If an Ombudsman decides that your complaint can't be upheld, you will have an opportunity to respond before a final decision is made.

If an Ombudsman decides that your complaint is justified, the organisation will be advised of the view and invited to provide further comments before a final decision is made.

If an Ombudsman forms the view that information should not be withheld, it is not the Ombudsman who releases the information. In such cases, the Ombudsman recommends that the organisation concerned release the information.

An Ombudsman's recommendation becomes binding on the organisation 21 working days after it has been made, unless:

- in the case of central government organisations, the Governor-General, by Order in Council, decides otherwise; or
- in the case of local government organisations, a resolution directing otherwise is made at a meeting of that agency.

Where an Order in Council or a resolution by a local government organisation is issued, the requester may apply to the High Court for a review of the Order in Council or resolution. In such cases, the court costs of the requester must be paid by the government (on a solicitor and client basis) unless the High Court believes that the case has not been reasonably or properly brought.

An Ombudsman does not have any involvement in a requester's application for judicial review.

However, an Ombudsman does have the ability to report an organisation to Parliament if it does not comply with a recommendation.

In some cases, the agency concerned may decide to release the information at issue during the course of an Ombudsman's investigation. If this happens, the investigation will usually be discontinued on the basis that your complaint has been resolved.

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How long will an investigation take?

In the Ombudsmen's Annual Report for the year ended 30 June 2005, the Ombudsmen reported that the average number of working days taken to complete an investigation under the OIA was 73. Under the LGOIMA, it was 69 working days.

However, these figures are averages. Some complaints, for example complaints about delays, can often be resolved within a week or so. Other complaints about refusals can be more complicated, depending on the amount of information at issue and the complexity of the issues resolved, and may take some months to resolve. In a very small number of difficult cases, the investigation may take longer than 12 months.

An Ombudsman will keep you informed throughout the investigation process.

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Contact Details for the Office of the Ombudsmen

Complaints Free Phone: 0800 802 602

Offices:

Auckland	Wellington	Christchurch
Level 10 55-65 Shortland Street PO Box 1960 Telephone: (09) 379 6102 Fax: (09) 377 6537	14th Floor 70 The Terrace PO Box 10 152 Telephone: (04) 473 9533 Fax: (04) 471 2254	6th Floor 764 Columbo Street PO Box 13 482 Telephone: (03) 366 8556 Fax: (03) 365 7935

Email:

Complaints:	complaint@ombudsmen.govt.nz
General information or enquiries:	office@ombudsmen.govt.nz

Website: www.ombudsmen.govt.nz

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