

1. WHERE A REQUESTER ASKS THAT A REQUEST FOR OFFICIAL INFORMATION BE TREATED AS URGENT

Introduction

This chapter is designed to help:

- (a) requesters seeking information urgently from an agency, and
- (b) agencies in considering such urgent requests for information.

It addresses the following issues:

- ❖ Is a person entitled to ask an agency to treat a request for information under the OIA (or LGOIMA) as urgent?
- ❖ Are there any requirements under the OIA which a person must meet when making an urgent request?
- ❖ What obligations does the OIA impose on agencies to respond within a certain time frame when they receive a request which seeks official information urgently?
- ❖ "*As soon as reasonably practicable*"
- ❖ Where a requester believes that an agency could have responded "*as soon as reasonably practicable*" and within the requester's "*urgent deadline*", can the requester complain to an Ombudsman?
- ❖ Practical suggestions arising from Ombudsmen's reviews which may assist requesters making urgent requests and agencies considering such requests

Is a person entitled to ask an agency to treat a request for information under the OIA as urgent?

Yes. The right to seek information urgently is implicit in section 12(3) of the OIA.¹

Are there any requirements under the OIA which a person must meet when making an urgent request?

Yes. There are three requirements identified in section 12² which must be met in making an urgent request.

¹ Section 10(3) LGOIMA

² Section 10 LGOIMA

- ❖ First, section 12(1)³ requires that the person making a request must be:
 - (a) A New Zealand citizen; or
 - (b) A permanent resident of New Zealand; or
 - (c) A person who is in New Zealand; or
 - (d) A body corporate which is incorporated in New Zealand; or
 - (e) A body corporate which is incorporated outside New Zealand but which has a place of business in New Zealand.
- ❖ Secondly, section 12(2)⁴ requires that the official information requested must be specified with due particularity in the request.
- ❖ Thirdly, section 12(3)⁵ requires that the person making the request must give his or her or its reasons for seeking the information urgently.

What obligations does the OIA impose on agencies to respond within a certain time frame when they receive a request which seeks official information urgently?

There are no specific obligations imposed on agencies in respect of urgent requests other than those set out in sections 15 and 15A⁶ of the Act.

Irrespective of the urgency requested, the requirements under the Act in respect of the time within which an agency must respond to a request for information are as follows. The agency must notify the person who made the request of its decision on the request:

- ❖ "*as soon as reasonably practicable*", and
- ❖ "*in any case not later than 20 working days*" after the date on which it receives the request, unless
- ❖ the 20 working day time limit is validly extended pursuant to section 15A⁷ of the Act.

A common misconception among agencies is that they have "*up to 20 working days*" within which to respond irrespective of the circumstances of the request and any urgency sought by the requester. That view is wrong under the Act. **The essential obligation is to respond "*as soon as reasonably practicable*".** The 20 working day time limit (subject to extension in certain defined circumstances under section 15A of the OIA) sets a statutory maximum on the period of time that can reasonably be said to be "*as soon as reasonably practicable*" in each case. The Act does not permit agencies to take as long

³There is no equivalent requirement under LGOIMA. Section 10 of that Act entitles "*any person*" to make a request for specified official information held by a local authority. "*Person*" is defined in section 2(1) of LGOIMA as including "*a corporation sole, and also a body of persons, whether corporate or unincorporate*".

⁴ Section 10(2) LGOIMA

⁵ Section 10(2) LGOIMA

⁶ Sections 13 and 14 LGOIMA

as they like, up to the statutory maximum time limit, to make a decision on a request irrespective of the circumstances of the particular case.

Similarly, some users of the Act have wrongly assumed that a person making an urgent request can require an agency to respond within a "*deadline*" fixed by that requester. While it will often assist an agency to know at the outset the urgent time frame within which a requester prefers to receive the information requested, the sole obligation remains to respond "*as soon as reasonably practicable*". As discussed below, whether responding "*as soon as reasonably practicable*" will meet a requester's "*urgent deadline*" will depend on the circumstances of the particular case.

"As soon as reasonably practicable" in the context of an urgent request

In the context of urgent requests under the Act, the issue of how an agency should interpret the phrase "*as soon as reasonably practicable*" is very important. There are no absolute rules for interpreting this phrase. Each particular case must be assessed on its merits. However, the Ombudsmen have identified a number of factors as being relevant:

- ❖ the reasons for urgency given by the requester,
- ❖ the volume of information which must be considered,
- ❖ the nature of the information requested and how it is held,
- ❖ whether any consultations are necessary before a decision on the request can be made, and
- ❖ whether according priority to an urgent request would unreasonably interfere with the operations of the agency involved.

Applying these factors to different fact situations can lead to quite different results. For example, a simple request for a single item of information could conceivably be answered verbally straight away if the information was known to the person receiving the request. On the other hand, a broad request requiring a search through a large quantity of information and consultation with numerous third parties could reasonably take longer than 20 working days or even justify a refusal under section 18(f)⁸ of the Act on the ground that "*the information requested cannot be made available without substantial collation and research*".

What constitutes "*as soon as reasonably practicable*" in each case depends solely on the circumstances of that case. A requester's need to obtain information within a fixed time frame is one of a number of factors that must be considered.

Where a requester believes that an agency could have responded "*as soon as reasonably practicable*" and within the requester's "*urgent deadline*", can the requester complain to an Ombudsman?

The OIA does not provide authority for an Ombudsman to investigate complaints about the failure of an agency to accord urgency to a particular request.

⁸ Section 17(f) LGOIMA

However, where a department or organisation or local authority is subject to the OA, an Ombudsman may investigate a complaint that an agency acted unreasonably in not according to a request the urgency for which the requester has asked.

An Ombudsman cannot investigate the actions of Ministers of the Crown under the OA. However, an Ombudsman may investigate the adequacy of advice a Minister received from a department or organisation which was relied on by the Minister in reaching his or her decision on an urgent request.

Given the short time frames which usually exist where such complaints are received by an Ombudsman, there is usually little practical purpose in commencing a formal investigation under the OA other than to investigate the adequacy of procedures for processing official information requests after the event. Usually an Ombudsman's assistance is sought where requesters are still hopeful of obtaining a response before their "*urgent deadline*" passes. Therefore as a matter of practical necessity, the Ombudsmen have followed the practice of making informal enquiries of the agency concerned to ascertain whether the complaint can be quickly resolved.

In many cases, satisfactory resolution can be achieved by a fuller explanation of the reasons why the request could not be acceded to within the requester's preferred time frame. In other cases, the result of an Ombudsman's inquiries concerning such a complaint has been a review of the procedures in place in the agency involved, such being designed at ensuring that requests are processed promptly in accordance with the requirements of the Act, particularly where urgency is validly requested. Sometimes the process has resulted in release of the information.

Practical suggestions which may assist requesters making urgent requests and agencies considering urgent requests

The following suggested checklist may assist requesters when making urgent requests:

- ❖ State clearly that the request is urgent and give your reasons for seeking urgency.
- ❖ Identify the time frame within which you need the information requested and ask the agency involved to let you know straight away if it cannot respond to your request within your preferred time frame.
- ❖ If you are happy to refine your request if it cannot reasonably be met within your urgent time frame clearly state this and ask the agency to contact you straight away. Provide a telephone or fax number to expedite response time in this regard.

The following checklist may assist agencies considering urgent requests:

- ❖ On receipt of an urgent request immediately decide **and** advise the requester without delay whether the reasons for urgency are accepted and whether the time frame specified by the requester (if any) may realistically be met.
- ❖ Where the reasons for urgency are accepted, ensure that the request is given appropriate priority. Remember that the phrase "*as soon as reasonably practicable*" applies to **all** requests whether urgent or not. Failure to accord

priority to valid urgent requests over other current work would render meaningless the implicit right under section 12(3)⁹ to ask that a request be treated as urgent.

- ❖ Always keep the requester advised of any difficulties that may arise which could adversely affect the likelihood of a response being completed within the requester's preferred time frame. Do not allow requesters to build up false expectations.
- ❖ Where urgency is not accepted or there are practical difficulties in responding within a requester's preferred time frame, advise the requester immediately. If requesters making urgent requests do not hear to the contrary they tend to assume that the reasons for urgency have been accepted and expect to receive a positive response within their preferred time frame.
- ❖ If the practical difficulties can be avoided by responding in an alternative format,¹⁰ consult the requester straight away to see if that approach would satisfy the request.

General observations

The Act clearly contemplates that urgent requests can reasonably be made. The obligations imposed on agencies that receive urgent requests are essentially flexible and turn on what is "*reasonable*" in the circumstances of the particular case. Agencies cannot unreasonably ignore urgent requests simply because they may prefer not to deal with them. Similarly, requesters cannot unreasonably expect agencies to respond urgently within a set time frame if there are valid reasons why that cannot be achieved. It is in the best interests of both requesters and holders of official information in the context of urgent requests to communicate fully and clearly their respective positions and to adopt such flexibility as the Act permits to comply with the spirit and purposes of the Act.

⁹ Section 10(3) LGOIMA

¹⁰ Section 16 OIA, Section 15 LGOIMA refers